



LEGAL INFORMATION ON SELECTED CHANGES IN THE REGULATION OF PUBLIC PROCUREMENT CONTRACTS AND ON PARTICULAR LEGAL INSTRUMENTS INTRODUCED DUE TO COVID-19

1. ABBREVIATIONS

nPPL	the Act of 11 September 2019 - the Public Procurement Law
oPPL	the Act of 29 January 2004 - the Public Procurement Law
ipPPL	the Act of 11 September 2019 - Regulations implementing the Public Procurement Law Act
saCOVID	the Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19, other infectious diseases and the resulting crisis situations
saOP	the Act of 3 April 2020 on specific solutions to support the implementation of operational programmes due to COVID-19 in 2020
r.r.o.p.	Regulation of the Council of Ministers of 21 December 2020 on establishing certain restrictions, orders and prohibitions in connection with the occurrence of a state of epidemic

2. PUBLIC PROCUREMENT LAW

Selected differences between the regulation of public procurement contracts under the oPPL and under the nPPL are discussed hereunder.

2.1. GENERAL ISSUES AND TERMINOLOGY

- Structure of the Act.** The Act's structure has been changed. The legislators have regulated in separate sections thereof the contract award procedures regarding standard contracts (awarded on the basis of general rules): with a value exceeding the EU thresholds (Section II nPPL) and with a value below the EU thresholds (Section III nPPL) – under the oPPL both of them were regulated in one Section. Sectoral contracts are explicitly separated from standard contracts (Section V). The provision concerning the public procurement agreement is made more comprehensive. Section I of the nPPL contains provisions common for all contract categories (standard, sectoral, in the field of defence and security). It should be noted that certain issues are regulated in different sections than in case of the oPPL. For instance, the provisions on the procurement procedure report or on estimating the contract value now can be found in Section I of the nPPL (they used to be in Section II oPPL).



2. **The principle of efficiency.** A new principle of efficiency has been introduced (Article 17 nPPL), which imposes on contracting authorities an obligation to award contracts in a manner that guarantees both (1) the best quality of the subject of the contract in relation to the funds that the contracting authority can allocate to the contract and (2) the best ratio of expenditure to outcomes (including social, environmental and economic outcomes).
3. **The contracting authority.** Contracting authorities are divided in three categories: public (Article 4 nPPL), sectoral (Article 5 nPPL) and subsidised (Article 6 nPPL).
4. **Contract documents.** The legislators have introduced the term 'contract documents'; they are documents drawn up by the contracting authority or documents referred to by the contracting authority, other than announcements, serving to specify or describe the contract terms, including the SCT, or a description of needs and requirements. (Article 7 (3) nPPL)
5. **Contract terms.** The legislators have introduced the term 'contract terms'; these are the terms which concern the contract or contract award procedure and result in particular from the description of the subject of the contract, the requirements connected with contract implementation, the tender assessment criteria, the procedural requirements or drafted provisions of public procurement agreement. (Article 7 (29) nPPL)
6. **Subjective evidence.** The legislators have added the term "subjective evidence", such evidence shall mean any evidence serving to confirm no grounds for exclusion, the fulfilment of conditions to participate in proceedings or the selection criteria, except for the European Single Procurement Document (ESPD) (Article 7 (17) nPPL)
7. **Objective evidence.** The legislators have added the term "objective evidence", such evidence shall mean any evidence serving to confirm the compliance of the offered supplies, services or construction works with the requirements set forth in the contract documentation. (Article 7 (20) nPPL)
8. **Procurement plan.** The contracting authority is obliged to publish procurement plans in the Public Procurement Bulletin (PPB) and to ensure that they are always up-to-date - i.e. to publish procurement plan revisions. (Article 23 nPPL)
9. **Threshold of application of the Act.** With regard to standard contracts, the Act shall apply to contracts of the minimum value of **PLN 130,000**. (Article 2 nPPL)

2.2. EXEMPTIONS, NON-COMPETITIVE MODE

10. **Objective exemptions.** In essence, the regulation of objective exemptions has not been significantly changed. The exemption which was previously regulated in Article 4d (1) (1) of the oPPL is not regulated in Article 11 (5) (1) 1 of the nPPL. Although the provisions of the nPPL do not currently include an exemption concerning agreements on the management of employee capital plans, pursuant to Article 7 (2a) of the Act of 4 October 2018 on employee capital funds the provisions of the nPPL shall not apply to agreements on the management of employee capital plans and agreements on operation of employee capital plans if the contract value is below the EU thresholds.
11. **Negotiations without announcement.** The conditions for the application of the mode of negotiations without announcement haven't been changed.
12. **Single-source procurement.** In essence, the conditions for awarding contracts under the single-source procurement procedure have not been changed. Among the changes concerning this procurement procedure, one should note that the conditions for admissibility



of in-house procurement must be met for the whole period for which the agreement was concluded. The contracting authority is required to publish an announcement stating the fact that the said conditions have been met, in the PPB, within 30 days after a lapse of 12 months from the day on which the agreement was concluded (Article 214 (4) nPPL). The legislators have broadened and strengthened the prohibition to engage subcontractors in the case of in-house procurement (214 (9) nPPL).

2.3. PROCUREMENT PROCEDURES, SOCIAL SERVICES, THE COMPETITION

13. **Modes of procurement procedures.** Contracts with a value at least equal to the EU thresholds can be awarded under the procurement procedures known so far (open tender, restricted tender, negotiations with announcement, competitive dialogue, innovation partnership, negotiations without announcement and single-source procurement procedure). Contracts with a value below the EU thresholds can be awarded under (a completely new) basic procurement procedure or under innovation partnership, negotiations without announcement or single-source procurement procedure. In the new Act the legislators have completely resigned from the request for proposal procedure provided for in the oPPL.
14. **Basic mode.** The basic mode is a completely new mode, implemented under the provisions of the nPPL (Article 275-296 nPPL). It is a single mode only in terms of terminology. In practice, three different modes have been provided for, referred to as variants:
 - a) **variant without negotiations** (basically this mode corresponds to an open tender, the SCT (Specification of Contract Terms) define all contract requirements; the economic operator submits the final tender right away),
 - b) **variant with optional negotiations** (can be called an open tender with an option for the contracting authority to add another round for the economic operators – the contracting authority provides, along with the announcement, the SCT, where all contract requirements are defined; the economic operators' submission of tenders is substantially final, whereas after the receipt thereof the contracting authority may, but doesn't have to, order to conduct negotiations, which may concern only those elements of the content of tenders that are subject to evaluation within the tender evaluation criteria and may not lead to changes in the content of the SCT, whilst after the negotiations are terminated, additional tenders are submitted),
 - c) **variant with mandatory negotiations** (upon the initiation of the procurement procedure, the contracting authority provides only a description of needs and requirements; in response to the announcement economic operators submit initial tenders, then the contracting authority invites the economic operators to negotiations, whereas the negotiations may not lead to changes in the minimum requirements for the subject-matter of the contract or the performance of the contract specified in the description of needs and requirements and may concern the contract terms and be targeted at an increase of the contract efficiency; upon the closure of the negotiations the contracting authority prepares the SCT and invites the economic operators to submit their final tenders, based on which it chooses the economic operator).



As part of optional and mandatory negotiations, the contracting authority may limit the number of economic operators to be invited to negotiations (applying the tender evaluation criteria specified for that purpose). That number cannot be smaller than 3.

The procurement procedure is initiated by publishing an announcement in the PPB.

A deadline for the submission of tenders, counted from the day of publication of the announcement in the PPB, may not be shorter than 7 days for supplies and services and 14 days for construction works. A deadline for the submission of additional tenders (the variant with optional negotiations), counted from the day of providing them with the invitation to submit tenders, is a minimum of 5 days. The deadline for submission of additional tenders (the variant with mandatory negotiations), counted from the day of providing them with the invitation to submit tenders, is a minimum of 5 days for supply and services contracts and a minimum of 10 days for construction contracts.

In the basic mode a statement confirming no grounds for exclusion, the fulfilment of conditions for participation in the proceedings and the selection criteria shall be submitted with the tender submitted in response to the announcement (Article 273 (2) nPPL), whereas the provisions concerning the ESPD shall not apply (Article 266 in conjunction with Article 125 (2) nPPL). Subjective evidence shall be presented by the economic operator whose tender was evaluated the highest, upon the request of the contracting authority, within a minimum of 5 days; the subjective evidence should be up-to-date (Article 274 (1) nPPL)

15. **Social services:** A major change concerns the regulation of awarding contracts for social services and other specific services (Article 359-361 nPPL). Generally speaking, standard contracts for social services and other specific services worth less than EUR 750,000 are, in principle, awarded just like other public procurement contracts whose value is below the EU thresholds, whilst contracts worth at least EUR 750,000 are awarded in accordance with the regulations on awarding contracts with a value above the EU thresholds. The provisions of Section IV, Chapter 4 provide for certain differentiation in the form of the possible determination of particular participation conditions, or the possible application of certain procedural simplifications for contracts worth at least EUR 750,000. The important thing is that in procedures concerning such contracts it is possible to file an appeal with the National Appeals Chamber (NAC).
16. **The competition:** The legal regulation of the competition (Article 325-358 nPPL) has been significantly modified and extended. The purpose of the competition should be the selection of creative work, which concerns in particular spatial planning, urban design, architectural design, architectural and building design, data processing, IT design and innovation undertaking (Article 325 (1) nPPL). Quite importantly, with reference to contracts with a value below the EU thresholds the subject-matter of which is the provision of architectural design or architectural and building design services, awarded under, among others, an open tender procedure or restricted tender procedure, the legislators imposed an obligation to organise a competition prior to conducting a contract award procedure (Article 325 (2-3) nPPL). In addition, certain competition "modes" have been introduced: restricted competitions and open competitions. Under the open competition procedure, all interested parties are allowed to present competition entries in response to the competition announcement (Article 338 nPPL), whereas under the restricted competition procedure the economic operators must first apply for permission to participate in the competition, whilst the entries are presented only by the invited participants (Article 339 nPPL). In the course of limited competition the contracting authority invites participants to submit competition entries, applying the grounds for exclusion,

the participation conditions or the selection criteria. One-stage competitions have also been distinguished from two-stage competitions (Article 329 nPPL). In two-stage competitions the participants first draw up study projects, so that at the second stage they could create competition entries based on the aforesaid projects. The contracting authority may limit the number of participants qualified for the second competition stage. The legislators have formulated quite detailed regulations regarding competition rules (Article 333-334 nPPL). It should be noted that not only “detailed preparation of the competition entry”, as provided for in the oPPL (Article 111 oPPL), but also “the performance of services based on the selected competition entry” (Article 326 nPPL) can be an award.

2.4. PREPARATION OF THE PROCUREMENT PROCEDURE, CONTENTS OF THE PROCUREMENT DOCUMENTATION

17. **Analysis of needs and requirements.** Public contracting authorities shall prepare, prior to the initiation of the procurement procedure, an analysis of needs and requirements in order to determine the optimal model of satisfaction of the contracting authority’s needs. (Article 83 nPPL)
18. **Estimating the contract value.** The principles of estimating the contract value have been slightly modified. The legislators have added a direct obligation to estimate cumulatively the value of contracts awarded by organisational units of the contracting authority, if it consists of several units, leaving at the same time a possibility to estimate separately the value of contracts awarded by the contracting authority’s organisational unit with financial autonomy (Article 33 (1-2) nPPL). Also, the legislators have expressed directly an obligation to estimate cumulatively the value of the planned similar supplies (Article 30 (2) nPPL).
19. **Preliminary market consultations.** The previous technical dialogue has been replaced by a similar instrument of market consultations (Article 84 nPPL).
20. **Specifications of Contract Terms.** The term “Specifications of Essential Terms of the Contract” has been replaced by the term “Specification of Contract Terms” (SCT).
21. **Tender security requirement.** For contracts with a value below the EU thresholds, the tender security may not be more than 1.5%. For contracts above the EU thresholds the 3% value remains (Article 97 (2) and Article 281 (4) and 299 (3) nPPL). Contracting authorities are not obliged to require to provide a tender security – also above the EU thresholds (Article 97 (1) nPPL). The catalogue of acceptable forms of tender security has been reduced - it no longer comprises bank sureties and sureties provided by SKOK. The principles of returning a tender security have been modified – i.a. the return of the tender security at the request of the economic operator. (Article 98 nPPL).
22. **Deadline for the submission of tenders.** Deadline for submission of tenders under the procurement procedures regarding contracts with a value at least equal to the EU thresholds may be 30 days if tenders are submitted in entirety using electronic means of communication (Article 138 (4) nPPL).

2.5. COURSE OF ACTION UNDER THE PROCUREMENT PROCEDURE

23. **Initiation of the procurement procedure.** Procurement procedures in competitive modes are always initiated by submitting an announcement in the Publications Office of the EU (above the thresholds) or by publishing the same in the PPB (below the thresholds) (Article 7 (18), Article 130 (1), Article 276, Article 298).

Previously the procedure was opened by posting an announcement on the contracting authority’s website, which, however, could not take place prior to the publication of the announcement in the Official Journal of the European Union or before a lapse of 48 hours from the submission of the announcement. Binding the initiation of the procedure with the submission of the announcement in the Publications Office of the EU makes it possible to precisely specify the initiation date (it is not necessary to foresee when the announcement will be published in the Official Journal of the European Union), which is important, e.g., in the case of amending the regulations (transitional regulations usually bind the application of old regulations as of the date of initiation of the procedure).

24. **Form of the tender and the ESPD.** Under the procurement procedure for awarding standard contracts with a value below the EU thresholds, a request for permission to participate in the procurement procedure and a statement confirming no grounds for exclusion, the fulfilment of conditions for participation in the procedure or the selection criteria (Article 125 nPPL) shall be submitted in electronic form (a qualified electronic signature) or in the electronic form signed with a trusted signature (using a trusted profile) or personal signature (using the so-called e-identity card). Above the EU thresholds an electronic form is required - a qualified electronic signature (Article 63 nPPL).
25. **Grounds for exclusion.** Changes regarding the grounds for exclusion have been implemented:
- The purpose of the changes was to transfer the mandatory grounds to the optional grounds. The nPPL provides for 7 mandatory grounds for exclusion (of which one applies to contracts with a value greater than EUR 10,000,000 for services and supplies and contracts with a value greater than EUR 20,000,000 for construction works) and 10 optional grounds for exclusion (Article 108-109 nPPL). The new grounds essentially refer to the previous ones, although there are certain changes and new items.
 - The duration of the effects of exclusion has been slightly modified for particular grounds. In particular, it is noted that because of misleading the contracting authority the economic operator shall be excluded from procedures for a period of one year, not only from a given procedure. (Article 111 nPPL)
 - It is possible not to exclude an economic operator based on certain optional grounds, when such exclusion could be plainly disproportionate. (Article 109 (3) nPPL)
 - The instrument of self-cleaning has been particularised, by indicating unambiguously that all three grounds for self-cleaning must occur jointly. (Article 110 nPPL)
26. **Clarifications of and explanations to the SCT.** The legislators have changed the deadlines for filing requests for clarifications of the SCT and providing explanations to the same. For procedures concerning contracts with a value at least equal to the EU thresholds, the aforesaid deadlines generally amount to: 14 days (request for clarifications) and 6 (explanations to the SCT) prior to the expiration of the deadline for the submission of tenders (Article 135 (2) nPPL), whilst for procurement procedures concerning contracts under the threshold respectively 4 days (request for clarifications) and 2 days (explanations to the SCT) prior to the deadline for the submission of tenders (Article 284 nPPL). In the event that a request for clarifications is filed after that deadline, the contracting authority does not have to provide answers.
27. **Amendments to the SCT.** In procurement procedures regarding contracts with a value at least equal to the EU thresholds, any amendments to the SCT involving changes in the announcement (which comprises in particular the change of the deadline for submission of tenders) can be made not later than 48h before that deadline expires (see Article 137 (5) nPPL).



28. **Changes in announcements.** If a change in the content of a procurement announcement substantially changes the procurement character, as compared to the original one, in particular significantly changes the scope of a procurement contract, the contracting authority is obliged to cancel the procurement procedure (Article 90 (3) nPPL).
29. **Reverse procedure.** Should the reverse procedure apply, the contracting authority may provide for in the SCT that the ESPD shall be submitted only by the economic operator whose tender received the highest score (Article 139 (1-2) nPPL). The reverse procedure shall not apply to procurement procedures with a value below the so-called EU thresholds (Article 266 in conjunction with Article 139 nPPL).
30. **Subjective evidence.** The legislators issued a new regulation describing the permitted subjective evidence (Regulation of the Minister of Development, Labour and Technology of 23 December 2020 on subjective evidence and other documents or statements which the contracting authority may request from the economic operator). The changes concern, among others, the catalogue of documents to be submitted in order to confirm no grounds for exclusion; the catalogue of evidence confirming the fulfilment of the conditions of participation in the procedure regarding technical and professional capacity has been broadened too (the regulation presently permits, i.a., to request for samples, descriptions and photographs, etc.)
31. **Tender validity period.** The legislators have changed tender validity period. Under the nPPL it is 90 days for procurement contracts with a value above the EU thresholds, whereas for procurement contracts of a substantial value (EUR 20,000,000 for construction works and EUR 10,000,000 for supplies and services) – 120 days (Article 220 nPPL). For procurement contracts with a value below the EU thresholds, the tender validity period is 20 days (Article 307 nPPL). The legislators have also changed the principles of extending that period (Article 220 and 307 nPPL). The contracting authority is obliged to choose the most advantageous tender within the tender validity period. (Article 252 nPPL)
32. **Provisions concerning procurement procedures under the threshold.** Procurement procedures with a value below the EU thresholds shall be subject to the provisions that regulate procurement procedures with a value at least equal to the EU thresholds, exclusive of the provisions set forth directly in Article 266 nPPL).
33. **Opening of tenders.** The opening of tenders shall take place after expiration of the deadline for submission of tenders forthwith, but not later than on a day following the deadline for the submission of tenders. The opening of tenders does not have to be public and open. The legislators have reduced the scope of information provided after opening of tenders. (Article 222 nPPL)
34. **Making tenders available.** The legislators have described more precisely the principles of making tenders with appendices available, i.a. a three-day period has been set to make them available. (Article 74 nPPL)
35. **Impartiality statement.** The legislators have extended the catalogue of persons obliged to make a statement on maintaining impartiality, indicating clearly i.a. the contracting authority's manager and the person awarding the contract. The Act also determines the time for the submission of the statements in question. (Article 56 nPPL)
36. **Simultaneity of the announcement of results.** The contracting authority is obliged to inform about the selection of the most advantageous tender and about the rejection of tenders simultaneously. (Article 253 nPPL)
37. **Rejecting a request for permission to participate in the procedure.** The legislators have implemented under the restricted tender procedure the instrument of rejection of a request for permission to participate in the procedure and specified the grounds for such rejection (Article 146 nPPL).



38. **The procurement procedure report.** The legislators have slightly modified the regulation of drawing up the procurement procedure report for the purpose of simplifying this obligation. It is no longer necessary, i.a., to provide in the report the information contained in the announcement, if the announcement is enclosed to the report. The report remains public and may be made available upon request. A new regulation was issued where the report model templates are described. (Article 71-80 nPPL).
39. **Informing the President of the PPO of tenders and requests.** The nPPL imposes on contracting authorities an obligation to provide the President of the PPO with information about any filed requests for permission to participate in the procedure or information about tenders within 7 days after the opening of tenders (including supplementary, initial and final tenders) or to cancel the procurement procedure (Article 81 nPPL).

2.6. AGREEMENTS

40. **The principle of collaboration.** The legislators have formulated directly the obligation of the contracting authority and the economic operator to collaborate in performing the agreement for the purpose of the due performance of the contract. (Article 431 nPPL)
41. **Abusive clauses.** The legislators have specified a catalogue of clauses which are prohibited in agreements. The designed contractual clauses may not provide for: 1) the economic operator's liability for delays, unless it is justified by the circumstances or the scope of the contract; 2) the imposition of contractual penalties for the economic operator's behaviour not related, directly or indirectly, to the subject-matter of the agreement or the proper performance thereof; 3) the economic operator's liability for circumstances which are in entirety attributable to the contracting authority; 4) a possibility for the contracting authority to reduce the scope of the contract without the specification of the minimum value or the value of the parties' performance. (Article 433 nPPL). One should particularly pay attention to the latter requirement, which obligates the contracting authority to explicitly specify the scope of the contract that will certainly be implemented. The President of the PPO shall publish exemplary abusive clauses (Article 469 (8) nPPL).
42. **Term of the agreement.** Pursuant to the nPPL, an agreement shall be concluded for a fixed period of time, whereas the requirement for that period of time not to be longer than 4 years has been removed by virtue of an amendment to the nPPL (Article 434 (1) nPPL). Simultaneously, it is permitted to award contracts the subject-matter of which is repetitive or continuous services, for a period longer than 4 years, provided that the conditions set forth in Article 434 (2) of the nPPL have been met.
43. **Obligatory elements in the content of the agreement.** The legislators require that a public procurement agreement should contain specific categories of provisions. They are set forth in Article 436 of the nPPL. They include a requirement to set maximum amounts of contractual penalties and to set the deadline for completion expressed in principle in time units (days/weeks/months/years) from the day of the conclusion of the agreement.
44. **Indexation.** A public procurement agreement for construction works or services concluded for a period longer than 12 months must contain provisions on the indexation of the remuneration of the economic operator. Detailed requirements as to the content of such provisions are set forth in Article 439 of the nPPL.



45. **The option right.** The legislators have introduced a regulation of the option right; it has to be stipulated in the form of understandable, precise and unambiguous contractual provisions which may not modify the general character of the agreement, and also must specify the type and maximum value of the option and the circumstances of using the option.
Any right exercised on the basis of provisions not complying with the afore-specified requirements shall be abrogated. (Article 441 nPPL)
46. **Performance Bond.** Certain principles of providing the performance bond have been adjusted. In particular, it is worth noting that in principle the performance bond should be provided in an amount not greater than 5% of the total price stipulated in the tender or the maximum nominal value of the contracting party's commitment under the agreement, and only in justified cases in an amount exceeding 5% of that value, but never greater than 10% (Article 452 (2-3) nPPL). One should also note that, as directly permitted in Article 453 (2) of the nPPL, the part of the security left after the completion may secure any claims not only under the warranty, but also under the guarantee. (Article 449-453 nPPL).
47. **Partial or advance payments.** For agreements concluded for a period longer than 12 months, it is necessary to include a provision for partial payments (the last part not more than 50%) or advance payments of the maximum value corresponding to 5% of the remuneration (Article 443 nPPL).
48. **Subcontracting.** The provisions of the nPPL contain a separate section which regulates issues relating to subcontracting (Article 462-465 nPPL). One should note that pursuant to Article 462 (2) of the nPPL, the contracting authority may request the economic operator to indicate in the tender the parts of the contract which the economic operator intends to entrust to subcontractors (previously, pursuant to Article 36b (1) of the oPPL, it was the duty of the contracting authority). It is also important that subcontracts may not contain provisions formulating the rights and duties of the subcontractor as regards contractual penalties and provisions referring to the conditions of the payment of remuneration in a manner that is less beneficial for that subcontractor than the provisions of the agreement concluded between the contracting authority and the economic operator. (Article 463 nPPL)
49. **Contract implementation report.** The contracting authority is obliged to prepare a report on the implementation of contracts when the amount spent on a given contract implementation was at least 10% higher than the tender price, when a contractual penalty was imposed on the economic operator in an amount corresponding to at least 10% of the tender price, when major delays occurred and when the contracting authority withdrew from or terminated the agreement. Contracting authorities may prepare the report in other situations. (Article 446 nPPL)
50. **Announcement of the fulfilment of the agreement.** Contracting authorities are obliged to publish in the PPB an announcement of the fulfilment of the agreement within 30 days from the day on which the agreement was fulfilled. (Article 448 nPPL)



2.7. REMEDIES

51. **Appealable actions/omissions.** The legislators have broadened the list of behaviours of the contracting authority against which an appeal may be lodged. In particular, in the procurement procedures below the threshold, the possibility to lodge an appeal is not limited to specific categories of violations of the Act, and also it is directly indicated that the basis for filing an appeal may be (1) including in a model agreement the provisions which are contrary to the Act, and (2) failing to conduct the contract award procedure or to organise the competition under the Act, despite the fact that the contracting authority was obliged to do so (Article 513 nPPL). It will be permitted i.a. to file an appeal against the conclusion of an annex to the agreement implementing a major change not in accordance with the provisions of the nPPL (Article 513 (3) in conjunction with Article 454 (1) nPPL).
52. **Public Procurement Court.** It has been agreed that appeals against verdicts of the NAC shall be settled by one public procurement court – the Regional Court in Warsaw. (Article 580 nPPL)
53. **Charge for filing an appeal.** By virtue of the provisions of the ipPPL, the legislators amended the Act of 28 July 2005 on court fees in civil cases as regards the amount of the flat charge for filing an appeal against the verdicts of the NAC. Previously, it was five times the fee for filing an appeal, and now it shall be three times the said fee.
54. **Attorneys.** An attorney can be a lawyer or legal adviser, and also a person managing the assets or interests of the party to or participant in the proceedings and a person having a permanent mandate relationship with the party to or participant in the proceedings, if the subject matter of the case falls within the scope of that mandate, as well as an employee (Article 510 nPPL). The legislators have also introduced the possibility to supplement a power of attorney and to allow, temporarily, an attorney who is unable to present a power of attorney, to participate, while maintaining the obligation to supplement thereof (Article 511 nPPL).
55. **Communication.** Pleadings in appeal proceedings shall be filed either in written or in electronic form, however, pleadings regarding an appeal and participation in appeal proceedings filed in electronic form must be signed with a trusted signature. (Article 508 nPPL).
56. **Division of appeal proceedings costs.** Pursuant to Article 575 of the nPPL, the parties to and the participant in the proceedings shall incur costs adequate to the outcome of the proceedings. In accordance with the Regulation of the President of the Council of Ministers of 30 December 2020 on particular types of costs of appeal proceedings, accounting for such costs, as well as the amount and manner of charging for filing an appeal, in the event that part of the charges presented in the appeal are admitted, the costs shall be divided in proportion to the number of charges admitted and dismissed. Also, it should be noted that the contracting authority may consider part of the charges presented in the appeal (Article 522 (4) nPPL).
57. **Deadline for filing an appeal.** An appeal shall be filed within 14 days from the day of delivery of NAC's verdict. (Article 580 (2) nPPL)
58. **Cassation appeal.** The legislators have introduced a possibility for the party to lodge a cassation appeal with the Supreme Court against the judgement issued by the public procurement court. (Article 590 (2) nPPL)
59. **Panels of the National Appeals Chamber.** In principle, appeals shall be examined by the NAC by a panel composed of three persons (above the EU thresholds) and by a single person (below the thresholds), unless NAC's President orders otherwise. (Article 487 nPPL).
60. **Amicable dispute settlement.** The provisions of the nPPL also implement a regulation regarding the amicable settlement of any disputes which might arise in connection with the implementation of public procurement agreements, i.a. before the Court of Arbitration at the General Counsel to the Republic of Poland. (Article 591-595 nPPL).

61. **Transitional regulations.** Pursuant to Article 98 (2) of the Act of 11 September 2019, the regulations implementing the Public Procurement Law Act for appeal proceedings initiated after 31 December 2020 relating to contract award procedures initiated before 1 January 2021 shall apply respectively to the provisions of the nPPL.

2.8. CONTROLS, PENALTIES

62. **Voluntary ex-ante control.** In procurement procedures regarding contracts with a value equal to or exceeding the EU thresholds, comprising aspects related to innovation or the subject matter of which is an innovative product, and which are not subject to mandatory ex-ante control, the contracting authority may request the President of the PPO to conduct an ex-ante control. (Article 614 nPPL)

2.9. CHANGES RESULTING FROM AMENDMENTS TO THE NPPL

63. **Contracts of minor importance.** The regulation regarding contracts of minor importance has been removed.
64. **Term of the agreement.** The legislators have removed the indication that agreements are concluded for a fixed period of time not longer than 4 years (leaving the requirement to specify the term of the agreement).
65. **Contract implementation report.** The premise of the obligation to prepare a contract implementation report has been amended, extending from 30 to 90 days the time of delay updating the obligation to prepare the report for contracts of substantial value (a minimum of EUR 20,000,000 for construction works and EUR 10,000,000 for supplies and services). For contracts with a value lower than the one specified above, the report has to be prepared in the case of a delay of at least 30 days.



3. SPECIAL-PURPOSE ACT IN RESPONSE TO COVID

Amendments to saCOVID selected from among those implemented on 29 November 2020, 1, 5, 16, 19, 23, 30 and 31 December 2020, as well as on 1, 5 and 15 January 2021, are discussed hereunder.

66. **Exclusion of application of the PPL.** Effective 29 November 2020, the legislators re-introduced to the saCOVID the objective exemptions from the application of the PPL regulations for contracts for services or supplies necessary to counteract COVID-19 in the case of a high likelihood of a rapid and uncontrolled spread of the disease or if this is necessary for the protection of public health (Article 6a saCOVID). Then, effective 1st January 2021, this provision was amended in such a way that currently it excludes the application of the provisions of the PPL (leaving unchanged the premise for the exclusion of the said provisions).
67. **Publication in the PPB.** If a contract is awarded with exclusion from the application of the provisions of the oPPL/nPPL under this basis the contracting authority is obliged to publish a notification of the award of such contract in the PPB, specifying i.a. the economic operator's business name, the description of the subject-matter of the agreement and the price, as well as grounds for the application of the exclusion (Article 6a (2) saCOVID).
68. **Possibility to work remotely during the isolation/quarantine.** For the duration of the announced state of epidemic threat or state of epidemic, employees and other persons engaged who are subject to a mandatory quarantine or a mandatory isolation at home may, with the consent of the employer or the person engaging them, perform work remotely and receive pay. (Article 4h-4ha saCOVID)
69. **Periodic medical examinations.** The period for the fulfilment of the obligations concerning periodic medical examinations of employees suspended for duration of the state of epidemic threat or the state of epidemic was extended from 60 to 180 days from the day on which a given state (of epidemic threat/of epidemic) was revoked. (Article 12a (2) saCOVID)
70. **Pre-employment medical examinations for administrative and office work.** The legislators have introduced a regulation, under which during the state of epidemic threat or the state of epidemic the persons employed at administrative and office posts are not obliged to submit to pre-employment medical examinations, if they hold a valid medical certificate stating no contraindications for working in the conditions described in the referral for a medical examination and if the employer states that the said conditions comply with the conditions existing in a given workplace. (Article 12a (5) (2) saCOVID)
71. **Pre-employment examinations for work other than administrative and office work.** The legislators have implemented a regulation extending, for the duration of the state of epidemic threat or the state of epidemic, for work other than administrative and office work, from 30 to 180 days the period in which it is not necessary to carry out pre-employment medical examinations in the event of (1) re-employment by the same employer to the same position or a position with the same work conditions, or (2) employment by a different employer for a given position if the person employed holds a valid medical certificate stating no contraindications for working in the conditions described in the referral for the medical examination and if the employer states that the said conditions comply with the conditions existing in a given workplace, exclusive of the persons employed to perform particularly dangerous work. The 180-day period shall be counted from the day of (1) termination or expiration of the previous employment relationship with that employer, or (2) termination or expiration of the previous employment relationship. (Article 12a (5) (1) saCOVID)



72. **Pre-employment medical examinations or check-ups.** The period upon the expiration of which a medical certificate issued by a physician unauthorised to carry out a pre-employment medical examination or check-up becomes invalid, was extended from 30 to 180 days from the day on which the state of epidemic threat was revoked, if the state of epidemic is not announced, or from the day on which the state of epidemic was revoked. (Article 12a (3) saCOVID).
73. **Payments from the Guaranteed Employee Benefits Fund (GEBF).** The legislators have changed the principles of settling the benefits and funds paid under Article 15gg (1-2) of the saCOVID in connection with layoff, economic layoff or reduced working hours following COVID-19. (Article 15gg (21) saCOVID).
74. **The so-called industry shield 6.0.** The entrepreneurs running the selected categories of business activities (designated with specific codes in the Polish Classification of Business Activities (PKD), in particular activities related to sales, catering, tourism, entertainment, culture, education, sport and organisation of fairs) whose income from these activities dropped by at least 40% were granted the right to apply for benefits for the protection of workplaces from the GEBF funds to subsidise pay for their employees (Article 15gga saCOVID) and for a one-off downtime benefit (Article 15zs² saCOVID); in addition they may apply for exemption from social insurance contributions for November 2020 (Article 31zo (10) saCOVID). As indicated in Article 15zzzh saCOVID, the support referred to, e.g., in Article 15gga, 15zs², 31zo of the saCOVID, in accordance with the conditions set forth in the communication from the European Commission (Temporary Framework for State aid measures to support the economy in the ongoing COVID-19 epidemic), constitutes the state aid aimed to remedy a serious disturbance in the economy. The Act authorises the Council of Ministers to broaden/renew the support by way of a regulation.
75. **Change of the deadline for filing an application for benefits from the Guaranteed Employee Benefits Fund.** The deadline for filing applications for benefits to subsidise the pay of employees referred to in Article 15g, 15ga and 15gg saCOVID, was set for 10 June 2021. The subsidies may be provided until 30 June 2021 (Article 15gh saCOVID). Simultaneously, during a period ending 30 June 2021 the aid mechanisms paid from the Labour Fund and GEBF under the rules set forth in Article 28 (2-4) of the Act of 11 October 2013 on special solutions connected with the protection of workplaces shall not apply. (Article 15gi saCOVID)
76. **Impact of COVID on agreements under the PPL.** In the regulation imposing on the parties to the public procurement agreement an obligation to notify immediately of the (existing or potential) impact of the circumstances connected with the occurrence of COVID-19 on the due performance of that agreement, the legislators have introduced a change under which the term 'public procurement agreement' should be construed, unlike before, in accordance with the provisions of the oPPL, but in accordance with the provisions of the nPPL. This raises doubts whether that notification obligation still concerns agreements concluded under the oPPL (Article 15r (1) saCOVID). An analogous change (introducing an appeal against the provisions of the nPPL instead of the oPPL) was made in the provision providing for a possibility to make a relevant amendment to the agreement in reaction to the circumstances referred to above. This raises doubts whether under this basis it is still possible to amend the public procurement agreement concluded under the oPPL (Article 15r (4) saCOVID). The aforementioned provisions shall apply respectively to agreements concluded with the exclusion of the application of the nPPL (Article 15r (11) saCOVID).



77. **One-off subsidies from the Labour Fund.** The legislators have added new Article 15zze⁴, under which district governors are granted the right to award to micro- and small entrepreneurs running the specific categories of business activity (designated by specific PKD codes) whose income earned in October or November 2020 was lower by at least 40% year-on-year a one-off subsidy to cover the costs of ongoing business activity. (Article 15zze⁴ saCOVID)
78. **Electronic delivery of postal items.** For the period ending 30 September 2021 Poczta Polska (the Polish Post) has been engaged to provide postal services consisting in sending registered mail using electronic means of communication (with the use of trusted profile) at the stage of delivery. Detailed principles concerning such postal items have been laid down. (Article 15zzu^{10a} – 15zzu^{10j} saCOVID).
79. **Suspension of the course of cases.** Pursuant to Article 15zzzzzn¹ saCOVID, for the duration of the state of epidemic announced due to COVID-19 a public administration authority may suspend the deadlines established for the handling of cases for a period of maximum 30 days, of which it notifies the parties by posting such information in the Public Information Bulletin on the website of the authority and by displaying the same in a visible place in its registered office. The periods established for the handling of cases may be re-suspended with the consent of a higher instance administrative authority. These provisions shall apply respectively to the provisions on the tacit handling of cases.
80. **Reinstatement of deadlines.** During the state of epidemic public administration authorities are obliged to notify the parties to proceedings of their failures to comply with the deadlines of certain categories. In the notification the public administration authority is obliged to set a 30-day deadline for filing a request to reinstate the deadline that was not complied with. Simultaneously, the deadline set in Article 58 §2 of the Code of Administrative Procedure for filing a request to reinstate the deadline was extended from 7 to 30 days from the day on which the cause of non-compliance with the deadline was determined. (Article 15zzzzzn² saCOVID)



4. SPECIAL ACT ON FUNDS (saOP)

Selected amendments to saOP implemented under the Act of 10 December 2020 amending the Act on specific solutions to support the implementation of operational programmes due to COVID-19 in 2020 and certain other acts are discussed hereunder.

81. **Extending the scope of application.** Article 1 (1) of the saOP was amended in such a way that it no longer refers only to the situations related to COVID-19 occurring in 2020, but also those to occur in the following years. The title of the Act was changed correspondingly.
82. **Revocation of the authorisation to amend a project.** The legislators have removed the previous authorisation given to the monitoring committee, referred to in Article 14 (1) of the implementing Act, to authorise in particularly justified cases, by way of resolution, the managing institution, the intermediary institution or the joint secretariat, to amend, at the request of the beneficiary, the project in such a way so that the amendments would result in the non-fulfilment of the project selection criteria. (Repealing of Article 4 (2) saOP).
83. **Reporting regarding irregularities resulting from COVID.** The legislators have changed the principles of reporting on deductions from expenditures due to irregularities being direct effects of the occurrence of COVID-19 which could not have been prevented despite exercising due diligence. A report specifying the amounts to be deducted should be submitted to the competent Minister responsible for public finance on a quarterly basis, not a monthly basis as it was previously. (Article 5 (5) saOP)
84. **Repealing of Article 13 saOP.** Article 13 of the saOP has been repealed. This article provided for the extension of the 30-day period for submission of requests for payment until 31 December 2020 and the time for completion of projects by 90 days, but maximally until 31 December 2023. This provision also authorised relevant institutions to extend the time limits referred to above up to 31 December 2023.
85. The provisions of the Act shall also apply to the European Neighbourhood Instrument. (Article 33 saOP)
86. The legislators have amended the regulation limiting the scope of application to certain provisions of the Act. Previously, Article 34 of the saOP indicated the application of Article 3-5, Article 6 (1) and Article 7-33 until 31 December 2020. Presently the catalogue of aforesaid provisions has been modified (Article 3, 4, 7-26, 28 and 29 saOP) and the period of their validity has been extended - until 31 December 2023.



5. THE REGULATION ON RESTRICTIONS

Selected provisions on the so-called sanitary restrictions provided for in the r.r.o.p. are discussed hereunder.

87. More than ten consecutive (superseding) regulations on restrictions have been entered in force, which have also been amended in the meantime. The currently binding regulation (r.r.o.p.) was passed on 21 December 2020 and entered into force on 28 December 2020. Since then it has been amended a couple of times, most recently effective 23 January 2021. Many of the obligations determined by this regulation have been in force in the current shape by 30 January 2021. Please find below our notes on some of the provisions of that regulation.
88. At present, by 31 January 2021, the usage of hotel services is largely limited. The usage of such services is basically permitted only in connection with the performance of certain duties (§10 (2) r.r.o.p.)
89. By 31 January 2021 any activities related to the organisation, promotion or management of events such as congresses and conferences can be performed only using the means of direct remote communication (§10 (18) r.r.o.p.).
90. By 31 January 2021 public and research libraries are allowed to perform activities consisting in making their collections available, provided that they will make sure that in the room made available to the users of library collections at any given time there is not more than one person per 15 m² of the surface area of such room, exclusive of librarians. (§10 (22) r.r.o.p.)
91. By 31 January 2021 employers shall provide (1) disposable gloves or hand disinfectants to their employees, regardless whether they work part time or full time, and (2) distance between work places of at least 1.5 m, unless it's impossible due to the character of the activity performed in a given company and the company provides the means of personal protection in relation to combating the epidemic. (§11 (3) (3) r.r.o.p.)
92. By 31 January 2021 exercising tasks by public administration offices or an organisational unit exercising public tasks can be limited to exercising only the tasks necessary to provide assistance to citizens. (§22 (1) r.r.o.p.)
93. By 31 January 2021 public administration offices or organisational units exercising public tasks are required to work remotely. (§23 (1) r.r.o.p.)
94. By 31 January 2021 in generally accessible places, including work establishments, if there's more than one person in one room, it is obligatory to cover the nose and mouth, unless the employer decides otherwise. (§27 (1) (2) (c) r.r.o.p.). The nose and mouth can be uncovered only while eating or drinking in work establishments (§27 (5) (3) r.r.o.p.)