COVID-19: Polish Government Financial Assistance Measures

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Authors: Marcin Studniarek, Radomir Szewczuk

The short-term effects of the novel coronavirus pandemic put many Polish businesses in financial distress and struck a major blow to their liquidity—a worrying turn of events in light of already widespread payment backlogs. The Polish Government is currently implementing the "Crisis Shield," a multi-layered package of measures to combat the looming crisis and avert the outcomes of the recent market slump.

Liquidity-oriented components of the "Crisis Shield" will be driven mainly by Bank Gospodarstwa Krajowego ("BGK"), Polski Fundusz Rozwoju ("PFR") and Agencja Rozwoju Przemysłu ("ARP").

Liquidity Guarantee Fund

In order to tackle the present liquidity concerns, Bank Gospodarstwa Krajowego ("**BGK**") established a special Liquidity Guarantee Fund (*Fundusz Gwarancji Płynnościowych*, the "**FGP**") in order to implement liquidity-oriented guarantee measures. BGK will use FGP to provide loan guarantees securing repayment of credit facilities ("**FGP Guarantees**") extended by banks that entered into dedicated agreements with BGK (an "**FGP Eligible Bank**"). A number of the largest Polish banks are already FGP Eligible Banks and more are likely to follow. All FGP Eligible banks are listed on BGK's website.

BGK will grant FGP Guarantees by December 31, 2020. Borrowers can request FGP Guarantees to secure the repayment of revolving facilities and line of credit facilities (also including multi-product lines with reverse factoring, promissory note discounting, bank guarantees and letter of credit products within a single facility limit) extended (or renewed) by FGP Eligible Banks after March 1, 2020, whose repayment is due no later than within 24 months after the utilization and that is not already secured by any other guarantee issued by BGK ("**FGP Eligible Facility**"). The total amount of FGP Guarantees to be granted by BGK is currently capped at PLN 100 billion.

Key details of the FGP Guarantee scheme are as follows:

- **Beneficiaries**: FGP Guarantees can be granted to medium and large undertakings with registered offices in Poland (or residence in Poland, in case of natural persons carrying out business activity). A medium or large undertaking must have met at least two of the three following criteria in at least one of the two last financial years: (i) yearly average FTE headcount of at least 50; (ii) yearly turnover of at least EUR 10 million; and (iii) year-end balance sheet value of assets of at least EUR 10 million. BGK does not have its own, specific requirements as to tax residence, corporate structure and/or detailed financials of the borrower and will not run its own credit scoring procedures. However, the borrower needs to satisfy the applicable requirements of the relevant FGP Eligible Bank in this respect (*e.g.*, complete its KYC procedure) and have sufficient scoring to qualify for the FGP Eligible Facility.

Additionally, the borrower must have been relatively "healthy" before the crisis struck. Therefore, some analysis of historic data might be necessary to assess a given borrower's eligibility for an FGP Guarantee. An FGP Guarantee can be granted only if the borrower:

  - As of February 1, 2020, was not listed as an insolvent or untrustworthy debtor in the most common Polish debtor registers and/or other similar databases that the relevant FGP Eligible Bank uses to verify the potential borrowers
  - As of February 1, 2020, did not have any credit facility terminated by the relevant FGP Eligible Bank
  - As of February 1, 2020, did not have any outstanding payments due to the relevant FGP Eligible Bank in an amount exceeding PLN 3,000
  - As of February 1, 2020, was not in arrears with any tax payments and/or social insurance contribution payments
  - As of December 31, 2019, did not have any credit facility classified as "threatened" (*zagrożone*), in accordance with the applicable Polish accounting regulations, or with respect to which evidence existed that its value had been impaired (in accordance with IFRS 9 and/or the PFSA's Recommendation R)
  - As of December 31,2019, was not classified as an "undertaking in difficulty" (*przedsiębiorstwo znajdujące się w trudnej sytuacji*") under EU Regulation no. 651/2014, EU Regulation no. 702/2014 and EU Regulation no. 1388/2014

- **Purpose**: An FGP Guarantee can secure repayment of all revolving facilities and/or credit line facilities, save for those that have been used to refinance other facilities.
- **Maximum guaranteed amount**: FGP Guarantees cover only the principal (interest and fees due to the relevant FGP Eligible Bank are not covered). As a rule, the minimum amount of a single FGP Guarantee is PLN 3.5 million, while the maximum amount of all FGP Guarantees granted to a single borrower is PLN 200 million. As the maximum percentage of the facility amount covered by an FGP Guarantee is equal to 80 percent, this translates to up to PLN 250 million of FGP Eligible Facilities covered by FGP Guarantees granted to a single undertaking. However, this cap might be subject to the following modifications:
  - The total amount FGP Eligible Facilities must not exceed the lowest of the following amounts:
    - PLN 250 million; or
    - Double the annual payroll expenses of the beneficiary (including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors) for 2019, or for the last year available—in the case of undertakings created on or after January 1, 2019, the cap must not exceed the estimated annual payroll expenses for the first two years in operation; or
    - Twenty-five percent of total net turnover of the borrower for 2019.
  - The borrower might request that the above value cap for FGP Eligible Facilities due for repayment after December 31, 2020, be increased to a justified amount necessary for the borrower to maintain liquidity (but not more than PLN 250 million) for the period of:
    - Eighteen months from the utilization of the relevant FGP Eligible Facility—if the borrower is a medium undertaking; or
    - Twelve months from the utilization of the relevant FGP Eligible Facility—if the borrower is a large undertaking (*i.e.*, met at least two of the three following criteria in at least one of the two last financial years: (i) yearly average FTE headcount of at least 250; (ii) yearly turnover of at least EUR 50 million; and (iii) year-end balance sheet value of assets of at least EUR 43 million)

- The borrower may submit a reasoned request to increase the above value cap for FGP Eligible Facilities due for repayment by December 31, 2020, up to PLN 250 million.

- **Conditions**: The granting of a FGP Guarantee is subject to the following conditions:

1.	**Maximum duration**	Twenty-seven months, but no more than three months from the facility maturity date If the FGP Eligible Bank extends the repayment date afterwards, the maximum duration of the FGP Guarantee might be extended up to 72 months, but no more than three months from the date the facility is due for repayment
2.	**Maximum size**	The total amount of FGP Eligible Facilities must not exceed PLN 250 million. However, for facilities with a maturity beyond December 31, 2020, the amount of the facility cannot exceed: ▪ Double the annual wage bill of the beneficiary (including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors) for 2019, or for the last year available. In the case of undertakings created on or after January 1, 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or ▪ Twenty-five percent of total turnover of the borrower in 2019 With appropriate justification and based on self-certification by the beneficiary of its liquidity needs, the permitted amount of the FGP Eligible Facility may be increased to cover the liquidity needs of the borrower for the period of: ▪ Eighteen months from granting of the relevant FGP Eligible Facility—if the borrower is a medium undertaking; or ▪ Twelve months from granting of the relevant FGP Eligible Facility—if the borrower is a large undertaking (*i.e.*, met at least two of the three following criteria in at least one of the two last financial years: (i) yearly average FTE headcount of at least 250; (ii) yearly turnover of at least EUR 50 million; and (iii) year-end balance sheet value of assets of at least EUR 43 million) The borrower can also submit a reasoned request to increase the above value cap for FGP Eligible Facilities due for repayment by December 31, 2020, up to PLN 250 million

3.	**No dividends** **No share buy-back**	No additional restrictions
4.	**Job security undertaking**	No separate undertaking. However, planned layoffs would have a material impact on actual liquidity needs, which, in turn, might make it more difficult to apply for an increase of the FGP Guarantee amount cap
5.	**Increase of overall liability of the lender**	No formal undertaking to increase the commitments on the lender's part

- **Commercial terms**: the all-in annual commissions payable by the borrower for the FGP Guarantees shall be calculated on the basis of the type of borrower and the year of financing as follows:

	First year	**Second year**
Medium undertakings	25 bps	55 bps
Large undertakings	50 bps	115 bps

In the case of an FGP Eligible Facility extension by the relevant FGP Eligible Bank, the commission is calculated for all years of the financing period, using the following rates for the years beyond the first year of the financing period:

	Second Year	**Third Year**	**Fourth Year**	**Fifth Year**	**Sixth Year**
Medium undertakings	40 bps	40 bps	80 bps	80 bps	80 bps
Large undertakings	80 bps	80 bps	160 bps	160 bps	160 bps

- **Security interests**: The BGK requires that any claims of the BGK vis-à-vis the borrower relating to the FGP Guarantee are secured with a blank promissory note. Although blank promissory notes are common in Poland, borrowers not familiar with this kind of security interest should seek advice before applying for FGP Guarantees.
- **Process**: The procedure is uniform for all borrowers. Applications for FGP Guarantees should be made using the relevant BGK forms made available by the FGP Eligible Banks.

PFR

PFR, a state-owned investment and aid vehicle, is implementing an aid program worth PLN 100 billion, composed of a number of various liquidity-oriented instruments. Out of the total PLN 100 billion, about PLN 25 billion should go to micro undertakings. Small- and medium-sized enterprises (SMEs) should receive instruments worth circa PLN 50 billion, and the remaining PLN 25 billion should be used to support large undertakings. Liquidity-oriented instruments will be offered to large undertakings as a PLN 10 billion package of the "PFR Liquidity Shield."

The PFR Liquidity Shield will be based on the following principles:

- **Beneficiaries:** All large undertakings with registered offices in Poland (or residence in Poland, in case of natural persons carrying out business activity) can apply for instruments covered by the PFR

Liquidity Shield. SMEs with a liquidity gap exceeding PLN 3.5 million, not using any other PFR aid measures, and useful in averting the COVID-19 pandemic (*i.e.*, subject to sectoral aid), can apply too, using the same procedure and adhering to the same rules as large undertakings. All beneficiaries should meet the following eligibility criteria:

  - They are not subject to any pending insolvency or restructuring proceedings.
  - The meet any of the below conditions:
    - After February 1, 2020, they noted a drop in monthly revenue of at least 25 percent as juxtaposed with the corresponding month in the preceding year.
    - They lost the ability to manufacture goods or provide services (or have them received by their clients) due to the COVID-19 pandemic.
    - Due to the COVID-19 pandemic, they have unpaid receivables accounting for more than 25 percent of their accounts receivable.
    - Due to disruptions of the financial markets, they do not have access to capital markets or credit limits in relation to new contracts.
    - They participate in programs aimed at averting the COVID-19 pandemic.
  - They have an ultimate beneficial owner (within the meaning of the Polish AML Act) who is a Polish tax resident, paying taxes in Poland for at least two years—this can be dropped if the ultimate beneficial owner undertakes to change its tax residency to Poland within nine months from granting of the aid.
  - They carried out business activity on December 31, 2019.
  - They had no arrears in tax payments and social insurance payments (unless the relevant authorities agreed to payment of the outstanding amounts in installments) as of December 31, 2019, or the day the financing is granted.
  - They do not operate in certain businesses not supported by PFR (gambling, tobacco, alcoholic drinks, firearms, animal testing, etc.).

- **Instruments**: The PFR Liquidity Shield will cover four main types of instruments: loans, factoring arrangements, bonds and guarantees. All instruments will be granted by December 31, 2020.
- **Maturity**: Regardless of the specific instrument, its maturity will not exceed two years. The total period of financing will not exceed three years.
- **Amount**: Financing under the chosen instrument will be extended in the amount equal to the forecasted liquidity gap of the beneficiary, up to PLN 1 billion. Consequently, a careful calculation of the forecasted liquidity gap should be made prior to applying for measures covered by the PFR Liquidity Shield.
- **Purpose**: The PFR Liquidity Shield includes essentially working capital financing (payroll, product supply, taxes and public charges, current administration costs, etc.), although specific purposes might be negotiated with the PFR. Still, no financing will be granted to fund:
  - Any payments to affiliates outside of ordinary course of business (and only as expressly approved by the PFR)
  - Stock buy-backs
  - Mergers and/or acquisitions (through share deals or asset deals)
  - Refinancing of existing facilities
- **Commercial Conditions**: Commercial conditions will be negotiable, although the PFR intends to include cash sweep (accelerated repayment in case of financial surplus of the borrower) and debt-to-equity mechanisms in order to tap into the improved prospects of the beneficiary after the downturn,

as well as standard restrictions (including restrictions on distributions). The above circumstances should be considered when deciding on application for the PFR Liquidity Shield.

- **Costs**: Cost of financing is defined as WIBOR 3M + margin. The margin depends on the total financing period in the following manner:

One year	**Two years**	**Three years**
100 bps	140 bps	180 bps

Other PFR Programs

The PFR will offer numerous other instruments, including preferential loans both for large undertakings and SMEs. While not specifically liquidity-oriented, they will aim at providing Polish businesses with necessary relief. All financing would be extended for no more than three years. The brief summary of implemented programs is presented below:

Name of the Program	**Eligible Beneficiaries**	**Instruments**	**Miscellaneous**
PFR Financial Shield for micro undertakings and SMEs	Polish micro undertakings and SMEs Additional eligibility criteria are similar to the PFR Liquidity Shield. However, undertakings with a non-Polish ultimate beneficial owner might be eligible even without a commitment for the ultimate beneficial owner to move to Poland within nine months (however, in such case, additional investment commitments would be necessary)	Equity injections Factoring Debt instruments Loan guarantees Subsidies	No M&A financing Potential loan subsidy—up to 25 percent of the subsidy amount Amount of subsidies tied to the number of FTEs and the COVID-19-related revenue drop (a drop of at least 25 percent is necessary to qualify for subsidies) Twenty-five percent of subsidy is repayable within a year. Further repayment of subsidies is tied to employment guarantee—layoffs would result in an obligation to return an additional part or all of the subsidy
PFR Financial Shield for large undertakings	Same as in PFR Liquidity Shield plus additional requirements The borrower must record negative cash flow on sales within any month after February 29, 2020 (might be adjusted for additional costs in specific cases, such as infrastructural investments)	Loans	Loans might be redeemed up to 75 percent of their value Redemption is not possible in an insolvency or restructuring scenario Redemption capped at negative cash flows on sales in the covered period

	Alternatively, the borrower must show an indebtedness forecast confirming that even though it is currently in financial distress, net debt to EBITDA ratio will not exceed 3.5 once the situation stabilizes Additionally, in each case, the borrower must provide a recovery plan and be subject to a simplified due diligence process		Redemption might be tied to employment guarantees
PFR Capital Shield for large undertakings	Same as in PFR Liquidity Shield, plus additional requirements The borrower must provide a detailed development plan and financial forecasts, as well as be subject to a due diligence process	Equity injections Convertible loans	As a rule, the PFR will cover up to 50 percent of the financing so another provider would be necessary

ARP Instruments

While FGP Guarantees and the PFR Liquidity Shield are relatively formalized, have well-defined eligibility criteria and are subject to specific commercial conditions, support provided by the ARP will be much more flexible and cover many more "market-based" instruments. These will include, in particular, loans (also revolving loan facilities), leases and loan guarantees. The instruments are flexible and might be negotiated between the ARP and the beneficiary. Not all instruments offered by ARP will be liquidity-oriented, but the overall purpose of the ARP's activity will be to provide liquidity relief to Polish businesses.

All Polish undertakings will be eligible for the instruments offered by ARP *provided that* they meet the following criteria:

- **Financial distress**: The beneficiary must be in financial distress due to the COVID-19 pandemic, not for any other reason. Whether the financial distress results from the pandemic or other reasons will be determined by the ARP. The beneficiary must submit a declaration confirming the financial distress. Making false statements in such a declaration might be subject to criminal liability.

- **No restructuring or insolvency**: The beneficiary must not be subject to bankruptcy or restructuring proceedings. If a bankruptcy or restructuring petition is submitted (even a petition to approve an extra-court composition agreement), the procedure before ARP is suspended. Once the bankruptcy or restructuring petition is accepted, the procedure before ARP is canceled. Consequently, the beneficiary should assess whether its situation does not justify filing for bankruptcy or restructuring prior to applying for ARP instruments.

- **Additional criteria**: ARP might establish additional eligibility criteria for specific instruments, as the ARP leg of the "Crisis Shield" is not yet fully developed.

Standstill and Postponement Measures

The Crisis Shield does not include any automatic standstill or postponement measures that would "freeze" the repayment of existing loan facilities. However, the banks designed a number of instruments allowing for appropriate contractual arrangements that should be reviewed on an individual basis. In order to facilitate such arrangements, the Crisis Shield allowed banks to rely on credit score assessments from as late as September 30, 2019, in deciding on amendments to facility agreements extended before March 8, 2020.

The Polish Financial Supervisory Authority intends to implement regulatory measures allowing easier credit expansion by domestic banks in order to address liquidity concerns. However, the details are not yet known.

Measures aimed at supporting business continuity

The Crisis shield contains measures to relieve enterprises from certain obligations or procedures that could trigger adverse effects due to the COVID-19 pandemic and the associated restrictions.

Directors' duties

Directors have been released from duty to file for insolvency within 30 days from the day the relevant company became insolvent if it became insolvent during the COVID-19 pandemic and the insolvency was due to the pandemic (it is presumed that, if the company became insolvent during the pandemic, it is due to the pandemic). However, the Crisis Shield does not address the situation of companies that became insolvent before the pandemic (even shortly before the state of epidemic was announced). Additionally, the Crisis Shield does not expressly release the management board members of Polish limited liability companies from joint liability for liabilities of Polish limited companies if the management board members did not file for bankruptcy or restructuring "in due time."

Employment Stabilization

The Crisis Shield provides for employment stabilization measures in the form of partial subsidies of remuneration and social insurance contributions for employees in case of a turnover drop resulting from the COVID-19 pandemic. All Polish businesses that faced a drop in turnover (or in volume) of either: (i) 15 percent in a two-month period (it might start mid-month, in which case, one month counts as 30 days) after January 1, 2020, as juxtaposed with a corresponding two-month period in the preceding year; or (ii) 25 percent in a month (or 30 consecutive days) falling after January 1, 2020, as juxtaposed with the preceding month.

Subsidies are available in case the beneficiary implements downtime (standstill) or reduces worktime (by no more than 20 percent, with half-time employment being the minimum). The introduction of such measures requires consultation and agreement with employees (or trade unions, if they are present in the firm). In the case of downtime, the subsidy for a single employee is capped at 50 percent of the statutory minimum wage (in the case of full-time employees—for part-time employees, the floor is proportionally reduced). In the case of reduced worktime, the subsidy is capped at 40 percent of average monthly remuneration in Poland determined by the National Statistics Office in the month preceding the one when the application for subsidy is made. In either case, employees earning more than 300 percent of the average monthly remuneration in Poland in the quarter preceding the one when the application is made are not eligible for subsidies.

Additionally, micro-, small-, and medium-sized enterprises might apply for separate remuneration co-financing measures extended by the Labor Fund. These measures are available in the case of a drop in revenue (or volume) of at least 30 percent in a month (or 30 consecutive days) falling after January 1, 2020, as juxtaposed with the preceding month (or 30 consecutive days), also falling after January 1, 2020. The amount of co-financing is higher in the case of larger drops in volume or revenue, with a maximum amount of 90 percent of the statutory minimum wage (plus applicable social insurance contributions) per employee subject to co-financing. The measure is extended for three months and requires job security undertaking for the entire period. No consultation or agreements with employees are necessary to apply for this measure.

Neither of the two remuneration co-financing schemes is available for insolvent undertakings; *i.e.,* those that would already qualify for bankruptcy.

Small and micro undertakings may also request the Social Insurance Authority (*Zakład Ubezpieczeń Społecznych*) to cancel all (micro undertakings) or 50 percent (small undertakings) of outstanding social insurance contribution payments for the period from March 1, 2020, to May 31, 2020.

Taxation

There is not a general tax payments moratorium. Certain preferential measures have been implemented in relation to income tax.

Local self-government bodies may resolve to postpone payment dates for real estate taxes, which might offer substantial liquidity relief to certain undertakings. Application of these measures, however, depends on the specific local government bodies.

Conclusions

The Crisis Shield provides a series of urgent measures intended to provide Polish businesses with necessary liquidity relief. The efficiency of these measures and their actual availability remains to be verified. The Polish Government is currently planning to introduce further liquidity-oriented instruments, but no details are known to date.

We encourage our clients to consider the opportunities presented by the Crisis Shield carefully, consulting with us as appropriate. Directors should review the solvency of the companies they manage in light of potential insolvency concerns that might affect the scope of available instruments.

In addition, White & Case has carried out an analysis of global governmental responses to the COVID-19 crisis. These vary considerably from country to country and are being updated and amended regularly.

We have prepared an in-depth and nuanced analysis for various major jurisdictions and pulled together a global response team.

For useful information on COVID-19, please consult the Coronavirus section of www.whitecase.com.

Annex I

The Crisis Shield includes urgent measures to support the liquidity of companies and ensure business continuity. The applicable measures are described and compared below.

Applicable Measures	Large corporates	SMEs
Eligible Beneficiary	All undertakings with registered offices in Poland	All undertakings with registered offices in Poland
FGP Guarantee	All large undertakings are eligible, subject to additional conditions—in particular, not classifying as an "undertaking in difficulty"	Only medium undertakings are eligible, subject to additional conditions—in particular, not classifying as an "undertaking in difficulty"
	Standard bank guarantee	Same
	Polish banks cooperating with BGK	Same
	Securing of working capital loans and debt instruments, including also reverse factoring and similar multi-product arrangements	Same
	Maximum guarantee amount is PLN 200 million, subject to additional reductions	Same
	Only principal is covered	Same
	Maximum guaranteed amount: 80 percent of the secured facility's principal amount	Same
	Maximum duration: 27 months, but no more than three months from maturity of the secured facility	Same
	Secured by blank promissory notes	Same
	All-in commissions, depending on the length of financing (see above), up to 115 bps. Larger commissions are possible in case of extended duration of the guarantee	All-in commissions, depending on the length of financing (see above), up to 55 bps. Larger commissions are possible in case of extended duration of the guarantee
	Simplified procedure, de facto managed by FGP Eligible Banks	Same

PFR Liquidity Shield	Large undertakings, subject to a number of additional requirements, with certain industries excluded Wide array of liquidity-oriented loan and guarantee products Financing in the amount of up to PLN 1 billion (keep PLN 1 billion together) Financing for up to three years No aid for insolvent companies The beneficiary must have an ultimate beneficial owner that is a Polish tax resident (or at least committed to move to Poland within nine months) Restrictions on distributions and upstream payments Interest rate WIBOR 3M + margin. Margin up to 180 bps	Not available to SMEs
Standstill and postponement	No general measures. Simplified approach to credit scoring with respect to amendments of existing facilities	
Shareholders' funding	No special measures currently implemented	
Other Corporate Measures	No liquidity-oriented measures currently implemented	
Insolvency-Related Measures	Suspension of statutory deadlines for filing for bankruptcy, but only if the company went insolvent during the state of epidemic	