CORONAVIRUS: POLISH BANKS OFFER ASSISTANCE

On 16 March 2020 the Polish Bank Association (ZBP) published a bulletin on the measures agreed on by Polish banks to assist borrowers affected by the COVID-19 epidemic, which are to be promptly taken[1].

The measures can be divided into four groups. The first group concerns granting customers payment holidays comprising a grace period for the repayment of facilities, leasing instalments and amounts payable under factoring agreements. The second group concerns the renewal of existing financing. The third group of measures is to make short-term liquidity facilities available[2]. The fourth group relates to increasing the possibility of concluding cashless transactions.

We set out below the issues we believe to be key concerning the first and second groups of assistance measures announced by the ZBP, i.e. those concerning payment holidays and renewal of financing. Short-term liquidity facilities will be key, too, but their scale and format will depend on the government programme that is yet to be announced.

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[1] A description of the bulletin may be found at: https://www.cliffordchance.com/briefings/2020/03/wp_yw-covid-19-na-transakcje-finansowania-dunego-na-rynku-polski.html (in Polish) and https://www.cliffordchance.com/briefings/2020/03/impact-of-the-coronavirus-on-debt-financing-transaction-on-the-p.html (in English)

[2] In this regard, ZBP announced a separate detailed bulletin (as we understand, because of the references to the governmental package that accompanies the announcement, it will not be published until after the governmental package has been announced).

Question 1: Who can apply for payment holidays?

The bulletin mentions the criteria that must be fulfilled by a borrower to be granted payment holidays.

With regard to who may apply for assistance, the bulletin refers to all a bank's customers who substantiate the need to defer (suspend) debt service because of their financial situation caused by the COVID-19 epidemic.

With regard to the banking products eligible for assistance, the bulletin lists mortgage loans, consumer loans and facilities for entrepreneurs.

In our opinion, the following issues are important:

- Will payment holidays really be available for every bank customer, i.e. will they also be offered to medium-sized and large enterprises?

  The bulletin does not specify this, so it should be assumed that banks will have different approaches to customers depending on whether they are individuals, small enterprises or medium-sized and large enterprises. Time will tell what those differences are.

- What information and data on the financial condition of customers will be sufficient for banks to approve an application for payment holidays?

  In light of the less formal and accelerated decision-making processes[3], one may assume that in the case of private individuals not conducting business activity banks will rely on the customer's representation that the epidemic is affecting his/her ability to repay instalments of principal and interest or instalments of principal (e.g. because of loss of employment or delays in the payment of wages). However, in the case of entrepreneurs, banks may require certain data to support the application, for example showing a decrease in turnover caused by the epidemic.

Question 2: How will the payment holidays mechanism work?

According to the bulletin:

- the payment holidays will consist of a deferral (suspension) of repayment of instalments of principal and interest or instalments of principal for up to three months;

- the total period for repayment of the facility will be automatically extended by the same period;

  provided, however, that in relation to secured transactions, the security period will also be extended (which may require corresponding amendments to be made to security documents and court filings).

Banks whose capital groups include leasing and factoring companies will procure that the clients of these companies will be offered the possibility of applying for similar payment holidays on analogous terms.

[3] The bulletin states that it is not necessary to submit additional documents and certificates confirming in detail the current economic and financial condition of a specific borrower.

Question 3: Are there any fees or commissions payable by customers applying for payment holidays?

The bulletin states that no fees or commissions will be charged for considering and accepting applications to suspend repayment of principal instalments and interest.

Question 4: Who may apply to renew financing?

The bulletin states certain eligibility criteria with regard to the customers and products that must be fulfilled if a customer applies for renewal of financing.

With regard to the **customers** eligible for this form of assistance, the bulletin refers to entrepreneurs who "*were creditworthy as at the end of 2019*" and have been affected by the COVID-19 epidemic, provided that "*in the coming months the deadline for renewing existing financing expires*".

With regard to the **banking products** to which this form of assistance may apply, the bulletin mentions financing that is subject to renewal.

In our opinion, the following issues are important:

- Will entrepreneurs be able to assess and demonstrate upfront what impact the COVID-19 epidemic will have on their business?

  There is no doubt that the epidemic will have a direct or indirect adverse effect on the business of majority of entrepreneurs in Poland, irrespective of the sector. On the other hand, however, it has affected entrepreneurs in Poland at the end of Q1 2020, so its impact on their financial statements may not be visible immediately (except for a cash flows decrease).

  Consequently, it is important to determine what information and data banks will consider sufficient to approve applications to renew financing. It should be assumed that they will concentrate mainly on unaudited data showing a drastic and considerable drop in turnover during the pandemic.

- How will banks examine the creditworthiness of entrepreneurs as at the end of 2019?

  This question raises other questions, for example will banks standardise the creditworthiness assessment criteria? Will they do so based on, for example, the financial statements for Q4 2019? Will the fact of being a bank customer that as at 31 December 2019 had no due and payable and outstanding facility be sufficient?

  Entrepreneurs in the course of bankruptcy or restructuring proceedings will definitely be excluded, but the question arises whether borrowers that as at 31 December 2019 were in the course of negotiating an out-of-court restructuring of their indebtedness and that are still cooperating with banks, but are also unable to obtain new bank financing, are excluded by the above-mentioned criteria?

  It seems that a bank may want to consider each borrower creditworthy as at 31 December 2019 provided that the bank had not yet written off its receivables constituting the credit exposure with regard to that borrower as at that date.

- What type of financings are capable of being subject to this type of assistance?

This is not fully clear. The bulletin uses the term "renewal", which could lead to the conclusion that this form of assistance will apply only to renewable facilities (working capital facilities, overdraft facilities) and revolving facilities. The question arises whether as part of this assistance banks will differentiate between short-term and long-term renewable financing in which a periodic mechanism of often somewhat artificial "renewal" is inherent (e.g. based on a typical cashless rollover language), and which sometimes include a clean down requirement for borrowers.

A working capital facility is one of the main sources of a company's liquidity, therefore it seems that also working capital facility that are due to be renewed in the coming months should qualify (regardless of whether they are short- or long-term). This would therefore mean that this type of assistance should comprise the disbursement of any rollover loan and a waiver of the clean down mechanism (if applicable). Arguably, based on the wording of the bulletin banks may also want to consider a "renewal" of any facility that has a final repayment date falling "in the coming months" and that was intended to be extended or replaced with new financing.

- How long will the assistance programme last, given that that the bulletin refers to financings that are due to be renewed "in the coming months"?

  If we interpret that criterion literally, the programme would apply only to facilities due to be renewed in April and May 2020. At present it is difficult to estimate how long the disruption caused by the COVID-19 epidemic will last. In this context, borrowers will expect the assistance programme to last as long as possible and on the other hand, the bulletin stipulates that the renewed financing will be granted for a period of up to six months. Therefore it seems reasonable that the offer of renewed financing should also apply to cases where the existing financing is due to be renewed in six months' time.

Question 5: What form will the renewal of financing take?

The bulletin specifies only the period for which financing may be renewed, stating it may be for up to six months. However, it does not indicate how banks will implement the renewal.

As regards revolving loans, we assume that any advance maturing in the coming months will be rolled over. As regards other facilities, it seems that it may take the form of an extension of the term of existing financing or of the granting of new renewable financing on the same terms as the existing one. Time will show what approach the banks ultimately take.

Question 6: What about events of default on facility agreements resulting from the COVID-19 epidemic other than non-payment?

We do not know the answer to that question – the ZBP's bulletin makes no mention of it.

Payment holidays and renewal of working capital finance is definitely a major and important gesture on the part of banks. However, it is necessary to take into consideration the imminent defaults on facility agreements threatening borrowers in the aftermath of the epidemic (non-compliance with financial covenants, limitation or cessation of activity, etc.) that could give banks the right to give notice to terminate credit agreements and seek to enforce security.

The ZBP bulletin does not relate to this issue. In this regard, it is essential for borrowers to check their finance documentation as soon as possible and consider applying to banks for waivers or standstills[4],with a view to negotiating appropriate amendments or restructuring.

Question 7: How will the proposed measures be implemented by the banks?

Banks declare in the bulletin that its terms will be implemented and applied promptly. The first banks have already offered individual customers assistance in the form of payment holidays to be granted based on a simplified procedure, giving the customers the opportunity to file an appropriate application through online banking systems.

It seems that the legal and documentary framework for implementing the assistance will be determined by each bank individually, rather than in a uniform way (e.g. through the issue of a binding recommendation by the PFSA or in the form of legislation). Certain measures proposed by banks could have features of state aid, which should comply with EU provisions, and may require approval. The approach the European Commission will take in this regard is yet to be seen.

Almost all commercial and cooperative banks on the Polish market are members of the ZBP, so it is reasonable to hope that the framework facilitating assistance will be implemented universally and rapidly.

OTHER PUBLICATIONS OF CLIFFORD CHANCE

We invite you to read yesterday's briefing "**Impact of the Coronavirus on debt financing transactions on the Polish market**", which is available at:

https://www.cliffordchance.com/briefings/2020/03/impact-of-the-coronavirus-on-debt-financing-transaction-on-the-p.html, and also other Clifford Chance publications on the impact of the COVID-19 epidemic, which are available at:

https://www.cliffordchance.com/insights/thought_leadership/coronavirus.html

[4]See our briefing on the impact of the Coronavirus on debt financing transactions on the Polish market: https://www.cliffordchance.com/briefings/2020/03/impact-of-the-coronavirus-on-debt-financing-transaction-on-the-p.html

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