

**Resolution No 49/936/21  
of the KDPW Supervisory Board of  
8 October 2021**

Acting in accordance with Article 50 subpara. 1 of the Law on Trading in financial instruments of 29 July 2005, as well as § 20, subpara.2 (6) of the KDPW Articles of Association, the KDPW Supervisory Board, has resolved the following:

**§ 1**

To make the following amendments to the KDPW Rules, approved on the basis of Resolution No. 42/679/17 of the KDPW Supervisory Board of 26 September 2017 (as amended):

**1/** In § 4, item 14 shall be amended as follows:

“14) securities settlement system, this shall be understood to mean the system referred to in Article 1 point. 2 of the Law on Settlement finality;”;

**2/** In § 5:

**a/** subpara. 5 point 2 shall be amended as follows:

“2) permit participants, or entities seeking to conclude a participation agreement, to submit documents, including official documents, in the form of electronic copy (scan) and to determine the rules for submitting them in such form.”;

**b/** subpara. 6 shall be amended as follows:

“6. In relations between KDPW and participants, the submission of documents containing a declaration, or information, that do not meet the formal requirements described, respectively, in subpara. 4 or in subpara. 5 point 2, may be permitted. However, only actions requiring an urgent response should be performed on the basis of the contents of such a document. No action should be performed when such a document has been damaged in such a way as to render its contents impossible to determine, or when its authenticity may be challenged.”;

**3/** In § 33a:

**a/** subpara. 3 shall be amended as follows:

“Subject to the provisions of subpara. 3a, extending participation within the participation type of issue agent, which consists of incorporating specific bonds, mortgage bonds or investment certificates within this participation type, shall be conditional on the issuer holding these securities, on holding the status of participant with the type Issuer and on submitting to KDPW a power-of-attorney in written form authorising the direct participant applying for the extension of participation to be able to conclude agreements with KDPW on behalf of that issuer, which relate to the registration in the depository of securities issued by that issuer.”;

**b/** subpara. 3a shall be added after subpara. 3, as follows:

“3a. In instances where the issuer's registered office is situated outside the territory of the Republic of Poland, an additional condition for extending participation to the participation type of issue agent, consisting of the inclusion of specific securities issued by this issuer, is the submission to KDPW of a

written declaration by the issuer stating that in connection with the provision of notary and central maintenance services for these securities, KDPW will not be obliged to take any measures to enable its users to comply with the requirements of the law of the country in which the issuer is domiciled, or, if it is evident from the content of this declaration that there is a requirement for KDPW to take such measures, for KDPW to be entitled to provide notary and central maintenance services with respect to securities established under the provisions of the law of that state, in accordance with Article 23 of CSDR.”;

**4/** In § 46 subpara. 1, the full stop in point 4 shall be replaced by a comma and point 5 shall be added as follows:

“5) in instances where the applicant's registered office is situated outside the territory of the Republic of Poland - a declaration specifying the securities that the applicant intends to register in the depository, and the state under the law of which they have been or are to be issued, and if that state is not also the state in where the applicant has registered its seat of business, and KDPW is to act as the issuer CSD - also indicating whether, in connection with the provision of notary and central maintenance services with respect to these securities, KDPW will be required to take measures enabling its users to comply with the legal requirements of both, or of only one of these jurisdictions.”;

**5/** In § 55, subpara. 1a shall be added after subpara. 1 as follows:

“ 1a. If the content of the information or of the documents, referred to in subpara. 1, shall indicate the possibility of irregularities in the securities accounting records kept by the direct participant, KDPW shall request that the participant immediately provide appropriate explanations or a specific report from these accounting records.”;

**6/** In § 65, subpara. 4a shall be added after subpara. 4 as follows:

“4a. If the application, referred to in subpara. 3, relates to securities issued by an issuer whose registered office is situated outside the territory of the Republic of Poland, then prior to its submission, the participant, referred to in subpara. 4, shall be required to obtain confirmation from the issuer that the declaration, referred to in § 33a subpara. 3a, submitted to KDPW in connection with an application by the participant, referred to in subpara. 4, for extending participation to the participation type of issue agent, consisting of the inclusion of specific securities issued by this issuer, shall also refer to those securities for which this application is sought. In the absence of such confirmation, the participant, referred to in subpara. 4, shall be obliged to obtain from the issuer and submit to KDPW a written declaration, referred to in § 33a subpara. 3a, relating to these securities, and may submit an application, referred to in subpara. 3, relating to these securities only after having first obtained confirmation from KDPW that KDPW is entitled to provide with notary and a central maintenance services with respect to these securities.”;

**7/** In § 66:

**a/** subpara. 1 shall be amended as follows:

“1. The issuer shall include the following documents with the application to register securities in the depository, subject to the provisions of subpara. 8:

- 1) an issue letter relating to the securities issue and containing information concerning the securities being deposited, including their number, or – in instances described in § 65 subpara. 2 – the total nominal value and unit nominal value of the instrument, and where appropriate, indicating the participant performing the role of lead manager or registration agent, and the registration account managed for that participant in KDPW on which the securities concerned should be entered,
- 2) documents specifying the legal status of the securities being registered, prepared according to the applicable legal regulations,
- 3) documents providing the legal basis on which the securities were issued,
- 4) documents that constitute the basis on which permission is granted to distribute the securities to those entitled by making entries in securities accounts or by means of omnibus securities accounts,

4a) in instances where KDPW is to perform the role of issuer CSD and the issuer's registered office is situated outside the territory of the Republic of Poland – a declaration indicating whether in connection with the provision of notary and central maintenance services with respect to securities to which the application pertains, KDPW will be obliged to take any measures to enable its users to comply with the legal requirements of a jurisdiction other than the Republic of Poland, as well as,  
5) for securities issued in accordance with the laws of a country other than the Republic of Poland:  
a) a legal opinion drafted by an entity performing professional legal support services in that country, selected by the applicant, indicating indisputably that all the terms and conditions which need to be met for the issue of these securities to be successfully finalised and for the securities to be distributed to those so entitled, as described in point 4 – on condition that KDPW is to perform the role of issuer CSD for these securities, and  
b) a document describing the basic principles of the exercise of rights from these securities.”;

**b/** subpara.9 shall be repealed;

**8/** § 69a shall be amended as follows:

“§ 69a

1. If the agreement for the registration of shares has been concluded by a participant in order to meet the legal obligations, referred to in Article 17 of the Law of 30 August 2019 on the amendment of the Commercial Company Code and certain other laws (Dz.U (Journal of Laws) 2019 item 1798, as amended), the number of shares registered in the depository may not exceed the number of shares whose physical counterparts have been submitted to the issuer.
2. The issuer shall determine the number of shares whose physical counterparts have been submitted to that issuer in the issue letter for those shares.
3. Shares whose physical counterparts have been deposited with the issuer after the date of the conclusion of their registration agreement, shall be registered in the depository on the basis of an annex or annexes to the issue letter for these shares, in which the issuer has confirmed the receipt of the submission of these physical counterparts.
4. The provisions of subparas. 1-3 shall not apply in instances where the issuer that is a party to the share registration agreement, which has been concluded by the issuer in order to meet the legal obligations referred to in subpara. 1, has not provided the physical shares and has confirmed this in the application submitted for the conclusion of this agreement.
5. The provisions of sections 1-4 shall apply accordingly in the event that the registration agreement relates to shares issued before March 1, 2021 by an issuer with its registered office situated in the territory of the Republic of Poland, who was not required to meet the obligation, referred to in subpara. 1, or who met this obligation by concluding an agreement for keeping a register of shareholders, in the event that all these issuer's shares could not be registered in this register with the effect referred to in Art. 343 § 1 of the Commercial Companies Code, as a result of failure by shareholders to submit all the physical counterparts of these shares issued to them.
6. The provisions of subparas. 1-4 shall apply accordingly to subscription warrants in instances where the issuer established outside the territory of the Republic of Poland has declared in the application for the conclusion of an agreement for their registration in the depository that this agreement relates to subscription warrants issued by the issuer before 1 March 2021.

**9/** In § 72, subpara. 3 point 5 shall be amended as follows:

“5) on the basis of an agreement concluded following the submission by an issuer of an application described in § 65 subpara.2a or in § 69a subpara. 6, on condition that all the securities that are subject to this agreement, for which share registers are not managed specifically by entities with the participation type of lead manager, are to be registered on the same registration account managed in KDPW for a given direct participant.

**10/** § 89a shall be added after § 89 as follows:

“§ 89a

1.If as a result of the settlement of the intersystem transfer of securities, these securities were recorded in the registration account of a direct participant on day D or before day D, and the issuer's benefit payment, deriving from these securities, determined for that day was made available to this or other direct participants in accordance with the balances of their registration accounts on day D, despite the fact that the intersystem transfer of these securities was performed with the exclusion of the right to receive this benefit payment, the direct participant who sent the settlement instruction for this transfer shall be obliged to reimburse KDPW without delay, however, not later than one day after the date of the receipt of a demand in this matter, the benefit payment derived from these securities.

2. KDPW shall order the direct participant to reimburse the benefit payment derived from the securities that were the subject of the intersystem transfer onto the participant's registration account, in the event of its receiving a request for the reimbursement of this benefit payment from the entity referred to in § 67 subpara. 2, which first transferred the benefit payment to KDPW, or in the event of not receiving a benefit payment from that entity deriving from these securities.

3. The reimbursement of the benefit payment by the direct participant shall take place according to the following principles:

1) for cash benefits - by making the amount of the cash benefit available to KDPW on the participant's cash account,

2) for non-pecuniary benefits - by making the securities from which the benefit derives available to KDPW on the registration account onto which the intersystem transfer of the securities from which the benefit derives was made.

4. KDPW shall be entitled to debit the participant's cash account or the registration account kept for that participant for the amount corresponding to the benefit payment to be reimbursed.

5. If as a result of the settlement of the intersystem transfer of securities, these securities were recorded in the registration account of a direct participant after day D, and the issuer's benefit payment, deriving from these securities, determined for that day was not made available to this or other direct participants, despite the fact that the intersystem transfer of these securities was performed together with the right to receive this benefit payment, then KDPW shall, following the receipt of this benefit payment from the entity referred to in § 67 subpara. 2, make available this benefit payment to the direct participant who sent the settlement instruction for this transfer without delay, however, not later than one day after the date of its receipt.

6. The transfer of the benefit payment by KDPW shall take place according to the following principles:

1) for cash benefits - by transferring the benefit payment amount onto the participant's cash account,

2) for non-pecuniary benefits - by recording the securities being the subject of this benefit on the registration account onto which the intersystem transfer of the securities from which the benefit derives was made.”;

**§ 2**

This Resolution shall enter into force two weeks after the date of its publication by the KDPW Management Board, following its approval by the Polish Financial Supervision Authority.

Chairman of the KDPW Supervisory Board

Adrian Kalisz