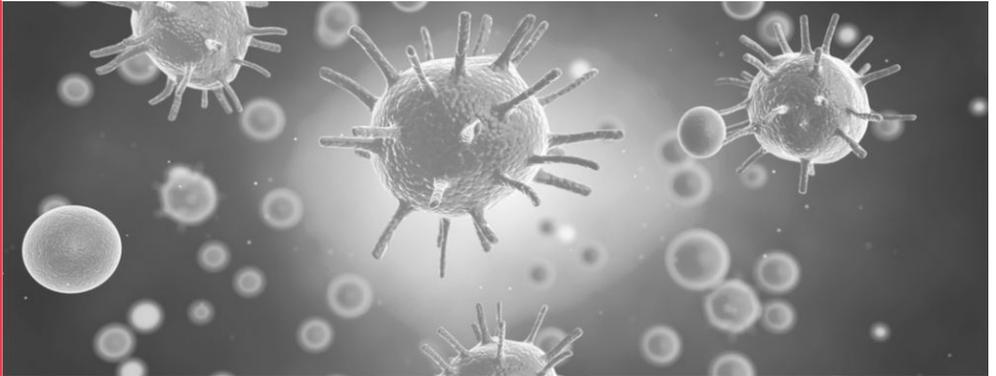


## CORONAVIRUS ALERT

24/7



# Business support 24/7 during coronavirus pandemic

## Impact of COVID-19 and M&A processes – Polish market

### Impact of COVID-19 and M&A processes

The dynamically changing situation relating to the COVID-19 pandemic will undoubtedly affect M&A processes. The unprecedented situation means that transaction participants will have to start paying attention to issues that to date have not required much reflection. We set out below selected transaction areas that will undoubtedly now need to be taken into account.

#### 1) Due diligence reviews

Anticipating the impact of current events on the business environment, it can be concluded that companies will have to pay more attention to regularly digitising documents, as physically sharing documents in M&A processes will be the exception. The market standard for M&A transactions is to make documents available in electronic form, e.g. via a VDR (*virtual data room*) or by various types of cloud solutions, which gives all interested parties the opportunity to access relevant documents from any place and at any time.

In their due diligence reviews, investigators will be paying more attention to assessing the impact of extraordinary events (e.g. epidemics, social unrest or general strikes) on the target's activities, particularly as regards key contracts with suppliers, customers and financial institutions, having regard to the risk of insolvency, the risk of disruption of the supply chain, and also the insurance cover held by the target.

#### 2) Negotiations and content of transaction documentation

The situation will have the greatest impact on the content of agreements negotiated by the parties and transaction documents, which will have to be adapted to new threats not yet identified by M&A participants. Standard contingency clauses (e.g. MACs) will have to be carefully negotiated by the parties and will be significantly revised in transaction practice. The parties will make greater efforts to anticipate new threats.

In addition, greater emphasis will undoubtedly be placed on addressing new risks and shaping regulatory clauses accordingly:

- a) transaction terms and conditions,
- b) representations and warranties of the parties,
- c) price fixing mechanisms (e.g. completion accounts),
- d) liability of the parties and insurance of special risks,
- e) extension of contractual deadlines (e.g. for obtaining administrative approvals),
- f) occurrence of force majeure,

g) contract rescission.

The COVID-19 pandemic may impact the availability of the funds required to finance transactions, which should also be duly taken into account by the buyer.

### 3) Finalisation of transactions (conclusion of contracts)

In the current perspective, it should be noted that significant difficulties may arise in transactions from the need for various entities to be physically involved in transaction finalisation, so we see that the greatest changes will be required in this area. While the content of a contract can be agreed upon remotely via electronic means of communication, contract signing usually requires the persons representing the transaction parties and a notary to appear in person (e.g. in the event of the sale of shares in a limited liability company or enterprise). Transactions also have to be registered in various registers, which still requires physical documents to be submitted to court offices. Certain changes and simplifications are planned in Poland for 2021, e.g. as regards trading in dematerialised shares in joint-stock companies, and the launch of e-KRS, i.e. an electronic court register to which applications will be submitted in electronic form. In the long run, these changes will drive the widespread introduction of qualified electronic signatures to trading, which will facilitate remote completion of formalities.

### 4) Prospects for M&A processes

As a result of the pandemic, the number of M&A transactions is likely to increase in all industries that enable society to function normally, despite the restrictions introduced, i.e. in the IT (AI, VR), e-commerce, medical (telemedicine) sectors and in sectors that enable the risk of disruption to the supply chain to be eliminated (local suppliers).

## We are at your disposal

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