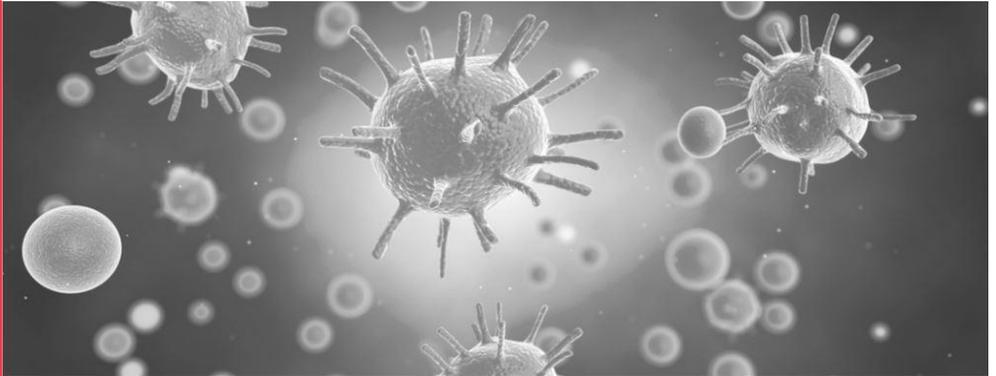


CORONAVIRUS ALERT

24/7



Business support 24/7 during coronavirus pandemic

Coronavirus and restructuring, bankruptcy and insolvency

The epidemic also means obligations for businesses

The coronavirus epidemic is turning the way business is conducted upside down. For many businesses it means, inter alia:

- government restrictions (*de facto* bans) on activities in a number of sectors and it is unknown when they will be lifted. This includes transport, tourism, retail, fitness, cinemas and restaurants;
- a sharp drop in turnover due to "quarantine of the whole of society" – people are staying at home and limiting consumer spending to what is absolutely necessary. Meanwhile, all businesses have to bear fixed costs (employee, social security, rent, leases), which do not decrease with falling revenues. This impacts not only the above-mentioned industries, but also freight and passenger transport, including bus and air transport;
- having to send staff home to work remotely. This is a revolution for many companies, regardless of sector;
- a crisis of confidence of business partners, who are increasingly demanding cash instead of the previous trade credit. This phenomenon can also hit almost all businesses.

For many companies this will mean liquidity problems. These can turn into insolvency. Businesses must remember that there are certain obligations associated with this:

- **a company must file for bankruptcy within 30 days of insolvency.** An epidemic constituting force majeure does not alter this obligation. This means that all businesses should above all monitor their liquidity on a regular basis and check whether they are able to pay due and payable liabilities on time. This does not rule out company rescue in a restructuring procedure (see next page);
- the threat of bankruptcy justifies a doubling of attention when paying debts and transferring a company's assets – the business must in everyday transactions take into account the interests of creditors;
- **the threat of bankruptcy does not affect a business's public law liabilities** – until the tax office or the Social Insurance Institution (ZUS) grants relief or defers the payment of liabilities, they should be paid to avoid exposure to personal liability (this especially applies to PIT-4).

NB: breach of the above-mentioned obligations may give rise to the personal liability of the company's management board members towards its creditors, ZUS or the tax authorities (and sometimes even criminal and or fiscal).

Companies can survive the epidemic and a debt crisis

However, the response to the problems must be early and planned. Businesses must show initiative and should not assume that "the problem will resolve itself". The law provides solutions for businesses in this difficult time in the form of a restructuring procedure. What does this give businesses? First of all, time to await the crisis, and moreover:

- suspension of repayment of "old" debts (e.g. loans taken out or unpaid invoices) and protection against enforcement. Even the enforcement of "new" debts cannot be carried out during a recovery procedure;
- possibility of operational restructuring: reduction in employment, termination of unprofitable contracts or sale of redundant assets. These actions are easiest in a recovery procedure;
- possibility of changing liability repayment terms by way of an arrangement with creditors in which the company's liabilities will be, e.g. reduced, spread into instalments or converted into shares. During the global crisis, this will often be more cost-effective for creditors than the indebted company selling its assets for a song and the creditor waiting many years for money from the receiver. **Restructuring is simply the re-alignment of a business's liabilities.**

NB: A restructuring procedure also gives a company's management board protection against liability arising from obligations to file for bankruptcy. However, bankruptcy must be opened at the right time (30 days after insolvency occurs), which can be difficult to achieve given the paralysis of the courts. This means that a restructuring application should be filed in due time or at the same time as the bankruptcy petition, which protects the management board from the moment it is filed. The "rescue" application, i.e. the restructuring application, then takes priority.

NB: The EU and the Polish Government are working on special measures to help businesses maintain liquidity, i.e. an anti-crisis package. The aid will consist of, e.g. loan guarantees, micro-loans, deferral or spreading of ZUS contributions into instalments being granted free of charge or liquidation of penalties for delays in public tenders. These solutions should help to avoid insolvency but may not resolve the problem wholly. Many businesses will still need to be rescued in court restructuring.

How to manage problems?

How should a responsible business act during the crisis?

- First, communication with the bank, business partners and employees is crucial. No one likes to be surprised by the lack of payment.
- Second, a team should be set up to constantly monitor the liquidity situation. If a company is too small for this, we should plan the time (once/twice a week) when we compare the balance and expected receipts (assessing their reality) with the nearest due dates of invoices and other debts.
- Third, a plan should be made to adjust costs to current cash generation capacity. Think about what savings we can make, what activity we can stop and with whom we can come to an agreement to defer payment.
- Fourth, a lawyer with restructuring experience or a restructuring adviser can be engaged. The threat of insolvency "turns the conducting of business on its head" but does not make it impossible. An experienced adviser will know what moves will be effective and safe in this situation.

DZP has an experienced team of specialists who are essential for businesses in a crisis. We offer the assistance not only of lawyers but also of restructuring advisers. We have a multi-disciplinary restructuring team. It also includes labour law experts who help with employment restructuring. Specialists in criminal and tax crime law advise on how to avoid personal liability during a crisis. Our tax advisers and state aid specialists will help businesses to restructure public law liabilities, including taxes. For the purposes of negotiations with banks, we also offer the assistance of experts in our Capital Markets & Financial Institutions Practice.

We are at your disposal

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