

# CORPORATE FINANCE & AUDIT & LEGAL ALERT

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## Overview of the premises of the "anti-crisis shield" with regard to granting public aid for rescuing or restructuring enterprises

The current COVID-19 pandemic forces the lawmakers to act urgently to protect the economy from the effects of an unprecedented market collapse. The package, commonly referred to as the "anti-crisis shield" consists of:

- a draft amendment to the special measures act for the prevention, counteracting and combating COVID-19
- a draft act on granting state aid for rescuing or restructuring of entrepreneurs (new opportunity policy)
- a draft act amending the Act on the system of development institutions (PFR).

**The following study presents the main premises of the draft law on granting state aid for rescuing or restructuring entrepreneurs (new chance policy).**

The aim of the law is to enable granting of state aid for rescuing and restructuring enterprises in difficulties, **in the form of financial support and reliefs in the execution of administrative fines.**

### WHO IS THIS AID FOR?

The Act provides for support for "entrepreneurs in a difficult economic situation", which means insolvency, within the meaning of restructuring or bankruptcy law.

The aid may be granted if the entrepreneur:

#### FORMAL CRITERIA (REQUIRED)

- Has been running a business for at least 3 years
- Operates in sectors other than the iron and steel industry, coal mining or the financial sector
- Does not operate in the market where long-term structural overproduction occurs or may occur;
- Is not an entrepreneur belonging to a capital group (with exceptions)

#### CRITERIA OF A DIFFICULT ECONOMIC SITUATION

- The sum of previous years' profit (losses), net profit (loss) for the particular financial year, reserve capital, revaluation reserve and other reserve capital (funds) is negative and its absolute value is greater than 50% of the share capital
- Financial data of the entrepreneur in the last two years exceeded the following values:
  - debt to equity > 7.5
  - (operating profit + depreciation)/interest < 1
- Has lost the ability to perform their due and payable cash liabilities; it is assumed that the condition is met if the delay in performing of the obligations

- exceeds three months (liquidity premise) or
- Cash liabilities exceed the value of the assets, and this state has continued for a period exceeding twenty-four months (asset premise)

## AID FOR RESCUING ENTERPRISES

The Act provides for three categories of state aid for entrepreneurs experiencing difficulties: rescue aid, temporary restructuring support and restructuring aid.

<b>OBJECTIVE</b>	<p>Enabling an entrepreneur in a difficult economic situation to conduct business activity for the period necessary to:</p> <ul style="list-style-type: none"> <li>■ prepare a restructuring plan</li> <li>■ perform a liquidation of the business</li> <li>■ and carry out the necessary analyses in this respect.</li> </ul>
<b>FORM</b>	<p><b>Interest-bearing loan</b></p> <ul style="list-style-type: none"> <li>■ The minimum interest rate is equal to the reference rate (currently 1%) plus 4 percentage points;</li> <li>■ The condition for granting a loan is to provide collateral, the amount of which depends on the assessment of the economic and financial situation of the applicant, no less than 50% of the requested loan amount;</li> <li>■ The amount of aid is determined according to the formula below and should reflect the entrepreneur's demand for funds necessary to maintain the entrepreneur's basic operating activity (effectively, an amount close to half of EBITDA for the previous year).</li> </ul> $\frac{EBIT_t + A_t - (\text{working capital}_t - \text{working capital}_{t-1})}{2}$ <p><i>t – financial year preceding the granting or application for aid</i>  <i>EBIT – earnings before deducting interest and taxes</i>  <i>A – depreciation</i>  <i>working capital – the difference between current assets and liabilities of a short-term nature</i></p> <ul style="list-style-type: none"> <li>■ Additionally, depending on the result of the calculation, the amount of aid applied for should be justified on the basis of the <b>applicant's financial liquidity projection</b></li> <li>■ The loan should be used within 6 months of its granting.</li> </ul>
<b>APPLICATION</b>	<p>The application for granting aid, apart from the statutory and accounting data, shall contain a description of the economic and financial situation of the applicant, indicating that the conditions for obtaining aid have been met, <b>financial forecasts for the next 12 months and a description and projection of anticipated economic and social effects.</b></p>

PROCEDURE	Within 30 days from the date of receipt of the application, it shall be evaluated by the Minister of Economy or by the Industrial Development Agency S.A. (ARP). Approved aid is subject to notification to the European Commission.
TEMPORARY RESTRUCTURING SUPPORT	
OBJECTIVE	Enabling an entrepreneur to conduct business activity for the time necessary to implement restructuring measures aimed at restoring the long-term capability to compete in the market and providing urgent liquidity support due to exceptional and unforeseen circumstances.
FORM	Loan under similar conditions as for <b>rescue aid</b> for a maximum period of 18 months (effective amount close to half of the EBITDA for the previous year).
APPLICATION	The application for granting aid, apart from the statutory and accounting data, shall contain a <b>description of the economic and financial situation</b> of the applicant, indicating that the conditions for obtaining aid have been met, <b>financial forecasts for the next 12 months and a description of anticipated economic and social effects</b> , as well as a <b>simplified restructuring plan</b> . The restructuring plan contains, i.a. a description of possible plans to solve the problems, a description of the process of implementation of the preferred plan, financial perspectives for the next 5 years, as well as the proposed own contribution.
PROCEDURE	Within 30 days from the date of receipt of the application, it shall be evaluated by the Minister of Economy or by the Industrial Development Agency S.A. Approved aid is subject to notification to the European Commission. The restructuring plan is subject to approval by the Minister of Economy or ARP within 5 months, which does not withhold the payment of funds.
AID FOR RESTRUCTURING	
OBJECTIVE	<b>Support</b> for the entrepreneur <b>in the implementation of the restructuring plan</b> , which will make it possible to restore long-term capability to compete in the market.
FORM	<p>Restructuring aid may be an addition to the own contribution of the entrepreneur in a difficult economic situation, which is a contribution to the financing of restructuring costs.</p> <p><b>Forms of aid for restructuring:</b></p> <ul style="list-style-type: none"> <li>■ loan</li> <li>■ taking up of shares or stocks in the increased share capital or participation in the increase of the share capital by increasing the nominal value of existing shares or stocks</li> <li>■ taking up of bonds</li> <li>■ change of loan repayment dates towards the entity granting restructuring aid</li> <li>■ conversion of a loan, granted as rescue aid, into shares or stocks of the entrepreneur.</li> </ul> <p><b>Aid for restructuring may also be granted in the form of relief from the administrative fine in the form of:</b></p>

	<ul style="list-style-type: none"> <li>■ a deferral of the execution date of an administrative fine or a possibility to pay it in installments</li> <li>■ a deferral of the execution of an outstanding administrative fine or a possibility to pay it in installments</li> <li>■ a cancellation of an administrative fine in whole or in part</li> <li>■ a cancellation of interest for late payment in whole or in part <ul style="list-style-type: none"> <li>■ provided that the equivalent of the aid granted is assigned for the implementation of the restructuring plan</li> </ul> </li> </ul> <p>Restructuring aid <b>may not be used to finance new investments</b> unless the new investment is necessary to restore the entrepreneur's long-term capability to compete in the market.</p>
APPLICATION	<p>The application for granting aid, apart from the statutory and accounting data, shall contain a <b>description of the economic and financial situation</b> of the applicant, indicating that the conditions for obtaining aid have been met, the form of aid applied for as well as its amount and purpose, <b>financial forecasts for the next 12 months</b> and a <b>simplified restructuring plan</b>.</p> <p>The restructuring plan contains, i.e., a description of possible plans to solve the problems, a description of the process of implementation of the preferred plan, <b>financial perspectives for the next 5 years</b>, as well as the proposed own contribution.</p>
PROCEDURE	<p>Within 30 days from the date of receipt of the application, it shall be evaluated by the Minister of Economy or by the Industrial Development Agency S.A. Approved aid is subject to notification to the European Commission. The restructuring plan is subject to approval by the Minister of Economy or ARP within 5 months, which does not withhold the payment of funds.</p> <p>Before granting restructuring aid, the minister responsible for the economy or the Industrial Development Agency (ARP) assesses whether it is justified, taking into account in particular</p> <ul style="list-style-type: none"> <li>■ priorities set in the government restructuring programmes</li> <li>■ expected economic viability of the entrepreneur in a difficult economic situation after the restructuring process</li> <li>■ employment size of the business in a difficult economic situation</li> <li>■ forecasts for supply and demand in the market in which the business in a difficult economic situation operates</li> <li>■ location of the business run by the entrepreneur in a difficult economic situation.</li> </ul>

This document was prepared for informational purposes only and is of a general nature. Every time before taking actions on the basis of the presented information, we recommend obtaining a binding opinion of TPA Poland and Baker Tilly Woroszyńska Legal experts.

Should you be interested in the above programmes, we invite you to contact experts from TPA Poland and Baker Tilly Woroszyńska Legal, who will provide professional support in each of the areas mentioned above. The team of TPA Poland's advisors and Baker Tilly Woroszyńska Legal's lawyers combines all the required competences for this type of consulting: financial analysts, legal and tax advisors and auditors.

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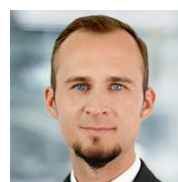


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