

Client Alert

Extension of consumer protection to farmers – new rules for entering into contracts

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On January 7, 2024, the Act of April 14, 2023, on Consumer Lombard Loans (the “**Act**”) entered into force. The Act introduces significant changes in financing provided to farmers and extends consumer protection to farmers.

Extended Consumer Protection for Farmers

The new regulations will apply to natural persons engaged in agricultural activities (“**Farmers**”). Agricultural activity includes plant, animal, horticultural, fruit and fish production. However, the new regulations will not apply to legal entities or companies conducting such activities.

The introduced changes will have a significant impact on many sectors, in particular on the financial, leasing, and insurance sector, as well as on the RES market in Poland. Until now, contracts concluded with Farmers in connection with their agricultural activities have been treated as B2B contracts, and farmers did not enjoy the rights of consumers. The new regulations, extending consumer protection to farmers, significantly change this approach, and the existing contractual and business models may need to be significantly revised.

Protecting Farmers against Abusive Clauses

Under the Act, the protection against abusive clauses provided for in the Civil Code (the “**CC**”) was extended to Farmers. Granting farmers such protection will have a significant impact on the rules of contracting with Farmers and their position in relations with business entities.

According to the CC, abusive clauses are contractual provisions not agreed individually that are contrary to good customs, grossly violate the interests of the contracting party and, consequently, do not bind the consumer. As a result of the amendments introduced by the Act, Farmers will be able to invoke the above-mentioned regulation and argue that certain contractual provisions are ineffective due to their abusive nature. Bearing in mind the current pro-consumer interpretation of these provisions by common courts and the President of the Competition and Consumer Protection Office (the “**President of the UOKiK**”), which has resulted in more than 7,000 clauses being entered in the register of prohibited clauses and hundreds of decisions of the President of the UOKiK declaring certain clauses abusive, there is a high risk that the clauses previously acceptable in B2B relations with Farmers may be considered abusive under the new regulations.

Farmers will therefore be able to take advantage of the case-specific review and challenge certain provisions as unfair contract terms. Farmers concluding contracts in connection with their agricultural activity will not obtain the status of consumers and will not be able to benefit from administrative and legal protection provided by the President of the UOKiK. Therefore, the President of the UOKiK will not be able to intervene in these situations by initiating administrative proceedings concerning the use of prohibited clauses or violation of collective consumer interests. However, it cannot be ruled out that, in disputes with business entities, Farmers will rely on the rich and constantly developing decision-making practice of the President of the UOKiK in order to challenge specific contractual clauses.

The above changes will be important for all entities providing services which may be addressed to farmers, e.g., lenders, lessors, insurance companies and RES developers. As a result, it seems necessary for such entities to carry out an audit and possibly introduce changes in the model contracts used so far in relations with Farmers.

Protection of Farmers Provided under the Consumer Loan Act

The amendments extended the scope of application of the Consumer Loan Act of May 12, 2011 (the “CLA”) to contracts entered into with Farmers. As a result, the CLA will apply to loan agreements entered into by Farmers and not exceeding the amount of PLN 255,550.

The CLA introduces a special lending regime, providing for far-reaching protection of the borrower, and imposes a number of obligations on the lender. This applies in particular to the borrower’s right to withdraw from the loan agreement within 14 days of its conclusion, the right to be informed about the cost of the loan, the possibility of early repayment of the loan, and the right to demand a proportionate refund of the fees charged in the event of early repayment of the loan.

As a consequence, companies from the broadly understood financial or loan sector will have to revise the products previously offered to Farmers. The aim should be to identify the rules that may apply to granted loans and to adjust the wording of contracts and the sales process to the requirements resulting therefrom.

Consumer Protection Granted to Farmers with regard to Loan Agreements

In the case of loan agreements entered into by Farmers and exceeding the amount of PLN 255,550, the special protection regime provided for in the CC and introduced under the so-called anti-usury law will apply. Under this regime, a borrower who is a Farmer will benefit from protection with regard to the limits of non-interest costs of a loan. Farmers will also be covered by provisions governing loan repayment security and early repayment. The lender, in turn, will be subject to specific disclosure obligations and failure to comply with such obligations may result in liability for damages towards the borrower and constitute an unfair, misleading market practice.

Application of Lombard Loan Provisions to Farmers

The last of the amendments concerns the extension of regulations on Lombard loans to Farmers. The Act regulates in detail the mechanism of granting such loans by business entities performing pawnshop activities, which, after the Act comes into force, will be subject to a regime similar to loan institutions. As a result, in the event of entering into Lombard loans, Farmers will benefit from the extended scope of protection provided for by the Act.

Summary

The changes have resulted in increased legal requirements related to the conclusion of contracts with Farmers. Since a number of changes have been introduced on the basis of the provisions of the CC and the CLA, their scope is very broad and can affect many industries. As a result, in the case of business entities that have previously entered into or plan to enter into contracts with Farmers, it seems necessary to review the used processes and models in order to comply with applicable law and avoid potential legal or financial risks. In addition, depending on the scale and nature of the required modifications, it may be necessary to revise the range of potential customers, revise the profitability of products offered in the changed legal environment, or implement solutions allowing the change of the product portfolio offered so far.

Finally, due to further expected changes in consumer protection legislation, resulting, for example, from the partial entry into force of the Act amending Certain Acts to Limit Certain Effects of Identity Theft in June 2024 or the implementation of EU directives no. 2023/2225 on credit agreements for consumers and no. 2023/2673 on financial services contracts concluded at a distance into Polish law, the need to review and modify the current practice seems inevitable.



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