

INFORMATION ON THE REQUIREMENTS FOR FOREIGN INVESTMENT FIRMS PROVIDING INVESTMENT SERVICES¹ IN THE REPUBLIC OF POLAND

I. The activities of a foreign investment firm providing investment services in the Republic of Poland through a branch shall be governed by the following provisions of the Act of 29 July 2005 on trading in financial instruments (Journal of Laws 2021, item 328, as amended), hereinafter: ‘Act on trading’:

- the provisions of Articles 3a, 7a, 117, 117a, 116 and 118 of the Act on trading,
- the provisions of Section IIIa of the Act on trading (Identification of shareholders, providing information to shareholders and facilitating the exercise of shareholders’ rights; Articles 68i–68n of the Act on trading),
- the provisions of Section IV, Chapter 1, Division 1, with the exception of the provisions of Articles: 69(1), 82, 83a(1), 84–85, 86(1), and 89(1) and 89(2) of the Act on trading (Conducting business as investment firms; Articles 69–94 of the Act on trading),
- the provisions of Section IV, Chapter 5 of the Act on trading (Policy on involvement; Articles 131n–131r of the Act on trading),
- the provisions of Chapter V of the Act on trading, in particular Article 136 – only in the case of participation in the compensation scheme operated by the National Depository for Securities (Krajowy Depozyt Papierów Wartościowych S.A.) (Protection of investors’ interests; Compensation scheme; Articles 132–146 of the Act on trading),
- the provisions of Section VI of the Act on trading (Access to information of a special nature; Articles 147–153 of the Act on trading),
- the provisions of Article 162(7–8) and Article 163(9–10) of the Act on trading,
- the provisions of Articles 166a, 168a and 169 of the Act on trading,
- the provisions of Section IX of the Act on trading (Civil liability; Article 177 of the Act on trading),
- the provisions of Section X of the Act on trading (Penal provisions; Articles 178–184 of the Act on trading).

An investment firm’s branch should pay special attention to the provisions of Articles 13 and 83 of the Act on trading, and regulations issued pursuant to Article 13(4) and Article 94(1) point 1 of the Act on trading.

In connection with the provision of Article 5 point 1 of the Act of 29 July 2005 on capital market supervision (Journal of Laws 2020, item 1400, as amended), hereinafter referred to as ‘Act on supervision’, the following provisions also apply to foreign investment firms providing investment services in the Republic of Poland through a branch, in particular:

- the provisions of Chapter 4 of the Act on supervision (Inspection and blocking of

¹ Please note that the Polish Act on trading in financial instruments uses the term ‘brokerage activities’ (PL: działalność maklerska), whose definition corresponds to the definition of ‘investment services and activities’ and “ancillary services” indicated in Annex 1, Section A and B of MiFID II.”

- accounts; Articles 24–44 of the Act on supervision),
- the provisions of Chapter 5 of the Act on supervision (Penal provisions; Articles 45–46 of the Act on supervision).

In connection with the provision of Article 1 point 2 of the Act of 29 July 2005 on public offering, conditions governing the introduction of financial instruments to organised trading, and public companies (Journal of Laws 2021, item 1983, as amended), hereinafter: ‘Act on public offering’, the following provisions also apply to foreign investment firms providing investment services in the Republic of Poland through a branch, in particular:

- the provisions of Chapter 4 of the Act on public offering (Qualifying holdings at public companies; Articles 69–90b of the Act on public offering),
- the provisions of Article 97 of the Act on public offering,
- the provisions of Chapter 8 of the Act on public offering (Civil liability; Article 98 of the Act on public offering),
- the provisions of Chapter 9 of the Act on public offering (Penal provisions; Articles 99–104a of the Act on public offering).

The KNF Board points out, in connection with the provisions of the Article 92(1) and (3) of the Act on trading, that a branch of a foreign investment firm may join the Chamber of Brokerage Houses (Izba Domów Maklerskich) and/or the Chamber of Fund and Asset Management (Izba Zarządzających Funduszami i Aktywami), which are voluntary and self-governing organisations of investment firms or investment fund management companies, and investment firms operating solely in the field of portfolio management or investment advisory services in regard to financial instruments admitted to organised trading, operating pursuant to the Act of 30 May 1989 on chambers of commerce (Journal of Laws 2019, item 579) and pursuant to their statutes.

The KNF Board points out that a foreign investment firm operating in the Republic of Poland through a branch, in order to comply with provisions of a given act of statutory law, shall also comply with acts of a lower rank than the acts of statutory law, i.e. implementing acts which are issued pursuant to and supplement the acts of statutory law.

The KNF Board points out that a foreign investment firm providing investment services in the Republic of Poland through a branch shall apply the following implementing acts to the Act on trading:

1. Regulation of the Minister of Finance of 30 May 2018 on the procedure and conditions to be followed by investment firms, banks referred to in Article 70(2) of the Act on trading in financial instruments, and custodian banks (Journal of Laws 2020, item 1922, as amended),
2. Regulation of the Minister of Finance of 29 May 2018 on detailed technical and organisational conditions for investment firms, banks referred to in Article 70(2) of the Act on trading in financial instruments, and custodian banks (Journal of Laws 2018, item 1111),
3. Regulation of the Minister of Finance of 22 February 2019 on the scope, procedure, form

and time limits for submission of information by investment firms, banks referred to in Article 70(2) of the Act on trading in financial instruments, and custodian banks (Journal of Laws 2019, item 531, as amended),

4. Regulation of the Minister of Finance of 12 October 2018 on reporting obligations in relation to securities issued by the State Treasury (Journal of Laws 2021, item 1431),
5. Regulation of the Minister of Finance of 12 April 2019 on the requirements for alternative trading systems and organised trading platforms operated by investment firms (Journal of Laws 2019, item 734).

A foreign investment firm providing investment services in the Republic of Poland through a branch shall apply the following implementing act to the Act on supervision:

1. Regulation of the Minister of Finance of 17 December 2019 on payments to cover the costs of capital market supervision (Journal of Laws 2019, item 2486, as amended).

A foreign investment firm providing investment services in the Republic of Poland through a branch shall apply the following implementing act to the Act on public offering:

1. Regulation of the Minister of Finance, Development Funds and Regional Policy of 26 November 2020 on the templates of the calls to subscribe for the sale or exchange of shares of a public company, the detailed manner of their announcement and the conditions for the acquisition of shares as a result of such calls (Journal of Laws 2020, item 2114).

Regardless of the above-mentioned acts of Polish law, in matters related to a foreign investment firm providing investment services in the Republic of Poland through a branch, the following shall apply: Commission Delegated Regulations (EU) to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 of 12 June 2014, pp. 349–496) and Commission Delegated Regulations (EU) to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 of 12 June 2014).

II. The activities of a foreign investment firm providing investment services in the Republic of Poland without a branch shall be governed by, in particular, the following provisions of the Act of 29 July 2005 on trading in financial instruments (Journal of Laws 2021, item 328, as amended), hereinafter referred to as ‘Act on trading’:

- the provisions of Articles 7a, 117, 117a, 116 and 118 of the Act on trading,
- the provisions of Section IIIa of the Act on trading (Identification of shareholders, providing information to shareholders and facilitating the exercise of shareholders’ rights; Articles 68i–68n of the Act on trading),
- the provisions of Section IV, Chapter 1, Division 1, with the exception of the provisions of Articles: 69(1), 82, 83, 83a(1), 84–85, 86(1) and Article 89(1) and (2) of the Act on trading (Conducting business as investment firms; Articles 69–94 of the Act on trading),
- the provisions of Section IV, Chapter 5 of the Act on trading (Policy on involvement; Articles 131n–131r of the Act on trading),

- the provisions of Section VI of the Act on trading (Access to information of a special nature; Articles 147–153 of the Act on trading),
- the provisions of Article 162(7–8) and Article 163(9–10) of the Act on trading,
- the provisions of Articles 166a, 168a and 169 of the Act on trading,
- the provisions of Section IX of the Act on trading (Civil liability; Article 177 of the Act on trading),
- the provisions of Section X of the Act on trading (Penal provisions; Articles 178–184 of the Act on trading).

A foreign investment firm providing investment services without a branch should pay special attention to the provisions issued pursuant to Article 94(1) point 1 of the Act on trading.

In connection with the provision of Article 5 point 1 of the Act of 29 July 2005 on capital market supervision (Journal of Laws 2020, item 1400, as amended), hereinafter referred to as ‘Act on supervision’, the following provisions also apply to foreign investment firms providing investment services in the Republic of Poland without a branch, in particular:

- the provisions of Chapter 4 of the Act on supervision (Inspection and blocking of accounts; Articles 24–44 of the Act on supervision),
- the provisions of Chapter 5 of the Act on supervision (Penal provisions; Articles 45–47 of the Act on supervision).

In connection with the provision of Article 1 point 2 of the Act of 29 July 2005 on public offering, conditions governing the introduction of financial instruments to organised trading, and public companies (Journal of Laws 2021, item 1983, as amended), hereinafter referred to as ‘Act on public offering’, the following provisions also apply to foreign investment firms providing investment services in the Republic of Poland without a branch, in particular:

- the provisions of Chapter 4 of the Act on public offering (Qualifying holdings at public companies; Articles 69–90b of the Act on public offering),
- the provisions of Article 97 of the Act on public offering,
- the provisions of Chapter 8 of the Act on public offering (Civil liability; Article 98 of the Act on public offering),
- the provisions of Chapter 9 of the Act on public offering (Penal provisions; Articles 99–104a of the Act on public offering).

The KNF Board points out, in connection with the provisions of Article 92(1) and (3) of the Act on trading, that a foreign investment firm may join the Chamber of Brokerage Houses (Izba Domów Maklerskich) and/or the Chamber of Fund and Asset Management (Izba Zarządzających Funduszami i Aktywami), which are voluntary and self-governing organisations of investment firms or investment fund management companies, and investment firms operating solely in the field of portfolio management or investment advisory services in regard to financial instruments admitted to organised trading, operating pursuant to the Act on 30 May 1989 on chambers of commerce (Journal of Laws 2019, item 578, as amended) and pursuant to their statutes.

The KNF Board advises that a foreign investment firm providing investment services in the Republic of Poland without a branch shall apply the following implementing acts to the Act on trading:

- 1 Regulation of the Minister of Finance of 30 May 2018 on the procedure and conditions to be followed by investment firms, banks referred to in Article 70(2) of the Act on trading in financial instruments, and custodian banks (Journal of Laws 2020, item 1922, as amended),
- 2 Regulation of the Minister of Finance of 29 May 2018 on detailed technical and organisational conditions for investment firms, banks referred to in Article 70(2) of the Act on trading in financial instruments, and custodian banks (Journal of Laws 2018, item 1111),
- 3 Regulation of the Minister of Finance of 22 February 2019 on the scope, procedure, form and time limits for submission of information by investment firms, banks referred to in Article 70(2) of the Act on trading in financial instruments, and custodian banks (Journal of Laws 2019, item 531),
- 4 Regulation of the Minister of Finance of 12 April 2019 on the requirements for alternative trading systems and organised trading platforms operated by investment firms (Journal of Laws 2019, item 734).

A foreign investment firm providing investment services in the Republic of Poland without a branch shall apply the following implementing act to the Act on supervision:

1. Regulation of the Minister of Finance of 17 December 2019 on payments to cover the costs of capital market supervision (Journal of Laws 2019, item 2486, as amended).

A foreign investment firm providing investment services in the Republic of Poland without a branch shall apply the following implementing act to the Act on public offering:

1. Regulation of the Minister of Finance, Development Funds and Regional Policy of 26 November 2020 on the templates of the calls to subscribe for the sale or exchange of shares of a public company, the detailed manner of their announcement and the conditions for the acquisition of shares as a result of such calls (Journal of Laws 2020, item 2114).

Regardless of the above-mentioned acts of Polish law, in matters related to a foreign investment firm providing investment services in the Republic of Poland without a branch, the following shall apply: Commission Delegated Regulations (EU) to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173 of 12 June 2014, pp. 349–496) and Commission Delegated Regulations (EU) to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173 of 12 June 2014).

III. Depending on the scope and regardless of the form of the investment business carried on in the Republic of Poland, on the basis of contracts concluded with capital market institutions (Warsaw Stock Exchange – Giełda Papierów Wartościowych w Warszawie S.A., the

National Depository for Securities – Krajowy Depozyt Papierów Wartościowych S.A., KDPW_CCP S.A., BondSpot S.A.), foreign investment firms, should comply with the regulations issued by those institutions. The KNF Board points to, in particular, the following regulations:

Regulations on trading on the regulated market and alternative trading system in Poland in relation to the activities of the Warsaw Stock Exchange:

1. The Warsaw Stock Exchange Articles of Association,
2. The Warsaw Stock Exchange Rules,
3. Rules of the Exchange Court,
4. WSE Detailed Exchange Trading Rules in UTP system,
5. Resolutions of the Warsaw Stock Exchange Management Board,
6. Resolutions of the Warsaw Stock Exchange Supervisory Board,
7. Alternative Trading System Rules.

Regulations on trading on the regulated market and alternative trading system in Poland in relation to the activities of BondSpot S.A.:

1. Articles of Association of BondSpot S.A.,
2. Trading Rules of the BondSpot Regulated Market,
3. Treasury BondSpot Poland Market Rules,
4. Detailed Trading Rules of the BondSpot Regulated Market,
5. Rules of Alternative Trading System organised by BondSpot S.A.

Regulations on the clearing and deposit system in relation to trading in securities in Poland:

1. Statutes of Krajowy Depozyt Papierów Wartościowych (KDPW),
2. Rules of Krajowy Depozyt Papierów Wartościowych (KDPW),
3. The Detailed Rules of Operation of Krajowy Depozyt Papierów Wartościowych (KDPW),
4. Statutes of KDPW_CCP Spółka Akcyjna,
5. Rules of transaction clearing,
6. Rules of the Clearing Fund,
7. Detailed Rules for Settlement of Transactions.

In accordance with the provision of Article 136(1) of the Act on trading, where the activity of a foreign investment firm in the Republic of Poland is to be conducted through a branch and where the compensation scheme in its home country does not provides compensation in the amount or to the extent specified in the Act, a branch of the foreign investment firm may apply to the National Depository for Securities (Krajowy Depozyt Papierów Wartościowych S.A.) to join the compensation scheme in order to guarantee the payment of compensation to investors up to the amount or to the extent specified in the Act. Submission of the application by a branch of a foreign investment firm is tantamount to its participation in the scheme. Then, the provisions of the Rules on the compensation scheme apply to that foreign investment firm.

IV. Foreign investment firms, regardless of the form of their investment business conducted in the Republic of Poland, shall apply, in their day-to-day operations the relevant provisions of Polish law applicable to the activities undertaken and conducted in the territory of the Republic of Poland by financial market entities. The KNF Board points to, in particular, the following legal acts:

1. Act of 29 July 2005 on public offering, conditions governing the introduction of financial instruments to organised trading, and public companies (Journal of Laws 2021, item 1983, as amended),
2. Act of 23 April 1964 – The Civil Code (Journal of Laws 2020, item 1740, as amended),
3. Act of 15 September 2000 – The Commercial Companies and Partnerships Code (Journal of Laws 2020, item 1526, as amended),
4. Act of 15 January 2015 on bonds (Journal of Laws 2020, item 1208, as amended),
5. Act of 29 August 1997 on mortgage bonds and mortgage banks (Journal of Laws 2020, item 415, as amended),
6. Act of 27 May 2004 on investment funds and alternative investment fund management (Journal of Laws 2021, item 605, as amended),
7. Act of 1 March 2018 on the prevention of money laundering and terrorist financing (Journal of Laws 2021, item 1132, as amended),
8. Act of 5 August 2015 on complaint handling procedure of financial market entities and on Financial Ombudsman (Journal of Laws 2019, item 2279, as amended),
9. Act of 21 July 2006 on financial market supervision (Journal of Laws 2020, item 2059, as amended),
10. Act of 29 July 2005 on capital market supervision (Journal of Laws 2020, item 1400, as amended),
11. Act of 29 August 1997 – The Banking Law (Journal of Laws 2021, item 2439, as amended).

The KNF Board also points out that the legal acts and regulations listed in this Annex set the framework for the functioning of entities in the investment services sector in the Republic of Poland and may be subject to amendments.