

SUMMARY OF REGULATIONS OF THE “ANTI-CRISIS SHIELD 4.0”

On 23 June 2020, Polish President signed the act constituting next version of government's anti-crisis shield, commonly described as “Shield 4.0”.

Act on interest rate of subsidies for bank loans granted to provide financial stability to entrepreneurs affected by the COVID-19 outbreak and on simplified proceedings for approval of agreements due to occurrence of COVID-19 (the “Act”) contains numerous significant legal amendments regarding, among others, employment matters (mostly by introduction of further facilities for employers), issues related to annual perpetual usufruct fees and provisions facilitating implementation of strategic investments by Polish state authorities.

Below we present most important regulations resulting from the Act:

REMOTE WORK

The legislator clarified and unambiguously regulated numerous matters regarding remote work:

- **equipment and materials for remote work purposes** are generally to be provided by the employer, but it will be possible to use the employee's private equipment or materials if protection of confidentiality and legally protected information will be secured;
- at the employer's request, **the employee will be required to keep records of working time related to work performed remotely** – regulations concerning conduct of such working time records (including form and frequency) are determined by the employer;
- it is confirmed that the employer **can withdraw the remote work instruction at any time**.

ECONOMIC DOWNTIME OR REDUCTION OF WORKING TIME UP TO 20% - POSSIBLE TO IMPLEMENT ALSO WITHOUT APPLYING FOR STATE SUBVENTION

Previous versions of anti-crisis shield introduced a number of state subventions, including subvention regulated in art. 15g of special purposed act related to COVID-19, connected with economic downtime or reduction of employees' working time up to 20%.


The legislator clarified that **implementation of such economic downtime or reduction of working time will also be possible without applying for aforementioned state subvention**.

At the same time, new premises are introduced in this respect. Instead of the current criterion of a decrease in turnover of at least 15%, the legislator introduced a premise related to decrease in revenues from the sale of goods or services resulting in a **significant increase in expenses related to the employer's remuneration fund**.

Such “significant increase” is defined as an increase in employees' remuneration costs in the period from March 1, 2020, **by at least 5% compared to the previous month**. Therefore, for example, there must be at least a 5% increase in remuneration costs in May 2020 compared to such costs of the employer in April 2020. Relevant calculations should also include amount of social insurance contributions related to employees. The Act sets out mechanism and formula for correct calculation of “significant increase in the remuneration costs”.

Economic downtime or reduction of working time up to 20% on this basis might be possible **for a maximum of 12 months from the date of cancellation of states of epidemic or epidemiologic threat**. It is also necessary to conclude relevant agreement in this regard with trade unions or employees' representatives.

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Therefore, new premise described as “significant increase in the remuneration costs” is related to implementation of economic downtime or reduction of working time up to 20% **even without applying for state subvention pursuant to art. 15g of the special purposed act related to COVID-19.**

If the employer intends to apply for such subvention, it will be necessary to prove current conditions present in the art. 15g of the special purposed act, that is: decrease in turnover of at least 15%.

OUTSTANDING HOLIDAY LEAVE

The employer will be entitled to oblige the employee to use the outstanding (overdue) holiday leave of **up to 30 days** and to indicate to the employee date of use of such overdue leave.

At the same time, such solution might be allowed only during period of epidemic status or epidemiological threat related to COVID-19.

LIMITATION OF SEVERANCE PAYMENTS AND COMPENSATIONS RELATED TO TERMINATION OF EMPLOYMENT CONTRACTS

Analysed limitation is intended to apply to those employers who might prove decrease in turnover of at least 15% (as specified in art. 15g of special purposed act related to COVID-19) or a significant increase in costs of remuneration, in accordance with new regulation implemented by the Act and described above.

In such situations, amount of severance payments and compensations might be **limited to the equivalent of 10 minimum remunerations for work present in 2020 (which is 26000 Polish Zlotys gross).**

AMENDMENTS CONCERNING SOCIAL BENEFITS FUND (SBF)

Amendments regarding Social Benefits Fund (SBF) are also meant to apply to those employers who might prove decrease in turnover of at least 15% (as specified in art. 15g of special purposed act related to COVID-19) or a significant increase in costs of remuneration.

In such situations, due to these circumstances, **the employer will be entitled to resign from contributions to SBF and from additional holiday payments**, but – on general terms – it will be necessary to conclude an agreement in this respect with trade unions or employees’ representatives.

In case of decrease in turnover of at least 15% or a significant increase in costs of remuneration, regulations of internal company acts related to employment (for example: remuneration regulations) are also meant to be suspended in terms of regulations providing higher amount of contributions to the SBF than the minimum amount resulting from the Act on the Social Benefits Fund.

TERMINATION OF NON-COMPETITION AGREEMENTS

The legislator decided to interfere in general regulations regarding termination of non-competition agreements binding after termination of employment contracts in order to facilitate such termination.

Regardless from contractual regulations, it may be possible to terminate such agreements with a **7-day notice period**, but only during an epidemic or epidemiological threat state.

This regulation is also meant to apply to civil law contracts concerning employment, therefore mostly to non-competition agreements binding after termination of contracts of mandate or specific-work contracts.

„SIGNIFICANT INCREASE IN COSTS OF REMUNERATION” IN TERMS OF FURTHER FACILITIES FOR EMPLOYERS

Presence of a „significant increase in costs of remuneration” determines possibility to take advantage of some other regulations implemented in previous versions of Anti-crisis shield. It applies to:

- possibility of implementation of **equivalent working time system with a 12-month settlement period** – but it is still necessary to conclude relevant agreement with trade unions or employees’ representatives in this regard;
- **limitation of employees’ uninterrupted rest** – daily up to 8 hours (instead of 11 hours resulting from general terms present in the Labour Code) and weekly up to 32 hours (instead of 35 hours on general terms);
- possibility to conclude an agreement on implementation of less favourable conditions of employment.



SUBVENTIONS TO REMUNERATIONS UNDER ART. 15G OF SPECIAL PURPOSED ACT ON COVID-19 – A WIDER SCOPE OF APPLICATION

Subventions to remunerations under article 15g of the special purposed act on COVID-19 is connected with a decrease of company's turnover of at least 15%.

The legislator clarified that in case of presence of such decrease of turnover, **the employer will be entitled to apply for such subvention also for those employees' who are not subject to economic downtime or working time reduction up to 20%**. Until now (under previous versions of the Anti-crisis shield), presence of one of these conditions was obligatory.

Other conditions regarding obtaining subvention will remain similar to those present in previous versions of the Anti-crisis shield. Therefore, the employer will have to prove:

- decrease in turnover on terms specified in the special purposed act on COVID-19;
- lack of arrears related to tax and social insurance contributions.

Additionally:

- remuneration of the employees covered by an application concerning state subvention cannot exceed 300% of the average monthly remuneration from the previous quarter.

Subvention will be granted on similar conditions as before, that is:

- it will be due up to a maximum of 50% the employee's remuneration, but not more than up to 40% of the average remuneration for work present in Poland in previous quarter (that is: quarter preceding submission of an application).

Subvention may be granted for a maximum period of 3 months.

DOWNTIME BENEFIT – PAID ALSO ON THE BASIS OF APPLICATION SUBMITTED DIRECTLY BY CONTRACTORS

Provisions concerning downtime benefits are subject to amendment related to contractors employed on the basis of contract of mandate. Until now, applying for this benefit required consent of principal (that is: party "ordering" work to be done by contractor), but pursuant to amended provisions, an application for downtime benefit might be submitted to the ZUS (Social Security Institution) also directly by contractors, that is: even without consent of principals.

EXTENSION OF ADDITIONAL CARE ALLOWANCE UNTIL JUNE 28, 2020

The legislator extended the additional benefit allowance until June 28, 2020. Until now and from June 14, 2020, ZUS was granting this allowance on the basis of its interpretation, therefore the legislator clarified this issue and implemented clear legal basis for such actions.

According to these regulations, authorized entities remained unchanged and include also parents of children under 8 years old. According to the current status, legal basis for payment of such allowance was valid until June 14, 2020, but – as it was mentioned – payments were continued based on the ZUS interpretation.

POTENTIAL EXEMPTION FROM RENT FOR GASTRONOMIC LOCALS IN THE SHOPPING CENTRES ABOVE 2000 M²

The provisions of Shield 4.0. clarify that the legal solutions introduced under the previous versions of the anti-crisis shield concerning the termination of mutual obligations of the parties to lease, tenancy and other agreements under which commercial space is used in commercial facilities above 2000 m² also applies to entities operating in the service and catering sector. In other words, thanks to this amendment, there is no longer any doubt that the new anti-crisis solutions concerning the possibility of extending the agreement for the period during which the business activity could not be carried out or giving the possibility of temporarily exempting tenants from rents will also apply to service or catering premises located in shopping centres above 2 000 m². This solution has entered into force with retroactive effect as of 30 March 2020.

PRE-EMPTION RIGHT OF ENTITY MANAGING A SPECIAL ECONOMIC ZONE – AGRICULTURAL PROPERTIES OF THE STATE TREASURY

Pursuant to Shield 4.0, pre-emption rights related to purchase of real properties owned by the State Treasury, i.e. : (i) agricultural properties within the meaning of the Civil Code and (ii) other real properties and property components remaining after the liquidation of state-owned agricultural enterprises, **will be attributed to entity managing a special economic zone** in terms of properties:

- situated in the area of managed special economic zone;
- situated outside the special economic zone but intended in the local development plan for industrial or service purposes, as well as covered by the support under the Act of 10 May 2018 on supporting new investments.

PROHIBITION OF ENERGY SUPPLY SUSPENSION BY ENERGY ENTERPRISES DUE TO ARREARS

Shield 4.0 introduces ban on suspension of supply of gaseous fuels, electricity and heat by energy companies towards customers who are in arrears. This regulation is intended to protect “private customers” in households and entities whose activity has been limited as a result of preventive measures introduced to minimize negative effects of the COVID-19 outbreak, for example – owners of premises that business activity has been restricted due to the establishment state of epidemic in Poland.

ELECTRONIZATION OF THE PROCEDURE RELATED TO ACCEPTANCE OF LOCAL LAW ACTS

Pursuant to provisions of Shield 4.0, applications or comments to drafts study of conditions and directions for local developments plan, local development plans or other local law acts, might be submitted by means of electronic communication, for example: by means of an e-mail.

Local public authority preparing documentation related to local law act is entitled to consult such project by means of distance communication, ensuring simultaneous transmission of video and audio, but only if will provide all parties with opportunity to ask questions and submit commentaries in real time.

NEW FEE RELATED TO APPLICATIONS FOR ZONING PERMIT

Shield 4.0 implies an obligation to submit fee for issuance of zoning permit (decision on outline planning spatial development) in the amount of PLN 598. The only entities exempted from this obligation will be owners and perpetual usufructuaries’ of the properties.

This regulation is intended to reduce the number of applications submitted by entities that have no legal titles to properties. As a consequence, introduction of this fee may relieve public authorities and speed up proceedings on issuance of zoning permits.

FACILITIES IN IMPLEMENTATION OF INVESTMENTS RELATED TO TRANSMISSION NETWORKS

The legislator reacted to significant delays in the preparation and implementation of strategic investments related to transmission networks. Therefore, pursuant to Shield 4.0, investor will obtain legal title to property necessary to realize such investment at the moment when decision determining strategic location has been issued, instead of date when this decision become final and binding.

POSSIBILITY OF REDUCTION OF AMOUNT OF FEES RELATED TO PERPETUAL USUFRUCT


If the entrepreneur who is the perpetual usufructuary of the property owned by the State Treasury suffered from a decrease in turnover due to COVID-19 outbreak, annual fee related to perpetual usufruct is reduced in proportion to period of epidemic state, provided that the entrepreneur:

- until the end of third quarter of 2019 is not in arrears in social security, health insurance, employee funds and tax contributions;
- will submit report to relevant public authority before January 31, 2021, concerning payment of reduced fee (“**Application**”).

Decrease in turnover should be considered as a decrease in the sale of goods or services, that is decrease of:

- **at least 15%**, calculated as the ratio of total turnover in selected two successive calendar months in the period after January 1, 2020, to the date preceding date of submission of the Application, compared to the total turnover from the corresponding 2 consecutive calendar months of the previous year;
- **at least 25%**, calculated as the ratio of total turnover in selected two successive calendar months in the period after January 1, 2020, to the date preceding date of submission of the Application, compared to the turnover present in previous month.

Pursuant to Shield 4.0, date for payment of the annual fee for perpetual usufruct is postponed until **January 31, 2021**.



The beneficiaries of this regulation are also entrepreneurs who are considered as tenants or users of properties – their fee will also be reduced accordingly.

Analogous regulations might be present in terms of properties owned by local government units, provided that appropriate local government unit will adopt resolution in this regard.

EXTENSION OF PERMITS FOR SALE OF THE ALCOHOL

Validity of permits for sale of the alcoholic beverages, which would expire after date of entry of the Shield 4.0 into force, may be extended for a **further period of 6 months**. In such a situation, it is required to cover proportional fee for extension of permit at the latest on the date of its expiration.

CONTACT

Should you have any questions or doubts concerning the legal aspects described in this alert, please feel free to contact us.



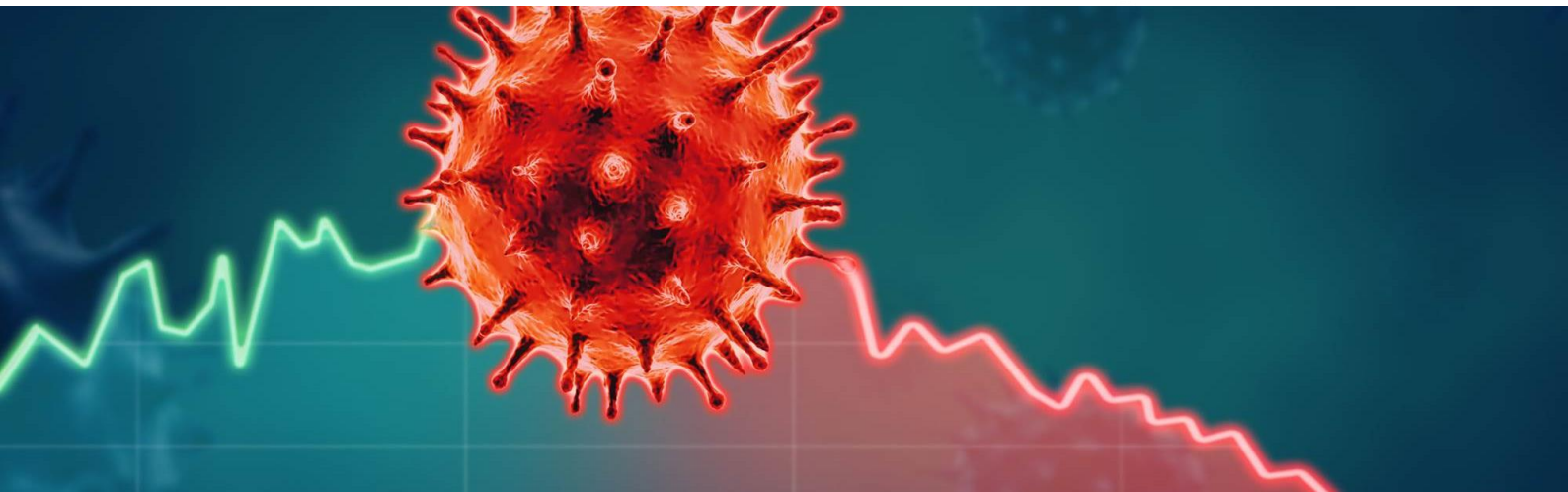
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