
Licensing Investment Services and Activities

– Member State Procedures under the Scope of MiFID

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Scope of the Directive

- ❑ The Directive shall apply to – art. 1(1):
 - ❑ investment firms
 - ❑ regulated markets
- ❑ Selected provisions shall apply to – art. 1(2):
 - ❑ credit institutions
 - authorised under Directive 2000/12/EC
 - when providing one or more investment services and/or performing investment activities

Scope of the Directive (cont. 1)

- ❑ Derogation for Multilateral Trading Facilities – art. 5(2):
 - ❑ any market operator may operate an MTF
 - ❑ subject to prior verification of its compliance with the selected provisions of the Directive
- ❑ Market operator – definition – art. 4(1)(13):
 - ❑ a person or persons who manages and/or operates the business of a regulated market
 - ❑ it may be the regulated market itself

Scope of the Directive (cont. 2)

- ❑ Central counterparty, clearing house and settlement system – art. 46
 - ❑ may be an entity/system of another Member State
 - ❑ oversight/supervision may be performed by the national central bank or by other supervisory authorities

Investment services and activities

Definition – art. 4(1)(2)

- Any of the services and activities
 - listed in Section A of Annex I
 - related to any of the instruments
 - listed in Section C of Annex I (financial instruments)

Section A

1. Reception and transmission of orders in relation to one or more financial instruments
2. Execution of orders on behalf of clients
3. Dealing on own account
4. Portfolio management
5. Investment advice

Section A – definition 2.

Execution of orders on behalf of clients –
art.4(1)(5):

- ❑ Acting to conclude agreements
 - ❑ to buy or sell
 - ❑ one or more financial instruments
 - ❑ on behalf of clients

Section A – definition 3.

Dealing on own account – art. 4(1)(6)

- ❑ Trading against proprietary capital
 - ❑ resulting in the conclusion of transactions
 - ❑ in one or more financial instruments

Section A – definition 4.

Portfolio management – art. 4(1)(9)

- Managing portfolios
 - in accordance with mandates given by clients
 - on a discretionary client-by-client basis
 - where such portfolios include
 - one or more financial instruments

Section A – definition 5.

Investment advice – art. 4(1)(4)

□ Provision of

- personal recommendation to a client
 - either upon its request
 - or at the initiative of the investment firm
- in respect of one or more transactions
 - relating to financial instruments

Section A (cont.)

6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis
7. Placing of financial instruments without a firm commitment basis
8. Operation of Multilateral Trading Facilities

Ancillary services

- ❑ The authorisation may cover – art. 6(1):
 - ❑ one or more ancillary services
 - ❑ set out in Section B of Annex I
- ❑ Authorisation shall in no case
 - ❑ be granted solely for the provision of ancillary services

Section B

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management
2. Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction

Section B (cont. 1)

3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings
4. Foreign exchange services where these are connected to provision of investment services
5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments

Section B (cont. 2)

6. Services related to underwriting
7. Investment services and activities as well as ancillary services of the type included under Section A or B of Annex 1 related to the underlying of the derivatives under Section C – 5, 6, 7 and 10 – where these are connected to the provision of investment or ancillary services

Investment firm – definition

Art. 4(1)(1)

- Any legal person
 - whose regular occupation or business is
 - the provision of one or more investment services to third parties
 - and/or
 - the performance of one or more investment activities
 - on a professional basis

Not legal persons

- MS may include them in the definition, provided that:
 - their legal status ensures a level of protection for third parties' interests
 - equivalent to that afforded by legal persons
 - they are subject to equivalent prudential supervision
 - appropriate to their legal form

Natural person

- ❑ Who provides services involving the holding of third parties' funds or transferable securities
- ❑ may be considered as an investment firm
- ❑ only if:
 - ❑ without prejudice to this Directive and the Directive 93/6/EEC (capital adequacy),
 - ❑ he complies with the following conditions (*next slide*):

Natural person – conditions (1)

- ❑ The ownership rights of third parties in instruments and funds must be safeguarded, especially in the event of the insolvency of the firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors.
- ❑ The firm must be subject to rules designed to monitor the firm/s solvency and that of its proprietors.

Natural person – conditions (2)

- ❑ The firm's annual accounts must be audited by one or more persons empowered, under national law, to audit accounts.
- ❑ Where the firm has only one proprietor, he must make provision for the protection of investors in the event of the firm's cessation of business following his death, his incapacity or any other such event.

Investment firms in Poland

- ❑ Commercial companies
 - ❑ Legal persons (joint-stock company or limited-liability company) – all services and activities
 - ❑ Not legal persons (partnerships), and only with individually licensed proprietors/managers (≥ 2) – only selected services or activities
- ❑ Natural persons – not allowed
- ❑ Foreign investment firms (legal, not legal or natural persons) – European passport

Outsourcing – Directive

- Outsourcing of important operational functions is possible, but – art. 13(5):
 - investment firm should ensure:
 - continuous and satisfactory service to clients
 - performance of investment activities on a continuous and satisfactory basis
 - avoid undue additional operational risk
 - may not be undertaken in such a way as to impair materially:
 - quality of its internal control
 - ability of the supervisor to monitor the firm’s compliance

Investment firm agent in Poland

- ❑ Written agreement with a natural or legal person
 - ❑ on an ongoing or temporary basis
 - ❑ in the name and for the account of the inv. firm
- ❑ Activities involving:
 - ❑ conclusion of brokerage agreements with clients
 - ❑ execution of brokerage agreements with clients
 - advising on the services offered by the firm
 - collecting the client orders
 - collecting other declarations of will from the clients

Investment firm agent (cont.)

- Register of agents maintained by the PFSA
- Supervision powers of the PFSA on the agents
- Obligatory supervision of the investment firm on its agents
- Agreement with only one investment firm
- Any payments from the clients – prohibited
- Joint and several liability for any damage

License – general requirements (1)

- ❑ Given by MS competent authority – art. 5
- ❑ For specified services or activities – art. 6
- ❑ Compliance with all requirements – art. 7
- ❑ Reputation and experience of managers – art. 9
 - ❑ ≥ 2 managers (with exception) – art. 9(4)
- ❑ Suitability of the shareholders/members with qualifying holdings – art. 10

Qualifying holdings

- ❑ Voting rights or capital: 20%, 30% (1/3), 50%
 - ❑ prior notification of intended acquisition
 - ❑ prior notification of intended disposal/reduction
- ❑ If the influence is likely to be prejudicial to the sound and prudent management
 - appropriate measures to put an end to this:
 - opposition of the competent authority
 - judicial orders and/or sanctions
 - suspension of the exercise of the voting rights
 - nullity or annulment of the votes cast

License – general requirements (2)

- ❑ Membership of an authorised Investor
Compensation Scheme – art. 11 (97/9/EC)
- ❑ Initial capital endowment – art. 12 (93/6/EEC)
- ❑ Organisational requirements – art. 13

- ❑ Regular review of conditions for initial
authorisation – art. 16

Final decision

- ❑ The competent authority shall not grant authorisation – art. 7(1)
 - ❑ unless and until such time
 - ❑ as it is fully satisfied
 - ❑ that the applicant complies with all requirements
- ❑ Information within six months – art. 7(3)
 - ❑ of the submission of a complete application
 - ❑ whether or not authorisation has been granted

Application in Poland (1)

- ❑ Personal details of managers/partners etc.
- ❑ Full list of shareholders + number of shares held
- ❑ Details of shareholders with $\geq 10\%$
- ❑ Information of capital group members
- ❑ As above – with respect to shareholders
- ❑ Description of the first activities to be performed
- ❑ Amount and source of initial capital

Application in Poland (2)

- ❑ Feasibility study for the first year
- ❑ Statements of the managers that they are not guilty of specified offences
- ❑ Organisation of the business
- ❑ MTF – settlement methods & partners
- ❑ Business activities conducted previously
- ❑ Parent entities and subsidiaries of the shareholders with $\geq 10\%$ of capital or votes

Attachments to the application (1)

- ❑ Articles of association + excerpt from the register
- ❑ Operational rules for investment services
- ❑ Organisational and internal audit rules
- ❑ Compliance rules
- ❑ Rules for the protection of inside information
- ❑ Anti-money laundering rules
- ❑ Rules for the conflict of interest management

Attachments to the application (2)

- Investing rules for the managers & employees
- Last audited yearly report
- List of securities brokers & investment advisers
- Civil liability insurance (if applicable)
- Statements of the shareholders ($\geq 10\%$) on the source of funds used to pay for the shares
- Proof of membership in the authorised Investor Compensation Scheme

Initial capital required in Poland

- ❑ Basic: € 125 000
- ❑ While dealing on own account and/or underwriting: € 730 000
- ❑ Without safekeeping of financial instruments for the account of clients: € 50 000
- ❑ Only reception and transmission of orders and/or investment advice (while being an insurance agent or broker): € 25 000
 - ❑ or civil liability insurance

Time and scope of the license

- ❑ Application is considered within 2 months of its submission (fully completed)
- ❑ The license specifies:
 - ❑ company name, registered office & address
 - ❑ list of authorised services & activities
 - ❑ date of commencing brokerage activities
 - no later than 12 months from the decision granting the license

Obligatory notifications to PFSA

- ❑ Any change of information in the application
- ❑ Selected changes of information in the attachments to the application
- ❑ Any change in qualifying holdings (20%, 33% or 50%)
- ❑ Acquisition of shares in other companies with $\geq 5\%$ of total voices

Banks in Poland

Two kinds of investment services and activities:

- ❑ Brokerage services and activities (like investment firms)
- ❑ Custodial activities (safekeeping and administration of financial instruments for the account of clients)

Regulated market – definition (1)

Art. 4(1)(14)

- ❑ Multilateral system
 - ❑ operated and/or managed by a market operator
 - ❑ which brings together (or facilitates this) of multiple third-party buying and selling interests in financial instruments
 - ❑ in the system and in accordance with its non-discretionary rules

(next slide)

Regulated market – definition (2)

- in a way that results in a contract
 - in respect of the financial instruments admitted to trading under its rules and/or systems
- and which is authorised and functions
 - regularly
 - in accordance with the provisions set in this Directive

Authorisation and applicable law

- ❑ Compliance with all the requirements – art. 36(1)
 - ❑ both the market operator and the system
- ❑ Compliance kept under regular review – art. 36(2)
- ❑ Market operator responsible for ensuring compliance – art. 36(3)
- ❑ Market operator entitled to exercise the rights that correspond to this regulated market – art. 36(3)

Requirements

- ❑ Management of the regulated market – art. 37
- ❑ Persons exercising significant influence – art. 38
- ❑ Organisation – art. 39
- ❑ Admission of financial instruments – art. 40
- ❑ Suspension and removal of instruments – art. 41
- ❑ Access to the regulated market – art. 42
- ❑ Monitoring of compliance – art.43
- ❑ Pre-trade & post-trade transparency – art. 44-45

Withdrawal of authorisation

May be done when the regulated market – art. 36(5):

- ❑ does not make use of the authorisation in 12 months
- ❑ expressly renounces the authorisation
- ❑ has not operated for the preceding 6 months
- ❑ has made false statements to obtain the authorisation
- ❑ no longer meets the original conditions of it
- ❑ has seriously and systematically infringed the provisions adopted pursuant to this Directive
- ❑ falls within any of the cases where national law provides for withdrawal

Legal form in Poland

- ❑ Exclusive right to use „stock exchange” name
- ❑ Only a joint-stock company
- ❑ Shareholders’ capital ~ € 2,5 mln
- ❑ Only registered shares*
- ❑ Only specified types of shareholders allowed*
 - ❑ PFSA may allow another shareholders
- ❖ waved for a public company

Qualified holdings in Poland

- ❑ 5%, 10%, 15%, 20%, 25%, 33% or 50% of capital or votes
 - ❑ prior notification of intended acquisition
- ❑ If the acquirer could exert detrimental influence on the management, PFSA may oppose it. If so:
 - ❑ any exercise of voting rights attached to the shares acquired shall be deemed null and void

Allowed business in Poland

- ❑ Operation of a stock exchange
- ❑ Alternative Trading System (ATS/MTF)
- ❑ Commodities trading
- ❑ Activities connected with capital market:
 - ❑ education
 - ❑ promotion
 - ❑ provision of information

Application in Poland (1)

- ❑ Name and registered office of the company
- ❑ Personal details of boards' members & managers
- ❑ Amount of own funds & loans allocated to the financing of the launch of the stock exchange
- ❑ Information how the operations will be financed
- ❑ Amount, structure & sources of shareholders' equity

Application in Poland (2)

- ❑ Settlement & clearing entity + rules
- ❑ Intended location of the stock exchange
- ❑ Technical means to facilitate its operations
 - ❑ ongoing communication with the clearing entity
- ❑ Commitment of ≥ 6 investment firms to conduct operations on the stock exchange
- ❑ List of shareholders with $\geq 5\%$ of capital or votes

Attachments to the application

- Articles of association
- Stock exchange rules
- Feasibility study of the operations
- Rules of an ATS (if applicable)

Authorisation in Poland

- ❑ Minister of Finance
 - ❑ after PFSA opinion
- ❑ Authorisation refused
 - ❑ if the applicant is found to be unable to:
 - conduct the operations in a manner which would guarantee the security of trading in financial instruments
 - duly protect the interests of trade participants

Required approval of the PFSA

- ❑ Any change in the composition of the management board
- ❑ Any amendment to the:
 - ❑ articles of association of the company
 - ❑ stock exchange rules
- ❑ Change of the settlement & clearing entity – prior notification of PFSA, with the right to oppose the change

Thank you for your attention