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**SETTLEMENT OF A LOAN SUBJECT TO FOREIGN
EXCHANGE RISK AFTER ELIMINATION OF THE
INDEXATION MECHANISM ACCORDING TO COURT
RECOMMENDATIONS**

Introduction

Between 2005 and 2010, banks massively granted housing (mortgage) loans indexed to foreign currencies or denominated in currencies, with the Swiss franc (CHF) being the most popular due to its high exchange rate stability. The popularity of these loans was mainly due to their much lower interest rates in relation to those of loans in PLN, the strengthening of the zloty (PLN) and the increase in demand in the residential property market. For example, in 2005, the interest rate on a PLN 300,000 mortgage loan taken out for 30 years was around 5.80% in PLN and 1.74% in CHF, while the capital and interest instalment for a PLN loan was around PLN 2,200 and for a 'franking' loan around PLN 1,400. Thus, the choice of a 'franking' loan was evident for many borrowers. Moreover, lower repayment installments for a CHF loan translated into higher creditworthiness for the borrowers, thus the possibility of a higher loan. According to data from the Supreme Audit Office (Protecting the Rights of Consumers with Foreign Exchange Risk Loans, 2018), nearly one million foreign exchange risk loan contracts were concluded, with the value of these contracts in 2011. (peak period) reached almost PLN 200 billion. According to data from the Credit Information Bureau, 899,000 more people were burdened with CHF loans in mid-2022.

In 2008, an economic crisis emerged, triggered, among other things, by the 'bursting of the speculative bubble' in the US property market. Markets became unpredictable, and the CHF exchange rate began to rise, becoming unstable on 5

January 2015. The Swiss Central Bank decided to free the CHF exchange rate, causing it to rise rapidly in 2008. CHF cost PLN 2.00, while at the beginning of 2015, it was as high as PLN 4.30. The CHF loan instalment thus more than doubled in seven years. It resulted in a significant deterioration or even loss of liquidity for many borrowers and a significant increase in debt. The depreciation of the PLN against foreign currencies led some borrowers to a situation where, despite many years of servicing the loan, they were left with a PLN-denominated debt more significant than the loan they had taken out. In addition, for a significant group of borrowers, this also exceeded the property's value, securing the repayment of the loan (Protecting the Rights of Consumers with Currency Risk Loans, 2018).

The above problems led to borrowers deciding en masse to go to court against banks that had granted them unfavourable loans in foreign currency (mainly in CHF), filing for the cancellation of the agreement or an alternative claim consisting in the settlement of the loan after the elimination of the indexation mechanism to foreign currency in its entirety (so-called 'de-franking' of the agreement). Arguments contributing to the decision to take out the loan included misrepresentation by the bank's employees, lack of complete, clear and transparent information about the foreign currency risk, and inadequate assessment of creditworthiness.

It follows from the Financial Ombudsman's 2022 study (Analysis of current issues concerning franking credits) that, in a situation where a 'franking' credit agreement had been invalidated by the court or had become ineffective due to its inability to be performed after the removal of prohibited contractual provisions from its content, the parties were obliged to return to each other what each of them had rendered to the other. The parties' previous performance under the invalid franking agreement had no legal basis. As a result, a situation arose in which an obligation arose between the parties to settle these benefits provided to each other based on an invalid or ineffective agreement. Significantly, on both sides of the loan agreement, there was an undue benefit, a particular type of unjust enrichment (Article 405 in connection with Article 410 of the Civil Code).

In the eventual claim, i.e. the settlement of the loan after the elimination of the mechanism of indexation to a foreign currency in its entirety (the so-called 'de-franking' of the agreement), the courts issued orders for expert evidence on the settlement of the loan taken out by the plaintiffs on the assumption that both the initial balance of the loan and the individual loan instalments were not converted into Swiss francs and that the loan would bear interest at the rate and margin of the bank indicated in the agreement.

The study aims to present the settlement of a sample mortgage loan indexed to the CHF currency after eliminating the indexation mechanism and to determine the financial consequences of such a settlement for both banks and borrowers.

Housing loans (mortgages)

Media coverage often uses the terms 'foreign currency loans', 'franking credits', etc., which can be considered a kind of simplification leading to a misunderstanding of the nature of so-called foreign currency loans. It should be clarified that in practice, the following types of loans are distinguished:

- PLN loan - a loan granted in the Polish currency (PLN) in which the borrower repays the principal and interest instalments in the Polish currency (PLN), returning to the bank the nominal amount of the loan granted (principal) plus interest;

- foreign currency loan - a loan granted in a currency other than the domestic currency - in the practice of the Polish market, most often in Swiss francs (CHF), in which the borrower repays the principal and interest instalments in a foreign currency, returning to the bank the nominal sum of the loan granted (capital) plus interest;

- foreign currency indexed loan - a loan granted and disbursed in PLN, the value of which, as on the date of loan disbursement (loan instalment), is converted from PLN into a foreign currency (e.g. CHF) at an assumed purchase rate; the amount of capital and interest instalments is determined in a foreign currency, and their repayment is made in PLN after conversion at the exchange (sale) rate as on the repayment date. CHF) at the assumed purchase rate; the amount of capital and interest instalments is determined in a foreign currency and they are repaid in PLN, after conversion at the exchange (sale) rate on the repayment date, or in a foreign currency; in the case of this type of loan, currency flows occur only if the borrower decides to repay the loan directly in the currency to which the loan is indexed (Protection of the rights of consumers using loans subject to currency risk, 2018);

Example of an index-linked loan - disbursed as a single payment:

The amount of the loan is PLN 400,000 in CHF. On the day the loan is disbursed, the bank pays out PLN 400,000 and converts the debt according to the exchange rate into CHF. For an exchange rate of 4.40 PLN/CHF, the debt will be CHF 90,909.09. For a lower rate, e.g. at 4.00 PLN/CHF, the debt will be CHF 100 000.00.

Example for an index-linked loan of PLN 400,000.00, disbursed in tranches:

Table 1 Disbursement of the index-linked loan - disbursed in 4 tranches

Tranche	Amount of tranche in PLN	PLN/CHF exchange rate	Amount of tranche in CHF	Capital - CHF debt
First tranche	100 000,00	4,20	23 809,52	23 809,52
2nd tranche	100 000,00	4,15	24 096,39	47 905,91
Third tranche	100 000,00	4,00	25 000,00	72 905,91
Fourth tranche	100 000,00	4,25	23 529,41	96 435,32
Total	400 000,00		96 435,32	

Source: own study.

In the case of an index-linked loan disbursed in tranches, the final debt currency is CHF 96,435.32, and the total loan amount (PLN 400,000) will be disbursed.

- a loan denominated in a foreign currency - a loan whose value is expressed in a foreign currency in the agreement but which is disbursed in PLN at the assumed conversion rate; the borrower repays the principal and interest instalments in PLN, after conversion at the exchange rate as at the repayment date; the borrower repays the bank the nominal amount of the loan granted (capital), which is a specific equivalent of the foreign currency depending on the current exchange rate, together with interest and other fees and commissions; in the case of this type of loan, currency flows also occur if the borrower decides to repay the loan directly in the currency in which the loan is denominated (Protecting the rights of consumers with currency risk loans, 2018). The amount will be indicated in the contract, but for objective reasons (lack of an exchange rate when the loan is activated), it is not indicated what the final amount in PLN will be paid to the borrower in whole or tranches. In the case of this loan, the amount of the debt is known. However, the final amount calculated in PLN that will be disbursed is unknown. It should be added that no more than the loan amount can be disbursed (KOWALEWSKA, 2017).

Example for a single-payment denominated loan:

The borrower applies for a loan of PLN 400,000 in CHF. The loan amount in CHF is calculated at a specific PLN/CHF exchange rate, e.g. PLN 4.00. In this case, the loan amount will be CHF 100,000. The bank will disburse this amount at the exchange rate on the day of disbursement, which means it is not known what the final amount of the disbursement in PLN will be. If the PLN/CHF exchange

rate on the disbursement date is PLN 3.90, the bank will pay out PLN 390,000, whereas if the exchange rate is PLN 4.15, the bank will pay out PLN 415,000.

Example for a denominated loan of PLN 400 000.00, disbursed in tranches:

Table 2. Denominated loan disbursement - disbursed in 4 tranches

Tranche	Amount of tranche in PLN	Rate in PLN/CHF	Amount of tranche in CHF	Capital - CHF debt
First tranche	100 000,00	4,05	24 691,36	24 691,36
2nd tranche	100 000,00	3,85	25 974,03	50 665,38
Third tranche	100 000,00	3,95	25 316,46	75 981,84
Fourth tranche	96 072,64	4,00	24 018,16	100 000,00
Total	396 072,64		100 000,00	

Source: own study.

In the example presented, in the situation of PLN appreciation against CHF, there is a shortfall in the loan amount in PLN, as the disbursement - according to the loan agreement - can cover a maximum of CHF 100,000. Hence, the amount of PLN 3 927.36 (PLN 400 000.00 minus PLN 396 072.64), which the borrower must supplement on his own. In the case of a weakening of the PLN against the CHF, the situation will be the opposite - there will be an excess of the loan amount disbursed in PLN (over the amount requested by the borrowers).

A change in the repayment of loans denominated in foreign currencies and indexed with foreign exchange rates was introduced by the so-called 'anti-spread law'. On 26 August 2011, the Act of 29 July 2011 amending the Banking Law and certain other acts entered into force, which introduced two significant changes¹:

- added to Article 69 of the Banking Law paragraph 2(4a), according to which the credit agreement should contain, in the case of an agreement on a credit denominated or indexed to a currency other than the Polish currency, detailed rules on how and when to determine the exchange rate, based on which, in particular, the amount of the credit, its tranches and capital and interest instalments, as well as the rules of conversion into the currency of the payment or repayment of the credit, are calculated;
- added paragraph 3 to Article 69 of the Banking Law, according to which, in the case of a credit agreement denominated or indexed to a currency other than the Polish currency, the borrower may make the repayment of capital and interest instalments and make early repayment of the total or partial

¹ <https://www.kwwp.pl/ustawa-antyspreadowa-a-kredyty-frankowe/>

amount of the credit directly in that currency - in this case, the credit agreement shall also specify the rules for opening and maintaining an account to accumulate funds earmarked for repayment of the credit and the rules for making repayments through that account.

The primary objective of the Act was to make borrowers independent of the banks' policy of setting exchange rates for the conversion of the loan principal and capital and interest instalments in a discretionary manner, in isolation from market exchange rates, and thus setting high spreads (the difference between the buying rate and the selling rate of a given currency). The provisions of the Act enabled borrowers to purchase foreign currencies on their own (e.g. at bureaux de change) at a rate more favourable than the rates in the bank's tables.

Settlement of credit after elimination of the indexation mechanism to foreign currency

The settlement of the sample loan agreement, assuming that the initial loan balance and individual loan instalments were not converted into CHF and that the loan bears interest at the bank's rate and margin indicated in the agreement, was carried out with the following assumptions:

1. According to the agreement, the bank granted a loan of PLN 190,000.00 indexed to CHF. The agreement provided for loan repayment in 408 monthly instalments (including a six-month grace period for capital repayment) in the formula of equal instalments, including a decreasing part of interest and an increasing part of the capital instalment. The interest rate on the loan was variable and derived from the sum of the applicable reference rate (LIBOR 3M for CHF) and the bank's fixed margin of 1.90%.

2. Determination of the sum of capital and interest instalments to be paid by the borrower to the bank during the repayment period of the loan in PLN was made using the formula of equal instalments, which include a decreasing part of interest and an increasing part of the capital instalment. Interest was calculated for each day on the current debt, assuming a year has 360 days and each month has 30 days.

3. The loan settlement was done using a spreadsheet and the PMT function, which calculates the repayment amount of the loan/credit assuming constant periodic repayments and a fixed interest rate. Its syntax is as follows:

PMT (rate; number_ratings; wa; [wp]; [type]),

What its elements stand for:

- rate - the interest rate of the loan;
- number of instalments - the total number of repayments under the loan;
- Wa - the present value, i.e. the total amount that is the value of a series of future payments (also called capital);

- Wp is the future value, i.e., the cash balance that is wanted after the last payment. If the wp argument is omitted, the number 0 will be taken as its value (meaning that the future value of the loan is 0);

- type - a number 0 or 1, indicating when the payment is due.

4. For the settlement of loan instalments into principal and interest, the solution adopted is that the principal instalment is equal to the difference between the principal and interest instalment and the interest charged on the current debt.

5. The following assumptions were made in the calculations:

- The loan of PLN 190,000.00 was disbursed in the following tranches:

23.11.2005 48000,00 PLN

22.12.2005 24000,01 PLN

25.01.2006 24000,00 PLN

23.02.2006 24000,00 PLN

27.03.2006 24000,01 PLN

24.04.2006 23974,99 PLN

24.07.2006 22024,99 PLN

- repayment period - 408 months (including a six-month grace period for capital repayment);

- repayment on an equal instalment basis, which includes a decreasing proportion of interest and an increasing proportion of the capital instalment;

- Interest rate based on LIBOR 3M for CHF (from 01.04.2022, SARON 3M is taken as the basis) plus bank margin;

- the borrower paid PLN 191,769.85 in principal and interest instalments between 23.12.2005 and 23.02.2023, so the loan settlement will cover the same period.

It follows from the settlement, presented in Table 3, of the capital and interest instalments that the borrower would be obliged to pay to the bank under the above assumptions that in the period from 23.12.2005 to 23.02.2023, the borrower should pay a total of PLN 136,572.96 (capital instalments of PLN 79,999.07, interest instalments of PLN 56,573.89).

Table 3. Determination of the sum of capital and interest instalments to be paid by the borrower to the bank between 23.12.2005 and 23.02.2023, assuming that both the initial balance of the loan and the individual instalments were not converted into CHF, with the other terms of the agreement unchanged

Date	Capital and interest instalment in PLN	Capital instalment in PLN	Interest instalment in PLN	Debt balance - loan principal in PLN	Interest rate of the loan
23.11.2005	0,00	0,00	0,00	48 000,00	2,6900%
22.12.2005	0,00	0,00	0,00	72 000,01	2,6900%
23.12.2005	107,60	0,00	107,60	72 000,01	2,6900%
23.01.2006	171,08	0,00	171,08	72 000,01	2,9100%
23.02.2006	228,92	0,00	228,92	120 000,01	2,9100%
23.03.2006	232,80	0,00	232,80	120 000,01	2,9100%
23.04.2006	361,53	0,00	361,53	144 000,02	3,1492%
23.05.2006	440,82	0,00	440,82	167 975,01	3,1492%
23.06.2006	676,81	235,99	440,82	167 739,02	3,1492%
23.07.2006	676,81	207,59	469,22	167 531,43	3,1492%
23.08.2006	794,86	254,62	540,24	189 301,79	3,4200%
23.09.2006	794,86	255,35	539,51	189 046,44	3,4200%
23.10.2006	794,86	220,95	573,91	188 825,49	3,4200%
23.11.2006	826,52	242,61	583,91	188 582,88	3,7108%
23.12.2006	826,52	243,36	583,16	188 339,51	3,7108%
23.01.2007	826,52	209,02	617,51	188 130,50	3,7108%
23.02.2007	858,74	231,25	627,49	187 899,25	4,0025%
23.03.2007	858,74	232,02	626,72	187 667,22	4,0025%
23.04.2007	858,74	209,72	649,03	187 457,51	4,0025%
23.05.2007	880,23	224,91	655,32	187 232,60	4,1950%
23.06.2007	880,23	225,70	654,53	187 006,91	4,1950%
23.07.2007	880,23	178,10	702,13	186 828,81	4,1950%
23.08.2007	926,03	209,86	716,18	186 618,95	4,6000%
23.09.2007	926,03	210,66	715,37	186 408,29	4,6000%
23.10.2007	926,03	201,34	724,69	186 206,95	4,6000%
23.11.2007	935,74	208,75	726,98	185 998,19	4,6850%
23.12.2007	935,74	209,57	726,17	185 788,63	4,6850%

Date	Capital and interest instalment in PLN	Capital instalment in PLN	Interest instalment in PLN	Debt balance - loan principal in PLN	Interest rate of the loan
23.01.2008	935,74	213,75	721,99	185 574,88	4,6850%
23.02.2008	932,52	212,38	720,14	185 362,50	4,6567%
23.03.2008	932,52	213,20	719,31	185 149,30	4,6567%
23.04.2008	932,52	198,85	733,66	184 950,44	4,6567%
23.05.2008	947,07	209,58	737,49	184 740,86	4,7850%
23.06.2008	947,07	210,42	736,65	184 530,44	4,7850%
23.07.2008	947,07	222,46	724,62	184 307,98	4,7850%
23.08.2008	936,34	216,01	720,34	184 091,98	4,6900%
23.09.2008	936,34	216,85	719,49	183 875,12	4,6900%
23.10.2008	936,34	198,32	738,03	183 676,81	4,6900%
23.11.2008	954,91	211,78	743,13	183 465,02	4,8550%
23.12.2008	954,91	212,64	742,27	183 252,38	4,8550%
23.01.2009	954,91	482,00	472,91	182 770,39	4,8550%
23.02.2009	714,98	324,81	390,17	182 445,58	2,5617%
23.03.2009	714,98	325,50	389,48	182 120,08	2,5617%
23.04.2009	714,98	356,26	358,71	181 763,81	2,5617%
23.05.2009	690,48	341,60	348,88	181 422,22	2,3033%
23.06.2009	690,48	342,25	348,22	181 079,96	2,3033%
23.07.2009	690,48	343,87	346,61	180 736,09	2,3033%
23.08.2009	689,70	344,05	345,66	180 392,05	2,2950%
23.09.2009	689,70	344,71	345,00	180 047,34	2,2950%
23.10.2009	689,70	357,64	332,07	179 689,70	2,2950%
23.11.2009	679,88	352,20	327,68	179 337,50	2,1883%
23.12.2009	679,88	352,84	327,04	178 984,66	2,1883%
23.01.2010	679,88	357,67	322,21	178 626,99	2,1883%
23.02.2010	676,55	356,26	320,29	178 270,72	2,1517%
23.03.2010	676,55	356,90	319,65	177 913,83	2,1517%
23.04.2010	676,55	358,11	318,45	177 555,72	2,1517%
23.05.2010	676,10	358,47	317,63	177 197,25	2,1467%
23.06.2010	676,10	359,11	316,99	176 838,13	2,1467%
23.07.2010	676,10	375,01	301,10	176 463,13	2,1467%

Date	Capital and interest instalment in PLN	Capital instalment in PLN	Interest instalment in PLN	Debt balance - loan principal in PLN	Interest rate of the loan
23.08.2010	664,10	368,27	295,83	176 094,85	2,0117%
23.09.2010	664,10	368,89	295,21	175 725,96	2,0117%
23.10.2010	664,10	362,03	302,07	175 363,93	2,0117%
23.11.2010	669,96	366,25	303,72	174 997,68	2,0783%
23.12.2010	669,96	366,88	303,08	174 630,80	2,0783%
23.01.2011	669,96	368,44	301,52	174 262,36	2,0783%
23.02.2011	669,23	368,63	300,60	173 893,73	2,0700%
23.03.2011	669,23	369,27	299,97	173 524,46	2,0700%
23.04.2011	669,23	368,80	300,44	173 155,67	2,0700%
23.05.2011	670,10	369,97	300,14	172 785,70	2,0800%
23.06.2011	670,10	370,61	299,50	172 415,09	2,0800%
23.07.2011	670,10	371,80	298,30	172 043,29	2,0800%
23.08.2011	669,67	372,18	297,49	171 671,11	2,0750%
23.09.2011	669,67	372,82	296,85	171 298,28	2,0750%
23.10.2011	669,67	390,07	279,60	170 908,21	2,0750%
23.11.2011	656,77	382,85	273,92	170 525,36	1,9233%
23.12.2011	656,77	383,46	273,31	170 141,90	1,9233%
23.01.2012	656,77	380,99	275,78	169 760,91	1,9233%
23.02.2012	659,16	383,06	276,10	169 377,85	1,9517%
23.03.2012	659,16	383,68	275,48	168 994,17	1,9517%
23.04.2012	659,16	378,01	281,15	168 616,16	1,9517%
23.05.2012	664,03	381,60	282,43	168 234,57	2,0100%
23.06.2012	664,03	382,24	281,79	167 852,33	2,0100%
23.07.2012	664,03	385,34	278,69	167 466,99	2,0100%
23.08.2012	662,12	384,82	277,30	167 082,16	1,9870%
23.09.2012	662,12	385,46	276,66	166 696,70	1,9870%
23.10.2012	662,12	390,68	271,44	166 306,03	1,9870%
23.11.2012	658,59	389,17	269,42	165 916,85	1,9440%
23.12.2012	658,59	389,80	268,79	165 527,05	1,9440%
23.01.2013	658,59	393,82	264,77	165 133,23	1,9440%
23.02.2013	655,99	392,88	263,11	164 740,35	1,9120%

Date	Capital and interest instalment in PLN	Capital instalment in PLN	Interest instalment in PLN	Debt balance - loan principal in PLN	Interest rate of the loan
23.03.2013	655,99	393,51	262,49	164 346,84	1,9120%
23.04.2013	655,99	393,08	262,91	163 953,76	1,9120%
23.05.2013	656,80	394,20	262,60	163 559,56	1,9220%
23.06.2013	656,80	394,83	261,97	163 164,73	1,9220%
23.07.2013	656,80	395,77	261,02	162 768,96	1,9220%
23.08.2013	656,56	396,26	260,29	162 372,70	1,9190%
23.09.2013	656,56	396,90	259,66	161 975,80	1,9190%
23.10.2013	656,56	397,22	259,34	161 578,58	1,9190%
23.11.2013	656,79	398,00	258,80	161 180,58	1,9220%
23.12.2013	656,79	398,64	258,16	160 781,94	1,9220%
23.01.2014	656,79	399,17	257,62	160 382,77	1,9220%
23.02.2014	656,87	399,86	257,01	159 982,91	1,9230%
23.03.2014	656,87	400,50	256,37	159 582,41	1,9230%
23.04.2014	656,87	401,24	255,63	159 181,17	1,9230%
23.05.2014	656,80	401,84	254,96	158 779,33	1,9220%
23.06.2014	656,80	402,48	254,31	158 376,84	1,9220%
23.07.2014	656,80	404,54	252,25	157 972,30	1,9220%
23.08.2014	655,72	404,54	251,18	157 567,76	1,9080%
23.09.2014	655,72	405,18	250,53	157 162,57	1,9080%
23.10.2014	655,72	406,03	249,69	156 756,55	1,9080%
23.11.2014	655,56	406,58	248,98	156 349,96	1,9060%
23.12.2014	655,56	407,23	248,34	155 942,73	1,9060%
23.01.2015	655,56	414,75	240,81	155 527,98	1,9060%
23.02.2015	650,36	412,27	238,09	155 115,71	1,8370%
23.03.2015	650,36	412,91	237,46	154 702,80	1,8370%
23.04.2015	650,36	487,77	162,60	154 215,04	1,8370%
23.05.2015	595,88	456,32	139,56	153 758,72	1,0860%
23.06.2015	595,88	456,73	139,15	153 301,99	1,0860%
23.07.2015	595,88	454,69	141,19	152 847,30	1,0860%
23.08.2015	597,63	456,12	141,51	152 391,18	1,1110%
23.09.2015	597,63	456,54	141,09	151 934,64	1,1110%

Date	Capital and interest instalment in PLN	Capital instalment in PLN	Interest instalment in PLN	Debt balance - loan principal in PLN	Interest rate of the loan
23.10.2015	597,63	451,53	146,10	151 483,11	1,1110%
23.11.2015	601,52	454,20	147,32	151 028,91	1,1670%
23.12.2015	601,52	454,65	146,88	150 574,26	1,1670%
23.01.2016	601,52	457,30	144,22	150 116,96	1,1670%
23.02.2016	599,94	456,82	143,11	149 660,14	1,1440%
23.03.2016	599,94	457,26	142,68	149 202,88	1,1440%
23.04.2016	599,94	455,14	144,79	148 747,73	1,1440%
23.05.2016	601,76	456,64	145,13	148 291,10	1,1708%
23.06.2016	601,76	457,08	144,68	147 834,02	1,1708%
23.07.2016	601,76	462,31	139,46	147 371,71	1,1708%
23.08.2016	598,35	460,78	137,57	146 910,93	1,1202%
23.09.2016	598,35	461,21	137,14	146 449,72	1,1202%
23.10.2016	598,35	458,85	139,50	145 990,87	1,1202%
23.11.2016	600,34	460,43	139,91	145 530,44	1,1500%
23.12.2016	600,34	460,87	139,47	145 069,57	1,1500%
23.01.2017	600,34	459,39	140,95	144 610,18	1,1500%
23.02.2017	601,72	460,62	141,09	144 149,55	1,1708%
23.03.2017	601,72	461,07	140,64	143 688,48	1,1708%
23.04.2017	601,72	461,56	140,16	143 226,92	1,1708%
23.05.2017	601,69	462,00	139,69	142 764,93	1,1704%
23.06.2017	601,69	462,45	139,24	142 302,48	1,1704%
23.07.2017	601,69	462,93	138,76	141 839,55	1,1704%
23.08.2017	601,66	463,37	138,29	141 376,18	1,1700%
23.09.2017	601,66	463,82	137,84	140 912,36	1,1700%
23.10.2017	601,66	463,91	137,75	140 448,44	1,1700%
23.11.2017	601,92	464,51	137,41	139 983,93	1,1740%
23.12.2017	601,92	464,97	136,95	139 518,96	1,1740%
23.01.2018	601,92	467,22	134,70	139 051,73	1,1740%
23.02.2018	600,64	466,94	133,70	138 584,79	1,1538%
23.03.2018	600,64	467,39	133,25	138 117,41	1,1538%
23.04.2018	600,64	466,89	133,75	137 650,52	1,1538%

Date	Capital and interest instalment in PLN	Capital instalment in PLN	Interest instalment in PLN	Debt balance - loan principal in PLN	Interest rate of the loan
23.05.2018	601,32	467,73	133,59	137 182,79	1,1646%
23.06.2018	601,32	468,18	133,14	136 714,61	1,1646%
23.07.2018	601,32	468,30	133,01	136 246,31	1,1646%
23.08.2018	601,55	468,89	132,66	135 777,42	1,1684%
23.09.2018	601,55	469,35	132,20	135 308,07	1,1684%
23.10.2018	601,55	470,17	131,38	134 837,90	1,1684%
23.11.2018	601,29	470,48	130,82	134 367,42	1,1642%
23.12.2018	601,29	470,94	130,36	133 896,48	1,1642%
23.01.2019	601,29	469,48	131,82	133 427,01	1,1642%
23.02.2019	602,65	470,72	131,94	132 956,29	1,1866%
23.03.2019	602,65	471,18	131,47	132 485,11	1,1866%
23.04.2019	602,65	471,55	131,11	132 013,56	1,1866%
23.05.2019	602,73	472,05	130,67	131 541,51	1,1878%
23.06.2019	602,73	472,52	130,20	131 068,98	1,1878%
23.07.2019	602,73	474,11	128,61	130 594,87	1,1878%
23.08.2019	601,93	474,12	127,81	130 120,75	1,1744%
23.09.2019	601,93	474,59	127,34	129 646,16	1,1744%
23.10.2019	601,93	478,16	123,77	129 168,00	1,1744%
23.11.2019	599,73	477,36	122,37	128 690,64	1,1368%
23.12.2019	599,73	477,82	121,91	128 212,82	1,1368%
23.01.2020	599,73	472,14	127,59	127 740,68	1,1368%
23.02.2020	604,06	475,09	128,98	127 265,59	1,2116%
23.03.2020	604,06	475,57	128,50	126 790,03	1,2116%
23.04.2020	604,06	473,37	130,69	126 316,65	1,2116%
23.05.2020	605,96	474,95	131,01	125 841,70	1,2446%
23.06.2020	605,96	475,44	130,52	125 366,26	1,2446%
23.07.2020	605,96	477,58	128,38	124 888,68	1,2446%
23.08.2020	604,79	477,40	127,39	124 411,28	1,2240%
23.09.2020	604,79	477,89	126,90	123 933,39	1,2240%
23.10.2020	604,79	486,66	118,13	123 446,73	1,2240%
23.11.2020	598,95	483,79	115,16	122 962,94	1,1194%

Date	Capital and interest instalment in PLN	Capital instalment in PLN	Interest instalment in PLN	Debt balance - loan principal in PLN	Interest rate of the loan
23.12.2020	598,95	484,24	114,70	122 478,70	1,1194%
23.01.2021	598,95	483,38	115,57	121 995,32	1,1194%
23.02.2021	599,87	484,36	115,51	121 510,96	1,1362%
23.03.2021	599,87	484,82	115,05	121 026,14	1,1362%
23.04.2021	599,87	484,52	115,35	120 541,62	1,1362%
23.05.2021	600,40	485,29	115,12	120 056,33	1,1460%
23.06.2021	600,40	485,75	114,65	119 570,58	1,1460%
23.07.2021	600,40	486,18	114,22	119 084,40	1,1460%
23.08.2021	600,42	486,66	113,77	118 597,74	1,1464%
23.09.2021	600,42	487,12	113,30	118 110,62	1,1464%
23.10.2021	600,42	488,25	112,17	117 622,37	1,1464%
23.11.2021	599,96	488,45	111,51	117 133,91	1,1376%
23.12.2021	599,96	488,91	111,04	116 645,00	1,1376%
23.01.2022	599,96	488,68	111,28	116 156,32	1,1376%
23.02.2022	600,45	489,42	111,03	115 666,90	1,1470%
22.03.2022	600,45	489,89	110,56	115 177,01	1,1470%
23.04.2022	600,45	487,06	113,39	114 689,95	1,1470%
23.05.2022	602,77	488,85	113,92	114 201,10	1,1919%
23.06.2022	602,77	489,34	113,43	113 711,76	1,1919%
23.07.2022	602,77	483,94	118,83	113 227,82	1,1919%
23.08.2022	606,91	486,81	120,11	112 741,01	1,2729%
23.09.2022	606,91	487,32	119,59	112 253,69	1,2729%
23.10.2022	606,91	453,19	153,72	111 800,50	1,2729%
23.11.2022	631,65	468,05	163,60	111 332,45	1,7560%
23.12.2022	631,65	468,73	162,92	110 863,72	1,7560%
23.01.2023	631,65	420,42	211,23	110 443,30	1,7560%
23.02.2023	667,66	442,37	225,29	110 000,93	2,4478%
Total	136 572,96	79 999,07	56 573,89		

Source: own study.

The calculations carried out showed that the difference between the amounts paid by the borrower to the bank between 23.12.2005 and 23.02.2023

and the amount that the borrower would have been obliged to pay in the same period, assuming that repayment would have been made in PLN without the denomination to CHF, i.e. without converting the nominal value of the loan and individual instalments to CHF, with the other terms of the agreement unchanged, amounted to PLN 55 196.89 (the borrower's payments of PLN 191 769.85 minus the due amount resulting from the settlement of the loan of PLN 136 572.96). Thus, on the part of the borrower, there will be an overpayment between the funds he actually paid to the bank in respect of repayments of capital and interest instalments and what he would hypothetically have paid on the same account if the loan agreement concluded by him had been devoid of the mechanism of indexation or denomination of the loan in foreign currency CHF. In contrast, on the part of the bank, the borrower will be liable, burdening its financial results. In addition, such a settlement of the loan will also result in a significant reduction of the loan balance.

Summary and conclusions

The settlement of the loan after the elimination of the foreign currency indexation mechanism in its entirety ("de-franking" of the loan) is based on several assumptions that are met together:

1. Maintenance of the concluded loan agreement.
2. Deprivation of the loan agreement of the CHF foreign currency indexation/denomination mechanism in its entirety (no conversion of the nominal value of the loan and individual instalments into CHF).
3. Application of the existing interest rate accompanying the original loan agreement.

As a result of the above, a CHF-indexed/denominated loan agreement is transformed into a regular loan in PLN, but bearing interest at a rate appropriate to a loan indexed/denominated to a foreign currency - most often such a loan is referred to as a PLN loan, the interest rate of which is based on LIBOR (currently SARON). Settlement of the loan according to such principles results in an overpayment of the loan on the part of the borrower, while on the part of the bank, there will be a liability to the borrower, which, in accounting terms, will burden business costs and negatively affect the financial result. In addition, it will reduce the balance of the loan (the bank's receivables), and the amount written off will also adversely affect the financial result and contribute to the deterioration of the bank's assets and financial position.

In litigation, the banks' attorneys often argue that the abovementioned assumptions are unacceptable, arguing that such a loan could never have occurred. No bank would have granted it, citing, among other things, the provisions of Regulation EU 2016/1011 of the European Parliament and of the Council of 08.06.2016 on indices used as reference indices in financial instruments and financial contracts or the measurement of the performance of an investment fund

and amending Directives 2008/48/EC and 201/17/EU and EU Regulation No. 596/2014, which prescribe the use of a reference rate appropriate to the currency of the credit obligation. Therefore, according to the provisions of the cited acts, for a loan indexed to CHF, the LIBOR (SARON) rate for CHF should be used, and for a loan in PLN, the WIBOR rate should be used. However, in the case of the problem presented in this article, the "de-franking of credit" has a sanctioning character for the dishonest entrepreneur (bank), which has applied prohibited contractual provisions (abusive clauses) in credit agreements.

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Abstract

By 2017, nearly one million foreign currency risk loans (indexed to foreign currencies or denominated in foreign currencies) were concluded, and their value reached nearly PLN 200 billion in 2011 (according to data from the Credit Information Bureau, 899 000 people had a loan in CHF by mid-2022). In 2008, an economic crisis arose, which resulted, among other things, in the depreciation of the złoty against foreign currencies. As a result, some borrowers, despite several years of systematic loan repayment, had a debt (capital to be paid) in PLN that was greater than the amount of the loan taken out and, in some cases, even exceeded the value of the real estate, which constituted security for repayment of the loan taken out.

The above facts have contributed to the decision of some borrowers to apply to the courts against the banks that granted them an unfavourable loan in a foreign currency (mainly in CHF), claiming the invalidation of the agreement or an alternative claim consisting in the settlement of the loan after the elimination of the indexation mechanism to a foreign currency in its entirety (the so-called 'de-franking' of the agreement). If the credit agreement is invalidated, the parties must settle the sums of money transferred to each other under the invalid agreement. In the second solution, however, there is a need to settle the credit indexed (denominated) to the CHF currency after the elimination of the indexation mechanism in its entirety.

The settlement of the example loan agreement, assuming that both the initial loan balance and the individual loan instalments were not converted into CHF and that the loan would bear interest at the bank's rate and margin indicated in the agreement, will result in an overpayment of the loan on the part of the borrower. In contrast, on the part of the bank, there will be a liability to the borrower, which will be charged to operating costs and thus hurt the financial result. In addition, it will reduce the balance of the loan (the bank's receivables), and the amount written off will also adversely affect the financial result and contribute to the deterioration of the bank's property and financial situation.

Keywords: foreign currency loan, index-linked loan, 'de-franking' of a loan agreement

JEL Classification: M21