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**KNF Statement on the entry into force of the Act on the conduct of business rules for certain financial market entities following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without the agreement referred to in Article 50(2) of the Treaty of European Union**

In the case of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (Brexit) without the agreement referred to in Article 50(2) of the Treaty of European Union, financial institutions based in the United Kingdom of Great Britain and Northern Ireland or Gibraltar will no longer be able to operate in the territory of the Republic of Poland on the basis of the European single passport. The issue was already raised in the previous KNF Statement of 29 January 2019 on the impending withdrawal of the United Kingdom from the European Union with regard to financial markets.

Considering the need for arrangements to protect the interests of clients of financial institutions, the Polish Financial Supervision Authority (KNF) initiated work to come up with a proposed transitional legal arrangement. As a result of cooperation between the KNF, the Ministry of Finance, the Ministry of Foreign Affairs, the Ministry of Entrepreneurship and Technology, and associations of financial entities, the Government of Poland submitted on 5 March 2019 to the Sejm of the Republic of Poland a *bill on the conduct of business rules for certain financial market entities following the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union without the agreement referred to in Article 50(2) of the Treaty of European Union*. The bill was passed by the Senate of the Republic of Poland on 21 March 2019 and signed by the President of the Republic of Poland on 28 March 2019.

The new statutory legislation provides for transitional arrangements, mostly with regard to business activities of certain financial institutions in the United Kingdom of Great Britain and Northern Ireland, and, in specified cases, Gibraltar. The new legislation, among other things:

- allows foreign banks to continue the performance of loan agreements as defined in the Act of 19 August 1997—the Banking Law under the legislation which applied to such agreements before the effective date of the new legislation—until such agreements expire, the portfolio of loans under such agreements is transferred to a domestic bank, a branch of a foreign bank and/or credit institution authorised to engage in lending activities in the territory of the Republic of Poland, authorisation to run a business in the territory of the Republic of Poland through a branch of a foreign bank is obtained, a domestic bank in the form of a joint-stock company is established through proper application of Articles 42a–42e of the Banking Law (Journal of Laws (Dziennik Ustaw) 2018, items 2187, 2243 and 2354; 2019, item 326)—for no more than 24 months of the effective date of the new legislation;
- allows for continued performance, for the benefit of banks and credit unions, of agreements for outsourcing activities entrusted to businesses in the territory of the

United Kingdom of Great Britain and Northern Ireland, and Gibraltar, or carried out in such territories under the legislation which applied to such agreements before the effective date of the new legislation—until such agreements expire, for no more than 24 months of the effective date of the new legislation;

- allows a provider operating as EU payment institution, EU electronic money institution, or provider referred to in Article 96(2) of the Act of 19 August 2011 on payment services, to operate in the territory of the Republic of Poland on the basis of authorisation granted, or entry in the relevant register made, by competent supervisory authorities and valid before the effective date of the new legislation, to the extent necessary to execute single payment transactions, perform framework agreements or agreements for the issuance of electronic money, respectively, as referred to in the Act of 19 August 2011 on payment services, concluded before, and valid at, the effective date of the new legislation, until the day on which: such agreements expire, the provider obtains authorisation or entry in the relevant register, and thus becomes authorised to provide payment services or to issue and buy electronic money, respectively, in the territory of the Republic of Poland—however for no more than 12 months of the effective date of the new legislation;
- allows entities operating as participants or indirect participants based in the United Kingdom of Great Britain and Northern Ireland, or Gibraltar to operate in the territory of the Republic of Poland under authorisation valid before the effective date of the new legislation and to the extent necessary to perform the agreements laying down the legal ties between the participants or between a system operator other than participant and the participants, resulting from participation in the system and its operation, concluded before, and valid at, the effective date of the new legislation—until such agreements expire but for no more than 12 months of the effective date of the new legislation;
- allows entities operating before the effective date of the new legislation as foreign investment firms to perform agreements for operations which constitute brokerage activities (referred to in Article 117(1) of the Act of 29 July 2005 on trading in financial instruments), concluded before the effective date of the new legislation, until the date on which: such agreements expire, authorisation referred to in Article 115(1) of the Act of 29 July 2005 on trading in financial instruments is obtained—however for no more than 12 months of the effective date of the new legislation;
- allows the entities operating as foreign investment firm with its registered office, headquarters or place of residence in the territory of the United Kingdom of Great Britain and Northern Ireland, and/or Gibraltar, as member or participant of the regulated market or alternative trading system operated in the territory of the Republic of Poland or using direct electronic access to such trading venues of financial instruments, to continue such operations until authorisation referred to in Article 115(1) of the Act of 29 July 2005 on trading in financial instruments is obtained—however for no more than 12 months of the effective date of the new legislation;
- allows foreign insurance undertakings to perform the contracts of insurance referred to in Divisions I and II of Appendix to the Act of 11 September 2015 on the business of insurance or reinsurance, by properly applying the provisions concerning the pursuit of the business of insurance by a foreign insurance undertaking in an EU Member State

other than the Republic of Poland, until the day on which: such contracts expire, the portfolio of insurance products is transferred to a domestic insurance undertaking or an insurance undertaking based in an EU Member State other than the Republic of Poland which may pursue the business of insurance in the territory of the Republic of Poland is obtained, authorisation to pursue the business of insurance in the territory of the Republic of Poland is obtained, and the portfolio of insurance products is transferred—for no more than 24 (for Division I) or 12 (for Division II) months of the effective date of the new legislation;

- allows foreign insurance undertakings or reinsurance undertakings to perform the business of reinsurance in the territory of the Republic of Poland by properly applying the provisions concerning the pursuit of the business of reinsurance by an insurance undertaking or reinsurance undertaking in an EU Member State other than the Republic of Poland—for no more than 24 months of the effective date of the new legislation;
- allows for continued performance of agreements for operations which constitute brokerage activities (referred to in Article 117(1) of the Act of 29 July 2005 on trading in financial instruments), concluded before the effective date of the new legislation, until the day on which:
  - such agreements expire,
  - authorisation referred to in Article 115(1) of the Act of 29 July 2005 on trading in financial instruments is obtained—for no more than 12 months of the effective date of the new legislation;
- allows the open-end investment funds and specialist open-end investment funds which apply the investment rules and restrictions defined for an open-end investment fund which:
  - hold assets invested in securities and money market instruments admitted to trading on a regulated market in the territory of the United Kingdom of Great Britain and Northern Ireland, or Gibraltar, or on an organised market other than a regulated market in those countries,
  - are parties to contracts relating to derivatives admitted to trading on those markets to hold such securities and/or money market instruments in their investment portfolio, or to invest their assets in such securities or money market instruments, or to be a party to contracts relating to such derivatives, or to enter into such contracts, although such markets have not been indicated in the investment fund's statutes under Article 93(1) point 1, Article 94(1) or Article 116a(1) of the Act of 27 May 2004 on investment funds and management of alternative investment funds (Journal of Laws 2018, items 1355, 2215, 2243 and 2244)—for no more than 6 months of the effective date of the new legislation.

**The KNF points out that the primary objective of the new legislation in question is to help businesses mitigate the negative effects of Brexit on clients by undertaking effective adjustment measures (e.g. by obtaining appropriate authorisation from the KNF, or by transferring the portfolio of financial services), or by closing the business. That is why the new legislation discussed applies to business activities commenced before the effective date**

**of the new legislation, and in most cases it restricts the possibility of concluding, renewing or amending contracts.**

It should also be noted that the new Act will only enter into force if the United Kingdom of Great Britain and Northern Ireland leaves the European Union without the agreement referred to in Article 50(2) of the Treaty on European Union, and if there is no other way to regulate the relationships existing in the areas of business covered by the new Act.