

POSTPONEMENT OF THE ENTRY INTO FORCE OF PROVISIONS ON THE APPLICATION OF CONSUMER PROTECTION TO CERTAIN ENTREPRENEURS DUE TO THE SPREAD OF CORONAVIRUS IN POLAND

Under the Act Amending the Act on Special Solutions for Preventing, Counteracting and Combating COVID-19, Other Contagious Diseases and Related Crisis Situations, and Certain Other Acts of 31 March 2020 (the "Act") the entry into force of certain legal solutions requiring the application to certain entrepreneurs of provisions concerning prohibited contractual clauses, related to a warranty for defects, or provisions concerning the right to rescind an agreement concluded by long-distance means or off the undertaking's premises, has been postponed. As a result, the processes for entrepreneurs to adjust to the new provisions, for example by adjusting standard form agreements used in relationships with such customers, may be implemented later.

On 31 July 2019, an act was adopted with the purpose of limiting regulatory burdens introduced by amendments to a number of other acts. One of the important modifications is an amendment to the Civil Code under which certain provisions on consumer protection apply to natural persons conducting economic activity ("Individual Entrepreneurs").

The Act Amending Certain Acts in Order to Limit Regulatory Burdens came into force on 1 January 2020. However, a number of its provisions come into force on later dates, including the provisions discussed here, which were to come into force on 1 June 2020, but under the Act, they will not come into force until 1 January 2021.

Amendments initially contemplated

The amendments initially contemplated were to be far-reaching, as the authors of the amendments planned to change Art. 22¹ of the Civil Code by adding a second paragraph that could be interpreted as a requirement that undertakings apply all the provisions on consumer protection to legal transactions entered into with Individual Entrepreneurs.

Ultimately, however, it was decided that these provisions would be changed before sending the draft Act to the Sejm.

The wording of the provisions adopted by the Sejm

The provision under discussion is set out in Article 385⁵ of the Civil Code and it stipulates that the consumer protection set out in Articles 385¹ - 385³ of the Civil Code (that is concerning prohibited contractual clauses) must be applied to natural persons concluding agreements directly related to their business activities when the agreement indicates that it is not of a professional nature for such person (particularly bearing in mind the object of business activities conducted by that person and disclosed on the basis of the provisions on Central Registration and Information on Business).

Practical implications

The provisions that were to come into force at the beginning of June this year and that due to the COVID-19 pandemic and by virtue of the amended legislation will become effective on 1 January next year will be of vital importance for undertakings that offer their services and products to Individual Entrepreneurs, in particular financial market institutions, including banks. Such undertakings will need to review their standard form agreements. The amendments may also be important for foreign undertakings that enter into agreements with Polish "quasi-consumers".

Regardless of the other amendments introduced by the Act, such as the application to Individual Entrepreneurs of the provisions concerning the right to rescind an agreement concluded by long-distance means or off the undertaking's premises, or related to a warranty for defects, it seems that the entities most affected by the amendments may be those which have not offered their services and products to consumers so far and which will soon have to take into account in processes associated with the conclusion of agreements with customer the issues related to a potential assessment of the professional nature of the relationship (from the customer's perspective) and adjust their standard form agreements to the new legal environment accordingly.

CONTACTS

Grzegorz Namiotkiewicz
Partner

T +48 22 627 11 77
E grzegorz.namiotkiewicz
@cliffordchance.com

Andrzej Stosio
Partner

T +48 22 627 11 77
E andrzej.stosio
@cliffordchance.com

Piotr Daniewski
Legal Adviser

T +48 22 627 11 77
E piotr.daniewski
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Norway House, ul. Lwowska 19, 00-660
Warsaw, Poland

© Clifford Chance 2020

Clifford Chance, Janicka, Krużewski,
Namiotkiewicz i wspólnicy spółka
komandytowa

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.