



## The impact of the COVID-19 pandemic on the ongoing functioning of cooperatives, associations, foundations and other entities

Practical guidelines developed on the basis of the provisions of the Act on special arrangements for the prevention, countering and combating of COVID-19, other infectious diseases and crisis situations caused by them (the “Anti-Crisis Shield”), which entered into force on 31 March 2020, the Act on special support instruments in connection with the spread of the SARS-CoV-2 virus (the “Shield 1.1”), which entered into force on 18 April 2020 and the Act amending certain laws concerning protection measures in connection with the spread of the SARS-CoV-2 virus, which entered into force on 16 May 2020 (the “Shield 3.0”).

### Restrictions related to the prohibition on gatherings

- » A prohibition on the organization of gatherings, as well as meetings and assemblies of any kind, is currently in effect in Poland, which was introduced by way of the Regulation of the Council of Ministers of 19 April 2020 on establishing certain restrictions, orders and prohibitions in connection with the occurrence of a state of epidemic.
- » Although this prohibition does not apply to, among others, meetings and assemblies related to the performance of professional activities, official functions, or non-agricultural economic activity, nor to undertaking agricultural activities, organising meetings of the bodies of legal persons undertaking business activities may contribute to the spread of the virus.
- » In order to facilitate the ongoing operations of cooperatives, associations, foundations and other legal persons, and to develop alternative solutions, the Act of 31 March 2020 amending the law on special solutions related to the prevention, counteracting and combating of COVID-19, other infectious diseases and crisis situations caused by them and certain other laws (further as the “Anti-Crisis Shield”) was adopted, which entered into force on 31 March 2020. The provisions of the abovementioned act were supplemented by the Act of 16 April 2020 on special support instruments in connection with the spread of the SARS-CoV-2 virus (further as the “Shield 1.1”), which has been in force since 18 April 2020, and by the Act of 14 May 2020 amending certain laws concerning protection measures in connection with the spread of the SARS-CoV-2 virus, which entered into force on 16 May 2020 (further as the “Shield 3.0”).

### Cooperatives - remote participation in meetings of their bodies And the postponement of general meetings for the duration of the pandemic

- » The Anti-Crisis Shield has made it possible to participate in meetings of the supervisory or management boards of a cooperative, or to adopt a given resolution in writing or by means of direct distance communication, at the request of a member of a given body, submitted together with a proposed agenda. A resolution may be adopted in this manner if all members of the relevant body have been properly notified of the meeting, or that voting will take place in writing or by electronic means of communication, and a resolution may be adopted with on the basis of both the votes cast at the meeting and those cast in writing or electronically. Pursuant to the provisions of Shield 3.0, the abovementioned rules also apply to the other bodies of cooperatives, as exclusively provided for in their statutes.

- Both the procedure for convening meetings of the bodies and the mode and conditions for the adoption of resolutions should be specified in the articles of association or provided for in the relevant body's rules of procedure. Therefore, before taking any action, it should be verified that the articles of association or the body's rules of procedure do not contain restrictions in this respect. Importantly, the possibility of remotely participating in meetings of a cooperative's bodies also applies to those convened before the Anti-Crisis Shield entered into force.
- The possibility of adopting resolutions in writing or by electronic means of communication is also provided for the general meetings of cooperatives, provided that the management or supervisory board has issued an appropriate order, and voting under these procedures may take place regardless of the provisions of the cooperative's articles of association. Notification of the time, place and agenda of such meetings should also be made electronically. Significantly, the legislature has limited the possibility for general meetings to use this method to adopt resolutions only for the duration of the state of epidemic threat or state of epidemic.
- General meetings of cooperatives which fall within the period of the state of epidemic threat or state of epidemic (that was already in effect as on the date of the Anti-Crisis Shield's entry into force and that was announced immediately after this state) have also been postponed. The date of convocation of general meetings is extended by 6 weeks from the date on which such states are revoked. This means that cooperatives will have additional time in which to prepare their financial statements for 2019 and adopt resolutions related to their approval.

## E-meetings of the authorities of associations and foundations during the pandemic

- From 18 April 2020, and only in the case of a state of epidemic threat or state of epidemic being introduced, it is also possible to use electronic means of communication to adopt resolutions of the authorities of an association and foundation, provided that the members of such authorities give their consent in the form of a document. The possibility of adopting resolutions during an e-meeting should be indicated in the meeting notice, which should include a detailed description of the mode of participation and the manner in which voting rights can be exercised.
- Before decisions are made by the authorities of an association or foundation using electronic means of communication, the provisions of the association's or foundation's articles of association or internal regulations should be reviewed for any possible limitations.

## E-meetings of members or delegates of Polish sports associations and the possibility of supplementing the composition of general meetings of the members (delegates) during the pandemic

- Pursuant to the Shield 1.1, the wording of the Anti-Crisis Shield's provisions introducing the possibility to hold general meetings of the members or delegates of Polish sports associations by means of electronic communication was amended. Currently, this possibility (which was only in force from 31 March to 18 April) has been excluded.
- However, the possibility of supplementing the composition of the management board or an internal control body of a Polish sports association has been retained for the duration of a state of epidemic threat or state of epidemic and for 6 months following their revocation, so that the minimum number of members specified in the association's articles of association is maintained in the event that the mandate of a member of one of the abovementioned bodies expires during its term of office. The Shield 1.1 extended – until no later than 30 September 2021 – the term of office of bodies of Polish sports associations expiring by 31 December 2020. Regardless of the above, on the basis of the general regulations applicable to associations, entities to which

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these regulations apply (thus also Polish sports associations) may use a simplified voting procedure via electronic means of communication.

- It is important to note that the above provisions also apply to sports associations (both regional associations and national associations without the status of a Polish sports association) and sports clubs operating in the form of associations, which were previously omitted from the solutions introduced by the Anti-Crisis Shield.

## E-resolutions of collegial bodies of professional self-governments

- For the duration of the state of epidemic threat or state of epidemic declared due to COVID-19, it is possible for the collegial bodies of professional self-government entities, as well as their executive and other internal bodies, to adopt resolutions by means of direct remote communication or by circulation. The use of this possibility is conditioned on the prior notification of all members of the body of the content of the proposed resolution and the date or time of voting. It is also necessary for at least half of the body's members to take part in the vote. Also, resolutions which, under other laws, require a secret ballot may be adopted in these new modes, provided that the body has waived the secrecy requirement in a given case.
- Clearly, the legislature has decided to introduce the above solutions only on a temporary basis. The new provisions are in force only for the duration of the state of epidemic threat or state of epidemic, and no longer than 180 days from the date of the Anti-Crisis Shield's entry into force, i.e. until 27 September 2020.

## Can e-resolutions be adopted by other entities?

- The Anti-Crisis Shield appears to introduce the principle that meetings of the bodies of other legal persons (however, with the exclusion of the Treasury and local government units) may also be held using electronic means of communication without needing the simultaneous presence of these bodies' members. This would mean that these solutions may be used by, among others, chambers of commerce or trade unions. However, the abovementioned provision is rather difficult to interpret due to its very unclear wording and its placement in the part of the Anti-Crisis Shield concerning administrative penalties for applying prices or margins higher than the designated maximums.

## The necessity of adapting the articles of association and internal rules of procedure of cooperatives, associations, foundations and other legal persons

- The Anti-Crisis Shield and Shield 1.1 may significantly improve the operation of cooperatives, associations, foundations and other legal persons in the face of the ongoing epidemic, however, the current articles of association and internal rules of procedure of such entities may prevent the use of the proposed solutions in practice. It is therefore recommended that the constitutional and organizational documents of a given entity be verified and adjusted as appropriate so that the solutions implemented can be used to the greatest possible extent.

## Postponement of obligations related to the drawing-up and approval of financial statements for 2019

- Pursuant to the provisions of the Anti-Crisis Shield and the Regulation of the Minister of Finance of 31 March 2020, the deadlines to draw-up and approve the financial statements and reports on the activities of, among others, cooperatives, associations, foundations and other legal persons, have been extended by 3 months. This extension applies only to entities whose financial year ended in the period between 29 September 2019 and 30 April 2020, provided that the deadline for the performance of obligations related to drawing-up and approving the statements and reports did not expire before 31 March 2020.

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- »» If the financial year of such entities coincides with the calendar year, the deadline to draw-up the financial statements for 2019 will expire on 30 June 2020, and the deadline for their approval will expire on 30 September 2020.
- »» Importantly, there has been no change to the deadline for public benefit organisations to publish their approved financial statements and reports on their activities on the relevant page of the National Institute's Public Information Bulletin. The statements and reports of such entities should still be published by 15 July 2020. The failure to postpone this deadline, despite the deadline for the approval of financial statements being postponed, may cause problems in practice.

### **Planned extension of the obligation to register information with the Central Register of Beneficial Owners to foundations, associations registered in the KRS and cooperatives**

- »» Notwithstanding future Anti-Crisis Shields, legislative work aimed at amend the Act amending the Act of 1 March 2018 on Counteracting Money Laundering and Terrorist Financing is ongoing. The planned amendments are mostly aimed at implementing Directive 2018/843 of the European Parliament and of the Council (EU) of 30 May 2018 (i.e. the 5<sup>th</sup> AML Directive). The draft amendments widen the catalogue of entities obliged to provide information on their beneficial owners to, among others, cooperatives, European cooperatives, associations registered in the National Court Register (the KRS) and foundations. The Council of Ministers is expected to adopt the draft amendments in the second quarter of 2020.