

## **COVID-19 and anti-crisis shield - what do we know so far?**

On the weekend of 21<sup>st</sup> and 22<sup>nd</sup> of March this year, the first information on detailed solutions of the planned package of laws, known as the anti-crisis shield, was published. Only a few hours later it was revealed that proposals for changes and additions were presented by the Ministry of Justice, the Ministry of Family, Labour and Social Policy, the Social Insurance Institution and the Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów; UOKiK). It has also been made public that the new provisions are to take into account proposals for supporting entrepreneurs announced by the President of the Republic of Poland. In the meantime, a draft act to amend the act on special solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them as well as some other acts was also made available.

Below you can find a summary of the proposed solutions divided into specific relevant topics. We will update this information regularly.

**Team of SDZLEGAL Schindhelm**



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## → CO-FINANCING FOR ENTREPRENEURS

It is envisaged to **finance** a part of the costs of business to an entrepreneur who is a natural person and **does not employ employees**. The co-financing shall be granted in case of a **decrease of the entrepreneur's turnover by at least 30%**.

A **turnover decrease** is defined as a decrease in the sale of goods or services (in volume or value), calculated as a **proportion of the entrepreneur's total turnover for any 2 consecutive months**, falling after 1.01.2020 to the day preceding the date of submitting the application for co-financing, **to the total turnover of the entrepreneur reached during any 2 consecutive months in 2019**. A month is considered to be 30 consecutive calendar days.

The co-financing may be provided **for a maximum of 6 months** and shall be paid **once**. During the period for which co-financing is provided, the entrepreneur is obliged to operate its business.

## → WAGE SUBSIDY

Employee Benefits Guarantee Fund (Fundusz Gwarantowanych Świadczeń Pracowniczych) shall subsidise employees' wages for the benefit of entrepreneurs who have recorded a decrease in turnover. The decrease in turnover shall amount to:

- **not less than 15%** calculated as the ratio of the total turnover in any two consecutive calendar months after 1.01.2020 until the day preceding the date of application, compared to the total turnover from the corresponding 2 consecutive calendar months of the previous year, or
- **not less than 25%** calculated as the ratio of the total turnover for any given calendar month, after 1.01.2020 until the day preceding the application date, compared to the turnover of the previous month.

The employer shall be able to obtain subsidy:

- **up to the amount of 50% of the minimum wage** - in case of introducing economic downtime;
- **up to the half of the wage for work in reduced working hours, but not more than 40% of the average monthly wage from the previous quarter** - in case of a reduction in working hours.

The maximum period for receiving such benefits shall amount up to 3 months.

## → STOPPAGE BENEFIT

**Persons conducting business activity and performing civil law contracts shall be entitled to a stoppage benefit**, if they are not subject to social insurance on another account. The above is **also applicable to foreigners** legally residing in the territory of the Republic of Poland.

The stoppage benefit is granted if in a month before the month in which the application for the stoppage benefit was submitted, following the occurrence of COVID-19, **an uninterrupted stoppage lasting at least 30 calendar days occurred**.

**The benefit is a one-off payment of 80% of the minimum wage.**



## → LOANS TO MICRO-ENTREPRENEURS

A local authority (starosta) may grant a **single loan of up to PLN 5.000** to cover the current costs of business for **micro-entrepreneur** who operated a business before 1.03.2020. The loan's fixed interest rate per year is 0,05 of the rediscount rate for bills of exchange accepted by the National Bank of Poland (currently the rediscount rate is 1,05). The repayment period may not exceed 12 months, with a grace period for repayment of capital and interest of 6 months from the date of granting the loan.

It is envisaged that **the loan may be remitted**, provided that the entrepreneur does not reduce the employment in terms of full-time work in comparison with the employment as of 29.02.2020 within 6 months from the date of its granting.

## → SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS

Micro-entrepreneurs, whose revenues in March 2020 fell by more than 50% compared to February this year, shall be exempted from paying social security contributions for three months. Please be advised, that this issue is not yet included in the draft act, it was presented by the President of the Republic of Poland. It is not known whether the exemption will cover March.

A micro-entrepreneur is in this case a natural person entered in the Central Registration and Information on Business (Centralna Ewidencja i Informacja o Działalności Gospodarczej; CEIDG), who in at least one of the last two financial years:

- employed **less than 10 employees** on average per year and
- achieved **annual net turnover** from sales of goods, products and services as well as financial operations not exceeding the PLN equivalent of EUR 2 million (i.e. **approximately PLN 8 million**) or
- by whom **total assets** indicated in the balance sheet drawn up at the end of one of these 2 years did not exceed the PLN equivalent of EUR 2 million (i.e. **approximately PLN 8 million**).

In addition, in the case of a deferral of the payment or a payment in instalments concerning the contributions due for the period from 1 January 2020 **no prolongation fee shall be charged** if the application is submitted in the right time.

The period of entitlement to **rehabilitation benefits** shall extended for further period of 3 months from the date of expiry of a given decision.

## → PIT

Taxpayers who have suffered negative economic consequences due to the COVID-19 epidemic may **pay the tax advances collected in March and April 2020** on income from the public service relationship, employment relationship, outwork, cooperative employment relationship, and social security benefits **until 1.06.2020**.



**The provisions regarding PIT payments on the so-called bad debts** to the taxpayer who is the debtor does not apply if, as a result of COVID-19, the taxpayer's revenues in 2020 will be at least 50% lower than the previous tax year. This also applies to taxpayers using flat-rate taxation.

Taxpayers, who **because of COVID-19 in 2020:**

- will suffer a **loss** on non-agricultural business activity and
- will achieve total **revenues** from non-agricultural economic activity **lower by at least 50%** than the total revenues achieved in 2019 from this activity,

may once **reduce revenue achieved in 2019 from non-agricultural economic activity by the amount of this loss, but no more than by the amount of PLN 5 000 000**, by submitting a correction of the tax return for this year.

**Stoppage benefit received under the COVID-19 Act shall be exempted from income tax.** Also, guarantee support and loan interest subsidies received in 2020 are to be PIT-free. The exemptions also shall apply to taxpayers using flat-rate taxation.

**The taxpayer may deduct donations made in 2020 to counteract COVID-19.** Donations can also be deducted by a taxpayer using flat-rate taxation.

Small taxpayers who have chosen the simplified form of advance payments for 2020 may opt out of it during the tax year if they have suffered negative economic consequences due to COVID-19.

**The deadline for tax payments on revenues from properties for the months March-May 2020 is postponed to 20.07.2020** if, as a result of COVID-19, the taxpayer's revenues in a given month are lower by at least 50% compared to the same month of the previous year tax.

## → CIT

**The provisions regarding CIT payments on the so-called bad debts** to the taxpayer who is the debtor does not apply if, as a result of COVID-19, the taxpayer's revenues in 2020 will be at least 50% lower than the previous tax year

Taxpayers, who **due to COVID-19 in 2020:**

- will incur a **loss** on their activities and
- will achieve total **revenues at least 50% lower** than the total revenues achieved in 2019 from these activities,

may once **reduce income achieved in 2019 by the amount of this loss, but no more than by the amount of PLN 5,000,000** by submitting a correction of the tax return for this year.

Guarantee support and interest rate subsidies received in 2020 are to be CIT-free.

**The taxpayer may deduct donations made in 2020 to counteract COVID-19.**

Small taxpayers who have chosen the simplified form of advance payments for 2020 may opt out of it during the tax year if they have suffered negative economic consequences due to COVID-19.



**The deadline for tax payments on revenues from properties for the months March-May 2020 shall be postponed to 20.07.2020** if, as a result of COVID-19, the taxpayer's revenues in a given month are lower by at least 50% compared to the same month of the previous year tax.

**→ VAT**

Deadline for all taxpayers for submitting a **new JPK\_VAT** file shall be **postponed from 1.04.2020 to 1.07.2020**.

The deadline for submitting notification that a **payment has been made to the account not included to the list of VAT taxpayers** shall be extended to **14 days**.

**→ TRANSFER PRICING**

It is envisaged that the information on transfer pricing may be submitted until **30.09.2020**.

**→ OTHER TAXES AND FEES**

The annual **perpetual usufruct** fee (opłata za użytkowanie wieczyste) for 2020 may be paid by **30.06.2020**.

**Loans** granted to entrepreneurs whose financial liquidity has deteriorated in connection with COVID-19 **are not subject to tax on civil law acts**. The rule applies to contracts made until 31<sup>st</sup> August 2020.

There is no general exemption from **property tax**: land, buildings, and structures related to business operations. The exemption may be introduced by the district council by way of resolution. In addition, the head of the district council (mayor, city president) may extend the dates of payment of property tax installments payable in April, May, and June, no longer than until 30.09.2020.

A excise tax inspector may decide not to be present at the **inspection regarding excise goods**. The controlled person should inform the controlling person about the course of the control.

The application of the **Retail Tax Act** is postponed. It shall first apply to revenues from retail sales achieved from **1.01.2021**.

**→ OTHER TAX ISSUES**

If the payment deadline is postponed or taxes paid to the state budget are paid in installments (including PIT, CIT), **no extension fee shall be charged** if the application is submitted in due time.

The deadline for issuing individual interpretations is extended by additional three months.

**The authority may suspend** on its own initiative or at the request of: 1) **proceedings or control** conducted under the Tax Code; 2) **customs and tax controls**; 3) proceedings in matters related to gambling.



Until 30.06.2020 deadlines for tax schemes other than cross-border schemes may not expire.

## → LABOUR LAW

The employer **shall be able to reduce wages in the event of economic downtime by no more than 50%. Reduced wages cannot be lower than the minimum wage.** An employer who has experienced a decrease in business trading as a result of COVID-19 may reduce working hours by 20%, not more than 0.5 FTEs. Employers are granted additional rights to **make the working time more flexible.** Up to 50% of the minimum wage may be subsidised from the funds of the Employee Benefits Guarantee Fund (Fundusz Gwarantowanych Świadczeń Pracowniczych).

An employer with a decrease in business trade (by 15% or 25%) may introduce the following changes:

- reduce the uninterrupted daily rest from 11 to 8 hours;
- reduce the uninterrupted weekly rest from 35 to 32 hours;
- conclude an agreement on the introduction of a balanced working time system where it is admissible to extend daily amount of working time, however for not more than 12 hours in the settlement period not longer than 12 months;
- conclude an agreement on the application of employment conditions less advantageous than the ones stipulated in the contracts of employment concluded with the employees to the extent and for the period determined in the arrangement (so-called crisis agreements).

For employers in Phase II of the implementation of Employee Capital Plans (**Pracownicze Plany Kapitałowe**; PPK) the maximum deadlines for taking the required actions shall be postponed by adopting the deadlines initially foreseen for Phase III. A contract to manage the PPK shall be concluded by **27.10.2020** and a contract to run the PPK shall be concluded by **10.11.2020**.

From the date on which an emergency epidemic state or epidemic state is declared, **periodic medical examinations of employees** shall be suspended. However, an employee shall still not be admitted to work without a current medical certificate stating that there are no contraindications to work in a particular position, i.e. without an initial examination. The check-up examinations are also not suspended.

If the authorised doctor is not available, the check-up or preliminary examination may be performed by another doctor. Such examination expires after 30 days.

The circle of those entitled to the **care allowance is extended to include children who have a judgment with a severe or moderate degree of disability up to the age of 18 or adults with disabilities.** At the same time, there are no plans to extend the period of payment of additional care allowance. The Council of Ministers may decide on an extension in a separate regulation.



## → LEGALISATION OF FOREIGNERS PERMIT

**The deadline for submitting an application for a residence permit shall be extended to 30 days** after the cancellation of an emergency epidemic state or state of epidemic respectively. During the above mentioned period the foreigner's stay will be legal.

The same rules apply to the expiry of the visa and the residence permit.

## → CREDIT AGREEMENTS

It will be possible to **change the conditions or repayment terms of loan agreements** granted before the day 8.03.2020 to **micro, small and medium-sized entrepreneurs**. The changes must be justified by the assessment of the borrower's financial and economic standing made by the bank not earlier than on the day 30.09.2019.

**An amendment** to loan agreement is made **on conditions agreed between the bank and the borrower however, it may not cause deterioration of the borrower's financial and economic situation.**

At the moment, **the previous proposal of Office of Competition and Consumer Protection (Urząd Ochrony Konkurencji i Konsumentów; UOKiK)** has not been accepted. The proposal stated that, at the client's request, the bank could postpone repayment of the loan for up to a year, and the period of suspension of performance of the agreement would not be treated as a loan period and the client would not incur any costs during this time, including interest or fees.

## → PUBLIC PROCUREMENT

Each party to a public procurement contract is required to **inform the other party without any delay of the impact, if any, the COVID-19** might have on the proper performance of that contract.

The impact of COVID-19 on the proper performance of the contract **must be confirmed by appropriate documents or statements**. By way of an example (the catalogue is open), the draft act lists such documents as those relating to:

- the number and positions of employees or other associates who are or could be involved in the execution of the contract but who are hospitalized, remain in mandatory quarantine etc. or are relieved of work for childcare reasons due to the occurrence of COVID-19;
- the obligation to take specific preventive measures or control;
- orders issued by voivodes or decisions issued by the Prime Minister related to the countermeasures against COVID-19;
- the suspension of supply of products, product components or materials as well as difficulties in accessing equipment or difficulties in providing transport services.

The above-mentioned circumstances may also apply to a subcontractor or a second-tier subcontractor.





If the contracting authority decides that the circumstances surrounding the occurrence of COVID-19 may affect or do in fact affect the proper performance of the contract, then, in consultation with the contractor, **it may amend the contract by:**

- changing **the delivery deadline** or suspending the performance of the contract or parts thereof;
- changing **the way** in which supplies, services or works are performed;
- changing **the scope** of the contractor's performance including a corresponding change in contractor's **remuneration**.

Moreover, if the provisions of the contract contain **more favourable conditions** for the contractor concerning the amendments to the contract, the provisions of the contract shall apply and not the COVID-19 Act.

The 29.01.2004 Act on Public Procurement regulating public contracts for essential supplies or services does not apply in cases where the protection of public health against COVID-19 so requires or where there is a high probability of rapid and uncontrolled spread of the disease. Still, contracting authorities have to apply the principles of transparency and equal treatment of contractors.

## ➔ WASTE MANAGEMENT

**In the absence of technical and organizational possibilities in a voivodship (województwo) required to dispose of waste "generated in connection with counteracting COVID-19 other than medical waste with infectious properties"** in accordance with applicable regulations – the local authority (wojewoda) **may issue an order regarding the management of this waste also binding for entrepreneurs**. The order may also concern:

- **transferring** unsorted (mixed) municipal waste **to installations other than municipal ones;**
- **disposal on landfills or thermal treatment of municipal waste without (any or specific) initial treatment processes.**

The order does not have to refer only to municipal waste “generated in connection with counteracting COVID-19”, but to **all municipal waste**.

Moreover, a voivode may issue an order **changing or excluding criteria concerning the selective collection of municipal waste**, specified in municipal regulations and provisions of law.

The problem of classifying **municipal waste generated in homes, e.g. by persons in quarantine**, and then it's safe collection **remains unresolved**. The draft act also does not introduce the possibility of processing waste beyond the limits resulting from permits. Although the draft act allows for the possibility of disposal on landfills unprocessed municipal waste, it lacks any regulations regarding the **marshal fee**.



## → TOURISM INDUSTRY

**The client have the right to withdraw from a travel contract before the start of the event** when the need to withdraw has a direct link with the epidemic. On the same basis, the **organiser is allowed to terminate such a contract.**

The parties shall settle accounts after 180 days. Within this period, a client may agree to accept a **voucher** worth at least as much as he or she has paid to the organiser – then a rescission or termination do not take effect and the traveller may use the voucher within one year from the day the vent was expected to take place.

Similar provisions have been proposed for entrepreneurs and farmers providing **accommodation services** as well as for **fairs and congresses organisers, cultural, entertainment and leisure operators or those who organise exhibitions or outdoor events.**

## → LEASE CONTRACTS

Subject to detailed rules set out in the draft act:

- until 30 June 2020 the tenant may make a declaration that **the term of the lease contract shall be extended until this date;**
- until 30 June 2020 the landlord is allowed to neither terminate the lease contract nor increase the rent by giving notice;
- when the termination notice or the rent increase notice has been filed prior to the entry into force of the act and the notice period ends between its entry into force and 30.06.2020, the tenant may make until 30.06.2020 a declaration that the notice period for termination of the lease contract or increase of the rent shall be extended until this date.

## → TRADE INDUSTRY

**The rent** of an entrepreneur running business in commercial facilities having a commercial area exceeding 2.000 m<sup>2</sup>, whose business has been banned or restricted under the provisions applicable in the emergency epidemic state or epidemic state, **shall be decreased by 90%, if a) an entrepreneur does not conduct this activity; b) the contract does not provide for more favourable conditions for a rent decrease.**

The ban on Sunday shopping shall not apply to some activities related to the trade, such as unloading, receipt, and exposition of essentials. Such activities may be carried out by an employer or a worker. This does not apply to Sundays being public holidays.

The application of the Act on **Tax on the Retail Sector** has been postponed. It shall apply to income generated from **1.01.2021.**

The **application of the provisions on the consumer contracts** to the sole traders, including provisions about the right of withdrawal from distance contracts, has been stopped until 1.01.2021.



## → FUNCTIONING OF COMPANIES

Board members of limited liability companies and joint-stock companies shall be released from **liability for stop making claims to contractors arising in a relationship with non-performance or improper performance of a public procurement contract** due to circumstances related to COVID-19. The same protection shall be granted if the public procurement contract was amended. The exemption concerns criminal liability (Article 296 § 1 of the Penal Code - criminal offense of mismanagement) and civil liability (Article 293 § 1 or Article 483 § 1 of the Commercial Companies and Partnerships Code).

**The deadline for complying with the obligation to submit information to the Central Register of Beneficial Owners (Centralny Rejestr Beneficjenta Rzeczywistego) shall be postponed from 13.04.2020 to 13.07.2020.**

The minister competent for public finance may postpone the deadlines for fulfilling obligations in the field of financial reporting of commercial law companies and other entities. Currently, however, there is no information that the minister plans to use the abovementioned permissions so in the current situation the deadline of 30.03.2020 for the preparation of financial documents is binding for the management boards.

The obligation for the general meeting of shareholders of a public company to adopt a resolution on the remuneration policy of management board and supervisory board members shall be extended until 31.08.2020.

**The possibility shall be introduced to hold meetings by the management and supervisory boards of limited liability and joint-stock companies using the means of communication at a distance** (in telephone or video conference mode). The management boards shall be entitled to adopt resolutions also by circulation, also its members shall be entitled to cast votes in favour of resolutions through another board member. The same possibilities shall be provided to supervisory boards. The existing restrictions on the prohibition of adopting resolutions in writing or by means of direct remote communication shall be removed, if they concern the election of the chairman and vice-chairman of the supervisory board, the appointment of the management board and the dismissal and suspension of these persons.

## → BUILDING LAW

The investor shall inform the architecture and building administration authority when it performs construction works or changes the intended manner of use of construction works or its part in relation to counteracting COVID-19.

## → INDUSTRIAL PROPERTY LAW

In the period from 8.03.2020 to 30.06.2020, **the deadline** for filing an objection to an application for a trademark and submission of a translation of the European patent into Polish by the Polish Patent Office as well as **the deadline** for submitting a limited translation into Polish or revised European patent **have been stopped**. The dates will start again on 1.07.2020.



## → SUPPORT FOR CREATORS AND ARTISTS

**Creators and artists** running their own businesses and working on a mandate contract or a specific work contract **may receive financial support up to 80% of the minimum wage.**

The collection of fees from authors and artists for the organization of collective management of copyright or related rights (including the association of authors ZaiKS) is suspended. The obligation to transfer payment on the revenue generated from the screening of films and advertisements in the cinema to the Polish Film Institute (Polski Instytut Sztuki Filmowej) and the data related to it by the cinema operator is also abolished.

## → COURT CASES

It is envisaged to **stop the not yet started or to suspend:**

- deadlines set out in civil law on which depends the right to seek a remedy before a court – in particular, **the limitation period of claims;**
- the prescribed statutes of limitations for criminal offenses and for execution of the penalty in cases of offences, fiscal offenses and fiscal petty offenses, and petty offenses;
- **procedural and court deadlines in court proceedings**, including administrative court proceedings, enforcement proceedings, criminal, fiscal offenses and petty offenses proceedings, administrative, administrative enforcement and other proceedings conducted under the laws.

**Please do not hesitate to contact us in case of any inquiries or doubts on the anti-crisis shield or any other legal questions concerning COVID-19.**

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