

**CONCLUDING A KDPW PARTICIPATION AGREEMENT
FOREIGN CUSTODIAN**

An entity which seeks participation in the depository system as a foreign custodian submits the following:

the application (form U32) which specifies:

- the type of activities **other than defined in § 24 subpara. 1-5 of the Rules**
- the type of participant status - **foreign custodian**
- a declaration stating that the applicant is familiar with the provisions of the Personal Income Tax Law specified in the Rules and is aware of the obligations of natural persons arising from such provisions (§ 26 subpara. 5 of the Rules)
- 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

or

- appointing an indicated direct participant the entity's account operator (in such cases the documents indicated in points 19 and 20 below should be attached)
- an indication of the LEI code identifying the applicant.

and **attachments** (according to § 27 i 28 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 1 ([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 U15.1](#)) 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 EUCouncil 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 with later amendments);
14. a declaration, or documents required for the identification of reported US accounts, or accounts held by exempt financial institutions, in accordance with the Act of 9 October 2015 on the implementation of the Agreement between the Government of the United States of America and the Government of the Republic of Poland to Improve International Tax Compliance and to Implement FATCA (Dz. U. (Journal of Laws) 2017, item 1858) - (forms: [U35.1](#) and [U35.1 - information](#));
15. a declaration ([form U15.3](#)) and documents needed for client identification and verification of the client's identity, or the application of other financial security measures, according to the Act of 1 March 2018 on Antimoney laundering and counter-terrorism financing;
16. a declaration, or documents required for the identification of accounts reported under the provisions of the Law on the Exchange of tax information with other jurisdictions of 9 March 2017 (Dz. U. (Journal of Laws) 2019, item 648) - ([form U35.2](#)).

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.

An applicant which appoints an account operator, shall also submit:

19. The relevant declaration ([form U37](#)) including:
 - a power of attorney granted to the account operator to submit and receive on behalf of the direct participant, in relations with KDPW and other participants, declarations of will on matters relating to its participation in the depository system where such declarations may, or should be made in electronic form, in particular to submit and revoke instructions which, once executed, cause a securities account managed in KDPW for the principal to be credited or debited or the participant's cash account relevant to the principal to be credited or debited;
 - a document containing authorisation for the account operator to submit and receive, on behalf of and with binding effect to the direct participant, declarations other than declarations of will which may or should be sent in electronic;
20. an approval of the KDPW direct participant to perform the function of account operator for the applicant ([form U38](#)).

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.

A foreign custodian which has obtained direct participant status and is not planning to operate in the depository system through an account operator 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>

The participant who did not appoint an account operator is obliged to take part, at least once a year, in tests of the System for Maintaining Business Continuity, organised by KDPW according to § 40 of the Rules.

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.

Furthermore, please note that, according to § 36 of KDPW Rules, a participant is obliged to indicate to KDPW entity accounts which will be the default accounts.