

# ŚRÓN & ŁAKOMECKI

KANCELARIA PRAWNICZA S.C.



**ABC LEGAL**  
KANCELARIA PRAWNICZA

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According to the law  
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ul. Paderewskiego 6/11  
61-770 Poznań  
<https://abclegal.com.pl/>

## Changes in consumer law in 2021

**On January 1, 2021, changes to the (Polish) Civil Code (hereinafter referred to as C.C.) as well as changes to the Consumer Rights Act (hereinafter referred to as: Consumer Law), introduced by the Act of July 31, 2019 amending certain acts in order to reduce the regulatory burden (the indicated date results from the so-called anti-crisis shield i.e. the Act of March 31, 2020 amending the Act on special solutions related to the prevention and combating of COVID-19, other infectious diseases and emergencies caused by them, and some other acts, which changed the original date of entry of the above-mentioned changes from June 1, 2020 to January 1, 2021) will enter into force. These changes are very important for many entrepreneurs.**

The essence of the mentioned changes is the partial **extension of consumer protection to an entrepreneur who runs a sole proprietorship (individual business activity), provided that he/she concludes a contract not covered by the scope of his/hers business activity and the contract is not of professional nature from the perspective of this sole proprietorship.**



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For the business concluding contracts with sole proprietorships, this means that the first step that ought to be taken is to **verify whether the contract is of a "professional nature"**.

**Moreover the new regulation will consequently generate numerous new obligations for sellers or service providers, not only in the scope of the above-mentioned need to verify the professional nature of contracts concluded with sole proprietorships, but also to properly adapt the provisions of these contracts and the applicable general terms and conditions, regulations, etc. to the consumer law and the fulfillment of further obligations, such as the information obligation regarding the right to withdraw from a distance (remote) contract.**



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**Verification of whether a given contract is of "professional nature" will be based on an entry in the Central Register and Information on Economic Activity (Centralna Ewidencja i Informacja o Działalności Gospodarczej), especially on the basis of the so called PKD codes, specifying the object of economic activity.**

The result of such verification will determine whether the purchasers of goods or services who are sole proprietors will be entitled to specific consumer rights or not. **In practice, the indicated verification may raise many doubts and cause practical problems,** will be undoubtedly time consuming and will mean extra effort for the staff of the company/entrepreneur concluding a contract with a sole proprietor. **Verification obligations will lay with the entrepreneur being the seller of the goods or the service provider** and the issue of qualifying a given contract based on the PKD codes to contracts concluded professionally is not obvious.



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For example, it is currently pointed out in the literature that, for example, in the case of providing health-related services, e.g. like dental services, the purchase of medical equipment will be treated as a contract of a professional nature whereas the purchase of office supplies will probably not, although office supplies will obviously be used in the business conducted by the buyer as well.

**The issue of correct verification of the contract with a sole proprietor will be very important, as depending on the verification results such an entrepreneur may or may not refer to certain provisions of consumer protection and the seller of goods or services provider will have to comply with these provisions.**



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In particular, a person being a sole proprietor who concludes a contract that is not of professional nature **will be provided with the consumer protection** in the following areas:

- the ineffectiveness and prohibition of using prohibited contractual provisions, i.e. abusive clauses;
- the seller's liability under the warranty for defects towards the buyer, i.e. with regard to complaints as far as defects in the sold item are concerned (with the possibility of excluding or limiting the liability under the warranty);
- the consumer's rights and the entrepreneur's obligations expressed in Chapter 4 of the consumer law, i.e. in particular, connected with the consumer right to withdraw from a distance (remote) contract without giving any reason for withdrawal, within 14 days of receiving the item.



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Due to a very wide range of changes introduced by the discussed regulation **we encourage you to verify, as soon as possible, to what extent it will apply to your business and then to review your contract templates, order forms regulations and general terms and conditions to adapt them to the new regulations, described above.**

**The scope of the changes is so significant that it may considerably affect your business activity and force significant changes of mentioned documentation, e.g. the need to remove – at least in relation to sole proprietorships that conclude non-professional contracts – provisions which are allowed between entrepreneurs but may be deemed as abusive clauses in consumer trade.**

Due to the complexity of the subject matter, our Law Firm is available for further questions and explanations.

