



What do lenders who offer credit holidays have to watch out for?

On 24 June 2020, the so-called "Anti-Crisis Shield 4.0"* came into force ("Shield 4.0"). One of the solutions introduced by this law is a, so-called, statutory credit holidays. Under these new provisions, credit institutions, in particular banks, are required to suspend the repayment of liabilities incurred by borrowers who have lost liquidity due to the coronavirus pandemic. This is another initiative, in addition to that reducing the non-interest costs of loans, aimed at providing assistance to consumers during the pandemic. This time, the beneficiaries of the assistance are borrowers who have suddenly lost their main source of income in recent months and still have to pay off, e.g. installments on mortgage loans. Implementing these new solutions will undoubtedly be a challenge for lenders. When granting credit holidays, financial institutions need to ensure that the assistance reaches the right people, but also to provide consumers with reliable, truthful and complete information throughout the process. Failure to comply with these obligations may, in general, result in the initiation of proceedings regarding the infringement of consumer collective interests.

"Credit holidays" offered by banks

- » In March 2020, shortly after the introduction of the first sanitary restrictions related to COVID-19 in Poland, banks themselves began to introduce solutions to relieve customers of the burden of loan repayments in the face of a gradual lockdown of the economy. Next, representatives of the banking sector, in cooperation with the Polish Bank Association (*Związek Banków Polskich*; "ZBP"), developed solutions based on remote communication with borrowers, which, in the opinion of the solution's originators, were not intended to be burdensome for customers. The ZBP indicated that, to the extent permitted by law, banks could defer the payment of up to three instalments of principal and interest, or up to six instalments of the principal only, at the borrower's request.
- » Since the ZBP's recommendations were not legally binding, banks had, in practice, significant freedom to shape the credit holidays they offered. Thus they developed various mechanisms to suspending loan repayments. Depending on the particular bank, the repayment of up to three instalments of principal and interest, or principal alone, could typically be deferred. The application for a credit holidays could be submitted online, i.e. without visiting a bank branch in person, which was strongly discouraged by various national institutions due to the growing threat of COVID-19. Although banks did not charge a fee to process the loan application, or a formal fee for the credit holidays itself, they did charge other high fees.

Concerns raised by the President of the Office for Competition and Consumer Protection (UOKiK) on "bank" credit holidays

- » Differences in the terms and conditions which banks offered to their clients in connection with credit holidays resulted in the drafting of annexes containing provisions which raised considerable doubts among borrowers. Therefore, some consumers notified the President of the Office of Competition and Consumer Protection (*Prezes Urzędu Ochrony Konkurencji i Konsumentów*; "President of UOKiK"). The President of UOKiK found the signals coming from the market so disturbing that, in early April 2020, he initiated an investigation (under the, so-called, "case" procedure, and not an investigation against specific entrepreneurs), during which he

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reviewed the terms and conditions under which banks offered consumers the ability to defer loan repayments due to COVID-19.

- »» During these proceedings, the President of UOKiK called on 26 banks to provide documents and information on the terms and conditions they offered for credit holidays. The analysis of the materials collected, and the resulting position of the President of UOKiK on annexes regarding credit holidays offered in connection with the COVID-19 epidemic issued on 22 April 2020, indicate that:
 - > The President of UOKiK's most serious concerns are related to the possibility that the annex, concluded in order to benefit from the deferral of instalment payments, may be considered confirmation of the amount of the loan's balance, which the bank determined unilaterally. Such an interpretation could have serious consequences in the future for people who may wish to pursue their claims in court and demand that the bank settle the loan, e.g. due to its invalidity.
 - > In the opinion of the President of UOKiK, it is also impermissible to make confirmation of the debt's balance a condition for the deferral of instalment payments. Such provisions may be regarded as abusive, and thus do not bind consumers.
 - > Moreover, the mere conclusion of an annex does not mean that its provisions have been agreed upon on a case by case basis. It is difficult to speak of "case by case agreement" on terms and conditions in situations where consumers, when deciding to accept credit holidays, can, in practice, only accept the contents of a template presented by a bank. Additionally, customers may be in a difficult financial situation due to the loss of their jobs or reduced income, and their future depends on the urgent deferral of instalment payments on loans or credit.
 - > Banks did not provide customers with sufficient and unambiguous information on the financial consequences of deferring repayments presented before they decision to take a credit holidays - e.g. on the installment amount after the holidays, rules on the calculation of interest.
 - > Customers were not provided with sufficient information on the possibility to withdraw their consent within 14 days of concluding an annex before they concluded such annexes, or this period was shortened to the detriment of consumers. This period should start running from the moment that a consumer is informed of the actual financial consequences of the credit holiday. A statement on their withdrawal from the agreement may be delivered in person, but also by regular post and e-mail.
- »» According to an UOKiK press release, the Banks have since eliminated the identified irregularities or have declared that they will implement the required amendments within the deadline set. The President of UOKiK will monitor their compliance with these commitments.

"Statutory" credit holidays in Shield 4.0.

- »» The President of UOKiK, recognising the danger to consumers from banks having too much "freedom" in shaping their credit holidays offers, decided to get involved in the legislative process in order to provide the banking sector's current practice with some form of statutory framework.
- »» Shield 4.0 allows for the ability to suspend a loan's repayment for a period of up to 3 months, without accruing interest or other fees (except for insurance premiums related to the agreements themselves). The new regulations will apply only to those borrowers who have lost their job or other main source of income after 13 March of this year. The solution provided for in the act will apply to loan agreements concluded before 13 March 2020, if the end of the loan term specified in these agreements falls at least 6 months after 13 March 2020. It provides for the suspension of the obligation to repay the loan, with regards to both the principal and interest. During this period, the lender will be prohibited from charging any other fees, except for premiums for insurance agreements linked to the loan agreement. The loan's term, as well as all other terms stipulated in the loan agreement, will be extended by the suspension period accordingly. If a borrower has several loans of the same type with a particular lender, they will only be entitled to take a credit holidays for one of them.

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- » It is also worth noting that, if a borrower takes advantage of the statutory suspension of the agreement (i.e. under the provisions of the Shield 4.0) during the credit holidays established under an annex to their agreement with a bank, the term of "bank" holidays is shortened and the provisions of the Shield 4.0 become automatically applicable.

What is next for credit holidays?

- » The passage of the Shield 4.0 should be considered as an action aimed at improving the situation of consumers as borrowers by increasing the transparency of the rules for taking credit holidays. Nevertheless, the new rules also give rise to new problems which lenders will have to deal with.
- » During the legislative process in both the Sejm and Senate, the ZBP submitted comments on the draft of Shield 4.0. Among other things, the ZBP indicated the following:
 - > the draft legislation was insufficiently specific with regards to the conditions that borrowers must meet in order to take credit holidays. The criteria regarding loss of a job or other main source of income should be clarified such that it requires that the loss of that income consequently led to an inability to fulfil obligations towards creditors and that the source of income was lost due to the COVID-19 pandemic;
 - > it was unclear how banks were supposed to verify a customer's declaration; in the ZBP's opinion, some form of verification is necessary, i.e. confirmation of the job's loss or confirmation of the loss of the main source of income (e.g. a statement from the Tax Office);
- » In the end, an amendment was made to the provisions governing statutory credit holidays, according to which a borrower's declaration that they have lost their job or other main source of income after 13 March 2020 is made under pain of criminal liability for making false statements. This is a potential solution, but it is still likely insufficient since, in practice, it will be difficult for banks to verify the veracity of such statements.
- » At the same time, it should be noted that if a customer takes credit holidays regulated by the Shield 4.0, the bank, as the lender, will, in practice, not be able to grant any additional financing to such a borrower for the duration of the loan agreement's suspension (due to the declared loss of a job or other main source of income after 13 March 2020). Additionally, the possibility of obtaining assistance from another financial institution will also be strongly limited, as banks will provide information about the suspension of the loan agreement's payment to Bureau of Credit Information (*Biuro Informacji Kredytowej S.A.*)
- » In conclusion, banks and other lenders face major challenges in designing processes to service consumers who request credit holidays, so that they are not misleading at any stage and the assistance reaches the right people. Failure to perform these duties properly may result in further proceedings being brought by the President of UOKiK or the Financial Ombudsman.
- » **The pandemic and the resulting economic slowdown is a difficult time for the whole of society, including entrepreneurs and consumers. Therefore, solutions aimed at reducing the burden on borrowers in financial difficulty, such as credit holidays, should be viewed positively by the market. However, as is always the case in emergency situations, the concept of credit holidays must be approached with caution. On the one hand, banks should not abuse their advantage in relations with borrowers, and on the other, customers must remember that credit holidays are only a temporary solution to a problem, and that they will eventually have to repay their liabilities.**

* Act of 19 June 2020 on interest rate subsidies for bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for the approval of an arrangement in connection with COVID-19 (Journal of Laws of 2020, item 1086).