



SQUARE

Kancelaria Prawna

FINANCIAL SHIELD

LEGAL ALERT COVID-19

FOR ENTREPRENEURS



Dear Sir/ Madam,

due to the spread of COVID-19 disease in Poland, the economic situation may change drastically, causing many of you to face difficult choices regarding the further organization of your business. This can lead to many legal uncertainties related to employee issues, especially regarding possible employment optimization schemes and, if inevitable, termination of ongoing employment relationships.

To address all your doubts, below we present selected issues regarding the state aid introduced in order to cope with the COVID-19 pandemic, including government financial support programs for enterprises, do called: Financial Shield. In this overview we would like to present you solutions prepared for entrepreneurs by the Polish Development Fund.

If you don't know if your company is eligible for funding,
if you have doubts about the ultimate beneficial owner's residence,
if you are wondering if help is available to foreign companies, please contact us.

If you have any other questions related to the mentioned issues, we remain at your disposal.

Sincerely,

Arkadiusz Skrobich
attorney-at-law
Partner

Grzegorz Rutkowski
attorney-at-law
Partner

LEGAL ACTS | DEFINITIONS

DEFINITION

MEANING

Anti-crisis shield

Act of 31 March 2020 amending the act on special solutions related to the prevention and eradication of COVID-19, other infectious diseases and crisis situations caused by them, as well as some other acts (Journal of Laws of 2020, item 568)

PFR

Polski Fundusz Rozwoju – Polish Development Fund

„SIR” Act

Act of July 4, 2019 on the system of development institutions (Journal of Laws of 2019, item 1572, of August 21, 2019, as amended), amended by the Act of March 31, 2020 amending the Act on system of development institutions.

Program/ Financial Shield

Government financial support programs for enterprises "PFR Financial Shield for Small and Medium Enterprises" and "PFR Financial Shield for Large Enterprises"

Aid instruments under the Polish Development Fund

We would like to present you solutions prepared for entrepreneurs by the Polish Development Fund. In order to protect the labor market and ensure financial liquidity during the period of economic complications caused by the prevailing COVID-19 pandemic, the Polish Development Fund is launching an assistance program addressed to enterprises worth nearly PLN 100 billion.

As part of the program, we can distinguish 3 basic elements: the Financial Shield for micro-entrepreneurs worth PLN 25 billion, the Financial Shield for small and medium-sized enterprises which will receive PLN 50 billion, and the Financial Shield for large enterprises also worth PLN 25 billion. Entities that will benefit from the program will receive a total of non-returnable funds worth PLN 60 billion.

"PFR Financial Shield for Small and Medium Enterprises" envisages that the basic instrument of financial support for enterprises will be financial subsidies, while "PFR Financial Shield for Large Enterprises" foresees following instruments as crucial: a liquidity financing of fully repayable and payable nature, preferential financing with the possibility of compensation of damage related to the spread of infectious disease caused by the SARS-CoV-2 virus ("COVID-19") and investment financing using capital instruments on market terms and as part of public aid.

I. PFR Financial Shield for Micro-enterprises.

Who can benefit from support, i.e. who is the Program Beneficiary?

The support under the PFR Financial Shield for Micro-enterprises can be used by entrepreneur under following conditions:

- 1) it is employing from 1 to 9 employees,
- 2) its annual turnover or balance sheet total does not exceed EUR 2 million,
- 3) the entrepreneur must indicate that he recorded a decrease in economic turnover (sales revenues) by at least 25% in any month after February 1, 2020 compared to the previous month or the corresponding month of the previous year and this decrease is related to COVID-19,
- 4) there are no grounds to open bankruptcy or liquidation proceedings against the entrepreneur or no restructuring proceedings have been opened,
- 5) the ultimate beneficial owner benefiting from financial support has a tax residence on the territory of the Republic of Poland and settling taxes for the last 2 financial years (if applicable) on the territory of the Republic of Poland. A departure from this principle is possible if the Program Beneficiary is required to transfer a tax residence to the territory of the Republic of Poland within 9 months from the day of granting an aid under the Program or in the case of foreign enterprises - from accepting additional obligations, e.g. investment, based on individual consent of PFR
- 6) the entrepreneur operated as at December 31, 2019 and is not in arrears with payments of taxes and social security contributions;
- 7) the entrepreneur who does not operate in the field of:
 - a. the production and trade of arms and ammunition;
 - b. products or services that may result in the restriction or violation of individual freedoms and / or human rights;
 - c. areas questionable for ethical and moral reasons, e.g. animal experimentation, gambling and related activities, production and distribution of tobacco products and similar types of drugs, production and distribution of narcotic drugs.

What kind of aid is offered?

The entrepreneur will be able to apply for a repayable subsidy from the Polish Development Fund. Detailed conditions for granting a subsidy will always be included in the subsidy contract.

What can the subsidy be used for?

- 1) To cover the costs of business operations, excluding the allocation of funds for the acquisition directly or indirectly of another entrepreneur (acquisition ban),
- 2) for repayment of loans, however, the possibility of using the subsidy for early repayment of loans will be possible up to a maximum of 25% of the loan value,
- 3) for settlements with related entities, but it will be prohibited to transfer the funds from the subsidy to the owner and to persons or entities related to the owner of the enterprise,

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- 4) for return of the subsidy - on the conditions set out in the Program and the subsidy contract,
- 5) for collateral – contractual or other.

What will be the amount of the subsidy?

The maximum amount of repayable subsidy under the Financial Support Program PFR Financial Shield for micro-enterprises is calculated as the product of the number of employees and the base amount of the subsidy.

The base amount of repayable subsidy per employee depends on the size of the micro entrepreneur's revenue decrease. This solution aims to adjust the amount of financial support to the scale of potential loss of revenue due to COVID-19.

Taking into account the average employment in the microenterprises sector at the level of about 3 employees, it is assumed that the average amount of financial support will mount to around PLN 72.000 - 96.000 for one micro-company and up to PLN 324.000.

Example (the number of employees employed does not include the business owner):

Decrease in revenues	Base amount	No. of employees								
		1	2	3	4	5	6	7	8	9
<25%;50%)	12 000	12 000	24 000	36 000	48 000	60 000	72 000	84 000	96 000	108 000
<50%;75%)	24 000	24 000	48 000	72 000	96 000	120 000	144 000	168 000	192 000	216 000
<75%;100%)	36 000	36 000	72 000	108 000	144 000	180 000	216 000	252 000	288 000	324 000

Can I be released for obligation to the return the subsidy?

The obligation to return a subsidy can be cancelled up to 75% at the end of the 12th calendar month from the date of disbursement of the funds, on the following terms:

- 1) 25% of the value of the subsidy is non-refundable, provided that the enterprise continues operations within 12 months of granting the subsidy,
- 2) an additional 50% of subsidies is non-returnable depending on the level of maintaining average employment over a 12-month period. In the case of employment reduction, the percentage of subsidy return is correspondingly higher.

When do I need to return the subsidy?

In the event of discontinuation of business operations by the micro-enterprise within 12 months from the date of granting the subsidy, it should be returned in the amount constituting 100% of the subsidy's value. Detailed guidelines provided by PFR also stipulate that the return of the subsidy might be incomplete.

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How to apply for a subsidy?

The PFR Financial Shield for Micro-enterprise will be launched in April this year and it will be operated as part of electronic banking by selected banks. Their list will be available at www.pfr.pl.

II. PFR Financial Shield for Small and Medium Enterprises

Who can benefit from support, i.e. who is the Program Beneficiary?

The support under the PFR Financial Shield for Small and Medium Enterprises can be used by:

- 1) an entrepreneur employing from 10 to 249 employees,
- 2) its annual turnover does not exceed EUR 50 million or the balance sheet total does not exceed EUR 43 million,
- 3) the entrepreneur must indicate that he recorded a decrease in economic turnover (sales revenues) by at least 25% in any month after February 1, 2020 compared to the previous month or the corresponding month of the previous year, and this decrease is related to COVID-19,
- 4) there are no grounds to open bankruptcy or liquidation proceedings against the entrepreneur or no restructuring proceedings have been opened,
- 5) the ultimate beneficial owner benefiting from financial support has a tax residence on the territory of the Republic of Poland and settling taxes for the last 2 financial years (if applicable) on the territory of the Republic of Poland. A departure from this principle is possible if the Program Beneficiary is required to transfer a tax residence to the territory of the Republic of Poland within 9 months from the day of granting an aid under the Program or in the case of foreign enterprises - from accepting additional obligations, e.g. investment, based on individual consent of PFR;
- 6) the entrepreneur operated as at December 31, 2019 and is not in arrears with payments of taxes and social security contributions;
- 7) the entrepreneur who does not operate in the field of:
 - a. the production and trade of arms and ammunition;
 - b. products or services that may result in the restriction or violation of individual freedoms and / or human rights;
 - c. areas questionable for ethical and moral reasons, e.g. animal experimentation, gambling and related activities, production and distribution of tobacco products and similar types of drugs, production and distribution of narcotic drugs.

What kind of aid is offered?

The entrepreneur will be able to apply for a repayable subsidy from the Polish Development Fund. Detailed conditions for granting a subsidy will always be included in the subsidy contract.

What can the subsidy be used for?

- 1) to cover the costs of business operations, excluding the allocation of funds for the acquisition directly or indirectly of another entrepreneur (acquisition ban),
- 2) for repayment of loans, however, the possibility of using the subsidy for early repayment of loans will be possible up to a maximum of 25% of the loan value,
- 3) for settlements with related entities, but it will be prohibited to transfer the funds from the subsidy to the owner and to persons or entities related to the owner of the enterprise,

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- 4) for return of the subsidy - on the conditions set out in the Program and the subsidy contract,
- 5) for collateral – contractual or other.

What will be the amount of the subsidy?

The maximum amount of repayable subsidy under the PFR Financial Shield for SMEs is calculated as a percentage of the enterprise's sales revenues for the financial year 2019, taking into account the scale of the decrease in turnover in connection with COVID-19.

Considering the average revenues in the sector of small and medium enterprises at the level of about 31.3 million PLN, the estimated average amount of financial support will be about PLN 1.9 million for one enterprise and up to a maximum of PLN 3.5 million.

Example:

<i>Decrease in revenues</i>	<i>Amount of subsidy as a % of revenue</i>	<i>Average revenue</i>	<i>Amount of subsidy</i>	<i>Max revenue for calculation purposes</i>	<i>Amount of subsidy</i>
<0%;25%)	0%	31 300 000	0	225 000 000	0
<25%;50%)	4%	31 300 000	1 252 000	225 000 000	3 500 000
<50%;75%)	6%	31 300 000	1 878 000	225 000 000	3 500 000
<75%;100%)	8%	31 300 000	2 504 000	225 000 000	3 500 000

Can I be released for obligation to the return the subsidy?

The obligation to return a subsidy can be cancelled up to 75% at the end of the 12th calendar month from the date of disbursement of the funds, on the following terms:

- 1) 25% of the value of the subsidy is non-refundable, provided that the enterprise continues operations within 12 months of granting the subsidy,
- 2) 25 % depending on the scale of damage suffered by the enterprise;
- 3) 25 % provided that the enterprise maintains average employment over a 12-month period.

When do I need to return the subsidy?

In the event of cessation of business activity by a small or medium-sized entity within 12 months from the date of granting the subsidy, it should be returned in the amount constituting 100% of the subsidy value. Detailed guidelines provided by PFR also stipulate that the return of the subsidy might be incomplete.

How to apply for a subsidy?

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The PFR Financial Shield for Small and Medium Enterprises will be launched in April this year and will be operated by selected banks as part of electronic banking. The list of banks will be available at www.pfr.pl.

III. PFR financial shield for Large Enterprises

Who can apply for support, i.e. who is the Program Beneficiary?

The following companies can benefit from support under the PFR Financial Shield for Large Enterprise:

- 1) in which the employment amounts to at least 250 employees;
- 2) the turnover exceeds EUR 50 million or the balance sheet total exceeds EUR 43 million;
- 3) the Small and Medium Enterprise that employs between 10 and 249 employees, and their annual turnover does not exceed EUR 50 million or the balance sheet total does not exceed EUR 43 million on a consolidated basis if they are not a beneficiary of the Financial Shield for Small and Medium Enterprises when the Small and Medium Enterprises financing gap, in accordance with the financial projections, exceeds PLN 3.5 million; the financing relates to the Sector Program in connection with COVID-19;
- 4) the decrease in economic turnover (sales revenues) is at least 25% in any month after February 1, 2020 compared to the previous month or the corresponding month last year and is caused by economic problems in connection with the coronavirus pandemic;
- 5) which has lost the ability to produce or provide services or receive products or services from cooperating entities due to the lack of availability of components or resources in connection with COVID-19;
- 6) does not receive payment for sales as a result of COVID-19 in an amount exceeding 25% of the amount due;
- 7) due to disruptions in the functioning of the financial market, there is no access to the capital market or credit limits in connection with new contracts;
- 8) which is a participant in Sector Programs;
- 9) there are no grounds to open bankruptcy or liquidation proceedings against the entrepreneur or no restructuring proceedings have been opened,
- 10) the ultimate beneficial owner, benefiting from financial support under the Program has a tax residence on the territory of the Republic of Poland and settled taxes for the last 2 financial years (if applicable) on the territory of the Republic of Poland. Departure from this rule is only possible if the ultimate beneficial owner obliges to transfer his tax residence to the territory of the Republic within 9 months after the subsidy is granted,
- 11) the entrepreneur operated as at December 31, 2019 and is not in arrears with payments of taxes and social security contributions;
- 12) The entrepreneur who does not operate in the field of:
 - a. the production and trade of arms and ammunition;
 - b. products or services that may result in the restriction or violation of individual freedoms and / or human rights;
 - c. areas questionable for ethical and moral reasons, e.g. animal experimentation, gambling and related activities, production and distribution of tobacco products and similar types of drugs, production and distribution of narcotic drugs.

What kind of aid is offered?

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Financing of the Polish Development Fund available under the Financial Shield for Large Enterprises may take three forms:

- 1) liquidity financing in the form of loans or bonds for a period of 2 years with the possibility of extension for another year, with a value of up to PLN 1 billion
- 2) preferential loans for a period of 3 years, partly non-returnable what will be dependent on a financial loss and maintaining employment, worth up to PLN 750 million per entity,
- 3) investment financing in the form of acquiring equity instruments (shares or stocks) on market terms or as part of public aid, with a value of up to PLN 1 billion per entity.

The detailed financing rules will always be set out in the contract.

How to apply for a subsidy?

Receipt of financial support is possible if the enterprise submits an appropriate application for financing directly to the Polish Development Fund or via the application form which can be found at: www.pfr.pl.

Program beneficiaries will be able to submit applications on the terms set out in the agreement referred to in art. 21a section 5 of the Act on SIR, which will be concluded between the Polish Development Fund and the Minister competent for economy, acting in consultation with the Minister competent for public finance.

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