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COVID-19

COVID-19 ANTI-CRISIS SHIELD REGULATIONS IN POLAND - SUMMARY

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Poland, like most if not all other countries in the EU and the world, has been grappling with the health law and commercial fallout from the COVID-19 pandemic.

Poland has not been in the international news much, as, when measured on number of infected, the pandemic has not affected Poland so badly. Further, the manner of lockdown and the relative observance of the lockdown requirements has kept Poland out of the spotlight. That doesn't change the fact that the economic fallout from the pandemic will be severe and the government has recently adopted laws and is in the process of further amending them in order to provide necessary economic relief.

The aim of this summary is to discuss:

- Act on special solutions related to the prevention, countermeasure and combating of COVID-19, other infectious diseases and crisis situations caused by them of 2 March 2020 (Journal of Laws of 2020, Item 374) - "Act on Combating COVID-19" or the "Shield 1.0", [Source: Tarcza 1.0].
- Act amending the Act on special solutions related to the prevention, countermeasure and combating of COVID-19, other infectious diseases and crisis situations caused by them and certain other acts of 31 March 2020 (Journal of Laws of 2020, item 568) - the "Shield 2.0" [Source: Tarcza 2.0]
- Act on specific support instruments in relation to the spread of the SARS-CoV-2 virus of 16 April 2020 (Journal of Laws of 2020, item 695) - the "SzlWU". [Source: SzlWU]
- Act on the amendment of certain laws on protective measures in relation to the spread of SARS-CoV-2 of 30 April 2020 - the "Shield 3.0" and jointly the "Shields". [Source: Tarcza 3.0]

The Shields provide for the amendment, modification, and/or suspension of enforcement of a myriad of laws. Of course, all these changes are intended to soften the impact of the pandemic and the shutdown of the economy on employees, entrepreneurs, companies and the government. Whether they will be successful in softening the impact, what changes have been forgotten, which of the changes turn out to be too extreme and which will prove to be too weak will be the subject of discussion now and for years to come. In the meantime, this summary is intended to break down what has been adopted into various fields of law.

Brief summary:

1. Labor Law: As usual in a downturn, but with a surprising speed in this pandemic, labor and employment law issues are of immediate importance, and we've addressed them first. The relevant changes include exemption from social security contributions, provisions as to layoffs and reduction of worktime, and subsidies and loans available to entrepreneurs¹ to maintain employment.
2. Tax provisions were amended to allow for the set-off of 2020 losses against 2019 gains, and many filing and payment periods have been extended.
3. Lease agreement obligations are modified for the term of the existence of the pandemic, while the rights and obligations will be different for tenants of large commercial spaces (subject to mandatory closure) and other tenants who lost business as a result of COVID-19;
4. The bankruptcy and restructuring laws have been amended in several key aspects to provide extra time to make court filings;
5. Bank loans and assistance from Bank Gospodarstwa Krajowego [Polish National Development Bank] are a major part of the Shield;
6. Business operations have been facilitated by the possibility to hold remote meetings of corporate bodies, extension of terms related to financial statements, postponement of some legal obligations;
7. Significant changes have been introduced in the field of tourism and hotel management to settle the problem with withdrawals or termination of tourist service contracts and reimbursement of payments made by tourists;
8. Other important changes include the temporary suspension of certain judicial and administrative periods, the suspension of court hearings, the introduction of maximum prices for certain medical products and the invalidity of certain contracts with the transfer of property ownership.

¹ When using the term entrepreneurs, we are using the European use of the term, intending to cover all persons conducting business activity, from sole proprietors to large corporations

■ TABLE OF CONTENTS

LABOR LAW 5

TAXES 9

LEASE AGREEMENTS 11

BANKRUPTCY AND RESTRUCTURING 12

BANK LOANS AND FINANCIAL AID 13

BUSINESS OPERATIONS 16

TOURISM AND HOTEL MANAGEMENT 17

OTHER REGULATIONS 18



1. LABOR LAW

Exemption from premiums to the Social Insurance Institution (ZUS)

Entrepreneurs may apply for an exemption from the obligation to pay social security premiums for a period of 3 months - from 1 March 2020 to 31 May 2020.

This applies to:

- payers with 10 to 49 employees registered for the purposes of social security as at 29 February 2020. The exemption covers 50% of the aggregate amount of unpaid contributions reported in the social security statement filed for the relevant month,
- sole traders (self-employed) whose premiums cover solely their own social security or health insurance for the period from 1 March 2020 to 31 May 2020¹.

Exemption of an entrepreneur who conducts non-agricultural activity from the obligation to pay social insurance premiums

A social security payer, who conducts non-agricultural business activity and pays premiums for his/her own social insurance or health insurance, is released from the obligation to pay the unpaid contributions for the period from 1 April 2020 to 31 May

2020, if:

- s/he has conducted the business activity before 1 April 2020 and,
- the revenue as defined in PIT provisions, obtained in the first month for which the application is submitted, was not higher than 300% of the forecast monthly average gross wages and salaries² in Poland in 2020, or
- the income from its business activity, as defined in PIT provisions, obtained in February 2020 was not higher than PLN 7,000.

The exemption from the health insurance payment under the Shield 3.0 may also be obtained by entrepreneurs that:

- commenced business activity or started business activity anew at least 60 months after it was suspended, or
- closed and do not conduct business activity for the last employer in the current or previous calendar year.

Such entrepreneurs need to satisfy the following criteria:

- the revenue as defined in PIT provisions, obtained in the first month for which the application is submitted, is not higher than 300% of the forecast monthly average gross wages and salaries in the national economy in 2020 or

¹ This exemption constitutes state aid aimed at remedying serious disturbances in the economy referred to in the Commission Communication – Temporary Framework for state aid measures to support the economy in the current COVID-19 outbreak (2020/C 91 I/01). It enables entrepreneurs to apply for state aid on those grounds up to the maximum amount of EUR 800,000.

² Currently, this monthly average wage is PLN 5331.47, so 300% of this amount as of now.

- the revenue as defined in PIT provisions, obtained in the first month for which the application is submitted, was not higher than 300% of the forecast monthly average gross wages and salaries in the national economy in 2020 and the income from his/her business activity, as defined in PIT provisions, obtained in February 2020 was not higher than PLN 7,000.

Economic layoff or reduction of working hours

Entrepreneurs who have suffered a decrease in economic turnover as a result of the pandemic have two options:

- to announce economic layoff or to reduce employees' working hours, or
- to apply for benefits to cover part of the employees' salaries.

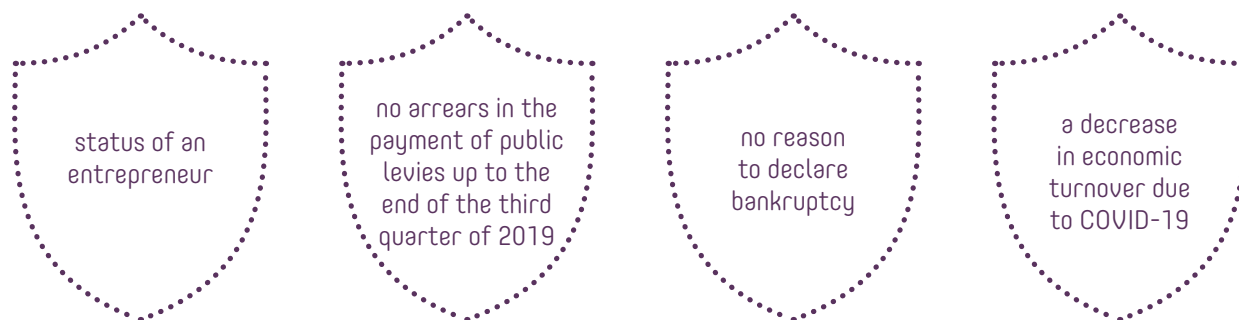
The said benefits may be paid out from the Employee Guarantee Benefits Fund

In order to receive such benefits, the entrepreneur shall meet specific criteria:

DECREASE IN ECONOMIC TURNOVER:

decrease in the sale of goods or services in terms of quantity or value:

- 1) min. 15%, calculated as the ratio of the total turnover, during any of the consecutive 2 calendar months, falling after 1 January 2020 to the day preceding the day of filing the application, compared to the total turnover in the corresponding 2 consecutive calendar months of the previous year;
- 2) min. 25% calculated as the ratio of the economic turnover of any given calendar month after 1 January 2020 to the day preceding the day on which the application is filed, compared to the turnover in the previous month.



An entrepreneur is authorized to:

- reduce the remuneration of his/her employees (subject to economic layoff) to no less than 50% of the original salary, which on the other hand cannot be lower than the value of the minimum wage determined on the basis of the minimum wage regulations, taking into consideration working hours;
- reduce the employees' working hours by 20% (to no more than 50% of the full time equivalent), with the reservation that the remuneration must not be lower than the minimum wage determined on the basis of the minimum wage regulations, taking into consideration working hours.

- A subsidy provided by the Employee Guarantee Benefits Fund is limited to 50% of the original salary, providing that the subsidy does not exceed 40% of the average monthly salary and the employees' remuneration does not exceed 300% of the average monthly salary.
- The subsidized employees must not be released at least for the time the subsidy was paid out by the Employee Guarantee Benefits Fund (i.e., up to 3 months).

Downtime relief payment

Downtime relief payment is granted to individuals:

- conducting business activity;
- employed on civil law contracts, unless they have social security provided otherwise,
- who have suffered from activity layoff caused by the COVID-19 crisis.

This benefit is paid by the Social Insurance Institution and it amounts to PLN 2,080 (80% of the minimum wage).

Downtime relief payment is available for up to three months.



Time of work

Certain employers are entitled to loosen up the rules for establishing the system or distribution of working time (upon conclusion of an agreement with the trade unions or employee representatives).

Additionally, the parties may conclude an agreement amending the employment terms to such that are less advantageous than those stipulated in the original employment contract.

Subsidizing the costs of employees' remuneration

- If the economic turnover decreases following the occurrence of COVID-19, entrepreneurs may apply to have part of the costs of their employees' remuneration and social insurance contributions subsidized.
 - The value of the subsidy depends on the size of the decrease in the economic turnover:
 - For decreases of a minimum 30%, a subsidy may be granted in the amount not higher than a sum of 50% of the remuneration of each employee, no more than 50% of the amount of a minimum wage, increased by social insurance contributions;

A DECREASE IN ECONOMIC TURNOVER

shall be understood as a decrease in the sale of goods or services in terms of quantity or value, calculated as the ratio of the total turnover, during any consecutive 2 calendar months, falling after 1 January 2020 to the day preceding the day of submission of the application for subsidy, compared to the total turnover for the consecutive 2 calendar months from the previous year.

- For decreases of a minimum 50%, a subsidy may be granted in the amount not higher than a sum of 70% of the remuneration of each employee, not more than 70% of the amount of the equivalent to the minimum wage, increased by social insurance contributions;
- For decreases of a minimum 80% - a subsidy may be granted in the amount not exceeding the sum of 90% of remuneration of each employee, however not higher than 90 % of the amount of a minimum wage, increased by social insurance contributions.

Available for a maximum period of 3 months.

Subject to an obligation to keep the employment at the same level over the subsidized period.

Loans to micro-entrepreneurs

According to Shield 3.0 micro-entrepreneurs, who have conducted business activity before 1 April 2020, may apply for a loan to cover the current costs of conducting their business activity.

- Up to PLN 5,000 may be granted.
- Fixed interest rate of 0.05 of the rediscount rate for bills of exchange accepted by the National Bank of Poland.
- The loan repayment shall not be longer than 12 months.

Such micro – entrepreneur shall submit the application for a loan to County Labor Office.

Loan and interest on the micro-entrepreneur's application are subject to depreciation, under condition that the microentrepreneur continues to run business activity for a period of 3 months after the loan is granted.

Sunday trading ban

Loosening up of the ban on performing

certain tasks associated with retail trade on Sundays, which include unloading, receiving, and displaying necessities.

Suspension of periodic medical check-ups

Suspension of the obligation to undergo periodical medical check-ups requested by the employer as the state of epidemiological threat or the epidemic continue.

Extended validity of medical check-ups

The medical certificates issued as part of the preliminary, periodic, and follow-up medical check-ups expiring after 7 March 2020 continue to be valid, no longer though than until the expiry of 60 days from the lifting of the state of epidemiological threat or the epidemic.



MICRO ENTREPRENEUR

- an entrepreneur who within at least one of the last two financial years: 1) on average employed fewer than 10 employees per year and 2) generated an annual net turnover from the sale of goods, products and services and financial operations not exceeding the PLN equivalent of 2 million EUR or the sum of assets of its balance sheet as at the end of any of those 2 years did not exceed the PLN equivalent of EUR 2 million.



2. TAXES

Possibility of retroactive settlement of tax losses for personal and corporate income taxes (PIT and CIT)¹

Shields provide for the possibility for PIT and CIT taxpayers to deduct losses incurred in 2020, from income received in 2019.

Deduction shall amount to no more than PLN 5 mln loss and shall in principle apply only to those taxpayers who will generate at least 50% less income in 2020 than in 2019.

Possibility of resignation by “small taxpayers” from paying advance payments in a simplified form.

“Small taxpayers”, who go for a simplified form of paying advance payments for PIT and CIT for 2020 and suffer the negative economic consequences of pandemics, will be able to waive simplified advanced payments for the period March – December 2020 and calculate monthly advances from the current income on general basis.

SMALL TAXPAYER

- an entrepreneur whose sales revenues in the previous tax year including the amount of output VAT do not exceed statutory limits. The limits for each of the taxes are different and subject to change. For example, the limit for PIT in 2020 is EUR 2,000,000

Waiving the collection of the extension fees

Taxpayers shall not have to pay the extension fee, with regards to deferment of the tax payment, payment in instalments, deferment or payment in instalments of the tax arrears together with interest.

The exemption from the obligation to pay for extension fee shall last during the pandemic and for 30 days directly after it is cancelled.

“Tax relief for bad debts”

The Shields provide for an exemption from the obligation to include in the taxable base such receivables that are at least 90 days overdue in the settlement periods falling in 2020.

The exemption is available to taxpayers who suffer from negative economic consequences as a result of the pandemic in a given accounting period, and their revenue in this period was at least 50% lower than in the corresponding period of the previous tax year.

Tax relief for donations granted to combat the coronavirus

Introduction of tax deduction in PIT and CIT without limit for donations (in cash or in kind) transferred to prevent and combat

¹ PIT = Personal Income Tax / CIT = Corporate Income Tax

coronavirus infection for healthcare entities, in particular sanitary transport, Material Reserves Agency and the Central Database of Sanitary and Anti-epidemic Reserves.

The deduction depends on when it was made:

- until 30 April 2020 – 200% of the donation shall be deductible;
- in May 2020 – 150% of the donation shall be deductible;
- from 1 June to 30 September 2020 – 100% of the donation shall be deductible.

Retail sale tax suspension

The Shields provide for the suspension of the Retail Sales Tax Act. Taxpayers do not have to pay tax for retail sale for the settlement period July – December 2020.

Postponement of the deadline for payment of tax revenue from buildings

According to the Shields, taxpayers may have the deadline for payment of tax revenue from buildings (the so-called minimum tax on commercial properties) postponed, for the period March – May 2020, until 20 July 2020.

The municipalities' right to introduce exemptions from property tax

The Municipal Councils in Poland may adopt, for the part of 2020, a tax exemption for land, buildings and structures, which are used to conduct business activity. Tax exemptions are offered to an indicated by the municipality group of entrepreneurs, whose financial situation deteriorated as a result of the coronavirus pandemic.

The municipalities' right to introduce an extension of payment deadlines for property tax instalments

The Municipal Council, by way of a resolution, may extend the deadline for payment of property tax instalments due in April, May and June 2020,

however not longer than to 30 September 2020. The extension of the deadlines for payment shall cover the groups of entrepreneurs, whose financial situation has deteriorated as a result of the outbreak of the coronavirus.

Extension of the deadline for submission of the tax return statement and the solidarity levy return by PIT payers until 1 June 2020

Shield 3.0 authorizes taxpayers to:

- file a tax return statement for 2019 and make PIT payment,
- file solidarity levy return and pay the underlying amount,

after the standard deadlines for their submission, though no later than on 1 June 2020, which is tantamount to the submission by the taxpayer of a notification required by the Fiscal Penal Code. Such later filing will not result in the initiation of proceedings for major or minor tax offences.

Extension and suspension of tax terms

- The Shields introduce an extension and suspension of tax terms, e.g.:
- extension of the deadline for the employer to make advance payments for PIT on revenues from work in a broad sense, collected in March and April (so-called PIT-4). The payment of the advance shall be made until 1 June 2020, rather than on 20 April and 20 May 2020,
- postponement of the entry into force of the provisions on the new VAT matrix from 1 April 2020 to 1 July 2020,
- suspension - from 31 March 2020 until the day of cancelation of the state of epidemiological threat or epidemic, but no longer than until 30 June 2020 - of the deadlines to report tax schemes. These rules apply to cross-border and other than cross-border tax schemes (so-called domestic tax schemes),
- prolongation of the term for submission of the applications to the Central Register of Real Beneficiaries, until 13 July 2020.



3. LEASES

Suspension of lease payments

During the period of the ban on conducting business activity in commercial facilities with a sales area of over 2000 m² the mutual liabilities of the parties to the tenancy agreement, lease agreement or any other agreement, whereby the commercial space is granted for use, shall expire.

- This means that tenants and lessees are released from the obligation to pay rent and other charges to the lessors or landlords (while the lessor is free from the obligation to provide access to the premises).
- The person entitled to use the commercial space shall submit to the provider an unconditional and binding offer to prolong the term of the agreement based on the existing terms and conditions by the period of the ban on conducting business activity in commercial facilities with a sales area greater than 2000 m² by six months.
- The offer shall be made within three months after the ban is lifted.

Prolongation of the term and a ban on termination of lease agreements

If, the term of the lease agreement, concluded before the entry into force of the amending act, expires after that day, but before 30 June 2020, the lease agreement shall be extended until 30 June 2020 on the existing terms and conditions.

The lease agreement may be prolonged based on the lessee's declaration of intent.

- The lessee's declaration on prolongation of the premises' lease agreement on the existing terms and conditions is valid until 30 June 2020.
- The declaration needs to be circulated to the lessor on the date of the expiry of the lease at the latest.

4. BANKRUPTCY AND RESTRUCTURING LAW

Suspension of the period for filing bankruptcy petition

If the grounds for declaration of bankruptcy arise during the period of the state of epidemiological threat or epidemic state¹ and the insolvency results from the COVID-19 outbreak, the period of time to file the declaration for bankruptcy does not commence, and if it has already commenced, it is suspended.

The running of the period for filing of the bankruptcy declaration resumes after the epidemic state is cancelled. If the insolvency has arisen during the COVID-19 epidemic (after 14 March 2020), it is presumed to have been caused by COVID-19.

The time over which the period for filing for bankruptcy is suspended due to COVID-19 is added to the protection period when the acts of the entrepreneur may be deemed ineffective.

Opening of the restructuring proceedings deemed urgent

Opening of restructuring proceedings has been listed among urgent matters.

Consequently, restructuring courts may consider cases for opening of restructuring proceedings, and hold hearings if they agree such are necessary.



¹ As of the date of writing this summary, Poland is in a state of epidemic, which is the ultimate level when it comes to epidemics. The most important restrictions that can be introduced during this level are the possibility to open so-called “zero zones” [equivalent of the Italian “red zones”] and buffer zones where special obligations may be introduced.



5. BANK LOANS AND FINANCIAL AID

Financial assistance from Bank Gospodarstwa Krajowego (BGK)

Entrepreneurs may apply for support from BGK.

In order to maintain financial liquidity BGK may grant the following support to entrepreneurs:

- Sureties;
- Guarantees of repayment of credits taken by entrepreneurs.

A surety or guarantee may constitute public aid.

A surety or guarantee covers not more than 80% of the remaining credit amount covered by the surety or guarantee.

De minimis aid

Micro, small and medium – entrepreneurs, may obtain de minimis guarantees to secure:

- repayment of working capital loans;
- investment loans.

The main benefits from granting the de minimis guarantees are (as regards the working capital loans):

- the increase of the guarantee coverage up to 80% of the credit amount (by the end of 2020);
- no guarantee commission (till the end of 2020);

- de minimis guarantee is secured with a blank promissory note signed by the entrepreneur,
- extension of the maximum guarantee period from 27 to 39 months for working capital loans (till the end of 2020).
- As regards the investment loans, the main benefits are as follows:
 - the increase of the guarantee coverage up to 80% of the credit amount (by the end of 2020);
 - a max. guarantee period of 99 months;
- de minimis guarantee is secured with a blank promissory note signed by the entrepreneur, no guarantee commission (by the end of 2020).

The max. de minimis guarantee amounts to PLN 3.5 million, and it depends on the amount of the de minimis aid received by a given entrepreneur in the current tax year and two preceding tax years.

The max. value of the de minimis aid for one entrepreneur is EUR 200,000 or EUR 100,000 (for an entrepreneur who conducts business activity in the road transport sector) over the next three tax years.

The value of the de minimis aid granted to the entrepreneur is converted into EUR at an average exchange rate of foreign currencies published by the National Bank of Poland, in force on the date the aid is granted.

The funds from the de minimis aid shall be used for:

- current financing of business activity;
- financing of investments projects (as regards the investment loans).

Bank Gospodarstwa Krajowego has specified exceptions, when the de minimis aid cannot be granted, which include among other things purchase of claims or financial instruments, capital investments, and other.

Amending terms of loan/credit agreements with banks

Entrepreneurs may obtain help from banks consisting in the amendment to be introduced to the terms and conditions or dates of repayment of the credits granted under the concluded agreement.

To be eligible for the help the entrepreneurs need to meet specific criteria:

- a credit shall be granted before 8 March 2020;
- an amendment to this agreement shall be justified by the borrower's financial situation and economic situation made by the bank not earlier than on 30 September 2019;

This aid is granted on terms identical to agreements for loans granted by the bank.

Financial assistance from the Polish Development Fund (hereinafter referred as the "Financial Shield")

The Financial Shield has been introduced as the help for micro, small, medium, large – entrepreneurs, who suffer as a result of the COVID-19 pandemic.

The purpose of the Financial Shield support is to protect the labor market and provide financial liquidity to entrepreneurs.

The Polish Development Fund has prepared a guide for micro, small, medium – entrepreneurs, who would be eligible to benefit from Financial Shield¹.

The Financial Shield support for large entrepreneurs still waits for the green light to be granted by the European Commission, which needs to positively assess the support to be granted from public funds².

The Council of Ministers may entrust the Polish Development Fund with the implementation of the governmental program of granting financial support to entrepreneurs.

The funds granted entrepreneurs as financial support shall not be subject to judicial or administrative enforcement, unless the enforced claim crystalized as a result of a breach of rules, whereby the support was granted to the entrepreneur.

These funds **must not** be seized under a court or administrative enforcement orders.

¹ Tarcza Finansowa - Przewodnik – a guide for micro, small and medium entrepreneurs

² Tarcza finansowa dla dużych firm - Przewodnik – one of the first guides for large companies.

FSA Credit Rating Communication

The Financial Supervision Authority (the "FSA"), has published announcements, whereby the application of the provisions of the banking law shall be subject to a more liberal interpretation.

More liberal interpretation shall be understood as:

facilitating the extension or increase of financing (up to 1 year) granted before 31 December 2019, in relation to temporary financial liquidity risk, and preferential treatment of borrowers,

According to FSA's announcement of 8 April 2020, such micro, small and medium entrepreneurs may be eligible for a more liberal bank's approach that:

- are not addressed in the Shields due to the lack of creditworthiness analysis conducted after 30 September 2019;
- have positive history of conducting their business activity.

[source: Komunikat KNF z 8 kwietnia 2020 r.]

Support granted by Agencja Rozwoju Przemysłu S.A. [Industrial Development Agency]

Agencja Rozwoju Przemysłu S.A. supports entrepreneurs through all forms of financial repayable support instruments granted to entrepreneurs, excluding instruments reserved for entities which conduct banking and insurance activity.

The support may be granted, in particular, in the form of:

loans, guarantees, sureties, leases, any other instruments related to financial business activity under market conditions.

The amount and the type of the support depends on the:

- actual financial consequences that the entrepreneur has faced as a result of the announcing of a state of epidemiological threat or epidemic;
- the scale of conducted business activity.

This kind of support is not meant to settle entrepreneur's liabilities to parent and subsidiary entities, nor partners, shareholders' family members or people close to entrepreneurs.

The entrepreneur's application for support is to be considered immediately, not later than 14 days after it has been filed together with the required attachments and if defective the entrepreneur is asked to complete it within 5 days

The support is granted on the basis of a support agreement to be concluded with Agencja Rozwoju Przemysłu S.A.

Pursuant to Shield 3.0 Agencja Rozwoju Przemysłu S.A. will receive additional capital of PLN 900 mln from the Reprivatisation Fund to help business entities.

Borrowers are covered by guarantees offered by Bank Gospodarstwa Krajowego amounting to 80 % of the amount lent, including new financing (vide announcement of the Financial Supervision Authority of 31 March 2020 [source: Komunikat KNF z 31 marca 2020 r.] and the Announcement of the Polish Banks Association No. 2 on aid measures – source: Komunikat ZBP



6. BUSINESS OPERATIONS

Remote meetings of corporate bodies

The Shields introduced the right to organize meetings of management boards and supervisory boards of Polish companies with the use of distance means of direct communication, unless the articles of association provide otherwise.

Moreover, members of the management boards and supervisory boards, may adopt resolutions in writing or with the use of means of direct distance communication, unless the articles of association provide otherwise.

Extension of the deadline for dematerialization of the shares

The deadline for mandatory dematerialization of the shares will be postponed from 1 January 2021 to 1 March 2021.

Financial statements

The 31 March 2020 Regulation of the Minister of Finance introduces mechanisms to change the statutory terms to perform obligations in order to prepare, approve, provide access and transfer financial statements, financial information to the required registry, entity or authorized body.

Statutory terms are prolonged to 3 months for entities obliged to draft financial reports, and to 2 months for entities underlying to financial supervision.

Ultimate Beneficial Owner register

Postponement of the deadline for submission of information to the Central Ultimate Beneficial Owner Register until 13 July 2020.



7. TOURISM AND HOTEL MANAGEMENT

Withdrawal from or termination of package holiday contracts

A tourist may withdraw from the package holiday contract before the start of the tourist event without payment of a withdrawal fee, in the event of:

- unavoidable and extraordinary circumstances at the place of destination or in its nearest neighborhood, which have a significant impact on the realization of a tourist event or transport to destination place.

A tour operator may terminate the package holiday contract if:

- the tour operator is unable to perform the package holiday contract because of the unavoidable and extraordinary circumstances, and
- the tour operator informed the tourist immediately about the termination of the package holiday contract, before the start of the tourist event

If a tourist wishes to withdraw from the package holiday contract or a tour operator wishes to terminate the said contract as a result of the outbreak of the pandemic, this is effected by operation of law after 180 days after the issue of a notification to this effect by the tourist or tour operator respectively.

Moreover, tourists have an opportunity to get a voucher with the amount of purchased package holiday.

- The voucher option is voluntary.
- The value of the voucher shall not be lower than the amount paid for the

performance of the existing package holiday contract.

- If the tourist agrees to get the voucher from the tour operator for future package holidays, the withdrawal from the contract or termination of the contract is not effective.
- The voucher is valid for a year from the date on which the tourist event was to take place.
- The voucher secures the tourist's financial interests.

Reimbursement of payments made by tourists

An entrepreneur who conducts hotel services and concluded an agreement with a client is obliged to reimburse the funds paid by the client within 180 days of the effective termination of the contract, in the event of:

- termination of the contract with the client due to the outbreak of the pandemic.

Termination of the contract is not effective if the client agrees to receive a voucher for future events in this area of the entrepreneur's business activity.

- The voucher is valid for one year after the trip paid for by client shall have taken place.
- The option with the voucher is voluntary.
- The value of the voucher shall not be lower than the amount paid by the client under the agreement signed.



8. Other regulations

Amendment in suspension of procedural and judicial terms

Shield 3.0 calls off the suspension of judicial and procedural terms and administrative terms introduced by Shield 1.0 (and amended by Shield 2.0, SzlWU), which means that all judicial, procedural and administrative terms shall be effective again.

Before the implementation of Shield 3.0 during the state of epidemiological threat or the epidemic state, procedural and judicial terms in pending criminal, administrative, enforcement and other proceedings did not start to run, while the proceedings that already started were suspended for that period.

Shield 1.0 (and amended by Shield 2.0, SzlWU) provided some exceptions on suspension and commencement of some types of proceedings.

According to SzlWU applications for granting or modifying the precautionary measures under the Code of Civil Procedure, during the state of epidemic threat or the epidemic state due to COVID, are examined by a single judge (while usually it is by a three judge panel).

This application is examined in a closed session, unless the circumstances justify the examination of the application at a court hearing.

Court Hearings

Shield 3.0 adds a provision to the Act on Common Court System, whereby the

Minister of Justice shall determine (by issuing a regulation) the method of:

designing, implementing, operating, integrating and developing the Information and Communications Technology system.

This system must take into account safety rules, including technical and organizational capabilities of the courts.

Shield 3.0 introduces changes to the Civil Procedure Code, whereby during the state of emergency, the state of epidemiological threat due to COVID-19 and during a year after these are called off:

- any court hearings or public hearings should be conducted with the use of technical devices allowing for distance communication with simultaneous direct transmission of video and sound. If such devices cannot be used, hearings may be held provided that they do not pose threat to their participants.
- The presiding judge may order an ordinary hearing if the court deems it necessary and it does not pose too great a threat to the health of the participants and the court hearing cannot be held with the use of technical devices. Closed door hearings may be conducted if the parties do not object thereto within 7 days after the receipt of a notice to this effect.
- If the procedure of taking evidence has already been finished, the court may close the court hearing and make a ruling on a closed session, after the parties make their statements.

- Any appeals submitted before 7 November 2019 may be considered at sessions held in chambers unless the court considers it necessary to hold a court hearing or a party requested that a court hearing be held or that evidence which cannot be omitted from witness statements or hearings of the Party is to be collected.
- A motion to hold a court hearing shall be filed within 7 days following the service of information on the holding of a session in chambers.

Shield 3.0 provides that, during the state of emergency, the state of epidemiological threat due to COVID-19 and during a year after these are called off, in the Supreme Court appeal cases, in which the person who has initiated the procedure did not waive the court hearing or the other party requested the court hearing, the Supreme Administrative Court may consider the case at a closed session provided that the participating parties agree within 14 days following the receipt of information on the decision to consider the case in chambers.

- In such a situation the hearing is carried out by three judges.

Shield 3.0 provides that during the state of emergency, the state of epidemiological threat due to COVID-19 and during a year after these are called off, the Voivodship Administrative Courts and Supreme Administrative Court conduct:

- courts hearings or public hearings with the use of technical devices allowing for distance communication with simultaneous direct transmission of video and sound and the participants do not have to be in the court building then, unless organizing an ordinary session does not pose too great a threat to the health of the participants.
- The presiding judge may order a session in chambers if it is necessary while an open

court session would pose too great a threat to the health of participants, and the court hearing cannot be conducted with the use of technical devices.

Before the entry of Shield 3.0 into force, court hearings and public hearings were not held due to the state of epidemiological threat or epidemic state of COVID-19 with some exceptions listed in Shield 1.0 (as amended by Shield 2.0, SzLWU).

Maximum prices and margins of medical products

The Shield 2.0 allowed the Minister of Health to set maximum sale prices, wholesale margins, retail margins for:

- medical products, medical devices, food products for special nutritional purposes, biocides,
- pharmaceuticals, which may be used in combatting COVID-19, except for such products, devices for which a price has been fixed by an administrative decision based on a specific Act.

No requirement to procure occupancy permit due to COVID-19

The obligation to procure occupancy permit is abolished for the time the state of epidemiological threat or COVID -19 epidemic state continue.

The application submitted to procure an occupancy permit before the enacted SzLWU, shall be treated as a notice of completion of construction works, which is defined in the Building Law.

The period for objection by a decision shall run from the date SzLWU entered into force.

Sharing the location data processing of a person under quarantine and infected with COVID-19

The minister in charge of computerization may request that the operators provide location data of end users of telecommunication devices suffering from COVID-19 or undergoing quarantine for the last 14 days.

The minister in charge of computerization may request that the operators provide anonymized location data of the person concerned as long as the epidemic, state of emergency or natural disaster situation continue to operate.

The consent of the person concerned is not required.

Anonymization of location data

According to the Shields, during the state of epidemiological threat or epidemic, or natural disaster situation, anonymization of the location, which includes the secrecy of location data, which go beyond what is necessary for transmission of a message or the issuance of an invoice, do not constitute a processing operation.

Power of Attorney for postal issues

According to Shield 3.0 during the state of epidemiological threat or epidemic state of COVID-19 or if post offices stop to operate, a power of attorney may be granted in writing for a period no longer than one month and can be revoked at any time.

Sharing data of the insured and premium payers

If it is necessary to fulfill the tasks connected with combating SARS-CoV-2, in particular to prevent, counteract and eradicate SARS-CoV-2 and its effects, the data collected on the insured person's account and on the premium payer's account shall be made available free of charge to the:

- Prime Minister, Head of Chancellery of the Prime Minister, the body representing the Prime Minister, who is competent to analyze and draw up studies according to key public policies.

The data collected in the account of the insured person or the account of the premium payer shall be made available free of charge to:

- Agencja Rozwoju Przemysłu S.A. and Polski Fundusz Rozwoju S.A., to assist in the prevention or counteracting economic consequences of the epidemic caused by SARS-CoV-2.

Introduction of provisions for anti-usury bills in criminal matters

Shield 3.0 includes amendments to the Criminal Code, with introduction of provision related to anti-usury bills. This crime is punishable by between 3 months to 5 years of imprisonment.

Invalidity of the contract which transfers the property ownership

Shield 3.0 amends the Civil Code, by adding additional provision, which refers to the invalidity of the contract with a transfer of the property ownership.

Under this provision, a natural person cannot transfer the title to the property used for housing needs as a security for claims, which arise from this or another contract indirectly to his/her business or professional activity, in the following cases:

- the value of the title of the transferred property is higher than the value of the pecuniary claims secured with this property increased by maximum interest for delay for 24 months,
- the value of the pecuniary claims secured by this property is not marked,
- conclusion of this contract has not been preceded by a property valuation assessment conducted by a professional appraiser.

Final word

A quick SWOT of the Shield legislation:

When looking into the crystal ball of the future, it's only vaguely possible to foresee what will result from the Polish Shield laws. Most likely, in 3 months' time, the newspapers will be full of allegations about companies that "double dipped" and took more than they should have, and in 2 years' time, a scandal will come out as they always do. But in the meantime, the question has to be asked whether the Shield legislation adequately addresses the pandemic and the economic effect? Walking through a quick SWOT

Strengths: the Shield addresses the legal issues which came to mind and could be resolved, and provides aid packages, structured in a way intended to prevent layoffs and dismissals.

Weaknesses: certain meetings (i.e., notarial deeds) were not addressed and undoubtedly many entrepreneurs will not qualify for aid given the numerous prerequisites (i.e., not having any tax arrears during 2019).

Opportunities: this is a time when the government will open up the floodgates to try to help and many companies will have an opportunity to reinvent themselves in a post-COVID-19 reality (whether or not COVID-19 actually disappears/dissipates).

Threats: vague and incomplete provisions, risks of bureaucratic interpretations, and an obligation to repay upon findings could bankrupt a company at a later time.

So, in summary, the Shield legislation is a good attempt to help, while the vague and incomplete drafting makes many provisions subject to interpretation and potential future amendment (which may be good and bad). Overall, it makes the role of a lawyer even more important in interpreting the changes and adjusting to the new reality.

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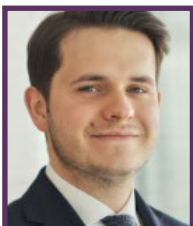
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