

## CORONAVIRUS: POLISH ANTI-CRISIS ACT

The Ministry of Development in cooperation with other ministries and state institutions has urgently drafted provisions to assist firms and employees in mitigating the effect of the economic crisis caused by the COVID - 19 pandemic. The Anti-crisis Act came into force on 31 March 2020. The package of solutions prepared by the government concerns a number of areas, covering, inter alia, employment, company law, civil law, the operation of the justice system and public administration, competition law, tax law and public procurement law.

Below we set out the most important types of aid and the most material amendments concerning entrepreneurs that are set out in the Act.

### LABOUR LAW AND EMPLOYMENT

#### Downtime and decreased working hours

Employers will be able to take advantage of two basic instruments for managing work:

- Employers may decrease the remuneration of employees who are affected by downtime (i.e. who have been furloughed) by no more than 50% (but to no lower than the minimum wage, which is currently PLN 2,600 per month, i.e. approx. EUR 560); and
- employers may decrease the working hours of other employees by 20%, but to no less than half of full time. The remuneration of such employees will be proportionally decreased but it may not be lower than the minimum wage, taking into account the number of working hours.

Those solutions may also be applied to persons employed based on civil law agreements. The above-mentioned solutions may be applied only in agreement with the employee representative body (trade unions or employee representative). Furthermore, only employers who satisfy a number of conditions may apply decrease working hours; primarily they must have been affected by a drop in turnover as a result of the COVID-19 epidemic, understood as a drop in revenue from the sales of goods or services, in simple terms (i) by 15% or more over two consecutive calendar months; or (ii) by 25% or more of turnover in one calendar month after 1 January 2020.

### **Basic subsidisation from public funds**

The possibility of obtaining subsidies from public funds for payment of remuneration (and social insurance contributions) of employees and persons employed on the basis of civil law agreements covered by the above-mentioned mechanisms depends on the satisfaction of certain conditions, including conditions related to a drop in turnover in the above-mentioned regard:

- 50% of the minimum remuneration in the case of employees affected by downtime (PLN 1,300, i.e. approx. EUR 280);
- half of the remuneration decreased as a result of the decrease in the employee's working hours, but no more than 40% of the average monthly remuneration in the preceding quarter (approx. PLN 2,080, i.e. approx. EUR 450).

Both types of subsidies are available for three months. Nevertheless, neither subsidy will be available for the remuneration of employees that in the month preceding the month in which the application for a subsidy is filed was three times the average monthly remuneration in the preceding quarter (approx. PLN 15,600). The employer will not be able to make redundant for economic reasons any employee for whom it has received the above-mentioned subsidy, during the period it receives the subsidy and thereafter for a period equal to the period it received the subsidy.

### **Additional aid granted by starostas**

Starostas have acquired the right to grant entrepreneurs subsidies for part of the costs of the remuneration of employees in the event of a drop in the entrepreneurs' turnover as a result of the COVID-19 epidemic by 30% or more in the period of any two consecutive months after 1 January 2020 (when compared to the same period in 2019). Depending on the extent of the drop in turnover, the subsidy may be granted as an amount that does not exceed 50% to 90% of the remuneration of individual employees to whom the application relates, but no more than, respectively, 50% to 90% of the amount of the minimum remuneration in relation to each employee. The subsidy may be granted to micro enterprises and SMEs for a period of no longer than three months.

### **Payments for the self-employed and persons employed on the basis of civil law agreements**

The self-employed and persons employed based on civil law agreements will be entitled to a one-off downtime payment of 80% of the minimum wage (PLN 2,040) if as a result of the COVID-19 epidemic there is a stoppage in the conduct of economic activity by such person and at the same time he/she satisfies a number of additional conditions.

## **COMPANY LAW**

### **Remote meetings of management boards and supervisory boards**

Until now, management boards and supervisory boards of companies have been able to adopt resolutions in writing or with the aid of long-distance means of communication, and the members of supervisory board have been able to cast votes in writing through another member only where the articles of association or statutes of the company expressly provided for this. Even then, members of supervisory board could not, without physically attending a

meeting in person, take part in making decisions in personal matters, including making changes to the management board.

The new Act overturns this rule. From now on, it will always be possible to adopt resolutions on any matter as described above unless the articles of association or statutes state otherwise. In practice, however, that regulation will be of limited significance until the amendment of the appropriate terms of the articles of association and statutes which often reiterated the statutory restrictions in force to date – this may take many months because of the limited activities of registry courts.

### **Remote participation in shareholders' meetings**

Existing provisions have allowed the inclusion in articles of association or statutes terms allowing participation in shareholders' meetings with the use of electronic means of communication.

The Anti-Crisis Act overturns that, granting, in the absence of terms to the contrary in the statutes or articles of association, the right of the authority convening the meeting (usually the management board) to decide on the possibility of participation in a meeting with the use of electronic means of communication.

In such a case, the supervisory board (or in its absence in a limited liability company – the shareholders) should specify in the form of internal regulations the detailed terms of such participation in the meeting, which may not implement limitations other than those that are essential for identifying shareholders and ensuring the security of electronic communications.

### **Financial reporting**

On 31 March 2020, the Minister of Finance issued an ordinance postponing a number of deadlines arising under the Accounting Act. For example, the deadlines for drawing up financial statements, consolidated financial statements, reports on activity, reports on the activity of the capital group and the deadlines for approving those statements and reports were postponed for three months from the statutory deadlines (and in the case of entities subject to supervision by the Polish Financial Supervision Authority – by two months).

The new deadlines apply only to the financial year ended no earlier than 30 September 2019 and no later than 30 April 2020. This means that in companies whose financial year corresponds to the calendar year, the ordinary shareholders' meeting approving the financial statements may be held by the end of September, instead of, as is usually the case, the end of June.

## **CIVIL LAW (LEASE AGREEMENTS)**

### **Lease agreements in shopping centres**

From the date of the ban on trading in shopping centres with a retail area in excess of 2,000 m<sup>2</sup>, the mutual obligations of the parties to a lease agreement for retail space in such shopping centres expire. Put simply, this means that, inter alia, the tenant's obligation to pay rent and service charges and the landlord's obligation to continue to make the premises available to the tenant and provide other services, expire.

Under the Anti-crisis Act, landlords are to be compensated for lack of revenue during the trading ban through the possibility of the tenant's submitting an offer to extend the current term of the original lease agreement by the period of the

trading ban plus another six months. The offer should be made within three months of the end of the trading ban. If a tenant does not make such an offer, it will be obliged to pay the amounts overdue for the period of the trading ban.

#### **Regulations concerning all lease agreements**

With regard to other lease agreements, solutions have been adopted that affect the extension of expiring lease agreements and modifying the possibility of terminating them and giving notice to change the amount of rent.

Until 30 June 2020, subject to certain exceptions, landlords will not be able to give notice to terminate lease agreements for premises or change the amount of rent. Furthermore, lease agreements for premises that expire after 31 March 2020 and before 30 June 2020 will be automatically extended to 30 June 2020, provided the tenant makes a declaration of will to the landlord in this regard.

#### **Practical problems**

The solutions adopted give rise to a number of queries and doubts that application in practice in the coming months will likely resolve. In particular, it is curious why the regulations indicate that all lease agreements in shopping centers are to expire whereas the trading ban affects only certain tenants. Also dubious is the expiry of all obligations arising under lease agreements which are by nature far more complex than the obligation to make the premises available and pay rent. This is just the tip of the iceberg, however, and interpretations will definitely appear in the coming months that should dispel a number of doubts related to the enacted text of the Act.

### **JUSTICE SYSTEM AND PUBLIC ADMINISTRATION**

During the state of an epidemic threat and epidemic announced due to the COVID-19 epidemic, procedural and court deadlines (e.g. deadlines for filing appeals and procedural submissions) do not start to run, whereas those already running have been suspended. The same applies to administrative law deadlines. Actions taken by parties during this time will, however, be effective.

Also, no trials and public hearings will be held. However, there are no obstacles to hearings being held in camera.

An exception with respect to the running of procedural and court deadlines and holding of hearings will be so-called urgent cases (economic disputes, as a rule, are not included in the list of such cases).

Furthermore, in the case of administrative proceedings the regulations regarding the failure of the authorities to act and the requirement to notify a party of the fact that the matter will not be dealt with in a timely manner have been excluded. The running of deadlines for tacit consent to the resolving of a matter have also been suspended.

During the course of the work on the Act, the suspension of the running of deadlines was originally also to include civil-law deadlines, but ultimately that solution was abandoned.

## COMPETITION AND CONSUMER PROTECTION LAW

### Maximum prices

The minister responsible for the economy may, in agreement with other ministers mentioned in the Anti-crisis Act, determine by way of an ordinance the maximum prices of or margins on goods and services of crucial importance for (i) health care, (ii) human safety, or (iii) the costs of maintaining households.

Compliance with the regulations is to be monitored by the Pharmaceutical Inspectorate, Sanitary Inspectorate, Agricultural and Food Quality Inspectorate within the scope of their competences, and the and the Trade Inspectorate within the remaining scope. These public bodies may impose fines for failures to comply with the regulations, amounting from PLN 5,000 to PLN 5 million. A decision may be made immediately enforceable. Furthermore, the OCCP may conduct a dawn raid of an undertaking, in order to check whether it is complying with the above-mentioned regulations.

In the event of multiple or material breaches of the above-mentioned regulations, the OCCP may impose an additional penalty (of up to 10% of the annual turnover). The OCCP may also punish an economic operator for failing to provide requested information, providing false information or providing misleading information to the OCCP, and for preventing or hindering the conduct of an inspection (up to 5% of the annual turnover, but not more than PLN 50 million).

### Consumer credit

The Anti-crisis Act has introduced a new limit on non-interest costs of consumer credit. In the case of consumer loans with a repayment period of less than 30 days, it is 5% of the total amount of the loan. In the case of loans with at least a 30-day repayment period, it is 15% of the total amount of the loan + 6% for each year, but not more than 45% of the total amount of the loan.

A breach of these limits may constitute an infringement of collective consumer interests, for which the OCCP may impose a fine of up to 10% of the annual turnover.

## TAX LAW

### Possibility of deferring the filing of PIT and CIT returns

Under the Anti-crisis Act, the deadline for filing the annual CIT return and paying tax for 2019 by the end of May 2020 has been deferred and the sanctions under Fiscal Offences Act have been abolished for filing an annual PIT return and paying tax for 2019 after the due date, provided this is done by the end of May 2020.

### Possible retroactive settlement of tax losses in PIT and CIT

On certain conditions, tax payers will be able to deduct a loss incurred in 2020 from income earned in 2019 by adjusting return for 2019.

### Waiving the application of income tax regulations on bad debts

In certain circumstances, the negative consequences arising under provisions on bad debts in PIT and CIT will not apply to debtors.

**Extending the time limit for paying agents to transfer withholdings on remuneration for March and April**

The deadline for employers to transfer withholdings made in March and April against personal income tax on remuneration may be made by 1 June 2020.

**Exemption from payment of social insurance contributions**

Micro-entrepreneurs and self-employed persons with annual revenues of up to PLN 15,000 will be exempt from the obligation to pay social insurance contributions for three months.

**Change of the deadline for the introduction of the new matrix of VAT rates**

The new matrix of VAT rates will come into force as of 1 July 2020.

**Information on transfer prices (TP-R)**

Taxpayers will have until 30 September 2020 to file information on transfer prices for 2019.

**Deferral of the reporting deadline**

The deadline for filing of ORD-U (information on agreements concluded with non-residents) returns has been deferred until the end of the fifth month from the end of the tax year for which such returns are prepared. The same applies to IFT-2R returns (information submitted to non-residents and the tax office on disbursements made and tax withheld at source)– these are to be filed by the end of the fifth month from the end of the tax year following the tax year in which the payments covered by this information were made.

**Postponement of the deadline for payment of tax on revenue from buildings**

The deadline for paying the minimum tax on commercial real estate for the period March - May 2020 has been postponed, subject to the fulfilment of specific conditions.

**Possibility for municipalities to introduce real estate tax exemptions**

Municipalities may introduce exemptions from tax on land, buildings and structures used to conduct economic activity with respect to specific groups of entrepreneurs whose financial situation has deteriorated as a result of the COVID-19 epidemic.

**Possibility for municipalities to extend the deadlines for payment of real estate tax instalments**

Municipalities may extend the deadline for the payment of real estate tax instalments payable in April, May and June 2020 with respect to groups of entrepreneurs whose financial condition has deteriorated as a result of the COVID-19 epidemic.

**Suspension of retail sales tax**

Taxpayers will not be obliged to pay retail sales tax for the July-December 2020 settlement period.

**PUBLIC PROCUREMENT LAW**

**Waiver of the application of public procurement law**

The Anti-crisis Act introduces two waivers of the application of the Public Procurement Law of 29 January 2004 (the "PPL"). Firstly, under the Anti-crisis

Act, the PPL does not have to be applied with respect to procurements for services or the supply of goods necessary to combat the COVID-19 epidemic, if there is a high probability of the quick and uncontrolled spread of the disease or if this is required for the protection of public health.

Procurements may be deemed "indispensable" in a situation where the services or supplies are necessary to combat infection with, prevent the spread of, prevent and combatting the effects, including socio-economic effects, of the COVID-19 epidemic.

The Anti-crisis Act does not specify precisely how the probability or whether the high probability of the quick and uncontrolled spread of the disease should be checked or tested, respectively, or whether the protection of public health requires the application of the provisions of the PPL to be waived. It follows from the communiqué of the Public Procurement Office (UzP) of 24 March 2020 that contracting authorities should, in this respect, take into consideration the information provided by the authorities competent in the area of healthcare, particularly the Minister of Health and the Chief Sanitary Inspector.

In the opinion of UzP, the waiver is relatively broad and may also include, among other things, procurements that deal with IT hardware or IT services.

Moreover, the application of the PPL has been waived with regard to Bank Gospodarstwa Krajowego, the Polish Development Fund (Polski Fundusz Rozwoju) and regional development funds as regards procurements that concern support instruments necessary to combat the negative effects of the COVID-19 epidemic.

#### **Changes to agreements due to COVID-19-related circumstances**

The Anti-crisis Act indicates that parties to a public procurement agreement should inform each other of the impact of circumstances related to the COVID-19 epidemic on the proper performance of the agreement, if such circumstances have arisen or may arise. The parties should attach the relevant declarations or documents, as specified for example in the Anti-crisis Act, to such notification. At the same time, each of the parties may request that the other party submit additional statements or documents confirming the impact of the circumstances related to the COVID-19 epidemic on the proper performance of the agreement.

The contracting authority may, after determining that the circumstances related to the COVID-19 epidemic may or do affect the proper performance of the agreement, in agreement with the contractor amend the agreement, in particular by way of: changing the deadline for the performance of the agreement or part thereof or the temporary suspension of the performance or part thereof, changing the method of deliveries, providing services or construction works, changing the scope of the contractor's performance and a corresponding change to the contractor's remuneration – provided that the increase in the remuneration caused by each subsequent change does not exceed 50% of the original value of the agreement.

The Anti-crisis Act does not, therefore, give any party the right to claim an amendment to the agreement.

The Act also provides that the parties should inform each other of the impact of circumstances related to the COVID-19 epidemic on the justifiability of determining and claiming contractual penalties or compensation, or the amount thereof. In this context, the regulation under which receivables that



arose in connection with the non-performance or inadequate performance of a public procurement agreement for reasons related to the COVID-19 epidemic are not determined or claimed from a party to the agreement referred to in Art. 15(r) sec. 1 of receivables does not constitute a breach of public finance discipline, is significant.

#### **Proceedings before the National Chamber of Appeals**

The Act stops and suspends the running of many court and procedural deadlines. This does not apply, however, to appeal proceedings before the National Chamber of Appeals ("KIO"). The president of KIO, in agreement with the President of UZP, may specify, by way of an order, the detailed terms of the organisation of the work of KIO related to ensuring the proper operation thereof and applicable safety measures, taking into consideration the prevention, combatting and counteracting of COVID-19. And, pursuant to the Act, the conduct of open hearings or sessions is not possible.

#### **AREAS NOT COVERED BY THE ANTI-CRISIS ACT**

The Anti-crisis Act is not of an exhaustive nature and does not fully regulate all areas of activity of the Polish State in connection with the COVID-19 epidemic. It does not interfere, in particular, directly with credit relations and certain other relations between financial institutions and their customers, which are subject to separate regulations and "statutory-related" packages developed by financial institutions and regulators, nor does it make amendments to the Bankruptcy Law, which is to be the subject of separate amendments.

These and other issues will be the subject of separate briefings.



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