

NEW RULES ALLOW THIRD-COUNTRY INVESTMENT FIRMS TO ACCESS POLISH TRADING VENUES

Polish law sets out the rules under which investment firms from third countries (i.e. non-EU/EEA countries) may provide investment services in Poland. The Parliament has adopted new regulations that provide for the terms on which third-country firms that do not provide investment services in Poland are able to access Polish trading venues.

Participation in a regulated market, MTF or OTF

The new regulations enable third-country investment firms that do not provide investment services in Poland to be parties to transactions entered into on a regulated market, multilateral trading facility (MTF) or organised trading facility (OTF) in Poland. This will be possible subject to certain conditions.

First, this does not apply to investment firms from all third countries, only to firms from those third countries that are OECD and FATF members (and therefore it will apply to UK investment firms post-Brexit). The firm must also hold a licence or provide services consisting in trading in financial instruments on another basis in the country where its registered seat is located and must be subject to supervision by the competent authority in that country.

Second, this does not apply to all transactions entered into by the investment firm on the venue, only to transactions for the sale or purchase of financial instruments:

- on its own account (but the firm will not be able to act as a market maker on the Polish trading venue); or
- for the account of its clients, but only those who have a place of residence or registered seat in the territory of a non-EU/EEA country.

Third, there must be a bilateral or multilateral agreement in place between the competent authority in the country where the registered seat of the investment firm is located and the Polish financial supervision authority (*Komisja Nadzoru Finansowego*, KNF) providing for cooperation and the effective exchange of information, or the exchange of information must be otherwise ensured between such competent authority and the KNF, as necessary for the purposes of supervision by the KNF of the activities of the third-country investment firm on the Polish trading venue.

Key issues

- New regulations allow investment firms from third countries that are OECD and FATF members to be parties to transactions entered into on a trading venue in Poland when acting on their own account or for the account of clients from non-EU/EEA countries.
- Investment firms from third countries are able to use the service of direct electronic access (DEA) to a trading venue in Poland to transact on their own account or for the account of clients from non-EU/EEA countries.

The new regulations also provide that if the transactions entered into as described above are derivatives admitted to trading on a Polish regulated market, then the derivatives may be recorded in accounts outside Poland.

Investment firms operating pursuant to these regulations will be subject to certain additional obligations, including the obligation to submit documents and information to the KNF upon request and the obligation to pay supervision fees to the KNF. In addition, the new regulations give the KNF powers to impose fines on these investment firms for contraventions of Polish requirements.

Direct Electronic Access (DEA)

Under the new regulations, third-country investment firms that do not provide investment services in Poland are allowed (without needing to be authorised in Poland) to access a Polish trading venue via direct electronic access (DEA) services provided by a member of or participant in the trading venue. This applies only to transactions for the sale or purchase of financial instruments by the firm:

- on its own account (the firm will not be able to act as a market maker on the trading venue); or
- for the account of its clients, but only those who have a place of residence or registered seat in the territory of a non-EU/EEA country.

The provisions of the new regulations relating to the use of DEA services do not specify that they only apply to third-country investment firms from OECD and FATF members. However, it seems that the legislator's intention was to limit the scope of use of DEA services in this way so that the services could be used only by entities that may be a party to transactions on the trading venue in accordance with the other provisions described above.

Conclusion

The new regulations will be particularly significant for UK investment firms in light of Brexit. For example, after Brexit, the regulations will allow UK investment firms to operate as remote members of the Warsaw Stock Exchange (*Giełda Papierów Wartościowych w Warszawie S.A.*) and to conclude transactions in Poland using DEA services provided by members of the Exchange, within the limitations discussed above.

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