

BEHOLD RISK AREAS!



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The financial sector is widely viewed as the central cog in the economy. Without capable financial institutions, the economy cannot maintain steady growth. War next door to Poland and the refugee crisis prove that Poland's banking sector is resilient, and working well in extraordinary circumstances. Yet, there are regulatory challenges ahead. Three are of paramount importance: the still unresolved topic of foreign currency (CHF) home loans; the loan vacations, allowing borrowers to defer payments; and the preparations for more ESG in financing. Economic issues perplexed by foreign currency home loans are nothing new internationally. In Austria, for example, it has become common to finance the housing sector through such schemes, as inflation and interest rates were higher than those set by either the Swiss National Bank

and many borrowers discovered that their repayments had risen beyond their ability to pay them.

FOREIGN CURRENCY MORTGAGE RISK

As a member of the EU, Poland is tied by several shared laws. One relates to abusive contractual clauses and the protection of consumers against such practices. In general, abusive clauses can be struck down to allow the contract to depend on whether the contractual relationship can be continued. If the parties are unwilling to agree, the loan contract becomes null-and-void *ab initio*, and the parties are obliged to return whatever they have "performed" since the start of their contractual obligation. That sounds logical. But with 347,000 loans pegged to the Swiss franc still pending, it can lead to disastrous consequences forcing the banks to absorb huge

solved as the parties decided to appeal to the European Court of Justice to tie this problem to EU laws. The public hearings have been conducted involving the Chairman of the Polish Financial Supervisory Authority, but no judgment has been handed down to date. It will likely come in 2023.

LOAN VACATIONS

The second regulatory challenge comes in the form of loan vacations for debtors so they can cope with rising interest rates and inflation in Poland. As the Polish Central Bank NBP has taken a hawkish stance on the significant uptick in inflation by raising interest rates, borrowers were faced with rising installments as, unlike in the US, their mortgages are largely not fixed-rate loans, but float along with benchmark rates. To help ease

on track to bring more ESG financing to the market. The policy is an EU-driven pathway for tackling global climate challenges. For several years, advising investors and banks, Dentons lawyers have been involved in this type of financing. They have built a solid knowledge base. However, there are still several unresolved regulatory challenges in the field that should be given greater clarity in 2023.

Judging by the resilience of the Polish banking sector demonstrated in 2022, 2023 looks as if it may be a paramount year for regulatory solutions that may materialize. The time will show whether new developments will contribute to reinforcing the role of banks in the Polish economy by bringing more green financing to the market or diminishing it. After

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or European Central Bank. In Poland, the peak selling time for mortgages denominated in Swiss franc came in 2007/8 when the Polish zloty was at an all-time high. According to "the common wisdom" propagated by some banks and the media, there was no risk attached to earning in zlotys while taking out loans tied to foreign currencies. Then the Lehman Brothers filed for bankruptcy, and the house of cards collapsed. Within a few days, this black swan sailed in majestically,

losses on their balance sheets. In September, the country's 10th largest lender—Getin Noble Bank—had to be bailed out by the Polish guarantee bank and a consortium of private banks in Poland. It involved PLN 10.3 billion (USD 2.2 billion). While the courts investigate it, the issue remains unresolved.

But banks are not charities. The cost of money is not burned internally but is related to the value behind the loan. Again, sounds logical, but the issue is still unre-

solved, a law was passed allowing borrowers to postpone a certain number of monthly installments in 2022 and 2023. Hence, no surprise then when major banks reported losses in the 3rd quarter of 2022 and warned of further losses down the line.

NEW CRITERIA

With the advent of ESG (Environment, Social and Corporate Governance) in all sectors of the economy, banks in Poland are

all, someone has to grease the wheels of the economy.