

## **Information on the conditions under which investment services must be carried on by foreign investment firms in the Republic of Poland**

**I.** Foreign investment firms providing investment services in the Republic of Poland through the establishment of a branch should be obliged to obey in particular the following provisions of the Act on Trading in Financial Instruments dated July 29<sup>th</sup> 2005 (Journal of Laws 2010 No. 211, Item 1384 as amended), hereinafter also referred to as "the Act on Trading":

- provisions of article 117, 117a as well as of article 118 of the Act on Trading,
- provisions of Part II Chapter 2 Section 3 of the Act on Trading (Market Manipulation; articles 39-43 of the Act on Trading),
- provisions of Part IV Chapter 1 Section 1 with the exclusion of provisions of articles 69 s. 1, 82, 83a s.1, 84-85 and article 86 s. 1 and art. 89 s. 1 and 2 of the Act on Trading (Activities of Investment Firms. General Provisions; articles 69-94 of the Act on Trading),
- provisions of Part V of the Act on Trading including in particular art. 136 of the Act on Trading (Protection of the clients' interest and the compensation scheme: art. 132 – 146 of the Act on Trading)
- provisions of Part VI of The Act on Trading (Access to Information of Special Nature; articles 147-161 a of the Act on Trading),
- provisions of article 163 s. 2 and 5 of the Act on Trading,
- provisions of articles 169, 169a, 171, 172 and 173 of the Act on Trading,
- provisions of Part IX of the Act on Trading (Civil Liability; article 177 of the Act on Trading),
- provisions of Part X of the Act on Trading (Criminal Penalties; articles 178-184 of the Act on Trading).

The branch of a foreign investment firm should draw particular attention to the provision of article 83 of the Act on Trading and the provisions issued by virtue of the article 94 s. 1 item 1 of the Act on Trading.

Foreign investment firms providing investment services in the Republic of Poland through the establishment of the branch are, according to provision of article 5 item 1 of the Act on Capital Market Supervision dated July 29<sup>th</sup> 2005 (Journal of Laws No. 183, Item 1537 as amended), hereinafter also referred to as "the Act on Supervision", bound particularly by the following provisions of the Act on Supervision:

- provisions of Chapter 4 of the Act on Supervision (Audit, Explanatory Proceedings and Blockings of Accounts; art. 24 – 44 of the Act on Capital Market Supervision),
- provisions of Chapter 5 of the Act on Supervision (Penalties: art. 45 – 47 of the Act on Capital Market Supervision).

Foreign investment firms providing investment services in the Republic of Poland through the establishment of branch are as well, according to provision of article 1 item 2 of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies dated July 29<sup>th</sup> 2005 (Journal of Laws 2009 No. 185, Item 1439 as amended) hereinafter also referred to as "the Act on Public Offering" bound particularly by the following provisions of the Act on Public Offering :

- provisions of Chapter 4 of the Act on Public Offering (Material Blocks of Shares in Public Companies; articles 69-90a of the Act on Public Offering),
- provisions of article 97 of the Act on Public Offering,
- provisions of Chapter 8 of the Act on Public Offering (Civil Liability; article 98 of the Act on Public Offering),
- provisions of Chapter 9 of the Act on Public Offering (Criminal Penalties; articles 99-104 of the Act on Public Offering).

The branch of a foreign investment firm should submit to the Polish Financial Supervision Authority, immediately after the completing of the registration process, an abridgment from

the National Court of Register as a confirmation of fulfilment of the obligation to register the branch in the register of the entrepreneur provided by the National Court of Register.

The Polish Financial Supervision Authority indicates that in accordance with the provisions of article 92 s. 1 and 3 of the Act on Trading, the foreign investment firm may become a member of The Chamber of Brokerage Houses (*Izba Domów Maklerskich*) or of The Chamber of Fund and Asset Managers (*Izba Zarządzających Funduszami i Aktywami*), which are the voluntary and self-regulatory organisations of investment firms or of management companies and investment firms whose only area of activities is the management of portfolios of broker-traded financial instruments or investment advisory services related to broker-traded financial instruments admitted to organised trading, organised in accordance with the provisions of the Act on Commercial Chambers, dated May 30<sup>th</sup> 1989 (Journal of Laws 2009 No. 84, Item 710 as amended) and their by-laws.

The Polish Financial Supervision Authority informs that foreign investment firms providing investment services in the Republic of Poland through the establishment of a branch should obey the following decrees to the Act on Trading:

1. Decree of the Minister of Finance on information constituting recommendations concerning financial instruments or their issuers, dated October 19<sup>th</sup> 2005 (Journal of Laws No. 206, Item 1715),
2. Decree of the Minister of Finance in the matter of the procedures and the conditions to conduct operations for investment firms, the banks referred to in art. 70 s. 2 of the Act on Trading and custodian banks dated September 24<sup>th</sup> 2012 (Journal of Laws 2012, Item 1078),
3. Decree of the Minister of Finance on determining the detailed technical and organisational conditions for investment firms, the banks referred to in art. 70 s. 2 of the Act on Trading in Financial Instruments and custodian banks (...) dated September 24<sup>th</sup> 2012 (Journal of Laws 2012, Item 1072),
4. Decree of the Minister of Finance on the scope, procedure, form and time limits for the provision of information by investment firms, the banks referred to in art. 70 s. 2 of the Act on Trading in Financial Instruments and custodian banks dated February 5<sup>th</sup> 2010 (Journal of Laws No. 25, Item 129 as amended),
5. Decree of the Minister of Finance on reporting requirements concerning the trade on financial instruments issued by the Treasury dated November 20<sup>th</sup> 2009 (Journal of Laws 2013, Item 331).
6. Decree of the Minister of Finance on conditions to be fulfilled by multilateral trading facility organized by the investment firm dated October 23<sup>rd</sup> 2009 (Journal of Laws No. 187, Item 1448).

Foreign investment firms providing investment services in the Republic of Poland through the establishment of a branch should obey the following decree to the Act on Supervision:

- Decree of the Minister of Finance on the fees and charges paid to the Polish Financial Supervision Authority by the supervised entities operating in the capital market, dated March 16<sup>th</sup> 2010 (Journal of Laws No. 57, Item 364 as amended).

Foreign investment firms providing investment services in the Republic of Poland through the establishment of a branch should obey the following decree to the Act on Public Offering:

- Decree of the Minister of Finance on specimens of invitations to subscribe for sale or exchange of shares of a public company, the detailed manner of announcing them and the terms and conditions of acquiring shares as a result of such invitations, dated October 19<sup>th</sup> 2005 (Journal of Laws No. 207, Item 1729 as amended).

**II.** Foreign investment firms providing investment services in the Republic of Poland without establishing a branch, under the freedom to provide services should be obliged to obey in particular the following provisions of the Act on Trading in Financial Instruments dated July 29<sup>th</sup> 2005

(Journal of Laws 2010 No. 211, Item 1384 as amended), hereinafter also referred to as "the Act on Trading":

- provisions of article 117, 117a as well as of article 118 of the Act on Trading,
- provisions of Part II Chapter 2 Section 3 of the Act on Trading (Market Manipulation; articles 39-43 of the Act on Trading),
- provisions of Part IV Chapter 1 Section 1 with the exclusion of provisions of articles 69 s. 1, 82, 83a s.1, 84 – 85, 86 s.1 and article 89 s. 1 and 2 of the Act on Trading (Activities of Investment Firms. General Provisions; articles 69-94 of the Act on Trading),
- provisions of Part VI of The Act on Trading (Access to Information of Special Nature; articles 147-161 of the Act on Trading),
- provisions of article 163 s. 2 and 5 of the Act on Trading,
- provisions of articles 169, 169a, 171, 172 and 173 of the Act on Trading,
- provisions of Part IX of the Act on Trading (Civil Liability; article 177 of the Act on Trading),
- provisions of Part X of the Act on Trading (Criminal Penalties; articles 178-184 of the Act on Trading).

Foreign investment firms providing investment services without establishing a branch should pay a particular attention to rules specified in the regulations issued under article 94 s. 1 item 1 of the Act on Trading.

Foreign investment firms providing investment services in the Republic of Poland without establishing of a branch are, according to provision of article 5 item 1 of the Act on Capital Market Supervision dated July 29<sup>th</sup> 2005 (Journal of Laws No. 183, Item 1537 as amended), hereinafter also referred to as "the Act on Supervision", bound particularly by the following provisions of the Act on Supervision:

- provisions of Chapter 4 of the Act on Supervision with particular attention to art. 26 s. 2 item 2 of the Act on Capital Market Supervision (Audit, Explanatory Proceedings and Blocking of Accounts; articles 24-44 of the Act on Supervision),
- provisions of Chapter 5 of the Act on Supervision (Criminal Penalties; articles 45-47 of the Act on Supervision).

Foreign investment firms providing investment services in the Republic of Poland without establishing a branch are as well, according to provision of article 1 item 2 of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies dated July 29<sup>th</sup> 2005 (Journal of Laws 2009 No. 185, Item 1439 as amended), hereinafter also referred to as "the Act on Public Offering", bound particularly by the following provisions of the Act on Public Offering:

- provisions of Chapter 4 of the Act on Public Offering (Material Blocks of Shares in Public Companies; articles 69-90a of the Act on Public Offering),
- provisions of article 97 of the Act on Public Offering,
- provisions of Chapter 8 of the Act on Public Offering (Civil Liability; article 98 of the Act on Public Offering),
- provisions of Chapter 9 of the Act on Public Offering (Criminal Penalties; articles 99-104 of the Act on Public Offering).

The Polish Financial Supervision Authority indicates that in accordance with the provisions of article 92 s. 1 and 3 of the Act on Trading, the foreign investment firm may become a member of The Chamber of Brokerage Houses (*Izba Domów Maklerskich*) or of The Chamber of Fund and Asset Managers (*Izba Zarządzających Funduszami i Aktywami*), which are the voluntary and self-regulatory organisations of investment firms or of management companies and investment firms whose only area of activities is the management of portfolios of broker-traded financial instruments or investment advisory services related to broker-traded financial instruments admitted to organised trading, organised in accordance with the provisions of the Act on Commercial Chambers, dated May 30<sup>th</sup> 1989 (Journal of Laws 2009 No. 84, Item 710 as amended) and their by-laws.

The Polish Financial Supervision Authority informs that foreign investment firms providing investment services in the Republic of Poland without establishing a branch should obey the following decrees to the Act on Trading:

1. Decree of the Minister of Finance on information constituting recommendations concerning financial instruments or their issuers, dated October 19<sup>th</sup> 2005 (Journal of Laws No. 206, Item 1715),
2. Decree of the Minister of Finance in the matter of the procedures and the conditions to conduct operations for investment firms, the banks referred to in art. 70 s. 2 of the Act on Trading and custodian banks dated September 24<sup>th</sup> 2012 (Journal of Laws 2012, Item 1078),
3. Decree of the Minister of Finance on determining the detailed technical and organisational conditions for investment firms, the banks referred to in art. 70 s. 2 of the Act on Trading in Financial Instruments and custodian banks (...) dated September 24<sup>th</sup> 2012 (Journal of Laws 2012, Item 1072),
4. Decree of the Minister of Finance on the scope, procedure, form and time limits for the provision of information by investment firms, the banks referred to in art. 70 s. 2 of the Act on Trading in Financial Instruments and custodian banks dated February 5<sup>th</sup> 2010 (Journal of Laws No. 25, Item 129 as amended),
5. Decree of the Minister of Finance on conditions to be fulfilled by multilateral trading facility organized by the investment firm dated October 23<sup>rd</sup> 2009 (Journal of Laws No. 187, Item 1448).

Foreign investment firms providing investment services in the Republic of Poland without establishing a branch should obey the following decrees to the Act on Supervision:

- Decree of the Minister of Finance on the fees and charges paid to the Polish Financial Supervision Authority by the supervised entities, operating in the capital market dated March 16<sup>th</sup> 2010 (Journal of Laws No. 57, Item 364 as amended).

Foreign investment firms providing investment services in the Republic of Poland without establishing a branch should obey the following decree to the Act on Public Offering:

- Decree of the Minister of Finance on specimens of invitations to subscribe for sale or exchange of shares of a public company, the detailed manner of announcing them and the terms and conditions of acquiring shares as a result of such invitations, dated October 19<sup>th</sup> 2005 (Journal of Laws No. 207, Item 1729 as amended).

**III.** Foreign investment firms providing services in the Republic of Poland will also be obliged to obey by-laws resolved by capital market institutions (the Warsaw Stock Exchange S.A., the National Depository for Securities S.A., the Bond Spot S.A.), under the agreements concluded with those institutions, if referred agreements are necessary in the light of the scale and form of provided services. The Polish Financial Supervision Authority especially informs about following by-laws:

**Regulation regarding exchange trading and multilateral trading facility in the Republic of Poland:**

1. Statute of the Warsaw Stock Exchange in Warsaw S.A. (Giełda Papierów Wartościowych w Warszawie S.A.),
2. The Rules of the Warsaw Stock Exchange,
3. The Rules of the Stock Exchange Court,
4. Detailed Exchange Trading Rules,
5. Rules of the Management Board of the Warsaw Stock Exchange in Warsaw S.A.,
6. Rules of the Supervisory Board of Warsaw Stock Exchange in Warsaw S.A.,
7. The Rules of Multilateral Trading Facility organized by the Warsaw Stock Exchange in Warsaw S.A.

**Regulation regarding over the counter trading and multilateral trading facility in the Republic of Poland:**

1. Statute of the Bond Spot S.A.,
2. The Rules of trading on Over the Counter Regulated Market (RRP),
3. The Rules of the Treasury Bond Spot Poland Market,
4. Detailed Trading Rules,
5. The Rules of Multilateral Trading Facility organized by the Bond Spot S.A.

**Regulation regarding clearing and settlement system in the Republic of Poland:**

1. Statute of the National Depository for Securities S.A. (Krajowy Depozyt Papierów Wartościowych S.A. - KDPW S.A.),
2. The Rules of KDPW S.A.,
3. Detailed rules of KDPW S.A.,
4. Statute of the KDPW\_CCP S.A.,
5. The Rules of Transaction Clearing,
6. The Rules of the Clearing Guarantee Fund,
7. KDPW\_CCP Detailed Clearing Rules.

**IV.** Without prejudice to the form of providing services in Republic of Poland, foreign investment firms should be obliged to obey relevant provisions of the Polish legal system in their every day business activity in the Republic of Poland which include e.g. commercial law, tax law, penal law, administrative law.

The Polish Financial Supervision Authority especially informs about following legal acts:

**List of chosen legal acts which regulate most important types of securities, civil and corporate law in the Republic of Poland:**

1. Act of 29<sup>th</sup> July 2005 on Public offering, conditions governing the introduction of financial instruments to organised trading, and public companies (Journal of Laws 2009 No. 185, Item 1439 as amended),
2. Act of 23<sup>rd</sup> April 1964 - Civil code (Journal of Laws No. 16, Item 93 as amended),
3. Act of 15<sup>th</sup> September 2000 - Commercial companies code (Journal of Laws 2013, Item 1030),
4. Act of 29<sup>th</sup> June 1995 on bonds (Journal of Laws of 2001 No. 120, Item 1300 as amended),
5. Act of 29<sup>th</sup> August 1997 on mortgage bonds and mortgage banks (Journal of Laws 2003 No. 99, Item 919 as amended).

**List of chosen legal acts, which regulate most important issues in the field of investment funds (in a case of activities related to investment funds provided by investment firm):**

1. Act of 27<sup>th</sup> May 2004 on investment funds (Journal of Laws No. 146, Item 1546 as amended).

**List of chosen legal acts concerning taxes in the Republic of Poland:**

1. Act of 9<sup>th</sup> September 2000 on tax on legal actions in civil law (Journal of Laws 2010 No. 101, Item 649 as amended),
2. Act of 26<sup>th</sup> July 1991 on personal income tax (PIT) (Journal of Laws 2012, Item 361 as amended),
3. Act of 15<sup>th</sup> February 1992 on corporate income tax (CIT) (Journal of Laws 2011 No. 7, Item 397 as amended),
4. Act of 11<sup>th</sup> March 2004 on tax on goods and services (VAT) (Journal of Laws 2011 No. 177, Item 1054 as amended).

**List of chosen legal acts concerning activity of enterprises in the Republic of Poland:**

1. Act of 26<sup>th</sup> October 2000 on commodity exchanges (Journal of Laws 2010 No. 48, Item 284 as amended),
2. Act of 16<sup>th</sup> November 2000 on counteracting money laundering and counteracting financing of terrorism (Journal of Laws 2010 No. 46, Item 276 as amended),

3. Act of 12<sup>th</sup> September 2002 on electronic instruments of payment (Journal of Laws 2012, Item 1232 as amended),
4. Act of 18<sup>th</sup> September 2001 on electronic signature (Journal of Laws 2013, Item 262 as amended),
5. Act of 18<sup>th</sup> July 2002 on provision of services *via* electronic means (Journal of Laws No. 144, Item 1204 as amended),
6. Act of 16<sup>th</sup> February 2007 on competition and consumer protection (Journal of Laws No. 50, Item 331 as amended),
7. Act of 16<sup>th</sup> April 1993 on combating unfair competition (Journal of Laws 2003 No. 153, Item 1503 as amended),
8. Act of 17<sup>th</sup> November 1964 Code of civil proceedings (Journal of Laws No. 43, Item 296 as amended),
9. Act of 14<sup>th</sup> June 1960 Code of administrative proceedings (Journal of Laws 2013, Item 267),
10. Act of 30<sup>th</sup> August 2002 - Law on conducting in front of administrative courts (Journal of Laws 2012, Item 270 as amended),
11. Act of 29<sup>th</sup> September 1994 on accountancy (Journal of Laws 2013, Item 330 as amended),
12. Act of 7<sup>th</sup> May 2009 on chartered auditors and their self-government, entities authorized to audit financial statements and public supervision (Journal of Laws No. 77, Item 649 as amended),
13. Act of 6<sup>th</sup> December 1996 on registered pledges and Pledge Register (Journal of Laws of 2009 No. 67, Item 569 as amended),
14. Act of 24<sup>th</sup> August 2001 on settlement finality in payment, securities settlement system and rules on supervision of those systems (Journal of Laws 2013, Item 246),
15. Act of 28<sup>th</sup> October 2002 on responsibility of corporate entities for illegal actions (Journal of Laws 2012, Item 768 as amended),
16. Act on 6<sup>th</sup> June 1997 Penal code (Journal of Laws No. 88, Item 553 as amended),
17. Act on 28<sup>th</sup> February 2003 - Law on insolvency and recovery (Journal of Laws 2012, Item 1112 as amended),
18. Act of 20<sup>th</sup> August 1997 on the National Court Register (Journal of Laws of 2007 No. 168, Item 1186 as amended),
19. Act of 2<sup>nd</sup> April 2004 on certain financial collateral arrangements (Journal of Laws 2012, Item 942 as amended),
20. Act of 4<sup>th</sup> March 2005 on the European Economic Interest Grouping and on a European company (Journal of Laws No. 62, Item 551 as amended),
21. Act of 15<sup>th</sup> April 2005 on the supplementary supervision of credit institutions, insurance and reinsurance undertakings and investment firms in a financial conglomerate (Journal of Laws No. 83, Item 719 as amended),
22. Act of 21<sup>st</sup> July 2006 on Financial Market Supervision (Journal of Laws 2012, Item 1149 as amended),
23. Act of 29<sup>th</sup> July 2005 on Capital Market Supervision (Journal of Laws No. 183, Item 1537 as amended),
24. The Banking Act of 29<sup>th</sup> August 1997 (Journal of Laws 2012, Item 1376 as amended),
25. Act of 19<sup>th</sup> August 2011 on Payment Services (Journal of Laws No. 199, Item 1175 as amended),
26. The Foreign Exchange Act of 27<sup>th</sup> July 2002 (Journal of Laws 2012, Item 826).

V. The Polish Financial Supervision Authority declares that above mentioned acts and by-laws cover the most important provisions regarding investment services and do not provide comprehensive list of acts and by-laws which foreign investment firms should be obliged to obey.

The Polish Financial Supervision Authority informs, that contents of legal acts and by-laws indicated above might be changed. The present English text is furnished for information purposes only. The original Polish text published in the Journal of Laws is binding in all respects.