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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          |
| <b>Total</b>   | <b>400 000,00</b>        |                       | <b>96 435,32</b>         |                    |

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         |
| <b>Total</b>   | <b>396 072,64</b>        |                 | <b>100 000,00</b>        |                    |

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 changes<sup>1</sup>:

- 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

<sup>1</sup> <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%                   |

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|------------|--|---------------------------|----------------------------|--------------------------------------|---------------------------|
| 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%                   |
| <b>Total</b> | <b>136 572,96</b>                      | <b>79 999,07</b>          | <b>56 573,89</b>           |                                      |                           |

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