

Poland implements extensive legislative changes in response to COVID-19 and the resulting economic downturn

Poland has largely kept out of the international press as the pandemic ravages the world, because Poland has been in relatively good shape. 16,000 cases at the time of writing this article. The low number, as usual, results from luck, law, and behavior. Luck, or good fortune, as always is good to have. Laws which were implemented when Poland had 50 confirmed cases slowed the spread of the virus to a greater extent than many other countries, and practice of millions of Poles (with some exceptions, of course) to follow the rules and keep social distance when and as possible.

Whether one is a fan of the current Polish government or not, they managed to respond quickly and put legislation in place, which, of importance:

1. Provided the legal basis for the quarantine and lockdown measures in place. Of interest, there was no law in place prior to 2020, which gave the government the authority to shut down businesses and schools due to a pandemic or a pandemic threat.
2. Implemented a series of changes to the legal system allowing for as many aspects of the legal system to function despite the existence of the pandemic; and
3. Adopt and promote packages allowing for government assistance to compensate for losses companies and individuals suffer as a result of COVID-19 and the resulting shutdown.

The “Shield” laws have such broad effect and go into so many various individual laws, that it is impossible to adequately summarize all changes in a few pages for the international audience. So, we have produced a summary of relevant provisions which you can find at in a separate document.

As most of our readers can guess, there are details and aspects of each of these laws that will lead to better and worse results, while the positive side is that there has not been much overt politicking in these changes. When you speak with your Polish lawyers, you will hear about the possibility of, and problems related to:

1. Labor law issues: how to handle staff reductions, salary reductions, union negotiations, forced holiday, and work stoppages, and the new requirements in place in relation to COVID-19. Aside from the need to provide gloves, hand sanitizer and masks, the work environment will be a source of many issues in the near future.
2. Remote meetings, while board and shareholder meetings can now be held virtually.
3. The extension of filing times and the suspension of the statute of limitations in relation to Courts being closed, except for in urgent matters.
4. Lease terms and how your business and your landlord may react (or your tenant, of course).
5. Unfortunately, if and as necessary, bankruptcy and restructuring issues, all of which have been amended in part to reflect the pandemic. Of importance as to bankruptcy, the elephant in the room of Polish bankruptcies is the potential for management board member liability under article 299 of the Commercial Company Code. The potential liability is if the management failed to submit a motion for bankruptcy in a timely manner. Obviously, COVID-19 affects thoughts and practices as to what could be timely (art. 299 says 30 days from the day of becoming aware that bankruptcy should be declared).

While when dealing with the business side of your Polish business, you will want to discuss:

- a) The incentive packages available for maintaining employment and replacing lost income.
- b) The social security and tax reprieves, abatements, and temporary waivers, which can help your bottom line
- c) Labor and employment law and practice as to how to deal with a return to work after the pandemic.
- d) The financing and state aid packages which are available to many companies harmed by the pandemic.

A quick SWOT of the Shield legislation:

When looking into the crystal ball of the future, it's only vaguely possible to foresee what will result from the Polish Shield laws. Most likely, in 3 months' time, the newspapers will be full of allegations about companies that "double dipped" and took more than they should have, and in 2 years' time, a scandal will come out as they always do. But in the meantime, the question has to be asked whether the Shield legislation adequately addresses the pandemic and the economic effect?

Walking through a quick SWOT

Strengths: the Shield addresses the legal issues which came to mind and could be resolved, and provides aid packages, structured in a way intended to prevent layoffs and dismissals.

Weaknesses: certain meetings (i.e., notarial deeds) were not addressed and undoubtedly many entrepreneurs will not qualify for aid given the numerous prerequisites (i.e., not having any tax arrears during 2019).

Opportunities: this is a time when the government will open up the floodgates to try to help and many companies will have an opportunity to reinvent themselves in a post-COVID-19 reality (whether or not COVID-19 actually disappears/dissipates).

Threats: vague and incomplete provisions, risks of bureaucratic interpretations, and an obligation to repay upon findings could bankrupt a company at a later time.

So, in summary, the Shield legislation is a good attempt to help, while the vague and incomplete drafting makes many provisions subject to interpretation and potential future amendment (which may be good and bad). Overall, it makes the role of a lawyer even more important in interpreting the changes and adjusting to the new reality.

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