

May 2020

## Financial Shield of the Polish Development Fund launched for SMEs

**On 27 April 2020, the European Commission (EC) approved the launch of the Financial Shield Support Program of the Polish Development Fund (PDF) for small and medium-sized enterprises ('PDF Financial Shield for SMEs' or 'the Support Program') and for micro-businesses. Applications for financial aid under the Support Program may be submitted starting from 29 April via electronic banking systems of banks cooperating with PDF in this regard.**

### **Changes in the Support Program for SMEs**

One of the most significant amendments to the Program, implemented in response to EC recommendations, relates to tax residence of the beneficial owner of the entity applying for support (the previous version of the Program set out the requirement of Polish tax residence). Under the current version of the Program:

- (i) the Program Beneficiary must be a tax resident of an EEA member state;
- (ii) the Beneficiary's business activity must be registered in Poland; and
- (iii) the entity's Beneficial Owner (as defined in the Act on Counteracting Money Laundering and Financing Terrorism [Journal of Laws of 2019, item 1115 – the AML Act]) is not a tax resident of a tax haven (entered on the EU list of non-cooperative jurisdictions for tax purposes).

However, these requirements may be waived if the Program Beneficiary or its Beneficial Owner undertakes to transfer their tax residency to Poland within 9 months from being granted financial aid under the Program.

### **Other terms of the SME Support Program**

The document entitled: "Regulations for enrolling in the State Support Program: Financial Shield of the Polish Development Fund for Small and Medium-sized Enterprises" ("PDF Regulations") setting out the terms of participation in the Program and the procedure for submitting applications and appeals, is now available on the PDF's website.

In order to enroll in the SME Support Program, it is essential to correctly determine the size of the business, taking into consideration the communicated criteria along with the relevant dates or periods.

Note the inconsistency between the definition of SME provided by the PDF and the one set out in the Polish Entrepreneurs' Law, to which the approval of EC refers, especially in terms of particular aspects of the definition, the date as at which the company's status is determined and the use of consolidated data when determining the company's size. Please bear in mind that, as per the PDF Regulations and the FAQ published on the PFDF's website, relevant data of partner and linked enterprises must be taken into consideration (pursuant to Commission Regulation (EU)

No 651/2014). This requirement was not present in the initially communicated participation terms.

Another prerequisite is a decline in economic turnover (revenue on sales) by at least 25 percent in any month after 1 February 2020, compared to the previous month or corresponding month of the previous year due to disruptions in the economy induced by COVID-19. However, it remains unclear whether the decline should be examined on the basis of the available financial information or tax data gathered based on the provided VAT return. Moreover, the EC's approval points to financial difficulties linked to deteriorated financial liquidity of the entity applying for support. It remains unclear how the criterion of deteriorated financial liquidity will be applied in the context of the prerequisite of a decline in turnover of at least 25 percent, under which there is no need to demonstrate that the company's liquidity has been affected.

Moreover, the Program introduces a specific definition of an "employee" which must be taken into consideration in the application process. In fact, the notion of an "employee" is understood differently when determining the size of business and when calculating the subsidy amount.

### **Applications**

The entire process, including issuance of the decision, possible appeals against it and signing an agreement with PDF, will be managed electronically via online banking systems.

Responses to FAQs published on the PDF website suggest that entrepreneurs who in April 2020 recorded a decrease in turnover by more than 25 percent will be allowed to apply for a subsidy not earlier than within 14 days from the date of submitting the April VAT return.

The applicants must provide a number of statements, submitted under pain of penal liability. They must declare that:

- (i) they have been authorized by the Beneficiary to perform all activities related to submitting the application and signing the support agreement;
- (ii) they have been advised of the criminal liability for making false testimonies and acting on behalf of the Beneficiary without the required authorization; and
- (iii) they release the intermediating bank from the banking confidentiality obligation in dealings with PDF to the extent necessary for the conclusion and performance of the support agreement.

The applications and statements will be verified automatically, based on the data from public registers and information collected by banks, the Polish Social Security Administration, the National Revenue Administration, the Ministry of Finance and other entities.

### **The amount of the subsidy and conditions for discharge**

The value of the subsidy depends on the value of sales revenues for 2019 and the amount of decline in revenues with the cap of PLN 3.5M (ca. EUR 77K) per entity. Importantly, under the Temporary Framework for State aid measures set out in the Communication of the Commission

of 19 March 2020, the aid shall not exceed EUR 800K per undertaking, where in case of groups of companies, related parties shall also be taken into consideration. This means that the previous financial support granted to the beneficiary and its related parties under section 3.1 of the Communication is jointly covered by the cap of EUR 800K.

The subsidy shall be used to cover day-to-day operating costs, excluding the costs relating to direct or indirect acquisition of another entity (acquisition ban) and settlements with the business owner or owner-related entities. In turn, it is allowed to use the subsidy for early repayment of loans (up to a maximum of 25 percent of the loan value).

The subsidy will be provided as an interest-free loan.

It may be discharged in a maximum of 75 percent of the subsidy at the end of the 12th calendar month from the date it was granted. The discharge rules are as follows:

- a discharge of 25 percent may be granted if the business activity is preserved;
- a discharge of 25 percent may be granted depending on the cash loss on sales in the company;
- a discharge of 25 percent may be granted if the average employment is preserved for 12 months.

Detailed financing conditions, the scope of the Beneficiaries' obligations as well as the terms and conditions of the loan repayment or discharge will be set out in the Financial Support Agreement concluded between the Beneficiary and PDF.

### **PDF support for large corporates under the Financial Shield**

PDF Support Program for large corporates under the Financial Shield still awaits approval by EC.

Two separate notifications have been submitted in this respect - one concerning preferential financing and one for equity financing.

This means that the currently communicated by PDF conditions of participation in the Financial Shield Support Program for large corporates may change.

Some of the changes that have already been noticed include amendments to the tax residency requirement for the Program Beneficiary and the Beneficial Owner, similar to the ones implemented for SMEs, and granting access to the Large Corporate Support Program also to selected SMEs, with the possibility of simultaneous participation in the two types of Support Program being excluded.

### **How can KPMG assist you?**

KPMG provides comprehensive assistance in the scope of verification of conditions required to participate in the SME and Large Corporate Support Program, in particular in determining the size of the business, meeting eligibility conditions and examining the admissible limits of public aid for a given undertaking.

If you would like to learn more about the issue discussed, please do not hesitate to contact us at [mampytanie@kpmg.pl](mailto:mampytanie@kpmg.pl)

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