

**LAW ON
COVID-19
HANDBOOK**

INTRODUCTION

The set of statutes within the so-called Anti-Crisis Shield was published and entered into force on 31 March/1 April 2020 (with few exceptions), after quick legislative procedure (Journal of Laws from 31 March, Items 567, 568 and 569). The most crucial part is the amendment to the so-called Law on COVID-19. The new regulation is in fact an entirely new document and additionally is or will be supplemented by number of decrees. Unlike the previous version, it covers a number of economic issues.

Unfortunately, the new regulation is not ideal from a legislative point of view and sometimes contains some errors or it is simply unclear.

We present to you a brief description of the changes that, in our view, are the most important for current and future economic landscape in Poland.

Should you have any questions, please let us know.

Baker McKenzie Team

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1. COMMERCIAL LAW

Among other things, new set of regulations contains solutions regarding the remote operation of companies. There are, however, no changes in the regulations on counteracting excessive delays in commercial transactions.

Corporate law

The grounds for holding meetings of the management board and the supervisory board of corporations / companies by means of direct remote communication have been directly introduced, as well as for adopting resolutions of the management board or the supervisory board in written form, remotely or in writing through another member.

The act also provides for the repeal of the provisions that did not allow for electing the chairman and the vice-chairman of the supervisory board, appointing management board members, or dismissing or suspending such persons in writing or remotely.

Further facilitations have been introduced to ensure the possibility of organizing shareholders' meetings using electronic means of communication.

In our view, it is a very good change. In the practice of trading, the remote functioning of the management board, often forced by external circumstances, has already functioned before. The amendment to the Commercial Companies Code will result in ending doctrinal disputes as to the legal grounds for introducing such a mode of operation. On the other hand, the sometimes-used practice of repeating code provisions in articles of association of companies may make it difficult for entrepreneurs to take advantage of the new solutions, because earlier provisions will constitute contractual, more restrictive modes of operation of the company's governing bodies.

It is also unfortunate that the amendment does not take into account the issue of a power of attorney to attend a shareholders' meeting. In limited liability companies and in private joint stock companies, written form continues to be applicable, and if this form is not used such a power of attorney is null and void. Although a power of attorney signed in the form of a qualified electronic signature should, according to the general terms of the Civil Code, be recognized as equivalent to written form, not every shareholder/ partner has such a signature. It may be difficult to print the document thus signed in a form that makes the content of the document integral to the signature, which will make it difficult to attach it to the book of minutes or submit it to the National Court Register at the request of the court. Meanwhile, in public companies, the Commercial Companies Code explicitly allows for a power of attorney in electronic form, without a qualified signature - this inequality as to the formal requirements for the power of attorney is even more glaring during the epidemic.

Commercial contracts

The Law on COVID-19 only enumerates the issues of contracts, regulating the effects of their non-performance or the need to make changes in individual sectors (financial sector, public procurement contracts, lease contracts for large area shopping centers, or - above all - employment contracts and similar civil contracts). Read about the details in this respect in the *Public Contracts, Lease Agreements and Employment Law* parts.

General rules apply to all other contractual obligations. It is worth recalling that, despite the unprecedented difficult situation in which entrepreneurs find themselves, each contract should be reviewed individually. It is worth resisting the temptation to report the impossibility

of performing a contract because of COVID-19, if it is not really impracticable because of the pandemic. Force majeure, an extraordinary change in relations and similar civil law institutions make it possible to be released from a specific contractual obligation. It is necessary to show what obligation has become unenforceable due to the epidemic, and to properly demonstrate the causal relationship. The mere fact of the epidemic status or the recommendation to avoid travel does not work automatically. These premises often cause that a reference to force majeure prevents the possibility of cooperation, and ultimately results in a negative judicial verification.

Payment terms

It is unfortunate that the Law on COVID-19 has not eased obligations arising from the Act on preventing excessive delay in commercial transactions, which are stringent and often incomprehensible to entrepreneurs. The aspect of administrative supervision over contractual payment deadlines introduced by this Act may rebound on entrepreneurs deferring payments beyond the statutory thresholds of 60 or 120 days.

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2. PHARMACEUTICAL AND MEDICAL LAW

As a part of the Anti-Crisis Shield the Polish Parliament has adopted an act that amends certain acts in the field of the health protection system related to the prevention, counteracting and fighting of COVID-19. The act introduces significant changes that will apply to entities operating in the pharmaceutical and medical industries.

Reimbursement proceedings

In accordance with the act, the period of validity of reimbursement decisions and, in consequence, reimbursement lists (until 31 August 2020) is to be extended. Until that date, the reimbursement list, which entered into force on 1 March 2020, is applicable.

Reimbursement proceedings are suspended by operation of law until 31 August 2020.

In the case of reimbursement decisions that were to come into force on 1 May 2020, this date is extended to 1 September 2020.

Provisions on the distribution chain

A change in the functioning of the current "anti-export list" has been adopted (Article 37 av of the Pharmaceutical Law). Before the expiry of the 30-day period for raising objections to the intention to export or sell certain medical products abroad, the Chief Pharmaceutical Inspector will be able to notify the business entity which informs him about such intention that he does not raise an objection. Thus, the business entity will be able to export or sell its products immediately after receiving such notification.

The act provides for the creation of another list of products for which restrictions on distribution abroad apply. The Minister of Health will be able, by way of an announcement, to publish a list of products that can only be sold to a Polish pharmaceutical wholesaler, and the wholesaler will be able to resell them only to pharmacies, other wholesalers and medical entities. According to the act, the order to sell only to Polish wholesalers will not apply to manufacturers and importers of medicinal products. The latter will be obliged to sell only to wholesalers operating in Poland. Individual consents for derogation from the above rules will be issued by the Minister of Health.

Quantitative limitations

The act provides for the possibility for the Minister of Health to limit, by way of an announcement, the amount of dispensed medicines, foodstuffs for particular nutritional uses, medical devices or biocidal products "per one patient" and in a specified unit of time.

ZSMOPL (INTEGRATED TRADE MONITORING SYSTEM FOR MEDICINAL PRODUCTS)

It is possible that the obligation to notify the ZSMOPL of all entities involved in the manufacture and trading in medical devices, foodstuffs for particular nutritional uses and biocidal products will be imposed. Connection to the ZSMOPL should be made within 24 hours.

Maximum prices

The Minister of Health will obtain the right to set maximum selling prices, wholesale margins and retail margins, according to the same rules as those applicable under the Reimbursement Act.

Prices and margins will apply to products indicated by the Minister of Health, which may be used in connection with counteracting COVID-19, and therefore to all categories of medicinal products, medical devices, foodstuffs for particular nutritional uses and biocidal products.

The penalty for price violation will be from PLN 5,000 to PLN 5,000,000, and in the case of a subsequent violation up to 10% of turnover.

Read more about the maximum prices in the *Consumer Regulations* part.

Extraordinary powers for the Minister of Health

In accordance with the act, the Ministry of Health may take any actions related to counteracting COVID-19.

The act does not specify what actions are involved; therefore, it is currently difficult to determine what the legislator meant and how the practice will develop if this solution is adopted.

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3. TAX LAW

The Anti-Crisis Shield includes changes in tax law to limit the negative impact of the epidemic on the financial standing of taxpayers and to reduce the administrative burden in terms of taxes. The most important solutions are:

- **PIT and CIT:** deadline for annual tax reconciliations for 2019 is extended to 31 May 2020 and with respect to a limited group of taxpayers to 31 July 2020. For PIT taxpayers the solution assumes that filing the tax return and paying tax due after the standard deadline (i.e. 30 April 2020) will be equal to filing a so-called voluntary disclosure;
- **PIT and CIT:** under certain conditions (as a rule - at least 50% revenue decrease in 2020 when compared to 2019 caused by the epidemic) taxpayers should be allowed to recognize the potential tax loss that they incurred in 2020 in their tax result for 2019. In practice, this should be possible by a correction to the tax return for 2019, and the amount of loss thus deductible is limited to PLN 5 M;
- **VAT:** new matrix of VAT rates, Standard Audit File obligations (*Polish: JPK_VAT*) for big taxpayers and regulations on the binding VAT rate information shall come into force on 1 July 2020;
- **Tax rulings:** the deadline for issuing tax rulings not issued before the entry into force of the Anti-Crisis Shield is extended by 3 months (i.e. up to 6 months). Based on the special regulations it may be further prolonged by another 3 months;
- **Mandatory Disclosure Rules:** all MDR reporting deadlines do not start, and those started are suspended in the period of 31 March - 30 June 2020.

Changes in tax law are of particular sensitivity and we are closely monitoring any new developments in this respect. Unfortunately, the tax measures adopted by the Parliament do not address many key issues that play a crucial role for Polish taxpayers in these special times. Combining our knowledge and experience as well as the expertise of Baker McKenzie offices in other countries, which first had to face the COVID-19 epidemic, we are ready to answer the following questions:

- Does the overall economic impact of the epidemic affect also the transfer pricing policy? Should these special circumstances be in general reflected in the transfer pricing approach?
- Should any additional costs incurred in relation to or as a result of the epidemic in Poland be treated as tax deductible?
- What steps should be taken within the capital group to reduce costs and limit the negative influence of the current situation on cash flows?
- Which entities may benefit from limiting and suspending tax audits and proceedings in Poland? How should tax payers deal with the tax authorities at the moment?

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4. EMPLOYMENT LAW

The Anti-Crisis Shield contains a number of solutions that are important for employers. They mainly concern funding of employees' remunerations, the possibility of introducing flexible working time (in both cases after fulfilling a number of detailed conditions described below) and exemption from ZUS (Social Security) contributions.

Funding of employees' remuneration

Regardless of the number of employees, employers will be entitled to obtain funding of employees' remunerations in the following situations:

- reduction of the remuneration of an employee affected by economic stoppage by up to 50%, but not lower than PLN 2,600 gross (minimum remuneration) for full time employment.

Then it will be possible to obtain funding of the employee's remuneration from the state that will equal PLN 1,533.09 - i.e. 50% of the minimum remuneration (PLN 1,300) for full time employment increased by the amount of social security contributions due from the employer from this amount;

- reduction of the working time of an employee by 20% (but not lower than 0.5 of the full time) and reduction of their remuneration accordingly, but not lower than PLN 2,600 gross (minimum remuneration) for full time employment.

Then it will be possible to obtain funding in the maximum amount of PLN 2,452.27 – i.e. up to 50% of the reduced remuneration, but not more than 40% of the average monthly remuneration in the previous quarter (PLN 2,079.43) for FTE, increased by the amount of social security contributions due from the employer from this amount.

The abovementioned funding will not be available for persons whose remuneration in the month preceding the motion for funding was higher than 300% of the average monthly remuneration in the previous quarter (PLN 15,198.52).

Alternatively, micro, small and medium-sized employers (hiring up to 249 employees and having an annual turnover not exceeding EUR 50 million) will be entitled to funding of an employee's remuneration in an amount depending on the fall in turnover:

- fall in turnover of at least 30% - funding up to 50% of the minimum remuneration (PLN 1,300), increased by the amount of social security contributions due from the employer;
- fall in turnover of at least 50% - funding up to 70% of the minimum remuneration (PLN 1,820) increased by the amount of social security contributions due from the employer;
- fall in turnover of at least 80% - funding up to 90% of the minimum remuneration (PLN 2,340) increased by the amount of social security contributions due from the employer.

The funding shall be available:

- up to 3 months;
- also for persons hired under contracts of mandate or other service contracts (civil law agreements).

Conditions for receiving funding of employees' remuneration - table

Related to economic stoppage or reduction of working time	Not related to economic stoppage or reduction of working time (micro, small and medium-sized employers)
<ul style="list-style-type: none"> • fall in turnover resulting from COVID-19: <ul style="list-style-type: none"> ○ at least 15% during any 2 consecutive months after 1 January 2020 in comparison to the same 2 months in the previous year, or ○ at least 25% in any chosen month after 1 January 2020 in comparison to the previous month (a month is also understood as 30 consecutive days); 	<ul style="list-style-type: none"> • fall in turnover resulting from COVID-19, at least 15% during any 2 consecutive months after 1 January 2020 in comparison to the same 2 months in the previous year (a month is also understood as 30 consecutive days);
<ul style="list-style-type: none"> • concluding an agreement with trade unions or employees' representatives (if there are no trade unions). In case of difficulties in conducting elections of employees' representatives due to COVID-19, such agreement may be concluded with the employees' representatives previously elected for other purposes resulting from the labor law; 	<ul style="list-style-type: none"> • lack of obligation to conclude an agreement with trade unions or employees' representatives;
<ul style="list-style-type: none"> • no arrears in payment of tax and social security contributions until the end of the third quarter of 2019; 	<ul style="list-style-type: none"> • no arrears in payment of tax and social security contributions until the end of the third quarter of 2019;
<ul style="list-style-type: none"> • no grounds to declare bankruptcy; 	<ul style="list-style-type: none"> • no grounds to declare bankruptcy;
<ul style="list-style-type: none"> • prohibition to conduct dismissals based on economic reasons of employees covered by funding during the period of funding and for 3 months afterwards. 	<ul style="list-style-type: none"> • obligation to hire employees covered by funding during the period of funding and the period equal to this period afterwards.

Flexible working time of employees

Employers will be entitled to:

- shorten the obligatory rest periods of employees - the daily rest period to at least 8 hours and weekly rest period to at least 32 hours (while ensuring that the equivalent rest period is granted within 8 weeks);
- introduce a balanced working time system and extend daily working time up to 12 hours, in the reference period of up to 12 months;
- apply less beneficial employment conditions than those determined in the employment contracts.

The conditions for introducing these flexible solutions are as follows:

- no arrears in payment of tax and social security contributions until the end of the third quarter of 2019 (with minor exceptions);
- fall in turnover resulting from COVID-19:
 - at least 15% during any 2 consecutive months after 1 January 2020 in comparison to the same 2 months in the previous year, or;
 - at least 25% in any chosen month after 1 January 2020 in comparison to the previous month (a month is also understood as 30 consecutive days).
- concluding an agreement with trade unions or employees' representatives (if there are no trade unions) - in order to introduce a balanced working time system or apply less beneficial employment conditions than those determined in the employment contracts of the employees (similarly as in the case of funding of remunerations - in case of difficulties in conducting elections of employees' representatives due to COVID-19, such agreement may be concluded with the employees' representatives previously elected for other purposes resulting from the labor law).

Social security contributions

Employers hiring fewer than 10 employees will be entitled to exemption from social security contributions for 3 months (March, April, May 2020) provided that:

- as of 29 February 2020 they have submitted for social security fewer than 10 persons, and;
- they file the relevant motion with the Social Security Office (ZUS) no later than on 30 June 2020.

In addition, employers will be entitled to exemption from the extension fee, in case of filing a motion for deferment or payment in installments of contributions during a state of emergency or state of epidemic or 30 days after its cancellation for the period from 1 January 2020.

Medical examinations of employees

During a state of emergency or state of epidemic, employers:

- are not obliged to refer employees for periodic examinations. The suspended obligations will need to be fulfilled within 60 days from cancellation of the state of emergency or state of epidemic;
- are still obliged to refer employees for initial and control examinations before allowing them to work. If an occupational doctor cannot perform such medical examinations, another doctor may conduct the examinations. Such examinations performed by another doctor will expire after 30 days from the date of cancellation of the state of emergency or state of epidemic.

Medical certificates that expired after 7 March 2020 are valid, but no later than up to 60 day from the date of cancellation of the state of emergency or state of epidemic.

Employees' Capital Plans (PPK)

Employers hiring at least 50 persons (as at 30 June 2019) will be entitled to conclude agreements on Employee Capital Plans (PPK) at a later date, i.e. the agreement on managing PPK should be concluded by 27 October 2020 and the agreement on operating PPK should be concluded by 10 November 2020 (extension of the deadline by 6 months).

Legalization of residence of foreigners

Foreigners who would be obliged to file motions to legalize their residence during the state of emergency or state of epidemic, will benefit from the following facilitations:

- extension of the residence period and validity of visa until the 30th day following the date of cancellation of the state of emergency or state of epidemic, and;
- extension of the period of validity of residence permits until the 30th day following the date of cancellation of the state of emergency or state of epidemic.

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5. COMPLIANCE

The Law on COVID-19, despite its theoretical focus on strictly economic issues, contains a number of solutions that are also important from the point of view of compliance. These include liability for failure to comply with obligations to prevent and control the virus, the possibility of introducing maximum product prices and administrative fines for entrepreneurs.

Changes in criminal liability and new offences

In order to combat and prevent COVID-19, new offences and liability rules have been added to the Penal Code and the Misdemeanors Code, including:

- failure to comply with instructions from a Police or Border Guard officer, e.g. refusal to go into quarantine is punishable by arrest, restriction of liberty or a fine: this provision is not limited to the epidemic period;
- exclusion of liability for some economic offences, i.e. abuse of powers by a person holding public office (Art. 231 of Penal Code) and abuse of powers or failure to fulfil an obligation in private entities (Art. 296 of Penal Code) - the exclusion covers 1) purchase of goods or services to combat an epidemic in violation of the obligations or regulations, and 2) withdrawal from the recovery of debts in connection with the non-performance or improper performance of a public contract and 3) amendment of a public contract. All of these are in force during the epidemic period;
- the period of limitation of the punishment and enforcement of already imposed penalties is to be suspended (with respect to any offences, fiscal offences and misdemeanors).

Administrative penalties

The legislator is increasingly reaching for the possibility to apply very high administrative penalties. The law has introduced provisions on administrative penalties for breach of obligations in connection with the fight against the virus. Thus, in the case of violation of the obligations of hospitalization, quarantine or isolation, a county (*powiat*) health inspector can impose a fine of up to PLN 30,000 (approx. EUR 6,500) on a person violating such an obligation.

Additionally, if a temporary restriction or ban on trading and using certain objects or food products is found to have been breached, the voivode may impose a fine of up to PLN 2,000,000 (approx. EUR 450,000) on the entity breaching such restrictions - regardless of additional penalties which may be imposed by the President of the Office of Competition and Consumers.

The penalties may be immediately enforceable and are subject to administrative enforcement. Submitting a complaint to an administrative court does not suspend immediate enforceability.

Administrative instructions

The new regulations include an extension of the new institution of the so-called "administrative instructions". Also, the Prime Minister will be able to give orders to businesses on his own initiative to act in a certain way, e.g. he can request the production of particular

items. The order is executed by concluding an agreement with the entrepreneur and is financed from public funds. Orders are issued by way of an administrative decision, and they are subject to immediate execution as soon as they are delivered or announced and do not require justification. On the basis of previous regulations, orders may be issued verbally or by telephone, which has so far made it very difficult to contest them. Under the Law on COVID-19, such case will require written confirmation in the form of the protocol, but it is still not clear how to challenge such arrangements.

Criminal and administrative proceedings

During the state of emergency and the state of epidemic, the course of trial and court periods in cases of, among others, criminal, petty offences, fiscal and administrative penalties shall not commence, and the commenced periods shall be suspended for that period. This means, for example, an extended time for preparing possible complaints. Also, hearings will not be held.

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6. CENTRAL REGISTER OF BENEFICIAL OWNERS

Under the Law on COVID-19, the transition period to disclose beneficial ownership data with the Central Register of Beneficial Owners (Register) has been prolonged until 13 July 2020. Under the previous regulations, the deadline to disclose beneficial ownership data with the Register was 13 April 2020.

Benefits of the transition period are only available to entities entered into the National Court Register before 13 October 2019. Other partnerships and companies must make the disclosure within 7 days of entry into the National Court Register – the Law on COVID-19 provides for no changes to this procedure.

Below we outline the most important information regarding the Register and related disclosures.

Who must make the public disclosure

- Polish registered partnerships, limited partnerships, partnerships limited by shares, limited liability companies and private joint-stock companies are required to make a filing;
- Polish branches of foreign businesses are not covered by the disclosure requirement.

Scope of disclosure

CRBO disclosure covers details of:

- the reporting entity;
- directors of the reporting entity and shareholders holding signing powers;
- beneficial owners of the reporting entity.

Once filed, all the information becomes publicly available and can be accessed through the Register's website.

Sanctions for failure to file

Financial penalty of up to PLN 1,000,000.

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7. CONSUMER REGULATIONS

The new regulations are intended to increase consumer protection, in particular by combating unfairly high prices of products for which demand has increased sharply during the epidemic. Setting maximum prices of products will also have a huge impact on the everyday operations of companies.

Maximum prices

Under the new rules, the relevant ministers may set:

- maximum sale prices, official wholesale margins and official retail margins for medicinal products, medical devices, foodstuffs for particular nutritional uses and biocides that may be used in connection with COVID-19 or that may become unavailable in Poland due to COVID-19;
- maximum sale prices, wholesale margins and retail margins applicable to the sale of all other goods or services essential for the protection of human health or safety or significantly affecting household maintenance costs.

These regulations raise many doubts amongst entrepreneurs and not without reason. First of all, such a wide authorization for relevant ministers may prove dangerous. An official margin limitation, in particular with respect to products which were unjustifiably included in the list of products that are "essential", in the time of lowered demand, may have consequences quite different from the goal of the Anti-Crisis Shield, i.e. protection of business liquidity.

Also, the question arises of whether the new law may be effectively enforced. Compliance with the regulations on maximum prices is to be ensured by the relevant sector authorities, i.e. the Pharmaceutical Inspection, the Office for Registration of Medicinal Products, Medical Devices and Biocidal Products, the State Sanitary Inspectorate and the Agricultural and Food Articles Commercial Quality Inspectorate, as well as the Polish Office of Competition and Consumer Protection (the OCCP) and the Trade Inspectorate. Will these bodies be able to verify the whole market and counteract abuses and attempts to circumvent the law?

For each case of overpricing products essential for counteracting COVID-19, the abovementioned sector authorities may impose a fine of up to PLN 5,000,000.

Additionally, the OCCP may impose a penalty of up to 10% of the turnover generated in the previous financial year on business entities that infringe, even unintentionally, repeatedly or significantly, the ban on applying prices higher than the maximum ones. This applies both to products essential for counteracting COVID-19 and other goods or services of significant importance for the protection of human health or safety or household maintenance costs.

Penalties may also be imposed on business entities that, even unintentionally:

- do not provide information requested by the OCCP or provide false or misleading information;
- prevent or hinder the initiation or performance of the OCCP's inspections or searches (dawn raids).

In this case, the penalties may amount to up to 5% of the turnover generated in the previous financial year, but not more than PLN 50,000,000.

Moreover, the OCCP announced that it would undertake intense efforts to fight against excessive prices. Employees of the OCCP and the Trade Inspectorate will focus in particular on monitoring the prices of food and hygiene products, both in brick-and-mortar and online stores. The OCCP will also take actions to combat consumers being misled about the characteristics of products that could allegedly cure or prevent coronavirus and COVID-19.

Cheaper consumer credit

The new law introduces an algorithm for calculating the maximum amount of non-interest cost of consumer credit. For loans with a repayment period of less than 30 days, the costs may not be more than 5 percent of the total amount of credit. For loans repaid after at least 30 days, the level of non-interest cost may be no more than 15% of the total amount of credit plus 6 percentage points for each year of duration of the credit, providing that no more than 45% of the total amount of the consumer credit over the entire maturity of the loan.

Example: the non-interest cost of a loan granted to a consumer, in the amount of PLN 1,000, on the basis of the existing and the new regulations:

Credit period	Current cost of the credit	Cost of the credit in accordance with the Law on COVID-19
7 days	PLN 256	PLN 50
30 days	PLN 275	PLN 155
90 days	PLN 324	PLN 165

The OCCP may impose financial penalties of up to 10% of the annual turnover on lenders who violate these regulations.

Deferral of the extension of consumer protection to sole traders.

The new law postpones the application of the provisions extending consumer protection to sole traders carrying out activities directly related to its activities, provided that they are not of a professional nature. The changes were to apply from 1 June 2020; however, according to the Law on COVID-19, the new rules will only apply to contracts entered into from 1 January 2021.

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8. LEASE AGREEMENTS

The solutions adopted by the Parliament will cause significant interference in existing lease agreements.

Retail buildings with retail space of over 2000 m²

Under the new provisions:

- during the period in which the tenant's activities in a retail facility with retail space of over 2000 m² have been prohibited in accordance with the relevant provisions, the mutual obligations of the parties to the lease, tenancy or other similar agreements under which the retail space is let for use expire;
- an entity entitled to use a commercial space (lessee, tenant etc.) shall make an unconditional and binding offer to the provider (landlord) of their will to extend the agreement on the existing terms and conditions for the period of the prohibition extended by 6 months; the offer shall be submitted within three months following the lapse of the period of the prohibition. The provisions shall cease to be binding on the lessor at the moment of the ineffective lapse of the period to submit the offer.

The adopted solutions result, among other things, in the expiry of the parties' obligations under lease agreements during the period of the prohibition to operate in retail buildings with retail space of over 2000 m², e.g. the lessee's obligation to pay the rent.

However, within 3 months from the cessation of the ban on operating in the premises in the said retail buildings, the lessee shall submit to the lessor a binding offer to extend the agreement on the existing terms and conditions for the period of the ban on operating extended by an additional 6 months.

Upon the ineffective lapse of the three-month period for the lessee to submit a binding offer for the extension of the lease agreement, the provisions of paragraph 1 of Article 15 of the COVID-19 Act shall no longer be binding for the lessor.

Extension of the lease period of premises until 30 June 2020

If the lease period of premises under the lease agreement concluded before 31 March 2020 expires after 31 March 2020 and before 30 June 2020, the lease agreement shall be extended on the existing terms and conditions until 30 June 2020, provided that the lessee submits to the lessor a declaration of will to extend the agreement on the last day of the lease agreement at the latest.

The lessee shall not have the right to extend the agreement until 30 June 2020 if in the period of 6 months prior to the Anti-Crisis Shield, or if the agreement was in force for a period shorter than 6 months prior to the entry into force of the Anti-Crisis Shield for the entire duration of the lease agreement of the premises prior to the entry into force of the Anti-Crisis Shield:

- the lessee was in default of payment of rent or fees for the use of the premises other than rent or fees independent of the lessor and charged by the lessor for at least one settlement period, if the sum of the arrears exceeded the amount of one month's rent, or;
- the lessee used the premises in a manner contrary to the agreement or contrary to the intended use of the premises or neglected their duties, allowing damage

to the premises, or sub-leased or gave the premises or their part for use to third parties without the written consent of the lessor.

Prohibition to terminate the lease agreement or rent amount by 30 June 2020

The Act on COVID-19 introduces a ban on terminating the lease agreement and the amount of rent by the lessor until 30 June 2020.

This prohibition does not apply to termination of the lease agreement by the lessor in connection with violation by the lessee of the provisions of the lease agreement or legal regulations concerning the manner of use of the premises or in connection with the necessity to demolish or renovate the building in which the premises are located.

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9. PUBLIC PROCUREMENT

Amending public contracts

The Law on COVID-19 allows changes to be made to a public procurement contract if COVID-19 affects its performance. In such situation, under Article 144 section 1 point 3 of the Public Procurement Law, the parties are allowed to introduce changes to the contract related to the deadlines, scope of the contract and the contractor's remuneration, provided that the increase in prices included in each subsequent change does not exceed 50% of the value of the original contract.

Relevant changes should be introduced to the contractor's contract with the subcontractor and further subcontractors to the extent that these entities have been entrusted with the performance of the contract, so that the conditions for the performance of these contracts are not less favorable than the terms of the amended public procurement contract.

The contracting parties shall inform one another without undue delay about the above circumstances and provide information and documents confirming the impact of COVID-19 on the performance of the contract. The other party is obliged to respond to the change request within 14 days.

If the public procurement contract includes more beneficial regulations for the contractor, a change may be introduced in accordance with such regulations. However, the circumstances related to COVID-19 cannot constitute a sole basis for withdrawal from the contract.

In the amendment request, the contractor may also request that the Contracting Authority withdraw from claiming any contractual penalties or damages for improper performance of the contract caused by the occurrence of COVID-19. It is important to note that the new Article 15s. of the Law on COVID-19 provides that withdrawing these claims and making the above changes to the contract does not constitute a violation of public finance discipline or an offense against business transactions, as referred to in Article 296 of the Criminal Code, and members of the company's bodies are not responsible for damage caused to the company referred to in Article 293 and 483 of the Commercial Companies and Partnerships Code.

Contracts not yet concluded

COVID-19 Act lacks an explicit reference to contracts that have not yet been concluded. In our opinion, the new provisions should, however, be interpreted in such a way that changes to draft contracts for which bids have been submitted are also permissible. The contractor is bound by the submitted offer and if he refuses to conclude the contract, he risks losing the bid bond. Therefore, for public procurement contracts, a different approach is justified. The contractual relationship is generally established when the offer is submitted and the Terms of Reference and the offer constitute the contract. Therefore, Article 15r. of the Law on COVID-19 should apply from the day of submitting the offer. Such a view is presented in the jurisprudence under current Public Procurement Law. In addition, a change on this basis should be permissible by the parties of future contracts in the event of new and unforeseen effects of COVID-19.

It has been clearly indicated that the new regulations do not infringe the parties' rights arising from general civil law concepts; however, the circumstances related to COVID-19 may

not constitute a sole basis for withdrawing from the contract also on the basis of these general provisions.

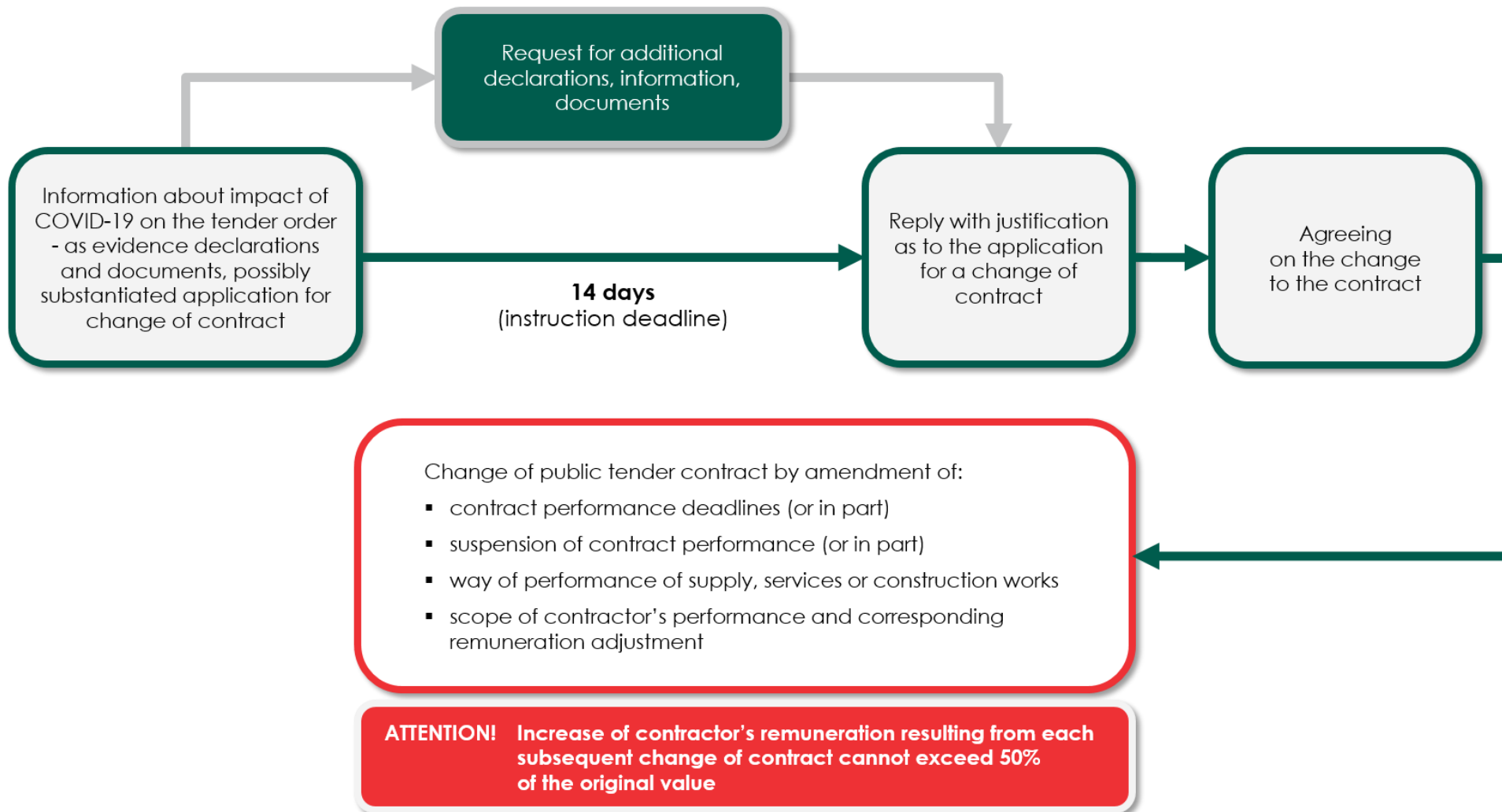
In the context of the above, from the contractor's perspective, the most important thing is the correct wording and justification of the request to amend the contract and substantiation with reliable information indicating that COVID-19 impacts or may impact the proper performance of the contract or draft contract, and that it justifies the Contracting Authority's withdrawal from contractual penalties and damages.

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TENDER CONTRACT AMENDMENT PROCEDURE



10. SUPPORT FOR RES SECTOR

Entities developing RES projects are particularly exposed to negative consequences of coronavirus epidemic. The present circumstances may result in, for instance, delays in supply of components indispensable for carrying out investment processes or no works engaging personnel. The Act on COVID-19 provides for measures supporting RES investors.

Extension of deadlines for onshore wind and PV projects

The Anti-Crisis Shield offers the possibility of a one-time extension of certain deadlines of up to 12 months (i.e. 24 months for PV installations and 33 months for onshore wind installations respectively), related to the permissible "age" of generating installations (e.g. PV panels or WTGs) as well as the deadlines for starting to sell power within the auction system. Upon a request submitted by the investor, these deadlines may be extended:

- up to a maximum of 36 months for PV installations;
- up to a maximum of 45 months for onshore wind installations.

By extending the deadlines, the investor will reduce the risk of losing the auction deposit paid.

Situations in which the investors can benefit from the extension mechanism

Successful application for an extension of the above deadlines will be possible if the state of emergency or the state of epidemic results in at least one of the following situations: (i) delay in the supply of equipment comprising an RES installation; (ii) delay in the supply of elements indispensable for the construction of an RES installation; (iii) delay in the construction of an RES installation and connections to the power grid; (iv) delay in the completion of acceptance or start-up of an RES installation; (v) delay in the obtaining a license or entry in the relevant registers.

The application for deadline extension should be submitted to the President of URE no later than 30 days before the expiration of the current deadline for the first sale of power within the auction system (i.e. within 24 months [for PV installations] or 33 months [for onshore wind installations] counted from the date of closing the relevant RES auction session).

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11. STATE AID

As several types of support covered by the Anti-Crisis Shield may constitute State aid, packages will need to be notified to the European Commission. It is expected that based on the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak issued by the Commission on 19 March, the consent should be expressed very soon (similar cases from Germany, Denmark, Spain, Italy, Estonia, Luxembourg France, Portugal, Latvia, Ireland or UK were done within a couple of days).

State aid under the Temporary Framework

A number of solutions introduced by the Anti-Crisis Shield if offered to all entrepreneurs constitute no State aid at all or according to this legislation just State aid to remedy a serious disturbance in the economy, referred to in Section 3.1 of the Temporary Framework, to enable, among others:

- financial support for natural persons, legal entities or organizational units without legal personality, where their creative or artistic activity cannot be continued in its current form during the state of emergency and state of epidemic, due to newly introduced restrictions, prohibitions and orders;
- exemption or deferral of payments from real estate tax: land, buildings and structures connected with conducting business activity, for part of the year 2020, of indicated groups of entrepreneurs whose financial liquidity has deteriorated due to incurring negative economic consequences due to COVID-19;
- co-financing of a part of the costs of employees' salaries and social security contributions due from these salaries or co-financing of a part of the costs of running a business;
- granting a loan to cover the current costs of running a microenterprise;
- distribution in instalments or redemption in part or in whole of payments due for letting real estate for rent, lease or usufruct, falling for the state of emergency and state of epidemic, or withdrawal from the collection of civil law receivables falling to a local government unit or its organizational units.

The aid referred to above may be granted to an undertaking which does not meet the criteria of an enterprise in difficulty, no later than 31 December 2020 and provided that its value does not exceed, together with other aid of such type, EUR 800,000.

Importantly, this aid may be combined with the so-called de minimis aid, i.e. aid whose total amount for one beneficiary may not exceed the equivalent of EUR 200,000 gross over a period of 3 calendar years, and in the case of an entity conducting business activity in the road freight transport services sector - EUR 100,000.

EU Funds

The Act on special solutions supporting the implementation of operational programs in connection with the occurrence of COVID-19 in 2020 introduces special regulations constituting derogations and exceptions from the rules of implementation and completion of projects under the operational program. The new act will be applied only exceptionally. In scope not regulated by its provisions we will continue to apply the current act on the principles of program implementation. The above means that one should apply the new act

only in cases related to epidemics, while wherever possible the old regulations will be applicable.

The special legislation provides in particular for the following:

a) for contracts already in progress:

- the possibility that expenditure for unrealized goals may be considered eligible (the beneficiary must demonstrate that it has taken the necessary measures to recover them with due diligence and in reasonable time, or demonstrate that they cannot be recovered);
- the possibility of amending the contract if, as a result of the occurrence of COVID-19, the implementation of its provisions or the decision to co-finance the project in the scope resulting from the approved project selection criteria is impossible or significantly complicated;
- the possibility of applying for a reduction in the amount of repayment of the funds allocated for the implementation of programs financed by EU funds and other claims relating to the implementation of projects financed by these funds, as well as interest on these funds and on these claims;
- deadlines for submission of payment applications falling within the period until 31 December 2020 specified in agreements or decisions on co-financing are extended by 30 days, and for completion of project implementation - by 90 days, but not longer than until 31 December 2023 (in particularly justified cases it is possible to extend the deadlines, but not longer than until 31 December 2023); however, this does not exclude the possibility of an earlier submission of a payment application by the beneficiary or, at the beneficiary's request, an earlier completion of project implementation;

b) for other matters:

- the possibility of amending and suspending the guidelines of the minister responsible for regional development on an exceptional basis;
- possibility to change the project selection criteria at any time and to apply deviations from the approved criteria during the project implementation;
- possibility to change, postpone or shorten the time limits for performing particular activities resulting from both the Special Legislation and the current law;
- projects aimed at preventing negative effects of COVID-19 in the implementation of operational programmes will be able to be considered in the so-called extraordinary modes, i.e. with the application of certain provisions concerning the non-competition mode.

The new rules are to apply retroactively from 1 February 2020 to 31 December 2020.

In connection with the new special act regulating the rules of accounting for aid financed from European funds, two special regulations are expected to be issued, i.e. on granting aid from financial instruments and on granting aid in the form of grants or repayable aid under operational programmes for 2014-2020 to support the Polish economy in connection with the COVID-19 pandemic.

These regulations provide that State aid may be granted to micro, small, medium and large enterprises for both trading and investment purposes, provided that the aid is aimed at mitigating the effects of the COVID-19 pandemic.

It has been indicated that the aid may be granted only to such entrepreneurs who are not in a difficult situation in its current understanding and to entrepreneurs who were not in a difficult situation on 31 December 2019, This means that all entrepreneurs who were in a difficult situation before 1 January 2020 or were in a difficult situation after that date for reasons other than the occurrence of the COVID-19 pandemic are excluded from the possibility of granting aid on the basis of the proposed regulation.

State aid from EU funds may still be granted to micro, small, medium and large enterprises. The regulations allow for its cumulation with public aid granted on other legal bases, including de minimis aid.

The aid may be granted in the form of grants or repayable aid and its value may not exceed EUR 800,000 in total, as well as in the form of guarantees, sureties and loans. The rules, including the interest rate, duration and maximum value, also correspond to those of the Temporary Framework.

Applying the Anti-Crisis Shield

The implementation of the Anti-Crisis Shield will be mostly handled by the Polish Development Fund Group, which is composed of Polish Development Fund (PFR), Bank Gospodarstwa Krajowego (BGK), Industrial Development Agency (ARP), Export Credit Insurance Corporation (KUKI), Polish Agency for Enterprise Development (PARP), Polish Investment and Trade Agency (PAIH) and their subsidiaries.

Securities and guarantees

Bank Gospodarstwa Krajowego will grant securities and guarantees for repayment of loans taken out by medium-sized and large enterprises to ensure financial liquidity. They will cover no more than 80% of the remaining loan amount.

Depending on its conditions, such instrument may be seen as state aid.

Rescue and restructuring aid

One of the elements of the Anti-Crisis Shield is a new law on granting public aid for rescuing or restructuring entrepreneurs.

The current Polish rescue and restructuring aid program, approved by the European Commission on 29 August 2016, provides for the possibility of granting annual public aid for rescuing and restructuring entrepreneurs in difficulties up to the amount of PLN 153,000,000 per year (of which PLN 100,000 is earmarked for financial aid, while PLN 53,000,000 is earmarked for the restructuring of certain public law receivables). The budget of the current program is to amount to PLN 120,000,000 per year for reliefs and PLN 50,000,000 for the restructuring of certain public-law receivables.

State aid is obtained upon application. However, the mere completion of a formalized application may be quite a challenge for an entrepreneur who is on the verge of bankruptcy. The competent authorities will have 30 days to process the application for rescue aid, but this period may be extended. In times of crisis, this deadline should be assessed as far too long. Therefore, one can seriously wonder to what extent such aid can be effective in the current difficult economic situation.

The law regulates State aid for:

- rescuing;
- temporary restructuring support, and;
- restructuring.

Rescue aid and restructuring aid is not a subject of separate notification to the European Commission if an entrepreneur in a difficult economic situation is a micro, small or medium-sized entrepreneur and the total amount of aid granted and applied for, granted under the same restructuring process, does not exceed the equivalent of EUR 10,000,000.

Rescue aid

Aid of this type is granted at the request of an entrepreneur being in a difficult economic situation in order to enable the business to be run for a transitional period until a restructuring plan or liquidation of the business (not longer than 6 months) is drawn up.

The aid takes the form of a loan at a rate not lower than the base rate plus 4 percentage points, and must be secured for at least up to 50 % of the loan amount, in the form in particular of a mortgage, pledge, assignment of claims, declaration of submission to enforcement or a blank bill of exchange.

Temporary restructuring support

Support of this type may be granted to a micro-, small or medium-sized entrepreneur in a difficult economic situation. Its amount is limited to the amount necessary to continue the activity in the period for which this support was granted, but not longer than 18 months.

Restructuring aid

This type of aid may only supplement the self-contribution of an entrepreneur in a difficult economic situation at the level of 50% (40% in case of medium-sized enterprises, 25% - micro and small enterprises), which is a contribution to the financing of restructuring costs. However, unlike rescue aid and temporary restructuring support, restructuring aid may also be granted in other forms than a loan:

- acquisition of shares or stocks in the increased share capital or participation in the increase of the share capital by increasing the nominal value of existing shares or stocks;
- bonds subscription;
- changes in loan repayment dates;
- conversion of a loan into shares of an entrepreneur;
- exemption in the execution of an administrative fine.

Changes in the Act on the system of development institutions

Amendments to the Act on the system of development institutions were adopted to enable the Polish Development Fund to finance actions aimed at preventing or mitigating the effects of crisis situations. From now on, one of the statutory prerequisites for the provision of

State aid by the Polish Development Fund is to prevent or remedy damage caused by natural disasters and other crisis situations, including the spread of COVID-19.

The Act extends the possibilities of financing and the scope of the fund's operation so that the Council of Ministers can formally entrust it with the implementation of the program of granting financial support to entrepreneurs. The first annual plan of the program's implementation in 2020 of the Polish Development Fund is to be presented within one month from the adoption of the program by the Council of Ministers.

The new rules clearly distinguish between State aid instruments and instruments offered on market terms.

The provisions under which the Polish Development Fund grants financing were clarified. They refer in particular to micro-, small and medium-sized enterprises and small and medium-sized enterprises. This means that financing will not have to involve an increase in the share capital of companies, which seems to be a more useful tool in times of crisis.

Also, ARP is expected to have a maximum of PLN 1.7 billion to re-guarantee the current leasing contracts concluded by transport companies.

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12. CREDITS AND PROJECT FINANCING

The Anti-Crisis Shield contains a number of regulations for credit and loan agreements and their payments as well as solutions for the finance market during the time of fighting COVID-19.

The possibility to change the terms and conditions of credit and cash loan agreements

The most significant change, from the point of view of financial markets, introduced under the provisions of the Act on COVID-19 is a solution enabling domestic banks to change the terms and conditions and the deadlines specified in credit agreements or cash loan agreements concluded with micro, small and medium-sized enterprises upon agreement with the borrower.

Such amendments could be made to all contracts for which financing was granted before 8 March 2020 and where, at the same time, such amendment is justified by the borrower's financial and economic situation. Such amendment shall be made on terms agreed between the domestic bank and the borrower and shall not cause a deterioration of the borrower's financial and economic situation.

The above solution is linked with the solution which entitles Bank Gospodarstwa Krajowego to grant (in connection with the effects of COVID-19) guarantees for repayment of credits granted to entrepreneurs (excluding micro and small entrepreneurs).

Repayable financing and credits within the meaning of the Act on Certain Forms of Support for Housing Construction

The Act on COVID-19 introduces new rules for the calculation of the repayable funding period and the credit period. This period does not include the grace period for the repayment if this grace period was requested by the borrower in connection with a state of emergency or state of epidemic.

Period of subsidies within the meaning of the Act on Financial Support for Families and Other Persons in Purchasing Their Own Apartment

The Act on COVID-19 introduces similar new rules for the calculation of the subsidy period within the meaning of the Act on financial support for families and other persons in acquiring their own housing. This period does not include the grace period for the payment of capital instalments or interest on a soft loan if this grace period was granted at the request of the borrower in connection with a state of emergency or state of epidemic.

However, the interest is capitalized during the grace period for the payment of the capital instalments or interest on the preferential credit. This may raise doubts as to its compliance with Polish law.

The periods under the provisions of the Act on the Bank Guarantee Fund, Deposit Guarantee Scheme, and Forced Restructuring

In order to ensure the Polish Bank Guarantee Fund's operations, the provisions of the Act on COVID-19 contain a competence for the Polish Minister of Finance to set shorter deadlines for the Polish Bank Guarantee Fund to undertake actions. This refers

to actions under the Act on the Bank Guarantee Fund, deposit guarantee system and forced restructuring, as well as other provisions regulating the functioning of the Polish Bank Guarantee Fund.

The general assumption is that the deadlines should ensure the proper performance of the statutory obligations of the Polish Bank Guarantee Fund and the proper functioning of the financial market, its stability, security, as well as protection of market participants.

Suspension of deadlines for the Polish Financial Supervision Authority

Pursuant to the provisions of the Act on COVID-19, the deadlines for the Polish Financial Supervision Authority are suspended. The time limits for issuing a decision or order terminating proceedings or filing an objection does not commence and is suspended until the end of the state of emergency or state of epidemic, unless the Polish Financial Supervision Authority issues a decision resolving the case, acts, or issues a decision or order.

Similarly, the period of limitation for administrative liability is suspended (i.e. the period of suspension will not be included in the period of 5 years related to the limitation period of the possibility of imposing an administrative fine by the Polish Financial Supervision Authority).

No requirement for the Polish Financial Supervision Authority to approve an information memorandum

One of the solutions adopted under the provisions of the Act on COVID-19 and of significant importance for financial markets is the exclusion of the requirement of the Polish Supervision Authority to approve an information memorandum. This solution is aimed at enabling entrepreneurs to easily raise capital by issuing financial instruments.

Remote operation of the Polish Financial Supervision Authority and the National Bank of Poland

The Act on COVID-19 introduces the possibility for the Polish Financial Supervision Authority to proceed in remote modes. Thus, the continuity of the functioning of the Polish Financial Supervision Authority and its supervision is ensured.

The same solution was also introduced for the National Bank of Poland and its bodies.

Possibility of suspending proceedings conducted by the Insurance Guarantee Fund

Pursuant to the provisions of the Act on COVID-19, the Polish Minister of Finance can suspend control proceedings, proceedings for the enforcement of the fee for failure to fulfil the obligation to conclude a mandatory insurance agreement referred to in the provisions of the Act on Mandatory Insurance, the Insurance Guarantee Fund and the Polish Motor Insurers' Bureau.

The Polish Minister of Finance has also been equipped with the competence to postpone payment dates for failure to fulfil the aforementioned obligations.

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13. INTELLECTUAL PROPERTY

The new provisions heavily impact intellectual property proceedings pending in front of the Polish Patent Office as well as civil and administrative courts regarding the suspension or extension of pending time limits. In particular:

- Between 8 March and 30 June 2020, the deadlines for filing an opposition against trademark applications will be interrupted or withheld until 1 July 2020; the 3-month opposition period will restart on 1 July 2020 - this means, in practice, that the registration procedure for trademarks applied for before or within the opposition window, is prolonged, as well as the time limit to file oppositions against such trademark applications;
- The same rule applies also to time limits for submitting a Polish translation of a European patent with the Polish Patent Office. Between 8 March and 30 June 2020, the deadline for filing the translation is withheld or suspended, and restarts on 1 July 2020; this rule, however, does not apply for opposition against applications for designs, utility models and patents;

Certain deadlines provided for by administrative law will be suspended or withheld for the time of the state of emergency and state of epidemic related to COVID-19. Among other things, this concerns the deadlines to pay office fees, to start the use of a trademark, to file a patent or a trademark application preserving conventional priority, to respond to an office action, or to file a request for reconsideration of the decision.

During a state of emergency or state of epidemic declared because of COVID-19, the procedural and judicial deadlines in, among others, civil and administrative proceedings are suspended or withheld.

No public hearings will be held during the state of emergency or state of epidemic except for urgent matters listed in the Law, for example, in the event that a person is to be heard by the court for the purpose of preserving evidence, or in case there is reason to believe that the person will not be able to be heard at the hearing (e.g. when such person has a terminal disease). We provide more information about court time limits in the part on *Court disputes*.

This Law was introduced as an urgently needed antidote to the most restrictive legal regimes. It is expected that further amendments will follow to fill in the gaps and provide solutions for newly arisen issues.

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14. COURT DISPUTES

The amendment to the Law on COVID-19, adopted by the Sejm, introduces important changes regarding many time limits stipulated in the provisions of the law.

Suspension of time limits stipulated in the provisions of administrative law

In line with the wording of the Law on COVID-19, the following time limits stipulated in the provisions of administrative law cannot start and those already started are suspended:

- Time limits the keeping of which is required to receive legal protection from the court or an administrative authority;
- Time limits to perform acts that shape someone's legal situation;
- Statutory limitation periods;
- Time limits whose non-observance results in expiration or change in property rights, claims and debts, or falling into delay,
- Final time limits (pl. *terminy zawite*) whose non-observance results in negative consequence under any legal act;
- Time limits for entities or organizational units that are required to enter into an appropriate registry to perform an act that results in an obligation to report such act to the appropriate registry, and the time limits to perform an obligation resulting from acts that regulate their existence.

Also, when voting the Sejm crossed out the words indicating that it applies also to time limits stipulated in the provisions of civil law. Thus, the amendment has become incomprehensible and, in practice, it will create uncertainty as to whether the fundamental time limits of civil law, such as statutory limitation periods or final time limits, are suspended.

In practice, it has to be analyzed on a case-by-case basis whether a specific time limit (deadline) is or is not suspended.

Procedural law time limits and court time limits cannot start while those already started are suspended

This includes time limits in court proceedings, enforcement proceedings, criminal proceedings, criminal tax proceedings, administrative proceedings, proceedings and inspections under the Tax Ordinance and other legal proceedings conducted under any legal act. Neither hearings nor open court sessions are being held.

The amendment does not specify whether the suspension of time limits applies retroactively (from the date on which the state of emergency or state of epidemic was announced) or from the date the amendment enters into force.

Urgent cases

The above described regulations do not apply to cases defined as urgent. The Law on COVID-19 Act explicitly lists such urgent cases. Mainly, it includes criminal cases dealing with deprivation or limitations of one's personal freedom.

Acts performed during the state of emergency and state of epidemic are effective. The court, administrative authority or entity may perform certain acts and request the parties

to do the requested acts. In line with the wording of the Law on COVID-19, the competent court, administrative authority or entity may request a party to perform an act resulting from the provisions of the law, in the specified time limit and in the scope arising from applicable laws and may also request a party to the proceedings in a specified time limit to perform an act if abstention from performing such act might (1) endanger the life or health of people or animals, (2) cause significant harm to the public interest, or (3) cause a risk of irreparable material loss. For similar reasons, the president of the court might decide to hear any case as an urgent one.

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