

ANTI-CRISIS SHIELD 4.0.

SUMMARY OF THE DRAFT LAW

Wrocław, 9th June 2020

COVID-19 and the anti-crisis shield 4.0. – what do we know so far?

We regularly inform you about successive governmental bills referred to as “anti-crisis shields”. On 31st March this year the anti-crisis shield 1.0. was adopted and entered into force on the very same day. On 18th April the anti-crisis shield 2.0. entered into force. On 28-29 April 2020, draft further laws were already published, including a draft law on interest subsidies on bank loans granted to provide liquidity to entrepreneurs affected by COVID-19 (draft law on subsidies), as well as the draft law amending certain laws regarding protective measures with relation to the spread of SARS-CoV-2. The first act, called the anti-crisis shield 3.0., finally entered into force on 16th May 2020. **The government's work on the draft law on subsidies was also completed and the draft law was adopted by the Sejm on 5th June 2020 and submitted to the Senate.**

Below you will find a summary of the solutions contained in the already binding law, so called anti-crisis shields 1.0., 2.0. and 3.0., divided into specific relevant topics. We have marked these solutions in black. **The amendments and supplements proposed under the draft law on subsidies, now called anti-crisis shield 4.0, have been marked in red.**

Team of SDZLEGAL Schindhelm



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→ CO-FINANCING FOR ENTREPRENEURS

A part of the costs of business of an entrepreneur who is a natural person and **does not employ employees shall be co-financed**. 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 31.12.2019 to the day preceding the date of submitting the application for co-financing, **to the total turnover of the entrepreneur reached during analogous 2 consecutive months in 2019**. A month is also considered to be 30 consecutive calendar days in a row when the two-month comparative period begins during a calendar month, i.e. on a day other than the first day of the calendar month.

The co-financing is provided by the local authority (starosta) on the basis of a contract concluded with the entrepreneur, **for a maximum of 3 months**, starting from the month of submission of the application for co-financing. The co-financing amounts:

- in the event of decrease of the entrepreneur's turnover by at least 30% – to 50% of the minimum wage per month;
- in the event of decrease of the entrepreneur's turnover by at least 50% – to 70% of the minimum wage per month;
- in the event of decrease of the entrepreneur's turnover by at least 80% – to 90% of the minimum wage per month.

The co-financing shall be paid on a monthly basis. The entrepreneur is obliged to operate its business during the period for which co-financing was provided. In the event of not operating business for the period described above, the entrepreneur is obliged to return the co-financing without interest, proportionally to the period of not operating the business, within 30 days of the date of delivery of the local authority's (starosta) call. The Council of Ministers may extend the maximum period of co-financing by a way of a regulation.

The application for the co-financing shall be submitted by the entrepreneur to the local employment agency (powiatowy urząd pracy) having jurisdiction over the place of ~~the conducting business its seat~~, within 14 days from the date of announcement of recruitment by the director of the local employment agency. We recommend to check regularly the website of the relevant local employment agency.

To the co-financing granted until the date of entry into force of the anti-crisis shield 2.0. the provisions in the wording of the new act shall apply.

In connection with the downtime resulting from counteracting COVID-19, there is no reduction in funding from the State Fund for Rehabilitation of the Disabled (Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych; PFRON) of the costs of operation of institutes of economic activity (zakłady aktywności zawodowej).



According to the anti-crisis shield 4.0. the co-financing shall not be subject to judicial or administrative enforcement. These funds, if transferred to a bank account, savings account, checking and saving account or term savings account, are to be free from seizure on the basis of a judicial or administrative enforcement order.

→ 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. Under the anti-crisis shield 4.0., funding is to be available to entrepreneurs and also particular non-governmental organizations and other entities dealing with public benefit activities and volunteering. 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 31.12.2019 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 31.12.2019 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, considering working time;
- **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, considering working time.

The subsidy is not to be granted in relation to the wages of persons whose wage obtained in the month preceding the month in which the application was submitted was higher than 300% of the average monthly salary from the previous quarter, announced by the President of the Central Statistical Office on the basis of regulations on pensions from the Social Security Fund, in force on the date of application.

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

The anti-crisis shield 2.0. extends the catalogue of entities that are entitled to apply for this kind of support. Eligible entities are also non-governmental organizations and public benefit organizations as well as state-owned persons. Under the anti-crisis shield 3.0. state legal persons were removed from the group of eligible entities.

The anti-crisis shield 4.0. envisaged the **possibility of co-financing from the resources of the Employee Benefits Guarantee Fund the wages of employees not covered by the downtime and reduced working hours** in case of a decrease in economic turnover at the employer. **Employees' wage may be subsidized up to half of the amount of these wage, but no more than 40% of the average monthly wage** from the previous quarter in relation to the date of application.



The subsidy is not to be granted with respect to wages of persons whose wage obtained in the month preceding the month in which the application was submitted was higher than 300% of the average monthly wage from the previous quarter.

A change regarding the rules of the reduction of employees' working time was also introduced. The amendment concerns granting employers the right to reduce the working time by maximum of 20%, and not, as before, only equally by 20%. The employee's remuneration may still not be lower than the minimum wage for work, with reference to the working time.

The subsidy will be paid for a total period of 3 months, starting from the month of submitting the application, and not, as before, from the day of submitting of the application.

A significant change in terms of the admissibility of termination of an employment contract after the period of receiving the subsidy was also introduced. The employer is entitled to terminate the employment contract after the period of receiving subsidy. Previously, after the termination of the co-financing, the employer was not entitled to terminate the employment contract for the period corresponding to the period of co-financing. As for now, the employer is obliged not to terminate the employment contract with the employee only during the period of receiving the subsidy to the remuneration due to that employee.

WAGE SUBSIDY ON THE BASIS OF CONTRACT WITH THE LOCAL AUTHORITY (STAROSTA)

Further funding, not only relating to the remuneration of persons employed under a contract for employment, but also employed under an outwork or contract of mandate or other contract for the provision of services, may be granted by the local authority on the basis of a contract with the entrepreneur. The co-financing concerns part of the wage and due costs on these wages and social security contributions. Micro, small and medium-sized enterprises can apply for this kind of funding.

The condition for obtaining the co-financing is that the entrepreneur shows a **decrease in turnover**. This term is understood as a decrease in sales of goods or services in quantitative or value terms, 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. A month is also considered to be 30 consecutive calendar days in a row when the two-month comparative period begins during a calendar month, i.e. on a day other than the first day of the calendar month.

The co-financing amounts:

- in the event of decrease of the turnover by **at least 30%** – maximum up to the amount of **50% of the total wage** of individual employees covered by the application for co-financing, together with social security contributions due on these wages, but not more than 50% of the minimum wage plus social security contributions from the employer in respect of each employee;
- in the event of decrease of the turnover by **at least 50%** – maximum up to the amount of **70% of the total wage** of individual employees covered by the application for co-financing, together



with social security contributions due on these wages, but not more than 50% of the minimum wage plus social security contributions from the employer in respect of each employee;

- in the event of decrease of the entrepreneur's turnover by **at least 80%** – maximum up to the amount of **90% of the total wage** of individual employees covered by the application for co-financing, together with social security contributions due on these wages, but not more than 50% of the minimum wage plus social security contributions from the employer in respect of each employee.

Co-financing may be granted from the day of submitting the application, for a period not longer than 3 months. The anti-crisis shield 2.0. provides for a change in this respect. The funding is due for the entire month in which the application is submitted, and not only for part of the month commencing from the date of submission of the application.

The co-financing shall be paid on a monthly basis, after the entrepreneur submits a declaration on the employment in a given month of employees covered by the contract with the local authority and the wage's costs of each of these employees and the social security contributions due on those wages, as of the last day of the month for which the co-financing shall be paid. **The anti-crisis shield 4.0. proposes to amend it so that payment is made on the basis of the data attached to the application, i.e. the employment data of the employees concerned and the wage of each of the employee concerned and the social security contributions payable on that wage. In the event of a change in these data and affecting the amount of the subsidy, the employment office is to determine the amount of the next tranche taking into account the changes submitted by the entrepreneur.**

It is also proposed to introduce an obligation for the entrepreneur to inform the poviast labour office (Powiatowy Urząd Pracy) within 7 working days about each change in the data concerning the employment of employees covered by the application and the amount of wage of each employee, if this has an impact for the amount of the grant paid.

Under the anti-crisis shield 2.0. a regulation was introduced, according to which an entrepreneur is obliged to maintain in employment the employees covered by the contract only for the period for which co-financing was granted. Therefore, the originally introduced requirement to maintain the employment of employees after the end of the subsidy collection was canceled. If this condition is not met, the entrepreneur will have to return the subsidy, without interest, in proportion to the period of failure to maintain in employment the employees covered by the contract, within 30 days from the date of delivery of the notice of the local authority (starosta). **In the anti-crisis shield 4.0. it is proposed that the described requirement to maintain employees should not apply, if it is the employee who terminated the contract, the contract is to be terminated in the so-called disciplinary mode or the employment relationship is terminated. If the entrepreneur in place of this employee hires another person, this person is to be covered by the contract.**

The anti-crisis shield 3.0. introduced the possibility to obtain the subsidy for the wages of disabled employees, in respect to which the employer benefits from a subsidy to the wages under the provisions of the Act on vocational and social rehabilitation and employment of disabled persons (ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych). The subsidy shall be used in the part not subject to co-financing under this Act. The support shall be used by employers who are micro, small and medium-sized enterprises.



The financial contribution is not to be subject to judicial or administrative enforcement, except for the benefit of persons whose wages and contributions are covered therefrom. These funds, if transferred to a bank account, savings account, savings and settlement account and a term deposit account, are to be free of seizure under a judicial or administrative enforcement order.

→ 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, following the occurrence of COVID-19, a stoppage in business activity has occurred, respectively, by a person conducting non-agricultural business activity or by ordering party with whom a civil-law contract has been concluded.

The anti-crisis shield 4.0. envisaged to change the way applications are submitted for a stoppage benefit. The application would be submitted only via the IT system made available by ZUS (ZUS PUE).

A person conducting business activity is entitled to a stoppage benefit if he or she started this activity before 1.04.2020 and:

- **did not suspend the business activity and the revenue** from conducting this activity obtained in the month preceding the month of submitting the application for the stoppage benefit was at least 15% lower than the income obtained in the month preceding that month;
- **suspend the business activity after 31.01.2020.**
- **who is not otherwise subject to social insurance, unless he or she was subject to pension insurance before 1.04.2020.**

A person performing a civil law contract is entitled to a stoppage benefit if:

- the civil-law contract was concluded before 1.04.2020;
- the revenue from the civil law contract obtained in the month preceding the month in which the application for the stoppage benefit was submitted was not higher than 300% of the average monthly wage from the previous quarter, announced by the President of the Central Statistical Office (Prezes Głównego Urzędu Statystycznego) on the basis of the regulations on pensions from the Social Insurance Fund, in force at the day of submitting the application.
- **that person is not otherwise subject to social security.**

The benefit is a one-off payment of 80% of the minimum wage. The anti-crisis shield 2.0. provides for maximum of three payments in place of only one payment provided for in the anti-crisis shield 1.0. The condition for granting further benefits is to make a declaration that the material situation shown in the application has not improved. A further payment shall be due not earlier than in the month following the month of payment of the previous stoppage benefit. In case of a person running a non-agricultural business activity, to which the provisions on flat-rate income tax in the form of a tax card apply and which has benefited from the exemption of sales from value added tax, the benefit amounts to 50% of the minimum wage.



If the revenues from civil law contracts, obtained in the month preceding the month in which the application for the stoppage benefit was submitted, are less than 50% of the minimum wage for work estimated in 2020, the entrepreneur is entitled to the stoppage benefit in the amount of the sum of wages for the performance of these civil law contracts. Applications for stoppage benefit may be submitted to the Social Insurance Institution (Zakład Ubezpieczeń Społecznych, ZUS) at the latest within 3 months of the month in which the announced epidemic state was cancelled. The Council of Ministers may, by way of a regulation, grant a new payment of the stoppage benefit for persons who have already received this benefit.

No set-off or enforcement proceedings shall be made from the stoppage benefit.

→ 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 1.04.2020. 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 3 months from the date of granting the loan.

An application for a loan is to be submitted by a microentrepreneur to the relevant local employment agency (powiatowy urząd pracy) for the place of ~~conducting the business by that microentrepreneur its seat~~, after an announcement by the director of the local employment agency. We recommend to check regularly the website of the relevant local employment agency.

According to the anti-crisis shield 2.0. the conditions of **loan remission** were changed. The loan may be remitted provided that the entrepreneur will operate the business activity within 3 months from the date of its granting. The requirement to maintain employment and therefore to submit the declaration on employment status was waived. The loan may be also granted to entrepreneurs not employing any employees. ~~The anti-crisis shield 4.0. provides for the removal of the requirement to request the remission of a loan. This rule is to apply also to loans granted before the new act enters into force.~~

To loans granted before the date of entry into force of the anti-crisis shield 2.0. the provisions in the wording of this new act apply.

~~According to the draft of the anti-crisis shield 4.0. the loan is not to be subject to judicial or administrative enforcement. These funds, if transferred to a bank account, savings account, checking and saving account or term savings account, are to be free from seizure on the basis of a judicial or administrative enforcement order.~~

~~Moreover, in the anti-crisis shield 4.0. it is provided that the loan will also be available to particular public benefit organizations as well as certain entities and organizations of churches and religious associations.~~



→ NEW SUPPORT FORESEEN IN THE ANTI-CRISIS SHIELD 2.0.

The anti-crisis shield 2.0. introduced the possibility to provide entrepreneurs with the support necessary to maintain and continue their business activities in the face of threats caused by the economic effects of the COVID-19 pandemic.

The support foreseen in the anti-crisis shield 2.0. applies only to those entrepreneurs whose difficult financial situation is connected with the spread of COVID-19. **The support will not be available to entrepreneurs for whom: (i) insolvency was declared or (ii) restructuring proceedings were opened.** In case of entrepreneurs, with regard to whom applications for opening of any of the above mentioned proceedings have been submitted, support procedures defined in the anti-crisis shield 2.0. will be suspended until their final consideration.

Support will be offered **on market terms for repayable financial instruments**, in particular through loans, guarantees, sureties, leasing and other financial instruments. The entity responsible for implementing the support is the Agencja Rozwoju Przemysłu S.A. (“ARP” or “Agency”) and its subsidiaries. The support have to be appropriate to the magnitude of the actual financial impact that the entrepreneur has incurred as a result of the declaration of an epidemic emergency or state of epidemic as well as the scale of its business activity.

An entrepreneur interested in obtaining support must submit **an appropriate application** together with the following attachments:

- a statement confirming the difficult financial situation and data concerning the financial situation;
- a plan of measures which the entrepreneur intends to take to stabilize his financial situation;
- an authorization to obtain data on the entrepreneur’s financial situation, collected by authorized public bodies and institutions.

A template of the application with a list of attachments and explanations as to how to complete and submit it are to appear on the ARP website. The Agency will also include a detailed list of financial instruments offered. It will be possible to submit the application electronically.

The entrepreneur’s application will be processed immediately, not later than within 14 days of its submission. In case of formal defects, the entrepreneur will be called upon to make them up within 5 days. After positive verification of the application, the entrepreneur will be authorized to conclude **a support agreement with the Agency**. The agreement will include in particular the rules and deadlines for the transfer of support, its form and value, rules and deadlines for reimbursement, control powers, forms of security and rules of liability. The agreement will be concluded within 5 days from the date of agreeing its terms. **In the case of a significant number of applications, the aforementioned deadlines may be extended.**

It will be possible to conduct the proceedings by means of electronic communication. If a written form is reserved for the validity of a legal action, during the period of an epidemic emergency or state of epidemic and one month after its cessation, it will be possible to provide the support on the basis of an agreement concluded in a documentary form.



The support will be provided from funds of the state budget or from the European Union's aid funds intended to help entrepreneurs affected by COVID-19.

➔ SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS

In the anti-crisis shield 4.0. it is envisaged that any applications concerning ZUS's receivables will be possible only through the IT system made available by ZUS.

At the contribution payer's request, who reported less than 10 insured persons to social security, **unpaid** contributions for social security, health insurance, Labour Fund (Fundusz Pracy), Solidarity Fund (Fundusz Solidarnościowy), Employee Benefits Guarantee Fund (Fundusz Gwarantowanych Świadczeń Pracowniczych) or Briding Pension Fund (Fundusz Emerytur Pomostowych), **due for the period from 1.03.2020 to 31.05.2020 shall be released**. According to the anti-crisis shield 2.0. the condition for the release is that the payer was reported to the social security:

- before 1.02.2020 and as of 29.02.2020,
- between 1.02.2020 and 29.02.2020 and as of 31.03.2020,
- between 1.03.2020 and 31.03.2020 r. and as of 30.04.2020.

The anti-crisis shield 2.0. provides also for the extension of the catalogue of entities entitled to exemption from the obligation to pay social security contributions. It applies also to payers who reported less than 50 insured persons for social security. The exemption concerns 50% of the total amount of **unpaid** contributions due indicated in the declaration submitted for the given month.

An exceptional provision was also introduced whereby the exemption may also cover contributions paid for March 2020. The contributions paid will be refunded. In principle, however, the exemption still applies only to unpaid contributions.

In the anti-crisis shield 3.0. **two new categories of entities** were introduced, which are entitled to exemption from ZUS for the period from 1 April to 31 May 2020, i.e. for two months of contributions. The **self-employed** are also to be exempt:

1. whose revenue from their activity in the first month, for which the application is submitted, was **higher than 300%** of the forecasted average gross monthly wage in the national economy in 2020, but their **income in the first month, for which the application is submitted, was less than PLN 7 000**;
2. benefiting from a start-up relief, whose revenue from operations in the first month, for which the application is submitted, **was not higher than 300%** of the forecasted average monthly gross wage in the national economy in 2020, **or was higher than 300%** of the forecasted average monthly gross wage in the national economy in 2020, **but their income in the first month, for which the application is submitted, was lower than PLN 7 000**.

In the above-mentioned cases, the exemption also applies to contributions paid. **In the anti-crisis shield 4.0. it is planned that despite the lack of payment and the fact that the decision on exemption has not yet been received, the entrepreneur will not be treated as if he were periodically in arrears in the payment of contributions.**



In the case of an entrepreneur who does not employ employees, an application may only be submitted by one who in the first month concerned by the submission of the application achieved revenue from non-agricultural activity not exceeding 300% of the forecasted average monthly gross wage in the national economy in 2020. During the redundancy period the right to social security benefits is retained from the payment of contributions.

Persons covered by agricultural pension insurance are exempt from the payment of contributions for this insurance for the second quarter of 2020.

Under the anti-crisis shield 2.0, a provision was also introduced that revenues from the exemption from the obligation to pay contributions do not constitute revenue within the meaning of the provisions on personal income tax and corporate income tax.

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. Only by way of a regulation may the Minister competent for public finance refrain from collecting interest in whole or in part for late payment of tax arrears. No such regulation was issued so far.

The anti-crisis shield 2.0. provides that Social Insurance Institution (Zakład Ubezpieczeń Społecznych, ZUS), at the request of the debtor, will waive the collection of default interest in the event of late payment of contributions due for the period after 31.12.2019. The exemption will have to depend on the situation of the payer, related to the occurrence COVID-19. The payer will be entitled to submit an application to the Social Insurance Institution within the period of the emergency epidemic state or epidemic state or within 30 days following their cancellation.

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 do 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.

The creditor is still entitled to receive an advance of the unpaid credibility value within 90 days from the payment date. The anti-crisis shield 4.0. envisaged that in 2020 the right to receive an advance might be executed already after 30 days from the date of payment, if in the given settlement periods the taxpayer have suffered negative economic consequences due to COVID-19. It also concerns taxpayers



who in 2020 chose simplified method of paying advances as well as taxpayers using a flat-rate taxation method, but deduction should include an appropriate part of the claim.

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 or income 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. The exemptions also shall apply to taxpayers using flat-rate taxation.

Anti-crisis shield 4.0. also proposes to include contractual penalties and damages as tax deductible costs, if a defect in the goods, works and services performed, or a delay in removing these defects, arose in connection with the state of epidemic threat or the state of the COVID-19 epidemic.

The taxpayer may deduct donations made in 2020 to counteract COVID-19, depending on the month of making a donation up to 200% of its value. Anti-crisis shield 4.0. proposes to expand the catalogue of donor beneficiaries to include care facilities, shelters and nursing homes. Donations can also be deducted by a taxpayer using flat-rate taxation. Further tax facilities support applies to entities producing goods related to fighting the epidemic and those conducting research in this area.

In addition, anti-crisis shield 4.0. provides for the taxpayer's a right to calculate in-kind donations as the form of personal computers or tablets, that were donated to educational institutions, from the tax base including periods 01.01.2020 to 30.09.2020. The equipment shall be complete and usable and not older than 3 years. In this case the month of donation determines the amount of deduction, giving the possibility of deduction for up to 200%. Donations can also be deducted by a taxpayer using flat-rate taxation.

Donations received to fight COVID-19 shall be exempted from an income tax.

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.

In addition, anti-crisis shield 4.0. proposes that in a situation of temporary limitation of business activity (other than agricultural activity) resulting from COVID-19, a taxpayer, which pays income tax in the form of a tax card, is not obliged to notify the head of the tax office about the start and end of a break in conducting this activity.



We also note that according to the ordinance of the Minister of Finance, submitting an annual tax return and payment of the tax by the taxpayer by 31.05.2020 (not 30.04.2020) does not result in criminal and fiscal consequences and no default interest is charged. In the anti-crisis shield 3.0. it is suggested that these interest should not be presented in the tax arrears declarations, which may be important for entities applying for financial support under government programs.

→ 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.

The creditor is still entitled to receive an advance of the unpaid credibility value within 90 days from the payment date. The anti-crisis shield 4.0. includes that in 2020 the right to receive an advance will be executed within 30 days from the date of payment, if in the given settlement periods the taxpayer have suffered negative economic consequences due to COVID-19. It also concerns taxpayers who in 2020 chose simplified method of paying advances as well as taxpayers using a flat-rate taxation method, but deduction should include an appropriate part of the claim.

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,

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. The provisions apply by analogy to tax years that not overlap with calendar years.

Anti-crisis shield 4.0. also proposes to include contractual penalties and damages as tax deductible costs, if a defect in the goods, works and services performed, or a delay in removing these defects, arose in connection with the state of epidemic threat or the state of the COVID-19 epidemic.

The taxpayer may deduct donations made in 2020 to counteract COVID-19, depending on the month of making a donation up to 200% of its value. Anti-crisis shield 4.0. proposes to expand the catalogue of donor beneficiaries to include care facilities, shelters and nursing homes. Further tax support applies to entities producing goods related to fighting the epidemic and those conducting research in this area.

In addition, anti- crisis shield 4.0. provides for the taxpayer's a right to calculate in-kind donations as the form of personal computers or tablets, that were donated to educational institutions, from the tax base including periods 01.01.2020 to 30.09.2020. The equipment shall be complete and usable and not older than 3 years. In this case the month of donation determines the amount of deduction, giving the possibility of deduction for up to 200%. Donations can also be deducted by a taxpayer using flat-rate taxation.

Donations received to fight COVID-19 shall be exempted from an income tax.



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 was 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.

In the anti-crisis shield 2.0. it has been introduced that the condition specified in the CIT Act classifying taxpayers as a capital tax group in the form of not occurring in companies - group members of arrears in tax payments will be considered fulfilled also, if the taxpayer suffers from negative economic consequences due to COVID-19 in 2020.

In addition, we would like to notice that according to the ordinance of the Minister of Finance, **the deadline for filing the CIT declaration has been extended**. Taxpayers whose tax year ended in the period from 01.12.2019 to 31.01.2020, should file a tax return and pay calculated tax by 31.05.2020.

→ VAT

Deadline for all taxpayers for submitting a new **JPK_VAT** file were **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** was extended to **14 days**.

In the anti-crisis shield 4.0. it is proposed to change the date of application of the new provisions on placing goods under the simplified customs procedure only in relation to the import of goods made after 01.10.2020 (instead of 01.07.2020). The same would apply to some other tax arrangements, that were to come into force on 01.07.2020, including the refund of the tax difference.

→ TRANSFER PRICING

In the anti-crisis shield 4.0. it is proposed to extend the catalog of entities included into the exemption of the application of the transfer pricing rules to transactions between a medical university and a medical entity.

The information on transfer pricing may be submitted until **30.09.2020**. However, the deadlines for submitting statements on preparation of local transfer pricing documentation and information on transfer prices will be extended to:

- 31.12. 2020, if this period expires from 31.03.2020 to 30.09.2020;
- and by 3 months, if this period expires from 1.10.2020 to 31.01.2021.



In the anti-crisis shield 2.0. the deadline for preparing local transfer pricing documentation and submitting statements on preparation of local transfer pricing documentation has been extended until 30.09.2020. Moreover, the deadline for attaching group transfer pricing documentation to the local transfer pricing documentation has been extended until **31.12.2020 end of the third month counting from the day after the deadline for submitting the forms.**

→ OTHER TAXES AND FEES

The annual **perpetual usufruct** fee (opłata za użytkowanie wieczyste) for 2020 may be paid by **30.06.2020**. The Council of Ministers may extend this period by a way of regulation. **The anti-crisis shield 4.0. proposed to postpone this deadline until the end of January 2021.**

In addition, it is envisaged that entities which will experience a decline in their economic turnover due to COVID-19, that pay an annual fee for perpetual usufruct of real estate owned by the State Treasury (Skarb Państwa), will be able to reduce their fee in proportion to the number of days in the year in which the epidemic threat and epidemic status were in force. The condition of being entitled to the reduction is to report, that the reduced fee will be paid to appropriate local government unit, and that there will be no arrears in settling the tax liabilities and contributions up to the third quarter of 2019. If the same conditions are met, it may also be possible not to pay a rent and allowances for perpetual usufruct of real estate owned by the State Treasury, for the period of the next three months in 2020, following the month in which the notification was made, and agreement is settled in a form of lease, tenancy or other use agreements concluded for a period of at least three months in relation to real estate belonging to the State Treasury.

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 31st August 2020.

In the anti-crisis shield 2.0. an obligation to pay the tax on civil law transactions in case of a sale or conversion of virtual currencies is now introduced.

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** was postponed. It shall first apply to revenues from retail sales achieved from **1.01.2021**.

In the anti-crisis shield 4.0. an exemption from inheritance and gift tax is envisaged for the period from 01.01.2020 to 30.09.2020, in relation to some donations made in connection with counteracting results of COVID-19.



→ 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 was extended by additional three months.

During an emergency epidemic state or epidemic state declared due to COVID-19, the running of terms in proceedings and controls conducted under the Tax Ordinance (Ordynacja podatkowa), customs and tax inspections and proceedings in matters related to gambling does not start, and existing terms are suspended for this period. [concerning other deadline see COURT AND ADMINISTRATIVE CASES]

Term does not start, and existing term is suspended also:

- concerning disposal of the matter without notice by the authority,
- in other matters, in which the authority's lack of objection, decision, order or other resolution entitles a party or participant in the proceedings to take action or affect the scope of rights and obligations of a party or participant in the proceedings,
- for expressing by the authority opinion or for issuing of individual interpretations, except for individual interpretation referred to in Tax Ordinance (Ordynacja podatkowa).

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

In relation to tax schemes, the anti-crisis shield 4.0. defines, that the time limits for tax schemes will not start and deadlines will be suspended for the period from 31.03.2020 to the 30th day after cancellation of the epidemic emergency status or epidemic status. In the case of a cross-border tax scheme, the time limits will be suspended only until 30.06.2020. Regulation shall apply from 31.03.2020.

The Council of Ministers may by way of a regulation suspend administrative enforcement proceedings against monetary receivables. Withdrawals from a seized bank account may be made during the suspension period.

In the anti-crisis shield 4.0. it is proposed to extend the use and recognition of a certain tax residence certificates for the duration of the epidemic or epidemic emergency status and for a limited time after their completion.

→ 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).



[regarding the reduction of working time for foreigners, see LEGALIZATION OF FOREIGNERS PERMIT].

The anti-crisis shield 4.0. proposes to introduce the possibility of changing working conditions without having to submit an application for funding. The project provides for **reduction of working time by maximum 20%, not more than to 0.5 full-time jobs**, or covering **the employee with economic downtime and reducing his or her wage** by not more than 50%, with the proviso that in both cases the employee's wage may not be lower than the minimum wage, including the working time. This option is to be available to employers where there has been a decrease in revenue from the sale of goods or services following the occurrence of COVID-19 and therefore there has been a significant increase in the burden on the compensation fund.

A **significant increase in the burden on the wage fund** is understood as an increase in the quotient of the costs of employees' wage, taking into account the social security contributions of employees financed by the employer, and revenues from the sale of goods or services from the same calendar month freely indicated by the entrepreneur and falling between 1.03.2020 and the day preceding the employer's exercise of the right referred to herein, **not less than 5% compared to such a quotient from the previous month** (base month). A month is also considered to be 30 consecutive calendar days.

The conditions and mode of performing work during a period of economic downtime or reduced working hours are to be determined in an agreement concluded as in the case of employee compensation.

The project provides that the reduction of working time or covering the employee with downtime under the above rules does not exclude the possibility of applying for a grant from the Employee Benefits Guarantee Fund (Fundusz Gwarantowanych Świadczeń Pracowniczych), if the relevant conditions are met [see WAGE SUBSIDY].

The anti-crisis shield 4.0. also provides that during the period of state of epidemic emergency or state of epidemic announced due to COVID-19, the employer may grant an employee, on a date indicated by the employer, without the employee's consent and without the leave plan, a leave of up to 30 days of leave not taken by the employee in previous calendar years. Moreover, it is envisaged that the employer's right to refuse to grant an employee a leave or to recall the employee from the leave (introduced by the anti-crisis shield 1.0.) will not apply to maternity leave, leave on maternity leave, parental leave, paternity leave and parental leave.

The draft act additionally provides that in the event of a decrease in economic turnover or a significant increase in the burden on the wage fund, **the amount of severance pay, compensation or other monetary benefit due to the employee from the employer paid in connection with the termination of the employment contract will not exceed ten times the minimum wage for work**. This regulation is to be applied respectively in the case of termination or termination of the civil law contract or in connection with the cessation of the paid function.

It is also proposed that the employer may suspend the obligations to create or the functioning of the company social benefit fund, making a basic write-down and payment of holiday benefits in the event of a decrease in economic turnover or a significant increase in the load on the wage fund. The provisions of collective bargaining agreements or wage regulations which set a higher amount of the allowance for



the fund and other social security benefits than those set out in the law are not to apply either. In return, the fund's write-offs are to be applied in the amount provided for in the act on social benefits fund (ustawa o zakładowym funduszu świadczeń socjalnych).

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).

The anti-crisis shield 2.0. extends the catalogue of employers who are entitled to change the schedule or the system of employees' working time or to order employees to work overtime, in particular by:

- a) employers employing employees in an enterprise performing the function of an ex officio seller within the meaning of Article 3 (29) of the Act of 10 April 1997 - Energy Law;
- b) entrepreneurs conducting business consisting in the provision of banking activities within the meaning of Article 5 of the Act of 29 August 1997 - Banking Law;
- c) entrepreneurs operating in the agri-food sector, related to with the production or supply of food.

The catalogue of rights of such employers have also been extended by granting them the right to oblige the employee to remain outside normal working hours ready to perform work in the workplace or in another place designated by the employer and to instruct the employee to exercise the right to rest in the place designated by the employer.

The anti-crisis shield 3.0. introduced changes concerning the determining of the amount free of deductions from the wage for work. If, due to activities related to counteracting SARS-CoV-2 virus, the employee's wage has been reduced or the employee's family member has lost the source of income, the amounts free from deductions set out in the provisions of the Labor Code are increased by 25% for each non-income family member who is dependent on the employee.

A family member means:

1. a spouse or parent of a common child, and
2. a child up to the age of 25, as well as a child over 25 years of age, with a disability certificate if in connection with this disability she or he is entitled to a nursing benefit or special care allowance, or a carer's allowance.

However, family members do not include a child who is under the care of a legal guardian, a married child or an adult child with their own child.

For employers in Phase II of the implementation of Employee Capital Plans (**Pracownicze Plany Kapitałowe**; PPK) the maximum deadlines for taking the required actions were 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 or a decision on the special needs education.** The allowance is also to be granted to persons insured in the Agricultural Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego; KRUS). The Act also provides for the granting of another care allowance of 14 days due to the necessity of personal care over a child under 8 years old. The Council of Ministers may decide on an extension in a separate regulation.

Under the anti-crisis shield 3.0. it was decided that care allowances are granted to caretakers of children with a severe or moderate degree of disability until the age of 18, a child with a disability certificate or a certificate of need for special education, and adults with disabilities, not only when the facilities they attend but also when they remain open, during the COVID-19 epidemic. The duration of the care allowance, whether it is It must not be taken longer than 14 days due to the closure of the facility, or while the facility was open. The allowances in question are to apply from 25.05.2020. **The anti-crisis shield 4.0. envisages extending the payment of the care allowance until 28.06.2020. Moreover, it is also planned to correct a legislative error related to the fact that currently only parents of disabled children are entitled to the care allowance described here.**

The anti-crisis shield 2.0. extends the catalogue of the entities authorized to receive care allowances to include police officers, special services, the Border Guard (Straż Graniczna), the State Protection Service (Służba Ochrony Państwa), the State Fire Service (Państwowa Straż Pożarna), the Customs and Tax Service (Służba Celno-Skarbowa) and the Prison Service (Służba Więzienna).

The anti-crisis shield 2.0. grants an additional entitlement to the Prime Minister. In the event of an emergency epidemic state or epidemic state being announced, the Prime Minister by way of regulation is authorized to introduce another day off from work.

~~Under the anti-crisis shield 3.0. the care allowance due because of the need to take care of a child under 8 years old was abolished.~~

It was also established that in the event of declaring an epidemic emergency or state of epidemic, the day off will also be a day defined by the Prime Minister by way of a regulation.

The draft of the anti-crisis shield 4.0. also provides for the possibility of termination of a non-competition agreement in force after the termination of an employment relationship or a civil law agreement by the party for whom a non-competition agreement has been established. The termination is to be done with a 7-day notice period.



→ REMOTE WORK

The anti-crisis shield 4.0. provides for a clarification of the rules of remote working. An order to perform remote work may be issued if the employee has the skills and technical and premises capabilities to perform such work and the type of work allows it. The means of work and materials for work needed to perform remote work as well as logistical support for remote work is to be provided by the employer. When performing remote work, the employee will be allowed to use means of work not provided by the employer, as long as this allows for the respect and protection of confidential information and other legally protected secrets, including company or personal data, as well as information the disclosure of which could expose the employer to damage.

At the employer's request, an employee performing remote work will be obliged to keep records of the activities performed, including, in particular, a description of those activities, as well as the date and time of their performance.

The order to perform remote work may be withdrawn by the employer at any time.

The principles of the employer's responsibility for the state of health and safety are to be changed and in the event of accidents at work. The provision that the employer would be responsible for the health and safety of remote work and only for accidents at work in so far as it relates to the means of work or materials for work provided by the employer was deleted from the original draft.

→ 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.

Under the anti-crisis shield 2.0. the stay in Poland of a foreigner is considered legal up to 30 days after the end of an emergency epidemic state or epidemic state, if the legal basis for this foreigner's stay in Poland is:

- Schengen visa,
- a visa issued by another Schengen State,
- a residence permit issued by another Schengen State,
- visa-free regulations,
- a long-stay visa issued by another Member State of the European Union, which is not a Schengen State, if it entitles its holder to stay in the territory of Poland in accordance with the provisions of European Union law,
- a residence permit issued by another Member State of the European Union, which is not a Schengen area country, if it entitles its holder to stay in the territory of Poland in accordance with the provisions of European Union law,
- residence card of a family member of an EU citizen, a document confirming the right of permanent residence and permanent residence cards of a family member of an EU citizen.



During the period of legal residence, a foreigner is entitled to perform work if she/he has a work permit or a declaration of employment.

The anti-crisis shield 3.0 allows for the possibility to change the conditions of performing work by a foreigner specified in temporary residence and work permits (including for the purpose of performing work in a profession requiring high qualifications), work permit, seasonal work permit and declaration of employment. The project solves the problem that we have been paying attention to and introduces the possibility of including foreigners in the agreements on changes in the working hours and salaries of employees.

The anti-crisis shield 2.0. also provides for the extension of the validity of residence cards, the validity of which will expire during the period of an epidemic emergency or state of epidemic. The validity of the cards has been extended to 30 days from the date of the last of the above mentioned states to be cancelled. The same rules apply to temporary identity certificates for foreigners.

Also the validity of the Card of the Pole has been extended to 3 months from the date of cancellation of an emergency epidemic state or epidemic state caused by the COVID-19 virus.

The anti-crisis shield 3.0 also provides for the extension of the validity of Polish foreigners' identity documents to 30 days from the date of cancellation of an epidemic emergency or state of epidemic caused by COVID-19.

In addition, **the validity of seasonal work permits was extended** to 30 days from the date of cancellation of an epidemic hazard or state of epidemic caused by COVID-19. The condition for extending the seasonal work permit will be to have a permit that was valid after 13.03.2020 or if a foreigner had a declaration of assignment of work entered in the register of declarations in which at least one day of the work period falls after 13.03.2020.

The anti-crisis shield 3.0. also introduced the possibility to apply for a national D visa without the need to pay a personal visit to the Polish diplomatic post abroad. The above facilitation applies only to citizens:

- Republic of Armenia;
- Republic of Belarus;
- Republic of Georgia;
- Republic of Moldova;
- the Russian Federation;
- Ukraine.

➔ OCCUPATIONAL SAFETY AND HEALTH (OSH)

Special rules have been introduced for conducting initial OHS training. During the period of emergency epidemic state or epidemic state, initial occupational health and safety training is to be conducted in full by means of electronic communication. This shall not apply to on-the-job training of:

- an employee employed as a blue-collar-worker;



- an employee employed in a position exposed to hazardous factors;
- an employee transferred to the positions referred above;
- a student undergoing practical apprenticeship or student undergoing a student apprenticeship.

The deadlines for conducting initial and periodic training in the scope of OHS are extended, if the date of their performance would fall during the period of the emergency epidemic state or epidemic state.

The anti-crisis shield 4.0. also provides that in the period of an epidemic emergency or a state of epidemic announced in connection with SARS-CoV-2 virus infections, qualification procedures, regulated in the Act on Technical Supervision (ustawa o dozorcze technicznym), are conducted in a different way.

➔ THE PROLONGATION OF SOME OF THE COMPETENCES

Both the anti-crisis shields 1.0. and 2.0. have been prolonged / suspended until after the end of an epidemic emergency or state of epidemic, certain rights and obligations related to the performance of certain works or professions. In addition to regular workers' medical examinations [see LABOUR LAW] and OHS training [see OHS], this concerns in particular:

- prolongation of the certificate of disability or degree of disability, partial inability to work, total inability to work, total inability to work and inability to exist independently, inability to exist independently, parking cards for the disabled, pensioner's identity card (shield 1.0.);
- prolongation of the trusted profile of entities performing public tasks (shield 1.0.);
- ADR (transport) prolongation (shield 1.0.);
- prolongation of the certificate for drivers engaged in road transport (shield 1.0. and 2.0.);
- prolongation of the authorization of qualified electricians (shield 1.0.);
- prolongation of certificate of competence in operation of networks and electrical equipment and installations (shield 1.0. and 2.0.).

The anti-crisis shield 3.0 introduced further the following prolongations:

- prolongation of certificates of competence for welding, brazing, soldering and plasticizing and heat treatment in the course of manufacture, repair and modernization of technical equipment and manufacture of components used for manufacture, repair or upgrading of these facilities, and extension of certificates of competence for persons operating and maintaining technical equipment (shield 3.0.);
- prolongation of the UDT (the Office of Technical Inspection) certificates (shield 3.0.);
- prolongation of the permits to sell alcohols (shield 3.0.).

➔ CREDIT AGREEMENTS

a) change in the repayment terms or dates of the cash loan or credit agreement

It is 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. Importantly, 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 and not on the current situation.

In the anti-crisis shield 2.0. new entities were added to the catalogue of entities authorized to request an amendment of the conditions of the repayment terms of a cash loan or a credit agreement, in order to include **all the entrepreneurs (regardless of the size of their business) and non-governmental organizations.**

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.

b) demanding payment of excessive costs of the loan

Under the anti-crisis shield 3.0. a provision has been introduced, according to which the agreement is void, in which a natural person undertakes to transfer the ownership of real estate serving its housing needs in order to secure claims arising from this or other agreement not directly related to the business or professional activity of that person, where:

- 1) the value of the property is higher than the value of monetary claims secured by this property increased by the maximum interest for delay from this value for a period of 24 months or
- 2) the value of monetary claims secured by this property is not marked, or
- 3) the conclusion of this agreement has not been preceded by an expert appraisal of the market value of the property.

A new type of crime has also been added to the Criminal Code. Who in return for a monetary consideration granted to a natural person **under a loan, credit or other agreement, the subject of which is to provide such a consideration** with an obligation to return it, not related directly to the business or professional activity of that person, **requires such a person to pay costs other than interest at least twice exceeding the maximum amount of these costs specified in the Act**, is punishable by imprisonment from 3 months to 5 years.

The same punishment shall be imposed on anyone who, in connection with the provision of a monetary consideration to a natural person **under a loan, credit or other agreement, the subject of which is to provide a monetary consideration with an obligation to return it**, not related directly to that person's business or professional activity, requests payment from such a person **interest of at least twice the maximum or maximum interest rate for the delay specified by law.**

c) possibility to suspend student loans

The anti-crisis shield 3.0. provides **the possibility of suspending the repayment of a student loan for the period indicated in the application, not longer than 6 months.** The suspension will take place at the request of the borrower submitted by the end of the 2019/2020 academic year.

The suspension period will not be included in the suspension period provided for in the Law on higher education and science (Prawo o szkolnictwie wyższym i nauce) related to the student's difficult life situation. The loan repayment period will be extended by the repayment suspension period. Interest



owed on a student loan collected from borrowers during the period of suspension of their repayment, according to the above-mentioned rules, will be covered entirely from a special fund.

d) subsidies to the interest rate of bank loans

The anti-crisis shield 4.0. is to introduce the possibility of applying subsidies to the interest rate of bank loans granted on the basis of agreements concluded until 31 December 2020 to entrepreneurs who found themselves in a difficult financial situation resulting from the negative economic effects of the COVID-19 pandemic. These subsidies may be applied to revolving and non-revolving working capital loans granted in the Polish currency.

An entrepreneur who was not in a bad situation at the end of 2019 will be able to apply for a subsidy, performs economic activity (or activity in the sector of primary production of agricultural products) in the territory of the Republic of Poland, has not taken another loan under this Act and has lost financial liquidity or is threatened with its loss. Importantly, this also applies to entrepreneurs who have suspended their activities due to a pandemic COVID-19.

Loans with subsidies will be granted by banks that have concluded a cooperation agreement with Polish national development bank (Bank Gospodarstwa Krajowego; “BGK”). The list of such banks is to be published on BGK’s website. The subsidies are to be paid out on a monthly basis collectively in relation to all credit with subsidies agreements concluded by the bank for a period no longer however than 12 months from the date of concluding the credit agreement with an additional payment. The subsidy will constitute a part of interest due to the bank - for micro, small and medium-sized entrepreneurs it will correspond to 2 percentage points, for other entrepreneurs 1 percentage point. If the interest rate of the credit with the subsidy does not exceed these amounts, the subsidy will constitute the total interest due to the bank

An application for granting a credit with the subsidy may be submitted by the entrepreneur to the bank granting such credits. The application should be accompanied by documents confirming the loss or threat of loss of financial liquidity and other documents and statements required by the bank, which result from the bank’s internal procedures, as well as a statement made under pain of criminal liability, on the fulfilment of the other conditions indicated. The loan agreement with the subsidy will be concluded after the bank has made a positive credit decision. In the case of an incomplete application, the bank will inform the entrepreneur about the necessity to complete the application or submit additional information within a specified period.

In the case of payment of subsidies that would have been paid on the basis of false information or documents that do not confirm the circumstances stated in them, the entrepreneur will be obliged to return the amount of the subsidies paid together with their statutory interest.

The subsidies are not to constitute revenue within the meaning of PIT and CIT regulations.

e) BGK guarantees and warranties

In connection with the effects of COVID-19 Polish national development bank (Bank Gospodarstwa Krajowego; “BGK”) may grant, in its own name and on its own account, sureties and guarantees for the



repayment of loans taken out by entrepreneurs, excluding micro and small entrepreneurs, for the purpose of providing financial liquidity. **The anti-crisis shield 4.0. envisaged that guarantees and warranties will also be available for micro and small entrepreneurs.**

➔ 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:

- absent employees or other associates who are or could be involved in the execution of the contract;
- 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;
- further circumstances which prevent or significantly limit the possibility of performing the contract.

The anti-crisis shield 4.0 provides that the contracting authority's power to amend a contract should be his or her obligation. The contracting authority is to be obliged to amend a contract if circumstances occur that affect its proper performance. Should such circumstances in fact occur, the change of contract will depend solely on the contracting authority' decision to do so.

In the case of the main contract amendment related to public procurement, the contractor and the subcontractor have to agree on the appropriate amendments to the subcontract. The terms of the subcontract shall not be less favorable than those of the main contract. The same applies to the contract with the subsequent subcontractor.

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 circumstances surrounding the occurrence of COVID-19 do not constitute a valid reason for withdrawal from the contract.

The above mentioned regulations, related to the possibility of making changes to the agreement, apply accordingly to agreements on public procurement, to which the 29.01.2004 Act on Public Procurement does not apply.

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.



During the state of an emergency epidemic state or epidemic state outbreak and regulations related with free movement constraints, it will be possible to conclude public procurement contracts in electronic form bearing a qualified electronic signature, with the consent of the contracting authority.

The anti-crisis shield 4.0 provides various regulations protecting the contractor. During the period, in which a state of emergency or a state of epidemic in connection with COVID-19 is declared as well as for the consecutive 90 days from the date of cancellation of the last of these states, the ordering party will not be able to deduct any contractual penalty for non-performance or improper performance of the contract. The contractor's remuneration or other claims may not be satisfied by a performance bond. The condition therefor is that the event, for which this penalty has been reserved, occurred during one of the above-mentioned states.

Public contracts are to continue to be awarded in accordance with the rules of the Public Procurement Law, but with certain modifications. As a rule, the contracting authority is to be obliged to pay the remuneration in parts, after the performance of a part of the contract, or to grant an advance payment for the contract performance. This refers to contracts concluded for a period longer than 12 months. Moreover, the provisions of the contract will have to specify the percentage of remuneration paid for the execution of particular parts, with the percentage value of the last part not exceeding 50% of the contractor's remuneration and the advance payment not less than 5% of the remuneration due to the contractor. In the case of construction work contracts with a completion date longer than 12 months, the contracting authority should be able to indicate in the contract documents the percentage of the last part of the remuneration, which may not be higher than 50% of the remuneration due to the contractor.

The maximum amount of security on due performance of the contract (hereinafter referred to as „security”) is to be reduced from 10% to 5% of the total price determined in the offer or the maximum nominal value of the contracting authority's obligation under the contract, unless a higher amount of security (up to 10%) is justified by the subject of the contract or the occurrence of risks related to the execution of the contract, as described by the contracting authority in the Terms of Reference. The contracting authority shall also be entitled to return the performance bond after a part of the contract has been performed, if such an option is provided for in the Terms of Reference.

Proceedings initiated and not completed before the date of entry into force of the new regulations, but also agreements signed as a result of these proceedings and agreements concluded earlier, shall be subject to the previous regulations.

It is also proposed to amend the provisions on the opening of a public procurement procedure by means of an open tender by waiving the obligation to place a notice in a publicly accessible place. It would be sufficient to place an announcement on the orderer's website.

[on deadlines see ADMINISTRATIVE AND COURT ADMINISTRATIVE CASES]



→ 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. Moreover, the local authority (wojewoda) may also, at the request of a commune mayor, change the frequency of municipal waste collection and the manner of providing services by municipal selective waste collection points.

Until the implementing regulations have been issued, municipal waste and waste from the treatment of municipal waste may be thermally treated in an operating installation that had obtained an integrated permit or a permit for processing these waste before the date of entry of the draft act into force.

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

In the anti-crisis shield 2.0. there was a significant change in those provisions: in the absence of technical and organizational possibilities for the disposal of waste generated "in connection with counteracting COVID-19, other than medical waste with infectious properties" in accordance with applicable regulations - a voivode may issue an order regarding the management of this waste, also binding for entrepreneurs, concerning also **the storage of medical waste by their generator.**

We also point out that according to the Ministry of Climate and the Chief Sanitary Inspectorate, the waste from persons subject to quarantine should be treated as municipal waste.

The anti-crisis shield 3.0. extends the validity of decisions in the field of waste management, validity of which would end during the period of epidemic emergency or epidemic. This applies in two situations: 1) when the permit for the collection or processing of waste or the permit for the production of waste covering collection or processing of waste or the integrated permit covering collection or processing of waste has been issued for a fixed period of time or 2) when the entity has submitted update application to change the decision by 5.03.2020 - the decision remains valid until the matter is resolved by the authority.



It also extends the deadlines for reports and information obligations under the Act on waste - a number of provisions are intended to facilitate waste management in fulfilling its obligations (including in the scope of the “BDO” - waste database register”). It has been proposed to allow entities keeping paper records to not enter these information to BDO. Thanks to this change, entities keeping paper records will not have to complete this data in BDO. It will also be possible to conduct business after submitting an application for entry into the BDO - you will no longer have to wait for the entry.

In addition, the deadline for submitting reports on municipal and post-consumer waste management is postponed.

Commune councils are authorized to adapt the regulations for maintaining cleanliness in the commune until the end of 2020 (and not until 6.09.2020).

➔ ENERGY LAW

Under the anti-crisis shield 1.0. following amendments have been made:

- the validity of qualification certificates for electricians expiring between 1.03. and 30.06.2020 has been prolonged until 31.12.2020;
- during the emergency epidemic state or epidemic state the energy enterprises cannot exercise their statutory right to cease supply of gaseous fuels, heat or energy, or terminate the power sales agreements under circumstances set out in the act (according to the anti-crisis shield 4.0 this restriction will be limited only to certain categories of recipients: households and entities whose activity has been restricted);
- renewable energy producers benefiting from the support system may apply to the President of the Energy Regulatory Office (Prezes Urzędu Regulacji Energetyki; URE) to prolong the deadline to generate or sale the energy for the first time;
- the President of the URE has to decide on subsidies for energy-intensive sectors and subsectors for 2019 until 31.07.2020, instead of 30.09.2020.

The anti-crisis shield 2.0. is focused on the extension of a variety of deadlines and a decrease in formalities imposed on participants of the electricity market.

The manner of fulfilling of some informational duties of energy companies towards the President of the URE has been changed. The monthly statements about entities commissioning storage, reloading, transmission or distribution of liquid fuels, about types, quantity, and destiny of generated, imported and exported liquid fuels, as well as information about the types and locations of liquid fuels infrastructure may be submitted using electronic mail. Electronic means of communication may, with energy or gas recipient’s consent, be also used by energy enterprises to submit drafts of contracts and amendments and other notifications concerning gas and power supply agreements.

On the terms and conditions set out in details in the anti-crisis shield 2.0., following deadlines and periods are extended:

- the period for which distribution system operators and LNG system operators has been appointed – until 31.12.2020;



- the deadline for submission to the President of URE of the draft of the development plan or its update – until 31.03.2021;
- the deadline for submission to the President of URE of the statements concerning the implementation of the development plan – until 30.04.2021
- the validity period of license for operating a business in the energy sector – until 31.12.2020, provided that an application for extension at least 30 days prior to the expiry of license has submitted;
- the deadline to fill in missing parts in the application for license – 60 days (instead of 30), and in the event of proceedings initiated but not completed before or during the emergency epidemic state or epidemic state – 60 days after such state has been called off;
- the deadline to submit the information about the performance of agreements concerning the purchase of natural gas from abroad – 30 days from the end of the second quarter of 2020 (instead of 30 days from the end of the first quarter);
- the term of office of commissions issuing the qualifications certificates for electricians – until 31.12.2020 (until 31.12.2020 they are also allowed to do qualifications for operating on grids, devices, and installations remotely).

The draft of anti-crisis shield 4.0. provides that certificates for electricians of renewable energy sources will be prolonged. Certificates that expire during the epidemic emergency state or state of the epidemic will be valid until up to 60 days from the day when the epidemic emergency state or state of the epidemic is canceled, whichever happens first.

The new act modifies detailed rules for announcement, organization and carrying out of auctions for the sale of energy in 2020. In particular, the President of the URE has gotten greater freedom to use the Internet Auction Platform (it enjoyed similar freedom, for other reasons, in 2019). For the next time it is possible to keep in force the grid connection agreements for renewable energy sources that have not been terminated – this time they may be in force until 30.06.2022.

A new definition of energy wood will be applicable until 31.12.2020. It decreases the quality requirements for such wood.

➔ 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 epidemy. On the same basis, the **organizer 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 organizer – then a rescission or termination do not take effect and the other party 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 organizers, cultural, entertainment and leisure operators or those who organize exhibitions or outdoor events**.

In the anti-crisis shield 2.0. it has been additionally introduced that the rules provided above apply to entrepreneurs not only conducting activities related to the organization of exhibitions and congresses, but also providing rooms and space for training, conferences or exams.

→ 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

During the ban on operating in commercial facilities having a commercial area exceeding 2.000 m², the mutual obligations of the parties to the lease, tenancy or other similar agreements whereby the commercial area is given for use, expire so as the obligation to pay the rent does.

After the end of the ban, the user of the commercial area (e.g., the tenant) should submit to the party that makes the area available (e.g., the owner of this area) an unconditional and binding offer to extend the term of a contract under current conditions by the duration of the ban plus further six months.

The offer should be submitted within three months from the day when the ban was lifted. Provisions concerning the expiration of the mutual obligations of the parties cease to bind upon the ineffective lapse of the period to submit an offer. It means that in such a case the landlord will be allowed to demand from the other party payment of the rent and other fees and charges due for all months when the ban was in force. The Act does not exclude the provisions of the Civil Code regulating contractual relationships in the event of the introduction of legal restrictions on the freedom of economic activity.

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.

The competent ministers will be allowed to adopt regulations providing for maximum prices or maximum wholesale and retail margins applied in the sale of goods or services of key importance for health protection, human safety or costs of living for households. Applying prices and margins higher than the maximum is about to be forbidden under pain of administrative penalty.

The maximum amount of non-interest credit costs shall be decreased.

Currently, the act of 8.03.2013 on counteracting excessive delays in commercial transactions provides that after 30 days, where parties have agreed on payment date longer than 30 days, the creditor has the right to statutory interest. According to the draft of anti-crisis shield 4.0., **large entrepreneurs will be deprived of this right.**

Some facilitations have been designed for the sellers of alcoholic beverages. Permits for the sale of alcoholic beverages intended for consumption at or outside the place of sale, whose validity expires during the period of the emergency epidemic state or state of the epidemic are to remain valid for an additional period of 6 months from the date of expiry of the original permit. However, sellers will be required to pay a proportional renewal fee before the original license expires. Moreover, this year the installment for the fees for the sale of alcoholic beverages intended for consumption at the point of sale may be paid until 30.06.2020 instead of 30.05.2020.

Further simplifications are to depend on the commune councils. They will be able to exempt from fees for the sale of alcoholic beverages intended for consumption at the point of sale or extend the deadline for paying them to 31.12.2020.

➔ **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 Beneficjentów Rzeczywistego) shall be postponed from 13.04.2020 to **13.07.2020**.

The anti-crisis shield 3.0. provides for the postponement of deadlines related to the **obligatory dematerialization of shares**. The deadline for **the first call for shareholders to submit share documents in the company has been changed, from 30.06.2020 to 30.09.2020**. Also the date of expiry of the share documents and obtain the binding force of the entries in the register of shareholders has been postponed – from 1.01.2021 to 1.03.2021.



The minister competent for financial institutions, by way of a regulation, may set a different date for the adoption by the general meeting of a public company of a resolution on remuneration policy for members of the management board and the supervisory board. At present, there is no information that the minister plans to exercise the aforementioned power, so in the current situation the deadline of 30 June 2020 for adopting such a resolution remains binding.

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.

It shall also be allowed to participate in the general meeting of shareholders by means of electronic communication, unless the company contract or its statutes state otherwise. With respect to shareholders' meetings and general meetings convened before the date of entry into force of the act, the person convening the meeting may decide to enable participation in them by electronic means of communication, subject to the obligation to inform the shareholders thereof in the manner provided for the convening of the meeting and no later than 4 days before the date of the meeting.

Additionally, we point out that in the meantime, the minister competent for public finance has postponed the deadlines for the implementation of financial reporting obligations of commercial law companies and other entities by 3 months.

In the anti-crisis shield 2.0. it has been clarified that within the framework of remote meetings of the supervisory board, the board may also take decisions for which the company contract (statutes) provides for a secret ballot, unless any member of the supervisory board objects. Moreover, the possibility of remote voting has been introduced also in entities other than the companies, i.e. cooperatives, foundations and associations.

It has also been introduced that the subscription for shares under the share capital increase in a joint-stock company in a private placement procedure may be made by the subscriber by filling in a form available in the ICT system and affixing a qualified electronic signature, a trusted signature or a personal signature.

➔ INVESTMENT FUNDS AND FINANCIAL MARKET SUPERVISION

According to in the regulation of the anti-crisis shield 2.0., participants of the investment fund may participate in the fund's meeting using electronic communication means. The fund statutes may exclude such a possibility. Participation by means of electronic communication is possible if it has been approved by the person convening the meeting. Electronic participation in a meeting of participants must include



in particular: (i) real-time two-way communication enabling the public to express themselves in the course of the meeting and (ii) the possibility to cast the voting rights before or during the meeting.

The notice convening the fund's meeting of contributors, if the person calling the meeting allows participation by electronic means of communication, must include details of this in its content.

Similar rules, allowing participation in the fund's meeting using electronic means of communication, are foreseen for the investor board and the investor meeting. The person calling the meeting shall decide on the possibility to participate in the investor board in this way.

Administrative decisions and decisions of the Polish Financial Supervision Authority (Komisja Nadzoru Finansowego, KNF), issued by way of resolutions, may take the form of an electronic document. Such a document must be signed by the chairman or deputy chairman of the Polish Financial Supervision Authority with a qualified electronic signature, a trusted signature or a personal signature to be effective. In such a situation, the KNF office will deliver to the party a copy of the decision or provision, without signature, with an annotation of affixing the decision or provision with a qualified electronic signature, a trusted signature or a personal signature.

➔ BUILDING LAW

Anti-crisis shield 1.0. shows that in the event of design, construction, reconstruction, renovation, maintenance and demolition of **building objects**, including changes in the way of use, in connection with counteracting COVID-19, the following provisions shall not apply:

- the Construction Law,
- the Act on Planning and Spatial and planning acts referred to in this act,
- the Act on the Protection of monuments and care for monuments.

Conducting construction works and changing the way of using a building object or its part in connection with counteracting COVID-19 **requires the investor to immediately inform the architectural and building administration authority**. If conducting construction works, mentioned above, causes a danger for the life or health of people, the architectural and building administration body, by a decision subject to immediate execution, immediately sets the requirements for necessary safeguards for their conduct. In the case of carrying out construction works in connection with counteracting COVID-19, the commencement of which requires obtaining a **building permit**, the investor is only obliged to ensure that management and supervision of these construction works are taken by a person with **building qualifications** in the relevant specialties.

According to the anti-crisis shield 2.0. the same principles apply for the design, construction, reconstruction, renovation, maintenance and demolition of buildings **regarding the continuity of essential services**, in particular in the field of telecommunications, public communications, transport, health services, energy, trade, water or sewage management, sewage treatment, public order, defense.



In addition, during the emergency epidemic state or epidemic state announced due to COVID-19, there is no obligation to obtain an **occupancy permit** regarding to some building objects for which it was obligatory to obtain a building permit, and building objects for which they were to be used before finish all construction works.

Applications for an occupancy permit that have been submitted before the entry into force of the anti-crisis shield, if no decision on the occupancy permit has been issued, **will be treated as a notice of completion of construction works**. The deadline for filing of an objection in this case will be counted from the date of entry into force of the anti-crisis shield 2.0.

[on deadlines see ADMINISTRATIVE AND ADMINISTRATIVE COURT CASES]

Anti-crisis shield 4.0, next to the abovementioned construction works, mentions also **changing the way of use** the building and emphasizes that the principles described in shield 1.0. may be used in the case of buildings **related to maintaining the continuity of essential services**, if the performance of specific works or a change of use are **necessary** to maintain them.

In the case of carrying out construction works or changing the way of use of buildings related to maintaining the continuity of essential services, in the information addressed to the architectural and building administration authority, the investor should justify the circumstances that these works are **necessary** to maintain the continuity of essential services and are directly used to counteract and combat COVID -19 and submit investor's **statement** on the right to use the property for construction purposes. If it is impossible to make a **statement** due to the permanent inability to obtain the consent of the owner, perpetual usufructuary or property manager, the information sent to the architectural and building administration authority, should also include the **justification** for this circumstance. In the event of being unable to contact also through the architectural and building administration authority, the authority will **issue a decision limiting the way of use of the property by granting an authorization to carry out certain construction works or changing the use of the building object and seizing the property for its execution**. The decision will be immediately enforceable. The authority will not make any notifications if the immediate beginning of construction works or changing the way of use of building are necessary to maintain the continuity of essential services directly to counteract and combat COVID-19 or to prevent significant damage and in relation to real estates with unregulated legal status.

The investor for whom a permit for perform of certain construction works or a change the way of use the building will be issued, will be obliged to restore the property to its previous condition immediately after completion of the works or change the way of use the building.

➔ 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.



In the anti-crisis shield 4.0. it is proposed that patent documents, protection certificates and other certificates issued by the Patent Office will be affixed with an electronic seal of the Polish Patent Office (Urząd Patentowy) and a qualified electronic signature of a person authorized by the President of that Office, if they were issued in an electronic form.

→ 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 remuneration 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.

The anti-crisis shield 3.0. introduced the payment obligation for leading entities, providing on-demand audiovisual media services (e.g. Netflix, HBO etc.), for state of the Polish Film Institute in amount of 1.5%, calculated from a total revenue, generated by those entities from users fees for an access to publicly available media services. These payments include the costs of revenues within the meaning of the provisions on personal income tax and corporate income tax.

→ ADMINISTRATIVE AND COURT ADMINISTRATIVE CASES

In the period an emergency epidemic state or epidemic state declared due to COVID-19 **the deadlines specified in the administrative law shall stop or be suspended. This applies to:**

- deadlines on which depends the right to seek a remedy before a court or an administrative body as well as deadlines to perform by the party any action which may modify rights or obligations that party;
- **limitations periods for claims** or other deadlines, the exceeding of which leads to expiration or alteration of property law rights or claims and receivables as well as falling into delay;
- **mandatory time-limits**, the exceeding of which may produce negative effects to the party;
- **deadlines for making entries by entities or organizational units** subject to the entry in the appropriate register of activities that cause the obligation to report to this register, as well as time limits for the performance of obligations by these entities resulting from the regulations on their system – this includes, in particular, entries in Central Register and Information on Economic Activity (Centralna Ewidencja i Informacja o Działalności Gospodarczej, CEiDG) and National Court Register (Krajowy Rejestr Sądowy, KRS);
- procedural and judicial deadlines in court proceedings, in particular administrative deadlines, court administrative deadlines and deadlines in administrative enforcement proceedings.

The anti-crisis shield 3.0. provides for the rescinding of the provisions under which the course of procedural and judicial deadlines was suspended. This results in the above-mentioned deadlines starting to run again on 24.05.2020.



According to the anti-crisis shield 2.0., the stop and the suspension of deadlines does not apply to, inter alia, deadlines:

- providing opinions on and arranging the design of the study, the design of the local plan and the design of the resolution setting out the rules and conditions for the location of small architecture forms, advertising boards and advertising equipment as well as fences, their dimensions, quality standards and the types of building materials they may be made of – all by the competent authorities;
- regarding the opinion of the draft municipal revitalization program by the competent authorities;
- on issuing of decisions on land development conditions;
- for submitting applications concerning the study of conditions and directions of spatial development of the municipality.

At the same time, the existing catalogue of cases, in which it is allowed to waive the principle of participation in person of parties in administrative proceedings has been extended to include the case where all involved parties have waived their right to participate in person in these proceedings.

An access to the case files is now possible by means of electronic communication.

The personal appearance of a party or another participant to the proceedings may be replaced by making the personal image available in real time via audiovisual transmission. Such a solution shall only be viable if it reflects the interest of the parties in question as well as the public authority at hand has agreed to it.

The anti-crisis shield 2.0. also includes the rules for service of letters issued by public administration in the form of an electronic document. In the case of letters issued by public administration bodies in the form of an electronic document – when the party or other participant in the proceedings did not submit an application in the form of an electronic document through the electronic mailbox of a public administration body or the party did not apply to the public administration body for such delivery or the party did not consent to the service of the letters in such a way – such service may consist of delivery of a printout of the letter obtained from this system reflecting the content of that letter.

In the case of undelivered letters, which are to be delivered with acknowledgement of receipt, if the time of receipt specified in the notice is during an epidemic emergency or state of epidemics, the letters cannot be considered to have been delivered during an epidemic emergency or state of epidemics and before 14 days have elapsed from the date on which those states are lifted.

The aforementioned rule does not apply to certain proceedings in gambling cases, certain tax proceedings and tax inspection, customs and fiscal control and tax proceedings if such inspections or proceedings are connected with a suspicion of a criminal or fiscal offence. It does also not apply to court cases.



➔ CIVIL, CRIMINAL AND PUBLIC PROCURMENT CASES

In the period an emergency epidemic state or epidemic state declared due to COVID-19 some further **deadlines stopped or were suspended. This applied to:**

- 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 (to read more about tax proceedings and tax controls see OTHER TAX ISSUES).

The anti-crisis shield 3.0 **provides for the rescinding of the provisions under which the course of procedural and judicial deadlines as well as the course of proceedings before the National Appeal Chamber were suspended. This results in the above-mentioned deadlines starting to run again od 24.05.2020.**

The statute of limitations on the prosecution of the case and the statute of limitations on the execution of the sentence started again with regard to fiscal offences, offences and misdemeanors, and that from the very day the law comes into force, i.e. 15.05.2020.

The stay or suspension of deadlines does not partly not apply to proceedings under the Public Procurement Law (Prawo zamówień publicznych) including deadlines for appealing against tenders' outcomes.

Nor does the regulation apply to time limits provided for in civil law, and thus, in particular, the limitation period for claims under contracts, torts and delicts and unjustified enrichment, as well as prescription. The actions or applications to the court necessary to comply with those time-limits should therefore be brought as if there were no emergency epidemic state or epidemic state.

Court hearings are not to be conducted except for urgent cases. In the anti-crisis shield 2.0. the obligation to present medical certificates from a doctor in case a person is unable to appear at a court hearing has also been suspended. The anti-crisis shield 3.0, provides for the extension of the catalogue of cases in which the courts are be able to proceed in classified meetings and with the use of technical devices enabling the meeting to be conducted at a distance with simultaneous direct transmission of video and sound, even for a period of one year after the end of the epidemic. In classified meetings with a broader scope than is currently the case, it is be possible, in particular, to pass judgment and hear appeals in civil cases.

Under anti-crisis shield 4.0. it is proposed to amend the provisions on criminal procedure in order to extend the possibilities of conducting hearings and other procedural activities in remote mode. It is intended, among others, to allow for conducting hearing concerning the detention on remand without having to bring the suspect to the court. It is also proposed to amend the rules on accumulation of penalties. In this respect, it is planned to reinstate the rules which were in force before 30.06.2015. In addition, it is proposed to introduce the new type of theft, i.e. the particularly impudent theft, which shall be subject to imprisonment for a period from 6 months to 8 years.



→ INSOLVENCY AND RESTRUCTURING PROCEEDINGS

a) deadline for submission of an application to open insolvency proceedings

According to the anti-crisis shield 2.0, during the period of the emergency epidemic state or epidemic state declared due to COVID-19, the running of the deadline for submission of an application to open insolvency proceedings is suspended. After the end of these states it runs again. The condition is that the insolvency is due to COVID-19. If the state of insolvency arises during the emergency epidemic state or epidemic state declared due to COVID-19, it is presumed that the insolvency was caused by COVID-19. This means that it is assumed that the state of insolvency was not caused by the fault of the debtor and the debtor (and in the case of a debtor that is a company, the entitled persons to its representation) will not suffer any negative legal consequences.

The catalogue of urgent cases to be dealt with as a priority during the emergency epidemic state or epidemic state declared due to COVID-19, in which hearings and court hearings may also be held, includes cases for the opening of a restructuring proceedings. The anti-crisis shield 3.0. also provides for the extension of the catalogue of urgent cases to include also restructuring proceedings conducted after their opening, i.e. restructuring in progress, as well as insolvency proceedings at any stage.

b) simplified restructuring procedure

According to the anti-crisis shield 4.0. an entrepreneur who has become insolvent or threatened to become insolvent shall be entitled to carry out a restructuring procedure with a minimum of court participation. At the same time, it is to be protected against enforcement in a way which is not guaranteed by any out-of-court restructuring proceedings currently available.

The initiation of the proceedings is to require 1) the conclusion of an agreement with a restructuring advisor and 2) the announcement in the Court and Commercial Gazette (Monitor Sądowy i Gospodarczy) of the opening of the procedure for approval of the arrangement by 30.06.2021. The announcement is not intended to be subject to the approval of the restructuring court.

From the date of the announcement until the date of discontinuance or completion of the proceedings:

- the entrepreneur is not to be obliged to satisfy the receivables covered by the arrangement;
- the enforcement proceedings already conducted against the entrepreneur shall be suspended if they apply to:
 - claim covered by the arrangement by law,
 - claim to be settled in full under the arrangement,
 - claim secured by, inter alia, a mortgage or a pledge, which by virtue of the arrangement is to be satisfied in an amount corresponding to the real value of the collateral;
- it is not allowed to initiate new enforcement proceedings;
- it is not permitted for the lessor or landlord to terminate the lease agreement of the premises or real estate in which the debtor's business is conducted;
- it is not allowed to terminate with respect to the entrepreneur credit agreements with regard to funds placed at the borrower's disposal, agreements on leasing, property insurance, bank



account agreements, suretyship agreements, agreements covering licenses granted to the debtor and guarantees or letters of credit;

- the entrepreneur is to be entitled to conduct current affairs of the enterprise and only decisions exceeding the scope of ordinary management need the consent of the supervisor of the agreement.

The court is to be able to overrule the effects of the announcement only if they lead to the harm to the creditors. In addition, the court's role is only to approve the arrangement adopted by the creditors.

The creditors are to vote on the arrangement with the entrepreneur in writing, but it is also to be possible to call a creditors' meeting in a remote manner.

The entire proceedings in the phase preceding the court's approval of the arrangement is to last at most four months, which means a moratorium on the payment of debts, including those secured by e.g. mortgage or lien, and protection against enforcement and termination of important contracts.

What is important is that if the entrepreneur proves that within the time limit for the execution of the obligation to file a bankruptcy petition, an announcement and then a final approval of the arrangement has been made in the proceedings, he is not to be liable for not filing a bankruptcy petition. The deadline for filing the bankruptcy petition is 30 days from the date of the insolvency.

The described proceedings are also to be available to entrepreneurs whose difficult financial situation is not related to the COVID-19 epidemic.

→ HYBRID DELIVERY

For the period to **30.09.2020** a new, extended form of the so-called hybrid delivery, carried out by the Polish Post (Poczta Polska), has been introduced into the Polish legal system. The hybrid delivery means that a registered mail shall be received by the post and then transferred into and delivered as an electronic document to the addressee without use of a hand-written signature.

Hybrid mail will be delivered in a digital form. **The content and the correspondence contained in the letter as well as the envelope will be digitalized. The electronic document created in this manner will be equal to the written document from which the digital form of the document was made.** The use of the hybrid delivery is **free of additional charge.**

To use the hybrid delivery it is required to have so-called a trusted profile (profil zaufany), which enables to identify the citizens before the administrative authorities. Hybrid delivery may be applicable in case of use of an ordinary registered mail, a registered mail with acknowledgment of receipt or electronic confirmation of receipt. Hybrid deliveries cannot be used for correspondence sent or received by courts, tribunals, prosecutor's offices, other law enforcement authorities or court enforcement officers. However, other authorities, e.g. tax offices or Social Insurance Institution (Zakład Ubezpieczeń Społecznych, ZUS), were not excluded from the application of the provisions concerning the hybrid delivery.



The extended form of the hybrid delivery may be applicable if the following conditions are cumulatively met:

- a) a delivery via the registered mail or a delivery with acknowledgment of receipt made by the Poczta Polska is prescribed by the relevant provisions of law, and
- b) the addressee agrees and authorizes the Poczta Polska to collect registered mails, to transfer them into and deliver as an electronic document into the recipient's electronic mailbox.

The Poczta Polska will have to provide an unambiguous identification of the recipients in case they are a natural person. In the case of legal persons or organizational entities which do not constitute a legal person their unambiguous identification or their representatives may be provided if the Poczta Polska has technical capabilities to do so. The hybrid delivery cannot be used if the correspondence may not be served in this way, for example when a document has to be served as an unconverted document. Hybrid deliveries carried out until 30.09.2020 will be effective as of the date on which the recipient was acquainted with the document placed in the recipient's electronic mailbox. The Poczta Polska will inform the addressee that an electronic document has been delivered to the recipient's electronic mailbox at the indicated e-mail address. In the event the recipient was not acquainted with the document, it will be deemed that the document has been served within 14 days from the moment of placement of the document into the recipient's electronic mailbox. This means that the **so-called a fiction of delivery** is applicable to the hybrid delivery and even if the mail actually will not be delivered to the recipient for the purposes of meeting the deadline the mail will be deemed as properly delivered.

Details of the provision of services on hybrid delivery, including rules on identification of the recipients and collection of the deliveries will be set out in a regulations adopted by the Poczta Polska.

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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