Regulating Borrower Hardship in Australia, Singapore, and Hong Kong: Payment Holidays During COVID-19 and Beyond

Emma Leong

Received: 2 December 2021 / Accepted: 28 March 2022 / Published online: 13 May 2022
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Abstract
Borrower hardship, while a critical issue, is not often addressed by consumer protection frameworks across the Asia–Pacific. The widespread use of payment holidays during the COVID-19 crisis provides a significant case study on the importance of having borrower hardship provisions as a consumer protection tool. This paper compares the pre-pandemic availability of payment holidays in three Asia–Pacific jurisdictions: Australia, Singapore, and Hong Kong. It evaluates their existing legislative frameworks, as well as regulatory and industry guidelines on borrower hardship, and contrasts this with their use of payment holidays during the pandemic. Where there were existing industry guidelines on borrower hardship, lenders were able to spearhead an industry-wide approach towards payment relief without regulatory intervention by governments. Beyond the pandemic, the paper argues that self-regulation has potential for protecting borrower interests by standardising the scope of, and the procedure for, obtaining hardship relief. It argues that there is a need for a greater prevalence of industry codes of conducts governing lenders’ approach towards borrower hardship across the Asia–Pacific.

Keyword Borrower hardship · Payment holidays · Self-regulation · Consumer protection · Asia–Pacific

Borrower hardship occurs when borrowers are temporarily unable to make debt repayments due to trigger events such as job loss or other income curtailment. The COVID-19 pandemic provides a fascinating case study, whereby borrower hardship relief, specifically payment deferrals, were used globally. The COVID-19 pandemic has wrought devastating economic consequences. The depth and severity of the health crisis necessitated the use of drastic measures such as lockdowns, severely restricting the flow of goods and services. With economic activity brought to a standstill, significant proportions of the workforce have experienced a reduction in income. Even in jurisdictions that have been lauded for their effective response to the pandemic such as Australia and Singapore (Bremmer, 2021),
the economic impact has been severe. At the height of the pandemic in July 2020, Australia’s unemployment rate peaked at 7.5%, a historic high in over twenty years (Australia. Bureau of Statistics, 2021). Similarly, Singapore reported an overall unemployment rate of 3.5% in September 2020, the highest since 2009 (Singapore. Ministry of Manpower, 2021). Hong Kong’s unemployment rate reached a high of 6.3% during the third quarter of 2020 (Hong Kong. Census and Statistics Department, 2021). Economic recovery remains uncertain given that the COVID-19 pandemic is still a stark reality, with new variants of the virus emerging (WHO, 2021).

According to an OECD survey, payment deferrals or payment holidays emerged as the most widely used financial consumer protection measure to alleviate the impact of the COVID-19 crisis (OECD, 2021, p. 28). However, in some instances such as in Singapore and Hong Kong, the standardized use of payment holidays was a specific response to the COVID-19 pandemic. Despite borrower hardship being a critical consumer protection issue, it is uncommon for consumer law frameworks across the Asia–Pacific to have provisions on borrower hardship, a contrast from other regions such as Europe. For example, Article 28 of the Mortgage Credit Directive (2014/17/EU) requires EU Member States to adopt measures encouraging creditors to exercise reasonable forbearance with consumers in arrears. This article argues that instead of being a form of ad hoc relief, a baseline approach towards borrower hardship should be in place across the Asia–Pacific, specifically in a lender’s code of conduct towards its borrowers.

Broadly, payment holidays can be implemented in three ways: firstly, enforced through existing legislation that required lenders to suspend repayments of borrowers that meet certain requirements; secondly, through self-regulation; and lastly, through the complete discretion of individual lenders who determine the availability, terms, and duration of repayment relief (Coelho & Zamil, 2020, p. 3). This article argues that self-regulation is the preferable approach when introducing a regulatory approach towards borrower hardship. Two key advantages that self-regulation offers include flexibility and higher levels of compliance (as self-regulation generates rules that are more sensitive to industry practices and constraints, thus encouraging compliance) (Coglianese et al., 2004, p. 224). Yet, the very flexibility that self-regulation offers may be regarded as a significant disadvantage, potentially leading to inadequate sanctions and underenforcement of rules (Coglianese et al., 2004, p. 225). In contrast, direct government regulation would likely ensure greater enforcement and accountability. The benefits and drawbacks of self-regulation will be further evaluated in the next section.

During the pandemic, it was evident that where industry codes of conduct included existing provisions on borrower hardship, lenders could utilize these guidelines to formulate a quick response. The timely roll-out of payment holidays illustrates the potential of self-regulation in protecting the borrower’s interest. Minimally, banking associations’ codes of conduct should reflect a commitment towards assisting borrowers in repayment distress. Unfortunately, this is currently not a standard practice across the Asia–Pacific. From a lender’s perspective, the use of payment holidays can be beneficial as it falls under the ambit of loss mitigation measures. Foreclosures are a costly and lengthy process for lenders, who incur losses on the unpaid balance of the loan, utilities, and preservation and maintenance costs in addition to transaction costs (World Bank, 2008, p. 7). Loan modifications are another type of loss mitigation that renegotiates the contract with concessions to the borrower. These concessions can take the form of principal balance or interest rate reductions, term to maturity extensions, or some combination of such options (Cooper et al., 2020, p. 3). Banks and borrowers would benefit.
from more clarity over types of relief available, as well as the process of obtaining and exiting repayment relief.

Previous financial crises such as the Global Financial Crisis of 2008–2009 have led the expansion of existing consumer protection measures such as the deposit insurance scheme (Demirgüç-Kunt et al., 2014). Following the pandemic, there is a scope for payment holidays to become standard relief available to borrowers, especially mortgagors, facing temporary repayment difficulties. In making this argument, the article examines the availability and use of payment holidays in Australia, Singapore, and Hong Kong pre-pandemic and during COVID-19. These jurisdictions are economically advanced markets in the Asia–Pacific region with other comparative studies having been carried out on their consumer protection approach (Wan et al., 2020). However, European-centric consumer law scholarship remains relatively more developed (Twigg-Flesner & Micklitz, 2010). This article takes a comparative approach towards examining the use of payment holidays in the Asia–Pacific, arguing for a baseline consumer protection approach for borrower hardship.

The article mainly focuses on payment relief offered to individual consumers for home mortgage loans, as mortgages typically form the lion’s share of debt incurred by the average consumer, and mortgage repayment rates are a key determinant of overall household financial vulnerability (Zabai, 2017, p. 41). However, relief measures available to small and medium enterprises (SMEs) during the pandemic will also be briefly considered to illustrate the extent of relief offered to SMEs in comparison to individual borrowers. The second section discusses the benefits and risks of using payment holidays and evaluates the use of self-regulation, as opposed to government regulation, in implementing payment holidays. The third section considers existing legislation and regulatory guidelines on borrower hardship. The fourth section examines industry guidelines on borrower hardship found in codes of conduct. The fifth section evaluates the use of payment holidays during the pandemic in light of existing, or non-existing, standards on borrower hardship. The article concludes by stating that post-pandemic, repayment relief should be made more widely available for borrowers in temporary hardship through a self-regulatory mechanism. In this article, the terms *borrower*, *debtor*, *consumer*, and *customer* are used interchangeably.

### The Case for Formalising Payment Holidays Through Self-Regulation

#### Payment Holidays as a Consumer Protection Tool

Payment holidays are a critical consumer protection tool as they provide material relief for borrowers facing repayment difficulties. Forbearance acts as a credit line allowing borrowers to draw on payment deferral if needed (Cherry et al., 2021, p. 1). During the pandemic, payment holidays complemented other financial aid programmes by providing relief to individuals with higher incomes who may be ineligible for government pay-outs. Payment holidays provide targeted relief as it is up to the borrower to request it and is typically subject to lender approval (Cherry et al., 2021, p. 3). Debt forbearance has implications beyond COVID-19 and can be used to restructure debt payments of households outside of crises (Cherry et al., 2021, p. 2). There are benefits both for banks and consumers if payment holidays were to be made available in the longer term. From a bank’s perspective, it is in their commercial interests for customers to keep their mortgage. Criticism has been levelled over the difficult balancing exercise banks had to undertake during the pandemic at ensuring prudential regulatory standards and implementing repayment relief policies. Such
Delegated implementation puts banks in a difficult position as they must handle the dissonance of changing regulatory objectives, and yet are uncertain about the extent to which the boundaries of existing regulatory regimes can be pushed (Chiu et al., 2020, p. 34). It would enable lenders to have greater certainty if the procedure for obtaining, as well as the scope of payment relief is standardized across the industry.

Understandably, banks may not be keen to make payment holidays available in the long term. Assistance that requires changes in credit contracts are more difficult for financial institutions to implement (Perkins et al., 2020, p. 2). Complementary measures such as accounting standards adjustments and loss accounting provisions were necessary in the COVID-19 pandemic for banks to implement payment holidays without falling foul of other regulations on capital maintenance. Payment holidays increase information asymmetry for banks in their assessment of borrowers’ creditworthiness and banks may have to make increased loan loss provisions against outstanding debt (Chiu et al., 2020, p.33). Where banks have a high exposure to consumer loans, these banks would be especially vulnerable if consumers miss loan payments (Cooper et al., 2020 p. 20). The complex policy trade-offs can be summarized in the following table (Table 1):

Table 1  Design of payment deferral programmes and policy trade-offs (Coelho & Zamil, 2020, p. 3)

| Degree of borrower relief | Maximum relief | Moderate relief | No public guarantees |
|---------------------------|---------------|----------------|---------------------|
|                           | Mandatory bank participation | Voluntary bank participation | Public guarantees |
|                           | Deferral of principal and interest | Deferral of principal only | |
|                           | Flexible borrower eligibility criteria | Strict borrower eligibility criteria | |
|                           | Longer duration | Shorter duration | |
|                           |                |                | |

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One argument made against payment holidays is that there are moral hazard concerns, i.e., borrowers who are able to continue servicing their loans may “opportunistically decide not to” (Bank of Thailand, 2020, p. 2). However, it is arguable that the continued accumulation of interest for borrowers on payment holidays deters overreliance on payment holidays. As observed, payment holidays come at a cost to borrowers as their overall interest payments increase. Furthermore, borrowers may face a trade-off between utilising a payment holiday now and limiting their access to future credit. In their own lending assessments, banks may be less willing to extend credit to borrowers who previously paused repayments. This would dissuade borrowers from over-reliance on payment holidays, utilising it when only absolutely necessary. Payment holidays serve as targeted short-term relief for borrowers who encounter unexpected setbacks.
Standardising the post-pandemic availability of payment holidays has several benefits. Firstly, there can be sustained efforts to educate borrowers over the benefits, risks, and suitability of its use. For example, there was criticism over the UK Financial Conduct Authority’s (FCA) delay in warning consumers over payment holiday credit risks during the pandemic. While the FCA had assured borrowers in March 2020 that the use of payment holidays would not affect their credit ratings, it did not explicitly warn consumers that payment holidays could still influence banks’ willingness to lend until some months later (Vincent, 2020). Piecemeal implementation of relief measures in a crisis meant that borrowers were not informed of the wider implications of using a payment holiday in a timely manner. More thorough consumer education can be conducted if a permanent approach towards borrower hardship is fleshed out.

Secondly, critical policy questions such as how forbearance will be unwound after its expiration can be addressed in such guidelines (Cherry et al., 2021, p.5). These are important procedural issues that can be clarified beforehand, to enable lenders to respond more quickly and confidently during a crisis even without regulatory intervention. The COVID-19 pandemic has already resulted in advancements to borrower hardship initiatives. In Singapore, banks have established restructuring teams to assess borrowers who have taken payment holidays (Choy, 2020). As a result of COVID-19, banks have refined their industry-wide approach to hardship and developed a new online tool to guide customers in financial hardship and improve transparency over the process (ABA, 2021b). The online tool, the Financial Assistance Hub\(^1\) consolidates relevant information for consumers at different stages of their financial hardship. In the long term, it may be useful for lenders to build on these consumer protection initiatives to assist borrowers facing temporary repayment hardship.

From both a bank and customer perspective, having a standardized approach towards bank assistance for borrower hardship would foster greater trust in bank-customer relations. While borrowers may not be depositors, they still enjoy a customer relationship with the lender. Guidelines would improve certainty over the use of relief measures and borrowers can have a more informed approach when deciding whether to utilize a payment holiday. Additionally, it is critical to have procedural clarity over the expiration of a payment holiday. Ideally, this approach should be coordinated across the banking industry and not left for individual loan providers to determine. As the global economy faces more exogenous shocks and the pace of finance increases, consumer protection will have to grapple with quick responses to world events. It would benefit banks and borrowers if there were in place sound guidelines over consumer protection measures such as payment holidays, to enhance certainty, clarity, and trust during times of crisis and otherwise.

### The Use of Self-Regulation

Considering the financial stability risks posed by the long-term use of payment holidays, self-regulation is key as it offers the flexibility and sensitivity that lenders need to navigate payment relief. Self-regulation avoids political constraints which government regulators are subject to, with the self-regulated entity having the flexibility and ability to address politically unpopular or extremely complex issues which regulators are unwilling to address (Coglianese et al., 2004, p. 224). Regulators may be hesitant to set permanent standards

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\(^1\) Available at [https://www.ausbanking.org.au/assistance/](https://www.ausbanking.org.au/assistance/). Accessed 25 Apr 2022.
on how banks should offer payment relief. One argument made is that this is a commercial lending decision that regulators should not impinge upon. For example, the stance of Singapore’s financial regulator, the Monetary Authority of Singapore (MAS), is that it lacks appropriate powers to direct banks to lend or set conditions (MAS, 2020a). This may also explain the approach of the Hong Kong Monetary Authority (HKMA), Hong Kong’s financial regulator, of merely encouraging, but not directing, banks to assist individual customers in financial difficulty during the pandemic.

While having a standardized approach towards borrower hardship is desirable, the key question is whether the starting point must be command-and-control regulation. Such regulations may unnecessarily hinder a lender’s commercial viability. Ayres and Braithwaite (1992, p. 4) argue that regulation should respond to industry conduct, to how effectively the industry is making private regulation work. Hence, where there is an absence of existing guidelines over borrower hardship, the use of self-regulation is a workable starting point. Additionally, it has been argued in at least one jurisdiction, Singapore, that having framework legislation governing relief measures might not be sufficiently nuanced and targeted to meet the unique challenges of the next financial crisis (Singapore & Ministry of Law, 2021).

Where there is resistance towards having legislation or regulatory standards over payment relief, implementing codes of conduct is a workable middle ground. Arguments for self-regulation include the lower costs involved and the opportunity to build an ethic within the industry. When self-regulation works well, it is the least burdensome approach from both the taxpayers’ and regulated industry’s perspective (Ayers & Braithwaite, 1992, p. 38). In contrast, mandatory regulation is costly to implement and monitor. During the pandemic, the rhetoric of corporate social responsibility was often used by banks when offering payment relief. For example, the chairman of the Association of Banks in Singapore (ABS) noted that it was “banks’ social responsibility… to help affected customers ride through [the COVID-19 pandemic] and help them recover as soon as possible” (MAS, 2020d). The use of self-regulation would build on such rhetoric and to “nurture [such an] ethical sense” that may be missing if operating through government proscription (Priest, 1997, p. 271).

However, the use of self-regulation has its disadvantages. A key drawback is the potential for inadequate sanctions and underenforcement of rules. While banks may introduce provisions on borrower hardship in their codes of conduct, the lack of regulatory oversight means that there may be no consequences even if these provisions are not observed. Accountability is present only at industry level. The potential lack of accountability is a significant criticism. One way of addressing this issue is to analyse, at the outset, the circumstances that make self-regulation appropriate for a particular industry. Priest (1997, p. 298) argues that industry codes work best as an alternative to government regulation when:

(a) there are a relatively small number of firms in the industry.
(b) firms are relatively large and mature so that they can afford to take a longer-term view of their self-interest and not be constrained by short-term considerations that inhibit expenditures on rulemaking and internal monitoring and enforcement.
(c) firms should have sufficiently common interests to be able to agree on a code and be willing to fairly enforce it.
(d) there is a sensitivity to consumer or public opinion.
(e) the industry should have sufficient resources to support an industry organization and the development and monitoring of a code or rules; and
Arguably, these are characteristics that can be found in the banking industry. Stringent licensing and capital adequacy requirements mean that firms are relatively large and there are a relatively small number of firms in the industry. Most tellingly, banking associations and codes of conduct are already in place across the Asia–Pacific such as in Australia, Singapore, and Hong Kong. As will be discussed below, compliance with these codes is compulsory for members. These codes can be expanded to include provisions over borrower hardship. Voluntary codes can be highly effective as they may be more specific than government regulations and tailored to an industry; by developing the code themselves, the industry’s commitment to make it work increases (Priest, 1997, p. 242).

Furthermore, self-regulation exists on a spectrum. The concept of self-regulation can be further sub-divided. One method of classification proposes four types of self-regulation: voluntary self-regulation where there is “no active state involvement, direct, or indirect,” in promoting self-regulation; coerced self-regulation where the industry “formulates and imposes regulation in response to threats by the government”; sanctioned self-regulation where the industry “formulates the regulation which is then subjected to government approval”; and mandated self-regulation where a collective group or industry is “required by the government to formulate and enforce norms within a framework” (Black, 1996, p. 27). In this classification, the level of government involvement increases across the spectrum of self-regulation.

The article argues that self-regulation, specifically codes of conduct, are a viable starting point for standardising the availability of borrower hardship relief post-pandemic. This is especially so given the current lack of existing guidelines on borrower hardship across Asia–Pacific generally. However, within the broad spectrum of self-regulation, the degree of regulatory involvement can be increased if necessary. The general principle is that governments need to be responsive towards corporations’ abilities to effectively regulate themselves before deciding whether to increase their level of intervention (Braithwaite, 2002, p. 29). Self-regulation can be viewed as a model of collective government. Brownsword, Van Gestel, and Micklitz argue that while states have the official regulatory responsibility as facilitators of commerce or as guardians of the consumer interest, in practice, there is a high level of unofficial self-regulation in commercial markets; there is no sharp line between the regulators and the regulatees (Brownsword et al., 2017, pp. 9–14). The COVID-19 crisis was a demonstration of how quick coordinated effort from both regulators and banks can provide substantial relief. Having provisions on borrower hardship in codes of conduct would form a valuable baseline to enable better coordination. Moving forward, banking codes across the Asia–Pacific can be updated to include procedural steps that banks should take in cases of borrower hardship, and to lay out the types of assistance available.
respectively. Debt management options are more commonly made available within the framework of personal insolvency. However, the personal insolvency framework is an unwieldy tool to assist borrowers who face temporary repayment difficulties. Insolvency is not a debt management strategy, but aims to allocate risk among participants in a market economy, as well as to financially rehabilitate the debtor by offering him/her a “fresh start” (International Monetary Fund, 1999). Furthermore, insolvency has a negative impact on an individual’s ability to obtain future credit. For example, in Australia, credit reporting agencies keep a record of an individual’s bankruptcy for a period of time after his/her bankruptcy, and the bankrupt person’s name appears permanently on a public register (AFSA, 2016). This section examines existing legislation and regulatory guidelines on borrower hardship in Australia, Singapore, and Hong Kong, specifically the limits of using a personal insolvency framework to address borrower hardship.

**Australia**

Australia has a legislative framework that protects consumers who borrow money. The *National Consumer Credit Protection Act 2009* (Cth) was enacted as a national regime in 2010 and contains the National Credit Code (NCC) at Schedule 1. The NCC applies to credit contracts entered into on or after 1 July 2010, whereby the debtor is a natural person or strata corporation and the credit is either for personal, domestic, or household purposes, to purchase, renovate, or improve residential property for investment purposes, or to refinance credit that has been provided for those purposes (NCC, ss. 5(1)(a)–(b)). The credit provider is a person that provides credit (NCC, s. 204) who must be in the business of providing credit (NCC, ss. 5(1)(c)–(d)). Part 4 of the NCC governs changes to obligations under credit contracts, mortgages, and guarantees. Under the NCC, a credit provider does not need to issue written notice to a debtor where the credit provider reduces the obligations of the debtor or extends time for payment under the credit contract and hence may do so unilaterally (NCC, s. 65(2)).

Under the NCC, a debtor who is unable to meet their obligations under a credit contract, due to illness, unemployment, or other reasonable cause may apply to the credit provider for a change in terms, if doing so he/she may reasonably expect to discharge his/her obligations (NCC, s. 72(1)). The terms of the contract can be changed in one of three ways: extending the period of the contract without reducing the amount of each payment due, postponing during a specified period the dates on which payments are due under the contract, or a combination of both (NCC, s. 72(2)). Procedurally, a credit provider must respond within 21 days after the debtor’s application to change the contractual terms (NCC, s. 72(3)). If the credit provider does not agree to the change, it must provide details of an external resolution of which it is a member, the debtor’s rights under that scheme and reasons for not agreeing to the change and failure to do so constitutes an offence of strict liability (NCC, s. 72(3)(b); s.72(4)).

Prior to the NCC, the Uniform Consumer Credit Code (UCCC) was enacted as template legislation in Queensland and adopted in other states (Niven & Gough, 2004). There have been three Australian State Supreme Court decisions on the operation of the hardship provisions under the UCCC, namely *Permanent Custodians Ltd v Upston* (2007), *RHG Mortgage Corporation Ltd v Cran* (2009), and *Westpac Banking Corp v Tesoro* (2012). In *Permanent Custodians*, the court laid out a two-stage test for obtaining relief under s.68 of UCCC, now found at s.72 of NCC. Firstly, the borrower needs to establish that he/she was unable reasonably, because of illness, unemployment, or
other reasonable cause, to meet his/her obligations under the credit contract. What constitutes a reasonable cause may include a situation where a debtor opts to leave his/her place of employment. In Permanent Custodians, the court was satisfied that the cause of the defendant borrower being unable reasonably to meet her obligations was the realization that her business was rapidly losing money, and that she had to leave her place of employment to supervise the business and determine what was going wrong. Secondly, the borrower must prove that he/she reasonably expects to be able to discharge his/her obligations if the terms of the contract are changed in one of the manners set out in s.66(2) of UCCC, which is identical to s.72(2) of NCC. Here, the borrower provided adequate evidence that she had obtained further employment with a steady stream of income. Thus, the court was satisfied that she had reasonable prospects of repayment.

However, where a defendant merely provides general assertions, an application to vary a credit contract on grounds of hardship will be unsuccessful. In Westpac Banking Corp, the court dismissed the defendant’s application as it considered the defendant’s material as a series of requests for further time to show that he can formulate a proposal, rather than the detailed change proposal required. The defendant had failed to give any detail of existing arrears, recent payment history, the precise amount to pay by way of regular payment, and when they will commence. Likewise, in RHG Mortgage Corporation Ltd, the applicants did not obtain a change to their contract to resist a judgment for possession, in part because they did not establish that they had a reasonable expectation of being able to meet their obligations if the contract was changed. As per s.74 of NCC, where a debtor’s application for a change in repayment terms is rejected by the credit provider, the remedy is to make a court application. However, the evidence before the court must be sufficient to show that the debtor can meet his/her proposed new obligations for the change to be accepted. In Grace v ING Bank (Australia) Ltd (Credit) (2009), the Victorian Civil and Administrative Tribunal dismissed an application for postponement of enforcement action under s.88 of the Consumer Credit (Victoria) Act 1995. An equivalently worded provision can be found at s.96 of NCC. In Grace, the applicant had no intention to sell the mortgaged property. Furthermore, it was uncertain if the applicant would be able to afford the whole of the loan balance given her income, expenditure, and employment status. Hence, the Tribunal could not determine a specific period for postponement. As s.88 of the Consumer Credit (Victoria) Act 1995 does not permit the Tribunal to order an indefinite postponement, the application was dismissed.

As seen from the preceding case law, operation of the hardship provisions does not provide a blank cheque for borrowers to renegotiate repayment terms. The court must make careful consideration of the borrower’s ability to repay based on the available evidence. In Westpac Banking Corp, Lansdowne AsJ noted that the applicant in Permanent Custodians successfully avoided entry of judgment for possession on “very detailed evidence,” and also having regard to the fact that there were only three months the applicant did not make payment (Westpac Banking Corp v Tesoro (2012), para. 58). What the NCC does is to provide clarity over relief options offered to borrowers in repayment distress. Additionally, procedural timelines for relief applications are clearly set out. Notably, the NCC envisages that the lender may commence an enforcement action against the borrower pending determination of a hardship application by the court (Westpac Banking Corp v Tesoro (2012), para. 55). In this manner, the interests of both lender and borrower are considered.
Singapore

Unlike Australia, Singapore does not have a legislative framework providing relief for borrowers who have started to encounter repayment hardship. The legal framework comes into play when borrowers facing sustained difficulties repaying their debts trigger the bankruptcy process. Under the bankruptcy framework, borrowers may utilize alternative debt repayment arrangements. Under Part 14 of Singapore’s Insolvency, Restructuring and Dissolution Act (IRDA), a debtor may enter a Voluntary Arrangement (VA) with his/her creditors. A nominee must be appointed to oversee the implementation of the VA and he/she must be a licensed insolvency practitioner who is to be remunerated (IRDA, s.277(1); s.277(3)). The VA is a comprehensive scheme meant to assist debtors with multiple debts. It allows an insolvent debtor to convene a meeting involving all of his/her creditors, in order to propose a repayment arrangement for the creditors’ approval. This may not be suitable for a bank customer who requires temporary repayment relief due to unforeseen hardship. Furthermore, the nominee’s involvement comes at a cost to the borrower.

Singapore has also implemented the Debt Repayment Scheme (DRS) in 2009 as an alternative to bankruptcy. Under the DRS, the debtor is required to submit a statement of affairs and a debt repayment plan with a repayment period not exceeding five years (IRDA, s.290). However, a debtor cannot choose to opt for a DRS. Instead, it is the Official Assignee, a person appointed by the Singapore High Court under s.16(1) of the IRDA, who is to review the suitability of the debtor for a DRS and implement it where suitable (IRDA, s.289). There are several criteria to determine suitability. For example, a debtor will not be deemed suitable if the aggregate of his/her debts exceeds the prescribed amount, currently set at USD 112,000 (IRDA, s.289(2)(a); Insolvency, Restructuring and Dissolution (Debt Repayment Scheme) Regulations 2020, s.4(1)). This monetary threshold is likely to be crossed in the case of mortgage contracts. If so, the DRS will not be available. Apart from the VA and DRS, the option to enter private arrangements with creditors to ask for an extension of time for repayment is a universal self-help mechanism available to debtors across all jurisdictions, including Singapore. However, insofar as this remains a private arrangement, its success and enforceability are questionable with the creditor under no legal obligation to accept the private arrangement (Gardner, 2020, p. 515).

Broadly, Singapore’s regulatory oversight focuses on ensuring that customers acquire financial products suitable to their needs. MAS has issued guidelines setting out financial institutions’ board and senior management responsibilities for delivering fair dealing outcomes to customers (MAS, 2013). These outcomes include ensuring that financial institutions offer products and services that are suitable for their target customer segments, have competent representatives who provide customers with quality advice and appropriate recommendations, and that customers receive clear, relevant, and timely information to make informed financial decisions (MAS, 2013, p. 2). While this facilitates consumer protection by attempting to minimize a mismatch in needs and financial products, there may be instances where consumers face repayment difficulties over a suitable product due to unforeseen circumstances. In the instance that a customer has repayment difficulties, ABS has implemented a debt consolidation plan which offers a customer the option to consolidate all unsecured credit facilities across financial institutions with one participating financial institution (Association of Banks in Singapore, 2016). However, this means that secured loans such as mortgage contracts, which COVID-19 payment holiday measures are applicable to, are excluded from the debt consolidation plan offered by the ABS.
**Hong Kong**

There is no legislation governing borrower hardship in Hong Kong. Rather, the HKMA has issued guidelines on the Hong Kong Approach to Consumer Debt Difficulties (HKACDD). These guidelines can be found at Sect. 8 of the statutory guidance titled “The Sharing and Use of Consumer Credit Data through a Credit Reference Agency” (HKMA, 2020c). Statutory guidelines are issued by the HKMA under ss. 7(3), 16(10), and 118C(7) of the Banking Ordinance which set out minimum standards for authorized institutions to comply with, best practices, or advisory standards. Minimum standards are described in definitive terms such as “should,” “are expected to,” or “must” (HKMA, 2001, para. 3.2). In contrast, where a best practice or advisory standard is merely encouraged, recommendations are prefaced with permissive phrases such as “should preferably,” “may,” or “are recommended to” (HKMA, 2001, para. 3.2). Where information obtained from credit reference agencies reveal that a customer has incurred a level of indebtedness that may be unmanageable and the customer might have genuine difficulty in repaying the loans, the HKMA states that lenders “should consider such cases sympathetically and discuss with the customer concerned to work out a solution that is mutually beneficial for both the customer and the lender” (HKMA, 2020c, para. 8.2). While statutory guidance does not have the force of law in itself, the HKMA monitors compliance with these standards as part of its holistic assessment of whether a lender satisfies the minimum criteria for authorization under the Banking Ordinance (Cap.155).

Under the guidelines, lenders “should not hastily demand immediate repayment of loans, reduce credit lines or actively recommend transfer of the balance” (HKMA, 2020c, para. 8.2; para 8.4). Lenders are also instructed to follow the framework and procedures laid down in the Agreement on Debt Relief Plans and Individual Voluntary Arrangements (IVA) (HKMA, 2020c, para 8.4). An Interbank Debt Relief Plan is an agreement to be concluded between a debtor and all his/her creditors for partial relief and/or rescheduling of debts owed to creditors, collectively endorsed by the Hong Kong Association of Banks (HKAB), the DTC Association and the Hong Kong S.A.R. Licensed Money Lenders Association. Options under the Interbank Debt Relief Plan include renegotiating the monthly repayments and terms of debt repayments without incurring any fees or charges, combining repayments, and paying them as a single monthly instalment, and avoiding action from collection agents, wage garnishments, bankruptcy, or other legal action (HKAB, 2020, p.5). Critically, these renegotiations apply only to unsecured debt repayments such as credit card debt and personal loans. Hence, mortgages would be excluded.

While the Interbank Debt Relief Plan has some potential to assist borrower distress, it does not apply to secured loans such as mortgages. The other specified option, the IVA, seems equally unsuitable to operate as a temporary relief measure. The IVA is an alternative to bankruptcy provided for under the Bankruptcy Ordinance (Cap. 6A) (“BAO”) available to debtors struggling with debt repayment, and to undischarged bankrupts (BAO, s. 20; ss. 20A – 20L). The debtor is required to make a court application for an interim order during which no bankruptcy petition or legal proceedings are to be taken or continued against the debtor (BAO, s. 20A(1)). Hence, this is a formal procedure involving the court at first instance. The debtor must appoint a nominee to act in relation to the voluntary arrangement for the purpose of supervising its implementation (BAO, s. 20A(2)). While the IVA mitigates the harshness of bankruptcy, it is...
significantly onerous as compared to a borrower negotiating temporary repayment relief with the bank. The involvement of the nominee comes at a cost to the debtor, who must deposit an initial sum to cover the fees, expenses, and remuneration of the nominee (Bankruptcy Rules (Cap. 6A), s.122C(2)(g)). The required contents of the debtor’s proposal under the IVA must include the nature and amount of the debtor’s liabilities as a whole, reaching beyond the individual mortgage contract between the bank and consumer (Bankruptcy Rules (Cap. 6A), s.122C(2)(c)).

Borrower Hardship and Self-Regulation—Banking Codes of Conduct

As argued in the previous section, the use of the personal insolvency framework in Singapore and Hong Kong is an unsuitable consumer protection tool for addressing borrower hardship. In contrast, Australia has a legislative framework governing borrower hardship that offers a wider range of options to borrowers who have started to encounter repayment difficulties. However, regulators may be reluctant to push for legislation on borrower hardship, viewing lending decisions as commercial decisions and such legislation as a form of regulatory overreach. Apart from legislation, payment holidays can be implemented through self-regulation. As discussed above, self-regulation offers greater speed, flexibility, and sensitivity than command and control regulation, contemplating ethical standards of conduct which extend beyond the letter of the law (Gunningham & Grabosky, 1998, p. 52).

Industry codes of conduct are a form of self-regulation. This section examines banking codes of conduct available in Australia, Singapore, and Hong Kong pre-pandemic. Financial industry dispute resolution mechanisms are also considered. Where self-regulation is utilized to implement standards on borrower hardship, dispute resolution mechanisms enhance a borrower’s ability to access relief. However, in the absence of codes of conduct detailing the scope of payment relief available, borrowers are typically excluded from challenging a lender’s lending decision. Such decisions are deemed as commercial decisions and the borrower lacks recourse if he/she makes an informal request for a payment holiday and is rejected. As will be argued in the following section, the banking industry was better equipped to respond decisively during the COVID-19 pandemic where industry codes of conduct included existing provisions on borrower hardship.

Australia

Australia is unique in that it has express provisions, both in the NCC and the Banking Code of Practice (BCP) issued by the Australian Banking Association (ABA), that grant customers a right to request payment holidays. The BCP sets out the standards of practice and service in the Australian banking industry and must be complied with by ABA’s members. It is a condition of ABA membership that member banks with a retail presence in Australia sign up to the BCP (ABA, 2020a, p. 7). The BCP contains provisions guiding a bank’s response to consumers facing difficulty fulfilling their repayment obligations. Under the BCP, banks have pledged to work with customers on a case-by-case basis to find a sustainable solution to financial difficulties (ABA, 2020a, p. 46). The BCP makes a distinction between situations where a customer is able, or unable to recover his/her financial position. For the former, banks may assist by agreeing to interest only payments for a short period; extending the term loan to reduce repayments; or temporarily postponing or deferring payments. However, where restoration of one’s financial position is unlikely, banks may only
be able to agree on an alternative arrangement, plan or contract; change the terms of the consumer’s loan; give time for the consumer to sell his/her property to satisfy the debt; or provide information for bankruptcy or insolvency arrangements (ABA, 2020a, p. 47). The BCP contains detailed guidelines on the process of addressing consumer hardship, as well as possible relief that may be offered.

If a bank fails to comply with their hardship obligations, Australian consumers have various avenues of recourse. Firstly, compliance with the BCP is monitored by the independent Banking Code Compliance Committee which has powers to investigate any allegations of a breach and to apply sanctions to banks (ABA, 2020a, p. 54). Customers who have a dispute with their bank involving a breach of the BCP hardship provisions can also contact an external dispute resolution provider such as the Australian Financial Complaints Authority (AFCA). The AFCA is an independent body that assists consumers and small businesses in resolving complaints with financial firms. Under AFCA guidelines, a distinction is made between credit risk assessment and a complaint about maladministration in lending, loan management, or security matters. While AFCA cannot consider complaints over the former, it can decide on the latter. More critically, AFCA can vary a credit contract as a result of the complainant being in financial hardship (AFCA, 2021b, p. 130). This is regardless of whether the credit contract is a consumer contract regulated under the NCC.

A customer may obtain a payment holiday through this dispute resolution process. For example, AFCA may decide to vary a credit contract on the basis of financial hardship where it considers that the credit provider has not met its obligations under the NCC in relation to a request for a hardship variation, a bank has not met its obligations under the BCP, or where it considers that a credit provider has not responded to a request for financial difficulty assistance in accordance with its own policy or good industry practice (AFCA, 2021b, pp. 130 – 131). A variation may include extending the period of the contract and reducing the amount of each repayment due under the contract, postponing repayments under the contract for a specified period and changing payment arrangements or reducing the loan interest for a short or longer term (AFCA, 2018). In Case 230070 (2013), the Financial Ombudsman Service (the “Ombudsman”), AFCA’s predecessor, varied the monthly repayment amounts of two loan contracts for the purchase of residential property on the grounds of financial hardship. It also varied the repayment period of an unsecured personal credit card loan. In that case, the Ombudsman held that based on the applicants’ income and liabilities, the variation would allow the applicants to discharge their debt obligations.

If the AFCA concludes that there has been a breach of the credit provider’s obligations to provide financial hardship assistance, it will also consider if the complainant has suffered financial loss such as default charges or enforcement costs, or non-financial loss such as unnecessary stress or inconvenience (AFCA, 2021b, p. 156). It may then order monetary compensation or a non-monetary remedy (AFCA, 2021b, pp.158 – 163). For example, in Case 491858 (2018), the Ombudsman held that financial service provider failed to meet its financial hardship obligations. In that case, the financial service provider did not obtain a statement of financial position from the applicant, despite being aware of the applicant’s inability to make sufficient repayments to clear arrears on the loan in the immediate short term. The Ombudsman directed the financial service provider to pay the applicant a non-financial loss compensation of AUD $250.

Except in the case of a superannuation complaint or a complaint about traditional trustee company services involving other parties, an AFCA determination is binding upon parties if accepted by the complainant within 30 days upon receiving the determination (AFCA, 2021a, p.18). If the complainant does accept the determination, he/she may bring
an action in the courts or take any other available action against the financial service provider (AFCA, 2021a, p.18).

**Singapore**

In Singapore, the focus appears to be on debt recovery instead of assisting consumers in temporary repayment difficulties. The ABS-issued Code of Consumer Banking Practice (“CCBP”) outlines minimum standards that a customer can expect from their bank. While the CCBP was issued as a voluntary initiative by the banking industry, ABS members which offer financial services to individual customers are required to comply (ABS, 2017, p. 4). The CCBP does not contain any targeted guidance on how to assist consumers in financial hardship. Rather, guidance on the treatment of customers facing payment difficulty is given in the context of debt recovery. For example, the CCBP lays down guidelines that banks “will not incur unreasonable costs and expenses, and will not approach third parties such as referees, family members, or friends in the debt recovery process” (ABS, 2017, p.19). As part of collection efforts, borrowers will be provided information on options to establish a debt repayment schedule (ABS, 2017, p.20). Hence, the overall focus appears to be on the bank’s right to recover its debt. The CCBP does not set out whether temporary relief such as payment holidays would be available to consumers facing repayment difficulty.

While Singapore’s financial industry has a well-structured complaints procedure in place, customers have no grounds to lodge a complaint over a bank’s decision to withhold repayment relief. While there is an independent organization, the Financial Industry Disputes Resolution Centre Ltd, that assists consumers in the resolution of disputes with financial institutions through mediation and adjudication, complaints pertaining to commercial decisions, pricing policies, and other policies such as interest rates and fees are expressly excluded from Financial Industry Disputes Resolution Centre Ltd’s purview (ABS, 2017, p. 23). Hence, it is unlikely that consumers will be able to challenge a bank’s decision to withhold a payment holiday.

**Hong Kong**

While Hong Kong’s Code of Banking Practice (HKCBP) prescribes general principles on customer treatment, there are no specific hardship provisions. The HKCBP is a non-statutory code jointly issued by the HKAB and the Deposit Taking Companies Association (DTCA). Although non-statutory in nature, both the HKAB and DTCA expect their respective members to comply with the code, and the HKMA monitors compliance with the HKCBP as part of its regular supervision (HKAB & DTCA, 2015, p. 1). Apart from guidance that institutions should advise customers to inform them as soon as possible of any difficulty in repaying their loan (HKAB & DTCA, 2015, p. 15), the HKCBP does not explicitly stipulate steps that members must take in responding to borrower hardship. Rather, general principles are set out. Consumers are to be treated “equitably, honestly, and fairly at all stages of their relationship with the institution” and “special attention should be dedicated to the needs of vulnerable groups” (HKAB & DTCA, 2015, 1). In doing so, the HKCBP recommends that a reasonable balance is to be struck between customer rights and the efficiency of banking operations while observing such principles (HKAB & DTCA, 2015, p. 3). However, it is unclear whether customers facing hardship in repayment constitute a vulnerable group. It appears that the HKCBP does not contain any guidance on
borrower hardship, either procedurally or in terms of relief that may be offered to consumers facing payment difficulty.

Given the lack of specific hardship provisions, a customer will have no recourse if his/her request for a payment holiday is rejected by the bank. A customer who is dissatisfied with the bank’s handling of his/her complaint can lodge a complaint with the HKMA. However, it is clearly stated that the HKMA cannot interfere with a bank’s commercial decisions, adjudicate, or intervene in a dispute between a bank and its customer or order a bank to pay compensation (HKMA, 2021a). Hence, consumers will have no grounds for lodging a complaint if their request for a payment holiday is rejected.

**Regulating Borrower Hardship During the COVID-19 Pandemic**

As set out in the preceding sections, while Australia has existing standards on borrower hardship, both Singapore and Hong Kong do not have hardship provisions either in legislation or codes of conduct. This section argues that where there were existing standards on borrower hardship, banks were quicker to spearhead relief as an industry. Having a borrower hardship framework in place expedited banks’ response during the pandemic, preventing large-scale foreclosures despite a sudden rise in unemployment. This section compares how having an existing framework guided the pandemic response in Australia, while the lack of such frameworks in Singapore and Hong Kong meant that regulators had to take a driving role. Where regulators did not prioritize payment relief for individual borrowers, such as in Hong Kong, the amount of payment relief offered by lenders to individual borrowers was comparably lower. This section focuses on payment holidays offered to individual borrowers during the height of the pandemic. However, relief measures available to SMEs will be briefly considered to illustrate the extent of relief offered to SMEs in comparison to individual borrowers.

**Australia**

In Australia, the ABA spearheaded the implementation of payment holidays by building on existing provisions in the NCC. The approach taken was one of sanctioned self-regulation, whereby the ABA worked with regulators to ensure there was appropriate regulatory treatment for their relief packages such as the Small Business Relief Package (ABA, 2020b). Payment relief was made available to both individual borrowers and SMEs who were not in arrears. On 12 March 2020, the ABA announced that banks would aid any business or individual financially impacted by COVID-19 to complement the Australian Federal Government’s stimulus package. The type of assistance offered depends on individual circumstances but included the deferral of scheduled loan repayments, waiving fees and charges, interest free periods, or no interest rate increases, as well as debt consolidation to make repayments more manageable (ABA, 2020d; 2020e). Notably, these options build on the types of relief available under s.72(2) NCC. Under s.72 NCC, banks may extend the period of the contract, postponing during a specified period the dates on which payments are due under the contract, or a combination of both. For example, under the Small Business Relief Package, small businesses affected by the COVID-19 pandemic will be able to access a six-month deferral of all loan repayments.

Sanctioned self-regulation was evident as the ABA drove efforts to provide relief to borrowers. ABA announced its intentions to assist borrowers in early March, and this was
followed by Australian Prudential Regulation Authority’s statement confirming its regulatory approach to the COVID-19 support packages offered by banks on 23 March 2020 (Australian Prudential Regulation Authority, 2020). The sequence of events shows that payment relief efforts originated from the banks which were later subjected to regulatory approval. As an industry, the ABA sought to standardize its pandemic response. The ABA initially commented that banks were yet to see households going into mortgage stress due to COVID-19 but would reassess their approach if the situation changed (Worthington, 2020). Shortly after this statement, the National Australian Bank announced that it would provide individual homeowners with a payment mortgage relief for up to six months (National Australian Bank, 2020). This approach was soon followed by other banks. Whether it was driven by an underlying desire to standardize relief or a result of commercial pressure from lenders seeking to match their competitors’ actions, the result was standardized relief across the industry. The main observation is the level of co-ordination that occurred across the industry without seemingly overt regulatory pressure. On the ABA website, it is stated that mortgage relief for homeowners was announced on 20 March 2020 (ABA, 2020c; 2020d).

The high level of co-ordination within the industry and the standardization of payment holiday relief are reflected in rates of payment holiday use across banks. From June to December 2020, mortgage repayment deferral rates rose and fell in tandem across ABA member banks Fig. 1.

In Australia, self-regulatory tools such as the industry’s BCP was key in guiding banks through the process of rendering support to customers during the pandemic. Banks were reminded to communicate with customers in a clear and timely manner, act with honesty and integrity, and treat customers in a fair and ethical manner, in line with their BCP obligations (ABA, 2020a, p. 5). There were also attempts at standardising an exit mechanism regarding payment holidays. As consumers approached the end of the six-month payment holiday, the ABA announced that banks would contact consumers with reduced incomes and ongoing financial difficulty due to COVID-19 to ensure that wherever possible, they

Fig. 1  Share of mortgage lending subject to temporary repayment deferral in Australia from June 2020 to December 2020, by bank (Statista, 2021)
can return to repayments through a restructure or variation to their loan. Options include extending the length of the loan, converting to interest only payments for a period of time, consolidating debt or a combination of these measures (ABA, 2021a).

Banks were able to utilize existing hardship protocols to guide their response. Prior to the pandemic, the ABA had spearheaded the development of specialized hardship teams who have experience handling customers in financial difficulty. Banks were able to leverage on these teams during the pandemic to assist customers unable to make reduced repayments or restructure their loans. Customers who were unable to make repayments were directed to their bank’s hardship process to determine the best long-term solution for their individual circumstances (ABA, 2020c; 2020d).

Singapore

In Singapore, the implementation of payment holidays was centrally co-ordinated by the MAS. Unlike Australia, there was strong regulatory push in standardising payment relief. While Singapore enacted the COVID-19 (Temporary Measures) Act (2020) to provide temporary relief for financially distressed individuals and businesses in the COVID-19 crisis, residential property loans did not fall under the specified categories of contracts covered by the Act. Payment relief was implemented as a product of informal influence exerted by the regulator, with the MAS spearheading the type and scope of payment relief available. On 31 March 2020, the MAS announced that individuals with residential property loans may apply to defer either their principal repayment or both principal and interest repayments up to 31 December 2020, with interest accruing on the outstanding loan principal (MAS, 2020d). Lenders were directed to approve the request for deferment as long as the individual is not in arrears for more than 90 days as of 6 April 2020, and individuals do not need to demonstrate any impact from COVID-19 to obtain the deferment (MAS, 2020d).

Strong regulatory influence from the MAS meant that while Singapore does not have existing legislation or guidelines on borrower hardship in place, nor were there any new regulations implementing such during the pandemic, there was significant use of payment holidays at the height of the pandemic. As of end-August 2020, financial institutions received 38,900 applications to defer property loan repayments and approved over 90% of these applications (Singapore Parliamentary Debates, 2020). More than 26,000 of the approved applications were for individuals seeking to defer their residential property loans, amounting to almost USD 15 billion of deferments. This is approximately 12% of the USD 128 billion outstanding housing loans as of Q3 2020, not an insignificant amount (MAS, 2020b). This scope of relief was only possible due to MAS’ active intervention. The MAS has acknowledged that it was critical to “sit down with the banks and work out a baseline industry support package that all banks could sign up to” and that mere exhortations for banks to provide relief would not work. It took the view that while individual banks could give more relief if they wanted, it was important to agree on a common baseline of support as an industry (MAS, 2020a).

Additionally, the MAS took the lead to set guidelines for exiting payment holidays. From 2021, full moratoriums are no longer offered. The MAS deemed that partial repayment of the loan principal was important for banks to gauge the performance of individual loans and took the approach of tapering down relief in tandem with the degree to which Singapore’s economy opened up (MAS, 2020e). Full or regular repayments as per the pre-COVID period were deemed too demanding for individuals and SMEs. Individuals with residential, commercial, and industrial property loans were able to apply to make reduced
instalment payments pegged at 60% of their original monthly instalment for a period of up to 9 months. Following the MAS’ lead, lenders were required to ensure that the reduced monthly instalments can cover individual’s full monthly interest and allow them to make partial principal payments, easing cash flow while allowing borrowers to pay down their principal amount (MAS, 2020c).

Hong Kong

In Hong Kong, payment holiday schemes were centrally co-ordinated by Hong Kong’s financial regulator, the Hong Kong Monetary Authority (HKMA). As in Singapore, the HKMA exerted influence over the banking industry to implement payment relief. It announced the Pre-approved Principal Payment Holiday Scheme (PPPHS) on 17 April 2020 and requested that all banks participated in the scheme. However, the PPPHS applied only to corporate customers (HKMA, 2020a). Under the PPPHS, all loan principal payments of eligible customers due between 1 May 2020 and 31 October 2020 were automatically pre-approved for deferment. Banks did not spearhead the scope and type of payment relief available but were charged by the HKMA with its implementation. The HKMA’s focus was clearly on aiding SMEs, implementing additional support for SMEs such as the Special Financing Guarantee Scheme which covers up to 100% of the loan amount and includes an optional principal moratorium for up to a year (HKMA, 2020b).

However, there was no compulsory payment relief for individual borrowers signalled by the HKMA. The lack of regulatory push regarding individual borrowers resulted in a minimal rate of payment relief granted to such borrowers. The HKMA merely reminded banks to be “sympathetic to customers” to help tide them over the COVID-19 crisis period as long as it is consistent with prudent risk management principles to do so (HKMA, 2020b). This language is similar to that of the HKACDD where banks are advised to be “consider cases [of borrower hardship] sympathetically.” Given the lack of existing guidelines (either in legislation or in the industry code of conduct) over borrower hardship, banks have sole discretion over whether to grant payment holidays to individual consumers and the terms of such relief. There was also no guidance over how banks should facilitate exit from payment holidays. The HKMA reported that as of January 2021, 28,000 applications for relief measures worth USD 5.7 billion were granted for individual customers (HKMA, 2021b). This figure does not apply solely to principal repayment holidays for residential mortgages, but also to relief loans offered to employees of hard-hit sectors, an extension of loan tenor for personal lending and reduction of charges for credit card lending. Given that there was USD 309 billion worth of household debt during Q3 2020, the relief granted amounts to a mere 1.8% of outstanding household debt (HKMA, 2021c, p. 3). While the majority of household debt in Hong Kong was made up of residential mortgage loans as of March 2021 (HKMA, 2021d), the extent of payment relief offered to individual borrowers for residential mortgages during the pandemic remains unclear.

Analysis

While all three jurisdictions utilized payment holidays as a COVID-19 response, the genesis and scope of these measures differed. In Australia, the model of sanctioned self-regulation was evident. The ABA was quick to respond as an industry body, spearheading relief efforts and subsequently seeking regulatory approval for such measures. Existing guidelines on borrower hardship found both in the NCC and the BCP meant that
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banks were aware of their hardship obligations towards borrowers. The COVID-19 pandemic merely amplified these existing obligations and formed the backdrop for coordinated execution of these obligations by ABA’s member banks. Arguably, this illustrates the effectiveness of a self-regulatory mechanism in implementing relief for borrower hardship.

In contrast, standardized borrower relief was a product of quick regulatory action in Singapore. MAS’ influence over banks meant that lenders had to comply with a common baseline of support, despite the lack of formal regulations making such relief measures mandatory. However, this begs the question whether banks would have responded in a similar manner without regulatory pressure. Moving forward, the lack of existing regulation and CCBP guidelines on hardship obligations mean that banks are not obliged to assist borrowers facing repayment difficulties. Most significantly, the MAS’ position is that it lacks powers to direct banks’ lending decisions. Hence, industry-led efforts to implement standards on borrower hardship would be the most tenable.

The situation in Hong Kong during the pandemic illustrates the scenario, whereby a lack of existing hardship provisions converges with the lack of a strong regulatory push for banks to implement relief for individual borrowers. In such an instance, banks had sole discretion in granting payment relief. With the HKMA simply reminding banks to be “sympathetic to its customers,” the rates of relief available for individual borrowers during the height of the pandemic remained minimal. As argued above, payment holidays are a form of loss mitigation potentially beneficial to both lenders and borrowers. Implementing standards on borrower hardship would be an important advancement in consumer protection.

Conclusion

Even while the COVID-19 pandemic has yet to be successfully contained, health experts have already warned that it is inevitable for the world to face another infectious disease threat in the years ahead. In such circumstances, it is plausible that regulators and banks may yet again scramble to provide suitable financial assistance to consumers to avoid widespread financial fallout. Admittedly the demands of each individual crisis will differ. However, payment holidays have proven useful as a relief measure. Just as how public health best practice has been updated while navigating COVID-19, the availability of payment holidays can be a key consumer protection takeaway. The pandemic has shown that borrower hardship is a critical issue. This article argues that post-pandemic, repayment relief should be made more widely available for borrowers in temporary hardship. A framework governing the administration such relief would enable banks to respond more quickly during the next financial crisis. While regulators may shy away from implementing payment holidays through command-and-control regulation, choosing to classify them as commercial lending decisions, utilising self-regulation serves as a compelling first step.

Acknowledgements The author would like to thank the Centre for Banking and Finance Law, Faculty of Law, National University of Singapore, for its support of this research. My sincere thanks also to Sandra Booyse, Jodi Gardner, Eric Chan, Nicolas Lainez, Damian Chalmers, the two anonymous reviewers, and the participants of the working paper presentation held on 25 May 2021 for their invaluable insights.

Funding This study was funded by the Centre for Banking and Finance Law, Faculty of Law, National University of Singapore.

Acknowledgements The author would like to thank the Centre for Banking and Finance Law, Faculty of Law, National University of Singapore, for its support of this research. My sincere thanks also to Sandra Booyse, Jodi Gardner, Eric Chan, Nicolas Lainez, Damian Chalmers, the two anonymous reviewers, and the participants of the working paper presentation held on 25 May 2021 for their invaluable insights.

Funding This study was funded by the Centre for Banking and Finance Law, Faculty of Law, National University of Singapore.
Declarations

Conflict of Interest  The author declares no competing interests.

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