

FINANCE

COVID-19: EBA extends application of Guidelines on Payment Moratoria

22 June 2020

The European Banking Authority (**EBA**) has extended the application period of its [Guidelines on Payment Moratoria \(EBA Guidelines\)](#) by three months to 30 September 2020. The EBA Guidelines are relevant to the COVID-19 payment breaks granted by the five Irish retail banks.

AWARDS

Ireland Law Firm of the Year 2020
Chambers Europe Awards

Ireland Law Firm of the Year 2020
IFLR Europe Awards

Structured Finance & Securitisation Deal of the Year 2020 (Stenn trade receivables securitisation) IFLR Europe Awards

Ireland M&A Legal Adviser of the Year 2019
Mergermarket European M&A Awards

Best Firm in Ireland 2019
Europe Women in Business Law Awards

Best National Firm for Women in Business Law 2019
Europe Women in Business Law Awards

Best National Firm Mentoring Programme 2019
Europe Women in Business Law Awards

Best National Firm for Minority Women Lawyers 2019
Europe Women in Business Law Awards

Ireland Law Firm of the Year 2019
Who's Who Legal

European Finance Deal of the Year 2019 (NTMA Green Bond Transaction)
The Lawyer European Awards

Most Inclusive Law Firm 2019
Managing Partners' Forum Awards

COVID-19 Moratoria and the EBA Guidelines

While non-legislative COVID-19 payment breaks have been offered by the five Irish retail banks and by eight other regulated non-bank lenders and credit servicers,¹ the EBA Guidelines (published on 2 April 2020) are only relevant to the five retail banks.

As set out in our recent briefing ([COVID-19: EBA Guidelines on Payment Moratoria](#)), the EBA Guidelines clarify that when a COVID-19 moratorium scheme (such as the payment breaks granted by the five Irish retail banks) meets the conditions necessary to be deemed to be a "general payment moratorium" for the purposes of the EBA Guidelines, the granting of a moratorium under that scheme to a borrower will not, of itself:

- trigger a forbearance classification for that borrower's loan; or
- be treated as a distressed restructuring of that borrower's loan.

Extension to 30 September 2020

One of the conditions to be met for a COVID-19 moratorium scheme to be deemed to be a "general payment moratorium" for the purposes of the EBA Guidelines is that it must have been announced and applied before 30 June 2020. The EBA [announced on 18 June 2020](#) that this date is being extended to 30 September 2020.

Impact of the extension

The extension means that where a COVID-19 payment break from an Irish retail bank is applied for and granted before 30 September 2020, the relevant loan will not be classified as being in forbearance, or as being subject to a distressed restructuring, solely as a result of that payment break being granted.

The remaining "general payment moratorium" conditions outlined in our [earlier briefing](#) continue to apply. This was reiterated by the Central Bank of Ireland (**CBI**) in its recent '[Dear CEO' letter](#) to the regulated firms that granted COVID-19 payment breaks (see our briefing on that '[Dear CEO' letter](#) [here](#)). In that letter, the CBI reminded the five retail banks that **all** conditions set out in the EBA Guidelines for a moratorium to be classified as a "general payment moratorium" must be met for that classification to be available. The CBI was concerned that some payment breaks proposed by the banks for larger borrowers (SME/corporate/commercial borrowers) may not have met all of those conditions.

The extension of the EBA Guidelines provides further scope for legislative and non-legislative COVID-19 moratoria schemes to be introduced over the coming months across EU Member States. However, there has been no indication that further schemes are planned by the Irish retail banks. The Banking & Payments

¹ See [Arthur Cox - COVID-19: Supports announced for affected customers of banks and other lenders \(20 March 2020\)](#) and [Arthur Cox - COVID-19: Payment breaks extended to six months \(7 May 2020\)](#).

Federation (Ireland) (**BPFI**) (the banks' representative body) [noted on 18 June 2020](#) that there has been a sharp fall in applications for COVID-19 payment breaks in recent weeks as the economy gradually re-opens. Demand for payment breaks is now, according to the BPFI, at 3% of what it was at the peak of the pandemic in Ireland.²

The extension of the EBA Guidelines underscores the importance attached by the EBA to the availability of continued financial support to households and businesses impacted by the COVID-19 pandemic. The EBA has acknowledged, however, that continuing liquidity shortages may lead to solvency issues for borrowers which will need to be

assessed by the relevant banks on a case-by-case basis. Ongoing support, and the importance of lenders assessing their customers' potential long-term solvency issues, have been consistent themes throughout the measures taken by the EBA and by other European authorities in response to the pandemic (see [COVID-19: Maximising banks' ability to lend](#)).

² As of 28 May 2020, more than 140,000 COVID-19 payment breaks had been granted, including 78,000 mortgage payment breaks and 35,800 payment breaks on loans to SMEs. (Source: [BPFI, 28 May 2020](#)).

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