

### As of April 9, 2020, the maximum interest rate that may be charged in Poland is 8% per annum. How did this happen?

In response to the COVID-19 pandemic, governments, regulators and central banks worldwide are acting to save national economies. On April 8, 2020, the Polish Monetary Policy Council decided to cut the National Bank of Poland (central bank) interest rates by 0.50 percentage points. The reference rate is now at 0.50% on an annual basis. This decision surprised many observers, as it is not only the second decision to decrease interest rates in the recent weeks, but also the central bank interest rates are now at a historic low. Greeted with joy by most borrowers, the decision affects practically all legal relationships, as the reference rate of the National Bank of Poland is the basis for calculating the statutory interest rate, the maximum interest rate and the maximum late payment interest rate.

Under Polish law, the maximum interest rate resulting from a legal act may not exceed, annually, double the amount of statutory interest. By law, the statutory interest rate is calculated as the reference rate of the National Bank of Poland plus 3.5 percentage points. Thus, effective from April 9, 2020, the maximum interest rate is 8% per annum  $([0.5 + 3.5] \times 2)$ . Such maximum interest rate applies, among others, to all interest paid on principal or capital.

The maximum late payment interest rate is calculated slightly differently. The maximum late payment interest may not exceed, annually, double the statutory interest rate for delay; the latter is equal to the reference rate of the Polish National Bank plus 5.5 percentage points. Thus, as of April 9, 2020, the maximum late payment interest rate is 12% per annum.

Importantly, neither of these limits on maximum interest nor maximum late payment interest can be waived or restricted by contractual provisions, even if foreign law is chosen as the governing law for such contract. In such case, the statutory maximum interest or the maximum late payment interest applies.

Do these provisions of Polish law apply to a contract between a foreign seller and a Polish buyer, or a credit facility agreement between a foreign lender and a Polish borrower, in either case governed by foreign law? The Polish Civil Code does not give a precise answer as to the territorial effect of the maximum interest provisions. There is also no clear jurisprudence at this point. The answer depends on where such agreement would be enforced. Polish courts would be bound by the Polish Civil Code and would give effect to the statutory limitation. The answer to how a foreign court would react depends on its interpretation of whether such provisions of the Polish Civil Code could be treated as mandatory overriding provisions applicable also in other jurisdictions. However, even if a foreign court did not apply such limitations, should enforcement of such judgment be sought in Poland, there is a risk that any enforcement of a foreign judgment applying an interest rate above these limits would be prevented by the Polish court as contradicting Polish public policy.

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