

Legal Alert

www.skslegal.pl

Draft amendment to the Act of 8 March 2013 on counteracting excessive delays in commercial transactions ('Payment Backlog Act')

On 23 June 2022, a draft act amending the Payment Backlog Act was published on the website of the Government Legislation Centre.

Some of the changes envisaged in the draft amendment are presented below.

1. The ineffectiveness of the exclusion of the right to assign claims
2. The restoration of the deduction of contractual penalties, and of the satisfaction of claims from performance securities lodged in public contracts
3. Large undertaking status declarations
4. Annual statements of payment periods
5. Proceedings conducted by the President of the Office of Competition and Consumer Protection ('UOKiK') regarding excessive delays in commercial transactions

The ineffectiveness of the exclusion of the right to assign claims

The amendment introduces a regulation that provides for the ineffectiveness of contractual provisions excluding or limiting the creditor's right to assign claims if any payment deadlines overrun.

That provision will only apply to asymmetrical transactions, i.e. transactions in which the debtor is a large undertaking and the creditor is an SME. Transactions where the debtor is a public entity will be excluded from the above regulation.

The restoration of the deduction of contractual penalties, and of the satisfaction of claims from performance securities lodged in public contracts

The draft amending act provides for repealing Article 15r(1) of the Act of 2 March 2020 on special solutions related to preventing, counteracting, and combating COVID-19, other infectious diseases and crisis situations caused by them ('COVID Act') which:

- excluded the possibility for the contracting authority to deduct contractual penalties provided for in the event of the non-performance or improper performance of the contract from the remuneration due to the contractor or other claims of the contractor; and

- excluded the possibility for the contracting authority to seek the satisfaction of claims from the performance security lodged; where the event for which such a contractual penalty was provided for occurred under the state of epidemic emergency or the state of epidemic.

In the legislator's assessment, due to the current epidemic situation, it is unfounded to keep Article 15r(1) of the COVID Act in force. Repealing this provision is aimed at avoiding the further possible concentration of claims of contracting authorities towards contractors regarding contractual penalties.

Large undertaking status declarations

The obligation to submit a large undertaking status declaration is supposed to apply not only in situations where the undertaking concerned is the debtor, as it is under the current regulation, but also in situations where the undertaking is the creditor.

Such a declaration should be submitted only once for a given business relationship, at the time of concluding the first commercial transaction at the latest, in the form of the conclusion of the transaction concerned. If there is a change in status, the undertaking will be obliged to update the declaration.

Annual statements of payment periods

The most important amendments to the provisions on such statements include the following:

- the extension of the deadline to file such statement to 30 April of each year;
- exemptions from the obligation to file such statement:
 - for companies forming tax capital groups; and
 - for public medical entities and medical entities in the form of companies established and operated by the State Treasury, or regional or local authorities;
- the exclusion from the scope of such statement:
 - payments within groups of undertakings;
 - payments in insurance and reinsurance activities; and
 - time-barred payments;
- the determination of the amount of monetary payments made and received when due, and of those

made and received after the payment deadline regarding contractual payment periods and not regarding the invoice date (as it is under the current regulation);

- the introduction of a regulation under which the transaction amount in a foreign currency should be indicated in the statement in the Polish currency, converted into the Polish currency in accordance with the accounting policies adopted by the entity filing the statement; and
- the obligation to file a correcting statement where the information given changes in one or more items by at least 10% of the amount.

Proceedings conducted by the President of the Office of Competition and Consumer Protection ('UOKiK') regarding excessive delays in commercial transactions

The most significant amendments to the provisions governing proceedings before the President of the Office regarding excessive delays in commercial transactions include the following:

- the introduction of 'soft requests' aimed at enabling the President of the Office to obtain information from undertakings about late payments without the need to initiate proceedings;
- the exclusion from the scope of proceedings of:
 - transactions within groups of undertakings; and
 - transactions in insurance and reinsurance activities;
- changes in the penalty model, i.e.:
 - changing the penalty calculation equation and thus, the departure from the computation of individual penalties for each late payment. In accordance with the new equation, the penalty amount will depend on the duration of the late payment period and on the amount of payments made after the deadline;
 - regulating the circumstances to be obligatorily taken into consideration by the President of the Office in determining the relevant penalty. Any penalty calculated in accordance with the equation will be the maximum penalty. The final penalty amount will be determined depending on the aforementioned circumstances;
 - eliminating the premises for the abandonment of a penalty under Articles 13v(6) and (8) of the Payment Backlog Act (i.e. the premise of a higher or equal amount of defaulted receivables in relation to that of defaulted payables and the premise of justified cases for the abandonment of a penalty);

- the introduction of the following currency conversion rules for transactions denominated in a foreign currency:
 - for monetary payments not made in the period covered by the proceedings, such translation will be based on the average exchange rate for the foreign currency published by the National Bank of Poland on the last business day covered by the proceedings; and
 - for late monetary payments made in the period covered by the proceedings, such translation will be based on the average exchange rate for the foreign currency published by the National Bank of Poland on the last business day preceding the date of making such a monetary payment.



Contact us

Zbyszko Wizner

Senior Partner, attorney-at-law

☎ +48 608 420 801

✉ zbyszko.wizner@skslegal.pl



Weronika Garniewicz

Junior Associate

☎ +48 602 758 385

✉ veronika.garniewicz@skslegal.pl