

**CONCLUDING A KDPW PARTICIPATION AGREEMENT**  
**- ENTITY WHICH CARRIES OUT CUSTODIAN ACTIVITIES**

An entity which seeks participation in the depository system as part of custodian activities submits the following:

the application ([form U1](#)) which specifies (according to § 26 of the Rules):

- the type of activities, in this case **custodian activities**,
- the type(s) of participant status relevant to such activities, sought by the applicant, according to the classification laid down in § 24 subpara. 2 of the Rules as follows:
  - **custodian**,
  - **custodian – own account**,
  - **lead manager**,
  - **representative** ..... (specify the entity which is not a participant, for which the applicant intends to perform such activities),
- a declaration to the effect that the applicant is familiar with the rules of sending and receiving declarations and information in electronic form used in relations between KDPW and direct participants, posted on the KDPW website, and that it is aware of the conditions it should meet as a direct participant according to § 37 subpara. 2 of the Rules,
- an indication of the LEI code identifying the applicant.

and **attachments** (according to § 27 i 29 of the Rules):

1. a copy of the company statute, or other official document describing the legal status and organisation of the applicant;
2. a valid copy or excerpt from the relevant company register;
3. a copy of the brokerage licence or licences to conduct other activities by the applicant, if such licences is necessary on the basis of provisions of Polish or foreign law currently in force, while for foreign investment companies conducting brokerage activities on the territory of the Republic of Poland – an additional declaration showing that conditions have arisen to allow them to begin performing brokerage activities in the territory of the Republic of Poland, defined in Article 117(3), second sentence, of the Law on trading in financial instruments, or a document from the Polish Financial Supervision Authority (KNF), or a department of the Polish Financial Supervision Authority, confirming that the Authority has received from the appropriate foreign supervisory body notification on the intention to begin performing brokerage activities in the Republic of Poland by that foreign investment company, indicating the date when this notification was received;
4. a copy of internal procedures and measures that the applicant shall apply to ensure the confidentiality of information obtained from the securities settlement system operated by KDPW;
5. cards with specimen signatures of the applicant's authorised representatives, as well as copies of power-of-attorney documents in instances where the right to represent the applicant by those persons submitting a specimen signature on the specimen signature card does not derive from the registration documents specified in point 2 ([form U5](#));

6. cards with specimen signatures of persons authorised to make and receive declarations from KDPW on behalf of the applicant, these declarations not being declarations of intent ([form U6](#));
7. an information card ([form U15](#)) containing addresses for deliveries as well as a list of staff employed in posts involving securities trading-related activities, that includes their positions, telephone numbers as well as email addresses;
8. a declaration giving consent to arbitration by the arbitration court at KDPW ([form U7](#));
9. a declaration indicating the number or numbers of bank accounts managed in the settlement bank and, in the case and within the scope referred to in Article 82 subpara. 7, managed in the TARGET2 system, used to process payments arising from the settlement of transactions performed by KDPW or performed as part of the processing of issuers' obligations arising from securities registered in the depository - (forms: [U10](#), [U10.1](#), [U12](#), [U12.1](#), [U13](#), [U13.1](#));
10. copies of annual financial statements for the previous 3 years, however, if the applicant has only performed business activities for a shorter period, for all business years together with a certified auditor's opinion and report, unless the applicant's annual financial statements are not subject to mandatory audit in accordance with the relevant laws in force in the jurisdiction of the applicant's place of business;
11. a copy of the risk management procedures the applicant has implemented, containing a description of how activities, duties and responsibilities have been allocated within the applicant's organisational structure, as well as information relating to procedures for identifying risk to which the applicant is, or may be, exposed, its assessment, monitoring and management, containing in addition rules and frequency of risk reports prepared by the applicant;
12. a description of the applicant's business continuity plan, or business recovery strategy in the event of emergencies;
13. a declaration indicating the business seat or fixed place of business within the meaning of the EU Council Implementation Regulation (EU) No. 282/2011 of 15 March 2011 on laying down implementing measures for Directive 2006/112/EC on the Common system of Value Added Tax (Journal of Laws EU L 77 of 23 March 2011) with respect to which the participation agreement is to be concluded –on condition that the applicant is a non-resident person within the definitions of the Currency Law of 27 July 2002 (Journal of Laws 2017 item 679 as amended);
14. a document containing a description of the principles and methods of managing a securities registry by the applicant, including rules for making entries on securities accounts or omnibus securities accounts, as well as containing an internal plan of registration accounts – the detailed guidelines for the content of the document to be prepared by an applicant operating securities accounts are laid down in § 12 of the KDPW Detailed Rules of Operation ("DRO");
15. a document containing the principles the applicant has adopted for maintaining the continuity and safety of operations related to securities registration, including operations related to making entries by the applicant on securities accounts and omnibus securities accounts – the detailed guidelines for the content of the document to be prepared by an applicant operating securities accounts are laid down in § 26 of DRO;
16. a list of persons to be employed by the applicant to manage securities accounting registration, containing a description of their qualifications and current experience in this field, or containing other information confirming that these persons have the required knowledge of the principles for performing this securities accounting and of practical experience of the same.

If the application is submitted by an entity with its business seat in a jurisdiction that is not a European Union member, or European Economic Area agreement signatory, the application should in addition include:

17. a comparative legal analysis of the regulatory and supervisory framework in the applicant's jurisdiction with the regulatory and supervisory framework applicable to the applicant if the applicant performed the same business activities and its seat of business was in an EU member state;
18. a legal opinion drafted by an entity performing professional legal support services in the applicant's home country, selected by the applicant, confirming that in the event that insolvency proceedings, within the meaning defined in the Law on settlement finality, are initiated against a foreign applicant, the provisions of these Rules relating to the moment of the introduction of a settlement order and the moment that such an order becomes irrevocable in the depository system, as well as the related principle of settlement finality and the right of KDPW to use the applicant's assets to perform this settlement, will be effective and may be enforced in the applicant's jurisdiction.

Documents included together with the application for direct participation, originally prepared in a foreign language, should be submitted in Polish translation, translated and certified by a certified translator.

Documents originally prepared in English shall not require translation into Polish, while those that have been originally prepared in another foreign language may be submitted in English translation, meeting the requirements for translations of public documents submitted in courts or public offices in the home country of the direct participant, or of the entity seeking participation status. In the latter case, a direct participant, or entity seeking participation status shall in addition provide a declaration in KDPW, confirming that the submitted English translation meets the requirements described in the previous sentence and provides a faithful and accurate rendition of the translated document.

An application for the conclusion of an agreement for direct participation, as well as the applicant's own declarations included with the application and submitted to KDPW should be prepared in Polish; however, the specimen signature card, referred to in points 5-7, may be prepared in English.

Furthermore, please note the following:

- a participant operating securities accounts or omnibus securities accounts is obliged to employ persons to manage securities accounting registration who have the required knowledge and experience or qualifications in this regard, as required under § 38 of the Rules, in the minimum number defined in Resolution No. 192/20 of the KDPW S.A. Management Board dated 10 March 2020;
- a participant is obliged to indicate to KDPW entity accounts which will be the default accounts (§ 36 of the Rules);
- direct participants operating securities accounts or omnibus securities accounts are obliged at least once every calendar year to take part in tests as part of the for Business Continuity Planning System, organised by KDPW according to § 40 subpara. 1 of the Rules,
- a participant who operates securities accounts is required to regularly provide KDPW SA reports on the basis of the securities register kept by the participant.

An entity which has obtained direct participant status is obliged to sign an agreement with KDPW, referred to in § 5 subpara. 1 of the Rules, defining the ability to make declarations of will and to send information in electronic form. Detailed requirements in this regard are available under the tab <https://www.kdpw.pl/en/technological-requirements.html>

Operation of registration accounts must be preceded by the opening of entity accounts on the basis of relevant messages sent to KDPW which define all attributes of the account to be opened ([acmt.rqa.001.03](#)). In the message opening an entity account, the participant may specify the identifier to be assigned to the account to be opened.