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COVID-19 Alert Book

Taylor Wessing Poland

Legal status as of April 2020

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Introduction

Coronavirus is one of the most dramatic obstacles modern civilisation has faced for generations. It has hit us so fast, dramatically and unexpectedly, the entire world is desperately trying to deal with the unprecedented impact it is having on society, national and global economies. The whole world has joined forces in a race to invent, test and produce a worldwide available vaccine to avoid a similar harvest to that of the Spanish flu in 1918.

Poland like all countries around Europe is endeavouring to manage this crisis and with COVID-19 having a strong grip around the throat of the national economy entrepreneurs, domestic and international companies of all sizes and in all market sectors in many cases are struggling to survive and are equally overwhelmed by the constant announcement of numerous new laws and amendments to laws.

Taylor Wessing is constantly monitoring and identifying the problems and obstacles that the global economy and entrepreneurs operating in different markets have to deal with in this difficult period.

To meet these challenges our lawyers have prepared a series of legal alerts which relate to the laws and amendments which the Polish Parliament has announced in recent weeks. These informative pieces address numerous legal aspects including construction, contract law, dispute resolution, corporate, finance and competition law and we are confident that this newsletter will provide an informative and comprehensible overview of the new laws surrounding COVID-19.

Should any information about new COVID-19 regulations and law amendments in other countries be of interest, we kindly ask you to check the international COVID-19 pages on our website: www.taylorwessing.com.

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What should each entrepreneur know about the COVID -19 Act?

ACT of March 2, 2020 on specific solutions related to the prevention, counteraction and eradication of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws 2020 item 373) (hereinafter the "Act")

Adopted as a matter of urgency and published immediately after its adoption, on March 7, 2020, the Act sets out the rules for preventing and combating SARS –CoV-2 infection specified in the Act, known worldwide as the abbreviation COVID-19.

Below we present the regulations from the point of view of an entrepreneur, introduced by the Act, which may directly affect the activities of each entity which conducts business in Poland.

1. Orders replacing administrative decisions subject to immediate execution, without any appeal

In accordance with art. 11 of the Act, in the event of the need to take action against COVID-19, the Prime Minister may, at each voivode, give entrepreneurs - legal persons and entities without legal personality - orders by administrative decision, which will be subject to immediate implementation as soon as they are delivered or announced.

It should be emphasized that each instruction / decision will not require justification.

The tasks specified in such decision (order) will be financed from the state budget and implemented on the basis of an agreement concluded with the entrepreneur. A quick negotiation procedure should be established with the entrepreneur in which all or essential elements allowing the implementation of the instruction will be short-circuited. All planning work related to the implementation of entrusted tasks will be financed from the entrepreneur's own resources and seem to be included in the contractual terms.

In urgent and justified situations, when there will be no time or conditions to announce or send the order, the order may be issued in special forms, i.e. orally, by telephone using electronic means of communication, as well as by other means of communication. In such an emergency, orders (decisions) should as soon as possible be recorded in writing in the form of a report or signed by the annotation / note regarding the content and conditions of the order.

2. Exclusion of statutory regulations in the field of construction law, spatial development, protection and care of monuments

In order to counteract COVID-19 the Act in art. 12 of the Act provides for the exclusion of the provisions of the Act of July 7, 1994. Construction Law (Journal of Laws of 2019, item 1186, as amended) and the Act of 27 March 2003 on spatial planning and development (Journal of Laws of 2020, item 293) as well as the Act of 23 July 2003 on protection monuments and maintenance of monuments (Journal of Laws of 2020, item 282) in the situation where it is necessary to design and build as well as renovate and demolish building objects, including in the case of the necessity to change the way buildings are used.

It should also be noted that in the event of the need to expand the base to provide health services, i.e. where there is the need to build or adapt existing buildings for the needs of health care, the Act provides for the possibility to omit, in addition to the procedures which results from the above-mentioned legal regulations, also all provisions issued pursuant to Article 22 (3) , 4 and 4a of the Act of 15 April 2011. about medical activities. Thus, requirements relating in particular to general conditions; sanitation; installation requirements for the premises and equipment of the entity which performs the medical activity, including ICT systems or communication systems of the entity which performs the medical activity. Resignation in emergency situations from statutory requirements for rooms in which a medical activity is carried out also applies to medical services provided for persons deprived of liberty as well as budgetary units and wax units.

3. Exclusion of liability the liability of rail and road air carriers as well as airport and train station managers for damage caused in connection with the actions of public authorities aimed at counteracting COVID-19

It is also important to emphasize the special situation of carriers specified in the Act. In accordance with Article 14 of the Act, the liability of rail and road air carriers as well as airport and train station managers for any damage caused in connection with the actions of public authorities aimed at counteracting COVID-19 as a result of which transport becomes impossible will be lifted. The legislator refers to paragraph 2 of Art. 14 to the definition of “extraordinary circumstances” set out in the provisions of Regulation (EC) 261/2004 of the European Parliament and of the Council of February 11, 2004. and also considers as such any reasonable action to counter COVID-19

4. Suspension of application of public procurement rules;

The Act excludes the application of public procurement provisions to procure services, supplies or works awarded in connection with the prevention or eradication of an epidemic in an area in which an epidemic emergency or epidemic status has been announced.

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Changes in corporate law under the influence of the COVID-19 pandemic

The so-called „Anti-crisis shield" introduces significant changes for businesses due to the coronavirus SARS-Cov-2 pandemic

1. Deadlines to declare the ultimate beneficial owner will be extended to 13 July 2020

As per Article 195 of the Polish Anti-Money Laundering and Terrorist Financing Act of 1 March 2018 (the Journal of Laws of 2018, level 723, as amended), Polish companies, with the exception of public companies and professional partnerships, were to report information on their ultimate beneficial owners to the Central Register of Beneficial Owners ("CRBO"), by 13 April 2020. The deadline applied to companies which entered into the National Court Register before 13 October 2019. It should be noted that the provision of Article 52 of the Act of 31 March 2020 amending the Act on special solutions related to the prevention, prevention and combating COVID-19, other infectious diseases and crisis situations caused by them and certain other acts (the Journal of Laws 2020, level 568) ("Special Purpose Act"), extended this deadline by three months, until 13 July 2020.

Notification to the CRBO requires first and foremost the internal identification of the ultimate beneficial owner of the company. For more information about this, please see our article "Do you know who your beneficial owner is? You had better" (https://poland.taylorwessing.com/en/press-releases/do-you-know-your-beneficial-owner-you-better-do).

2. Deadlines to prepare and approve financial statements ("FS") and management board reports ("MB Report") for the financial year 2019 ("FY 2019") have been extended by 3 months

As per the Accountancy Act of 29 September 1994 (the Journal of Laws 1994, No. 121, level 591, as amended) ("Accountancy Act"), companies whose financial year coincides with the calendar year, were obliged to prepare their FS and the MB Report for the FY 2019 by 31 March 2020, and to approve them by 30 June 2020. However, the Special Purpose Act has granted the Minister of Finance the right to extend these deadlines. By way of the Decree of 31 March 2020 on the appointment of the new deadlines for the fulfilment of registration, preparation, approval and filing obligations of businesses with regards to certain reports and information (the Journal of Laws 2020,

Level 570), both of these deadlines were extended by three months. The amended deadlines do not, however, apply to companies for whom the deadlines have already expired before 31 March 2020. The extension of deadlines for the approval of the FSs and MB Reports automatically extends the deadline for their submission, which, pursuant to Article 61 Section 1 of the Accountancy Act, which only runs once these documents have been approved.

3. Meetings of corporate bodies may be held online

In order to enable the day-to-day operation and fulfilment of statutory obligations of the Polish limited liability companies (Pol. *"spółka z ograniczoną odpowiedzialnością" – "sp. z o.o.") and corporations (Pol. "spółka akcyjna" – "S.A." or "SA"*), including the approval of the financial statements and management board reports, Article 27 of the Special Purpose Act introduced a wide range of completely new and very broad facilities to hold meetings of shareholders' meetings, management boards and supervisory boards remotely, including online.

4. Shareholders' meetings and general meetings

Pursuant to Article 27 of the Special Purpose Act, participating in shareholders' meetings of Polish limited liability companies' (Pol. "zgromadzenie wspólników") and general meetings of Polish corporations (Pol. "walne zgromadzenie") may also be taken by means of electronic communication, unless the articles of association ("AoA") of a limited liability company or statute of a corporation provide otherwise. Such wording of the provision indicates that the majority of companies will be able to use this procedure without the need to amend their AoA or statutes. This is a radical change from the previous legal requirement that this form of meeting be explicitly allowed by a company's constitution.

Participating in a meeting held by means of electronic communication includes, in particular, two-way real-time communication of all shareholders participating in the meeting and exercising the voting right, personally or by proxy.

It should be noted that detailed rules to participate in meetings organised by means of electronic communication are to be set out in the regulations adopted by the corporation's supervisory board, and as for limited liability companies where the supervisory board is not mandatory, also by the shareholders. A resolution on this matter may be adopted by the shareholders in a limited liability company through circular voting. Adoption of these regulations is a prerequisite to hold a meeting by electronic means of communication, which should be considered an unnecessary formality on behalf of lawmakers; in particular, it is legally and praxeologically inconsistent both with the fact that there is no law that would indicate that a breach of the provisions of these regulations, even qualified, is a prerequisite for declaring a resolution invalid or annulling it, and moreover, the management board as a body of the Company was and is responsible for organising shareholders' meetings and general meetings.

It is worth mentioning that holding meetings is subject to restrictions as set out by the Public Health Minster's Ordinance of 20 March 2020 on declaring the state of epidemics in the Republic of Poland (the Journal of Laws of 2020, level 491, as amended) ("Ordinance"), which concern freedom of movement and assembly, and was introduced in connection with the threat of the COVID-19 pandemic. In our opinion, while convening a meeting, both the management board of the company and the individuals who convene should be fully aware of the limitations specified therein. This means that the content of the convening notice must take into account both current and possible future circumstances content of the accordingly.

Therefore, we rather recommend holding a meeting of shareholders or a general meeting either by allowing all shareholders to "remotely" participate in the relevant meeting or by using "proxy voting" and appointing a single proxy, following the instructions of all those entitled to participate in the relevant meeting. This allows limiting the number of participants to two or three, including a notary public if his or her presence is necessary. It is possible to enable all those entitled to attend the meeting by electronic means of communication, such as Cisco Webex, Zoom, Google Hangouts and the like.

5. Management Board and Supervisory Board

Management boards and supervisory boards of limited liability companies and corporations have also been given wider facilities to do remote decision making. The possibility of holding their meetings "remotely" has become the default. The AoA or the statute must contain provisions which expressly prohibit holding "remote" meetings and voting in such a manner in order to make remote communication impossible.

Pursuant to Article 27 of the Special Purpose Act, a meeting of the management board and the supervisory board may be attended and voted on by means of direct remote communication, unless the AoA or the statute provide otherwise. It is also possible for the supervisory board and the management board to adopt resolutions in writing, i.e. by their circulation, without holding a meeting, unless the AoA or the statute provide otherwise. As for supervisory boards, the validity of a resolution adopted in this manner depends on all members of the board being provided with a draft resolution in advance and on maintaining a quorum of ½ of its members. The AoA or the statute of a company may provide for more stringent requirements for the remote adoption of resolutions; i.e., to raise the quorum or introduce an appropriate deadline for delivering draft resolutions. It is also possible to introduce the obligation to obtain consent of all the members of the board to use the means of remote communication to adopt a resolution on a specific subject prior to the actual voting. Such specific restrictions must be provided in the AoA or the statute. Including such specific provisions in the "regulations of the board" (although in this case such board regulation - unlike the regulations of the general meeting or the shareholders' meeting – has been expressly foreseen by the Code of Commercial Companies for quite some time) is not sufficient to consider a given resolution, adopted in violation of a provision not contained in the articles of

association but in such board regulation, as null and void. This is different from the previous legal situation, in which a violation of the board regulations with respect to the limitation of remote voting in the supervisory board was sufficient for the court to determine the invalidity or non-existence of such resolution. Existing restrictions (if any) provided in the board regulations must therefore be transferred to the level of the company's AoA or statutes in order to remain effective. This formality of the new regulation should also be negatively assessed.

There are also facilities to adopt resolutions in the traditional form, i.e. in writing, at a meeting. Management and supervisory board members can now vote through another member, unless the AoA or the statute provide otherwise. For supervisory boards, Article 27 of the Special Purpose Act introduces an additional condition for that method of voting, namely only the issues, included onto the meeting agenda at least one day in advance, can be voted in that form. This is a transfer of the existing regulation of Article 388 § of the Commercial Companies Code that is relevant to public limited companies (Pol. “spółka akcyjna” – “S.A.” or “SA”) to limited liabilities companies.

If you are currently facing any of the above described issues or have any other questions connected to the current situation please do not hesitate to contact us. We are at your disposal.

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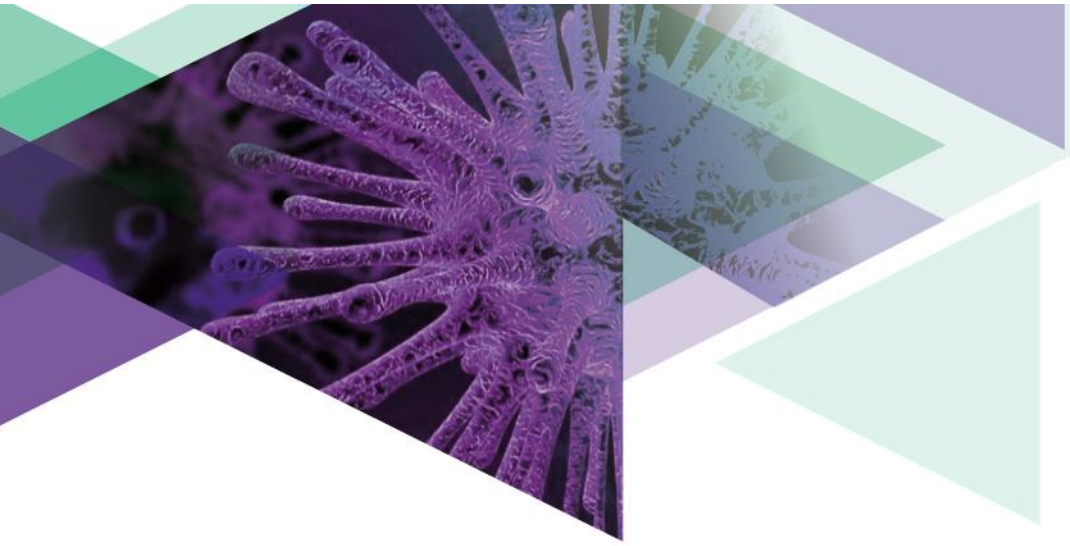

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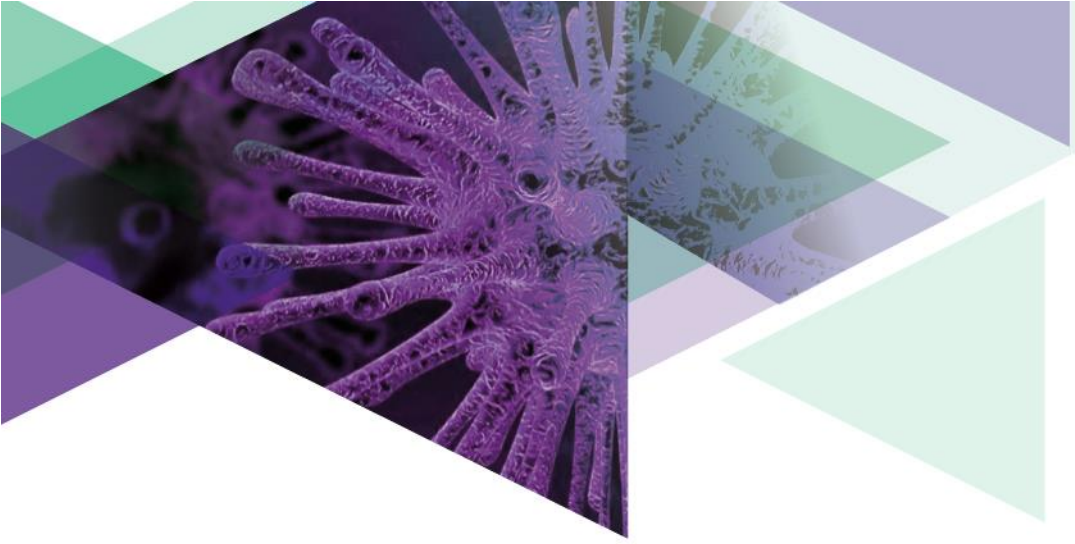
How to hold a meeting of a company's bodies during the coronavirus (COVID-19) and quarantine times?

Due to the unexpected emergence of an untypical situation for the day-to-day business of declaring a state of epidemic both in Poland and in most EU countries, companies and their bodies must face a new reality in their daily work and take up the challenge of acting as close to normal as possible. Especially given the fact that even an emergency situation does not release from all of the obligations provided for in the provisions of law.

One such obligation, usually performed in the second quarter of the calendar year, is to approve the financial year. The vast majority of Polish businesses consider the calendar year as their financial year. The beginning of the "season" of ordinary shareholders' meetings or ordinary general meetings overlapped this year with the announcement of a state of epidemic. It should be noted that in accordance with the provisions of the Act of 31 March 2020 amending the Act on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them and certain other acts (Journal of Laws of 2020, item 568) ("Special Purpose Act"), the deadlines for drawing up and approving the financial statements and the management board reports for the financial year 2019 were extended by three months..

Approval of financial statements is not however the only activity for which the general meeting or shareholders' meeting needs to be active. Given the risk of recession, it is very likely that many shareholders of companies for whom the present situation may give an impulse to liquidity needs as a way to support their companies financially, which, in turn, may require the adoption of resolutions by shareholders' meetings or general meetings; often in the presence of a notary public.

The presence of a larger number of shareholders at a general meeting or a shareholders' meeting may, in the current situation, turn out to be irreconcilable with the need to maintain the requirements of epidemic safety. In order to enable companies to operate on an ongoing basis and fulfil their obligations, including those related to the approval of the financial statements and the management board's reports, the Special Purpose Act introduced a completely new, wide range of possibilities for Polish limited liability companies (Pol. *"spółka z ograniczoną odpowiedzialnością" – "sp. z o.o.")* *and corporations (Pol. "spółka akcyjna" – "S.A." or "SA"*) to hold shareholders' meetings, but also the management board and supervisory board meetings remotely, including online.



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How to hold a meeting of a company's bodies during the coronavirus (COVID-19) and quarantine times?

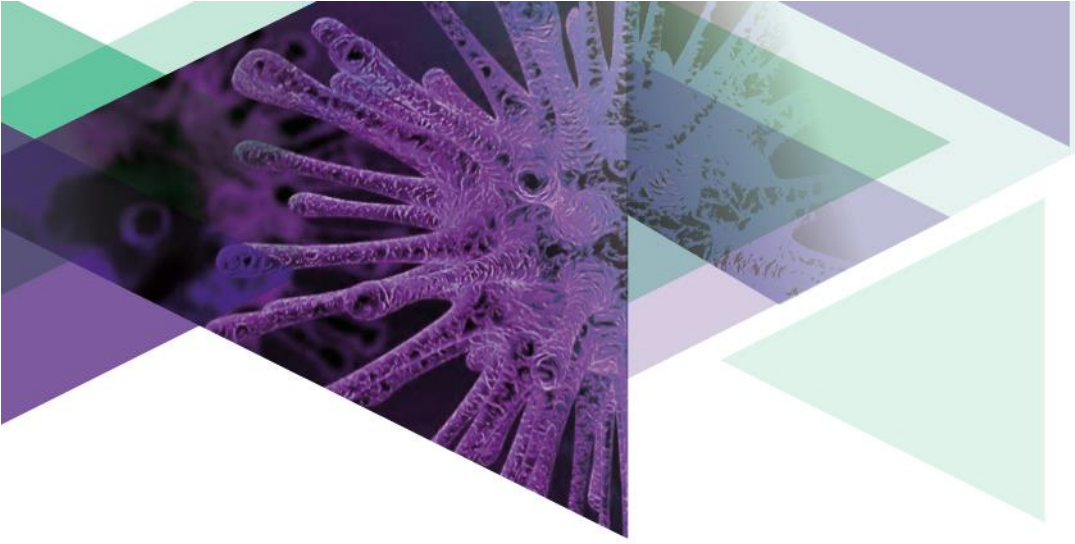
1. Shareholders meeting in the limited liability company

According to the currently binding provisions of the Commercial Companies Code ("CCC"), introduced in the Special Purpose Act, in the absence of a reservation to the contrary in the articles of association of a company, it is possible to permit participation in a shareholders' meeting using electronic means of communication, which includes in particular: (i) real- time bilateral communication where shareholders may take the floor during a shareholders' meeting from a place other than the venue of the meeting, (ii) exercising the right to vote in person or by proxy before or during the shareholders' meeting. Participation in the shareholders' meeting may only be subject to such requirements and restrictions as are necessary to identify the shareholders and ensure the security of electronic communication. It is therefore possible to use both video-conferencing and teleconferencing as well as acting through a proxy. Use of such remote solutions requires not, as previously, the Articles of Association provisions that allow so, but the absence of prohibition of such means. However, it should be noted that the Special Purpose Act introduced a requirement for the supervisory board, and in the case of a company without a supervisory board - for the shareholders, to adopt rules of procedure which will specify detailed rules of participation in the shareholders' meeting by means of electronic communication. The rules may however be adopted by way of a shareholders' resolution without holding a shareholders' meeting if the shareholders representing an absolute majority of votes agree in writing to the content of such rules.

If the articles of association prohibit to conduct a shareholders' meeting by means of electronic communication , in limited liabilities companies (sp.z.o.o) where it is possible to reach a consensus on adopting resolutions without holding a "traditional" shareholders' meeting, it is possible to apply procedures provided for in Article 227 § 2 of CCC, i.e. adoption of unanimous resolutions in writing (i.e. if the shareholders agree in writing to the provision to be adopted) or voting in writing. It is worth mentioning that as of 1 March 2019 the possibility to vote in writing also applies to annual resolutions, i.e. resolutions which have so far been adopted at ordinary shareholders' meetings, which have traditionally had to be held before. Therefore, iIn a situation of a state of epidemic, a practical solution is for the management boards of the companies to obtain, sufficiently in advance, the written consent of all shareholders to vote in writing and to carry out in such manner the approval of the financial year 2019, to grant vote of approval and, if necessary, to appoint members of the company's bodies for subsequent/new terms

2. General meeting in a public limited company

The use of electronic means of communication in a public limited company (S.A.) has already been introduced at the stage of organisation of a general meeting. Amendments to the provisions of CCC, introduced in the Special Purpose Act extended the possibility of holding a general meeting



with shareholders and members of the governing bodies participating remotely for all companies where the Statute do not prohibit such a method – until now, this possibility has only applied to companies statutes of which provided it for.

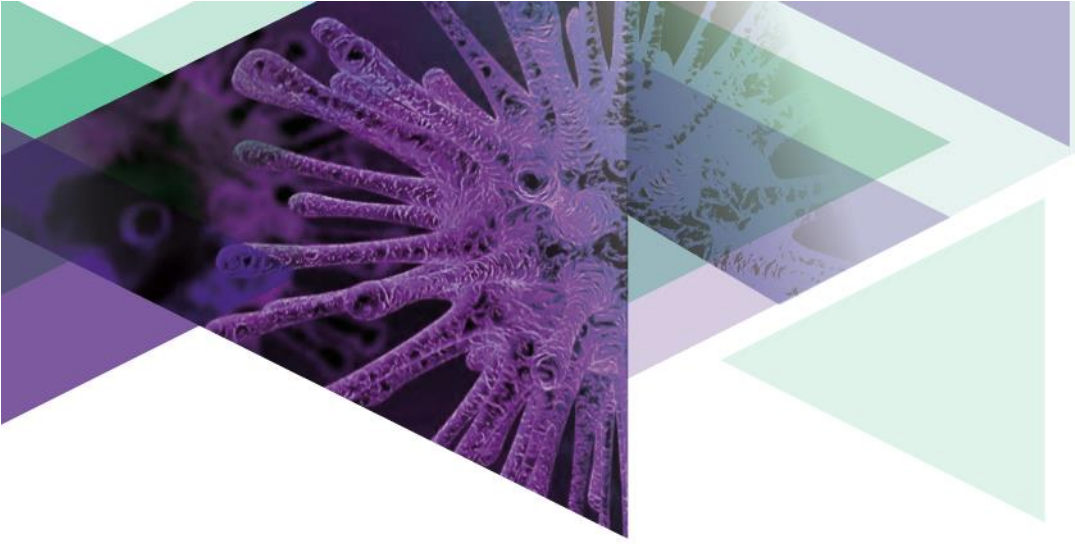
Please note that the announcement of convening a general meeting should contain information about: (i) the manner of exercising the voting right by proxy, including in particular the forms used to vote by proxy, and the manner of notifying the company by electronic means of communication of the appointment of a proxy, (ii) the possibility and manner of participating in the general meeting by electronic means of communication, (iii) the manner of expressing opinions during the general meeting by electronic means of communication, (iv) the manner of exercising the voting right by mail or by electronic means of communication.

As in the case of a limited liability company, also in a public limited company, the rules of procedure specifying rules on holding a general meeting by means of electronic communication must be provided for in the rules adopted by the supervisory board. If this condition is met and the Statutes make it possible, then it is possible to use both video-conference and tele-conference technology. For shareholders to participate in the general meeting may only be subject to requirements and restrictions which are necessary to identify shareholders and ensure the security of electronic communication. It is important that Special Purpose Act introduced an obligation to ensure real-time transmission of general meetings by public companies.

Shareholders also have the possibility to contact the company via a distant manner in connection with the convened general meeting. A shareholder or shareholders of a public company who represent at least one twentieth of the share capital may, prior to the date of the general meeting, submit, in writing or using electronic means of communication, draft resolutions to the company which concern the matters on the agenda of the general meeting or matters to be included in the agenda. The Company shall immediately announce the draft resolutions on its website.

In addition the Company's Statute may authorize the shareholders to represent less than one-twentieth of the share capital to request that certain matters be put on the agenda of the next general meeting of shareholders and to submit to the Company in writing or using electronic means of communication draft resolutions concerning matters put on the agenda of the general meeting of shareholders or matters which are to be put on the agenda.

In the current situation, and taking into account the existing CCC provisions, it is possible to enable shareholders to participate in the general meeting and exercise their voting rights by proxy. Shareholders and the company may entrust the role of a proxy holder to one professional adviser appointed by the company, exercising the profession of advocate or attorney at law. In such a case, the relationship of the mandate (and duty of care) would link the advocate (attorney at law) with the company and would concern the facility of holding the general meeting by exercising the shareholders' powers of attorney, according to their instructions. The proxy would be present in a



notary's office or in the registered office of the company or even in the law office of that proxy, in the presence of a notary (if possible; such proxy may also act as the chairman of the general meeting) and would exercise the voting rights of all shareholders who would grant him a power of attorney. The course of the general meeting may be broadcasted and allow both remote presence of members of the authorities (management board and supervisory board) and the option for shareholders to ask questions. A possible introduction of changes to the content of draft resolutions of the general meeting, as compared to the content of published drafts, for which shareholders have drawn up voting instructions, would require an announcement of a break in the general meeting, in order to enable a possible change in the content of the instructions issued by the shareholders.

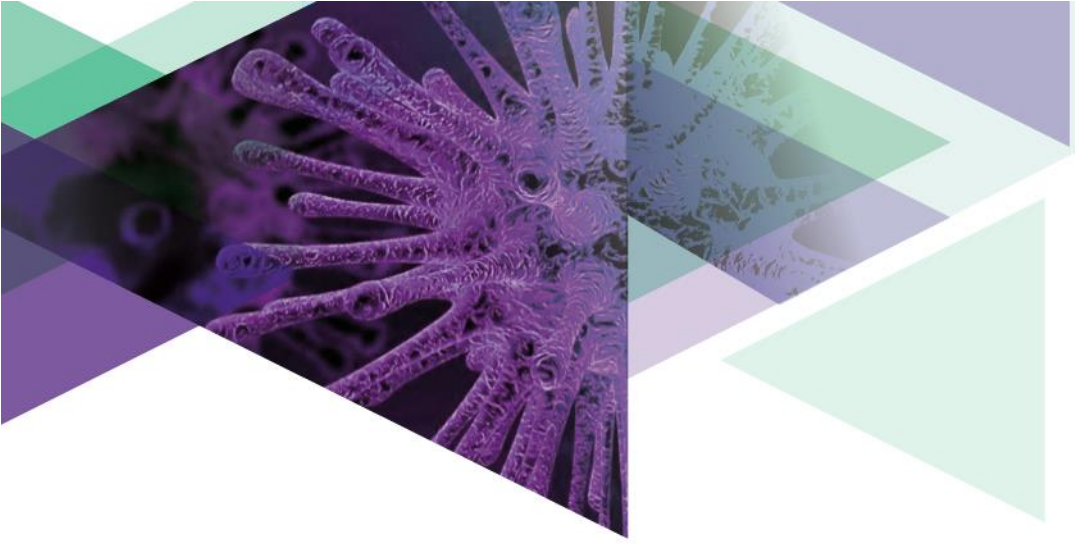
The current regulations, concerning written voting by shareholders, do not seem to fully meet the challenges posed by the current situation to the companies. In particular, since the possibility of voting by mail has been introduced in the act by referring to the "general meeting bylaws"(regulamin walnego zgromadzenia), a previously unknown to CCC corporate document, whose status is at least doubtful (a violation of the bylaws does not result in the right to challenge a resolution).

We would like to point out that regardless of the form of holding a meeting, in the case of limited liability companies, the presence of the chairman of the shareholders' meeting and a minutes secretary is required (and if required, a notary public), and in the case of joint-stock companies, the chairman of the general meeting and a notary public.

3. Amendment of CCC regulations with regard to the form of meetings of supervisory boards and management boards

In a situation where members of the company's bodies may be placed under either formal or even de facto quarantine and with movement restrictions, it has become necessary to allow the management to act in an emergency situation. The current regulations, introduced to the CCC by the Special Purpose Act, allow the collegial management boards of capital companies to adopt resolutions remotely (by using means of direct remote communication), in writing or in writing through another member of the management board, unless the articles of association or the statutes provide otherwise. In the case of a joint-stock company, however, the company's supervisory board should determine, in the form of rules, the detailed terms of participation in a management board meeting by means of direct remote communication.

Supervisory boards may operate remotely, i.e. by means of direct remote or written communication forms or in writing through another supervisory board member, unless the articles of association or the statutes provide otherwise. A resolution adopted in this manner is only valid if all members of the supervisory board have been notified of the content of the draft resolution and at least half of the board members took part in the adoption of such resolution. The articles of association or statutes may provide for stricter requirements for the adoption of resolutions by the supervisory



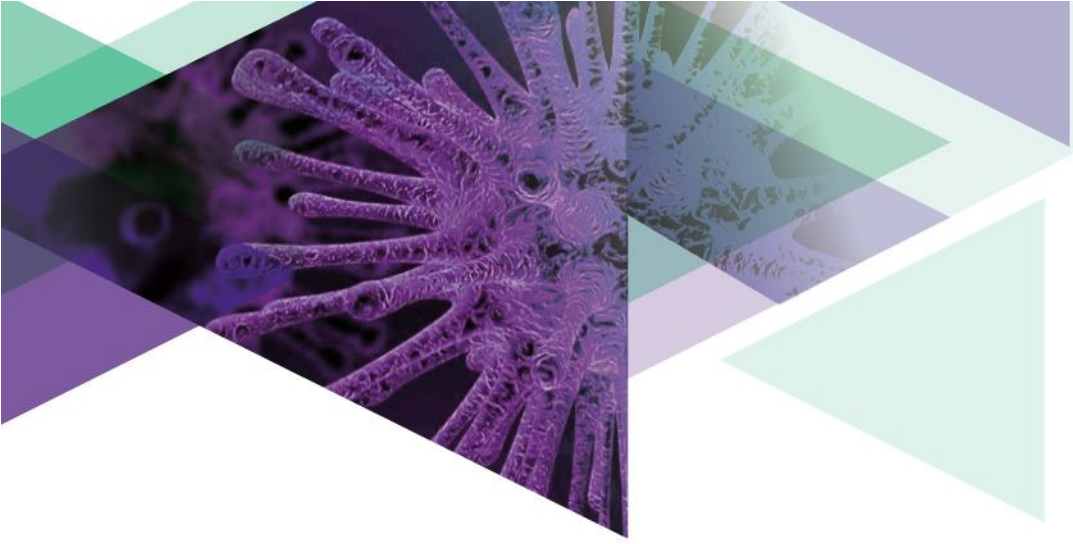
board by means indicated above. Similarly to the regulation concerning the management board meetings, in the case of a joint-stock company, the company's supervisory board should determine, in the form of rules, detailed terms of participation in a supervisory board meeting by means of direct remote communication. Importantly, the supervisory board may adopt resolutions in writing or by means of direct remote communication also on matters for which the articles of association or the statutes of the company require a secret ballot, unless any member of the supervisory board objects.

In situations where the currently applicable internal bylaws of management boards or supervisory boards specifically regulate the conditions for adopting resolutions, they should be analysed in terms of the need to change them, if necessary.

4. Conclusion

In each case, the content of the company's articles of association or statutes shall first be thoroughly analysed in terms of the possibility of adopting resolutions remotely, communicating with the company and participating in a shareholders' meeting or a general meeting. If the Articles of Association or Statue do not prohibit the facility to use other forms of body meetings than a face-to-face meeting, it is worth considering implementing such solutions in the company's corporate documents; however, it should be noted that due to the need to carry out the procedure required for amending the Articles of Association (Statues) and registering the change in the National Court Register, this may prove to be time-consuming and thus difficult. A practical solution is to grant a power of proxy and coordinate this process by the companies, additional transmission of the meeting or, in the case of a limited liability company, consent to a written vote.

We are ready to provide you with assistance in the organisation of general meetings or shareholders' meetings by means of electronic communication and using the institution of power of attorney and simultaneous two-way audio and video broadcasting to persons entitled to participate in the general meeting or shareholders' meeting, as well as in the preparation of rules on remote participating in the general meetings, shareholders' meetings, and meetings of the company's management board and supervisory board.



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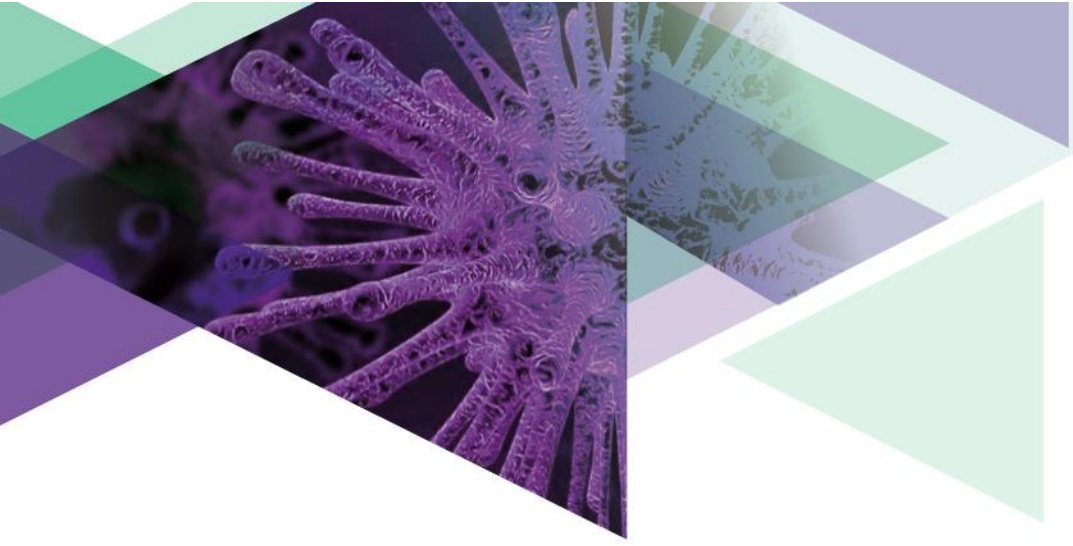

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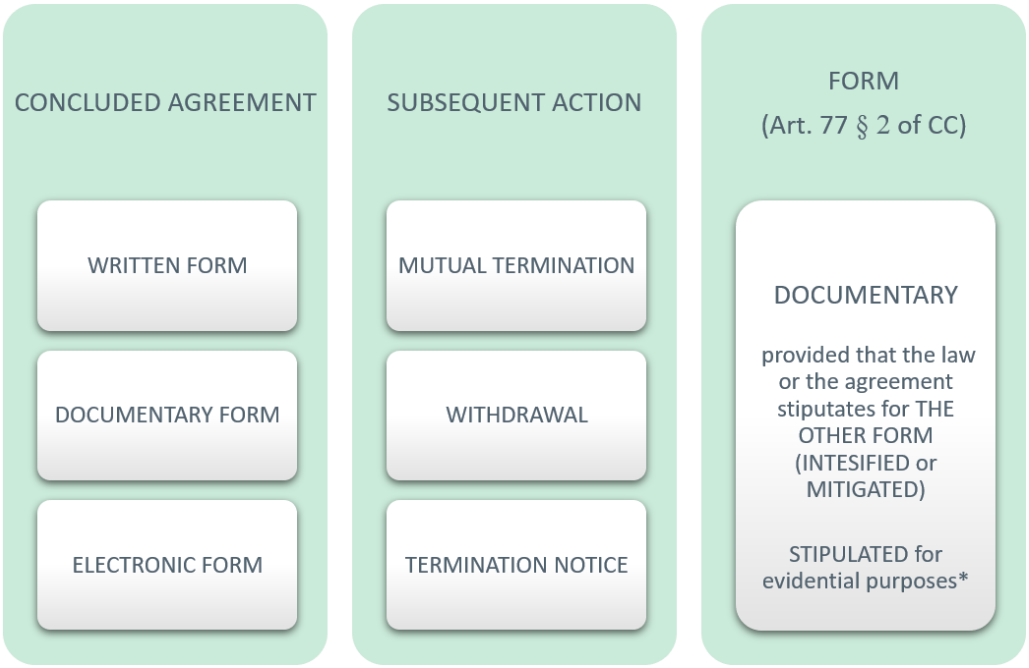
Terminating a contract – nothing easier?

Entrepreneurs are confronted with incredible challenges these days. One of which is taking difficult decisions on terminating a business relationship. In times of the current restrictions and remote communication we advise on how to do this safely and accurately from a legal perspective

The regulations which govern the so-called subsequent nullifying legal actions i.e. aimed at ending the legal relationship, are as follows:

The current wording of Article 77 § 2 of the Civil Code ("CC") is the result of an amendment which came into force on 8 September 2016.



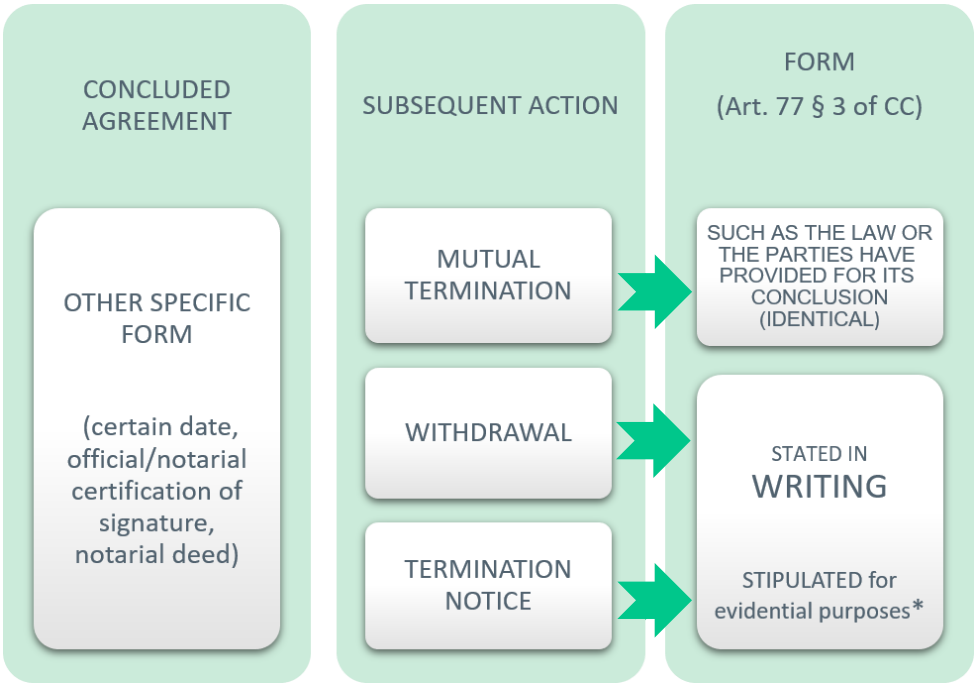
Thus, mutual termination, notice of termination or withdrawal from the agreement concluded in writing (Art. 78 of CC), in a documentary form (Art. 77^2 of CC) or in an electronic form (Art. 78^1 of CC) shall be made in documentary form, under pain of evidential limitations (*ad probationem*).

It is irrelevant as to whether the agreement was concluded in writing due to a statutory requirement or a contractual arrangement (pactum de forma) and under what pain the form was reserved.

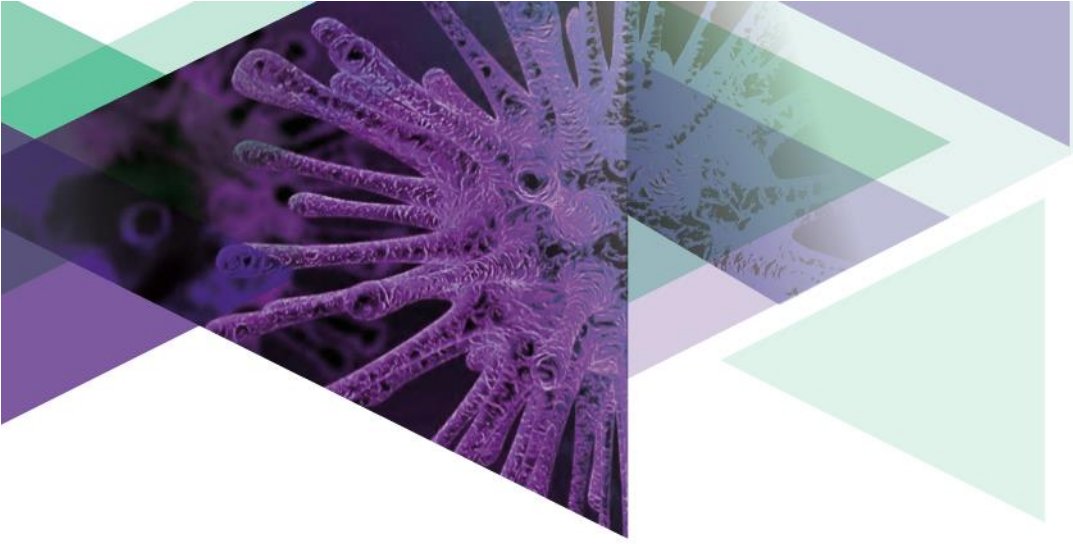
Therefore, if the agreement does not stipulate any requirements as to the form of the subsequent nullifying legal action (in previous practice the agreements have often regulated the requirement of a form for its change only) and there is no such statutory provision, the agreement can be terminated in the documentary form (e-mail, text message, record, picture, fax), which is less formalised than before the amendment of the Civil Code from 2016 (the written form was foreseen so far).

Moreover, from 8 September 2016, the provision of Article 77 § 2 of CC has an optional nature, thus the parties can decide what form they choose for the subsequent action which nullifies their agreement and it does not have to be a more solemn form (i.e. sharper) than a documentary one. The ,,other form" referred to in this provision may therefore be considered to be any form, even oral.

The statutory rules for terminating an agreement concluded in a qualified specific form, unless otherwise specified, have not changed and are as follows:



Therefore, if the agreement has been concluded in a qualified specific form, withdrawal and termination require the simple written form, under pain of evidential limitations (*ad probationem*). Such a rule applies regardless as to whether concluding the agreement in one of the qualified special forms was made in accordance with the law or in accordance with the will of the parties.



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Terminating a contract – nothing easier?

ATTENTION!

In accordance with Article 74 § 4 of CC, in relationships between entrepreneurs, failure to comply with the requirements of the form, where the pain of nullity has not been stipulated, by the law or the parties (i.e. the form was restricted for evidence purposes only; *ad probationem*), does not result in evidence sanctions and at the same time does not affect the validity of the performed legal action.

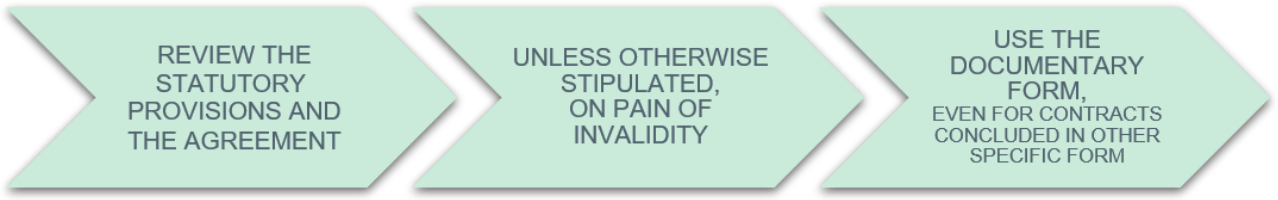
Therefore, the agreement between the entrepreneurs may be withdrawn or terminated in any form, provided that the law or the agreement does not provide for such a declaration to be made in aspecific form, otherwise being null and void.

RECOMMENDATION

Simple and legally secure solutions work in business. Oral communication, although is in principle allowed, is in line with the rules outlined above, it cannot be trusted. The ,,classic'' written form is most commonly used, which results from the previous regulations and common practice, especially for the sake of litigation prudence. However, what used to be a rule or commonplace, should now be verified, especially since we can use solutions which are available, cheaper and faster than traditional correspondence.

Therefore, it is worth noting that the Civil Code allows for the use of a documentary form (e-mail, text message, recording, photo, scan, fax) as the form aimed at facilitating the performance of legal actions.

Therefore, if you intend to terminate (or withdraw from) your contract, please follow these criteria:



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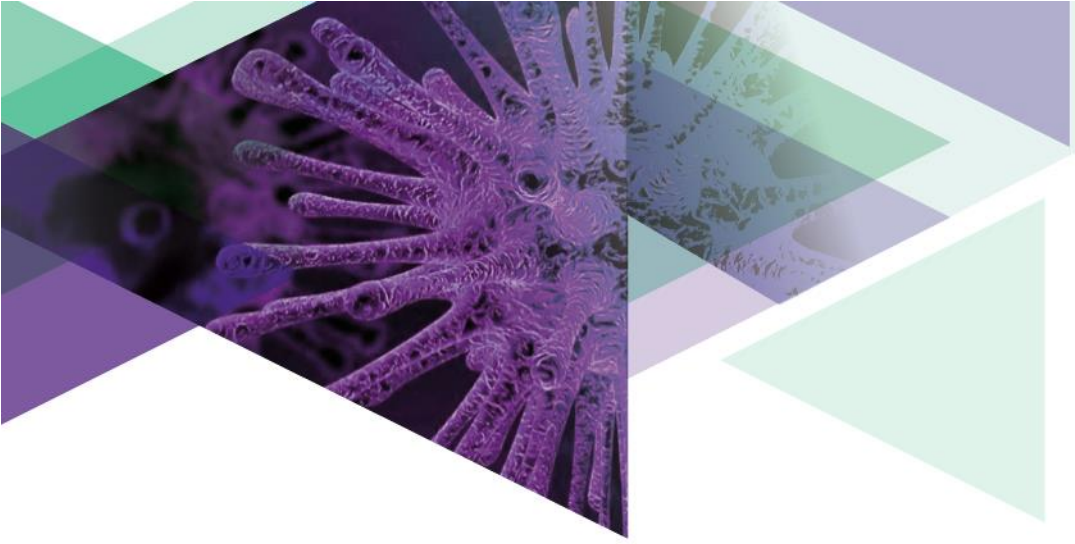

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Terminating a contract – nothing easier?

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Don’t give up on transactions - alternative contracting methods

In light of the coronavirus pandemic, the restrictions on movement and the ban on meetings and gatherings, and in contrast the requirement to work remotely and having to utilize universal communication using online tools, many people are asking themselves, how they should organise their business if, at the end of the day, "you will have to sign something". Negotiations and arrangements can be conducted through email correspondence, teleconference and videoconference, but what next? We have already had to give up on the customary handshake, but we cannot give up on the requirement to sign documents.

What are the facilities to conclude a contract if we cannot physically undersign the document at the meeting?

	**Written form** (Article 78 § 1 of the civil code**)**	**An exchange of documents** which comprise of the content of declarations of intent, each of which is signed by one of the parties, or of documents each of which comprises of the content of declaration of intent of one party and is signed by this party **shall be sufficient** to conclude a contract. In practice, we can therefore organise the negotiation phase using electronic means of communication and sign the agreed contract by hand and send it to the other party by courier or post, asking them to do the same.
	**Electronic form** (Article 781 § 1 i 2 of the civil code)	In order to observe the electronic form of a legal action it shall be sufficient to make a declaration of intent in electronic form and provide it with a qualified electronic signature. A declaration of intent made in electronic form **shall be equal** to a declaration of intent made in written form. Thus, wherever regulations require us to sign using our own signature, we can use a qualified electronic signature.

	**Document confirming the agreement** (Article 771 § 1 i 2 of the civil code)	If a contract concluded between entrepreneurs without complying with the written form (e.g. via mail or via phone call) **is immediately confirmed by one party in the form of a letter** addressed to the other party and such letter contains amendments or supplements to the contract which do not essentially change its content, the parties shall be bound by the contract the content of which is specified in the confirmation letter, unless the other party immediately objects to it in writing. If a contract concluded between entrepreneurs without complying with the document form (e.g. orally) is **immediately confirmed by one party in a document** addressed to the other party and such document contains amendments or supplements to the contract which do not essentially change its content, the parties shall be bound by the contract the content of which is specified in the confirmation document, unless the other party immediately objects to it in a document. Please note that confirmation does not replace or validate the required form of the contract. If any special form is required, under pain of nullity, for a contract which was concluded informally, the confirmation shall not apply. In a case, where the special form was reserved to cause certain legal effects (*ad eventum)*, the confirmation will not cause such effects, as intended by the parties or prescribed by law

HANDWRITTEN SIGNATURE = QUALIFIED ELECTRONIC SIGNATURE

If neither the regulations nor the parties have reserved the written or electronic form under pain of invalidity for a given action (and of course the participation of a notary public), the documentary form may suffice. In order to maintain the documentary form of a legal action, it is sufficient to make a declaration of will in the form of a document, in a manner which makes it possible to identify the person making the declaration.

Let us recall that since 8th September 2016, the document has ceased to only be associated with paper. In accordance with Article 773 of the Civil Code, a DOCUMENT is an information carrier enabling to learn its contents. Therefore, it is an e-mail, text message, message sent through a

communicator, recordings (image, sound), as well as a file in any format which enables reading.

Therefore, we are still able to conclude contracts, but before we reach for a traditional pen, let's analyze whether we can effectively sign or e-sign and make a contract, annex or other statement, without leaving home or the office.

Types of electronic signatures and other trust services, according to the eIDAS Regulation

As of 1 July 2016, the most important legal act applicable in all Member States of the European Union, which ensures consistent legal and technical standards for the provision of trust services in the European Union's digital dingle market, is the eIDAS Regulation[1].

The Regulation introduced, among others, universally recognisable electronic identification mechanisms (eID), which allows for unambiguous verification of the identity of users of online services and electronic signatures.

Below we present the most "practical" services, especially useful in the current state of the global pandemic.

➢ INDIVIDUALS: e-signature

ELECTRONIC SIGNATURE - data in electronic form which is attached or logically linked to other data in an electronic form and which is used by the signatory as a signature (e.g. footer in an e-mail)..

ADVANCED ELECTRONIC SIGNATURE – is an electronic signature which meets the following requirements:

(a) it is uniquely linked to the signatory;

(b) it is capable of identifying the signatory;

(c) it is created using electronic signature creation data which the signatory can, with a high level of confidence, use under his/her sole control; and

it is linked to data signed therewith in such a manner that any subsequent change in the data is detectable (e.g. a digital signature)

1 Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. Furthermore, In Poland, the Act of 5 September 2016 on trust services and electronic identification is in force since 7 October 2016.

QUALIFIED ELECTRONIC SIGNATURE - an advanced electronic signature which is created by a qualified electronic signature creation device and which is based on **a qualified certificate** for electronic signature..

> An electronic signature may not be denied legal effect or admissibility as evidence in legal proceedings on the sole grounds that it is in electronic form or does not meet the requirements for qualified electronic signatures.

> A qualified electronic signature has a legal effect equivalent to a handwritten signature.

> A qualified electronic signature based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic signature in all other Member States.

➢ LEGAL ENTITIES: e-seal

ELECTRONIC SEAL - data in electronic form added to or logically linked to other data in electronic form to ensure the authenticity of the origin and integrity of the linked data.

ADVANCED ELECTRONIC SEAL - is a seal that meets the following requirements:

(a) t is uniquely linked to the creator of the seal;

(b) it is capable of identifying the creator of the seal;

(c) it is created using electronic seal creation data that the creator of the seal can, with a high level of confidence under its control, use for electronic seal creation; and

(d) it is linked to the data to which it relates in such a manner that any subsequent change in the data is detectable.

QUALIFIED ELECTRONIC SEAL - an advanced electronic seal which has been created by a qualified electronic seal creation device and which is based on a qualified certificate for electronic seal.

> A qualified electronic seal shall enjoy the presumption of data integrity and the authenticity of the origin of the data to which the qualified electronic seal is linked.
> A qualified electronic seal based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic seal in all other Member States.

➢ E – DOCUMENTS: e – time stamp

ELECTRONIC TIME STAMP - data in electronic form which binds other data in electronic form to a specific time, providing evidence that the other data existed at that time.

QUALIFIED ELECTRONIC TIME STAMP shall meet the following requirements:

(a) it binds the date and time to data in such a manner as to reasonably preclude the possibility of the data being undetectably changed;

(b) it is based on an accurate time source linked to Coordinated Universal Time; and

(c) it is signed using an advanced electronic signature or sealed with an advanced electronic seal of the qualified trust service provider, or by some equivalent method

> A qualified electronic time stamp shall use the presumption of the accuracy of the date and time it indicates and the integrity of the data to which the indicated date and time are linked.
> A qualified electronic marker issued in one Member State shall be recognised as a qualified electronic time stamp in all Member States

The current list of trust service providers in Poland can be found on the website:

> European Commission (EC): https://webgate.ec.europa.eu/tl-browser/#/tl/PL
> National Certification Centre (NCCert) at NBP: https://www.nccert.pl/indexE.htm

If you have any questions regarding the use of electronic form, electronic signature or e-documentation, please do not hesitate to contact us.

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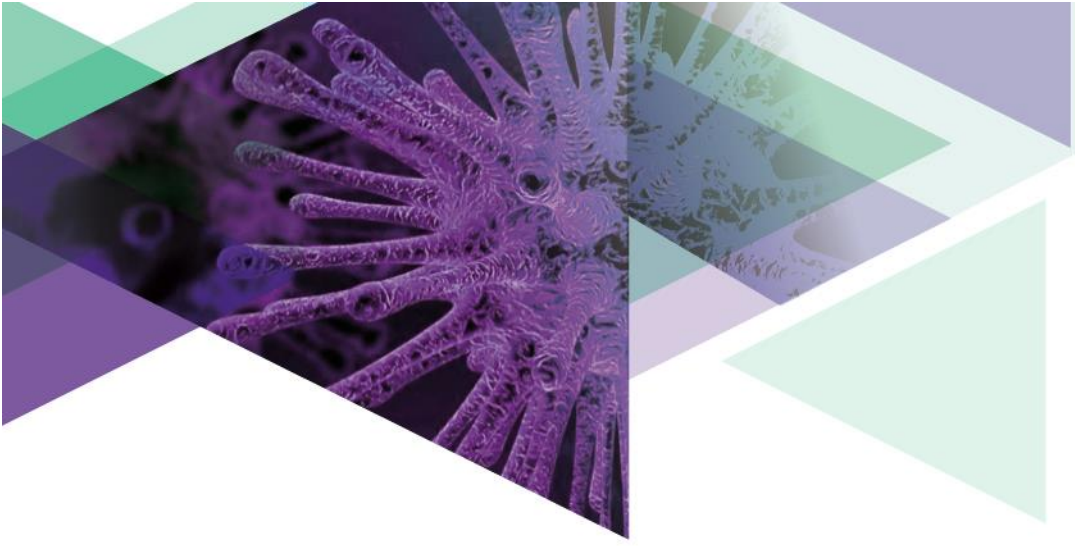

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Registration courts in times of the state of epidemic in Poland (as of 21st of April 2020)

As for commercial companies, a number of activities may require a prior amendment of the company's articles of association, and therefore also a registration procedure, the positive conclusion of which is a condition for the effectiveness of such an amendment. In addition, a change in the composition of the corporate bodies should be entered as urgently as possible in the register of entrepreneurs of the National Court Register for purely practical reasons. We would like to present you with some current information on the functioning of commercial divisions in district courts in connection with the announcement of a state of epidemic in Poland.

According to the information acquired from the general enquiry centre of the commercial divisions of the National Court Register of the district courts of the largest cities in Poland (including Warsaw, Kraków, Wrocław, Łódź, Katowice and Gdańsk), as of 21st of April 2020, cases in the registry courts are handled according to the following rules.

1. Document submission departments

Most court document submission departments are currently closed. An exception is the District Court for the Capital City of Warsaw (12th and 13th Commercial Division of the National Court Register), where letters may be submitted in person at the document submission department (one post is currently functioning). Still however, in all courts all letters and motions may be submitted by post.

2. Assessment of cases

As of 21st of April 2020, all cases in the registry courts are assessed, closed hearings are held, and the judges and court registrars issue orders and decisions. However, in some courts, departments work in a smaller composition, also due to the introduction of staff rotation, and therefore the waiting period for a case to be heard is likely to be significantly longer. In urgent cases, in line with previous practice, applicants may submit duly motivated requests to the head of the division to expedite the consideration of the case and to process the motion urgently. However, there are no guarantees that the case will be dealt with in a quicker manner.

In this situation, when planning the company's activities, one should take into account the fact that the desired entry in the register can only be made in the longer timeframe. If time is critical and the nature of the given case allows it, it is worth considering alternative solutions.

It should be noted that in accordance with Article 15 of the Act of 2 March 2020 on special solutions related to the prevention, prevention and combating of COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2020, item 374, as amended), during the period of the state of epidemic, the course of trial and court time limits does not start, and the commenced time limits are suspended for the duration of that state. This applies also to proceedings pending before registry courts

I am at your disposal for further questions!

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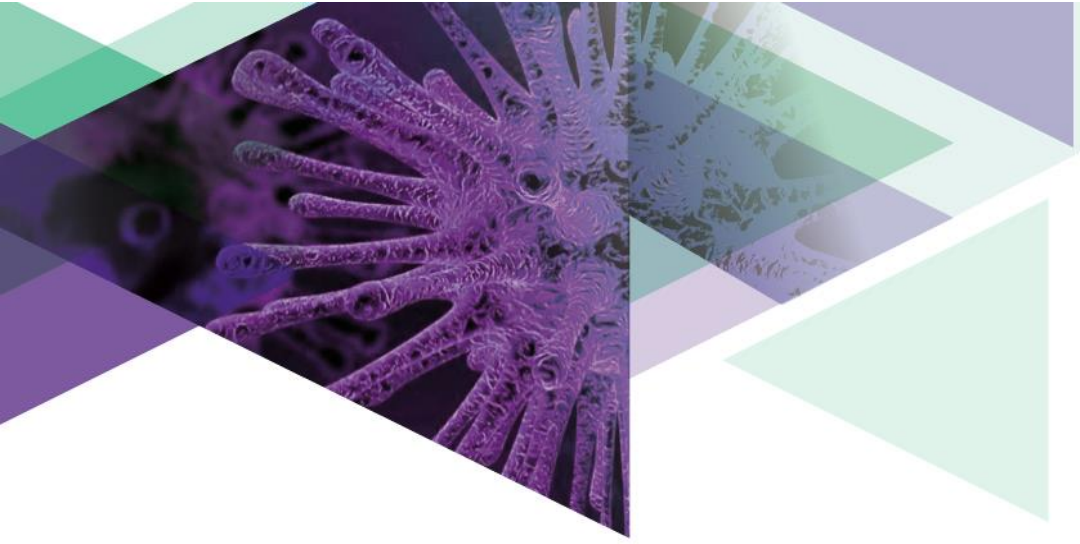

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Dispute resolution during a pandemic time

How to resolve disputes when the courts are not functioning? Where to go for help regarding a business dispute at this particular time? What about disputes which are already pending in court?

These and other questions are undoubtedly being asked by entrepreneurs at this difficult time for the economy and business.

Entrepreneurs also review their contracts in search of clauses related to force majeure or extraordinary situations. And since contracts are written for hard times, they will undoubtedly find such clauses in many contracts and apply them. The question remains, however, how to resolve disputes in a situation where the courts do not function and the parties have agreed to resolve possible conflicts by a competent common court. What should entrepreneurs whose cases already pending in the courts are being dismissed and (probably) will find themselves at the end of the queue in an already overloaded court system?

Of course, contracts may also include a clause for an arbitration court, the so-called arbitration clause, which allows bypassing the common court. The question arises, however, whether the arbitration courts - even if they are functioning - will be able to deal with the case? Considering the rather high formality of the arbitration procedure, it may transpire that at this particular time when entrepreneurs are currently operating, arbitration courts will not be able to proceed normally. Any dispute resolution by a court (common or arbitration) involves meetings of the parties, experts, witnesses during a hearing or court session, which requires the participation of at least a few people.

Of course, practice will show how far arbitral tribunals will be able to adapt to the situation. However, entrepreneurs who have a business dispute or whose dispute has just "become bogged down" in a common court may use other alternative dispute resolution methods. Any dispute can be resolved through commercial mediation, which in turn may prove to be quite an effective tool that can also be used during a pandemic.

1. Mediation as a remedy for difficult times

Commercial mediation has been experiencing a revival in Poland in recent years. Mainly the legislative environment for mediation, including a number of subsequent amendments to the law are aimed at encouraging entrepreneurs to mediate

Mediation is a highly informalized method of resolving disputes in business, which, in addition, is

several times cheaper than court proceedings or arbitration proceedings. Mediation can also be carried out using various means of distance communication (by video- or teleconference, or even in writing on-line). Mediation in participation with a mediator can be carried out without their direct contact, i.e. - at present - without a threat to their health.

No special contractual arrangement between the parties is needed to use mediation. Mediation can also take place without a specific referral to a court when the parties themselves decide to have mediation conducted by an independent mediator of their choice or by an independent, specialised mediation centre (so-called private mediation).

In fact, mediation can not only resolve an existing dispute, but can also "mediate" special contractual terms and conditions under special circumstances such as a pandemic. This may be important precisely in a situation where the parties concluding the contract did not foresee certain circumstances of their performance, such as introducing a state of epidemics or epidemic threat throughout the country. Such situations and states of emergency can often lead to a disruption of business relationships between the parties or make it temporarily impossible. If the parties did not provide for such a situation in the contract, they may find themselves in a business poop. Commercial mediation may be helpful in such a situation, which will allow the parties not only to clarify differences in the interpretation of the agreement or its execution, but also to arrange the relationship for the future.

Classic commercial mediation consists of the participation of an independent mediator in communication between the parties in a dispute. The parties, as it were, moderated by the mediator in the mediation proceedings, strive to find a solution which would be acceptable to both parties. The mediation process should therefore lead to a win-win situation

2. Settlement agreement replaces judgment

Practice shows that a solution achieved by both parties with the help of a mediator through commercial mediation is usually implemented by them on a voluntary basis and no steps are necessary to force the parties to implement the settlement reached. It is worth remembering, however, that the settlement reached through economic mediation can be confirmed in court. In such a situation, the mediator or attorneys of the parties ask the court to set a special court hearing during which the settlement agreement is formally approved by the court, which becomes an enforcement order, and thus gains the value and legal force of the court judgment.

This approval of the settlement may also take place a few weeks or months after the conclusion of the settlement agreement before the mediator. Thus, the fact that the court does not act at the present time does not prevent the parties from resolving disputes by means of mediation and subsequent possible approval of the settlement reached by the court.

The same applies to disputes which are already pending between the parties in court. In a situation where it is not certain when the court will be able to proceed with the case anew, the parties may conclude an out-of-court settlement by private mediation by regulating the fate of the pending

dispute accordingly (e.g. by deciding to withdraw the statement of claim and mutual abolition of court costs).

I am convinced that this is the most sensible solution in the current situation, especially if the parties want to settle the dispute quickly.

It is estimated that mediation is at least ten times cheaper than a court process. Perhaps it is precisely this current, exceptional situation which will contribute to a greater use of economic mediation in business and entrepreneurs will use this tool for dispute resolution more often.

3. Cost comparison: Court proceedings vs. private mediation within the International Mediation Centre (www.mcm.org.pl)

The value of the dispute: 3,000,000 PLN

Costs	Court proceedings	Mediation
Initial fee / registration**	200,000 PLN court fee	1,500 PLN registration fee.
Cost of legal support* / Mediation costs**	appr. 120,000 PLN	Net 15,000 PLN (15 hours of mediation divided into the sessions)
Experts opinion	appr. 3,000 PLN	Not applicable
Bailiff execution	appr. 2,500 PLN	Not applicable
Sum of the main costs	**appr. 325,500 PLN**	**16,500 PLN**

***costs calculated on the basis of the World Bank's data published in Doing Business Report (Poland)*
*** mediation cost within the International Mediation Center*

I am at your disposal for further questions!

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How to save a business relationship in times of the coronavirus pandemic (COVID-19)?

The situation which has emerged as a result of the COVID-19 pandemic has already led to a fundamental change to the reality surrounding us. It is impossible at this stage to assess the nature and extent of all the effects of the ongoing pandemic, but there is no doubt that it will impact on legal relationships, in particular including contractual relationships. Many entrepreneurs are probably already experiencing, or will shortly experience, a situation in which it will become extremely difficult or even impossible to comply with their contractual obligations. In such a case, one should consider using the measures which are already available under the current legislation. Below we set out a few practical steps which we believe each entrepreneur struggling to carry out his contractual undertakings can take:

1. Is the occurrence of force majeure stipulated in the contract?

Reading and understanding the binding contracts can most certainly not be overestimated. It is possible that the agreement to which one is a party includes the so-called force majeure clause (vis maior, force majeure), which has become a “boilerplate” provision which is commonly implemented in various types of agreements. It usually contains a definition of an event of force majeure (e.g. as an extraordinary, external event which is difficult to predict and the effects of which cannot be prevented even with maximum care) supplemented by an open or closed catalogue of specific states and situations which, in the opinion of the parties to the contract, should be included within the definition. **The essence of the force majeure clause is a reservation that a party is not responsible for the non-performance or improper performance of the contract caused by force majeure or which otherwise limits its contractual liability in this respect.**

2. Epidemics as an event of force majeure

The inclusion of the force majeure clause in the agreement is definitely good news. In the next step, one should consider whether the disruption which arises as a result of COVID-19 will meet the definition of force majeure in the agreement. One can assume with a great deal of certainty that this will be the case, although it is the wording of the provision under consideration which is decisive. If it explicitly mentions an epidemic as one example of force majeure, then the situation seems to be fairly straightforward. According to Article 2(9) of the Act of 5 December 2008 on Prevention and Control of Infections and Infectious Diseases, an epidemic is understood as the occurrence of infections or contagious diseases in a given area in a number clearly greater than in the previous period, or the occurrence of infections or contagious diseases not yet observed. While in the period from 14th to 19th March 2020, i.e. after the official announcement of the danger of state epidemic, one could possibly consider whether we were

already dealing with an epidemic, or "only" with the risk of its occurrence, the official announcement of the state of epidemic which started on 20th March 2020 removes all doubt in this respect. **The state of the epidemic has a number of far-reaching, direct legal consequences, but at the same time it significantly strengthens the legitimacy to invoke the force majeure clause stipulated in the agreement.**

3. Other cases of force majeure

However, the situation is definitely more complex, the spread of COVID-19 has triggered a number of reactions and processes the development of which and, above all, the effects are difficult to predict at this stage. Many of them can potentially be classified as force majeure, which also applies to the actions of public authorities and the measures which have already been taken to combat the threat of epidemic. The Regulation of the Council of Ministers of 19th April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of a state of epidemic introduces - similarly to previous regulations in this respect - a number of restrictions very directly impacting onto business activity. Currently, these restrictions include, among other things, a restriction or total ban on carrying out certain types of activities (including activities related to the provision of hotel services, activities consisting in organising events, activities related to the consumption and serving of beverages, retail trade in certain goods in large commercial facilities, activities related to sport, entertainment and recreation or the ban on using city bikes available to the public), restrictions on a certain manner of movement or restrictions or a ban on trading in and using certain items (e.g. a ban on exporting or disposing of ventilators and patient monitors outside the territory of the Republic of Poland). Although the classification of the governmental state activities (the so-called "imperium") regarding force majeure raises some controversy in the legal doctrine, it should be acknowledged that the freedom of the parties in shaping the contractual relationship goes far enough for such official restrictions to be included within the definition of force majeure determined by the parties. The wording of the contract will therefore be decisive in this respect.

4. What if there is no force majeure clause in the contract?

A similar issue may also arise if the parties have provided for such a provision in the agreement, still due to its narrow scope it cannot be applied, e.g. if its wording has been reduced to an exhaustive list of specific situations which do not involve either epidemics or governmental action. Force majeure is a term used in Polish law, however, there is no general provision in the Civil Code which would provide for the limitation of contractual liability due to force majeure. In such a situation, alternative measures should be considered, initially including the so-called rebus sic stantibus clause under Article 357^1 of the Civil Code, which some time ago experienced a real renaissance in popularity due to the public discussion on its potential application to bank loans denominated and indexed in Swiss francs (CHF). This provision allows for a change in the manner of performance, its amount or even termination of the contract if the performance would be associated with excessive difficulties or would threaten one of the parties with gross loss due to an extraordinary change in relationships, which the parties did not expect when concluding the contract. Similar mechanisms have been provided for by the legislator for certain specific types of contracts (e.g. an increase of the lump sum remuneration or termination of contracts for the performance of a specific task pursuant to Article 632 of the Civil Code, or reduction of the lease rent

pursuant to Article 700 of the Civil Code). In this context, it is also worth noting that responsibility for proper performance is based on the principle of fault, and the debtor is obliged, in principle, to exercise due diligence. However, as appealing as the above mentioned solutions are, their value is significantly diminished by the fact that a change in the contractual relationship (or even its termination) is decided by the court, thus an effective solution to the problem of inability to perform the contract will be postponed in time, especially taking into account the current situation. Already now, unless this issue is regulated by the legislator in advance, extraordinary delays in the work of the courts should be expected.

5. What action should be taken now?

Usually, the contractual provisions concerning force majeure also provide for an appropriate procedure, which starts with notifying the other party that its trading partner has been affected by a case of force majeure and that this may affect the performance of its contractual obligations. This should be done in accordance with the manner of communication agreed under the contract, but in any case, by means which adequately evidence the fulfilment of the obligation to notify. The next step may involve negotiations between the parties in good faith in order to change the contractual relationship accordingly. Finally, in the case of extended force majeure events (e.g. more than 90 days), each party may be entitled to unilaterally terminate the contract. Much depends on the circumstances of the specific matter (including, above all, the wording of the contract), but it appears that at this stage it is too early to draw any far-reaching conclusions and one should firstly wait for further developments. **It is certainly advisable to communicate with the business partner and to prepare them for any possible perturbations in the performance of the contract.** This applies both to contracts with an express force majeure clause and those in which the parties did not provide for such regulation. Initiating talks at an early stage of a force majeure event may limit the extent of possible damages and possibly also increase the chance to save the contractual relationship.

I am happy to discuss any questions or comments you may have!

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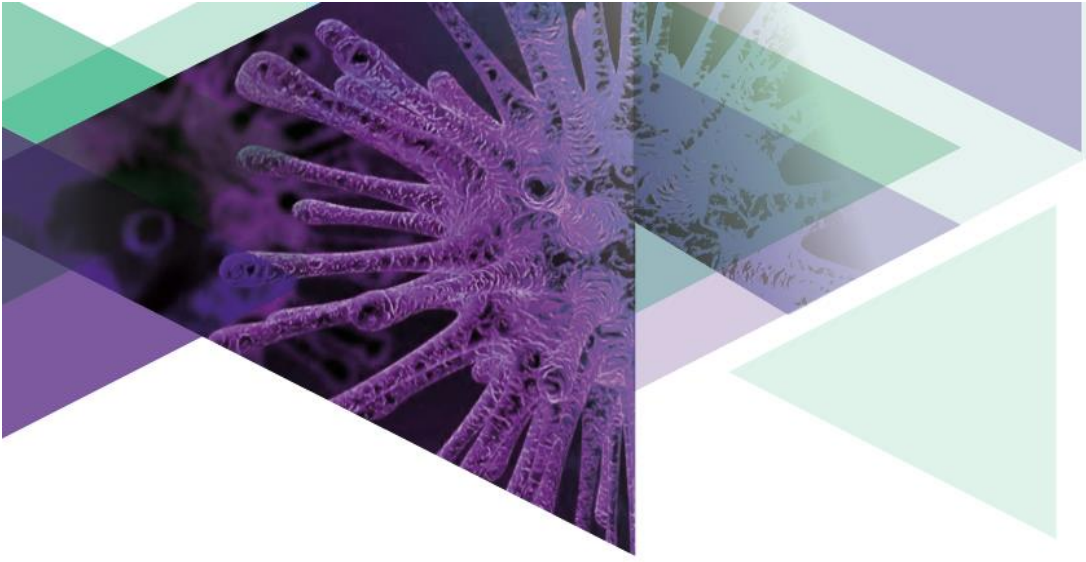

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Dismissing employees in an epidemic

The government's introduced aid solutions aimed at supporting employers and protecting jobs. The scope of the proposed aid is broadening, which allows expressing the hope that it will prove sufficient to maintain jobs in the companies most affected by the turnover decrease. However, employers should also be prepared for a less optimistic scenario and be aware of their obligations and the technical solutions available if job cuts prove to be unavoidable. At the present time, the Covid-19 epidemic has forced a number of changes in the area of operations of many enterprises and their work organisation. Difficult economic situation related to the suspension of international air transport, closing borders to foreigners and restrictions in the activity of mainly the service and trade sectors, but also other entrepreneurs, may unfortunately affect their financial situation and consequently affect sustainability of employment. Employers who planned to make individual redundancies earlier and those whose circumstances will force to make such redundancies in the near future will have to face additional logistical difficulties in delivering written notices of termination. These difficulties will be related, among others, to the fact that employees will perform remote work from home and the resulting lack of personal contact between them and their superiors. There are doubts among employers whether in the case of directing all or the majority of the employees to work remotely and the lack of direct business meetings, without prejudice to legal requirements, it is possible to deliver a notice of termination of employment contract to an employee without personal contact with him/her?

1. General requirements

Termination of employment contracts is one of the most challenging and difficult decisions which employers have to make with regards to people they employ. This process is formalised and requires observing strictly defined requirements contained in the provisions of the Labour Code concerning, among others: delivery, written form, the necessity to provide a reason for termination of an employment contract concluded for an indefinite period of time and to inform the employees of their right to appeal to the labour court within 21 days from delivery of the notice.

2. Remote delivery

The notice of termination of an employment contract, which has been signed by the employer or another person duly authorised to do so and meets the requirements set out in art. 30 of the Labour Code, can be sent to the employee by registered letter or by courier with acknowledgement of receipt to his/her home address. However, this solution has several disadvantages. Apart from the objective difficulties of personal communication of the fact of dismissal during the delivery of written notice, one of the main risks for the employer is the fact that it is impossible to determine the exact date and time of its delivery. It may transpire that on the day of delivery of the notice of termination, the employee was absent from work due to sick leave or leave on demand. One should be aware that notice of termination cannot be

given to an employee who is absent from work due to child care as a result of the closure of a nursery, kindergarten or school attended by the child. Although the notice of termination delivered to the employee on such a day will be effective, it is still subject to a breach of art. 41 of the Labour Code, which prohibits the employer from terminating the employment contract during the employee's leave or other justified absence from work. As a result, the employee will be able to appeal effectively to the labour court, which may decide on reinstatement to work or award of compensation.

3. Electronic delivery

Bearing in mind the above-mentioned risks related to remote delivery of notice of termination, it is worth considering the alternative in the form of electronic delivery. The requirement of a written notice of termination of the employment contract will also be met by the notice sent to the employee by e-mail, which as an attachment, includes the notice of termination of the employment contract signed with a certified electronic signature. Pursuant to Article 781 of the Civil Code, a declaration of will made in electronic form is equivalent to a declaration of will made in writing. It should be noted that the document must bear a qualified electronic signature. Such an e-signature can be obtained from one of the certified suppliers. Due to the requirements of submitting electronically signed financial statements to the National Court Register, such signatures are often held by members of the management board of capital companies, i.e. limited liability companies and joint stock companies. When delivering a notice of termination by e-mail under the above rules, it is worthwhile sending it to the employee's business e-mail address, because in this case the employer who has access to the resources of its own mail server, will be able to prove that the delivery actually took place and indicate the exact moment of its delivery. In addition a recommended solution which can be found in practice is to conduct a simultaneous tele- or video-conference with the employee, in participation with an additional witness on the employer’s side, who, if the employee invokes problems with the e-mail, will confirm the course of the business conversation, the fact of sending a notice e-mail during the conversation (the witness may be placed in a copy of the e-mail) and the employee's reaction to this situation. In doing so, care must be taken that the person concerned is authorised to process the personal data of the given employee and is aware of the obligation to keep such data confidential. Most often it will be a direct superior of the employee or a representative of the HR department. As for e-delivery of notice of termination, it is best done on a business day, making sure in advance that the employee was professionally active on that day, i.e. present at remote work and did not take any leave of absence or justified absence from work.

4. Is it possible to sign the termination of the employment contract using the trusted profile on the ePUAP platform?

No, it is not. Such notice of termination will be defective as the signature using the trusted profile does not meet the requirement of a qualified electronic signature, i.e. the requirement of written form. Despite the introduction of the facility to sign any document on the ePUAP platform, it does not apply to employment matters. Thanks to the trusted profile, it is possible to contact offices and courts and deal with official matters such as, among others, submitting financial statements. However, it cannot be used to sign employment law documents or other statements intended for private individuals

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COVID-19 and antirust and consumer law– Polish perspective

Coronavirus outbreak is having a significant influence on commercial conduct. Both businesses and consumers may face unusual market situations. Below we present some guidance concerning the impact COVID-19 is having on particular areas of Polish competition law and the scope of powers of the Polish Competition Authority[1] („PCA").

1. Merger control

So far, no extraordinary measures related to merger control have been introduced. Thus, it is still possible to file a notification which should be reviewed within the statutory deadline of 1 month (1st phase cases) or 5 months (2nd phase cases). However, it should be noted that merger control proceedings may last longer than usual even for simple cases (although the PCA is still obliged to issue the decision within the statutory deadline). Also, market investigations (conducted in more complex cases) may be difficult to conduct. Unlike the European Commission or Autorité de la concurrence in France, the PCA has not called on businesses to refrain from notifications which may be filed later. Nevertheless, given the gravity of the current situation, such recommendation seems reasonable. Perhaps, the PCA would be more eager to engage in pre-notification contacts (which are rarely used in Poland) in order to initially review the case before formal notification[2]

2. Antitrust

The ongoing crisis may reshuffle the legal qualification of agreements or dominant companies' unilateral conduct. In particular, some types of horizontal agreements (between competitors), which would violate Article 101(1) TFEU3 or Article 6(1) of the Competition Act4, may be considered legal under the ongoing circumstances. Such agreements may benefit from individual exemption laid down in Article 101(3) TFEU or Article 8(1) of the Competition Act. Nevertheless, it should be noted that under these provisions the anti-competitive agreement may "become" legal once four conditions are jointly met, namely efficiency, pass-on to consumers, necessity and non-elimination of effective competition. Also, it is the business which is obliged to provide evidence for individual exemption. Hence, despite the dynamic

[1]Prezes Urzędu Ochrony Konkurencji i Konsumentów.

[2]For instance, the U.S. Federal Trade Commission forced all parties to file merger notifications electronically (no hard copies are accepted from 17 March 2020). See: https://www.ftc.gov/news-events/blogs/competition-matters/2020/03/changes-bureau-procedure- during-covid-19-coronavirus

[3]Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, p. 47–390).

[4]Act of 16 February 2007 on competition and consumers protection, consolidated text – Journal of Laws 2019 item 369 as amended (ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów, tekst jednolity – Dz.U. 2019 r. poz. 369 z późn.zm.).

situation, given the 5-year limitation period, it is recommended to collect evidence (such as market data or correspondence) in order to prove that certain forms of cooperation with competitors has been necessary. There would be a similar situation of unilateral conduct of dominant companies which would e.g. refuse to supply existing customers because of the ongoing crisis.

On the other hand, competition authorities are closely monitoring business conduct during the crisis. For instance, the PCA has initiated proceedings concerning terminating wholesaler's contracts which supply hospitals with protective equipment (including surgical masks). According to the press release, such abrupt termination might be due to the possibility that existing customers (hospitals)5 may be forced to accept significantly higher prices for such supplies. There are currently two pharmaceutical wholesalers which the PCA have singled out. The authority is investigating as to whether an antitrust infringement (anticompetitive agreement or abuse of dominant position) has taken place. As part of this a special telephone hot-line dedicated to hospitals has also been launched by the PCA.

Secondly, some businesses may be forced by public authorities to adopt extraordinary measures of an anti-competitive character. A good example of this may be Article 11(2-5) of the Polish COVID-19 Act6 which provides the legal basis for the Prime Minister to issue binding orders or force the execution of agreements by non-public entities, including businesses. Some of such measures may be of an anti-competitive character. However, they could benefit from so-called state action defence under which the conduct of businesses which would be forced by public authorities would not qualify as an infringement of Article 101(1) or 102 TFEU / Article 6(1) or 9(1) of the Competition Act. A good example could be the Prime Minister's decision to prohibit Allegro and OLX online services to market certain medical, pharmaceutical or paramedical products. However, it should be noted that state action doctrine – being an exception from the general prohibitions laid down in the provisions invoked – are narrowly interpreted by EU courts. Therefore, prior consultation with antitrust counsel would be recommended

3. Consumer relations

The COVID-19 crisis may constitute an incentive for some forms of conduct which may result in consumers being harmed. These are inter alia:

(i) refusal to reimburse price of services paid up-front;
(ii) misleading consumers in relation to characteristics of some products, e.g. antibacterial effects;
(iii) excessive prices of some products.

In its official communication, the PCA declared that, pursuant to sector-specific legislation, travellers (customers of tour operators) are entitled to full reimbursement of costs if they are forced to withdraw as a result of these extraordinary events. The situation of passengers (airline customers) is somewhat

[5]https://www.uokik.gov.pl/news.php?news_id=16277 (in English)

[6]Act of 2 March 2020 on specific solutions concerning prevention, counteraction and combat of COVID-19, other contagious diseases and crisis situations resulting therefrom, Journal of Laws 2020 item 374 (ustawa z dnia 2 marca 2020 r. o szczególnych rozwiązaniach związanych z zapobieganiem, przeciwdziałaniem i zwalczaniem COVID-19, innych chorób zakaźnych oraz wywołanych nimi sytuacji kryzysowych, Dz.U. 2020 r. poz. 374).

unclear due to scarcity of specific regulations. However, Mr. Tomasz Chróstny (Head of PCA) expressed his expectation that "airlines should also behave responsibly and monitor the current situation to avoid endangering passengers' health"[7]. We may expect that the PCA would be inclined to open proceedings against businesses which refused to reimburse consumers the costs of services which were not provided during the state of epidemiological threat.

When it comes to the misleading information, such communication to consumers may constitute unfair market practice which is also a violation of collective consumer interests under Article 24(2)(3) of the Competition Act. Such practices may be subject to fines of up to 10% of company's' annual turnover which are imposed by the PCA.

The most difficult is the situation of price rises. Although competition authorities normally refrain from intervening into pricing policies, the PCA communicated that unfair price rises in the retail sector would be treated as charging margins contrary to principles of social coexistence (zasady współżycia społecznego)[8] Such legal assessment may result in the PCA opening proceedings concerning violation of collective consumer interests. Therefore, retailers should be able to provide evidence that significant price rises were necessary in the current circumstances (e.g. because of higher input prices).

The ongoing situation is thoroughly monitored by the PCA which established a task force which is dedicated to combat unfair business practices during the COVID-19 crisis. Hence, we may expect that the PCA will open proceedings concerning such practices in the following years.

The approach adopted by the PCA is no different from measures taken by competition authorities in Italy[9,] the UK or Australia

4. Contractual advantage

Given the importance of the food supply chain during the COVID-19 outbreak, the practices of large entities (suppliers or purchasers) vis-ŕ-vis their smaller contractors may be assessed under the Act on Contractual Advantage[12.] According Article 6 of this Act, it is prohibited to use contractual an advantage the prohibition of which is addressed to suppliers and purchasers. The contractual advantage is defined as the situation of significant disproportion between the economic potential of the parties. So far, the Act served as a tool giving the PCA power to intervene against large businesses which are allegedly exploiting their smaller contractors, e.g. relationships between large food processors supplied by individual farmers[13] or supermarkets operators and their smaller suppliers[14.] Given the situation caused by the COVID-19 outbreak and vagueness of underlying definitions laid down in the Act, this piece of Polish legislation may be used by the PCA especially in order to fight against significant rises of

[7]https://www.gov.uk/government/topical-events/coronavirus-covid-19-uk-government-response (in English)

[8]https://www.uokik.gov.pl/aktualnosci.php?news_id=16322 (in Polish)

[9]https://en.agcm.it/en/media/press-releases/2020/3/ICA-Coronavirus-the-Authority-intervenes-in-the-sale-of-sanitizing-products-and- masks

[12]Act of 15 December 2016 on counteracting unfair use of contractual advantage in trade of agricultural and food products, consolidated text – Journal of Laws 2019 item 517 as amended (*ustawa dnia 15 grudnia 2016 r. o przeciwdziałaniu nieuczciwemu wykorzystywaniu przewagi kontraktowej w obrocie produktami rolnymi i spożywczymi, tekst jednolity – Dz.U. 2019 r. poz. 517 z późn.zm.*).

[13]E.g. PCA decision of 1 October 2019 No. RGB-15/2019; PCA decision of 5 March 2018 No. RBG-3/2018.

[14]https://www.uokik.gov.pl/news.php?news_id=15802&news_page=8 (in English)

wholesale or input prices. Such policy was also announced by the Head of the PCA in its official communication[15].

5. Payment gridlocks

As of 1 January 2020, the PCA gained another power to intervene against businesses which fail to regulate its financial obligations if the number of non-payments and/or late payments exceeds PLN 2 million in 3 consecutive months[16]. The PCA is competent to impose a fine (proportional to the amount and interest due) if the late payment is found during the infringement proceedings. However, in relation to the gridlock caused by COVID-19 the debtor may argue that non-payment was caused by the force majeure. According to the Code of Administrative Procedure[17], the administrative fine cannot be imposed in such circumstances. However, the company should be able to provide evidence that the delay was caused by the COVID-19 outbreak.

I am at your disposal for further questions!

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[15] See footnote 8.

[16] Article 13b(2) of the Act of 8 March 2013 on counteracting excessive gridlocks in commercial transactions, consolidated text – Journal of Laws 2019 item 118 as amended (*ustawa z dnia 8 marca 2013 r. o przeciwdziałaniu nadmiernym opóźnieniom w transakcjach handlowych, tekst jednolity – Dz.U. 2019 r. poz. 118 z późn.zm.*).

[17] Article 189e of the Act of 14 June 1960 – Code of administrative Procedure, consolidated text – Journal of Laws 2020 item 256 as amended (*ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania adminsitracyjnego, tekst jednolity – Dz.U. 2020 r. poz. 256 z późn.zm.*)