

COMPANIES FACING THE COVID-19 CRISIS

Special newsletter

COVID-19: Changes in act on preventing and combating COVID-19

On 31 March, 2020 an amendment to the Act on specific solutions related to the preventing, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them, together with other acts (the "Act") entered into force. The Act is a part of what is commonly referred to as the "anti-crisis shield" and it significantly extends the scope of measures in force aimed at addressing the issues related with the current pandemic.

Labour law

Economic downtime and reduction in working hours

One of the solutions proposed by the Act is to introduce the possibility of concluding an agreement with employees on declaring economic downtime and reducing the working time by 20%, but not more than up to 0,5 full-time job.

The agreement is concluded between the employer and the workers' representatives, i.e. the trade unions or, failing that, the representative elected by the workers.

Although the Act does not provide for the possibility of unilateral introduction of new terms and conditions of the employment contract by the employer, it does introduce to some extent new possibilities for the employer. On the basis of the previous provisions of the Labour Code there was (and still is) subject to certain conditions a possibility:

- for employers with at least 20 employees - to suspend in whole or in part the provisions of the company's labour law, i.e. the remuneration regulations, bonuses or collective agreement which contained regulations providing for additional benefits for employees, the implementation of which burdened the budget of the employer (bonuses, prizes, additional severance pay);
- for employers with fewer than 20 employees - the suspension of the working conditions and remuneration conditions of the employment contracts. By way of this agreement, it is therefore possible to reduce the working hours and reduce the employee's remuneration accordingly.

Subsidy to the employer from the GEBF

The Act also provides for the possibility for the employer to receive a subsidy from the Guaranteed Employee Benefits Fund ("GEBF") to the employee's remuneration:

- in case of introducing economic downtime in the amount of 50% of the minimum remuneration (currently PLN 1.300 gross);
- in the case of reduced working hours (by 20%, not more than up to 0,5 full-time job) - up to half of the remuneration, but not more than 40% of the average remuneration (currently PLN 2.079,4 gross)

However, an employee who earned more than 300% of the forecasted average monthly remuneration in the national economy in 2020 in the previous month (currently PLN 15,681) will not be entitled to receive such subsidy;

The funding will be available to any entrepreneur (micro, small, medium, large), who:

- was not in arrears with social security contributions and tax liabilities until the end of Q3 2019;
- recorded a decline in economic turnover:
 - i. not less than 15% calculated as the ratio of the total turnover during any 2 consecutive calendar months falling in the period after January 1, 2020 to the day preceding the day of filing the application to the GEBF as compared to the total turnover during the same 2 consecutive calendar months of the previous year, or

- ii. not less than 25% calculated as the ratio of the turnover from any given calendar month after January 1, 2020 to the day preceding the day of filing the application to the GEBF as compared to the turnover from the previous month.

The benefits will be available for 3 months from the date of submitting the application to Social Insurance Institution (ZUS) and GEBF.

Subsidy from the Labour Office

Regardless of the fact that the employer may obtain funding from GEBF, he may also apply for funding of a part of the costs of employees' remuneration and social security contributions by District Labour Offices.

This form of funding is not available to large enterprises. Only micro, small and medium-sized enterprises are eligible.

Additionally, only those entrepreneurs who have recorded a decrease in turnover in terms of quantity or value, calculated as a ratio of total turnover during any 2 consecutive calendar months, falling in the period after January 1, 2020 to the day preceding the date of submitting the application for co-financing, will be entitled to obtain co-financing, as compared to total turnover from the same 2 consecutive calendar months of the previous year; – there is no condition for particular size of the decrease, but the amount of the subsidy depends on the size of decrease.

- At least 30% of the decrease, the subsidy may amount to 50% of the remuneration, but not more than 50% of the guaranteed minimum remuneration
- With at least a 50% decrease, the subsidy may amount to 70% of the remuneration, but not more than 70% of the minimum remuneration
- At least 80% of the decrease, the subsidy may amount to 70% of the remuneration, but not more than 90% of the minimum remuneration

The grant is awarded on the basis of a contract with the District Labour Office for a maximum period of 3 months and is paid monthly.

The employer must also maintain size of employment for the duration of the grant and afterwards for the same period of time under penalty of repayment of the grant, but without interest.

The application for funding should be submitted by employers to the District Labour Offices, but only after they have announced a call for proposals.

Exemption from ZUS contributions

In addition, the Act provides for the possibility of obtaining exemption from the obligation to pay contributions for mandatory social insurance, health insurance, Labour Fund, Solidarity Fund, Guaranteed Employee Benefits Fund or Bridge Pension Fund, due for the period from March 1, 2020 to May 1, 2020.

However, only micro-entrepreneurs who had a registered business activity before February 1, 2020 will be entitled to such an entitlement.

The application shall be submitted to ZUS by June 30, 2020, i.e. when it is already known that due to difficulties the contribution was not paid.

Litigation matters

Suspension of deadlines. During the period of an emergency or a state of epidemic declared due to Covid-19, the commencement and suspension of procedural and court deadlines, was generally suspended. At the same time, the Act ensures that actions taken in order to exercise a right or obligation during the period of suspension of commencement or suspension of the running of time limits are effective. The first draft of the Law provided also for suspension of the civil deadlines (e.g. suspension of limitation periods), finally however a legislator decided to suspend administrative deadlines only.

Corporate

Liability of corporate bodies for not asserting claims against debtors

If one of the parties to a public procurement contract (the debtor) fails to fulfil or improperly fulfils its obligations under the contract because of COVID-19-related circumstances, the creditor may choose not to assert claims or agree with the debtor to amend the contract. In such case the persons entrusted with the affairs of the creditor, such as the management board, may not be held criminally liable, as well as the management board, the supervisory board, the revision committee or the liquidators of the creditor may not be held liable for damages caused by their inaction.

Shareholders' meetings and general assemblies

Shareholders may participate in and vote at shareholders' meetings of limited liability companies (sp. z o.o.) and general assemblies of joint-stock companies (S.A.) by electronic means of communication, unless the articles of association or statute provide otherwise. The decision on participation by electronic means of communication is taken by the body or persons convening the meeting and in case of a limited liability company (sp. z o.o.), the notice convening the meeting must contain information regarding the particulars of the participation, voting, speaking out or raising an opposition.

The rules and regulations of participation in a shareholders' meeting or general assembly by electronic means of communication shall be adopted by the supervisory board and if one is not present in a limited liability company (sp. z o.o.), the shareholders adopt the relevant bylaws.

Meetings and resolutions of the management board

Members may participate in meetings of the management board by means of direct distance communication, unless the articles of association or statute provide otherwise. The management board may also adopt resolutions in writing or by means of direct distance communication, unless the articles of association or statute provide otherwise.

A member of the management board may participate in the adoption of resolutions by casting their vote in writing via another member unless the articles of association or statute provide otherwise.

Meetings and resolutions of the supervisory board

Members may participate in meetings of the supervisory board of a limited liability company (sp. z o.o.) or a joint-stock company (S.A.) by means of direct distance communication, unless the articles of association or statute provide otherwise.

A member of the supervisory board may participate in the adoption of resolutions by casting their vote in writing via another member unless the articles of association or statute provide otherwise. This procedure does not apply to matters introduced into the agenda during the meeting. The supervisory board may also adopt resolutions in writing or by means of direct distance communication, unless the articles of association or statute provide otherwise. The resolution is valid if all members were informed about the contents of the draft resolution and at least half of the members participated in its adoption.

Financial Statements

In the event of the state of epidemic threat or the state of epidemic is announced, the minister responsible for public finance, by way of a regulation, may specify other deadlines for fulfilling obligations concerning records and the preparation, approval, disclosure and submission to the appropriate register, unit or body of financial statements, activity reports and other reports, described among others in the Accounting Act. If the minister indicates new dates, and the law provides that the meetings of the bodies approving these reports (e.g. ordinary meeting of shareholders) should take place earlier than the date indicated by the minister, the meeting of the bodies shall take place until the date indicated by the minister. This means that if the minister extends the deadline for preparing financial statements, for instance, to September 2020, the ordinary meeting of shareholders approving this report may also take place until September 2020.

Central Register of Ultimate Beneficial Owners

The deadline for the registration of the company's ultimate beneficial owners to in the Central Register of Ultimate Beneficial Owners is extended by another 3 months, that is until 12 July 2020.

Commercial contracts

Shopping center leases

During the ban on operating in commercial facilities with a sales area of over 2,000 m², the mutual obligations of the parties to the lease, tenancy or other similar agreement for the use of commercial space shall expire. In other words, in the case of a commercial space lease agreement in a facility over 2,000 m², from the date of entry into force of the Amendment obligations such as for example the tenant's obligation to pay rent or fees, as well as the lessor's obligation to provide space expire.

When the activity ban is lifted, the holder of the commercial space (for example, the tenant) should submit to the user (for example, the lessor) an unconditional and binding offer of will to extend the term of the contract on the current terms for the period during which the ban was in force, extended by six months; the offer should be submitted within three months from the day the ban was lifted. Provisions regarding the expiry of mutual obligations cease to be binding on the entity making the space available (e.g. the landlord) as of the expiry of the deadline to submit the offer.

Restrictions on terminating lease of premises

If an agreement for lease of premises concluded before the date of entry into force of the Amendment, would terminate after that date but before 30 June, 2020, the agreement shall be extended to 30 June 2020, on existing terms. The extension is applied based on the tenant's declaration of intent. This does not apply in particular cases, including non-payment of rent or misuse of the premises by the tenant.

The lessor may not issue the notice of termination of the rental contract or the amount of rent until 30 June 2020. If the lessor issued the notice of termination of the rental contract or the amount of rent before entry into force of the Amendment, and the notice period lapses after that date but before 30 June, 2020, the term of notice extends until 30 June 2020. The extension is applied based on the tenant's declaration of intent.

The above restrictions do not apply among other instances when the termination is issued in accordance with certain provisions of the law on the protection of tenants or the tenant is entitled to another dwelling meeting certain conditions.

Banking and finance

Change the definition of the concept of "counteracting COVID-19"

In order to assess the scope of application of the Act, it is necessary to refer precisely to the issues relating to the 'COVID-19 counteraction', a concept which, prior to the entry into force of the Act, did not include combating the socio-economic consequences of the epidemic. Therefore, it is worth noting the amendment contained in Article 1, point 1) of the Act, because from the date of entry into force of the Act, also **all activities related to the control of the social and economic effects of the SARS-CoV-2 disease will fall within the scope of this notion** and will, under the conditions specified in the regulation, be admissible or otherwise affect the sphere of competence of the entities (e.g. give the right to apply for the reliefs and exemptions specified in the Act).

Non-interest-bearing costs of consumer credit

The Act introduces a significant restriction on the possibility of charging consumers for high non-interest-bearing credit costs, limiting them accordingly:

- (a) for consumer credit with **a repayment period of not less than 30 days** to the amount calculated using the formula:

$$MPKK \leq (K \times 15\%) + (K \times n/R \times 6\%)$$

in which the individual symbols mean:

MPKK - maximum amount of non-interest bearing credit costs,

K - total loan amount,

n - repayment period expressed in days,

R - number of days per year.

(b) for consumer credits with a **repayment period of less than 30 days** calculated using the formula:

$$MPKK \leq K \times 5\%$$

in which the individual symbols mean:

MPKK - maximum amount of non-interest bearing credit costs,

K - total amount of credit

At the same time, the total amount of these costs may not exceed 45% of the loan amount, regardless of the financing duration. This means that the legislator has decided to drastically reduce these costs compared to the solutions provided for in Art. 36a of the Consumer Credit Act, where the amount of costs depending exclusively on the amount of the credit has been set at 25%, and depending on the duration of financing at 30% of this amount per year, with a limit of 100% of the credit amount. This will undoubtedly help those who, as a result of COVID-19, will be forced to seek financing from loan institutions, but it will also result in a decrease in the profitability of this type of activity and, in certain situations, may lead to the cessation of the activity by some of the consumer loan companies, which have so far been strongly opposed to further proposals to reduce these costs and have pointed to the risk of an increase in the grey market for such services. In accordance with the Article 1 point 19 of the Act, the solution will be valid for 365 days from the date of its entry into force, with costs determined in accordance with the current Consumer Credit Act only being charged for the remaining period of outstanding credit.

BGK guarantees and warranties

The Act provides that in connection with the effects of COVID-19 and the purpose of providing financial liquidity to entrepreneurs other than small and micro entrepreneurs, BGK may, upon request in its own name and on its own account, grant sureties and guarantees for the repayment of loans up to 80% of the outstanding loan amount, for a specified period and up to a predetermined amount. These activities may constitute State aid within the meaning of the relevant provisions as they constitute State aid to remedy a serious disturbance in the economy as referred to in Section 3.1 of the Communication from the Commission - Temporary framework for State aid measures to support the economy in the context of the ongoing COVID-19 epidemic (2020/C 91 I/01) (OJ C 202, 7.8.2020, p. 1). (EU C 911 of 20.03.2020, p.1) and can be cumulated with de minimis aid granted in accordance with the provisions of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p.1).

Changes in credit repayment terms or dates and export insurance

Pursuant to the Act, the bank will be able to change the terms and conditions or dates of repayment of a loan granted under the Banking Law or a cash loan to a micro, small or medium-sized entrepreneur if the loan or loan was granted before 8 March 2020, and such change is justified by the assessment of the borrower's financial and economic situation made by the bank not earlier than on 30 September 2019. The parties must agree on the terms and conditions of such a change, but it must not cause deterioration of the financial and economic situation of the borrower.

Korporacja Ubezpieczeń Kredytów Eksportowych S.A. will receive instruments enabling, among other things, to cover export insurance also for bank credits, loans or credit limits for issuing guarantees or letters of credit, which is to help Polish entrepreneurs return to foreign markets.

Tax

Improvement in the financial fluidity of enterprises

Tax advances / payments postponed

- Postponed deadlines for filing CIT tax return and making final payments (if any) for 2019 till May 31st 2020.
- Deadline for advance payments for PIT advances on employment salary for March and April 2020 postponed to June 1st 2020.
- Facultative postponement of deadline to pay the tax on income from buildings for months from March to May 2020 to July 20th 2020 (condition applies at least 50% decrease in revenues from such source).

Loss carryback

- Enabling CIT and PIT taxpayers who suffer negative economic consequences due to COVID-19 to deduct the loss incurred in 2020 from the income earned in 2019 (when they achieve at least 50% less revenue in 2020 compared to 2019).

COVID donations deduction

- Enabling deduction of donations made for the prevention of COVID-19 - cash or in-kind donations (in full amount) from the income, made to entities carrying out therapeutic activities as well as those made to the Material Reserves Agency and the Central Sanitary and Anti-epidemic Reserves Database.

Bad debts

- Suspension of application of the provisions in PIT and CIT concerning “bad debts” to taxpayers whose income is at least 50% lower compared to previous year so that the debtor is not obliged to adjust tax deductible costs and input VAT in case of payment delays

Real estate tax

- Introduction of provisions enabling the municipal council to:
 - introduce for part of 2020 an exemption from the property tax for the indicated groups of entrepreneurs whose liquidity has deteriorated due to negative economic consequences due to COVID-19,
 - extend, by order of the executive bodies, the deadlines for payment of property tax instalments payable in April, May and June 2020 - no later than 30 September this year.

Suspension of tax proceeding / inspections

- The possibility to apply for suspension of any opened and ongoing tax proceedings on the grounds of personal or public interest (the nationwide state of epidemic should be sufficient for suspension as most tax proceedings are not active currently due to quarantine).

Exemption from social security contributions

Separate set of regulations has been provided to self-employed persons and micro entrepreneurs, who, in addition to the general facilitating measures, will be exempted from the obligation to pay social security and health premiums (for themselves or their employees) for three months, provided that they meet a certain income threshold in that period.

Postponement in execution of coming, new tax formalities / procedures

Postponing certain tax related obligations is caused mostly by logistic and operational difficulties caused by the epidemic. No new obligations should apply in that period, especially such requiring implementing new procedures within a company.

- The implementation of retail sales tax postponed to January 1st 2021.
- Implementation of the new VAT matrix postponed to July 1st 2020.
- Extension of the deadline for submitting transfer pricing information for 2019 to September 30th 2020.
- Extension of the deadline for submitting a payment notification to an account not included in the VAT register (from three days to fourteen).
- Postponing of the obligation to file the new Single Audit File (declaration and records) from April 1st to July 1st 2020 for all taxpayers (voluntary filing available from May 2020).
- Postponement by three months of the deadline for reporting the information to the Central Register of Beneficial Owners.
- Extension of deadlines for tax schemes reporting, including the suspension of ongoing deadlines, but no later than June 30th 2020.
- The Minister of Finances will be able to (during the epidemic) issue a regulation implementing different deadlines in relation to: transmission of data, information, declarations, reports, statements, requests, applications, contributions, fees and charges, as well as other deadlines for fulfilling the obligations to register and to draw up, approve, make available and transmit to the competent register, unit or body certain reports or information to assist operators in fulfilling their information and reporting obligations.

Employment security

The government provided for regulations providing tax exemption for contractors and self-employed persons up to a certain threshold (80% of the minimum wage) and for persons on a tax card or a lump sum taxation (up to 50%). Further certain increases were made in limitations of exemptions applicable in personal income tax (mostly for employee receivables and subsidies). In relation to PIT the deadline for filing annual return is still April 30th, but Ministry of Finances said that no repercussions will be held against people who file their return a month later at the latest.

Solutions enabling and improving implementation of the special regulations

The act includes measures alleviating certain formal requirements of operating of tax authorities as well as provides means of delegating official competencies within the authorities personnel.

Irrespective of the above initiative, the general tax law includes regulations allowing to individually ask for postponement, split into installment (or in extreme cases even redemption) of any tax liability or social security contribution based on difficult situation of a given taxpayer. According to the planned measures, approach of the tax / social security authorities to acceptance of the individual requests should be less strict now with respect to the companies suffering negative consequences of coronavirus situation. The government also proposed that in relation to the applications described above, there will be no late payment interest applicable to rescheduled payments or administrative fee (4% of debt) applied.

Public procurement

Limitations in the application of public procurement law

Entry into force on April 1, 2020 of the Act concerning specific solutions related to the prevention, counteract and combating of COVID-19, other infectious diseases and the crisis situations caused by them allowed to introduce some special suspensions in the applicability of public procurement law and construction law.

- Exemption of Bank Gospodarstwa Krajowego (BGK) from the obligation to apply public procurement law when implementing financial instruments aimed at eliminating the effects of the COVID 19 pandemics on the entrepreneurs' activity.
- Public procurement contracts for services or supplies awarded by Zakład Ubezpieczeń Społecznych (ZUS – National Insurance Institute) in connection with the realization of the tasks related to the determination of the right or payment of the demurrage are exempt from the application of public procurement law.

Amendment of public procurement contracts and exemption from contractual penalties

The project foresees changes in the Public Procurement Law introducing mutual obligation to communicate about the impact of circumstances relating to the occurrence of COVID-19 on the proper performance of the contract, the possibility of amending the contract, non-recovery of receivables, including contractual penalties and exemption from penalties specified in the Act on the violation of the public finance discipline.

Two principal solutions:

- Possibility of amending the content of the contract concluded by the parties to ensure its realization and adaptation of the contract to the current changes of social and economic situation because of the COVID-19 outbreak;
- Exemption of contracting authorities' liability, including contracting entities awarding utilities contracts, from the breach of public finance discipline when resigning from the determination and recovery of receivables from the contractors (ex. contractual penalties) or amending contractual provisions in accordance with the rules defined in the presented project.

In the current state of epidemic threat introduced by the Polish government, the Public Procurement Office declared that an online transmission from bids opening is sufficient to comply with the rule introduced by art. 86 section 2 of public procurement law.

Deadlines in the area of public procurement

The stay and suspension of deadlines in the project does not apply to controls and proceedings indicated appropriately in Title V chapter 3 section 3 (Ex-ante control of contracts co-financed from the EU funds) and Title VI chapter 2 (Legal protection measures – Appeal) of the act dated 29 January 2004 Public procurement law.

In this area, the President of the Public Procurement Office or the President of National Appeal Chamber, through an adequate ordinance, may define the detailed conditions for the organization of work of the National Appeal Chamber and the security measures taken.

Garrigues, a multidisciplinary team of specialists facing COVID-19

The worldwide health alert triggered by coronavirus is generating a great deal of uncertainty among companies, affecting all aspects of their activity. Since the crisis took hold, Garrigues has been at the disposal of its clients, with multidisciplinary teams specializing in all practice areas in the countries in which it is present. These are also the teams responsible for supervising the contents of this Special section, in which we provide information on all legal developments in relation to the coronavirus crisis, on proposals made by social agents, agreements, decisions, orders, etc.; in short, all the relevant information which companies need to be aware of.

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