

FINANCIAL ALERT

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Changes will be made to regulations on trading in financial instruments

In the last days of December 2020 the government adopted a draft bill amending the Act on trading in financial instruments and certain other acts. It provides for changes to oversight of providers of financial data processing services, insurance and reinsurance, as well as strengthens legal protection of consumers and minority shareholders.

The draft of the Ministry's of Finance bill amending the Act on trading in financial instruments and certain other acts, which has already been sent to the Sejm, adapts Polish regulations to European Union requirements. It makes changes relating to the implementation of EU regulations on European Supervisory Authorities (ESAs). ESAs consist of the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority.

When it comes to the capital sector, the draft provides for strengthening supervision over providers of financial data processing services to financial market entities. Until now such providers obtained permits and were supervised by national supervisory authorities. After

the changes, the granting of permits to providers of information sharing services and supervision over such providers will for the most part be transferred to the European Securities and Markets Authority. Some of the providers, whose activities will not be material to the EU market, will however continue to be subject to national oversight.

With regard to insurance and reinsurance activities, the draft provides for strengthened supervision over cross-border insurance and reinsurance activities performed by insurance and reinsurance companies. A mechanism will be introduced for the sharing of information between the supervisory authorities from different member states and the European Insurance and Occupational Pensions Authority (EIOPA). Collaboration platforms establi-



DR ANDRÉ HELIN,
BDO Managing Partner

shed by the relevant oversight organs or EIOPA will also become an important tool for improving the efficiency of supervision over the cross-border activities of entities from the insurance market.

The draft also provides for improved consumer protection. To this end, it introduces regulations on the provision by suppliers of payment services of a pamphlet prepared by the European Commission, containing information about consumer rights. The new regulations will also ensure the uninterrupted

performance by insurance companies – with registered seats in the United Kingdom of Great Britain and Northern Ireland, as well as in Gibraltar – of in-force insurance policies and continuity of insurance coverage in the interest of the insured. This applies to the period after 1 January 2021 until the expiration of claims under such policies.

The last group of changes includes solutions relating to the operation of public companies and protection of minority shareholders. The regulations

will include changes associated with the operation of public companies required to announce tender offers for shares when a company is withdrawn from trading on the Securities Exchange or NewConnect.

The changes will increase legal certainty when it comes to withdrawing shares from regulated trading and will allow for maintaining proper protection of minority investors in connection with such operations.

Most of the new solutions are to become effective as of 1 January 2022.



The government wants to impose more reporting requirements on banks

In December the Council of Ministers adopted a draft bill amending the Banking Law Act and certain other acts. The new regulations provide for increasing the resilience of banks and brokerage house in the event of a financial market crisis.

The Ministry's of Finance draft bill amending the Banking Law Act and certain other acts adapts Polish law to European Union regulations. The changes contained therein relate to the implementation of EU capital requirements for financial institutions. They are part of the EU's reforms enacted in response to the 2007-2008 financial crisis.

Under the draft bill, Banking Law will cover financial holdings and mixed financial services holdings. It lists the principles of their organization, operation and supervision. The new regulations will strengthen the banks' capital base and improve their protection against insolvency. Improvements will also be made in the exchange of information about banks and brokerage houses between the Polish Financial Supervision

Authority and the Bank Guarantee Fund.

Many of the changes relate to reporting and disclosure requirements. As a result, banks will be subject to new regulatory and reporting standards. The Polish Financial Supervision Authority will have the power to impose additional reporting requirements on a supervised entity (e.g. bank and brokerage house), or increase their frequency. Such additional requirements, however, will only be imposed if proportionate and necessary for efficient supervision. Small banks (with a simpler business model) will have fewer reporting and disclosure requirements. The goal is to

ensure that the reporting burden of smaller banks is proportionate to the scale of their operations and the related risk.

Moreover, under the new regulations an entity applying for a permit to create a bank will, in addition to the current requirements, provide information about entities belonging to the same group and about the links within the group. Whereas branches of foreign banks will have to submit annual reports on their activities to the Polish Financial Supervision Authority. With few exceptions, the new regulations are to go into effect after 14 days of their publication in the Journal of Laws.



Ministry of Finance and Polish Financial Supervision Authority ready to defer the requirement to use ESEF

Due to COVID-19, the Ministry of Finance and the Office of the Polish Financial Supervision Authority (UKNF) have decided to defer by a year the requirement to use ESEF in the financial reporting of issuers. At the same time, they have kept the option to report in this format already for 2020.

According to an 11 December 2020 press release, the European Parliament and the Council have reached a preliminary agreement, currently undergoing formal approval, to amend the Transparency Directive with regard to the effective date of the application of the European Single Electronic Format (ESEF) requirements for issuers whose securities are traded on a regulated market.

The amendment to the Transparency Directive postpones the mandatory application of the ESEF requirements by a year – for reports for financial years beginning on or after 1 January 2021, i.e. starting with reports for 2021. Decision to postpone is to be made by member states. This means that the EU regulations will include an option for member states to defer the requirement to apply ESEF. The Ministry of Finance and the UKNF have announced that they will take advantage of this option and postpone the requirement by a year. At the same time, they have announced the preparation of regulations to implement EU law into the Polish legal system immediately after the change to the Transparency Directive is adopted and published in the Official Journal of the European Union. Poland's use of the option will have no effect on the effective

date of the requirement to label (tag) notes to consolidated financial statements prepared in accordance with IFRS (International Financial Reporting Standards). Tagging of notes will still be mandatory for consolidated financial statements prepared for financial years beginning on or after 1 January 2022, i.e. starting with financial statements for 2022 (the Ministry of Finance has prepared a draft bill of related changes to the Accounting Act, which we discussed in more detail in one of our alerts).

As ESEF is a step forward in communications between issuers and investors and other stakeholders, the deferral of the requirement to apply it will not preclude the ability to use the format to prepare the 2020 annual reports. The UKNF is prepared to accept ESEF-compliant annual reports in the ESPI system as of 4 January 2021. It also encourages the application of this solution in the preparation of annual reports for 2020 – particularly by those issuers who are already prepared to do so.

The UKNF has also issued an invitation to take part in tests that will take place from 11 January to 15 February 2021.



New pension product to be offered by insurance companies starting in August

The Ministry of Finance, Funds and Regional Policy has published a draft bill on pan-European personal pension products, which among others provides that such products would benefit from tax relief fashioned on that enjoyed by IKE.

The Ministry of Finance, Funds and Regional Policy has published a draft bill on pan-European personal pension products (so-called OIPE bill, meant to implement Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP). The bill proposes the introduction for OIPE of tax relief fashio-

ned on the existing solutions applicable to IKE. In consequence, payments to an OIPE account held in Poland, as well as to an OIPE sub-account held for Poland, would come from a saver's funds after taxation with personal income tax. Whereas income generated on investments while saving, as well as income from withdrawal of the funds from the account or sub-account, would be tax exempt.

The bill provides that OIPE contracts would be concluded in electronic form. As insurance companies would be one of the types of entities authorized to offer PEPP, the bill provides that unit-linked life insurance policies would constitute the insurance version of OIPE. According to the PEPP Regulation, OIPE is a personal, non-employment related pension product, which a saver joins voluntarily with a view to retirement. The purpose of the EU regulation is to enable the

creation of a pension product that will be long-term in nature, will to the greatest extent possible consider environmental, social and governance factors discussed in the principles for responsible investments, will be simple, safe, affordable, transparent, consumer friendly and transferrable within the entire European Union, and will supplement the systems already in existence in member states. The bill also provides for granting to the KNF the powers to oversee and investigate, as well as to apply administrative sanctions and implement corrective measures in cases specified in the PEPP Regulation, as the authority competent to supervise the fulfilment of the obligations related to the distribution of OIPE. The new regulations would become effective on 15 August 2021.



In short

The premium paid by insurance companies to the Polish Insurance Chamber has gone up

The minister's of finance, funds and regional policy's decree of 3 December 2020 on the membership premium paid to the Polish Insurance Chamber has been published in the 2020 Journal of Laws, item 2223. The decree defines the amount of the premium paid by insurance companies to the Polish Insurance Chamber. It states that as of January 2021 the amount of the premium will be 0,026% of the gross premium written for the year preceding the year for which the membership premium is to be paid. Until now it had amounted to 0,024%

Consolidated text of regulations on reporting to the KNF has been published

The minister of finance, funds and regional policy has published the consolidated text of the minister's of development and finance decree on the measures and technical conditions for the reporting of certain information by entities supervised by the KNF (2020 Journal of Laws, item 2195). Among others, the

consolidated text includes the changes made to the regulations at the beginning of December 2019 and effective as of 1 January 2020 (see 2019 Journal of Laws, item 2364), with the exception of some, including reference 2 to par. 2 and 3 of the decree.

New regulations on issuing permits to provide payment services

The minister's of finance, funds and regional policy decree of 13 November on the detailed scope of information and the type and form of documents to be attached to applications for a permit to conduct activities as a domestic payment institution was published in the Journal of Laws on 14 December 2020 (item 2225). The decree went into effect after 14 days of its publication, i.e. on 29 December 2020.

Not all insurance purchased in Great Britain will be valid in the EU

The EIOPA and the UKNF have informed that those who have purchased an insurance or pension product from an insurance company from the United Kingdom of



Great Britain and Northern Ireland (or a British overseas territory such as for example Gibraltar), and who live in an EU member state, should check whether such products will be able to operate on the same terms as of 1 January 2021. The servicing of such products in the EU will remain uninterrupted if the provider has taken steps to adapt to Brexit, i.e. for example has moved the contract to a company from an EU member state or obtained a relevant permit to operate in the EU.

UKNF warns against acquisition of crypto-assets

The UKNF has presented the “UKNF’s standpoint on the issue and sale of crypto-assets”. The document pertains only to crypto-assets in the case of which the application of Polish regulations is justified due to the registered office, physical location (including of the servers) of the issuer, the registered office of the trading platform owner, the residence or registered office of the buyers, or due to other formal and legal

circumstances. The UKNF warns that because the legal status of crypto-assets has not been directly regulated, their issue, acquisition, use, as well as sale may give rise to all types of risks, including in particular of being unable to assert claims associated with their acquisition.

Listed companies can identify shareholders and determine the number of shares held

A company whose shares are registered with the securities depository may ask KDPW SA for information about its shareholders and the number of shares they hold. This may be done using an application on the website accessible by issuers registered with KDPW SA. In the application the company must enter the date as of which the shareholder list should be prepared. KDPW will then forward the inquiry to the entities that manage the securities accounts, and once the information is provided, will prepare an aggregate statement for the company.



Decision of the President of the Office of Competition and Consumer Protection regarding Jeronimo Martins Polska S.A.

The President of the Office of Competition and Consumer Protection ("the President of the Office") issued a decision on 11 December 2020 pursuant to which the Office imposed a fine of over PLN 723 million on Jeronimo Martins Polska S.A., the owner of the Biedronka chain stores. According to the Office's findings, the company applied practices unfairly exploiting contractual advantage by forcing suppliers to pay additional discounts for deliveries already made. The above was to concern mainly fruit and vegetable suppliers. This is the largest penalty ever imposed by the Office of Competition and Consumer Protection ("the Office") for using contractual advantage.

Practices unfairly exploiting contractual advantage

The President of the Office stated that Jeronimo Martins Polska S.A. forced retrospective discounts on suppliers of agricultural or food products. This means that the company's practices consisted in imposing discounts and collecting them from suppliers on the basis of agreements concluded at the end of a settlement period after deliveries were made, and the amount and terms of discounts were not agreed before the start of a given settlement period.

Therefore, there was a risk for the suppliers that Biedronka would demand a reduction in their remuneration by granting itself an additional discount. The President of the Office found that the suppliers were threatened with a financial penalty if they failed to correct their invoices by taking into account the discount imposed by the company. According to the Office, one of the suppliers had to pay the company over PLN 151 million during the year, which accounted for over 26% of its total turnover with the Biedronka stores chain; however, the suppliers agreed to provide discounts as they feared the termination of their cooperation which would expose them to even greater financial losses.



DOROTA SZLACHETKO-REITER,
Managing Partner, Attorney-at-law
BDO Legal Łatata i Wspólnicy Sp.k.
(limited partnership)

A record fine imposed by the President of the Office

The financial penalty of over PLN 723 million imposed on Jeronimo Martins Polska S.A. by the President of the Office is the largest penalty for unfairly exploiting contractual advantage and at the same time the second largest penalty in the history of the Office's activity. It should be noted that unfair abuse of contractual advantage in the agri-food industry may result in a penalty of up to 3% of an entrepreneur's annual turnover.

The President of the Office justifies the amount of the penalty by the fact that over a three-year period, i.e. between 2018 and 2020, Jeronimo Martins Polska S.A. gained over PLN 600 million from the practices questioned by the Office, and the unfair practices were applied on a wide scale – the infrin-

gements were said to concern over 200 suppliers. According to the statement of the President of the Office, the penalty is adequate to the size of the infringement, the onerous nature of the practice and the amount of benefits gained unfairly by the store chain.

The statement of the company is unambiguous

Jeronimo Martins Polska S.A. published its statement in the case on 14 December 2020, accusing the decision of the President of the Office of being biased, lacking factual and legal basis and failing to follow procedures during the proceedings. According to the company, the decision is unfair and undeserved, while discounts

are agreed in advance, together with suppliers.

Summary

At this moment it is not possible to assess whether the decision of the President of the Office to impose such a high penalty on Jeronimo Martins Polska S.A. is justified. The Office points out that the way in which other companies in the Jeronimo Martins group charge supplier fees raises concerns not only with Polish authorities – in 2019 in Portugal, law enforcement authorities detained employees of one such company who are suspected of charging suppliers unauthorized fees for priority supply. However, given the content of the firm announcement of the

Biedronka chain, there is no doubt that the chain will appeal against the decision of the President of the Office to the Court of Competition and Consumer Protection.

The President of the Office points out that such a high penalty is intended as a warning to other retail chains. In his statement of 14 December 2020, President of the Office stresses that the only chance for other chains to avoid high sanctions is to immediately change the mechanisms of applying retroactive discounts to suppliers. According to the Office's announcement, investigations into the use of unfair retrospective discounts by other retail chains are currently underway.



Crowdfunding becoming more regulated

Crowdfunding is becoming a more frequent and popular source of raising additional funding every month. Until October 2020, this financing model was basically outside the scope of legal regulations in Poland. On 7 October 2020, an EU regulation was adopted which aims to introduce unified rules for crowdfunding in the investment model in all European Union member states.

What is crowdfunding?

Crowdfunding as its name suggests means raising funding through the crowd. Currently, we can distinguish several types of crowdfunding with the basic distinction being between charity collections and collections for economic purposes (for the purposes of this article, we limit ourselves only to the second type of crowdfunding). The main purpose of crowdfunding is for the originator to look, through an online platform, for people willing to support his or her venture in exchange for providing certain benefits (e.g. taking up shares by the offering entity). Thus, the nature of crowdfunding comes down to the presence of three entities: (1) the project owner that proposes the project to be funded, (2) investors who fund the proposed project and (3) an intermediating organisation in the form of a crowdfunding service provider that brings together

project owners and investors through an online platform. Until now, crowdfunding in Poland has not been subject to Polish or EU regulations. However, the significant increase in the popularity of this model of financing made it necessary to introduce appropriate legal regulations in this area, ensuring the safety of each of the parties participating in this model of financing.

New regulations – what is going to change?

In the last quarter of 2020, finally a Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (hereinafter referred to as the „Regulation”) was passed at EU level. One of the most important changes that will occur after the legislation comes into force is the regulation of the rules of operation and functioning of intermediary organizations. Pursuant to the Regulation, crowdfunding services shall only be provided by



WIESŁAW ŁATAŁA,
Managing Partner, Attorney-at-law
BDO Legal Łatała i Wspólnicy Sp.k.
(limited partnership)

legal persons that are established in the European Union and that have been authorised as crowdfunding service providers. Additionally, the Regulation determines the content of the so called “key investment information sheet”, i.e. the set of information to be provided by crowdfunding service providers to prospective investors for every crowdfunding offer in order to enable them to make an informed investment decision. In addition, this sheet should warn prospective investors that the investing environment they have entered into entails risks that are covered neither by deposit guarantee schemes nor by investor compensation schemes. The key investment information sheet will not be authorized by the supervisory authority in each case, in order to ensure seamless and expedient access to capital markets for start-ups and small and medium entrepreneurs, to reduce their costs of financing and to avoid delays and costs for crowdfunding service providers. In addition to the above, the

changes will also affect investors. The Regulation distinguishes between sophisticated and non-sophisticated investors, as well as introduces different levels of investor protection safeguards appropriate for each of those categories. The distinction between sophisticated and non-sophisticated investors should build on the distinction between professional clients and retail clients. The main criterion for differentiation will be the prospective investors' experience in and knowledge of crowdfunding, which should be re-assessed every two years.

Crowdfunding and the prospectus obligation

This Regulation will not apply to crowdfunding offers with

a consideration of more than EUR 5 000 000, which are to be calculated over a period of 12 months. For a period of 24 months from 10 November 2021, where in a Member State the threshold of total consideration for the publication of a prospectus in accordance with prospectus regulation (Regulation (EU) 2017/1129) is below EUR 5 000 000, this Regulation will apply in that Member State only to crowdfunding offers with a total consideration up to the amount of that threshold.

When the changes will occur?

The Regulation will come into force on 10 November 2021.

Until then, however, it will be necessary to amend the Polish

regulations so that they are compliant and consistent with the content of the Regulation, which will avoid legal dualism and difficulties in applying the regulations.

The above changes should be considered as positive. On the one hand, they aim to increase investor safety by imposing certain obligations and conditions on intermediary organizations, including obtaining authorization to conduct such activities. On the other hand, the introduction of a mandatory threshold of EUR 5,000,000 will certainly contribute to the development of this financing model and will make it easier for many entities to use this source of capital.



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The last distinctions for the company are related to the Rankings: Companies and Tax Advisors of Dziennik Gazeta Prawna for 2019:

- ▶ 1st place The Best Tax Advisor in the category of medium-sized companies
- ▶ 3rd place for tax projects implementation

The 2019 rankings prepared by the Rzeczpospolita and Parkiet dailies:

- ▶ Best Audit Firm (5th place);
- ▶ Firm Most Active on the Stock Exchange (5th place)

BDO spółka z ograniczoną odpowiedzialnością sp.k., ul. Postępu 12, 02-676 Warszawa;
 tel.: +48 22 543 16 00, fax: +48 22 543 16 01, e-mail: office@bdo.pl
BDO Legal Łałała i Wspólnicy sp.k. Kraków, ul. Morawskiego 5, 30-102 Kraków,
 tel.: +48 12 423 23 23, fax: +48 12 429 41 17, e-mail: office@bdolegal.pl