

**RESOLUTION NO 111/2022
OF THE KNF BOARD
of 14 April 2022**

**on the circumstances relevant for the assessment of guarantee in matters regarding
financial market in connection with the aggression of the Russian Federation against
Ukraine**

Pursuant to Article 11(1) of the Act of 21 July 2006 on financial market supervision (consolidated text in: Journal of Laws 2022, item 660), the following is hereby resolved:

A stable, secure and efficient financial market is one of the key determinants of proper development of each market economy. For that reason, the entry into, and the provision of services in, the financial market is in most cases subject to a licensing assessment performed by a specialised supervisory authority, which role in Poland is performed by the KNF Board (Komisja Nadzoru Finansowego). The basic requirement for obtaining a licence to enter the financial services market, and then to operate in that market, apart from the requirement to ensure ongoing and long-term future stability of a licensed entity, is the requirement for the entity, its significant shareholders and managers to provide guarantee of proper performance.

‘Guarantee’ means an assurance about something, and therefore an objective lack of any irremovable doubts as to the occurrence of a specific condition in the future. It means that with regard to the licensed entity and its significant shareholders and managers – as those exerting a key influence on the entity’s operations – there must not be any irremovable doubts whether or not such operations will be performed properly: in a lawful, fair, transparent, prudent and stable manner. If such doubts do arise and cannot be removed, it should be concluded that the requirement to provide guarantee has not been fulfilled. The guarantee is assessed in relation to both historical events and information, and to the actual current situation.

The main criterion for the assessment of guarantee of proper performance is the repute of the entity, its significant shareholders and managers under assessment, or more broadly – a set of properties and external circumstances, including those related to the past and current business, professional and social activities which allow for conclusions regarding the tendency of the entity under assessment to engage in certain conduct and the forecasts regarding the entity’s future conduct. Positive conclusions in this regard help build the confidence (trust) – both on the part of the supervisory authority and on the part of market participants – that the operations of the licensed entity will be carried out properly: in a lawful, fair, transparent, prudent and stable manner.

The circumstances determining the repute of the entity under assessment include credibility – in a broadly understood area of geographic risk – of countries (jurisdictions) in which the entity conducts most of its social, professional or business activities, or in which most of such activities of entities and individuals having close personal or business relationships with the

entity are carried out. The significantly negative impact on the repute of the entity under assessment undoubtedly arises from such links or relations with countries that do not respect, or do not even recognise, the principles of democracy and rule of law, human rights, international rules and principles, and whose authoritarian governments support terrorism or themselves engage in acts of terrorism against not only their own citizens but also citizens of other countries, and expand their arsenal of weapons of mass destruction. Such countries also exercise far-reaching control of the main areas of social life, including social, political and economic activities of entities subject to, or originating from, their jurisdiction, in an effort to exert a significant influence on those activities and to subject them to national purposes, which harm the well-being of humanity, including the basic human rights and freedoms generally respected by democratic states. Such conduct of the above-mentioned countries results in all kinds of international sanctions being imposed on them or their representatives individually and as part of international organisations and communities such as the United Nations or, in particular, the European Union.

The above-mentioned traits have been demonstrated in recent weeks and are still being demonstrated by the Russian Federation and the Republic of Belarus, in the light of the current events in Ukraine and their internal policies. The inexplicable, unlawful, explicit and unprecedented in the last decades military aggression against Ukraine – a sovereign state which observes the basic rule of law – combined with attacks on civilians that might be considered war crimes or even crimes against humanity,¹ calls for the Russian Federation and the Republic of Belarus to be considered countries that act in violation of the basic rule of law, human rights, democratic values and the rules of international law. For many years, the governments of both countries have consolidated and tightened their authoritarian regime by using oppressive legal solutions, strongly supported by ideology and propaganda, as well as aggressive state violence, in order to maintain and expand the control over the society and means of production. What has happened in those countries is deep erosion of the rule of law and tripartite separation of powers, as well as institutionalisation of the central and authoritarian control over various levels of administration, over economy, access to information, elections and other areas of social and public life. The Russian aggression against Ukraine has been explicitly condemned by the European Union in the statements by the High Representative of the Union for Foreign Affairs and Security Policy and in the European Council conclusions as unprovoked and unjustified military aggression. The Council of the European Union has concluded that through its unlawful military actions, the Russian Federation grossly violates international law and the principles of the United Nations Charter, and endangers security and stability in Europe and worldwide. In consequence, the European Union in cooperation with the G7 countries and other countries sharing a similar view imposed on the Russian Federation and the Republic of Belarus unprecedented restrictive measures related to their economies, including financial sectors. In view of those notorious circumstances, confirmed by the available reports on the current situation in those countries and by the tragic events in Ukraine witnessed by the whole world, which events have been co-created directly and solely by those countries, the economically active entities and individuals from those countries cannot be treated, especially outside those

¹ See Resolution of the Sejm of the Republic of Poland of 23 March 2022 on Russia committing war crimes and crimes against humanity and violating human rights in Ukraine; Polish Official Gazette, item 367.

countries, as credible and trustworthy entities that have no relationship with the regimes operating in those countries.

Any relationship of a licensed entity, its significant shareholders and managers with the Russian Federation and the Republic of Belarus, such as having the main place of business in or being a national of those countries, conducting most of their social, professional or business activities in those countries or having close personal or business relationships with entities conducting most of their activities in those countries is and will be treated by the KNF Board as material doubt as to whether the operations of the licensed entity will be carried out properly: in a lawful, fair, transparent, prudent and stable manner. In consequence, it is highly probable that as part of the licensing or authorisation procedures in which the guarantee of proper performance constitutes a requirement for entering the financial services market, operating in that market or managing an entity operating in that market, such requirement in relation to entities having any such relationship will be considered unfulfilled.