

Federal Law on Consumer Credit* (FLCC)

of 23 March 2001

*The Federal Assembly of the Swiss Confederation (Swiss parliament),
Having regard to sections 97 and 122 of the Constitution¹,
Having regard to the Federal Council's (Swiss government) report of 14 December
1998²,
adopts the following rules :*

Section 1 Definitions

Article 1 Consumer credit agreement

1. A "consumer credit agreement" is a contract whereby a creditor grants or promises to grant credit to a consumer in the form of a deferred payment, a loan or other similar financial accommodation.
2. The following agreements are also considered as consumer credit agreements :
 - a. leasing contracts on movable goods intended for the private use of the lessee providing that there will be extra charges on the agreed installments in case of early termination of the contract;
 - b. Credit and customer cards agreements as well as credit given as current account advances and linked to a credit option; a credit option being the possibility to pay back the credit or customer card debit in installments.

Article 2 Creditor

"Creditor" means a natural or legal person who regularly grants credit in the course of his business.

Article 3 Consumer

"Consumer" means a natural person who enters a consumer credit agreement for purposes which can be regarded as outside his business or professional activities.

* Unofficial translation made by Nathalie Wharton, Federal Office of Justice, Berne, March 2002

¹ Systematic Classification of Laws (Recueil systématique; RS) 101

² Federal Bulletin (Feuille fédérale; FF) 1999 2879

Article 4 Credit broker

A "credit broker" means a natural or legal person who regularly acts as an intermediary in the making of a consumer credit agreement in the course of his business.

Article 5 Total cost of the credit to the consumer

The "total cost of the credit to the consumer" means all the costs of the credit including interest and other charges the consumer has to pay for the credit.

Article 6 Annual global and effective percentage rate of charge

The "annual global and effective percentage rate of charge" means the total cost of the credit to the consumer, expressed as an annual percentage of the amount of the credit granted.

Section 2 Scope of the law

Article 7 Exclusion

1. This law shall not apply to :
 - a. credit agreements or agreements promising to grant credit secured directly or indirectly by mortgage on immovable property;
 - b. credit agreements or agreements promising to grant credit secured by an ordinary bank warranty or for which the consumer has deposited with the creditor money or assets important enough to cover the loan;
 - c. credit granted or made available without any interest or other charges;
 - d. credit agreements under which no interest is charged provided the consumer agrees to repay the credit in a single payment;
 - e. credit agreements involving amounts less than CHF 500 or more than CHF 80.000;
 - f. credit agreements under which the consumer is required to repay the credit either within a period not exceeding three months or by a maximum number of four payments within a period not exceeding 12 months;
 - g. agreements providing the consumer with private or public services over a period of time and under which the consumer has the right to pay for the cost of those services, as long as they are provided, through periodic installments.
2. The Federal Council can adapt the amounts in paragraph 1, letter e, to changing circumstances.

Article 8 Limitation

1. Only articles 11, 13 to 16, 17, paragraph 3, 18, paragraphs 2 and 3, 19 to 21, 26, 29, 31 to 35, 37 and 38 apply to leasing contracts as defined in article 1, paragraph 2, letter a.
2. Only articles 12 to 16, 17, paragraphs 1 and 2, 18, paragraphs 1 and 3, 19 to 21, 27, 30 to 35, 37 and 38 apply to credit card or customer card accounts with a credit option and credits in the form of current account overdraft.

Section 3 Form and content of the contract

Article 9 Cash credit

1. Credit agreements shall be made in writing; the consumer shall receive a copy of the written agreement.
2. The written agreement shall include :
 - a. a statement of the net amount of the credit;
 - b. a statement of the annual global and effective percentage rate of charge or the annual rate of interest and the charges applicable from the time the agreement is concluded;
 - c. a statement of the conditions under which the charges mentioned in letter b above may be amended;
 - d. a statement of the cost items not taken into account in calculating the annual global and effective percentage rate of charge (article 34), with the exception of charges arising from a breach of contract; if the exact amount of these cost items is determined, this amount must be stated; otherwise, and if possible, the contract will stipulate a method of calculating these costs or a realistic estimate of their amount;
 - e. a statement of the credit limit, if any;
 - f. a statement of the amount, number and frequency or dates of the payments which the consumer must make to repay the credit, as well as of the payments for interest and other charges; the total amount of these payments should also be indicated where possible;
 - g. a statement of the right to being freed from paying any further interest and an equitable reduction of the charges related to unused part of the credit in case of early repayment of the credit;
 - h. a statement of the right to cancel the contract and the cooling-off period (article 16);
 - i. a statement of the security required, if any;
 - j. a statement of the portion of the consumer's revenue that can be seized as ascertained in the evaluation process of the consumer's financial capacity to enter a credit agreement (article 28, paragraphs 2 and 3) the details of which can be described in a separate document which will become part of the credit agreement.

Article 10 Credit agreement for financing the supply of goods or services

The credit agreement for financing the supply of goods or services shall include :

- a. a description of the goods or services covered by the agreement;
- b. the cash price and the price payable under the credit agreement;
- c. the amount of the deposit, if any, the number and amount of installments and the dates on which they fall due, or the method of ascertaining any of the same if unknown at the time the agreement is concluded;
- d. who owns the goods if ownership does not pass immediately to the consumer and the terms on which the consumer becomes the owner of them;
- e. an indication of the insurance required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof.

Article 11 Leasing agreement

1. The leasing agreement shall be made in writing; the lessee shall receive a written copy of the leasing agreement.
2. The agreement shall include :
 - a. a description of the object being leased and its cash price at the time the agreement was concluded;
 - b. the number and amount of installments and the dates on which they fall due;
 - c. the amount of the security, if any;
 - d. an indication of the insurance required, if any, and, when the choice of insurer is not left to the consumer, an indication of the cost thereof;
 - e. the annual global and effective percentage rate of charge;
 - f. the right to cancel and the cooling-off period;
 - g. a chart, elaborated on the basis of recognized principles, showing on the one hand the amount the lessee has to pay in addition to the installments already paid if the agreement is terminated early and on the other hand the residual value of the object leased on termination;
 - h. the elements taken into account when the lessee's capacity to enter a leasing agreement was ascertained (article 29, paragraph 2) the details of which can be described in a separate document which will become part of the credit agreement.

Article 12 **Credit agreements operated by running account or by an account operated by a credit card or a customer card with a credit option**

1. If the creditor gives the consumer a credit by running account or by an account operated by a credit card or a customer card with a credit option, the agreement shall be in writing; the consumer shall receive a written copy of the agreement.
2. The agreement shall include :
 - a. the amount of the credit limit;
 - b. the annual rate of interest and the charges applicable from the time the agreement is concluded and the conditions under which these may be amended;
 - c. the conditions under which the agreement can be terminated;
 - d. the elements taken into account when the consumer's capacity to enter a leasing agreement was ascertained (article 30, paragraph 1) the details of which can be described in a separate document which will become part of the credit agreement.
3. During the course of the agreement the consumer must be immediately informed of any modification of the annual interest rate or of the charges; this information can be given on a bank statement.
4. If a bank overdraft is tacitly accepted and extends over a period of three months or more, the consumer must be informed :
 - a. of the annual interest rate and of possible further charges;
 - b. of any modification of the above.

Article 13 **Legal representative consent**

1. The validity of a consumer credit agreement entered into by a minor depends on his legal representative consenting to it in writing.
2. This consent must be given at the latest when the consumer signs the agreement.

Article 14 **Maximum interest rate**

The Federal Council determines the maximum admissible interest rate of article 9, paragraph 2, letter b. In order to do so, the Federal Council takes into account the interest rate ascertained by the National Bank that applies to the refinancing of consumer credit. As a general rule, the maximum rate should not exceed 15 %.

Article 15 **Avoidance**

1. Violation of articles 9 to 11, 12, paragraphs 1, 2 and 4, letter a, 13 and 14 causes the agreement to be void.

2. If the agreement is void, the consumer must pay back the amounts he received or used up to the expiry time of the agreement; but he owes neither interest nor charges.
3. The credit can be paid back by equal monthly installments unless the agreement provides longer intervals of time.
4. In the case of a leasing contract, the lessee must return the hired object and pay the hire installments due up to that time. The lessor must bear the loss of value of the object which is not covered by the installments.

Article 16 Right to cancel the agreement

1. The consumer can cancel his offer or acceptance of the agreement in writing within a seven days period. The right to cancel does not apply to cases covered by article 12, paragraph 4.
2. The cooling-off period starts when the consumer gets a copy of the agreement according to articles 9, paragraph 1, 11, paragraph 1 or 12, paragraph 1. The time-limit is considered respected if the cancellation notice is posted on the seventh day.
3. If the loan is paid before the end of the cooling-off period, article 15, paragraphs 2 and 3, applies. Article 40f of the Code of Obligations³ applies to installment sales, credit agreements relating to the financing of services and to leasing agreements.

Section 4 Rights and duties of the parties

Article 17 Early repayment

1. The consumer has the right to execute in advance duties that arise from the credit agreement.
2. In that case he has the right to be freed from paying any further interest and to a equitable reduction of the charges related to the unused part of the credit.
3. The lessee in a leasing agreement can terminate the contract provided he gives a 30 days notice period before the end of a trimester of the agreement. The article 11, paragraph 2, letter g, chart determines the indemnity the lessee must pay upon termination.

Article 18 Default

1. The creditor can only terminate the contract if the unpaid installments amount to 10 % of the net credit or of the cash price.
2. The lessor in a leasing agreement can only terminate the contract if the lessee owes an amount that exceeds three monthly installments.
3. The interest for default cannot exceed the interest rate that was agreed on for the credit or in the leasing agreement (article 9, paragraph 2, letter b).

³ RS 220

Article 19 Defenses of the consumer

The consumer has the inalienable right to set up defenses he has against the creditor arising from the consumer credit agreement against any assignee.

Article 20 Payment and security in the form of a bill of exchange

1. The creditor cannot accept payment of the credit in the form of bills of exchange, including promissory notes, and cannot receive security in the form of bills of exchange, including promissory notes and cheques.
2. If, thereby violating paragraph 1, the creditor accepts a bill of exchange or a cheque, the consumer can demand its restitution at all times.
3. The creditor is responsible for any loss to the consumer caused by the issuing of the bill of exchange or by the cheque.

Article 21 Faulty execution of the acquisition contract

1. The consumer who enters a credit agreement with someone else than the supplier of goods or services in order to acquire goods or services can exercise against the creditor all the rights he has in his agreement with the supplier when the following conditions are met :
 - a. there is an agreement between the creditor and the supplier whereby a credit will be exclusively given by this creditor to the customers of this supplier;
 - b. the consumer has been given a credit because of this agreement;
 - c. the goods or services that are part of the credit agreement are not delivered, are only partly delivered or are not in conformity with the agreement;
 - d. the consumer has exercised his rights against the supplier but has not been successful in doing so;
 - e. the agreements involve a sum of money exceeding CHF 500.
2. The Federal Council can adapt the sum of money in paragraph 1, letter e, to any new circumstances.

Section 5 Capacity to enter a credit agreement

Article 22 In general

The evaluation of the consumer's capacity to enter a credit agreement is aimed at preventing excessive indebtedness a credit agreement could cause.

Article 23 Information Center

1. Creditors set up an Information Center on consumer credit (Information Center). This center deals with the data defined by articles 25 to 27.
2. The regulation of the Information Center must be approved by the relevant department⁴. They contain rules governing :
 - a. liability regarding the treatment of data;
 - b. the categories of data that can be collected, how long they can be kept for, how they are archived and erased;
 - c. the access to and the treatment of the data;
 - d. collaboration with the third parties involved;
 - e. the security of the data.
3. The Information Center is a federal entity within the meaning of article 3, letter h, of the Federal Law of June 19 1992 on data protection⁵. The Federal Council adopts execution regulation.
4. The relevant department is in charge of controlling the Information Center except for matters covered by the Federal Law of June 19 1992 on data protection.
5. The Federal Council can establish a time-limit within which creditors must set up the Information Center. If the center is not created or if it is dismantled after having been set up, the Federal Council sets it up.

Article 24 Data access

1. Only creditors who must obey the rules of the present law have access to the data collected by the Information Center and they must use this data solely for the purpose of fulfilling their duties under the present law.
2. However, the public institutions of debt reorganization chosen and supported by the cantons also have access to the data of the Information Center provided the debtor's consent has been given in every occurrence.

Article 25 Duty to give notice

1. Every creditor has a duty to inform the Information Center of the credits he has given.
2. He must also give notice of all cases where the unpaid installments amount to at least 10 % of the net credit amount or of the cash price (article 18, paragraph 1).
3. The Information Center regulates in its articles or in regulations set out in the articles, the rules governing the content, form and the announcement time of the compulsory notice.

⁴ The Federal Department of Justice and Police

⁵ RS 235.1

Article 26 Duty to give notice of leasing agreements

1. In the case of a leasing agreement, the lessor must give notice to the Information Center of :
 - a. the total amount due;
 - b. the duration of the agreement
 - c. the amount of the monthly installments.
2. He must also announce cases in which the unpaid installments amount to three monthly installments.

Article 27 Duty to give notice of accounts linked to a credit card or to a customer card with a credit option or credit given as a current account overdraft

1. When the consumer exercises his credit option three times in succession, the creditor must give notice of it to the Information Center. The notice is not compulsory when the remaining amount to be paid is less than CHF 3000.-.
2. The Federal Council can adapt the 3000 francs limit set out in paragraph 1 periodically through an ordinance based on the Swiss consumer price index.

Article 28 Evaluation of the consumer's capacity to enter a credit agreement

1. Before the contract is concluded, the creditor must check, according to article 31, that the consumer has the financial capacity to enter a credit agreement.
2. The consumer is considered as having the financial capacity to enter a credit agreement if he can repay the credit without burdening the portion of revenue that cannot be seized according to article 93, paragraph 1 of the Federal Law of April 11 1889 on Debt Enforcement and Bankruptcy⁶.
3. The portion of revenue that can be seized is determined on the basis of the minimum subsistence figure calculation directives by the canton where the consumer is domiciled. In all cases, the following elements will be taken into account :
 - a. the effective rent due by the debtor;
 - b. the income tax, calculated on the basis of the taxation at source;
 - c. the liabilities communicated to the Information Center.
4. The capacity to enter a consumer credit agreement is evaluated on the basis of a credit repayment over a period of 36 months, even if according to the agreement the installments cover a longer period. The unpaid amounts on credits which have already been given must be taken into account in this evaluation.

⁶ RS 281.1

Article 29 Evaluation of the lessee's financial situation

1. The lessor must evaluate the lessee's financial situation before concluding the contract.
2. The lessee has the capacity to enter a leasing agreement when he can pay the installments without burdening the portion of revenue that cannot be seized according to article 28, paragraphs 2 and 3 or when assets belonging to the lessee can secure the payment of the installments.

Article 30 Evaluation of the capacity to enter a credit agreement for accounts linked to a credit card or a customer card with a credit option and for credit related to current accounts overdrafts

1. The credit limit for an account linked to a credit card or a customer card with a credit option or a credit related to current accounts overdrafts must be ascertained at the time the contract is concluded. To determine this limit the creditor must take into account, through a summary evaluation of the credit, the consumer's revenue and fortune situation according to the information given by the person asking for the credit. The credits announced to the Information Center must also be taken into account.
2. The evaluation of the capacity to enter a credit agreement according to paragraph 1 must be renewed when the creditor or the credit company has information indicating that the consumer's financial situation has worsened.

Article 31 Extent of the creditor's duty of investigation into the consumer's financial situation

1. The creditor can limit his investigations to the information provided by the consumer about his revenue source and his financial obligations (article 28, paragraphs 2 and 3) or on his financial situation (article 29, paragraph 2 and article 30, paragraph 1).
2. However, the limitation in paragraph 1 does not apply where the consumer's information is obviously false or does not fit in with the data of the Information Center.
3. If the creditor is suspicious of the truth of the information given by the consumer, he verifies it with official or private documents, for instance a debt collection register extract or a salary certificate.

Article 32 Sanction

1. If the creditor seriously violates articles 28, 29 or 30, he loses the amount of the credit as well as the interest and the charges. The consumer can ask for the repayment of the amounts he has already paid according to the rules of the action for money had and received.

2. If the creditor violates articles 25, 26 or 27, paragraph 1 or if he slightly violates articles 28, 29 or 30, he only loses the interest and the charges.

Section 6 Annual effective global interest rate

Article 33 Time and method of calculation

1. The annual effective global interest rate is calculated at the time the consumer credit agreement was concluded, according to the formula in annex 1.
2. The calculation is based on the hypothesis that the credit agreement remains in effect during its agreed on duration and where the creditor and the consumer fulfill their obligations within the agreed time limits and at the agreed dates.
3. If the credit agreement contains a clause allowing a modification of the interest rate or of the other charges that must be taken into account but cannot be put into numbers at the time of calculation, the annual effective global interest rate is calculated by making the hypothesis that the interest rate and the other charges remain stable compared with their initial level and that they apply until the credit agreement ends.
4. For a leasing agreement, the annual effective global interest rate is calculated on the basis of the purchase cash price of the object of the leasing at the time the agreement was concluded (basis of calculation) and at the end (residual value), as well as on the basis of the amount of each installment.

Article 34 Relevant charges

1. In order to calculate the annual effective global interest rate the total cost of the consumer credit as defined in article 5 including the purchase price has to be determined.
2. The following charges are not taken into account :
 - a. charges incurred by the consumer because of a breach of the credit agreement;
 - b. charges incurred by the consumer while acquiring the goods or services whether cash or by credit;
 - c. contributions related to joining associations or groups and deriving from agreements that are distinct from the credit agreement.
3. The funds transfer charges and the charges related to managing the account receiving the amounts debited as repayment of the credit, receiving the payment of the interest or of the other charges, must only be taken into account if the consumer does not have sufficient reasonable freedom of choice on that matter and if those charges are extraordinarily high. However, the receipt charges of the payments or repayments must be taken into account whether these payments are made cash or otherwise.
4. The insurance or security charges are taken into account :

- a. if the creditor makes them compulsory in order to enter the credit agreement; and
- b. if their goal is to insure the creditor against the death, invalidity, illness or unemployment of the consumer by a repayment of an amount equal or inferior to the total amount of the credit including the interest and other charges.

Section 7 Credit brokerage

Article 35

1. The consumer owes no indemnity to the credit broker who has allowed him to enter a credit agreement.
2. The creditor expenses for the credit broker's activities are part of the total cost of the credit (articles 5 and 34, paragraph 1); they cannot be billed to the consumer as an itemized statement of account.

Section 8 Advertising

Article 36

Advertising consumer credit is governed by the Federal Law of December 19 1986 on Unfair Competition⁷.

Section 9 Mandatory legal provisions

Article 37

The parties cannot derogate to any of the rules of the present law unless it is in favor of the consumer.

Section 10 Competence

Article 38 Relationship to the cantonal law

The Confederation regulates consumer credit agreement in an exhaustive way.

Article 39 Authorization regime

⁷ RS 241

1. The cantons must impose a duty to seek an authorization upon creditors giving consumer credit and upon credit broker.
2. The canton in which the creditor or credit broker has its registered place of business delivers the authorization. If the creditor or the credit broker has no registered place of business in Switzerland, the authorization is delivered by the canton in which the creditor or the credit broker intends to make main business. The authorization given by one canton is valid in the whole of Switzerland.
3. An authorization according to paragraph 2 is not necessary if the creditor's or the credit broker's activities :
 - a. come under the Federal Law of November 8 1934 relating to Banks and Savings Banks⁸;
 - b. consist of giving or acting as a broker for consumer credits to finance the acquisition of goods or services that they themselves offer.

Article 40 Conditions of the authorization

1. The authorization is given if the person seeking it :
 - a. is reliable and has a sound financial situation;
 - b. has the necessary knowledge and business skills to work in that trade;
 - c. has an adequate civil liability insurance.
2. The authorization is given to companies and legal persons only if all the managing directors have the knowledge and skills set out in paragraph 1, letter b.
3. The Federal Council details the conditions to be met in order to obtain an authorization according to paragraph 2 in an ordinance.

Section 11 Final provisions

Article 41 Abrogation and modification of legal provisions heretofore in force

The abrogation and modification of legal provisions heretofore in force are set out in annex II.

Article 42 Referendum and entry into force

1. The present law is subject to referendum.
2. The Federal Council sets up the date of entry into force. ⁹

⁸ RS 952.0

⁹ Date of publication : 3 April 2001 (FF 2001 1263)

Math equation for calculating the annual effective global rate of interest

$$\frac{K = m}{K = 1} \frac{AK}{(1 + i)^{tK}} = \frac{K' = m'}{K' = 1} \frac{A'K'}{(1 + i)^{tK'}}$$

Meaning of letters and symbols :

K	is the number of a loan
K'	is the number of a repayment or a payment of charges
AK	is the amount of loan number K
A'K'	is the amount of repayment number K
E	represents a sum
m	is the number of the last loan
m'	is the number of the last repayment or payment of charges
tK	is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of subsequent loans Nos 2 to m
tK'	is the interval expressed in years and fractions of a year between the date of loan No 1 and those of repayments or payments of charges Nos 1 to m
i	is the effective global percentage rate that can be calculated (either by algebra, by successive approximations, or by a computer program) where the other terms in the equation are known from the contract or otherwise.

Abrogation and modification of legal provisions heretofore in force

I

The Federal Law of October 8 1993 on consumer credit¹⁰ is abrogated.

II

The legal provisions heretofore in force are modified as follows :

1. Code of Obligations¹¹:

*Article 162, paragraph 2
Abrogated*

*Articles 226a to 226d and 226f to 226m
Abrogated*

Article 227a, paragraph 2, number 7

2. The prepayment contract is not valid unless it is made in writing and contains the following particulars :

7. The right for the purchaser to declare the contract canceled within seven days;

Article 227c, paragraphs 2 and 3

2. Abrogated

3. If the purchaser has purchased several things or reserved the right of selection, he is entitled to request partial delivery of the goods unless the deal involves an aggregation of things. If less than the total sales price has been paid, the seller may be required to make partial deliveries only when he is left holding 10 percent of the remaining claim as security.

Article 227h, paragraphs 3 and 4

2. If the seller cancels a contract concluded for not more than a year, he may only demand from the purchaser a reasonable interest on capital as well as compensation for the decreased value of the object of the

¹⁰ RO 1994 367

¹¹ RS 220

sale which occurred after the conclusion of the contract. A contingent penalty may not exceed ten percent of the cash price.

4. If the object of the sale has already been delivered, each party is obliged to return the consideration already received. In addition the seller is entitled to receive a reasonable rental and compensation for excessive wear and tear of the object. In any case, he may not demand more than he should have received, in case of a timely performance of the terms of the contract.

Article 228 Application of the Federal Law on consumer credit

The following articles of the Law of March 23 2001 on Consumer Credit¹² apply to prepayment contracts :

- a. Article 13 (legal representative consent)
- b. Article 16 (right to cancel the contract)
- c. Article 19 (consumer's defenses)
- d. Article 20 (payment and security in the form of a bill of exchange)
- e. Article 21 (defective execution of the acquisition contract)

2. The Federal Law of December 19 1986 on Unfair Competition¹³:

Article 3, letters k to n

A person commits an act of unfair competition when he :

- k. omits to indicate clearly his company name, the net amount of the credit, the total cost of the credit and the annual effective global interest rate in public advertising of consumer credit;
- l. omits to indicate clearly his company name, the cash price, the credit agreement price and the annual effective global interest rate in public advertising of consumer credit relating to goods and services;
- m. offers to conclude or concludes a consumer credit agreement or a prepayment contract in the course of his business by using agreement forms containing incomplete or inaccurate indications about the object of the contract, the price, the payment modalities, the duration of the contract, the client's right to cancel or to terminate the contract or the client's right to repay early;
- n. omits to indicate that it is forbidden to give credit to a consumer if it causes him to be indebted in public advertising on consumer credit (letter k) or on consumer credit relating to goods or services (letter l).

Article 4, letter d

A person commits an act of unfair competition when he :

¹² RS ...; RO ... (FF 2001 1263)

¹³ RS 241

d. causes a purchaser or a lessee who has entered a prepayment or a consumer credit contract to cancel that contract, or a purchaser who has entered a prepayment contract to terminate it, in order to himself enter a contract with that purchaser or lessee.