

ROLE OF MICROLOANS AS A FORM OF MICROFINANCE IN CIVIL LAW

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ABSTRACT

This article highlights the role of microloans in Civil law as a form of microfinance. The article also covers ways to resolve and protect disputes between individuals and organizations of microfinance that arise in the context of a pandemic in terms of interest, based on general Civil law rules. The article uses the example of foreign judicial practice and legislation.

Keywords: Microfinance, pawnshop, microfinance organizations, microloan, complicated transaction, debt interest

INTRODUCTION

Improvement of banking system reforms and ensuring their stability, guaranteeing financial sustainability, indispensability of enhancing monetary policy with the advanced instruments of international practice account for Uzbekistan's Five-Area Development Strategy for 2017-2021. Currently, microfinance scheme of banking system and legislation is earning great reputation. International practice of regulating microfinance system, incremental demands of people and business enterprises to the microfinance services are proving the importance of exploration the following field effectively.

Conducting merely unprecedented positive efforts to the improvement of microfinance legislation, implementing its effective aspects, namely, the opportunities of distant service, broadening the framework of services, deterring gradual debt burden of people, promoting financial knowledge among citizens, upgrading the financial popularity, protecting consumer rights constitute the current relevant pace of enhancing microfinance policy in Uzbekistan.

Legal basis of microfinance in Uzbekistan Republic is governed by legislative and regulatory acts. The main act regulating microfinance framework of Banking system is “act on microfinance” adopted in 25 August 2006. Furthermore, for the sake of providing convenient environment to the improvement of microfinance, a presidential decree on “Additional measures to further develop the economy and improve the efficiency of economic policies” was adopted in 8 January 2019.

On 23 July 2019, a presidential decree on “Measures to increase the visibility of microfinance services” was adopted to modernize the principles of microfinance and meet the requirements of foreign monetary policies. The following decree paved the way to the new phase of microfinance system. Microfinance system is one of the aspects of Civil law, therefore it is administered by common rules of Civil law. According to the article 3 of “act on microfinance”: Microfinance is the activity of microfinance institutions including the allowance of microcredits, microloans, micro leasings and other activities under the rules of legal norms and the contracts of microfinance service.

One of the main forms of microfinance is microloans, which are allowed by banks and microcredit organizations to the individuals for the amount of not exceeding 50 million sum, under the urgency and refund conditions.¹

Under the article 7 of “act on microfinance”, financial services are functioned by the following organisations:

- Banks
- Microcredit organisations;
- Pawnshops;
- Other credit organisations.

Conforming to the general principles of microfinance, per cents are fixed to the microfinance services. The amount of per cents must be reflected in microfinance contract. Economic crisis due to the ongoing pandemic situation boost people` demands on money, unprecedentedly. The following state, therefore, impacts on people` needs to the microfinances. By accounting the conditions, several microcredit organisations, commercial banks and pawnshops merely raise their per cents on various type of microfinance services. It is not a secret that artificial escalation of per cents directs to the growing surplus income.

According to the general rules of civil law, above-mentioned transactions should be invalidated. As an article 128 of Civil code of Uzbekistan Republic states that the deal, effected under the impact of the fraud, coercion, a threat or an ill-intentioned agreement of the representative of one party with the other party, and also the deal, which the person has been forced to make on the extremely unfavourable terms because of the coincidence of ill circumstances, while this has been made use of by the other party (the bondage deal), may be recognized as invalid by the court upon the claim of the victim.

If the deal has been recognized as invalid on one of the grounds, pointed out in Item 1 of the present Article, all that the other party has received by the deal shall be returned by it to the victim, and in case it is impossible to return all this in kind, its cost shall be recompensed in money. In addition, the victim shall be recompensed by the other party all the actual damage inflicted upon him.

Thus, according to the contract of individual and microfinance organization, in case the amount of microloan per cents outnumber required norms of customs of business practices, the situation shall be dealt with the general rules of civil law. Need of money during pandemic situation is ill-circumstance, and the artificial increase of per cents by other party can be an abusive, therefore, a transaction between individual and microfinance organization can be counted as the bondage dealⁱⁱ. In such a way, microfinance organization should not get additional per cents, if the per cents are covered, overpaid money to the percents might be returned.

Before invalid recognition of transaction between parties on microfinance by the court, in case the per cents of loans was paid, and after the court voidance of transaction, overpaid payments shall be returned to the individual. The transaction between them shall be nullified. If the per cents were recovered in the form of property, microfinance organization shall return it in its original form. If it is not possible, money equal to the value of property shall be paid

On 27 May 2014, According to the case N 33-682/2014 of supreme court on appeal of Tuva Republic, The court voided a transaction between microfinance organization and individual. As it commented, the transaction was invalidated due to the artificial increase of per cents during ill-circumstance.ⁱⁱⁱ

Conforming to the commentaries of the presidium of Russian Federation on the practices of using articles 178 and 179 of civil code by Arbitrage^{iv}, in case the transaction per cent is differ from the same transaction made by individual and microfinance organisation, the former one is counted as an invalid under article 179 of Civil code.

Abusing individual's financial situations during the global economic crisis due to the pandemia, is prohibited under the general and international principles of civil law. The equitable and lawful nature of microfinance transactions between organisations and individuals should represent justified per cents.

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^{iv}http://www.consultant.ru/document/cons_doc_LAW_157434/