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THE LEGAL STATUS OF THE AID AND LOAN FUNDS IN THE SYSTEM OF POLISH LEGISLATION

Abstract

Aid and loan funds are a self-help institution in the work environment. The Act of 11 August 2021 on aid and loan funds regulates their status for the first time in a comprehensive manner. The article presents issues related to their organization and functioning in the Polish legal system.

Słowa kluczowe: kasy zapomogowo-pożyczkowe, pracownicza samopomoc

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Aid and loan funds in Poland have a nearly 100-year tradition. They are self-help organisations in the working environment. Their objective is to provide material assistance to their members in the form of interest-free loans and non-refundable benefits. The Act of 11 August 2021 on aid and loan funds (Dz.U. 2021, item 1666, hereinafter referred to as: “the Act on the ALF”) was the first to comprehensively regulate their activity by an act of statutory rank, which comprehensively defines the mechanisms of their functioning. In this article I presented the basic issues related to their organisation and principles of functioning.

In accordance with Art. 7 of the Act on the ALF, a fund may be established if 10 persons who are gainfully employed declare their willingness to belong to it. Against this background the question arises how to understand the legal status of these persons. Article 2 point 1 of the Act on the ALF refers in this matter to Art. 1¹ point 1 of the Act of 23 May 1991 on trade unions (Dz.U. 2019, item 263 consolidated text) (Baran 2020b, pp. 39 ff). When decoding this mechanism it seems legitimate to state that not only employees (Baran 2020a, pp. 33 ff), but also persons providing paid work on a basis other than employment relationship, have the ability to establish a savings and loan fund. This applies not only to persons employed under civil law contracts (e.g. mandates), but also to self-employed persons. In this normative context there arises the problem of creating aid and loan funds in militarised structures (e.g. in the structures

of the Police; cf. Art. 60 of the Act on the ALF). It seems that the question posed in this way should be answered in the affirmative. This is supported by the textual wording of Art. 10 § 7 of the Act on the ALF. This interpretation option is also supported by *a completudine* and *a coherentia* arguments. Retirement or disability does not deprive a person of the right to become a member of an aid and loan fund. This regulation applies not only to employees, but also to officers.

A person who performs gainful employment for a given employer is admitted as a member of the aid and loan fund on the basis of a submitted declaration. A resolution to admit such a person is adopted by the management board no later than one month from the date of submission of the declaration (Art. 11 of the Act on the ALF). It is unacceptable to apply any mechanisms of a discriminatory nature in this respect.

From the point of view of a member's status as a fund member, their rights and duties are important. As regards the former, they have the right to:

- collect membership contributions,
- take out loans,
- receive allowances,
- participate in the general meeting,
- elect and be elected to the board of directors and the audit committee,
- familiarise themselves with the documents produced by the governing bodies of the fund.

In addition to the members' rights, they also have obligations. The most important of these are of a financial nature, namely the payment of the registration fee and monthly membership fees. Furthermore, the member must comply with the provisions of the statutes and resolutions of the fund's governing bodies.

An aid and loan fund may be established with an employer. In Art. 8 § 1 of the Act on the ALF also allows for the establishment of a fund that covers at least two employers. Also in this case the number of founders cannot be lower than 10 persons performing paid work. As a result, the provisions in force allow for the establishment of both company and inter-company funds, which should be noted with approval.

An issue that needs to be considered is the question which employers may establish aid and loan funds. Due to the personal scope of the Act on the ALF the range of employers is *de lege lata* very wide. The Act on the ALF (in Art. 2(2)) applies—*lege non distinguente*—not only to those employers employing exclusively employees, but also to heterogeneous employers, employing both employees and non-employees and, finally, also to non-employers, who employ exclusively self-employed persons (b2b) and persons providing work on the basis of civil law contracts (e.g. mandate contracts; Baran 2020, p. 37). This type of solution is a certain novelty in the Polish legal system. The employer is obliged to provide the funds with office premises, a place to store cash, assistance in bookkeeping, and financial and legal services. Moreover, the employer is obliged to make deductions for the benefit of the aid and loan fund in respect of the registration fee, membership fees and loan (Art. 6 of the Act on the ALF) instalments. The employer

is also obliged by law to notify the employees of the status of their membership fees and the level of indebtedness.

The rules of organisation and operation of an aid and loan fund are specified in its statute, which is adopted by its members at the founding meeting. It is not a source of labour law within the meaning of Art. 9 § 1 of the Labour Code (Act of 26 June 1974, Dz.U. 2020, item 1320 consolidated text, as amended, hereinafter referred to as: “the Labour Code”), as it does not concern the rights and obligations of the parties to the employment relationship. Pursuant to Art. 15 of the Act on the ALF, the statutes must contain:

- data identifying the provident society in legal terms (e.g. name, registered office, address of the employer),
- objectives and demands of the fund,
- structure of the fund’s governing bodies or management board,
- the way the fund is represented,
- mechanisms for the election of fund authorities,
- the rules for the collection and distribution of funds.

This list is not enumerative. The statute may also define other aspects of the activities of an aid and loan fund than those provided for in Art. 15 of the Act on the ALF. It is worth emphasising here that the statutes may not impose on the employer any obligations other than those defined by law, unless they are provided for in a collective labour agreement or another collective agreement (Baran 2020, pp. 83 ff).

When analysing the issue of the statutes of the aid and loan fund, attention should be paid to the question of its organisation. The basic factors in this matter are set out in Art. 16–29 of the Act on the ALF, but the provisions of the statutes may make them more specific and detailed. The general meeting (Art. 16 and 17 of the Act on the ALF) is the most important body of the aid and loan fund. In detail, its competences include:

- adopting the statutes of the fund and amending them, if necessary (Art. 21 point 1 of the Act on the ALF),
- election and dismissal of members of the management board and members of the audit committee (Art. 21 point 2 of the Act on the ALF),
- the determination of the financial policy of the fund (Art. 21 points 3 and 6 of the Act on the ALF),
- the determination of the organisational structure of the fund (Art. 21 points 9 and 10 of the Act on the ALF).

A very important aspect of the activities of the general meeting of a aid and loan fund is the supervision of its activities. This includes, on the one hand, accepting the reports of the management board and the audit committee on current activities and approving the financial statements required by the accounting regulations. It is the general meeting that decides about covering any potential financial damages or losses in the activities of the fund.

The Act on the ALF provides for an ordinary or extraordinary general meeting. An ordinary meeting is convened by the board at least once a year. It may be held using electronic means of communication. In such case, a real-time transmission of the meeting is required, which allows for the identification of the person using the electronic (Art. 20 of the Act on the ALF) means of communication. The casting of votes may also take place in this form.

The executive and governing body of an aid and loan fund is the management board. Its members are elected by the general meeting for a term of four years. It (Art. 24 of the Act on the ALF) is responsible for managing the day-to-day affairs of the fund, both external and internal. Among them, the decisions of the management board concerning the granting of loans and allowances (Art. 24 points 3 and 5 of the Act on the ALF) to members are of particular practical importance. No less important is the competence in the area of financial discipline of the aid and loan fund, in particular the control of timely payments and withdrawals of money and keeping records of these transactions. The members of the management board also have reporting duties (e.g. Art. 21 points 11, 12, and 13 of the Act on the ALF). They do not receive remuneration for performing their work on the board. At this point it should be noted that a person who has been sentenced by a final judgment for an offence prosecuted by public indictment or an intentional fiscal (Art. 18 point 5 of the Act on the ALF) offence cannot be a member of the management board.

The internal supervisory and control functions within the structure of the aid and loan fund are performed by the audit committee. Its tasks include protecting the assets of the fund, controlling the observance of the law by the management and ensuring that payments and withdrawals are properly documented. If the audit committee finds that the management board has not complied with the law or financial discipline in its activities, it demands that an extraordinary general meeting be convened immediately, during which it proposes that the management board be dismissed.

The audit committee, unlike the management board, operates periodically. At least once a quarter it inspects the activities of the aid and loan fund both from the point of view of legality and regularity. It is obliged to draw up a protocol for each audit. Its chairman has the right to participate in the meetings of the management board in an advisory (Art. 28 point 1 of the Act on the ALF) capacity.

In this context, the question arises as to whether other bodies (e.g. committees) can operate within an aid and loan fund. Personally, I am of the opinion that it should be possible, if the statutes provide for it.

A very important issue in the functioning of aid and loan funds is their financial management. The financial resources consist of three basic funds:

- savings and loans,
- reserve,
- aid.

They are obligatory and must therefore be created in every aid and loan fund. Other special-purpose funds may also be created under the statutes.

In practice, the savings and loan fund is the fundamental element. It is financed from the members' funds. The members contribute their registration fees and monthly membership dues as well as loan repayments. Its main purpose is to grant loans to members. The loan agreement must be made in writing, by document or electronically. If the amount of the loan exceeds the amount of the accumulated membership contributions, a statutory condition for granting the loan is that at least two guarantors undertake to repay the member's debt should he not be able to do so in time. The guarantor can only be a person in gainful employment with an employer (Art. 35 point 4 of the Act on the ALF). Along with the undertaking, the guarantor shall agree for the amounts necessary to repay the loan to the member to be deducted from their remuneration.

The day-to-day management of the savings and loan association's funds is carried out by the management board. In the event of a delay in repayment, the debtor (wage-earner) is called upon to settle the debt. If payment is not made in time, the management board has the right to cover the debt from the guarantors' membership fees or to deduct it from their wages or allowances.

In addition to the aid and loan fund, a reserve (Art. 32 of the Act on the ALF) fund is obligatorily established. It is built up from members' registration fees, unclaimed returns of members' contributions, interest on fixed-term deposits and court-ordered interest as well as donations, legacies and bequests. Its purpose is to cover damages and losses, bad debts, commissions and fees for the operation of the payment account. In accordance with the provisions of Art. 41, bad debts may be written off and paid from this fund.

The third type of mandatory fund is the provident fund (Art. 33 of the Act on the ALF). It is established from deductions from the reserve fund and voluntary contributions made by members. It is used to pay benefits, i.e. non-returnable pecuniary payments, in the case of random events specified in the fund's statutes (e.g. death in a fund member's family). Detailed premises and principles of the payments are regulated by the fund's statutes.

The funds belonging to the aid and loan fund are kept in payment accounts, which are opened at the request of the management board. It is the management board who designates the persons who have the right to dispose of the money in these accounts.

The Act on the ALF also provides for external supervision of the aid and loan fund. Trade unions are central in this matter. Pursuant to Art. 5 § 1 in question, control over the fund is exercised by the trade union organisation operating with the given employer, referred to in Art. 25¹ of the Act on trade unions (Książek 2020, pp. 135 ff). However, if there is more than one trade union organisation operating with the employer, control is exercised jointly by all the organisations by establishing a joint trade union organisation, within the meaning of Art. 30 point 4 of the Act on trade unions (Książek 2020, pp. 135 ff) and appointing a particular person. In the event of failure to establish a joint trade union representation, control pursuant to Art. 5, Clause 2 *in fine* of the Act on the ALF is exercised by the organisation which unites the biggest number of persons performing paid work with the employer with whom that organisation operates.

However, if there is no trade union organisation at the employer's company, the employees' (Baran, Lekston 2020, pp. 514 ff) council exercises control over the aid and loan fund.

To sum up the considerations on the Act on the ALF, one may conclude that it constitutes a solid legal basis for the functioning of self-help mechanisms in labour relations. At present, it seems premature to assess whether it will constitute a new quality in the labour environment.

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