

Consumer Credit: The harmonisation legislation

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Back in the year 2001, Cyprus implemented the Law «Regulating the Terms in relation to Credit Agreements for Consumers», in order to be in compliance with the EU legal framework at that time.

As a full member of the EU, Cyprus came under the obligation to align its legislation with the new Directive 2008/48/EC on «Credit Agreements for Consumers», which was subsequently transposed into Cyprus law on November 2010, by the «Credit Agreements for Consumers Law».

Scope

The scope of the new legislation is the elimination of national differences (emerging by virtue of the adoption by certain countries of more stringent measures than others) leading to distortions of competition amongst creditors and thus, creating obstacles to the internal market. The new law aims to afford a sufficient degree of consumer protection and free movement of credit offers to take place under optimum conditions for both those who offer credit and those requiring it.

In basic terms, the new law applies, amongst others, to the following credit agreements:

- (a) consumer loan from €200 to €75.000;
- (b) current accounts;
- (c) deferred debit cards (except if the credit has to be repaid within 3 months (or less) and only insignificant charges are payable);
- (d) overdraft facilities, where the credit has to be repaid in not less than one month;
- (e) leasing (hire-purchase) agreements, where there is an obligation for the purchase of the goods; and
- (f) loans whose purpose is the renovation or increase of the value of an existing building.

New provisions

Pre-contractual information: Firstly, the new law places an obligation on the part of the credit intermediary to provide certain pre contractual information to the consumer in reasonable time before the conclusion of the agreement. Such information include the type of credit, the identity of the creditor (certain other details), the total amount of credit and the conditions governing the drawdown, the duration of the agreement, the

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annual percentage rate of charge and the total amount payable by the consumer, the amount, number and frequency of payments to be made, the interest rate applicable in the case of late payments and the arrangements for its adjustment, the consumer's right to be supplied (free of charge) of a copy of the credit agreement, a warning regarding the consequences of late payments and the existence or absence of a right of withdrawal. This information will enable the consumer to compare different offers in order to make an informed decision on whether to conclude a credit agreement and therefore shall be provided to the consumer in a personalised, clear and concise manner. There is a standard form to be used (Standard European Consumer Credit Information Form).

The new law makes also reference to the pre-contractual information requirements for certain credit agreements in the form of overdraft facilities, for which the new law applies (and other specific credit agreements), which essentially, comprises, in addition to some others, of most of the abovementioned information. A similar provision is made in the case of an agreement to open a current account, where there is a possibility that the consumer is allowed an overrun. In the event of significant overrunning exceeding a period of one month, the creditor shall inform the consumer without delay of the overrunning, the amount involved, the borrowing rate and any penalties, charges or interest on arrears applicable.

Consumer credit-worthiness: In addition, the new law places an obligation on the part of the creditor to assess the consumer's credit worthiness before the conclusion of the credit agreement. Moreover, in a case of cross-border credit, creditors from other member states shall have access to databases used in that member state for assessing the credit-worthiness of consumers. If the credit application is rejected on the basis of consultation of a database, the creditor shall inform the consumer immediately and without charge of the result of such consultation and of the particulars drawn from the database consulte.

Termination provisions: As regards open-end credit agreements, the consumer may effect standard termination of such an agreement free of charge at any time unless the parties have agreed on a period of notice. Such a period may not exceed one month. If agreed in the credit agreement, the creditor may terminate by giving the consumer at least 2 months notice. He may also terminate the consumer's right to draw down by informing the consumer and providing adequate reasoning, at the latest immediately thereafter termination.

Advertising: Finally, the new law makes express reference to the duties and obligations of credit intermediaries towards the consumers. Amongst others, these include a requirement to indicate in all their advertising and documentation intended for consumers, the extent of their powers, a requirement that the fee payable by the consumer to the credit intermediary for the services shall be agreed in writing before the conclusion of the agreement and be communicated to the creditor.

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Other provisions

Apart from introducing new provisions, the new Law adopted certain parts of the 2001 law in an amended form.

Advertising: For instance, in relation to advertising, if any figures relating to the cost of the credit to the consumer is indicated, then any advertising shall include standard information in a clear, concise and prominent manner comprising of the total amount of credit, the borrowing rate together with particulars of any charges, the annual percentage rate of charge, the duration of the agreement, the cash price and/or the amount of any advance payment and the total amount payable by the consumer.

Right of withdrawal: Another amendment relates to the right of withdrawal from the agreement on the part of the consumer, which extends to a period of 14 calendar days during which is able to withdraw without giving any reason. If the consumer exercises his right, he shall notify the creditor and pay the capital and the interest accrued thereon from the date the credit was drawn until the repayment date.

Right to early discharge: Finally, by virtue of the new law, the consumer is entitled at any time to discharge fully or partially his obligations under a credit agreement and shall be entitled to a reduction in the total cost of the credit. Such reduction consists of the interest and the costs for the remaining duration of the contract. In addition, the creditor shall be entitled to fair and objectively justified compensation (varies between 0.5% - 1%) for possible costs directly linked to the early repayment (provided that it falls within a period for which the borrowing rate is fixed).

Conclusion

Any business currently covered by or exempt from the credit legislation, should assess the potential impact and effect of the new law. Particular consideration shall be placed on advertising, customer-facing materials which may need to be amended in order to comply with the new requirements, business processes, staff training in order to ensure ongoing compliance with the new law, IT systems and at the same time update of all current documentation.

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| Website: www.erotocritou.com | Telephone: +35725370101 | Fax: +35725370102 |
Email: info@erotocritou.com