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ALERT | COVID-19 | SHIELD

Impact of the COVID-19 epidemic on the credit sector

CHANGES WITH REGARD TO CONSUMER LOANS

- The maximum amount of non-interest consumer loan costs has been limited for a period of one year from the date of entry into force of the "shield" law. After the expiry of this period, the previously existing limits of non-interest costs, i.e. those in force prior to the entry into force of the "shield" law, will apply (the existing limit was 25% of the total loan amount increased by 30% of the loan amount per year, proportionally to the duration of the financing period).
- It appears from the justification of the bill, the new, temporary restrictions apply only to new consumer loan agreements concluded during the period of validity of the said provisions of the “shield” law.
- The “shield” law differentiates loans with a repayment period shorter than 30 days and those granted for minimum 30 days or longer.
- For consumer loans with a repayment period shorter than 30 days, non-interest costs may amount to a maximum of 5% of the total loan amount.
- For consumer loans with a repayment period of 30 days or longer, the non-interest costs may amount to a maximum of 15% of the total loan amount, plus 6% of the total loan amount per year, proportionally to the duration of the financing period. For example, for a loan granted for two years, the non-interest costs will now be amounting to 13.5%, while under the general rules they would amount to 42.5%.
- However, under the new regulation, in none of the above cases may the total non-interest costs of the consumer loan be higher than 45% of the total loan amount.
- If the creditor or an affiliated entity grants another consumer loan to the borrower within 120 subsequent days of the disbursement of the first consumer loan and, the first loan granted to the borrower has not yet been fully repaid, only the amount of the first loan is taken into account in calculating the amount of the permitted maximum non-interest costs, but such limitation applies to the aggregate amount of the non-interest costs of both consumer loans.
- A violation of the restrictions referred to above may be treated as a practice infringing the collective interests of consumers as referred to in the law on competition and consumer protection.

POSSIBILITY OF CHANGING TERMS AND CONDITIONS OR DEADLINES OF COMMERCIAL LOAN REPAYMENTS

- The "shield" law provides for the possibility of changing the terms and conditions or deadlines for the repayment of loans or credit granted under the banking law before 8 March 2020. Such changes have to be implemented via an agreement with the borrower (unilateral statement of the bank is not permitted).

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- However, such changes can only be made if they are motivated by an assessment of the borrower's financial and economic situation carried out by the bank not earlier than on 30 September 2019.
- Under the new provisions, banks are allowed to maintain or modify an existing financing for the benefit of the borrower, in particular, if the borrower may have lost its creditworthiness within the meaning of Article 70 of the banking law as a result of the COVID-19 pandemic.
- However, on its face, it seems that this provision cannot be interpreted as precluding the possibility for banks to terminate credit or loan agreements.
- The Polish Financial Supervision Authority's (pl. Komisja Nadzoru Finansowego, "KNF") position on these new provisions indicates that the permissible changes should only apply to those borrowers who were subject to a full credit assessment not earlier than 31 March 2019 and a quarterly review not earlier than 30 September 2019.
- The KNF also recommends that the renewal of financing under the terms and conditions as they stood at 31 December 2019 should not be made for a period longer than 1 year. Further, as regards cases in which current customers apply for an increase in the amount of financing above the level as at 31 December 2019, the KNF allows banks to consider simplified positive projections of the borrower's liquidity when making their decisions.
- The aim of the provisions in question is to provide flexibility to banks and give them the possibility to extend (renew) or otherwise modify the terms and conditions of financing previously granted to entrepreneurs, regardless of regulatory requirements under the banking law. However, without specific, detailed regulatory provisions concerning for example principles of creating provisions for risk or exposure limits towards certain categories of entities, the use of this instrument by banks may prove to be difficult.

FINANCIAL ASSISTANCE PROVIDED BY THE BGK

- The "shield" law allows the Bank Gospodarstwa Krajowego to grant, within the framework of state aid, sureties and guarantees to medium and large entrepreneurs.
- However, the amount of a single guarantee or surety may not exceed 80% of the outstanding loan principal. The remaining 20% of the amount is to be covered by instruments provided by other entities. The borrower is required to seek such additional cover on a best efforts basis.
- BGK's guarantees and sureties are intended to improve the creditworthiness of existing borrowers when applying for additional working capital loans. However, according to market observations, such instruments will not help when borrowers apply for investment or acquisition loans, or for completely new financing from a bank where they have no credit history.
- The KNF's stance allows a guarantee or surety granted by the BGK to be treated as a "special type of collateral" within the meaning of art. 70 section 2 item 1 of the banking law.

POSITION OF THE POLISH BANK ASSOCIATION

- On 16 March 2020, the Polish Bank Association issued a statement on assistance measures taken by the banks due to the pandemic. The content of the communiqué indicates the willingness of the banks to support borrowers in this difficult situation.
- Accordingly, it is said that the banks are open to facilitating the deferral of instalments, introducing the possibility of renewing financings for a further 6 months and making short-term loans available to stabilize the financial situation of entrepreneurs. Applications submitted by borrowers regarding those issues are to be free of fees and commissions, and subject to as little formality as possible (e.g. by allowing applications to be submitted remotely).
- Assistance measures taken by the banks may also include facilitation of leasing and factoring instalment deferrals.

POSITION OF THE FINANCIAL SUPERVISION COMMITTEE

- The KNF has published a so-called Supervisory Pulse Package containing a range of solutions to facilitate the operation of the financial sector during the epidemic.
- The proposals include modified regulatory arrangements for supervised entities concerning, among other things, the rules for creating provisions, postponing the moment of implementation of Recommendation R (concerning, among others, the principles of identification of on-balance sheet impaired credit exposures), liberalisation of the supervisory approach to the maintenance of the level of the revenue coverage ratio by regulated entities (the so-called LCR, or liquidity buffer), or limiting inspections carried out by the KNF.

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