



June 26, 2020

POLAND'S ANTI-CRISIS SHIELD 4.0. – KEY UPDATES

On 24 June, 2020 the Law on subsidies to interest rates on bank loans granted to entrepreneurs affected by COVID-19 and on simplified procedure for approval of the arrangement in connection with COVID-19, i.e. the so-called **Anti-Crisis Shield 4.0**, came into force. Below, we briefly summarize some of the changes introduced by the Law which in our opinion may be important to you.

Changes within the HR area:

- The possibility of receiving support from the **Guaranteed Employee Benefits Fund** also by those companies which, despite a drop in turnover following COVID-19, did not apply economic downtime or reduction of working time to their employees. In such a situation, employee compensation will be subsidized for a maximum of 3 months on the same principles as it is in the case of a reduction of working time to 80% (i.e., up to half of the compensation but not more than 40% of the average monthly compensation). However, the subsidy will not be applicable to the compensation of staff members whose compensation was higher than 300% of the average monthly salary.
- **Extending the possibility of introducing economic downtime and reducing working time** - Employers who have experienced a significant increase in the burden on the payroll fund following the COVID-19 epidemic have the opportunity to:
 - reduce the working time of employees by a maximum of 20%, not more than to a half of the employees' normal working time, however, the employees' compensation may not be lower than the minimum wage, taking into account working time before reduction.
 - introduce economic downtime, whereby the compensation paid to employees in economic downtime may be reduced by no more than 50% and may not be lower than the minimum wage, taking into account working time.

For the employer to be able to take advantage of the economic downtime or reductions in working time, it will be necessary to reach an agreement with the trade union organizations operating in the company. The reduction in working time or covering an employee with economic downtime may apply for up to six months. The regulation in question applies only to businesses whose share of compensation costs in revenues is over 30%.

- **Clarification of the rules for remote working** - The employer may request remote working if the employee has the skills and technical and accommodation capacity to perform such work and the type of work allows it. The employer should provide the tools, materials and logistical support necessary for remote work. The employee may use his/her own resources provided that the security of information, including personal data and information that is a company secret, is ensured. At the employer's request, the employee performing remote work will be obliged to keep records of the activities performed.
- **The possibility of granting, during an epidemic emergency or epidemic state, outstanding holiday leave (up to 30 days)**, even without the employee's consent. The purpose of this regulation is to eliminate the accumulation of holidays not taken for previous years and holidays acquired in the current calendar year.
- **The possibility of terminating non-competition agreements during an epidemic emergency or epidemic state** – the legislator has introduced the right to terminate a non-competition clause that remains valid after the termination of the legal relationship in question in favor of those entitled under the non-competition clause, namely employers/contractors etc. Termination is possible even if it is not mentioned in the non-competition agreement. Upon termination, the non-competition obligation ceases to apply with all consequences.
- During an epidemic emergency or epidemic state, provided that the employer has been strongly affected by the economic crisis caused by the COVID-19 epidemic and has therefore recorded a (15% or 25%) drop in turnover or a significant increase in the burden on the salary fund, the following options can be considered:

- **Limitation of the amount of severance payments and other benefits on account of termination of employment relationship and civil law contracts** to 10 times the minimum compensation for work (i.e., up to PLN 26 000)
- **The possibility of suspending the obligation to establish a company social benefit fund (ZFSS)**, make contributions to the fund and pay out holiday benefits; provided that an agreement with trade unions operating in the company has been concluded.

"Anti-take-over" provisions:

- Control of acquisitions by non-OECD entities will apply for 2 years.
- The regulation covers key entities for maintaining safety, order and public health, including:
 - entities conducting business activities related to e.g. electricity, telecommunications, food processing, drug production, explosives, weapons and ammunition, providing data collection or processing services in the cloud computing,
 - entities creating software used in basic services for society, such as: energy, cash supply, card payments, transport, etc.
- Transactions involving the acquisition of a significant number of shares (i.e. at least 20%) in such companies will be subject to the control of the President of the Office of Competition and Consumer Protection (UOKiK). The control of acquisitions is to apply to enterprises whose revenues in the territory of the Republic of Poland have exceeded the equivalent of EUR 10 million in any of the two financial years preceding the notification.

A credit with additional payment financed by BGK:

- Support will be directed to companies (micro, small, medium and large enterprises) which, due to the economic situation caused by the COVID-19 pandemic, lost financial liquidity or are at risk of such liquidity loss.
- The credit with additional payment will be granted by commercial and cooperative banks which will conclude an agreement with Bank Gospodarstwa Krajowego (BGK). The list of banks will be published on the BGK website.
- The amount of support will depend on the size of the enterprise applying for the loan:
 - An entrepreneur from the SME sector will receive an additional payment constituting a part of interest due to the bank corresponding to 2 percentage points
 - Other entrepreneurs will receive an additional payment constituting a part of the interest due to the bank corresponding to 1 percentage point
- The maximum support provided to an entrepreneur resulting from this instrument, i.e. the additional payment that can be obtained cannot exceed - for most entrepreneurs - the PLN equivalent of EUR 800,000 gross (taking into account the amount of public aid to date that the entrepreneur benefited from in connection with COVID-19).
- Additional payments will be made for a period not longer than 12 months from the conclusion of the credit agreement with the additional payment.
- Credit agreements with an additional payment can be concluded until December 31, 2020.

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