

ABREU & MARQUES

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SOCIEDADE DE ADVOGADOS, RL

BANKING LAW

CONSUMER CREDIT AGREEMENTS

AMENDMENT OF THE REGIME

It was published on March 28, the Decree Law 42-A/2013, amending, as from July 1, the regime on Consumer Credit Agreements (the "Regime"), which was approved by Decree Law 133/2009, of July 2, and that implemented Directive 2008/48/EC of the European Parliament and of the Council, of April 23.

The Regime has standardized the method of calculation and the elements included in the annual percentage rate of charge ("taxa anual de encargos efectiva global") (TAEG), as well as enhanced consumers' rights, namely the right to pre-contractual information. We used the term "enhancement" to the extent that this Regime revoked - considering the social, political and economic evolution that occurred in the national and European territory - Decree-Law 351/91 of September 21, which had already approved rules on consumer credit agreements since 1991.

Decree-Law 42-A/2013, that has now amended for the second time the Regime, implemented the Commission Directive 2011/90/EU, of November 14, and aims to introduce some clarifications concerning the Consumer Credit Agreements regime, and, more importantly, to extend the scope of the Regime, to update the rules for the determination of usury in such agreements, to define the limits of the TAEG applicable to credit agreements in the form of an overdraft facility where the credit has to be repaid within one month; and for the annual nominal rate ("taxa anual nominal") (TAN) in overrunning. Similarly, the creditor, in this type of contracts, may, no longer, charge fees in overrunning situations.

The Regime foresees, from the beginning, some types of contracts that are not covered by the same, including, among several others: (i) credit agreements which are secured either by a mortgage on immovable property or secured by other right related to immovable property; (ii) credit agreements in the form of an overdraft facility where the credit has to be repaid within one month. With the entry into force of Decree-Law 42-A/2013, and although not in full, the Regime will also be applicable to the contracts referred in (ii) above.

An important amendment that Decree-Law 42-A/2013 has introduced and which is guaranteed to have a useful ef-

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(CONTINUATION)

fect on consumers is the prohibition of the creditor (bank) to charge fees in case of overrunning by the consumer, notably in current deposit contracts.

Furthermore, Decree-Law 42-A/2013 has established that it is considered as usurious, the credit agreement which TAEG, at the time of its signature, exceeds by one quarter (previously, one third) the TAEG' average practiced in the market by credit institutions in the previous quarter, for each type of consumer credit agreement. Similarly, the referred legislation has also considered as usurious, the credit agreement, which TAEG, at the time of its signature, while not exceeding the limit above referred, exceeds in 50% the average TAEG of consumer credit agreements concluded in the previous quarter.

It is also considered as usurious, the credit agreement in the form of an overdraft facility¹ where the credit has to be repaid within one month, which TAEG, at the time of its signature, exceeds the maximum TAEG amount as defined, in the above mentioned terms, for credit agreements in the form of an overdraft facility where the credit has to be repaid within a period exceeding one month.

It has also been considered as usurious, the credit agreement in the form of overrunning² which TAN, at the time of its signature, exceeds the maximum amount of the TAEG, under the above mentioned terms, for credit agreements in the form of an overdraft facility where the credit has to be repaid within a period exceeding one month.

If some of the above referred TAEG and TAN limits are exceeded, Decree-Law 42-A/2013 established

that the same must be considered, respectively and automatically, reduced to half, without prejudice of the eventual criminal liability of the offender.

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¹ Corresponds to an express credit agreement under which a creditor makes available to a consumer funds exceeding the current balance in the consumer's current deposit account.

² Corresponds to the overdraft tacitly accepted by a creditor allowing a consumer to dispose of funds which exceed the current balance in the consumer's current deposit account or the agreed overdraft facility.

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