

**LAWS ON  
COVID-19  
HANDBOOK**

## INTRODUCTION

Following the adoption of another (fourth) set of COVID-19 laws, we present to you the fourth edition of our handbook.

The set of COVID-19 laws includes:

- the so-called Polish Anti-Crisis Shield including the First Law on COVID-19, which entered into force on 31 March and 1 April 2020 (Journal of Laws of 2020, issue 568);
- the so-called Second Law on COVID-19, which entered into force on 18 April 2020. The most crucial parts at that time were the extensive amendment to the First Law on COVID-19 and a new act (Journal of Laws of 2020, issue 695);
- The Third Law on COVID-19 is the Act dated 14 May 2020 on changing various laws as protective measures due to the spread of COVID-19 (Journal of Laws of 2020, issue 875), which entered into force on 16 May 2020;
- the newest Fourth Law on COVID-19 is the Act dated 19 June 2020 on subsidies to interest rates of bank loans granted to enterprises affected by COVID-19 (Journal of Laws of 2020, issue 1086), which entered into force on 24 June 2020.

We present you a brief description of the new laws that in our view are the most important for current and future economic landscape in Poland. For your convenience, the changes introduced by the Fourth Law on COVID-19 and other changes introduced compared to the previous versions of the Handbook are **in red**.

The following are of special importance in this version: foreign investment control, simplified restructuring and major changes in public procurement.

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 contain solutions regarding remote operation of companies.

The Second Law on COVID-19 clarifies that its solutions apply only to those entrepreneurs who:

- conduct business activity on the territory of Poland;
- have financial difficulties due to COVID-19;
- are not bankrupt or in restructuring proceedings.

Furthermore, the Second Law on COVID-19 introduces a number of forms of financial support that can be provided on the basis of a contract with the Industrial Development Agency.

The Fourth Law on COVID-19 introduces liability arising out of simplified restructuring of companies and some detailed regulations on payment deadlines.

### 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 and 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, including when the articles of association or the statute provided for a secret ballot (added in the Second Law on COVID-19).

Further facilitations have been introduced to ensure the possibility of organizing shareholders' meetings using electronic means of communication, and electronic subscription for shares (added in the Second Law on COVID-19).

It is 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.

In addition, the deadline for performing stocks dematerialization obligations has been extended by 3 months (added in the Third Law on COVID-19). The new deadline for adoption of a resolution by general shareholders' meeting regarding choice of dematerialization regime, conclusion of the agreement and making the first call upon shareholders to submit their paper stock documents is set for 30 September 2020.

Also, share documents in paper form are no longer valid starting from 1 March 2021. The same term is predicted for procurement of binding force by entries in the shareholders' register or by entries of stocks in the securities account.

### **Management board duties**

The Law on COVID-19 Act also makes the deadlines for some reporting requirements less restrictive. For example, the requirement to make the entry in the Central Register of Beneficial Owners is extended to 13 July 2020. Moreover, this act provides for the implementation of the obligations related to preparing and auditing financial statements by audit companies, and approving and making such statements public, by way of regulation (delegation under Article 15 zzh).

The extraordinary difficulties, which entrepreneurs are facing, make questions about the scope of personal responsibility of management board members and the obligation to act in the best interest of the company appear in a new light. The First Law on COVID-19, stating that no offence of wrongful trading or any other act to the detriment of the company is committed by a member of the management board (and respectively a member of the supervisory board, audit committee or liquidator) who does not determine or seek recovery of due payments arising from the non-performance or improper performance of a public contract, or changes such a contract - introduces a new perspective in assessing the extent of diligence by persons who hold functions in the governing bodies of legal entities, also in relation to all other contracts.

This is even more important as the Second Law on COVID-19 prohibits the use of support measures to pay among others things liabilities to parent and subsidiary entities. In practice, this means not only limiting the possibility of dividend payment, but also of fulfilling obligations arising from group loans or cash pooling solutions.

Nevertheless, the spectrum of difficulties in the timely performance of contractual obligations (and possible filing of a declaration for bankruptcy or restructuring in the future) involves increasing the risk that unsatisfied creditors of the company will bring lawsuits personally against management board members, if they do not file such declarations in a timely manner.

The Fourth Law on COVID-19 mitigates that risk. In principle, the personal liability of directors (members of the management boards) for not lodging an application to declare bankruptcy within the time limit set forth in the insolvency law, as well as personal liability under Art. 299 CCC and Art. 166 of the Tax Ordinance, will not apply, provided that an announcement on opening the restructuring process, in line with the rules on simplified restructuring proceedings introduced by the Fourth Law on COVID-19, has been made. The details are described in *Simplified restructuring part*.

### **Commercial contracts**

The Laws on COVID-19 only enumerate 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). You can 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.

The Fourth Law on COVID-19 sets out (changes to the Tax Ordinance) what type of information must be provided to the regulator for the purpose of analysing whether excessive payment delays apply. Also, the provision allowing creditors to claim interest for payment terms longer than 30 days has been changed. Currently, it does not apply to large entrepreneurs.

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## 2. SIMPLIFIED RESTRUCTURING

(new chapter added as a result of the Fourth Law on COVID-19)

The Fourth Law on COVID-19 introduces simplified restructuring proceedings. It allows for fast action to improve financial situation of companies without the risk of court debt enforcement proceedings. The new provisions introduce temporary protection from court enforcement proceedings and allow for repayment of debt in installments based on an agreement with creditors.

### What is the simplified restructuring?

The simplified restructuring will be conducted partly only with participation of a restructuring advisor (without involving the court). This is to guarantee speed. It will be necessary for the entrepreneur to conclude an agreement with the restructuring advisor to start the proceedings. The advisor will also be a supervisor of the agreement with creditors. It will be necessary to place a notice to the Court and Economic Monitor. Then the restructuring advisor together with the company prepare proposals for the agreement with creditors regarding repayment of debts. Then there will also be voting on the arrangement - can take place online. The next step is to apply to the court for approval of the agreement.

### Protection against court enforcement and the situation of creditors

Starting the simplified restructuring proceedings results in prohibition of court enforcement proceedings against a company. Also, execution of financial obligations will be suspended for up to four months. Creditors will not be able to terminate key contracts such as a lease or credit agreement during that time. The so-called ordinary management activities in the company are the only possible ones. Other activities, e.g. sale of real estate, new loan will require the approval of a restructuring advisor. It is in exchange for granting protection against court debt enforcement.

### Who can benefit and when?

All entrepreneurs listed in the Restructuring Law (without additional restrictions). Simplified restructuring is available for one year, i.e. until 30 June 2021, once for each entrepreneur.

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### **3. 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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## 4. 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 Fourth Law on COVID-19 contains tax provisions regarding e.g. mandatory disclosure rules, transfer prices and VAT.**

- **PIT and CIT:** the 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:** under the Fourth Law on COVID-19, the Standard Audit File obligations (*Polish: JPK\_VAT*) for big taxpayers shall enter into force on 1 October 2020, and the new matrix of VAT rates 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:** under the Fourth Law on COVID-19, all MDR reporting deadlines will not commence, and those that have already commenced are suspended from 31 March up to the 30th day after the state of pandemic ends (or to 30 June for cross-border tax schemes);
- **Minimum Tax for buildings:** the Fourth Law on COVID-19 provides for a Minimum Tax exemption in the period between 1 March and 31 December 2020.
- **Transfer pricing:** based on the Fourth Law on COVID-19, the deadline for submitting transfer pricing information with a relevant statement for 2019 is extended (i) to 31 December 2020 - if the deadline lapses between 31 March 2020 and 30 September 2020, or (ii) by three months - if the deadline lapses between 1 October 2020 and 31 January 2021.

Some of the solutions proposed in the Third Law on COVID-19 not only cannot be perceived as solutions supporting taxpayers taking into account the overall objectives of the Anti-Crisis Shield, but also have negative consequences for taxpayers. **These are, in particular:**

- **VOD tax:** entities providing video-on-demand (VOD) services will be obliged to pay a charge (kind of a tax) to support the Polish Institute of Film Art. The charge should be equal to 1.5% of VOD-related revenues or revenues from commercials whichever is higher. The details are described in *Technology, Media, Telecommunication* part of this Handbook;
- **Resumption of procedural time limits:** the Third Law on COVID-19 repeals the provisions suspending certain deadlines in tax and fiscal penal law procedures. The suspended deadlines would start or continue to run within 7 days after the Third Law on COVID-19 enters into force.

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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## 5. EMPLOYMENT LAW

The Anti-Crisis Shield contains a number of solutions that are important for employers. They mainly concern the funding of employees' remunerations, the possibility of introducing flexible working time and exemption from ZUS (Social Security) contributions. **The newest changes (introduced by the Fourth Law on COVID-19) cover in some places just a change in the amount of subsidy, due dates, new conditions or possibilities of receiving subsidies. However, there are also entirely new issues such as regulating remote work or holiday leave from previous years. All these changes are described in red.**

### Subsidies for employees' remuneration

Employers may be entitled to the following forms of funding:

- introducing **economic stoppage** in relation to all or some employees and reducing their remuneration by up to 50%, but not lower than to PLN 2,600 gross (minimum remuneration) monthly for full time employment.

In such a case the funding from the Guaranteed Employee Benefits Fund will equal PLN **1,300** (50% of the minimum remuneration) monthly for full time employment, increased by the amount of social security contributions due from the employer from this amount (approx. PLN 233.09);

- **reducing the working time** of all or some employees by up to 20% (but not lower than to 0.5 of the full time) and reducing their remuneration accordingly, but not lower than to PLN 2,600 gross (minimum remuneration) monthly for full time employment.

In such a case the funding from the Guaranteed Employee Benefits Fund will be up to **PLN 2,132.59** (50% of the reduced remuneration, but not more than 40% of the average monthly remuneration in the previous quarter) monthly for full time employment, increased by the amount of social security contributions due from the employer from this amount (approx. PLN 382.37);

- **funding remuneration of employees not covered by stoppage, economic stoppage or reduced working time**

In this case funding from the Guaranteed Employee Benefits Fund will be up to **PLN 2,132.59** monthly (50% of the reduced remuneration, but not more than 40% of the average monthly remuneration in the previous quarter) for full time employment, increased by the amount of social security contributions due from the employer from this amount (approx. PLN 382.37);

- funding from Labor Fund of an employee's remuneration (not related to stoppage, economic stoppage or reduced working time) in an amount depending on the fall in turnover:
  - fall in turnover of at least 30% - funding up to **PLN 1,300** (50% of the minimum remuneration) monthly, increased by the amount of social security contributions due from the employer;
  - fall in turnover of at least 50% - funding up to **PLN 1,820** (70% of the minimum remuneration) monthly, increased by the amount of social security contributions due from the employer;

- fall in turnover of at least 80% - funding up to **PLN 2,340** (90% of the minimum remuneration) monthly, increased by the amount of social security contributions due from the employer.

The above forms of funding are available:

- for up to 3 months (paid monthly);
- in relation to employees and persons hired under contracts of mandate or other service contracts (civil law agreements).

Employers may benefit from various forms of funding in relation to different groups of employees. However, it is not possible to benefit from more than one form of funding for the same employee and for the same period.

<ul style="list-style-type: none"> <li>▪ <b>Conditions for receiving funding of employees' remuneration</b></li> </ul>		
<p><b>For employees who are covered by economic stoppage or reduction of working time</b> (funding from the Guaranteed Employee Benefits Fund (FGŚP) based on an agreement with the voivodeship labor office)</p>	<p><b>For employees who are not covered by stoppage, economic stoppage or reduced working hours</b> (funding from the Guaranteed Employee Benefits Fund based on an agreement with the voivodeship labor office)</p>	<p><b>Not related to economic stoppage or reduction of working time</b> (funding from the Labor Fund (FP) based on an agreement with the district governor)</p>
<ul style="list-style-type: none"> <li>▪ available for entrepreneurs, non-governmental organizations and public benefit organizations</li> </ul>	<ul style="list-style-type: none"> <li>▪ available for entrepreneurs, non-governmental organizations and public benefit organizations</li> </ul>	<ul style="list-style-type: none"> <li>▪ available only for micro, small and medium-sized entrepreneurs, non-governmental organizations and public benefit organizations</li> </ul>
<ul style="list-style-type: none"> <li>▪ fall in turnover resulting from COVID-19 of at least:           <ul style="list-style-type: none"> <li>– 15% during any 2 consecutive months after <b>31 December 2019</b> in comparison to the same 2 months in the previous year, or</li> <li>– 25% in any chosen month after <b>31 December 2019</b> in comparison to the previous month</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ fall in turnover resulting from COVID-19 of at least:           <ul style="list-style-type: none"> <li>– 15% during any 2 consecutive months after <b>31 December 2019</b> in comparison to the same 2 months in the previous year, or</li> <li>– 25% during any consecutive month after <b>31 December 2019</b> in comparison to the previous month</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ fall in turnover resulting from COVID-19 of at least 30% during any 2 consecutive months after <b>31 December 2019</b> in comparison to the same 2 months in the previous year</li> <li>▪ (a month is also understood as 30 consecutive days)</li> </ul>

<ul style="list-style-type: none"> <li>▪ (a month is also understood as 30 consecutive days)</li> </ul>	<ul style="list-style-type: none"> <li>▪ (a month is also understood as 30 consecutive days)</li> </ul>	
<ul style="list-style-type: none"> <li>▪ concluding an agreement with trade unions or employees' representatives (if there are no trade unions).</li> <li>▪ (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)</li> </ul>	<ul style="list-style-type: none"> <li>▪ lack of obligation to conclude an agreement with trade unions or employees' representatives</li> </ul>	<ul style="list-style-type: none"> <li>▪ lack of obligation to conclude an agreement with trade unions or employees' representatives</li> </ul>
<ul style="list-style-type: none"> <li>▪ no arrears in payment of tax and social security contributions until the end of the third quarter of 2019</li> </ul>	<ul style="list-style-type: none"> <li>▪ no arrears in payment of tax and social security contributions until the end of the third quarter of 2019</li> </ul>	<ul style="list-style-type: none"> <li>▪ no arrears in payment of tax and social security contributions until the end of the third quarter of 2019</li> </ul>
<ul style="list-style-type: none"> <li>▪ no grounds to declare bankruptcy</li> </ul>	<ul style="list-style-type: none"> <li>▪ no grounds to declare bankruptcy</li> </ul>	<ul style="list-style-type: none"> <li>▪ no grounds to declare bankruptcy</li> </ul>
<ul style="list-style-type: none"> <li>▪ the funding is not available for persons whose remuneration in the month preceding filing the motion was higher than PLN 15,994.41 (300% of the average monthly remuneration in the previous quarter)</li> </ul>	<ul style="list-style-type: none"> <li>▪ the funding is not available for persons whose remuneration in the month preceding filing the motion was higher than PLN 15,994.41 (300% of the average monthly remuneration in the previous quarter)</li> </ul>	<ul style="list-style-type: none"> <li>▪ the funding is available regardless of the amount of employees' remuneration</li> </ul>
<ul style="list-style-type: none"> <li>▪ prohibition of dismissals based on economic reasons of employees covered by the funding during the period of funding</li> </ul>	<ul style="list-style-type: none"> <li>▪ prohibition of dismissals based on economic reasons of employees covered by funding during the period of funding</li> </ul>	<ul style="list-style-type: none"> <li>▪ obligation to continue employment of employees covered by the funding during the period of funding</li> </ul>

## Additional measures for employers - in case of a fall in turnover

The employer is entitled to:

- reduce the employee's working time by up to 20%, but not lower than to 0.5 of the full time (the remuneration may not be lower than the minimum remuneration for full time employment, taking into account the working time before the reduction); or
- cover the employee with economic stoppage, (the remuneration may be reduced by up to 50%, but not lower than the minimum remuneration for full time employment, taking into account the working time).

The conditions for applying such measures are as follows:

- the ratio of the employees' remuneration costs (including social security contributions financed by the employer) to the revenues from the sale of goods or services from a chosen month after 1 March 2020 is at least 30% and is increased by at least 5% in comparison to the previous month (a month is also understood as 30 consecutive days) and;
- an agreement with trade unions or employees' representatives (in case there are no trade unions) must be concluded

The above measures may be applied for no longer than 12 months after cancellation of the state of emergency or state of epidemic.

## Flexible working time of employees

Employers may be entitled to:

- shorten the obligatory **rest periods** of employees - the daily rest period to at least 8 hours and the 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 or an increase in the ratio of employees' remuneration costs to the revenues from the sale of goods or services;
- 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. 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

Entrepreneurs may be entitled to full or partial exemption from unpaid social security and health insurance contributions if they file a relevant motion with the Social Security Office (ZUS) no later than on 30 June 2020:

- employers who registered fewer than 10 persons for social security – **full exemption for 3 months (March, April, May 2020)**;
- employers who registered from 10 to 49 persons for social security – **50% exemption for 3 months (March, April, May 2020)**;
- self-employed persons who conducted business activity before 1 April 2020 and their revenue in the first month of the exemption did not exceed 300% of the projected average monthly remuneration – **full exemption for 3 months (March, April, May 2020)**;
- self-employed persons who conducted business activity before 1 April 2020 and their revenue in the first month of the exemption exceeded 300% of the projected average monthly remuneration, but their income did not exceed PLN 7,000 – **full exemption for 2 months (April, May 2020)**;
- self-employed persons benefiting from the so called *Relief for Start* who conducted business activity before 1 April 2020 and whose revenue in the first month of the exemption did not exceed 300% of the projected average monthly remuneration or exceeded 300% of the projected average monthly remuneration, but their income did not exceed PLN 7,000 – **full exemption for 2 months (April, May 2020)**.

In the event that social security contributions for the period of exemption have already been paid entrepreneurs may apply for a refund.

In addition, based on a motion filed during a state of epidemic emergency or state of epidemic or 30 days after their cancellation, all employers may be entitled to exemption from:

- **interest for late payment** of contributions for the period starting from 1 January 2020;
- **extension fee** in case of deferring or paying in installments of contributions for the period starting from 1 January 2020.

### **Deadline for payment of tax advances from income from employment relationships**

Employers who faced negative economic consequences due to COVID-19 may benefit from the **extended deadline to pay income tax advances** on remunerations collected in March and April 2020. The new deadline to fulfill the obligation is 1 June 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 epidemic 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 epidemic emergency or state of epidemic.



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

### **Health and safety training**

During a state of epidemic emergency or state of epidemic, employers may conduct the **initial health and safety training sessions** via electronic means of communication (except for the work post training for some types of work, e.g. blue-collar workers or work posts with dangerous factors).

Moreover, during a state of epidemic emergency, state of epidemic and 30 days after their cancellation employers are not obliged to conduct the **periodic health and safety training sessions**. The deadline for conducting such trainings is 60 days after canceling the state of epidemic emergency or state of epidemic.

### **Employee Capital Plans (PPK)**

Employers hiring at least 50 persons (as at 30 June 2019) are 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**).

### **Additional measures for employers in strategic sectors**

During a state of emergency or state of epidemic, employers operating in selected strategic sectors are entitled to the following in order to ensure continuity of their activity:

- modifying the working time system or schedule of employees;
- instructing employees to work overtime as necessary;
- instructing employees to serve on-call duties without the standard limits relating to obligatory minimum daily and weekly rest periods;
- instructing employees to spend their rest periods in a place indicated by the employer, e.g. at the workplace.

### **Remote work**

In order to counteract COVID-19, employers may unilaterally instruct employees to work remotely, provided that the employee has the skills, technical capabilities and space to work remotely and the type of work performed makes remote work possible.

In that case:

- the employer must provide the tools and materials for work as well as logistic support;
- the employee may use their own tools and materials only if they ensure the protection of confidential information;
- at the employer's request, the employee is obliged to keep records of the activities performed, in particular their description, date and duration.

### **Outstanding holiday leave**

During a state of emergency or state of epidemic, the employer may grant the employee up to 30 days of holiday leave (the days the employee is entitled to under Polish law but which were not taken by the employee in full in previous calendar years):

- on the date indicated by the employer;
- without the employee's consent;
- disregarding the applicable holiday schedule.

### **Limitation of benefits when terminating employment**

During a state of emergency or state of epidemic, the amount of compensation or other cash benefit resulting from the statutory provisions paid to an employee that leaves the company may not exceed 10 times the minimum remuneration for work (**PLN 26,000**).

It concerns the following cases: termination of employment, termination of a contract of mandate, service contracts and task-specific contracts and termination of performing a function against remuneration.

This limitation may be used when there is a fall in turnover or increase of the ratio of employees' remuneration costs to revenues from the sale of goods or services.

### **Suspension of obligations related to the company social fund**

During a state of emergency or state of epidemic, the employer may suspend obligations related to the functioning of the company's social fund, i.e.: establishing or operating the fund, making a basic contribution for the fund, paying holiday benefits from the fund.

The employer may benefit from this suspension in case of a fall in turnover or an increase of the ratio of the employees' remuneration costs to the revenues from the sale of goods or services, and the conclusion of an agreement with the representative trade union organizations – if there are representative trade union organizations operating at the employer.

In addition, during this period, the provisions of internal by-laws concerning the increased amount of the contribution for the fund do not apply (only basic contributions are made).

### **Non-competition agreements**

During a state of emergency or state of epidemic, the employer may terminate each post-contract non-competition agreement with 7 days' notice.

The above right concerns non-competition agreements binding after the termination of an employment contract, contract of mandate, service contract and agency contract.

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## 6. COMPLIANCE

The Laws 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 changes in criminal liability, liability for failure to comply with obligations to prevent and control the virus, introducing maximum product prices and administrative fines for entrepreneurs. **The Fourth Law on COVID-19 provides for new hacking offences and higher penalties for types of fraud, including those committed on a computer.**

### 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 Code of Offences, 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) the 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; Second Law on COVID-19 adds here that also changes of contracts with a charity organization and withdrawal from the recovery of debts in that case has been covered and it will not be a violation of public finance discipline; Liability is also excluded for persons who carry out duties and tasks in public interest relating to combating the effects of COVID-19, insofar as they are directed towards combating those effects. In that scope, members of the management board, the supervisory board and liquidators are exempt from liability for damage made to the company under the Commercial Companies Code.
- 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);
- Third Law on COVID-19 adds a new form of financial offence of too high costs and interests in consumer loans and credits (added § 2 and § 3 of Article 304 of Penal Code). The new offence is: demanding from a consumer
  - costs other than interest at least twice the maximum amount of such costs specified in law;
  - interest in an amount at least twice as high as the maximum rate of interest or the maximum rate of interest for delayin exchange for a financial benefit to be returned (loan, credit etc.).
- **The Fourth Law on COVID-19 also adds a new offence of hacking videoconferences/calls/online classes. The code will use the following description: an unauthorized person joins the data transmission carried out with the use of an ICT system and thwarts or hinders the transmission of information by the user of that system. The penalty is restriction of freedom or a fine not lower than PLN 1,000. If the hacker uses words**

commonly regarded as offensive, the minimum amount of the fine is PLN 3,000 and additionally the hacker may be arrested.

- The Fourth Law on COVID-19 increases penalties for up to 10 years of imprisonment for theft, fraud, online fraud and destroying someone else's items if the value of goods is above PLN 200,000.
- Additional controversies has been raised re. changes in general rules of the Criminal Code. Those changes lead in practise to increased penalties, since the court powers to choose the lower options are limited.

### **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 (*poviat*) 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 could 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.

The Second Law on COVID-19 adds that orders can also be issued by the Minister of Health himself or at the request of the voivode. The time period in which the orders may be issued is limited to 180 days from entry into force of the Act. The companies cover the costs of preparing for the ordered tasks.

### **Criminal and administrative proceedings**

The Fourth Law on COVID-19 introduces the possibility to carry out certain activities related to criminal proceedings remotely (e.g. hearing a witness online). There are doubts how this will work in practise- mainly due to technological problems of the courts and law enforcement authorities.

## **Tracking citizens**

The Second Law on COVID-19 contains controversial permissions to track people. Telecommunication providers will be obliged to disclose the location of equipment (we understand this refers mostly to phones) of infected persons and those in quarantine for a period of 14 days to the Minister of Informatization. This Minister may also demand that telecommunication providers provide - in the manner and form established by the Minister – anonymized data on the location of users' equipment (e.g. their phones).

## **Acquisition of rights to systems managing the flights - drones**

During the period of validity of the Second Law on COVID-19, operations of unmanned aircraft (e.g. drones) may be carried out only after informing the Polish Air Navigation Agency (PAŻP) and in accordance with detailed regulations on flight operations.

For the purpose of carrying out these tasks, the PAŻP may take over all the owner's proprietary rights (copyrights) to the systems for coordination and management of unmanned aircrafts flights in Polish airspace. This refers to systems which have undergone the verification process and are authorised by the relevant aviation supervisory authorities. The takeover takes place on all fields of exploitation of the Act of 4 February 1994 on Copyright and Related Rights. The takeover shall take place at the moment of submitting a declaration of will to the owner of the rights and is made in exchange for remuneration (the book value of the system).

Unfortunately, the form of submitting this declaration, the appeal possibilities, return of rights and a way of determining the remuneration have not been specified.

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## 7. CENTRAL REGISTER OF BENEFICIAL OWNERS

Under the First 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.

The 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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## 8. CONSUMER REGULATIONS

The First Law on COVID-19 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. **The Fourth Law on COVID-19 introduces delayed consumer credit payments. We describe the details below.**

### Maximum prices

Under the First Law on COVID-19 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.

### Regulation regarding maximum margins for face masks

The project of the Regulation of the Minister of Development on the maximum wholesale and retail margins apply in the sale of certain face masks was published on the website<sup>1</sup> of the National Judicial Council (*Rządowe Centrum Legislacji*). The Regulation is currently at the stage of providing of the opinions to the project.

The draft provides for maximum wholesale and retail margins apply in the sale of: (i) protective masks that are personal protective equipment; and (ii) masks that are not personal protective equipment used to cover nose and mouth. Protective masks that are medical devices are not covered by this regulation.

The maximum wholesale margin will be 8% of the selling price. The below table presents how retail margin will be calculated:

Wholesale price (PLN)	Retail margin calculated based on wholesale price
0-3	50%
3.01-5	40%
5.01-7	30%
7.1-10	20%
10.1-15	10%
Above 15	5%

### Cheaper consumer credit

The First Law on COVID-19 introduced 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 it is 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:

<sup>1</sup> <https://legislacja.rcl.gov.pl/projekt/12333203/katalog/12683531#12683531>



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 First Law on COVID-19 postponed 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.

### **Delayed credit payments**

A consumer who:

- i. has a consumer credit, a mortgage or a credit within the meaning of Article 69 of the Act of 29 August 1997 – Banking Law and is in financial difficulties because he/she has lost his/her job or other main sources of income after 13 March 2020;
- ii. has concluded a credit agreement prior to 13 March 2020 and;
- iii. whose credit period ends 6 months after that date,

may suspend the repayment of consumer credits and mortgage at his or her bank for a maximum of three months. One credit of each type may be suspended in a given bank. This will happen automatically when the application is delivered to the bank and is free of charge (excluding the insurance related to the credit).

In addition, even if the consumer has already used a credit repayment suspension offered by a bank, the consumer has not lost the chance to suspend the repayment based on the Fourth Law on Covid-19. Upon delivery of an application for the suspension of a credit agreement under the Fourth Law on Covid-19, the previous suspension of payments shortens and the suspension under the Fourth Law on Covid-19 starts. To sum up, the repayment period of the entire credit is extended to include the statutory suspension period. No interest or other charges other than insurance are charged for this time.

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## 9. LEASE AGREEMENTS

The solutions adopted by the Parliament will cause significant interference in existing lease agreements. **The Fourth Law on COVID-19 specifies the meaning of 'retail space'**.

### **Retail buildings with retail space of over 2000 m<sup>2</sup>**

Under the First Law on COVID-19:

- during the period in which the tenant's activities in a retail facility with retail space of over 2000 m<sup>2</sup> 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;
- **the Fourth Law on COVID-19 specifies that 'retail space' means a space in a retail facility with retail space of over 2000 m<sup>2</sup>, regardless of the purpose, in particular for the sale of goods, services and gastronomy;**
- 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 m<sup>2</sup>, 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 First Law on COVID-19 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 a 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 a part of the premises for use to third parties without the written consent of the lessor.

### **Prohibition to terminate lease agreements or rent amount by 30 June 2020**

The First Law on COVID-19 introduces a ban on terminating lease agreements 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.

### **Properties of the State Treasury**

At the request of an entity whose financial liquidity has been deteriorated due to negative economic consequences resulting from COVID-19, the relevant authorities may withdraw from the recovery of receivables for the lease, tenancy or usufruct for the period of the epidemic emergency or the epidemic status.

It is also possible to write off such receivables in whole or in part, postpone or spread them into installments.

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## 10. PUBLIC PROCUREMENT

The Fourth Law on COVID-19 contains a number of public procurement provisions. We describe them in red below.

### **Amending public contracts**

The First 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**

The Laws on COVID-19 do not have 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.

As follows from the justification for the Fourth Law on COVID-19, its basic goal is to reduce the costs of participation in public procurement procedures and to prevent the loss of financial liquidity of contractors. Therefore, the following changes have been introduced with respect to public procurement law:

### **Contract notice posted on the website**

In accordance with amended Article 40.1 of the Public Procurement Law, the contracting authority initiates a public tender by posting a contract notice on its website. Thus, the existing obligation to post the contract notice in a publicly accessible place at the contracting authority's seat has been removed. Apart from the security considerations related to the occurrence of the COVID-19 epidemic, this change is reasonable due to the fact that the requirement for the contracting authority to simultaneously post the contract notice in a publicly available place at its seat and on its website is unnecessary and impractical. This is especially so since the primary source of information on public procurement is the Public Procurement Bulletin and the Official Journal of the European Union. As a result of the introduced change, for the proper initiation of the procedure it will be necessary to announce the contract on the website and in the Public Procurement Bulletin or the Official Journal of the European Union (depending on the value of the contract).

### **Replacement of the public procurement contract**

In the event that, in the contracting authority's opinion, the circumstances related to the occurrence of COVID-19 affect the proper performance of the contract, the contracting authority shall amend the contract in agreement with the contractor, instead of being able to change the contract as it has done so far. On the other hand, the optionality in this respect has been left to the contracting authority if it considers that the circumstances related to the occurrence of COVID-19 may affect the proper performance of the contract (section 4a is added).

This amendment is intended to create a guarantee for contractors that the provisions of public procurement contracts include the change in socio-economic conditions caused by the COVID-19 epidemic.

### **No deduction of contractual penalties and no claiming due payments from a performance bond**

During the period when a state of emergency or state of epidemic is announced due to COVID-19, and for 90 days from the date of cancellation of that status, the contracting authority may not deduct a contractual penalty stipulated in the event of non-performance or improper performance of the contract from the contractor's remuneration or from its other

receivables. It may not seek any satisfaction from the performance bond, provided that the event in relation to which such penalty was stipulated occurred during the period of the state of emergency or the state of epidemic. During that time limit, the limitation period of the contracting authority's claim and the period of validity of the performance bond shall not commence, and the commenced period shall be suspended. Such periods may expire no earlier than at the end of 120 days from the date of cancellation of the status which was valid as the last one.

The change aims to prevent contractors from losing financial liquidity and, in consequence, their ability to obtain new public contracts and to perform already concluded public procurement contracts. It should be emphasized that this solution does not mean that the contractors cease to be liable for damages for non-performance or improper performance of the public procurement contract, including the removal of the obligation to pay a contractual penalty. Its essence, however, involves temporarily limiting the powers of the contracting authority as regards the admissibility of making deductions and satisfying its claim from the performance bonds.

Simultaneously, in order to secure the interests of contracting authorities, namely, the ability to satisfy their claims after the end of the epidemic, the Fourth Law on COVID-19 introduces the suspension of the start or the suspension of the limitation periods for such claims, as well as the dates of validity of the performance bonds, for the period when the said restrictions are effective. This solution makes it possible to maintain a balance between the interests of both parties to the public procurement contract.

### **Bid bonds and public procurement contracts**

The obligation to demand a bid bond is removed with respect to proceedings relating to an estimated value above the EU thresholds. The purpose of this regulation is to reduce the cost of participation in proceedings, and thus to increase the availability of the public procurement market for contractors during the COVID-19 epidemic. Consequently, having assessed the legitimacy of the request to provide a bid bond, taking into account the specificity of a given contract, including the circle of potential contractors, it is the contracting authority that will decide whether a bid bond is required to participate in it.

Then, the following rules shall apply to contracts concluded in accordance with procurement procedures:

- Having performed part of the contract, the contracting authority will pay remuneration in parts or will give an advance on the performance of the contract, with respect to all public procurement contracts concluded for a period of more than 12 months (so, not only with respect to construction work contracts). The contracting authority shall specify in the contract the percentage of remuneration paid for the performance of its individual parts. The percentage of the last part of the remuneration may not be more than 50% of the remuneration due to the contractor. However, the advance payment may not be less than 5% of the remuneration due to the contractor.
- The performance bond may amount to a maximum of 5% of the total price specified in the offer or the maximum nominal value of the contracting authority's liability under the contract instead of the existing 10%. However, a higher performance bond of no more than 10% can be determined if this is justified given the subject of the contract or the risk associated with the performance of the contract, which the contracting authority has described in the terms of reference.
- The contracting authority may partially return the performance bond after partial performance of the contract, if it provided for such a possibility in the terms of reference.

The above regulations do not apply to proceedings initiated and not completed before the date of entry into force of the changes. On the contrary, the existing regulations will apply to public procurement contracts concluded: 1) prior to the entry into force of the changes; but 2) not earlier than the day of entry into force of the changes as a result of procurement proceedings initiated before the date of entry into force of this provision.

In addition, the special solutions introduced by the above regulations will apply to public contracts awarded as a result of proceedings initiated prior to 31 December 2020, irrespective of when such proceedings would have ended. According to amended Article 36.2 of the Law on COVID-19, Article 15 va and Article 15 vb will cease to be effective on 1 January 2021. Public procurement proceedings initiated during the above-mentioned period and not completed by 31 December 2020 will be continued in accordance with the existing rules, i.e. pursuant to the provisions of the Public Procurement Law modified by the Fourth Law on COVID-19, despite the fact that Article 15 va and Article 15 vb will cease to be effective as from 1 January 2021. The analogously modified provisions of the Public Procurement Law will apply to contracts concluded after the procurement procedure has been carried out, provided they were concluded before 1 January 2020 or were already concluded in 2021, but as a result of proceedings initiated in 2020.

### **Certificate of no arrears with payments of social security contributions**

In the event that the contractor has submitted an application to Social Security (ZUS) for an exemption from the obligation to pay social security and health insurance and labor fund contributions, etc., for the period of March - May 2020, until the authorities ultimately examine the application, the contractor will not be treated as an entity in arrears and will be able to obtain from ZUS a certificate of no arrears (in order to submit it to the Contracting Authority and thus to meet the formal requirements of participation in the public procurement procedure).

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## 11. SUPPORT FOR RES SECTOR

Entities developing RES projects are particularly exposed to the negative consequences of the coronavirus epidemic. The present circumstances may result in, for instance, delays in the supply of components indispensable for carrying out investment processes or inability to engage personnel. The Laws on COVID-19 provide for measures supporting RES investors.

### **Extension of deadlines for onshore wind and PV projects**

The First Law on COVID-19 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**

A 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 obtaining a license or entry in the relevant registers.

The application for a 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. 24 months [for PV installations] or 33 months [for onshore wind installations] counted from the date of closing the relevant RES auction session).

### **Extension of the validity of connection agreements**

The Second Law on COVID-19 provides for an option to extend the validity of connection agreements for renewable energy sources installations until 30 June 2022. In addition, renewable energy sources projects successful at auction will be entitled to request grid operators to adjust the deadline for the first delivery of power to the grid in line with the deadline for the first sale of power within the auction system extended to up to 12 months (according to the rules described above).

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## 12. FOREIGN INVESTMENT CONTROL

(new chapter added as a result of the Fourth Law on COVID-19)

The Third Law on COVID-19 provides amendments to the Act on the Control of Certain Investments. The aim is to strengthen protection for Polish companies against acquisitions by entities which are not Member States (defined as EU/ EEA or OECD countries), which could threaten the ability to ensure public security, public order and public health in the context of the economic situation caused by the COVID-19 epidemic. The Act gives the President of the Office of Competition and Consumer Protection ('President of the OCCP') new, far-reaching competences. Restrictions on the freedom of investments will be binding for 2 years, starting from 24 July 2020 until 24 July 2022.

### Key issues:

- Each transaction covered by the Act and resulting in: (i) the acquisition, or achievement of significant participation or (ii) the acquisition of dominance - indirectly, directly or subsequently - by undertakings with their registered offices or citizenship (for natural persons) from outside any Member State will have to be notified to the President of the OCCP;
- The notification will concern companies whose turnover in Poland in any of the two financial years preceding the notification exceeded EUR 10 million and that meet one of the criteria for protection specified in the Act.
- The President of the OCCP will generally have 30 business days to issue a 'no issue' decision or to initiate a screening procedure. In the event that the screening procedure is initiated, the decision regarding the Investment should be issued within 120 days.
- Closing the deal without the required notification will be invalid. Lack of the notification will also result in the imposition of a high penalty and even imprisonment with respect to natural persons.

### Investors and investments - who and what is subject to restrictions?

Natural persons who do not have citizenship of a Member State and companies that do not have, or did not have their registered offices in the territory of a Member State for at least two years from the day preceding the notification will be required to make a prior notification to the President of the OCCP, informing him about the direct, indirect or subsequent acquisition or achievement of a significant participation or the acquisition of dominance in a protected entity.

In accordance with the Act:

- the acquisition or achievement of a significant participation shall mean a situation affecting the activities of the protected entity by: (i) holding shares/stocks representing at least 20% of the total number of votes; (ii) holding a capital share in a partnership with a value of at least 20% of the value of all contributions made to such company; or (iii) having a share in the profit of another entity, amounting to at least 20%; and (iv) reaching or exceeding the threshold of 20% and 40% of the total number of votes in the protected entity's decision-making body, or of a share in the profit of the protected entity, or of a capital share in a partnership that is a protected entity, in relation to the value of all contributions made to that company by the acquisition of shares/stocks

or the rights resulting from shares, or the acquisition of shares, or (v) the acquisition or lease of an undertaking or its organized part from the protected entity;

- acquisition of dominance shall mean achieving the status of dominant entity within the meaning of applicable laws through the acquisition of shares or the conclusion of an agreement providing for the management of the entity or the transfer of profit by that entity.

With respect to indirect investments, the Act lists acquisitions by subsidiaries as well as other situations, including: (i) acquisition of an entity on one's own behalf, but commissioned by another entity, including as part of the performance of a portfolio management agreement; or (ii) an entity from outside a Member State obtaining the status of parent entity in relation to an entity that has a significant participation in the protected entity or is a parent entity or has the legal title to an undertaking or its organized part. Indirect investment may apply also as a result of a transaction undertaken abroad and under foreign law.

In turn, subsequent investments involve the acquisition or achievement of a significant participation or the acquisition of dominance in the event of, among other things: (i) redemption of shares/stocks in the protected entity; (ii) division or merger of the protected entity; or (iii) amendment of the articles of association of the protected entity in respect of the preference of shares/stocks or a share in profit.

Importantly, the Act does not provide for an exemption for intra-group transactions. This means that it will also apply to transactions within the same capital group.

### **Which entities are protected?**

The protection applies to public companies, and entities that:

- have property disclosed in a single list of the facilities, installations, equipment and services included in the critical infrastructure. This includes companies that provide food, water, energy, energy and fuel supplies, rescue companies, transport companies or financial companies, or;
- develop or modify software for strategic companies, including: (i) for the control of power plants or networks, (ii) for the management and control of drinking water supplies, (iii) for the operation of equipment or systems used for cash supply or card payments, (iii) for the operation of hospital IT systems; or
- conduct a specific business activity in one of 21 industries, including in the field of electricity generation, petrol or diesel production, production of chemicals, telecommunications, manufacturing of medical devices, medicines or other pharmaceutical products, and producing food;

provided that the turnover of such company in Poland in any of the two financial years preceding the notification exceeded the equivalent of EUR 10 million.

### **How is the control procedure carried out?**

The notification will be required before the conclusion of any agreement or other legal transaction, and in the case of an invitation to subscribe for or exchange stocks in a public company - before publishing the invitation. The Act also provides rules, though not precisely, on the submission of notifications in the case of indirect and subsequent acquisitions. In the event of more than one agreement being concluded, the notification should be made prior to the conclusion of the last agreement, and in the event of an invitation to the subscription of stocks, before the invitation is published. This provision already raises doubts. Acceptance

of the fact that it is not permissible to make an offer for stocks prior to obtaining appropriate consent brings into question the possibility of conducting such transactions in accordance with public company regulations.

As a result of the notification, the President of the OCCP will initiate preliminary examination proceedings, and within 30 business days from their initiation he will issue a decision in which he will either: (i) decline to initiate control proceedings and state that he does not raise any objections to the transaction, or (ii) issue a decision to initiate the control procedure.

The control procedure will be initiated in case of a failure to provide missing information or documents within the given deadline, or if there are reasons that justify a further examination of the acquisition in terms of public security or public order. In this case, the President of the OCCP will receive another 120 days.

It is worth adding that the very general conditions justifying the initiation of the control procedure will enable the President of the OCCP to freely interpret the new law.

At the same time, pursuant to the clause of circumvention of the law, the President of the OCCP will be able to initiate ex officio examination proceedings if there are conditions of abuse or circumvention of the law. One of such conditions is the lack of a permanent establishment, an office or personnel in a member state.

### **What are the sanctions?**

In the event of a breach of the obligation to submit the notification, the Act provides for financial liability (up to PLN 50 million) and criminal liability (imprisonment from 6 months to 5 years). Both of these penalties may also be imposed jointly.

Moreover, any transaction made without the required notification or made despite an objection by the President of the OCCP will be invalid (in limited cases the voting rights are excluded instead).

### **Investment control vs. merger control**

Generally, the procedure under the Act is similar to the procedure relating to merger control, which is supervised by the President of the OCCP under the Act on Competition and Consumer Protection. However, the new law does not combine these two procedures, which means that a single transaction may require two proceedings and two independent consents issued by the same authority. Also, the legal remedies are different. Possible objections of the President of the OCCP under the Act should go to the administrative court. However, decisions regarding merger control under the Act on Competition and Consumer Protection should go to the civil court.

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## 13. STATE AID

As several types of support covered by the Laws on COVID-19 may constitute State aid, packages will need to be notified to the European Commission. 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 was expressed very soon (similar cases from Germany, Denmark, Spain, Italy, Estonia, Luxembourg France, Portugal, Latvia, Ireland and the UK were done within a couple of days). **We now have new European Commission Decisions for Poland, i.e the Ninth, Tenth and Eleventh (so-called Financial Shield of the Polish Development Fund for Large Enterprises), Twelfth and Thirteenth decision. All of them are described below.**

### **Guidelines by the Office of Competition and Consumer Protection.**

The Office of Competition and Consumer Protection published<sup>2</sup> guidelines for "Possible actions of Local Government Entities in providing public aid to counteract COVID-19" confirming that the new aid instruments resulting from the Anti-Crisis Shield have been qualified as state aid to remedy a serious disturbance in the economy, i.e. in compliance with Article 107(3)(b) TFEU.

It should not be qualified as *de minimis* aid, although pursuant to the Temporary Framework, such aid may be combined with *de minimis* aid. This means that the limit of aid resulting from the Temporary Framework is completely separate from *de minimis* aid and thus the value of *de minimis* aid received so far has no impact on the possible value of public aid aimed at remedying serious disturbances in the economy. Additionally, the Office of Competition and Consumer Protection confirmed that aid granted by Local Government Entities, both under resolutions and individual decisions will not require notification to the Office of Competition and Consumer Protection or the European Commission. Thus, the adoption of a given resolution on the basis of the Anti-Crisis Shield is compatible with the application of relevant conditions under the Temporary Framework.

Because of adoption of many public aid programs, the Office of Competition and Consumer Protection prepared a summary of aid cumulation rules. The summary was published at the Office's website and is accessible here:

[https://www.uokik.gov.pl/covid19\\_a\\_pomoc\\_publiczna.php#faq3972](https://www.uokik.gov.pl/covid19_a_pomoc_publiczna.php#faq3972)

In addition, UOKiK published on its website<sup>3</sup> explanations on definition of the undertaking under the limitation of the aid from section 3.1 of the Temporary Framework.

### **Extension of the Temporary Framework and decisions of the European Commission Decision**

The Commission adopted amendments to extend the Temporary Framework<sup>4</sup>

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<sup>2</sup> [https://www.uokik.gov.pl/covid19\\_a\\_pomoc\\_publiczna.php#faq3972](https://www.uokik.gov.pl/covid19_a_pomoc_publiczna.php#faq3972)

<sup>3</sup> [https://www.uokik.gov.pl/covid19\\_a\\_pomoc\\_publiczna.php#faq3972](https://www.uokik.gov.pl/covid19_a_pomoc_publiczna.php#faq3972)

<sup>4</sup> First changes allow Member States to support undertakings that develop and manufacture products needed to fight the coronavirus, such as vaccines, medicines, medical devices, disinfectants and protective equipment. In addition, the Temporary Framework has been extended so that Member States are more able to support the liquidity of enterprises and protect jobs in those sectors and regions that have been most severely affected by the crisis. Second changes to the Temporary Framework allow Member States to provide recapitalisations and subordinated debt to companies in need. Recapitalization is linked with certain rules regarding conditions on the State's entry and exit in the capital of companies and remuneration, conditions regarding governance, including dividends and prohibition of cross-subsidisation and acquisition ban. Simultaneously, recapitalisation aid will be granted if no other appropriate solution is available. The same rules apply to subordinated debt, if it exceeds the relevant thresholds from the section 3.3 of the Temporary Framework.

Additionally, on the same day, the European Commission approved the first Polish aid scheme by issuing the decision SA.56876 - Polish anti-crisis measures - COVID-19 - guarantee scheme. According to it, the program enables Bank Gospodarstwa Krajowego (BGK) to grant guarantees for investment and working capital loans. The estimated budget of this programme is PLN 22 billion (approx. EUR 4.8 billion). This amount is to allow BGK to grant guarantees of up to PLN 100 billion (approx. EUR 22 billion). The estimated amount of the guarantee may be used to cover the total amount of loans up to PLN 125 billion (approx. EUR 27 billion).

### **Second European Commission Decision**

The Commission approved the second Polish aid scheme by issuing decision SA.56896 – COVID-19 - Anti-crisis measures in the form of loans and guarantees financed from EU funds. This program is to be co-financed with European Union funds under shared management, in particular from the European Regional Development Fund and the European Social Fund. Poland has informed the Commission that it estimates that around 20,000 enterprises will benefit from loans and guarantees granted under the program, the total amount of which is set at PLN 3.5 billion (EUR 0.7 billion).

### **Third European Commission Decision**

The Commission approved the third Polish aid scheme, SA.56979 - Polish anti-crisis measures - COVID-19 virus interest rates subsidies. The estimated budget of this scheme is PLN 527 million (around EUR 115 million). The public support, in the form of direct grants, is intended to partially cover interests on loans, which should normally be borne by the borrower. The scheme is open to micro, small and medium-sized enterprises and large enterprises, who will be in a difficult situation due to the economic effects of the pandemic outbreak. The aim of it is to help companies cover their direct capital needs and help them within first 12 months from the moment of signing the loan agreement.

### **Fourth European Commission Decision**

The Commission approved the fourth Polish aid scheme, SA.57065 - Polish anti-crisis measures - COVID-19 - in the form of loans and guarantees financed from the re-use of resources returned from 2007-2013 financial instruments. Program provides support in the form of guarantees on loans and subsidised interest rates for loans. This measure is available to small and medium-sized enterprises, as well as large enterprises. Financial institutions are excluded as eligible final beneficiaries. Under the measure, aid may not be granted to enterprises that were already suffering from difficulties on 31 December 2019. Aid will be granted through credit institutions and other financial institutions as financial intermediaries. The estimated total amount of the program is set at PLN 500 million (approx. EUR 110 million).

### **Fifth European Commission Decision**

The Commission approved the fifth Polish aid scheme, SA. 56922 - Polish anti-crisis measures – COVID-19 – direct grants, repayable advances, tax and payments advantages, tax deferrals and wage subsidies schemes. In this decision, Commission has approved 11 Polish schemes: (i) wages subsidies for employees, (ii) co-financing of conducting business activities for natural persons not having employees, (iii) low-interest loan (in the form of repayable advance) to cover the cost of doing business for a micro-entrepreneur, (iv) co-financing of remuneration of persons employed by non-governmental organisations,

(v) property tax exemptions, (vi) extension of deadlines for payments of property tax, (vii) financial support of natural persons, legal persons or organisational units without legal personality, if creative or artistic activity cannot be continued in its current form during the period of epidemic emergency, (viii) exemption from payments for the rent or lease of public real estate, (ix) withdrawal from the recovery of civil law claims and liabilities due attributable to a local government or its organizational units, (x) exemption from payment of unpaid compulsory social security and health insurance contributions due for the period from 1 March 2020 to 31 May 2020, (xi) wage subsidies for disabled employees and COVID-19 related training aid. The list of beneficiaries depends on given scheme. The estimated total amount of the program is set at PLN 35.1 billion (approx. EUR 7.8 billion).

Guidelines regarding this decision were published at the website of the Polish regulator<sup>5</sup>.

On 13 May 2020, Commission issued a decision, SA.57282, which amended the above mentioned decision. As a result, the budget of scheme seventh, i.e. financial support of natural persons, legal persons or organisational units without legal personality, if creative or artistic activity cannot be continued in its current form during the period of epidemic emergency, was increased by PLN 60 million (approx. EUR 13.12 million). Thus, the total amount of this scheme is set at PLN 80 million (approx. EUR 17.51 million).

### **Sixth European Commission Decision**

The Commission approved the sixth Polish aid scheme, SA. 57015 - Polish anti-crisis measures - COVID-19 - aid in the form of grants or repayable assistance under operational programmes for 2014 - 2020. The measure provides aid in the form of direct grants and repayable advances using for this purpose EU structural funds and including its rules. The scheme is available to all enterprises, which have access to European structural funds and are facing difficulties in consequence of the coronavirus outbreak. The estimated total amount of the program is set at PLN 3 billion (approx. EUR 700 million).

### **Seventh European Commission Decision (so-called Financial Shield of the Polish Development Fund for micro, small and medium companies)**

The Commission approved the seventh Polish aid scheme, SA. 56996 - Polish anti-crisis measures - COVID-19 - repayable advance scheme for micro, small and medium-sized enterprises. Under the scheme, the public support will take the form of repayable advances. The scheme is open to micro enterprises and small and medium-sized enterprises facing economic difficulties and liquidity shortages due to the coronavirus outbreak and which fulfil conditions described in the program such as for example: (i) decrease in revenues of at least 25% in any month after 1 February 2020, when compared to either the previous month or to the same month of the last year, (ii) on the day of submission of the application no liquidation, insolvency or restructuring proceedings, (iii) having a tax residence in the EEA, registration in Poland and not having a real tax residence by the main beneficiary in so-called *tax havens*. The aid granting authority responsible for administering the measure is the Polish Development Fund.

The amount of the financial support for **micro-sized enterprises** depends on a decrease in revenues, i.e. base amount, and number of employees.

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<sup>5</sup> [https://www.uokik.gov.pl/covid19\\_a\\_pomoc\\_publiczna.php#faq3972](https://www.uokik.gov.pl/covid19_a_pomoc_publiczna.php#faq3972)

Financial support (PLN)		Financial subsidy amount depending on the number of employees								
The scale of decrease in revenues	Base financial subsidy amount per employee	1	2	3	4	5	6	7	8	9
<25;50%)	12.000	12.000	24.000	36.000	48.000	60.000	72.000	84.000	96.000	108.000
<50;75%)	24.000	24.000	48.000	72.000	96.000	120.000	144.000	168.000	192.000	216.000
<75;100%)	36.000	36.000	72.000	108.000	144.000	180.000	216.000	252.000	288.000	324.000

The amount of the financial support for **small and medium-sized companies** depends on the decrease in revenues and undertaking's sales revenue for the financial year 2019.

Financial support (PLN)		SME (average)		SME (maximum)	
The scale of decrease in revenues	Financial subsidy amount as a percentage of revenue	SME average income	Financial subsidy amount	SME's maximum income for calculating the financial subsidy amount	Maximum financial subsidy amount
0;25%)	0%	31.300.000	0	225.000.000	0
<25;50%)	4%	31.300.000	1.252.000	225.000.000	3.500.000
<50;75%)	6%	31.300.000	1.878.000	225.000.000	3.500.000
<75;100%)	8%	31.300.000	2.504.000	225.000.000	3.500.000

Applications may be submitted only via electronic channels, through the electronic banking of a given bank and only through the application available at the electronic banking. The estimated total amount of the program is set at PLN 75 billion (approx. EUR 16.6 billion).

### **Eighth European Commission Decision**

The Commission approved the eighth Polish aid scheme, SA.57191 The Polish anti-crisis measures - COVID-19 - state aid in the simplified repayable from financial engineering instruments. The support measures available under the scheme will be co-financed by the EU structural funds. The support will take the form of loan, surety or guarantee. The scheme will be accessible to companies active in all sectors, which have access to European structural funds and are facing difficulties in consequence of the coronavirus outbreak. The budget of the measure is estimated at PLN 2.043 million (approx. EUR 450 million).

### **Ninth, Tenth and Eleventh European Commission Decision (so-called Financial Shield of the Polish Development Fund for Large Enterprises)**

The Commission approved the ninth Polish aid scheme, SA.57306 - the Polish anti-crisis measures - COVID-19 - Financial shield for large enterprises: Liquidity loans. Under the scheme, the public support will take the form of interest loans that are not redeemable and are

granted for a maximum period of 4 years. The amount of the loans may not generally exceed: PLN 1 billion, twice the value of the annual wage bill of the entrepreneur (including employee benefit costs) for 2019, or 25% of the entrepreneur's total turnover in 2019. The total amount of loans that can be granted under the scheme is PLN 10 billion (approx. EUR 2.2 billion).

The Commission approved the tenth Polish aid scheme, SA.57054 – the Polish anti-crisis measures - COVID-19 – Aid for damage compensation and to improve the liquidity of undertakings affected by the COVID-19 outbreak. Under the scheme, the public support will take the form of interest loans of up to PLN 750 million, redeemable up to 75% of the damage suffered by the entrepreneur, but no more than 75% of their value. The total amount of loans that can be granted under the scheme is PLN 7.5 billion (approx. EUR 1.6 billion).

The Commission approved the eleventh Polish aid scheme, SA. 57055 the Polish anti-crisis measures - COVID-19 – equity instruments. The scheme grants the aid in the form of such instruments as acquisition of shares, warrants, bonds or loans convertible into equity under market conditions or under State aid rules, subject to the condition that in the latter case funding which exceeds EUR 250,000,000 will be subject to an individual notification to the European Commission. The total amount of the scheme is PLN 7.5 billion (approx. EUR 1.6 billion).

The above programs are parts of the larger support program in Poland, i.e. "Financial Shield of the Polish Development Fund (PFR) for Large Enterprises", which is managed by the Polish Development Fund (PFR).

According to the decisions, the beneficiaries of the program are:

- a) large enterprises which employ more than 249 employees (as of 31 December 2019, excluding the owner), or which had an annual turnover in 2019 of more than EUR 50 million and a balance sheet for 2019 of more than EUR 43 million; and
- b) small and medium-sized enterprises ("SMEs"), which are not large enterprises but exceed a certain size, i.e. which employ more than 150 employees (as of 31 December 2019, excluding the owner), and their annual turnover in 2019 exceeds PLN 100 million, as long as: (i) their financing gap under the financial projections exceeds PLN 3.5 million; and (ii) the undertaking has exhausted the maximum financing possibilities of the Polish Development Fund program "Financial Shield of the Polish Development Fund for SMEs"; and/or (iii) the financing concerns the Sectoral Program in relation to the Covid-19 epidemic.

The decisions also provided other conditions, such as: (i) conducting business activities on 31 December 2019, (ii) decrease in revenues of at least 25% in any month after 1 February 2020, when compared to either the previous month or to the same month of the last year, (iii) having a tax residence in the EEA, registration in Poland, and the main beneficiary not having a real tax residence in a so-called *tax haven*.

In addition, in order to benefit from the instruments, beneficiaries must, among other things, successfully pass the due diligence process.

## **Twelfth European Commission Decision**

The Commission approved the twelfth Polish aid scheme, SA.57568 Polish anti-crisis measures - COVID-19 - interest rate subsidies (for farmers). The support, which will take the form of interest rate subsidies, will be open to all companies active in the primary agricultural production sector. The aid will be granted to cover up to 2% of the interest rate on loans for small and medium-sized enterprises (SMEs) and up to 1% of the interest rate on loans for large enterprises. The budget of the measure is estimated at PLN 40 million (approx. EUR 9 million).



### Thirteenth European Commission Decision

The Commission approved the thirteenth Polish aid scheme, SA.57519 - Aid for R&D activities related to the COVID-19 pandemic, investment aid for infrastructure for testing and preparation for mass production of products for combating the COVID-19 pandemic, and investment aid for the production of products for combating the COVID-19 pandemic, under operational programs for the years 2014-2020. The public version of the decision is not yet available.

### Further programs subject to EC approval and decisions re. new countries

According to the information on the website<sup>6</sup> of the Office of Competition and Consumer Protection, the following programs are at the notification or pre-notification stage:

- i. **SA.57172** - Polish anti-crisis measures - COVID-19 - scheme for reductions in the repayment of tax liabilities under the Tax Code (prenotification);
- ii. **SA.57452** - Polish anti-crisis measures - COVID-19 - factoring guarantee program (prenotification);
- iii. **SA.57611** - Polish travel vouchers (prenotification);
- iv. **SA.57571** - Public aid for environmental protection and water management purposes in connection with the COVID-19 epidemic (prenotification).

Also, in the meantime the Commission has accepted aid schemes of other countries including Austria, Belgium, Bulgaria, Croatia, Czech Republic, Greece, Netherlands, Lithuania, Malta, Romania, Hungary, Denmark, Germany, Latvia, Sweden, **France, Italy, Luxembourg, Slovakia, Estonia, Portugal, Latvia, Finland, Cyprus and Malta.**

### 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, as referred to in Section 3.1 of the Temporary Framework, to enable, among other things:

- financial support for natural persons, legal entities or organizational units without legal personality, where their creative or artistic activity cannot be continued in their 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, occurring within the state of emergency and state

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<sup>6</sup> More: [https://www.uokik.gov.pl/covid19\\_a\\_pomoc\\_publiczna.php#faq3973](https://www.uokik.gov.pl/covid19_a_pomoc_publiczna.php#faq3973).

of epidemic, or withdrawal from the collection of civil law receivables belonging 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 to the rules of implementation and completion of projects under the operational program. The new act will be applied only exceptionally. To the extent that it is 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;
- the 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 the 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, earlier completion of the 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;

- the possibility to change the project selection criteria at any time and to apply deviations from the approved criteria during the project implementation;
- the 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 the negative effects of COVID-19 in the implementation of operational programs 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 programs 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 receiving 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.

### **New Regulations on granting aid**

The Regulation of the Minister of Funds and Regional Policy of 14 April 2020 on granting aid from financial instruments under the operational programmes for 2014-2020 to support the Polish economy in connection with the COVID-19 pandemic was published. Entrepreneurs (both micro, small, medium and large) will be able to use funds not only for investment purposes, but also for current operation of their companies. The duration of the surety or guarantee is limited to a maximum of 6 years and the surety or guarantee may not exceed:

- 90% of the principal of the loan or credit, if losses are borne proportionately and under the same conditions by the lending institution and the State, or
- 35% of the principal of the loan or credit, if the losses are first attributed to the State and only subsequently to the lending institution.

If a loan or credit decreases over time, the amount guaranteed or the surety is reduced proportionately.

In addition, the Regulation of the Minister of Finance and Regional Policy dated 28 April 2020 on aid granting in the form of grants or repayable assistance under the 2014-2020 operational programmes to support the Polish economy in connection with the occurrence of the COVID-19 pandemic was published. The aid may be granted to entrepreneurs (both micro, small, medium and large) in the form of grants or repayable assistance. Regulation entered into force on 30 April 2020.

### **Applying the Laws on COVID-19**

The implementation of the Laws on Covid-19 will be mostly handled by the Polish Development Fund Group, which is composed of the Polish Development Fund (PFR), Bank Gospodarstwa Krajowego (BGK), the Industrial Development Agency (ARP), the Export Credit Insurance Corporation (KUKE), the Polish Agency for Enterprise Development (PARP), the 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 to 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 **published on the European Commission website, applicable at the date of granting the loan**<sup>7</sup> 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, and 25% in the case of 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.

Currently, the Act **has been adopted with amendments by the Senat and has been referred back to the Sejm.**

### **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.

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<sup>7</sup> The amendment was proposed by the Senat - however, the Sejm may not adopt it.

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.

### **Amendments re. support of new investments**

The Fourth Law on Covid-19 extends the definition of new investment and covers also the acquisition of assets belonging to a plant that has been closed or would have been closed if it had not been purchased, stipulating, however, that the assets cannot be acquired by an undertaking associated with the seller. In addition, the purchase of the company's shares/stocks has been excluded. This change will make it possible to maintain existing jobs and continue business operations, in particular in the event of the COVID-19 pandemic.

In addition, the support decision will be issued for 15 years, if at least 51% of the investment will be located in a special economic zone (before the amendments, the support decision was issued for 15 years only if the entire investment was carried out in a special economic zone).

The Fourth Law on Covid-19 makes it possible to include, as eligible costs of the new investment: (i) two-year labor costs, (ii) costs related to the rent or lease of land, buildings under construction and financial leasing incurred after the end of the investment. This amendment will make it possible to include the above costs (which generally are assumed to be spread over a longer period) also after the date of the completion of the investment, i.e. already during the maintenance period.

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## 14. 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 Fourth Law on COVID-19 introduces new subsidies.**

### **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 - The Second Law on COVID-19 introduces the following changes here: micro, small and medium-sized companies are crossed out and all the types of enterprises are covered now, also non-governmental organizations and public benefit (charity) entities were added. It is all 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). This applies to credits intended to provide financial liquidity.

Amendments may also be implemented to contracts concluded with other creditors. Such changes will be made not under the COVID-19 regime but under general civil law rules.

**Bank Gospodarstwa Krajowego is equipped with the right to grant sureties and guarantees for the repayment of loans or other liabilities incurred by entrepreneurs for the purpose of ensuring financial liquidity; however, the amount of such sureties or guarantees covers no more than 80% of the outstanding amount of a credit or other liability covered by a surety or guarantee. In the event of the execution of such a surety or guarantee, Bank Gospodarstwa Krajowego becomes a beneficiary of the surety or guarantee.**

### **Subsidies for working capital loans aimed at ensuring financial liquidity**

**Under the provisions of the Fourth Law on COVID-19, the Polish legislator introduced a mechanism to subsidize the interest rate on working capital credits for entrepreneurs who find themselves in a difficult financial situation because of the COVID-19 pandemic. This mechanism is aimed at ensuring the financial liquidity of these entrepreneurs, both in the short and medium term, which has been lost or is threatened because of the COVID-19 pandemic.**

**The surcharge mechanism may apply to both "old" credits (i.e. those granted before the date of entry into force of the Fourth Law on COVID-19, if the credit agreement is annexed accordingly) and "new" credits (i.e. those granted after that date, but until 31 December 2020). The mechanism covers only working capital credits (revolving and non-revolving) which were granted in Polish zloty.**

**The mechanism will be applied at the request of an entrepreneur who cumulatively meets such conditions as:**

- a) not meeting as at 31 December 2019 the criteria of a company in difficulty within the meaning of the provisions of Regulation (EU) 651/2014;
- b) performing economic activity in the territory of Poland;
- c) not taking out another credit under the provisions of the fourth COVID-19 Act;
- d) having lost financial liquidity due to the COVID-19 pandemic.

The applications of entrepreneurs will be assessed and considered by lender-bankers which have concluded a relevant cooperation agreement with Bank Gospodarstwa Krajowego. In the event of a positive credit decision, the parties will conclude a credit agreement with an additional payment, or they will annex the already functioning credit agreement accordingly.

The surcharge covers a part of the interest due to the lender-bankers in an amount not exceeding 2%. The surcharge will be paid out by Bank Gospodarstwa Krajowego from the Interest Rate Subsidy Fund to the lender-bank for no more than 12 months from the date of the conclusion (annexation) of the credit agreement with the surcharge.

The subsidies constitute public aid for entrepreneurs aimed at remedying serious disturbances in the economy. The maximum amount of aid for a single entrepreneur is:

- a) EUR 100,000 in the sector of basic production of agricultural products;
- b) EUR 120,000 in the sector of fishery and aquaculture;
- c) EUR 800,000 in other sectors.

This aid may be combined with *de minimis* aid as well as public aid in the form of guarantees. The aid does not constitute revenue within the meaning of tax legislation.

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

The First Law 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 First Law 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 First Law 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.

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

One of the solutions adopted under the provisions of the First Law 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.

### **Use of the electronic document form within Polish Financial Supervision Authority proceedings**

The Second Law on COVID-19 introduces solutions allowing the wider use of electronic document form in administrative proceedings being conducted by the Polish Financial Supervision Authority. The Polish Financial Supervision Authority may use the electronic document form for all decisions being issued.

### **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.

### **Electronic bondholders' meeting**

The provisions of the Second Law on COVID-19 introduce solutions enabling electronic organization and holding of corporate bondholders' meetings. At the same time such an electronic meeting is equal to a traditional one. Also, the organizer decides on the form of the meeting (unless the terms of issue provide otherwise) .

### **Electronic meeting of investment fund participants and council of investors**

The provisions of the Second Law on COVID-19 also introduce solutions enabling the electronic organization and holding of meetings of investment fund participants and councils of investors (unless the articles of association provide otherwise). The decision to hold such meetings shall be taken by the organizer.

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## 15. INTELLECTUAL PROPERTY

The Third Law on COVID-19 repeals the regulations concerning the suspension or withholding of the below-described deadlines. Deadlines which were withheld will begin to run after 7 days from the date the Law enters into force. Deadlines which were suspended continue to run after 7 days from the date the Law enters into force.

The Third Law on COVID-19 also regulates conducting hearings by means of remote technical devices.

(Under the First and Second Law on COVID-19): 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 translations 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;

According to the previous Law, certain deadlines provided for by administrative law were suspended or withheld for the time of the state of emergency and state of epidemic related to COVID-19. Among other things, this concerned 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. Procedural and judicial deadlines in, among others, civil and administrative proceedings were suspended or withheld.

We provide more information about court time limits and conducting hearings in the part on *Court disputes*.

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## 16. 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.

### **Time limits of administrative law will start or will continue to run after 7 days from the date Third Law on COVID-19 enters into force**

Third Law on COVID-19 repealed provisions that provided for the suspension of time limits of administrative law. Time limits that were suspended or could not start, will start (or will continue to run) after 7 days from the date Third Law on Covid-19 enters into force, i.e. they will start (or will continue to run) on 24 May 2020.

### **Time limits of bankruptcy law**

The regulation of the time limits was extended under the Second Law on COVID-19 to time limit for filing bankruptcy motion. If the grounds for declaring a bankruptcy arose during the state of emergency or state of epidemic and the insolvency results from COVID-19 this time limit cannot start, while those already started are interrupted. After the mentioned states are over, the time limits start anew. Moreover, if the insolvency arose during the state of emergency or state of epidemic, there is a presumption that it results from COVID-19.

### **Procedural law time limits and court time limits will start or will continue to run after 7 days from the date Third Law on COVID-19 enters into force**

Third Law on Covid-19 repealed provisions that provided for suspension of procedural law and court time limits. Time limits that were suspended or could not start, will start (or will continue to run) after 7 days from the date that Third Law on Covid-19 enters into force, i.e. they will start (or will continue to run) on 24 May 2020.

### **Urgent cases**

The regulations of Laws on Covid-19 regarding suspension of time limits 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. The lists of urgent cases was supplemented in the Second Law on COVID-19 with cases dealing with restructuring motion. Third Law on COVID-19 supplemented the list of urgent cases with proceedings following the opening of the restructurization, proceedings regarding declaration of bankruptcy and proceedings following declaration of bankruptcy.

### **On-line hearings and closed court sessions**

Third Law on Covid-19 provides that during the state of emergency, state of epidemic and for a year after their repealment in the civil proceedings:

- 1) Hearings and open court sessions are conducted in the form of a **video conference call**, However, hearings and open court sessions are conducted in the normal way if it does not excessively endanger the health of the participants. It means that in practice the judge decides what will be the form of the hearing;

- 2) The judge can order a **closed court session** (with no participants present, only judge and the clerk) instead of the session with participants. It may happen when the judge finds it necessary to hear a case but an open court session could excessively endanger the health of the participants and video conference call is not possible. Each party can object to it.

If the evidence part of the proceedings has been completed, a judge can issue a judgment at a closed court session (with no hearing and participants present) after it receives written explanations of position from the participants.

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## 17. TECHNOLOGY, MEDIA AND TELECOMMUNICATION

The Laws on COVID-19 also include changes in the regulations regarding telecommunications services, installing software to confirm compliance with the quarantine obligation, financing film production, as well as use of solutions offered by new technologies. The Fourth Law on COVID-19 contains restrictions re the foreign acquisition of Polish companies. This may also have impact on investment in the IT/TMT market.

### Foreign investment control

The Fourth Law on COVID-19 Act amends the Act on the control of certain investments. The amendments are intended to introduce controls on the investments of certain business entities in order to protect public order, public security or public health. Among the entities covered by the protection there are, among others, entrepreneurs who conduct business activities that involve telecommunications activities or develop or modify software:

- to control power plants, networks or operate facilities or systems for the supply of electricity, gas, fuel, fuel oil or district heating;
- for the management, control and automation of drinking water supplies or wastewater treatment plants;
- for operating equipment or systems used for voice and data transmission or for storage and processing;
- to operate or manage facilities or systems used for cash supply, card payments, conventional transactions, securities settlements and derivatives transactions or for the provision of insurance services;
- to operate hospital information systems, to operate equipment and systems used for the sale of prescription drugs and to operate a laboratory information system or laboratory tests;
- to operate facilities or systems used for the transport of passengers or goods by air, rail, sea or inland waterway, road, public transport or logistics;
- for the operation of facilities or systems used in the supply of food;
- to provide services of data collection or processing in the cloud.

More on the above changes can be found in the part entitled *Foreign Investment Control*.

### Extensive changes in Telecommunication Law

The Third Law on COVID-19 contains amendments to the Telecommunication Law some of which implement the solutions of European Electronic Communications Code (EECC) into Polish law. The changes will enter into force on two different dates. The changes that enter into force, i.e. on the day following the announcement of the Third Law on COVID-19 i.e. on **16 May 2020** are:

#### Fee for machine-to-machine communication number (M2M)

The Third Law on COVID-19 introduces maximum annual fee for the right to use numbering resources for machine-to-machine communication. The fee is 0.35 PLN. This shall allow the President of Office of Electronic Communication (UKE) to make a new range of numbering available which will be dedicated to M2M services. The numbering range for the machine-to-machine communication is to be separate from subscriber numbering. This is to enable

smooth management of the numbering resources and services provided and as a result development of the M2M market.

### **New grounds for invalidating tenders**

The Third Law on COVID-19 contains a provision on invalidating tenders. It says that the President of UKE will ex officio invalidate the tender, auction or competition, if the draft decision published together with the announcement of the tender does not contain all the required elements arising from the Telecommunication Law. These provisions are to apply to tenders, competitions and auctions announced before the date of entry into force of the the Third Law on COVID-19.

The following changes are to enter into force on **21 December 2020**:

### **Conclusion and termination of telecommunication services contract**

The Third Law on COVID-19 describes new obligations of telecommunication operators related to conclusion and termination of telecommunication services contracts as well as to inform subscribers about service conditions:

- if the operator allows customers to conclude a contract in documentary form (e.g. by simple e-mail, without a qualified electronic signature), they also must allow termination, withdrawal or termination of the contract also in that form;
- if the subscriber submits a declaration of termination of the agreement in a documentary form, the operator must at the latest within 1 working day, confirm that he has received his declaration. The operator may do so by text message or telephone. Then the operator must confirm receipt of the statement on a durable medium within 14 days (e.g. by regular mail);
- the operator will have to inform the subscriber at least once a year about the most favourable tariff packages it offers, unless the subscriber has not agreed to receive marketing information.

### **Automatic extension of telecommunication services contract**

The Third Law on COVID-19 adds new rights of subscribers in a situation where a telecommunication services contract concluded for a fixed period is automatically extended for an indefinite period:

- the subscriber will have the right to terminate the contract at any time with one month's notice. During the notice period, the subscriber will bear only the costs of providing telecommunication services covered by the agreement;
- moreover, the operator will have to inform the subscriber about the automatic extension of the agreement at the latest 30 days before the end of the period for which the fixed term agreement was concluded. The notice must be on a durable medium (e.g. regular mail) and be clear and understandable. It must also contain information on how to terminate the agreement and the most favourable tariff packages offered by the operator.

### **Monitoring of the use of service limits**

The Third Law on COVID-19 adds an obligation of operators of publicly available telecommunication services on mobile network to provide the consumer with a tool to monitor the use of services. This will apply to services that are billed based on the time or amount of data or tariff units used. If the consumer uses his limit, the operator will have to notify him out it.

### **Number portability**

The Third Law on COVID-19 provides that a consumer who has terminated a telecommunication contract will still for at least one month have the right to transfer his existing number to another network, unless he waives this right.

### **Changing the Internet provider**

The Third Law on COVID-19 contains new regulation on changing the Internet provider. The subscriber will have the right to continuity of service when changing the Internet provider, unless it is not technically possible. According to the justification of the Law, the rule shall be continuity of service.

The new provider will have to activate the service as soon as possible, as agreed with the subscriber, but not later than within 1 working day from the end of the contract with the existing provider. The deadline will have to be confirmed on a durable medium for evidence purposes (e. mail). According to the justification of the Law this is important due to the new right of the subscriber to receive compensation (see below).

Internet providers - both new and current - will also have to create the appropriate technical conditions to ensure that the above subscriber rights can be exercised.

What is more, the existing provider will be obliged to provide Internet access under the existing conditions until the service activation date of the new service.

Where, as part of an Internet access service, an existing provider has provided the subscriber with access to electronic mail and the address of that mail is associated with the trade name or mark of that provider, the subscriber will be able to request free access to that mail for 12 months from the date of termination.

The subscriber will not be charged for exercising the above rights.

The Third Law on COVID-19 adds also the providers' liability for damages. If there is no change of Internet provider for reasons attributable to the existing provider, the subscriber will have the right to receive one-off compensation from that provider for each day of delay in the amount of  $\frac{1}{4}$  of the total monthly fees for all services provided. If there is no change due to the fault of the new provider, the subscriber will have the right to the same compensation (the same amount and the same calculation) from the new provider.

The details concerning these rights of the subscriber are to be specified in the regulation (the executive act), and the technical and organisational conditions to ensure the exercise of these rights will have to be provided by the new and existing Internet provider and operator. If they are not able to do so, they will be able to apply to the President of UKE for a decision to suspend or limit the subscriber's rights related to the continuity of service.

In order for Internet providers and operators to be able to fulfil the above obligations, a special ICT system is to be created, which will be operated by the President of UKE. Before



the system becomes operational, the President of UKE will determine the manner and mode of exchanging of communications between operators or service providers.

Preventing subscribers from exercising the right of service continuity described above will be punishable with a fine of up to 3% of the penalised entity's revenue earned in the previous calendar year.

### **Shortening the term of office of the President of the Office of Electronic Communications (UKE)**

Pursuant to the provisions of Third Law on COVID-19, the term of office of the current President of the Office of Electronic Communications (UKE) for the years 2016-2021 will be shortened. His term of office will end 14 days after the entry into force of Third Law on COVID-19. Within this period, a call for candidates for the President of the UKE will also be announced, and until the new President of the UKE is appointed by the Sejm, the duties of the President of the UKE will be performed by a deputy President of the UKE appointed by the Prime Minister.

### **Software used to confirm compliance with the quarantine obligation**

The law has already introduced an obligation for people obliged to undergo mandatory quarantine to install software on mobile devices to confirm the implementation of the quarantine obligation. At that time, however, there were no provisions concerning the transmission of location data by telecommunication operators to the relevant state authorities responsible for compliance with the quarantine regulations. Provisions on data transfer were added to the Second Law on COVID-19.

### **Transfer of location data and protection of personal data**

The new regulations referred to in the *Compliance* section include an obligation for telecommunications operators to make the following data available during the state of epidemic threat, state of epidemic or state of natural disaster and in connection with the COVID-19 counteraction:

1. location data of the telecommunications equipment for the last 14 days of a user who is diagnosed with COVID-19 or who is obliged to undergo mandatory quarantine.
2. anonymized location data of terminal equipment of end-users.

The operator is not required to obtain the end user's consent to the processing and transmission of their data.

The above data shall be made available by the operator to the Minister of Digitization at his request and in the form indicated by him. However, there are no regulations specifying the rights of the Minister of Digitization with regard to the processing of the received data, their security and making them available to other state authorities, including the Police or sanitary services.

### **New VOD tax**

The Third Law on COVID-19 amended the Polish Cinematography Act by introducing the so-called "on-demand audiovisual media services tax", i.e. the fees to be paid by providers of VOD services.

According to the new regulations, which enter into force on 1 July 2020, entities providing on-VOD services will be obliged to pay a fee of 1.5% of the revenue obtained from fees for access to publicly available on-demand audiovisual media services or revenue obtained from the emission of advertisements if the revenue from them is higher in a given accounting period. The fees will be paid quarterly, and entities will be required to pay them within 30 days after the end of the quarter.

This obligation will apply both to entities having their registered office in Poland and to entities having their registered office in another European Union Member State. In the case of the latter, the fee will be calculated on the basis of revenues earned on the territory of Poland.

Only entities that are microentrepreneurs and entities with a limited number of users, determined with reference to the number of subscribers to data transmission services determined on the basis of separate regulations, will be exempt from paying the fees.

According to the Third Law on COVID-19, the provisions on VOD taxation enter into force on 1 July 2020.

### **Subsidies for film productions**

The new regulation extends the legal definition of a film, contained in the Cinematography Act of 30 June 2005, by introducing the possibility to consider as a film also such works which, although intended to be screened in a cinema could not have a cinema premiere due to circumstances beyond their control.

The new regulation also relaxed the reporting obligations for cinemas when they are not generating revenue.

The provisions of the Act of 9 November 2018 on Financial Support for Audiovisual Production concerning proceedings for granting funding have also been changed. The new provisions provide among other things for the possibility of extending the deadline for concluding a co-financing agreement and relaxing the requirements for presenting certain documents (e.g. acquiring rights to the literary source of a film).

### **Digital dealing with selected issues**

A number of possibilities for carrying out activities in digital form were introduced.

For employers, such possibilities are created by the provision according to which, during a state of epidemic threat or a state of epidemic, initial health and safety training may be carried out electronically.

Videoconferencing can also be used in the activities of certain other entities. For instance participants of an open investment fund meeting that has been convened to agree on certain matters may take part in the meeting by videoconferencing, unless the statutes of such fund provide otherwise.

There are also numerous possibilities for presenting documents in an electronic form.

### **Change in calculation of subscribers' use of data packages**

The rules also provide for changes that affect the way in which providers providing an Internet access service calculate the use of the subscriber's data package. According to the new regulations, the use by users of the sites of the institutions indicated in the list kept

by the Minister of Digitization shall not affect the use of the data transmission limit within the subscriber's data packet. The only exception is when the subscriber is abroad and uses these sites when using international roaming services. In this situation, the new calculation rules will not apply.

The list is to be announced for the first time within one month from the date of entry into force of the new regulations, and telecommunications undertakings are obliged not to account for the use of these sites within the packages, at the latest from the day after 30 days from the date of announcement of the list by the Minister of Digitization.

At the same time, the amended regulations indicate that the abovementioned new calculation rules do not constitute an amendment to the terms and conditions of a contract for the provision of telecommunications services.

### **Changes re.initiation of proceedings by the President of the Office of Electronic Communications and the possibility of waiving the imposition of a penalty**

The new regulations also change the rules for the President of the Office of Electronic Communications to initiate selected proceedings to impose a financial penalty for 2019. The President of the Office of Electronic Communications (UKE) will not be able to initiate such proceedings if a telecommunications undertaking or another obliged entity fulfils its reporting obligations regarding data for 2019 (i.e. obligations regarding the type and scope of its telecommunications activities and the volume of sales of telecommunications services or regarding its telecommunications infrastructure) after the statutory deadline (31 March 2020) but not later than 30 April 2020. In practice, this means that entrepreneurs who have not yet fulfilled the above obligations have time to do so until 30 April 2020.

In addition, the new regulations provide for the possibility for the President of UKE, during a state of epidemic threat or state of epidemic, to waive the imposition of a penalty on a telecommunications undertaking for breach of the provisions of the Act of 16 July 2004 – Telecommunications law. This applies to situations where the breach of these provisions occurred directly in connection with the introduction of restrictions aimed at the prevention and combating of SARS-CoV-2 infection and the spread of COVID-19.

The deadline for the President of UKE to publish a report on the state of the telecommunications market for 2019 was also extended from 30 June 2020 to 31 July 2020.

### **New rights for owners of critical infrastructure**

New rights have been introduced for owners of critical infrastructure, including equipment used to provide telecommunications services that is located on third-party property and for the authorized representatives of the owners of such infrastructure. During a state of emergency or state of epidemic, if the activities necessary for the continuity of services need to be carried out and the owner, user or manager of the property has refused access to the property or there is no possibility to contact it, the owner of such critical infrastructure has the right, with the assistance of the Police, to enter the property or building, also using means to break existing safeguards, to carry out the necessary activities, including construction works. Importantly, the owner of the infrastructure or his authorized representative is obliged to provide the Police with evidence confirming the refusal to grant him access to the property or the impossibility to contact the owner prior to entering the property and to get Police assistance.

After the completion of such works, the owner of the infrastructure is obliged to safeguard the property against unauthorized access, to immediately inform the owner, user or

manager of the property about the activities carried out and to repair the damage, if any, if such damage has occurred in connection with the works.

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