

Settlement Act -  
The accountability of  
financial institutions  
Legal newsletter



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**Deloitte Legal Szarvas, Erdős and Partners Law Firm, a member of Deloitte Legal's international network, is providing its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.**

**This edition of our newsletter deals with the Settlement Act issued on 6 October.**

The Act provides that financial institutions must repay to their consumers any overpayments arising from the invalidity of the use of the forex margin and unilateral contract amendments. The Settlement Act provides the framework for such settlement; however, the Hungarian National Bank (MNB) is responsible for devising the formula required for the calculation of the precise amount to be repaid and for monitoring whether financial institutions comply with their repayment obligation. The governor of MNB will specify the formula for calculating the amount of the settlement in a decree.

**Who and what types of contracts are covered by Settlement Act?**

The scope of the Settlement Act covers only loan contracts and finance leasing contracts concluded with consumers. In addition, the Settlement Act also regulates settlements with factoring companies and covers consumers whose real property has been purchased by the Hungarian National Asset Management Inc., those who opted for final repayment, and those who opted in to the exchange rate cap scheme (or received other payment facilities).

According to the general rule, financial institutions are subject to the settlement obligation with respect to consumer contracts (loan and leasing contracts) that are still effective and those that expired after 26 July 2009 (i.e. within the five-year period preceding the entry into force of the first act on foreign currency loans). The Settlement Act defines a number of other cases where financial institutions are subject to the settlement obligation (e.g. those opting for final repayment and debts that have not yet lapsed).

## **The purpose and method of settlement**

According to the reasoning of the Settlement Act, the general rule of settlement is that consumers must end up in the same position as if the lawful exchange rate and the original interest rate effective at the date of the contract had been used since the date of the contract.

"Settlement" refers to the communication on the amount to be credited or repaid and not the actual crediting or repayment as the date for these will be announced at a later date. Settlement also involves the calculation of the new instalment.

The most important rule regarding repayment (and the one that benefits debtors the most) is that overpayments must be accounted for as early repayment and must be deducted from the principal. Accordingly, cash will be repaid only to those consumers who have already fully repaid their debt and, as a result, their contract has expired, as well as those whose contract is effective but their entire debt is treated as settled on the basis of the more favourable calculation to be applied due to the invalidity of unfair terms and such contracts should already have expired.

## **The schedule for settlement**

Under the Settlement Act, financial institutions must first send the settlement calculations to consumers with foreign currency loans. Financial institutions which filed a lawsuit in order to establish the fairness of their unilateral changes in terms must inform their consumers about the settlement between 1 February 2015 and 28 February 2015 or, if the lawsuit is settled in 2015, within 60 days from the settlement of such lawsuit. Those financial institutions that have not filed a lawsuit must send the settlement calculations to their consumers between 15 January 2015 and 29 January 2015.

Financial institutions may file a lawsuit in connection with the unilateral amendment to HUF loan contracts between 5 January 2015 and 12 January 2015. Financial institutions that do not file a lawsuit will have to send the settlement calculations to their consumers with HUF loan contracts between 16 April and 30 April, while those that do file a lawsuit will have to do so between 15 August and 30 September or within 60 days from the settlement of such lawsuit.

In order to ensure that those involved are well-informed, MNB will provide regular updates through its website in connection with the details and schedule of the settlement scheme

## **Consumers opting for final repayment are covered as well**

At the consumers' request, financial institutions must settle accounts with consumers opted for final repayment as well: those concerned may request settlement between 1 and 31 March 2015 in return for a charge of HUF 10,000 and the financial institutions must send them the settlement calculations before 30 November 2015. If the calculations reveal that money is due to the consumer, then the actual repayment will take place at a date to be announced later on.

### **Settlement with factoring companies**

It is important to point out that consumers whose debts have been transferred to a factoring companies will also be covered by the settlement scheme. In such cases, consumers may request the factoring companies to settle accounts with them. The factoring companies is required to pay the consumer but may request a refund of the amount (or a part thereof) from the bank that is obliged to pay.

### **No tax liability for consumers**

The Settlement Act also amended the tax laws by providing that the individual's tax liability shall not be affected by amounts paid out (repaid) or credited (accounted for as overpayment) to the consumer to which the consumer is entitled on the basis of the Settlement Act or the settlement resulting from a lawsuit related to the unfair nature of consumer loan contracts. Accordingly, the amount to be provided under the Settlement Act is not subject to personal income tax.

The Settlement Act deals with the tax issues affecting financial institutions in a unique, detailed and special manner. Accordingly, financial institutions must exercise reasonable care.

### **Good news for financial institutions**

It has become common practice for financial institutions in the market to provide various discounts in order to help troubled consumers with forex loans and to reduce the percentage of non-performing loans. During the course of settlement, financial institutions may deduct such discounts from the amount of the overpayment. One such significant discount was when the consumer sought the help of Hungarian National Asset Management Inc. In the case of such consumers, settlement essentially takes place only between the bank and the asset management company; these consumers will not receive any repayment as they have already received significant aid.

Another provision that favours financial institutions is that, under the Settlement Act, unilateral contract amendment does not include cases where discounts from the interest rate and discounts from charges or fees were cancelled after the period of the discount ended and such interest rates, charges or fees were subsequently raised back to the levels set forth in the contract.

If a debtor disagrees with the amount calculated by a financial institution, they may ultimately submit an appeal to MNB.

### Further legislation

Thus, as the most recent development regarding legal issues surrounding consumer loans, the Settlement Act enacted the invalidity of the use of the forex margin, established the presumption of unfairness with respect to unilateral contract amendments, and laid down the general rules for settlement.

MNB's decree containing the detailed rules is expected to be issued in the period ahead. The decree will contain the formula to be used by financial institutions to calculate their liabilities to consumers arising due to the invalidity of the use of the forex margin and the unfairness of unilateral contract amendments. The date when the calculations will be sent out to consumers depends on the outcome of the pending lawsuits as well.

The final date of settlement, i.e. the actual date when overpayments are credited and any repayments are made, will be announced later.

According to the press, the chance exists that there will be changes to the types of loan contracts subject to the Settlement Act. Should this happen, we will of course inform our clients in another edition of our newsletter.

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