

## **Follow up Questions for Poland:**

### **Introduction:**

#### ***Tax system***

- 1) For the section “tax system” under question 2, could you provide a brief description of the rules for considering a foreign entity as tax resident in Poland?**

#### **Natural persons**

If a person has the status of a Polish tax resident, then he/she should declare worldwide income for tax purposes in Poland, regardless of the country in which that income has been earned - unlimited tax liability.

If a person does not have the status of a Polish tax resident (a non-resident), only the income generated in Poland should be declared to the revenue office for tax purposes (limited tax liability).

Pursuant to the Article 3 § 1a of the Personal Income Tax Act a person may acquire the status of a tax resident in Poland if he/she has centre of personal or economic interests (centre of vital interests) in Poland, or spends more than 183 days in a fiscal year in Poland.

These rules apply taking into account double taxation agreements. If a person is considered as tax resident in two countries, he/she is subject to the conflict-of-laws rules set out in the relevant double taxation agreement. In general:

-he/she shall be deemed to be a resident of the state in which he has a permanent home available to him; if he/she has a permanent home available to him/her in both contracting states, he/she shall be deemed to be a resident of the state with which his/her personal and economic relations are closer (centre of vital interests);

- if the state in which he/she has his centre of vital interests cannot be determined, or if he/she has not a permanent home available to him/her in either state, he/she shall be deemed to be a resident of the state in which he/she has an habitual abode;

- if he/she has an habitual abode in both contracting states or in neither of them, he/she shall be deemed to be a resident of the state of which he/she is a national;

- if he/she is a national of both contracting states or of neither of them, the competent authorities of the contracting states shall settle the question by mutual agreement.

If a person works in Poland but resides in another country, the bilateral double taxation agreement concluded between Poland and this country will determine where such person is required to pay taxes (the proper article of the DTA concerning taxation of income from employment).

#### **Legal persons**

Pursuant Article 3 §1 of the Corporate Income Tax Act legal persons whose registered office or management lies within the territory of Poland shall be subject to tax liability as regards the total of their income irrespective of the location of the sources of their revenue. This rule applies taking into account double taxation agreements.

According to DTAs the decisive criterion determining tax residence of a legal person is, in general, its place of effective management. Determining place of effective management is often difficult and raises many practical problems. It should be stressed in this context that Poland is a party to the MLI Convention - Multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting (elaborated within the BEPS Action 15 plan in order to limit using the double taxation avoidance agreements in aggressive tax planning). Poland joined its article 4 concerning double resident entities (other than natural persons). This provision provides for that if by reason of the provisions of a DTA a person other than an individual is a resident of more than one contracting state, the competent authorities of the contracting States shall endeavour to determine by mutual agreement the contracting state of which such person shall be deemed to be a resident for the purposes of the DTA, having regard to its place of effective management, the place where it is incorporated or otherwise constituted **and any other relevant factors**. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Covered Tax Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting Jurisdictions.

The provision of article 4 of the MLI shall be included in bilateral DTAs concluded between Poland and the second contracting state only when also that other contracting state chooses to apply this provision.

Our position is that including the above mentioned provision in DTAs should ease the process of determining tax residence of legal persons of dual residence by the obligation to take to account by tax authorities also **any other relevant factors**. Additionally the provision introduces a burdensome sanction to tackle possible abuses regarding tax residency – which is denying tax benefits provided for by tax treaty. Therefore Poland aims to include such a provision in its DTAs not encompassed by the MLI.

**2) Can you please clarify if partnerships are legal entities in Poland? Can partnerships hold property or assets in their own name? Are they liable to tax as a legal entity or are they fiscally transparent? It is our current understanding that there may be different treatment for different types of Partnerships, in this case, please clarify this and elaborate on these differences.**

Partnerships have legal capacity, but they are not legal entities. Legal capacity means that partnerships may acquire rights on its own behalf, including real estate ownership and other rights in rem. Generally partnerships are not liable to tax as legal entities, excluded limited partnerships, limited joint stock partnerships and registered partnerships, which are liable tax as legal entities under some conditions<sup>1</sup>.

Taxpayers on income generated in a partnership are its partners/shareholders.

Partners of partnerships are taxed proportionally to the share in the profits or contribution specified in the partnership's agreement. In the absence of relevant provisions in the agreement, there is a presumption that the partners' contributions are equal.

No taxable income is established at the company level. Nevertheless, a partnership, despite the lack of the status of a taxpayer in terms of income tax, keeps accounting records in the

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<sup>1</sup> Art. 8 of Commercial Companies Code:

§ 1. A partnership may, in its own name, acquire rights, including ownership of immovable property and other rights in rem, incur obligations, sue and be sued.

§ 2. A partnership shall conduct an enterprise under its own business name.

form of a tax book of revenues and expenses or accounting books from which the amounts necessary to determine the shareholders' income result.

In the case of partners/shareholders which are legal persons, the partner is subject to taxation in accordance with the provisions on corporate income tax.

Partnerships do not have the status of a taxpayer in terms of income tax, but they have the status of a taxpayer under other taxes, such as VAT, excise duty or local taxes.

### **Limited joint-stock partnership**

Despite the fact that a limited joint-stock partnership is a type of partnership, the above rules do not apply to it, due to the specific structure of this company. Limited joint-stock partnerships have the status of a taxpayer in terms of income tax and, unlike other partnerships, their income is determined at the level of the company.

### **Amendments to the CIT Act that entered into force on January 1, 2021 (limited partnerships and registered partnerships)**

On October 30, 2020, an amendment to the tax law was published in the journal of laws, providing for CIT to cover all limited partnerships and those registered partnerships whose partners are not only natural persons.

*Art. 1<sup>2</sup>*

*1. This Act shall govern the income tax imposed on incomes earned by legal persons and companies in organization.*

*2. The provisions of this Act shall also apply to organizational units having no legal personality, except for enterprises in the form of an inheritance and partnerships, subject to paragraphs 1 and 3.*

#### **3. The provisions of this Act shall also apply to:**

**1) limited partnerships and limited joint-stock partnerships having their seats or management offices within the territory of the Republic of Poland;**

**1a) registered partnerships having their seats or management offices in the territory of the Republic of Poland, if partners of a given registered partnership are not exclusively natural persons and if the partnership does not submit:**

*a) before the beginning of a financial year – the information, according to the prescribed standard form, on legal persons' income tax payers holding, directly or through subjects not being income tax payers, the right to a share in the profit of this partnership, as referred to in Article 5, paragraph 1 or Article 8, paragraph 1, respectively, of the Act of 26 July 1991 on Natural Persons' Income Tax (Journal of Laws 2020, item 1426, as amended); or*

*b) an update of the information referred to in letter a, within 14 days counting from the day of occurrence of the changes in the composition of the taxpayers*

*– to the head of the revenue office competent for the seat of the registered partnership and the head of the revenue office competent for each taxpayer earning incomes from such a partnership;*

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<sup>2</sup> Art. 1 sec. 3 points 1 and 1a added by the Act of November 28, 2020 (Journal of Laws of 2020, item 2123), which entered into force on January 1, 2021. - <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20200002123>

2) partnerships having their seats or management offices in another state, if they are treated as legal persons under tax law provisions of that another state and are liable to tax on the total amount of their incomes in this state, irrespective of the place where they are earned.

4. The information referred to in paragraph 3, subparagraph 1a, shall include:

1) the forename and surname or business name (name) and address of the place of residence or of the seat, the tax identification number as well as the extent of the right to a share in the profit of the registered partnership:

a) of a partner who is a taxpayer earning incomes from the registered partnership;

b) of a taxpayer that is not a partner of the registered partnership and earns incomes from this partnership;

2) the (business) name, address and the tax identification number of the subject not being an income tax payer, through which the taxpayer gains incomes from the registered partnership, and the extent of the right held by the taxpayer to a share in the profit of this subject.

5. A registered partnership shall have the status of a taxpayer from the first day of the financial year referred to in paragraph 3, subparagraph 1a, letter a, or from the day of occurrence of the changes in the composition of taxpayers, as referred to in paragraph 3, subparagraph 1a, letter b or from the day of liquidation of the partnership or removing the same from the relevant register, respectively.

6. The minister competent for public finance shall determine, by a regulation, the standard form of the information referred to in paragraph 3, subparagraph 1a together with the explanations as to the manner of its filling in, the deadline for and the place of submission, having regard to the identification of the taxpayer and the head of the revenue office to which the information is addressed, determination of the extent of the rights vested in the taxpayers to a share in the profit of the registered partnership, directly or through subjects that are not income tax payers as well as the identification of these subjects.

**3) Please also provide copies of the following Acts and Laws mentioned in your answers to the questionnaire:**

- a) Legal Persons' Income Tax 1992 (LPIT Act)<sup>3</sup> - The current version of the act is provided in a footnote (working translation is attached to supporting documents).
- b) Act on Natural Persons' Income Tax 1991 (NPIT Act)<sup>4</sup> - The current version of the act is provided in a footnote (working translation is attached to supporting documents).
- c) Act of 30 August 2019 amending the CCC<sup>5</sup> - The current version of the act is provided in a footnote. We are not in a possession of translation of the entire legal act into English. Nevertheless, the changes introduced to the Commercial Companies Code, as well as NCR Act and AML Act by this act were attached to the previous supporting materials in August this year.

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<sup>3</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19920210086>

<sup>4</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20210001128>

<sup>5</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20190001798>

- d) The EOI Act<sup>6</sup> - The current version of the act is provided in a footnote. We are in the process of translating the act into English. We will hand it over to you in due time.

### **Financial Sector**

- 4) **Can you please clarify whether the PFSA supervises Virtual currency exchanges, as well as virtual currency wallet providers? What is the difference between those that have obtained licenses and those that have not in respect to PFSA supervision mandate?**

There are currently no Polish regulations in regard to the PFSA supervision on virtual currency exchanges, as well as virtual currency wallet providers. Some of the providers which are supervised by the PFSA, such as payment institutions or small payment institutions who provide payment services as defined in the Payment Services Act, can also provide services related to virtual currencies. This part of their business is not supervised by the PFSA. To sum-up: the only case when the entity which is i.e. virtual currency exchanger might be supervised by the PFSA is when the same entity provides also payment services.

We additionally propose small changes in the question 3 point b from the questionnaire, clarifying abovementioned situation.

### **3. Financial sector**

**(...)**

#### **b. Please provide an overview of how the financial sector and service providers that are relevant to EOIR for tax purposes in your jurisdiction are authorized/regulated and supervised.**

*Banks are regulated by the Banking Law Act 1997 (BA) setting forth the principles of conducting banking activity, establishment and organisation of banks, branches and agencies of foreign banks and branches of foreign credit institutions (BA, art. 1). Banks operating in Poland must be licensed by the PFSA. They are also obliged institutions under the Act on Counteracting Money Laundering and Terrorism Financing 2018 (AML/CFT Act, article 2 paragraph 1 point 1). In practice, the PFSA monitor and enforce the obligations on banks and other financial institutions.*

*Financial institutions operating on European markets are authorized on the basis of EU single passport rule. The institution responsible for authorization and supervision of financial institutions is the Polish Financial Supervision Authority (KNF; hereinafter referred to as the "PFSA"). PFSA is also supervising the activities of the pension funds sector.*

*Since July 2018 there are two new types of regulated entities in Poland in terms of AML/CFT (Act on combating money laundering and the financing of terrorism as of the 1st of March 2018; Polish Journal of Laws 2018, item 723). The list of institutions obliged to carry out financial security measures with regard to their customers (e.g. customer identification and identity verification, beneficial owner identification etc) has been enlarged through adding the*

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<sup>6</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20170000648>

entities carrying out business activity consisting in the provision of services in the scope of (article 2 paragraph 1 point 12 of the AML Act):

- exchange between virtual currencies and means of payment ,
- exchange between virtual currencies,
- intermediation in the exchange mentioned in the two items above,
- providing accounts in the form of a collection of electronic identification data which enables the entitled persons to use virtual currency units (virtual currency wallet providers).

Virtual currency exchanges, as well as virtual currency wallet providers are not supervised in Poland.

**In June 2018 the PFSA announced the position that virtual currency exchanges must obtain a payment institution license or a small payment institution license when they provide payment services according to the provisions of Payment Services Act. In particular when those entities provide payment account services and when this payment account is used for making payment transactions in regard to buy or sell cryptocurrencies. In this case they are supervised by the PFSA as payment institution or small payment institutions. In the absence of a payment license or entrance to the register (as in the Article 14 of PSD2), virtual currency exchanges operated in Poland who provide also payment services are entered on the list of public warnings maintained by the PFSA (as such entities are in breach of art. 150 of the Payment Services Act which defines unauthorised provision of payment services as a criminal offence). The PFSA also reports such entities to the prosecutor's office.**

In accordance with Article 130(1) of the Act of 1 March 2018 on counteracting money laundering and financing of terrorism (AML/CFT Act), the General Inspector of Financial Information exercises control over all obligated institutions for the purposes of compliance with AML/CFT obligations. The control shall be exercised also by the relevant sectoral supervisors under Article 130(2) of the AML/CFT Act which provides that control by other supervisors shall be exercised under separate provisions.

**5) You have also indicated that Virtual currency exchanges and virtual currency wallet providers that operate without a payment licence are in breach of art.150 of the Payment Services Act. What is the applicable sanction and were there any such breaches during the review period? If this is the case, how many were reported to the prosecutor's office and action taken?**

In the period of 2018-2020, the PFSA analysed the activity of 34 cryptocurrency exchanges in terms of the provision of unauthorized payment services. The PFSA initiated 10 explanatory proceedings (pursuant to art. 18a of the Act on Financial Market Supervision) in order to determine whether there are grounds for notifying the suspicion of committing an offense under art. 150 § 1 of the Act on payment services, by entities operating cryptocurrency exchanges. The PFSA sent 11 notifications to law enforcement authorities on a reasonable suspicion that persons representing entities running cryptocurrency services had committed a crime under the abovementioned art. 150 §1 (additionally 1 notification was submitted in 2021). The law enforcement authorities preparatory proceedings are currently ongoing.

Criminal offence under art. 150 §1 can result in a financial penalty of PLN 5 million and/or the penalty of imprisonment for up to 2 years. The notifications sent to law enforcement authorities also means that the entities are added to the list of the PFSA public warnings (available on the PFSA website<sup>7</sup>).

### **Main Changes to legal framework**

**6) In respect of Simplified joint stock companies, please provide additional information on this type of entity. This information may also be in other aspects of the report especially element A1 on identity and ownership information. Some of the areas that you may expound on are:**

**(a) is there a segregation to the Assets and liabilities of the company based on the different classes of shares. For example, financial investors and founding shares,**

Pursuant to the relevant provisions of the Commercial Companies Code:

Art. 300<sup>25</sup>

*§ 1. The company may issue shares carrying special rights which shall be identified in the company deed (preference shares).*

*§ 2. The preference referred to in paragraph 1 may, in particular, relate to the voting right, right to dividend or distribution of assets in the event of liquidation of the company.*

Art. 300<sup>26</sup>

*§ 1. Preference shares may carry a special right in accordance with each subsequent issue of new shares may not violate the specific minimum proportion of the number of votes attached to those preference shares to the total number of votes attached to all shares of the company (founders' shares). In the event of an issue of new shares which issue could distort this proportion, the number of votes attached to founders' shares shall be subject to a relevant increase.*

*§ 2. A resolution on issue new shares shall indicate the number of votes which will be attached to the founders' shares following an entry of a new issue of shares into the register.*

*§ 3. Founders' shares may be subject to subsequent issues.*

Art. 300<sup>27</sup> *As regards shares preferred as to dividend a voting right may be excluded (a non-voting share). The company deed may specify the circumstances in which the beneficial holder of a non-voting share obtains a voting right.*

Art. 300<sup>28</sup>

*§ 1. The company deed may vest individual rights in a designated shareholder, in particular the right to appoint or recall members of the management board or supervisory board.*

*§ 2. Individual rights of a shareholder shall expire at the latest upon the day on which he/she ceases to be a company's shareholder, unless the company deed provides otherwise.*

**(b) how does the company attach value to the issued shares and in what form,**

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<sup>7</sup> [https://www.knf.gov.pl/en/CONSUMERS/Information\\_for\\_the\\_financial\\_market\\_consumers/Public\\_warnings](https://www.knf.gov.pl/en/CONSUMERS/Information_for_the_financial_market_consumers/Public_warnings)

Pursuant to the relevant provisions of the Commercial Companies Code:

Art. 300<sup>15</sup>

§ 1. A shareholder shall have the right to participate in the profit and make a disbursement from the share capital in the amount as shown in annual financial statements, said amount being allocated for being paid out in a resolution of shareholders, unless the company deed provides otherwise.

§ 2. An amount to be distributed among shareholders shall not exceed the aggregate profit for the last financial year, undistributed profits from previous years created from the profit from reserve capital which may be allocated for the disbursement of the dividend and the amount from the share capital which has been allocated for disbursement of the dividend. This amount shall be reduced by uncovered losses, own shares, and sums which under this Act or under the company deed should be allocated from the last financial year's profit for the supplementary capital which shall not be allocated for the disbursement of the dividend.

§ 3. Save as otherwise provided in the company deed, the dividend shall be distributed in relation to the number of shares.

§ 4. Disbursement from the share capital for the benefit of shareholders shall not lead to reduction of the amount of this capital below 1 zloty. The provisions of Article 456, paragraphs 1 and 2 shall apply accordingly to the disbursement from the share capital from the part of this capital constituting 5 per cent of the aggregate liabilities of the company as shown in the approved financial statements for the last financial year.

§ 5. Disbursement for the benefit of shareholders shall not lead to loss, on the part of company, in normal circumstances, of a capability to satisfy matured pecuniary liabilities within six months from the day of making the disbursement.

§ 6. Disbursement from the share capital may be made after entry of a change in the amount thereof in the register. In the case referred to in paragraph 4, the provision of Article 458, paragraph 2, subparagraph 4 shall apply accordingly to an application for making an entry into the register of the share capital amount.

Art. 300<sup>16</sup>

§ 1. Entitled to dividend for a given financial year shall be those shareholders that were entitled to shares on the date of adopting the resolution on the dividend disbursement.

§ 2. The company deed may authorize the general meeting to determine the day as at which the list of shareholders entitled to dividend for a given financial year is established (the dividend day).

§ 3. The dividend day shall be fixed no later than within two months from the adoption of the resolution on disbursement of the dividend.

§ 4. The dividend shall be disbursed on the day specified in the resolution of the general meeting. Where the resolution of the general meeting does not determine such a day, the dividend shall be disbursed on the day specified by the management board.

Art. 300<sup>23</sup>

§ 1. A share shall carry one vote.

### **(c) how are ownership changes effected.**

Pursuant to the relevant provisions of the Commercial Companies Code:

Art. 300<sup>36</sup>

*§ 1. Shares shall be transferable.*

*§ 2. Shares shall be neither admitted nor introduced to organized trading within the meaning of the provisions on trading in financial instruments.*

*§ 3. Dispositive acts in law performed in contravention of paragraph 2 shall be valid.*

*§ 4. A share shall be transferred or encumbered in the document form under pain of nullity.*

A simplified joint stock company allows the issuance of - apart from ordinary shares - founding shares, preferred shares and silent shares. Shares in a simplified joint stock company will not be in the form of a document, but will be registered in the register of shareholders.

Factors that determine the issue price of the shares are:

- The current and expected financial situation of the company,
- Company book value,
- General condition of the economy,
- The general condition of the secondary market (bull market or bear market),
- Value of shares of other companies in this industry,
- Expected use of funds obtained from the issue of shares

The share price is determined by the general meeting of shareholders.

Acquisition of new issued shares and sale of existing shares are needed to become one of the ownership of joint stock company.

### **Element A.1, A.2, A.3**

#### **7) On question 8, the response provided does not elaborate the specific steps taken to address the recommendations above from the previous peer review.**

First recommendation - Companies registered in Poland are required to provide in the National Court Register such data as the address of the registered office, data of members of the management board and members of supervisory bodies. Data of partners of partnerships and partners of limited liability companies are also provided. In the case of a joint-stock company, a limited joint-stock partnership and a simplified joint-stock company, the ownership data is collected in the register of shareholders. Branches of foreign entrepreneurs operating in the territory of the Republic of Poland, main branches of foreign insurance companies and main branches of foreign reinsurance companies are required to provide data on foreign entrepreneurs, insurance companies and insurance companies that created them, respectively.

Response to second recommendation - Two subsequent acts amending the Commercial Companies Code - acts of July 19, 2019 (Journal of Laws 2019, item 1655) and August 30, 2019 (Journal of Laws of 2019, item 1798) made radical changes to the Code of Commercial Companies, including establishing a new capital company - a simplified joint-stock company and imposing on all joint-stock companies, limited joint-stock partnerships and simplified joint-stock companies the obligation to implement and commission the keeping of the Register of Shareholders of the company to an external, licensed entity. Under the new regulations,

shares will not be able to have the form of a document (obligation of dematerialisation) and will have to be registered in the Register of Shareholders kept by a brokerage house (authorized to keep securities accounts), a custodian bank, notary public (only for simplified joint-stock companies) or in a depository kept by the National Depository for Securities.

As a result of dematerialisation, from March 1, 2021, it will not be possible to use share documents to exercise corporate rights. In relation to the company, only the person entered in the register of shareholders will be considered a shareholder. However, the collective episodes of the shares remain as evidentiary only in relation to the Company and only for a period of 5 years from March 1, 2021, which is to enable dematerialisation to take place also after March 1, 2021.

The register of shareholders is open to the company and each of its shareholders. They are able to acquire the information contained in the register of shareholders in paper or electronic form.

Third recommendation refers to trusts, which are not regulated under the Polish law.

It should be recalled here that data on foreign companies are available in the registers where they are registered. Access to such registers is possible through the e-justice platform<sup>8</sup>.

**8) Please provide additional information regarding the requirement to keep identity and legal ownership information for Joint Stock companies. It is also our understanding that the Simplified joint Stock company is also a different type of entity; please provide information on this as well including other parts of the questionnaire where statistics on different types of entities have been provided (see qn. 6 above).**

Joint Stock companies:

Pursuant to the relevant provisions of the Commercial Companies Code:  
**art. 316**

*§ 1 The management board shall notify the registration court competent for the company seat of the formation of the company in order to have the company entered in the register. The application for entering the company into a register shall be signed by all members of the management board.*

**art. 318** *the notification of a joint-stock company to the registration court shall state:*

- 1) the business name, seat and address of the company, or its address for service;*
- 2) the object of the company's activity;*
- 3) the amount of initial capital, number and nominal value of shares;*
- 4) the amount of target capital, if provided for in the company articles;*
- 5) the number of preference shares and kind of preference carried;*

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<sup>8</sup> [https://e-justice.europa.eu/489/EN/business\\_registers\\_search\\_for\\_a\\_company\\_in\\_the\\_eu](https://e-justice.europa.eu/489/EN/business_registers_search_for_a_company_in_the_eu)

- 6) *the information as to the proportion of initial capital paid up prior to registration;*
- 7) *the surnames and forenames of the members of the management board and the manner of representing the company;*
- 8) *the surnames and forenames of the members of the supervisory board;*
- 9) *where shareholders make non-cash contributions, a notice to that effect;*
- 10) *lifetime of the company, if defined;*
- 11) *where the company articles provide for a specific paper in which company announcements are to be made, the designation of the same;*
- 12) *where the company articles provide for vesting in certain shareholders personal rights or titles to participate in income or assets of the company other than the rights carried by shares, a notice to that effect.*

#### **Art. 319**

*§ 1. The notification of a sole-shareholder company shall state, next to the data referred to in Article 318, the surname and forename or business name and the seat and address or the address for electronic service of the sole shareholder, likewise a notice that he is the sole shareholder of the company.*

*§ 2. The provision of paragraph 1 shall apply respectively where the shareholder acquires all shares in the company upon registration of the company. The management board shall notify this circumstance to the registration court within three weeks from the date of becoming aware of all shares in the company having been acquired by a single shareholder.*

#### **Art. 320**

*§ 1. The following shall be appended to the notification of company:*

- 1) *company articles;*
- 2) *notarial deeds of the formation of company and of taking up shares;*
- 3) *statement by all members of the management board that such payments towards shares and non-cash contributions as are required under the company articles have been made in a lawful manner;*
- 4) *a receipt, certified by a bank or an investment firm, for money paid towards shares into the account of the company in organization; where the company articles provide for initial capital being covered by non-cash contributions upon registration, a statement by all members of the management board, to the effect that bringing such contributions into the company before the elapse of the time limit laid down in Article 309, paragraph 3 is ensured in accordance with the company articles, shall be appended;*
- 5) *the document attesting the appointment of the bodies of the company, identifying the members of the said bodies;*
- 6) *permit, or proof of approval of the company articles by the competent public authority, if required for the formation of the company;*

7) statement referred to in Article 310, paragraph 2, where the management board has made the same.

§ 2. In cases specified in this Section, the promoters' report and expert auditor's opinion shall be appended.

#### **Art. 321**

§ 1. The management board shall notify the registration court of any and all changes in the data referred to in Article 318 and Article 319, with a view to their being entered in the register or disclosed in register files.

§ 2. Where only a proportion of initial capital has been paid up before the registration of the company, the management board shall notify the registration court of each consecutive contribution made thereafter towards the initial capital.

#### **Art. 328<sup>1</sup>**

§ 1. Shares of a company which is not a public company shall be registered in the register of shareholders.

§ 2. The register of shareholders shall be maintained by the subject entitled to operate the securities account within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments.

§ 3. The register of shareholders shall be maintained in electronic form which may have a form of distributed and decentralized database.

§ 4. Regardless of the form of the register of shareholders, the subject maintaining the register shall maintain it in a manner that ensures the security and integrity of the data contained therein.

§ 5. The selection of the subject maintaining the register of shareholders requires the resolution of a general meeting. The selection is made by promoters at the time of formation of the company.

#### **Art. 328<sup>3</sup>**

§ 1. The register of shareholders shall include:

- 1) the business name, seat and address of the company;
- 2) the designation of the registration court and the number under which the company is entered in the register;
- 3) the date of registration of the company and of issue of shares;
- 4) the nominal value, series and number, type of a given share and special rights carried by the share;
- 5) the shareholder's surname and forename or business name (name) and his residence or seat address or other delivery address or the address for electronic service, as well as an e-mail address, if the shareholder granted his consent for communication in relations with the company and the subject maintaining the register of shareholders using e-mail;

6) at the request of a person having legal interest – an entry on transfer of shares or pledge interest to another person or establishment of a limited right in rem on a share together with the date of entry and indication of the acquirer or pledgee or usufructuary, their residence or seat addresses or other delivery addresses or the addresses for electronic service, as well as the e-mail address, if these persons granted their consent for communication in relations with the company and the subject maintaining the register of shareholders using e-mail and the number, type, series and individual numbers of acquired or encumbered shares;

7) at the request of the pledgee or usufructuary – an entry confirming his authority to exercise the voting right attached to the encumbered share;

8) at the request of the shareholder – an entry on deletion of the encumbrance of his shares with limited right in rem;

9) an annotation as to whether the shares were fully paid up;

10) restrictions on disposal of the share;

11) provisions of the company articles on duties to the company carried by the share.

§ 2. The company articles may contain additional provisions concerning information disclosed in the register of shareholders.

§ 3. If the contract for the maintenance of the register of shareholders so provides, the register of shareholders may, instead of the data referred to in paragraph 1, subparagraphs 1 to 4, 10 and 11, include a separate designation referred to in Article 55 of the Act of 29 July 2005 on Trading in Financial Instruments. In such a case, the data referred to in paragraph 1, subparagraph 6 shall not include the type, series and numbers of the acquired or encumbered shares, but shall include their separate designation.

#### **Art. 328<sup>4</sup>**

§ 1. The subject maintaining the register of shareholders shall make an entry in the register of shareholders, at the request of the company or a person having a legal interest in making the entry, immediately, but not later than within a week from the day of receiving the request. If the entry requires the removal of an obstacle, the entry should be made within one week from the date of its removal.

§ 2. In the case when the shareholder's property rights are seized by a court executive officer pursuant to Article 9113, paragraph 2 of the Code of Civil Procedure, as well as in the event of notification by an execution authority pursuant to Article 95a, paragraph 2, letter b of the Act of 17 June 1966 on execution proceedings in administration (Dziennik Ustaw 2019, item 1438, as amended) or a motion pursuant to Article 95f, paragraph 2 of that Act, the seizure of the shareholder's property rights shall be disclosed in the register of shareholders ex officio and shall be free of charge.

§ 3. Before an entry in the register of shareholders is made, except in the case referred to in paragraph 2, the subject maintaining the register of shareholders shall notify the person whose rights stand to be struck off, changed or encumbered by the entry, of the content of the intended entry, unless the person granted its consent for such entry.

§ 4. The person requesting an entry is obliged to provide the subject maintaining the register of shareholders with documents justifying the entry. The basis for making the entry is also a

*statement by a shareholder on the obligation to transfer share or to encumber the share with a limited right in rem.*

*§ 5. The subject maintaining the register of shareholders shall examine the content and the form of documents justifying the entry. However, such subject shall not be obliged to examine the lawfulness and authenticity of documents justifying the entry, including the signatures of the transferor of the share or persons establishing a limited right in rem on the share, unless it has reasonable doubts in this respect.*

*§ 6. When making entries in the register of shareholders, the subject maintaining the register of shareholders takes into account the restrictions on disposal of the share.*

*§ 7. The subject maintaining the register of shareholders shall immediately notify the person requesting the entry and the company of the entry made. If the entry is not made, the subject maintaining the register of shareholders shall immediately notify the person requesting the entry of this fact, stating the reasons for the failure to make the entry.*

#### **Art. 328<sup>11</sup>**

*§ 1. If a resolution of a general meeting so provides, shares of a company other than a public company shall be registered in the depository for securities within the meaning of Article 3, paragraph 21 of the Act of 29 July 2005 on Trading in Financial Instruments, hereinafter referred to as the “depository for securities”.*

*§ 2. Paperless trading in the shares of the company which is not a public company, which shares shall be registered in the depository for securities, and of the public company, as well as the related legal effects for the company and shareholder, are governed by the Act of 29 July 2005 on Trading in Financial Instruments.*

**Art. 328<sup>12</sup>** *Shares of the same company shall not be registered in the register of shareholders and depository for securities at the same time.*

#### **Art. 328<sup>13</sup>**

*§ 1. At the request of the company which is not a public company whose shares are registered in the depository for securities, or at the request of its shareholders, the subjects operating the securities accounts shall be obliged to make the following information available via the National Depository for Securities, Joint-stock Company:*

*1) forenames and surnames or business names (names), place of residence or seat and addresses or delivery addresses of the shareholders of the company;*

*2) the number and separate designations referred to in Article 55 of the Act of 29 July 2005 on Trading in Financial Instruments, of the shares of the company held by individual shareholders;*

*3) information on the establishment of a pledge or usufruct on the shares of the company, with the indication of the number and separate designations referred to in Article 55 of the Act of 29 July 2005 on Trading in Financial Instruments, of the shares covered by this right as well as the appointment of the pledgee or usufructuary;*

*4) information as to whether the authorization of the pledgee or usufructuary to exercise voting right attached to the encumbered share has been noted in the securities account.*

§ 2. *To the extent to which the request referred to in paragraph 1 refers to the shares registered in an omnibus account, within the meaning of Article 8a, paragraph 1 of the Act of 29 July 2005 on Trading in Financial Instruments, the subjects operating these accounts shall be obliged to make available, via the National Depository for Securities, Joint-stock Company, information on general number and separate designations referred to in Article 55 of the Act of 29 July 2005 on Trading in Financial Instruments, of the shares entered on these accounts.*

§ 3. *The request referred to in paragraph 1 shall be submitted by the company to the National Depository for Securities, Joint-stock Company and by its shareholder to the subject operating the securities account for him.*

§ 4. *If the request referred to in paragraph 1 refers to the shares registered in an omnibus account, the shareholder shall submit it to the subject operating the omnibus account within the meaning of the Article 8a, paragraph 1 of the Act of 29 July 2005 on Trading in Financial Instruments through the omnibus account holder. In such case, the submission of the request requires the simultaneous indication of the requesting party by the omnibus account holder as the beneficial holder of the shares to whom the request applies pursuant to Article 8a, paragraph 4 of the Act of 29 July 2005 on Trading in Financial Instruments.*

Simplified Joint Stock company:

Pursuant to the relevant provisions of the Commercial Companies Code:

**Art. 300<sup>12</sup>**

§ 1. *The management board shall notify the registration court competent for the company seat of the formation of the company in order to have the company entered in the register. The application for entering the company into the register shall be signed by all members of the management board.*

§ 2. *A notification of a company to the register shall include:*

- 1) the business name, seat and address of the company;*
- 2) the object of the company's activity;*
- 3) the number of shares;*
- 4) where the company deed provides for an issue of various type of shares – the number of preference shares and the type of the preference;*
- 5) where the company deed provides for vesting in certain shareholders individual rights or titles to participate in income or assets of the company other than the rights carried by shares, a notice to that effect;*
- 6) the amount of share capital;*
- 7) where shareholders make non-cash contributions, a notice to that effect;*
- 8) the surnames and forenames of the members of the management board and the manner of representing the company;*
- 9) the surnames and forenames of the supervisory board members where appointment of the supervisory board is required under the company deed;*
- 10) lifetime of the company, if defined;*

11) where the company deed provides for a specific paper in which company announcements are to be made, the designation of the same.

§ 3. The following shall be appended to the notification of company to the register:

- 1) a company deed;
- 2) a declaration of all members of the management board on the amount of the share capital, said amount being determined based on the aggregate value of the contributions made and allocated for the share capital;
- 3) statement by all members of the management board that the contributions for paying up shares have been made in the part provided for in the company deed;
- 4) where members of company bodies are appointed otherwise than under the notarial deed wherein the company deed is contained, proof of appointment of these bodies and specification of their composition;
- 5) the addresses for the service or the addresses for electronic service of the management board members.

§ 4. The list of shareholders signed by all members of the management board, stating their surnames and forenames or business names (names) as well as the number and series of the shares taken up by each of them, shall be submitted together with the notification of the company to the register.

§ 5. In the case of a company whose deed was concluded using a model deed, the documents specified in paragraphs 3 and 4 shall be drawn up using the forms made available in an IT data transmission system and provided with a qualified electronic signature, a trusted signature or a personal signature.

§ 6. The management board shall notify the registration court of any and all changes in the data referred to in paragraph 2, with a view to their being entered in the register or disclosed in register files.

#### **Art. 300<sup>30</sup>**

§ 1. Shares shall be registered in the register of shareholders.

§ 2. In the event of taking up shares, an entry into the register of shareholders shall be made following an entry of the company into the register of entry of new issue of shares into the register.

#### **Art. 300<sup>31</sup>**

§ 1. The register of shareholders shall be maintained by:

- 1) the subject which, under the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws 2018, items 2286, 2243 and 2244; 2019, items 730, 875 and 1655) shall be entitled to maintain securities accounts;
- 2) a notary running a notary's office in the territory of the Republic of Poland.

§ 2. *The tasks of the subject running the register of shareholders include ensuring the compatibility of the number of the shares registered in the register with the number of the shares issued and making entries of the data referred to in Article 300<sup>33</sup>.*

§ 3. *The register of shareholders shall be maintained in electronic form which may have a form of distributed and decentralized database.*

§ 4. *Irrespective of the form of the register of shareholders, the subject maintaining this register shall maintain the same so as to ensure security and integrity of the data contained therein.*

§ 5. *The choice of the subject maintaining the register of shareholders requires a resolution of shareholders. The shareholder shall make the choice while forming the company.*

#### **Art. 300<sup>33</sup>**

§ 1. *The register of shareholders shall contain:*

- 1) the business name, seat and address of the company;*
- 2) the designation of the registration court and the number under which the company is entered in the register;*
- 3) the date of registration of the company and of issue of shares;*
- 4) the series and number, type of a given share and special rights carried by the share;*
- 5) the surname and forename or the business name (name) of the shareholder and the address of his residence or seat or another address for service or the address for electronic service, as well as the e-mail address provided that the shareholder consented to communication in relations with the company and the subject maintaining the register of shareholders using e-mail;*
- 6) upon demand of a person having a legal interest – entry on devolution of shares or pledge interests upon another person or on establishment on a share a limited right in rem along with the date of entry and indication of the acquirer, pledgee or usufructuary, address of their residence or seat or other addresses for service or the addresses for electronic service, as well as the e-mail address, if those persons consented to communication in relations with the company and the subject maintaining the register of shareholders using e-mail, as well as the number, type, series and individual numbers of acquired or encumbered shares;*
- 7) upon demand of a pledgee or usufructuary – an entry stating that he is vested with the right to exercise voting right attached to an encumbered share;*
- 8) upon demand of a shareholder – entry on removal of encumbrance of his shares with limited right in rem;*
- 9) an annotation on whether shares have been fully paid up;*
- 10) restrictions on disposal of the share;*
- 11) provisions of company deed on duties to the company carried by the share.*

§ 2. *The company deed may include additional provisions concerning the information disclosed in the register of shareholders.*

#### **Art. 300<sup>34</sup>**

§ 1. *The subject maintaining the shareholders' register shall make an entry in this register upon demand of the company or other person having a legal interest in making the entry forthwith, but no later than within seven days of receiving the demand. If making the entry requires removal of an obstacle, the entry shall be made within seven days from the day of its removal.*

§ 2. *If property rights of a shareholder are seized by a court executive officer under Article 9113, paragraph 2 of the Code of Civil Procedure, and in the case of providing a notification by an execution authority under Article 95a, subparagraph 2, letter b of the Act of 17 June 1966 on Execution Proceedings in Administration (Journal of Laws 2019, items 1438, 1495, 1501, 1553, 1579 i 1655) or a request under Article 95f, paragraph 2 of this Act, disclosure in the shareholders' register of the seizure of property rights of a shareholder shall be made ex officio and shall be free of charge.*

§ 3. *Prior to an entry in the shareholders' register, excluding the case referred to in paragraph 2, the subject keeping the register shall notify of the contents of the intended entry the person whose rights are to be struck off, changed or encumbered by the entry, unless the person consented to the entry.*

§ 4. *The person demanding the entry shall submit to the subject keeping the register of shareholder the documents justifying making the entry. The grounds for making the entry shall be also a declaration by the shareholder on his commitment to transfer the share or encumbering the share with limited right in rem.*

§ 5. *The subject keeping the register of shareholders shall examine the contents and form of the documents justifying making the entry. This subject shall not, however, be obliged to examine either lawfulness or accuracy of the documents justifying making the entry, including the signatures of the share transferor or the persons establishing a limited right in rem on a share, unless it has any substantiated doubts in this respect.*

§ 6. *While making entries into the register of shareholders, the subject keeping the register shall take into account restrictions as regards the disposal of a share.*

§ 7. *The subject keeping the register shall forthwith notify the person demanding the entry and the company of the entry made. In the event of failing to make the entry, the subject keeping the register shall immediately notify the person demanding the entry, providing the reasons for not making the entry.*

§ 8. *After receiving the notification referred to in paragraph 7, the first sentence, the management board shall forthwith file with the registration court a new list of shareholders signed by all members of the management board, providing the surname and forename or the business name (name) and the number and series of the shares held by each of them and an annotation on establishing a pledge or usufruct on the shares in the event of establishment of limited right in rem of the shares.*

**9) For Joint Stock Companies, is there a requirement for JSCs to keep information about their ownership with the authorities? When the Company chooses to register its shares at the Securities depository, is there no register of shareholders that is kept with the company. Please provide statistics on how many of these JSCs keep their registers of shareholders with the securities depository.**

**Art. 328<sup>1</sup> of the CCC**

*§ 2. The register of shareholders shall be maintained by the subject entitled to operate the securities account within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments.*

**Art. 328<sup>11</sup>**

*§ 1. If a resolution of a general meeting so provides, shares of a company other than a public company shall be registered in the depository for securities within the meaning of Article 3, paragraph 21 of the Act of 29 July 2005 on Trading in Financial Instruments, hereinafter referred to as the “depository for securities”.*

*§ 2. Paperless trading in the shares of the company which is not a public company, which shares shall be registered in the depository for securities, and of the public company, as well as the related legal effects for the company and shareholder, are governed by the Act of 29 July 2005 on Trading in Financial Instruments.*

**Art. 328<sup>12</sup>** *Shares of the same company shall not be registered in the register of shareholders and depository for securities at the same time.*

In the case of joint-stock companies, the data referring to ownership structure is disclosed in the National Court Register (if the company has only one shareholder) and in the register of shareholders. Therefore, the registers are not kept by public authorities.

In view of the repeal of Art. 341 § 1 of the Commercial Companies Code the possibility of keeping a share register by the company is not foreseen any further.

No data available about how many of these JSCs keep their registers of shareholders with the securities depository.

**10) Please provide some additional detail on the process of transfer of ownership for JSCs and how such changes are reported to the Polish authorities if any.**

Pursuant to the relevant provisions of the Commercial Companies Code:

**Art. 328<sup>9</sup>**

*§ 1. The acquisition of a share or establishment of a limited right in rem thereon shall take effect as of making an entry in the register of shareholders indicating the acquirer or pledgee, or usufructuary, number and type, series and numbers or separate designations referred to in Article 55 of the Act of 29 July 2005 on Trading in Financial Instruments, of acquired or encumbered shares.*

*§ 2. The provision of paragraph 1 shall not apply in the case of taking up shares, except for Article 452, paragraph 1, as well as appointment to inherit, vindication legacy, contributing shares as a non-cash contribution to the company, merger, division or transformation of a company or other legal event causing, by operation of law, transfer of shares or establishment*

*of a limited right in rem on a share to other person. The provision of Article 343, paragraph 1 shall apply.*

*§ 3. In the case of taking up shares, the entry into the register of shareholders may take place when the company is entered into the register or when the increase in initial capital is entered into the register.*

**Art. 328<sup>5</sup>**

*§ 1. The register of shareholders shall be open to the company and any shareholder.*

*§ 2. The subjects referred to in paragraph 1 shall have the right of access to the data included in the register of shareholders through the subject maintaining the register of shareholders.*

*§ 3. The subjects referred to in paragraph 1 shall have the right to demand that information from the register of shareholders be provided in the hard copy or electronic version.*

Informations about shareholders are not disclosed in the National Court Register. However there is one exception - in the first section of the National Court Register, shareholder's data are provided only if there's only one shareholder in joint stock company.

**11) In your response to question 10, you indicate that LLCs are required to disclose the identity of the persons holding at least 10% of the initial capital. Please clarify if this implies that persons owning less than 10% would not be included on the register of shareholders.**

Data of partners of limited liability companies with less than 10% of the share capital are not entered in the National Court Register (cf. Article 38 (8) (c) of the Act of August 20, 1997 on the National Court Register.). Pursuant to Art. 188 §1 of the Code of Commercial Companies and Partnerships the management board of a limited liability company is obliged to keep a share register, in which should be entered the surname and first name or company (name) and registered office of each partner, address, number and nominal value of its shares as well as establishing a pledge or use and exercising voting rights by the pledgee or usufructuary, as well as any changes concerning the persons of the partners and the shares they are entitled to. Pursuant to Art. 188 § 3 of the Code of Commercial Companies and Partnerships after each entry of a change, the management board submits to the registration court a new list of shareholders signed by all members of the management board, specifying the number and nominal value of the shares of each of them and a note on the pledge or use of the share. Such a list includes all partners (including those with less than 10% of the share capital) and is submitted to publicly available registration files.

It should be clarified that the data of partners of limited liability companies with at least 10% of the share capital are entered in the National Court Register (cf. Article 38 (8) (c) of the Act of 20 August 1997 on the National Court Register). There is no separate register of shareholders, as is the case with registers of shareholders in a joint-stock company, a limited joint-stock partnership and a simplified joint-stock company.

So that persons owning less than 10% of the initial capital in limited liability companies (LLC) are not included on the register of shareholders, because this register doesn't refer to LLC. The register of shareholders covers only joint stock companies, simplified joint stock companies and limited joint stock partnerships.

**12) Please refer to Q.10(c): regarding the dissolution of a company that has been identified for dissolution, in the event that the dissolved entity has outstanding tax liabilities how is the liability treated on dissolution?**

Pursuant to Art. 25a et seq. of the Act of August 20, 1997 on the National Court Register (proceedings to dissolve an entity entered in the Register without conducting liquidation proceedings), entities that do not actually operate and do not have any assets may be dissolved. These circumstances are determined in the course of the proceedings. Pursuant to Art. 25d §2 of the Act on the National Court Register, the existence of unmet obligations imposed on an entity entered in the Register or uncollectible debts does not exclude the possibility of ruling on the dissolution of this entity without conducting liquidation proceedings. Pursuant to Art. 25e § 1 of the Act on the National Court Register, the State Treasury acquires, free of charge, by operation of law the property remaining after the entity deleted from the Register, regardless of the reason for the removal, which was not disposed of by the competent authority before the removal from the Register. The State Treasury is liable under the acquired property for the obligations of the entity removed from the Register (Article 25e (2) of the Act on the National Court Register). Partners, cooperative members and other persons entitled to participate in the liquidation assets may claim their rights if they represent at least two-thirds of the votes in total and prove that all creditors have been satisfied or secured (Article 25e (3) of the Act on the National Court Register). The claims of creditors and persons referred to in §3, expire, if they are not brought against the State Treasury within one year from the date of acquisition of the property by the State Treasury. If, prior to the acquisition of the property by the State Treasury, the creditor obtained an enforcement order against the entity removed from the Register, the claim stated in this title shall expire if the creditor does not submit an application for enforcement within one year from the acquisition of the property by the State Treasury (Article 25e (4) of the Act on the National Court Register).

It should be also noted that a partner in a civil law partnership, registered partnership, professional partnership and general partner in a limited partnership or limited joint-stock partnership is jointly and severally liable with the company and other partners with all his assets for the company's tax arrears.

Members of the management board are jointly and severally liable for tax arrears of a limited liability company, a limited liability company in organization, a simplified joint-stock company, a simplified joint-stock company in organization, a joint-stock company or a joint-stock company in organization, jointly and severally liable with all their assets under some conditions provided in art. 116 §1 The Tax Ordinance Act

**13) Please refer to Q. 11: It is our understanding that after registration in the National Court Register, this information is automatically transmitted to “relevant offices”. Please confirm that this includes that Tax Administration and clarify what sort of information is transmitted specifically to the Tax Administration. Does the competent Authority have direct access to the centralised electronic database?**

First of all, it should be noted that pursuant to Art. 8 of the Act on the National Court Register, this register is open. However, pursuant to Art. 10 sec. 1 of the Act on the National Court Register, everyone has the right to review the registration files of entities entered in the Register and the set of documents referred to in Art. 9 sec. 6, unless the law provides otherwise. Pursuant to Art. 10 sec. 1a of the Act on the National Court Register, registration files kept in the ICT system are made available:

- 1) via generally available ICT networks;
- 2) at the seat of the registry court, using the ICT system.

The above-mentioned provisions apply to the files of the case examined by the registry court and, accordingly, to the files of the case examined by the court of second instance and the Supreme Court.

This means that the tax authorities have access to both the Registry and registry files.

Notwithstanding the foregoing, pursuant to Art. 20 § 1c of the Act on the National Court Register, after the entry of the entity in the National Court Register or its change, with the exception of the register of insolvent debtors, the data covered by the entry is transferred via the ICT system to the Central Register of Entities - the National Register of Taxpayers and the national official register of national economy entities. Pursuant to Art. 20 § 1d of the Act on the National Court Register, after the financial statements or the audit report are placed in the repository of financial documents, they are sent via the ICT system to the Central Register of Tax Data.

**14) Please provide a short explanation on the process of ensuring that information captured in the 21 district courts gets into the central register. Is the information shared with other offices upon consolidation in the centralised register or directly from the 21 district courts.**

The National Court Register is kept by the courts of registration, which examine applications for entry in this register, and if they are accepted, they issue decisions on the entry in the register. As soon as such decisions are issued, the employees of the court secretariats enter the data covered by them into the Register.

As indicated above, pursuant to the art. 8 of the Act on the National Court Register, this register shall be made public. However, pursuant to Art. 10 sec. 1 of the Act on the National Court Register, Everyone shall have the right to review the registration files of subjects entered in the Register and the collection of the documents referred to in Article 9 § 6, unless the Act provides otherwise. Pursuant to Art. 10 sec. 1a of the Act on the National Court Register, Registration files maintained in an IT data transmission system shall be made available:

- 1) via publicly accessible IT data transmission networks;
- 2) at the seat of the court of registration, using an IT data transmission system. The above-mentioned provisions apply to the files of the case examined by the registry court and, accordingly, to the files of the case examined by the court of second instance and the Supreme Court.

The above-mentioned provisions apply to the files of the case examined by the court of registration and, accordingly, to the files of the case examined by the court of second instance and the Supreme Court.

This means that the tax authorities have access to both the Registry and the registry files.

Notwithstanding the abovementioned information, pursuant to Art. 20 § 1c of the Act on the National Court Register, after making the entry of the subject into the Register or its modification, excluding the register of insolvent debtors, the data covered by the contents of the entry shall be transmitted via an IT data transmission system to the Central Register of Subjects - the National Taxpayers Register and the national official register of national economy subjects. Pursuant to Art. 20 § 1g of the Act on the National Court Register, After placing in the repository of financial documents of financial statements or an audit report, they shall be sent via an IT data transmission system to the Central Register of Tax Data.

All courts of registration are connected to the centralized IT system of the Service System of the National Court Register Divisions, which, based on other system modules, such as the Repository of Registry Files or the Court Registers Portal, ensures direct data flow from registry courts to the National Court Register and then the data is available via a browser on the website of the Ministry of Justice, i.e. from the central register and not directly from courts of registration.

**15) On the process of removal of the company from the register without conducting liquidation proceedings, kindly explain more what happens when it is established that the company being considered under these liquidation proceedings does not meet one or both of the conditions stated. Will liquidation proceedings be suspended? If yes, are there any other actions that may be undertaken. How is the information on the company maintained after dissolution without liquidation proceedings?**

If at least one of the conditions specified in Art. 25a §2 of the Act on the National Court Register, i.e. establishing in the course of the proceedings for dissolution of an entity without conducting liquidation proceedings that the entity owns assets or conducts business activities, the court of registration discontinues the ongoing registration proceedings pursuant to Art. 25d § 3 of the Act on the National Court Register. In the case at hand, the entity is not removed from the register, and the provisions of the Act on the National Court Register do not provide for when and under what conditions further proceedings for dissolution of the entity may be initiated without liquidation proceedings. The decision to initiate another procedure pursuant to Art. 25a of the Act on the National Court Register may be taken by a judge, in particular, when the factual state changes, e.g. from the files of the registration will appear that the company no longer possesses assets, the existence of which was the basis for the discontinuation of previously conducted proceedings.

Moreover, in the event of discontinuation of the proceedings, it should be considered whether it is possible to initiate compulsory proceedings against the entity or members of its governing bodies pursuant to Art. 24 sec. 1 of the Act on the National Court Register. In such proceedings, the performance of obligations is required under pain of a fine.

Deleting an entity from the National Court Register means that it loses its legal existence. Also the National Court Register Historical entries about the entity are in the National Court Register.

The National Court Register performs the function of a public register aimed at ensuring the security and credibility of trading for each entity appearing in it, as well as for each natural person wishing to conclude a transaction with an entity operating in accordance with law.

**16) What steps are taken to verify that the entity has no transferable property and does not run any business activity prior to removal from NCR?**

Pursuant to Art. 25b § 1 of the Act on the National Court Register, the court of registration shall notify the subject entered in the Register of the initiation of the proceedings for its dissolution without conducting liquidation proceedings, demanding that it demonstrate that it actually pursues activity and that it has assets, with an indication of its components, within a period of 14 days from the date of service of the demand, along with the instruction on the effects in case of lack of response to the court's demand.

The Court of registration also announces the initiation of the proceedings for the dissolution of the subject entered in the Register without the conduct of liquidation proceedings. In the absence of an authority authorized to represent or current address of the subject entered in the Register, the announcement shall replace the notice about the initiation of the proceedings. (Article 25b (2) of the Act on the National Court Register).

In the course of proceedings for the dissolution of an entity entered in the Register without conducting liquidation proceedings, the registration court may request information necessary to determine whether the entity entered in the Register has transferable property and whether it actually conducts business, to tax authorities, authorities keeping registers and public records or other public administration bodies and social organizations (Article 25c of the Act on the National Court Register).

Liquidators should terminate the company's day-to-day business, collect debts, fulfill obligations and liquidate the company's assets. New interests may only be undertaken where necessary to complete pending cases.

The liquidators are the partners of the companies (in partnerships companies) and generally members of management boards in LLC, JSC and simplified JSC.

**17) Please refer to Q. 12(a): Provide additional practical information on the registration process for the different entities. For example, does the NRA carry out any additional checks on data received from the NCR, the process of submission of the NIP-8 form etc.**

Companies, including joint-stock companies, in terms of data included in the entry in the National Court Register (KRS), submit an identification application to the National Court Register. These data are automatically provided by the National Court Register via the ICT system. Whereas, in terms of data not included in the entry in the National Court Register, companies submit a notification to the head of the tax office on the NIP-8 form, which contains supplementary data (not included in the entry in the National Court Register): abbreviated

name (business name), list of bank accounts or personal accounts in a cooperative savings and credit union, with the exception of the VAT account, addresses of places of business, data of the operator of accounting documentation, including tax identification number (NIP), address of the place where the accounting documentation is stored, contact details.

**18) Please refer to Q. 12(b): Please explain what actions are undertaken if the audits were to establish irregularities that concern identity and ownership information.**

Pursuant to art. 281 of the Tax Ordinance Act the purpose of tax control shall be the verification of the fulfilment by the persons controlled of duties resulting from provisions of tax law. Therefore Irregularities that concern identity and ownership information are not the main object of the control. These issues can be addressed on the basis of chapter V the TOA (inspection acts). Please find below answer to question 20.

**19) Please refer to Q11 (c): You have indicated that no information is available on fines imposed despite various proceedings initiated. Please provide an explanation to elaborate why the information on fines is not available. You may also provide information on other actions taken if the resolution of the proceedings was not issuance of fines.**

The judge or court referendary conducting the compulsory proceedings decides on the number and amount of fines imposed, which are a means to achieve the aim of the proceedings, i.e. for example forcing the entity to submit financial statements for a specified period. In the statistical form on registration matters of the National Court Register (MS-S20KRS), no statistical data is collected on the number and amount of fines imposed as part of compulsory proceedings. The above is dictated, inter alia, by the fact that the fine is only a measure that is imposed in the course of the proceedings, and the fulfillment of the obligation that was the basis for initiating compulsory proceedings causes the remission of the fine unpaid by that time.

**20) Please refer to Q. 11 (d): Can you explain efforts including monitoring undertaken by Poland to measure or evaluate the level of compliance during the peer review period? - Similarly for Q. 12 (d): Please provide additional information on efforts undertaken to evaluate compliance with tax filing obligations, the results and associated statistics.**

Issues of compliance with tax filing obligations could be addressed on the basis of chapter V the TOA (inspection acts). The essence of inspection acts consists mainly in eliminating errors and mistakes related to tax filings made by taxpayers. The inspection acts may concern, formal verification of the correctness of the declarations submitted by the taxpayer or verification of the correctness and completeness of registration declarations.

It can be indicated that inspection acts are a less formalized form of verifying the correctness of taxpayers' compliance with their tax obligations than, for example: conducting tax controls or proceedings. Compared to the controls, they also have a narrower scope. Detailed regulations on checking activities have been indicated in chapter V of the TOA.

**Art. 272** *The tax authorities of the first instance, subject to Article 272a, shall perform inspection acts for the purpose of:*

*1) verification of the observance of time limits for:*

- a) *filing tax returns;*
- b) *payment of taxes, including those collected by tax remitters or tax collectors;*
- 2) *stating the formal correctness of documents referred to in subparagraph 1;*
- 3) *establishing the factual state of affairs to the extent necessary to determine its conformity with the documents presented.*
- 4) *verification of expenses incurred by the taxpayer as well as taxable revenues (incomes) or non-taxable revenues (incomes) earned by him - to the extent necessary to disclose the tax base for revenues not justified by the revealed sources or derived from unrevealed sources;*
- 5) *verification of data and documents presented by taxpayers effecting the tax registration.*
- 6) *verification of data and documents presented by the subjects submitting an application for registration in accordance with Article 16 of the Act of 6 December 2008 on Excise Duty (Dziennik Ustaw 2020, items 722, 1747, 2320 and 2419; 2021; item 72) and a simplified application for registration pursuant to Article 16b of this Act.*
- 7) *verification of meeting the conditions entitling to being subject to lump-sum taxation on incomes of companies as well as the accuracy and timeliness of submitting a declaration to a taxpayer by shareholder of such a company, said incomes being referred to in Chapter 6b of the Act of 15 February 1992 on Legal Persons' Income Tax.*

#### **Art. 274**

*§ 1. In the case of establishing that a tax return includes counting errors or other obvious errors or that it was filled in contrary to agreed requirements, depending on the nature and scope of mistakes, the tax authority shall:*

- 1) *correct the return by making appropriate adjustments or additions, if the change in the amount of tax obligation, overpayment, tax refund or tax surplus to be carried forward or loss resulting from the said correction does not exceed the amount of 5,000 zloties;*
- 2) *require the declarant to provide necessary explanations and correct the tax return, pointing out the reasons for which the information included in the tax return shall be called into question.*

*§ 2. The tax authority shall:*

- 1) *authenticate a copy of the corrected return referred to in paragraph 1, subparagraph 1;*
- 2) *serve the taxpayer with an authenticated copy of the corrected tax return together with information about the change in the amount of tax obligation, overpayment, tax refund or tax surplus to be carried forward or loss related to the corrected return or information about the lack of such changes and the instruction on the right to lodge an objection.*

*§ 3. Within 14 days from serving an authenticated copy of the corrected return the taxpayer may file an objection against the correction referred to in paragraph 1, subparagraph 1 with the correction-making authority. The filing of such objection shall annul the correction.*

*§ 4. In the case where an objection is not filed within the specified time limit, the correction of the return referred to in paragraph 1, subparagraph 1 shall have such legal effects as the correction of said return filed by the taxpayer.*

*§ 5. The provisions of paragraphs 1 to 4 shall accordingly apply to the tax returns submitted by taxpayers or tax collectors and to the annexes thereto.*

§ 6. *The provisions of paragraphs 1 to 4 shall apply accordingly to the tax returns submitted by taxpayers, tax remitters or tax collectors by electronic communication means.*

**Art. 274a**

§ 1. *A tax authority may demand explanations as regards the reasons for failure to file a tax return or financial statements or issue summons for filing the said same the said documents were not filed in spite of the duty to do so.*

§ 2. *In the event of doubts as to the correctness of the filed tax return, the tax authority may issue summons for furnishing, within the fixed time limit, necessary explanations or for supplementing the return, mentioning the reasons for questioning the accuracy of information contained therein.*

**21) For question 14(b): Please provide information to demonstrate how in practice these sanctions were enforced. These may include preventive controls, audits, inspections, and also provide the resultant statistics.**

The answer to this question is being verified. Therefore we would like to addresss this issue during on site visit.

According to the information received, Ministry of Justice does not possess this kind of data.

**22) In respect to inactive entities, please provide more information on the following aspects:**

**a. For non-compliant entities that do not conduct business and have not submitted an application for suspension of business activity identified by the NCR, what actions are taken?**

Registry courts conduct proceedings to dissolve an entity entered in the Register without liquidation proceedings (Article 25 et seq. of the Act on the National Court Register).

As of January 1, 2021, there were 13,084 such cases. In the first half of 2021, 14,195 such cases were initiated.

As of January 1, 2021, 56,679 such cases were pending. In the first half of 2021, 106,924 such cases were initiated.

**b. Please provide the figure for entities that were actually removed from the Registry as a result of the 95,034 proceedings that were initiated in 2017-2020. And how often are these proceedings conducted?**

Ex officio cases for dissolution of an entity without liquidation proceedings (Article 25a of the NCR Act) in 2016-2020					
years	Specification		Influx	Settled matters	

		Left from the previous reporting year		Total	z tego				Left for the next period
					Included in whole or in part		Discontinued	other handling of the matter	
					Overall	Including deletions			
2016	Registry of entrepreneurs	232	8.077	2.914	1 173	740	311	1 409	5 394
2017	Registry of entrepreneurs	5 391	16 398	12 774	7 046	3 529	1 767	3 961	8 901
	register of associations	173	502	433	248	134	26	159	250
2018	Registry of entrepreneurs	8 897	24 109	19 015	10 033	4 882	4 762	4 220	13 789
	register of associations	250	694	574	358	181	49	167	354
2019	Registry of entrepreneurs	13 786	25 082	25 039	12 660	6 176	7 225	5 154	13 572
	register of associations	354	782	767	499	278	111	157	360
2020	Registry of entrepreneurs	13 572	26 705	27 088	11 828	5 894	7 709	7 551	13 098
	register of associations	360	762	755	442	239	103	210	363

**c. What activities are carried out by the registration court to examine whether the entity has transferrable assets and whether it actually pursues economic activity?**

The registry court shall notify the entity entered in the Register of the initiation of proceedings for dissolution without conducting liquidation proceedings, summoning it to prove that it actually conducts business and that it has assets, indicating its components, within 14 days from the date of delivery of the summons , with information on the consequences of failure to respond to the court's summons.

The registry court also announces the initiation of proceedings to dissolve an entity entered in the register without conducting liquidation proceedings. In the absence of a body authorized to represent or the current address of the entity entered in the Register, the announcement is replaced by a notice of initiation of proceedings (Article 25b (2) of the Act on the National Court Register).

In the course of proceedings for the dissolution of an entity entered in the Register without conducting liquidation proceedings, the registration court may request information necessary to determine whether the entity entered in the Register has transferable property and whether it actually conducts business, to tax authorities, authorities keeping registers and public records or other public administration bodies and social organizations (Article 25c of the Act on the National Court Register).

**d. Please explain why Poland is unable to determine the actual number of entities that are deleted or 'struck-off' from the register.**

- e. Was the procedure for the dissolution of the 26,705 cases for 2020 finalised? And why was the procedure on the 13, 572 in the previous years not completed.**

Conducting the procedure requires the court of registration to perform the activities described above. The number 13,572 is the number of pending cases as of January 1, 2020. The number of 26,705 is the number of cases opened during 2020. The number of pending cases as of December 31, 2021 is 13,098. This means that during 2020, 27,179 such cases were completed ( $13,572 + 26,705 - 13,098 = 27,179$ ). A total of 11,818 were taken into account, including 5,894 deletions, 7,709 were canceled, and 7,551 of other settlements.

- f. Under what circumstances, if any would the deleted entities be restored onto the register and after how many years is this possible.**

Removal from the National Court Register means the cessation of the entity's legal existence. It is not expected to be restored.

- 23) Please refer to Q.12 (f): Please provide the number of inactive companies registered with the tax authorities at the end of the peer review period.**

Tax Authorities do not collect this kind of data.

- 24) Are there any other additional consequences for entities that are inactive. How do you ensure, that legal and beneficial ownership information is available during the retention period for this kind of inactive entities? Is there any administrative actions regularly conducted for targeting inactive companies and enhancing their compliance with their obligation to maintain or report ownership information?**

Pursuant to Art. 24 sec. 6 of the Act on the National Court Register, in cases justified by the security of trading, the registration court may delete ex officio data inconsistent with the actual state of affairs or enter data corresponding to the actual state of affairs, if the documents constituting the basis for the entry or deletion are in the registration files, and these data are significant. If such documents concerning the inactive entity are submitted to the registry court, it may update the data. Registry courts continuously monitor the performance by entities of their obligations, in particular reporting obligations, and in the event of shortcomings, initiate the procedures referred to in Art. 24 and art. 25a of the Act on the National Court Register.

- 25) Please refer to question 15: It is our understanding that the example of the obligation you have provided concerns entities themselves and not service providers. Please provide responses throughout question 15 that relate to service providers if any in Poland.**

**Art. 300<sup>31</sup>**

*§ 1. The register of shareholders shall be maintained by:*

*1) the subject which, under the Act of 29 July 2005 on Trading in Financial Instruments (Dziennik Ustaw 2018, items 2286, 2243 and 2244; 2019, items 730, 875 and 1655) shall be entitled to maintain securities accounts;*

*2) a notary running a notary's office in the territory of the Republic of Poland.*

*§ 2. The tasks of the subject running the register of shareholders include ensuring the compatibility of the number of the shares registered in the register with the number of the shares issued and making entries of the data referred to in Article 30033.*

*§ 3. The register of shareholders shall be maintained in electronic form which may have a form of distributed and decentralized database.*

*§ 4. Irrespective of the form of the register of shareholders, the subject maintaining this register shall maintain the same so as to ensure security and integrity of the data contained therein.*

*§ 5. The choice of the subject maintaining the register of shareholders requires a resolution of shareholders. The shareholder shall make the choice while forming the company.*

**Art. 328<sup>1</sup>**

*§ 1. Shares of a company which is not a public company shall be registered in the register of shareholders.*

*§ 2. The register of shareholders shall be maintained by the subject entitled to operate the securities account within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments.*

*§ 3. The register of shareholders shall be maintained in electronic form which may have a form of distributed and decentralized database.*

*§ 4. Regardless of the form of the register of shareholders, the subject maintaining the register shall maintain it in a manner that ensures the security and integrity of the data contained therein.*

*§ 5. The selection of the subject maintaining the register of shareholders requires the resolution of a general meeting. The selection is made by promoters at the time of formation of the company.*

**Art. 42§ 1 the Act of February 14, 1991 - Law on Notaries.**

Supervision over the activities of notaries and notary self-government bodies is exercised by the Minister of Justice in person, through the presidents of courts of appeal or provincial courts or by designated persons.

Art. 4

1. *The securities accounts shall be accounts in which paperless securities are entered, operated exclusively by:*

*1) brokerage houses and banks pursuing brokerage activity, fiduciary banks, foreign investment firms and foreign legal persons pursuing brokerage activity on the territory of the Republic of Poland through a branch, the National Depository, the company to which the National Depository delegated the carrying out of acts covered by the scope of tasks referred to in Article 48, paragraph 1, subparagraph 1, and the National Bank of Poland - where the designation of these accounts is such that it enables persons who enjoy the rights attached to securities to be identified;*

*2) other subjects being participants of the depository for securities or of a securities registration system operated by the National Bank of Poland, acting as intermediaries in the transfer of securities issued by the State Treasury or by the National Bank of Poland - where the entries made by them concern these securities and enable the persons in whom the rights attached to securities are vested to be identified.*

*2. As of the registration of securities pursuant to the contract for registration of the securities in the depository for securities, the entries concerning these securities, made in connection with the subscription for same or sale thereof, whether in primary trading or under an initial public offer, shall also be considered securities accounts when made by:*

*1) subjects pursuing brokerage activity; or*

*2) fiduciary banks*

*- provided these entries identify the persons in whom the rights attached to the securities are vested.*

*2a. As of the registration of Treasury securities within the meaning of the Act of 27 August 2009 on Public Finance (Journal of laws 2013, item 885, as amended), pursuant to the contract for registration of the securities in the depository for securities, the entries concerning these securities made by subjects pursuing brokerage activity or fiduciary banks, provided these entries identify the persons in whom the rights attached to the securities are vested, shall also be considered securities accounts.*

*3. Any reference in this Act to securities accounts shall be understood to include also the accounts in which non-securities and financial instruments not being derivative instruments admitted to organized trading are entered.*

The Act of 21 July 2006 on supervision over the financial market grants powers in this respect to the Polish Financial Supervision Authority.

The entity maintaining the register of shareholders examines the content and form of the documents justifying the entry. However, this entity is not obliged to examine the legality and truthfulness of the documents justifying the entry, including the signatures of the seller of the shares or persons establishing a limited property right to the shares, unless they have justified doubts in this regard.

Furthermore only members of management board of company are obliged to monitor compliance with the obligations to maintain information about ownership and identity information.

**26) Please refer to question 16: in respect of art. 126 § 6 of the Cooperative Law, please clarify to whom the books and documents are handed over to after liquidation**

Pursuant to § 1 sec. 1 of the Regulation of the Minister of Justice of 4 April 1995 on the manner and time of storing books and documents of liquidated cooperatives and cooperative organizations<sup>9</sup>. The liquidator of cooperatives and cooperative organizations stores and properly secures the books and documents of these entities, and after arranging this documentation, according to the rules of classification and qualification of documentation in force in a given cooperative and cooperative organization, provides:

1) archival materials - the competent unit of the state archival network indicated by the decision of the General Director of the State Archives,

2) non-archival documentation, the storage period of which has not yet expired - the audit union in which the associated cooperative or cooperative organization was, and if there is no such association or in the event of its liquidation - the National Cooperative Council,

3) non-archival documentation, the storage period of which has already expired in a liquidated cooperative and cooperative organization - to waste paper.

2. The documentation referred to in par. 1 point 2, the liquidator may also transfer to the paid storage of a cooperative or cooperative organization indicated by the National Council of the Cooperative that took over the assets of the liquidated cooperative or association or other cooperative or cooperative organization, as well as the Association of Polish Archivists; in this case, the liquidator shall provide adequate financial resources for this purpose in the liquidation plan. The storage contract should be concluded until the end of the storage period for non-archival documentation.

3. Submitting the documentation referred to in par. 1 points 1 and 2 and in sec. 2, is based on the list of delivery and acceptance.

4. One copy of the delivery and acceptance list of non-archived documentation in the case referred to in sec. 1 point 2 and in sec. 2, the liquidator submits to the National Co-operative Council.

**27) In respect to bearer shares: Please provide additional explanations on the following;**

The binding force of share certificates, subscription warrants, utility certificates, founding certificates and other participation titles in the company's income or division of assets shall expire by operation of law on March 1, 2021. The above documents remain valid as evidence in the scope of proving by the shareholder to the company that he is entitled to share rights for a period of five years from the date of entry into force of the Amendment Act, i.e. until

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<sup>9</sup> <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19950470248>

March 1, 2026. Therefore, if during this period a shareholder submits a share document to the company, he will be entered in the register of shareholders, which will again enable him to exercise his share rights (e.g. a dividend). After March 1, 2026, a shareholder who has not submitted the share document will be deprived of the protection of the share rights; he will lose the claim to be entered in the register of shareholders on the basis of the Company's share documents in his possession.

Members of management boards are responsible for ensuring compliance with the obligation to register bearer shares.

**a. the most recent figures for the total number of companies that have issued outstanding bearer shares and the total number of bearer shares in circulation**

As of September 24, 2021, there are **900 participants** of the National Depository for Securities (hereinafter KDPW) in the type of issuer activity, which have Poland as their country of residence and have bearer shares registered with the National Depository for Securities.

The total number of all bearer shares of the above-mentioned issuers, registered on registration accounts in the National Depository for Securities, is **46 788 116 069**.

The Act of August 30, 2019. amending the Act - Code of Commercial Companies and certain other acts (Journal of Laws of 2019, item 1798) entered into force on January 1, 2021. except:

1. Art. 1 §1 and 25, art. 6, art. 16 - 19, art. 21 and art. 22, which entered into force on January 1, 2020;

2. Art. 1 points 2-4 and 47 and article. 3, which entered into force on March 1, 2020.

Therefore, the scope of data taken into account regarding the number of entities that registered shares with the National Depository for Securities is the period from January 1, 2021. until September 24, 2021 During this period, 345 KDPW participants, of the type of issuer activity, whose country of residence is Poland, registered the shares, and 208 registered bearer shares<sup>10</sup>.

- b. supervisory and enforcement measures which were taken during the peer review period to ensure that the legal and beneficial ownership information on holders of bearer shares is available
- c. additional information on how the amendments contained in the Act of 30 August 2019 would ensure registration of bearer shares.
- d. Clarify if there are any sanctions for the companies that do not register their shares in addition to the restriction to trade them and what will happen after the five years.

*Pursuant to the Art. 594 § 1. Whoever, being a member of the management board of a commercial company or partnership, against his duty, allows the management board:*

*(...)*

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<sup>10</sup> Source: KDPW

*2) not to keep the register of stocks pursuant to the provision of Article 188, paragraph 1 or not to keep the register of shares pursuant to the provision of Article 341, paragraph 1 or allows for failure to keep the register of shareholders in accordance with the provisions of the Act;*

*(...) - shall be liable to a fine of up to 20,000 zloties.*

*Art. 592*

*§ 1. A member of the management board who allows the release of share title deeds:*

*1) which have not been paid up sufficiently;*

*2) before registration of the company or partnership;*

*3) in the case of increase of the initial capital – before the registration of such increase*

*– shall be liable to a fine, a penalty of restriction of liberty or deprivation of liberty of up to one year.*

**e. Which authority is responsible to ensure compliance with the obligation to register the bearer shares?**

We would like to ask you to clarify whether it concerns the registration of a newly created share capital in the National Court Register (taking up shares), or an entry in the register of shareholders, or the performance of obligations under the Act of August 30, 2019 on changing the code of commercial companies and certain other acts. Therefore we would like to address this issue during on site visit.

**28) Please provide the list of legal persons that are obliged to make entries to the Central Register of Beneficial Ownership and the list of the new entities under the amendment to the AML/CFT Act.**

The list of legal persons that are obliged to make entries to the Central Register of Beneficial Ownership:

1. general partnerships (sp.j.);
2. limited partnerships (sp.k.);
3. limited joint-stock partnerships (S.K.A.);
4. limited liability companies (Sp. z o.o.);
5. simplified joint-stock companies (PSA);
6. joint-stock companies (S.A.) excluding public companies.

Legal status from 31 November 2021:

1. general partnerships (sp.j.);
2. limited partnerships (sp.k.);

3. limited joint-stock partnerships (S.K.A.);
4. limited liability companies (Sp. z o.o.);
5. simplified joint-stock companies (PSA);
6. joint-stock companies (S.A.) excluding public companies;
7. trusts whose trustees or persons holding an equivalent position:
  - a) have their place of residence or seat in the territory of the Republic of Poland, or
  - b) establish business relations or purchase real estate in the territory of the Republic of Poland on behalf of or for the benefit of the trust;
8. partner companies;
9. European economic interest groupings;
10. European companies;
11. cooperatives;
12. European cooperatives;
13. associations subject to entry in the National Court Register;
14. foundations.

The list of new entities under the amendment to the AML/CFT Act:

1. notaries in the scope of keeping registers of shareholders of simplified joint-stock companies and undertakes related activities;
2. entrepreneurs whose main business activity is providing services consisting in preparing returns, keeping tax books, giving advice, opinions or explanations on tax or customs legislation, not being other obliged institutions;
3. intermediaries in real estate trading excluding real estate agency services aimed at entering into a lease or tenancy agreement of real estate or parts thereof where the monthly rent is less than the equivalent of EUR 10 000;
4. entrepreneurs pursuing activities consisting in:
  - a) trade in or intermediation in the trade of works of art, collectors' items and antiques:
    - paintings, collages and similar decorative panels, drawings and pastels, executed entirely by the artist, excluding plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated handicraft products, painted fabrics for theatrical scenery, for the decoration of studios or similar uses (CN 9701),
    - original engravings, prints and lithographs, made in limited numbers copies, black and white or in colour, consisting of one or more sheets, made entirely by the artist, regardless of the process or material used, excluding any mechanical or photomechanical processes (CN 9702 00 00),

- original sculptures and statues of any material, provided that they were made entirely by the artist; casts of sculpture whose limited to eight copies and the making of which was supervised by the artist or his heirs (CN 9703 00 00),
- tapestries (CN 5805 00 00) and wall textiles (CN 6304) made by hand on the basis of original designs provided by the artist provided that their number is limited to 8 copies,
- photographs taken by the artist, published by him or under his supervision signed and numbered, limited to 30 copies in all sizes and bindings,
- postage or revenue stamps, postage stamps, first-edition envelopes circulated, stamped stationery and the like, stamped on the front, or, if not uncovered, declared void and not intended to be for use as valid means of payment (CN 9704 00 00),
- collections and collector's items of zoological value, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest (CN 9705 00 00), as well as collectors' pieces,
- other articles over 100 years old (CN 9706 00 00),

including when such activity is carried out:

- in art galleries or auction houses or
- using a free port understood as a zone or room where the goods are treated as not located in the customs territory of the Member States or third countries, including the use of a free zone,

b) storing works of art, collectors' items and antiques:

- paintings, collages and similar decorative panels, drawings and pastels, executed entirely by the artist, excluding plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated handicraft products handicraft products, painted fabrics for theatrical scenery, for the decoration of studios or similar uses (CN 9701),
- original engravings, prints and lithographs, made in limited numbers copies, black and white or in colour, consisting of one or more sheets, made entirely by the artist sheets, executed entirely by the artist, regardless of the by the artist, regardless of the process or material used, excluding any mechanical or photomechanical processes (CN 9702 00 00),
- original sculptures and statues of any material, provided that they were made entirely by the artist; casts of sculpture whose limited to eight copies and the making of which was supervised by the artist or his heirs (CN 9703 00 00),
- tapestries (CN 5805 00 00) and wall textiles (CN 6304) made by hand on the basis of original designs provided by the artist provided that their number is limited to 8 copies,
- photographs taken by the artist, published by him or under his supervision signed and numbered, limited to 30 copies in all sizes and bindings,
- postage or revenue stamps, postage stamps, first-edition envelopes circulated, stamped stationery and the like, stamped on the front, or, if not uncovered, declared void and not intended to be for use as valid means of payment (CN 9704 00 00),

- collections and collector's items of zoological value, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest (CN 9705 00 00), as well as collectors' pieces,

- other articles over 100 years old (CN 9706 00 00),

when such activity is carried out using a free port

– for transactions with a value equal to or greater than the equivalent of EUR 10 000, regardless of whether the transaction is carried out as a single operation or several operations that appear to be related to each other.

**29) Please refer to question 20: please explain more on requirements to update Beneficial ownership information including the frequency of submission of information to the central register of BO**

The change in the information subject to submission to the Central Register of Beneficial Owners shall be submitted to the Register within 7 days following the change. The term shall not comprise Saturdays and public holidays. In the event of a failure or disruptions in the ICT system operation, the authority competent for the Register shall inform of their occurrence and elimination in the Public Information Bulletin on the website of the office servicing the minister competent for public finance. In such a case, a period from the moment of occurrence of the failure or disruption indicated in the information published in the Bulletin until the moment of publishing information on their elimination, shall not be included in the calculation of time limits.

Legal status from 31 November 2021:

Information reported to the Central Register of Beneficial Owners is updated in the case of entities:

a) general partnerships (sp.j.), limited partnerships (sp.k.), limited joint-stock partnerships (S.K.A.), limited liability companies (Sp. z o.o.), simplified joint-stock companies (PSA), joint-stock companies (S.A.), excluding public companies, partner companies, European economic interest groupings, European companies, cooperatives, European cooperatives, associations subject to entry in the National Court Register and foundations – within 7 days of their change in the National Court Register, and in the case of changes whose effectiveness does not require an entry in the National Court Register, within 7 days from the date of their introduction;

b) trusts – within 7 days from the date of their change.

A trustee or a person holding an equivalent position in a trust are required to update the information reported to the Register during the period of the trust's economic relations in the territory of the Republic of Poland or in the period in which the trustee or a person holding an equivalent position, acting on behalf of or for the benefit of the trust, is the owner or holder of real estate on the territory of the Republic of Poland.

A beneficial owner is obliged to provide the entity, or in case of a trust a trustee or a person holding an equivalent position, all information and documents necessary to notify the update of information about the beneficial owner on the dates of an update of information reported to the Register.

The term shall not comprise Saturdays and public holidays.

In the event of a failure or disruptions in the ICT system operation, the authority competent for the Register shall inform of their occurrence and elimination in the Public Information Bulletin on the website of the office servicing the minister competent for public finance. In such a case, a period from the moment of occurrence of the failure or disruption indicated in the information published in the Bulletin until the moment of publishing information on their elimination, shall not be included in the calculation of time limits.

**30) It is also indicated that ‘information collected in the Central Register of Beneficial Owners, referred to in Article 59, shall be kept over a period necessary to perform the tasks with the aim of counteracting money laundering or financing of terrorism’. Please confirm if there is specific period provided for or not.**

The law currently does not specifically define period (days/weeks/months/years) for keeping the information collected in the Central Register of Beneficial Owners; however the law provides that the information “shall be kept over a period necessary to perform the tasks with the aim of counteracting money laundering or financing of terrorism”.

Legal status from 31 November 2021:

Information collected in the Central Register of Beneficial Owners concerning entities:

a) general partnerships (sp.j.), limited partnerships (sp.k.), limited joint-stock partnerships (S.K.A.), limited liability companies (Sp. z o.o.), simplified joint-stock companies (PSA), joint-stock companies (S.A.), excluding public companies, partner companies, European economic interest groupings, European companies, cooperatives, European cooperatives, associations subject to entry in the National Court Register and foundations – are stored for a period of 10 years from the date on which information about these entities was deleted from the National Court Register;

b) trusts – are stored for a period of 10 years from the date on which the obligation to submit data to the Register or update them ceased.

**31) Are all legal entities and arrangements obligated to engage an AML-obliged person? If yes, how (e.g. through having a Polish Bank account)? Please provide the legal basis.**

Legal entities making or receiving payments arising from economic activity where the other party to the transaction is an entrepreneur and where the value of the transaction (regardless of the number of payments) is in excess of PLN 15 000 are required to have bank accounts.

In case of legal arrangements, the law does not provide for them to be formed.

**32) In respect of the non-financial professions relevant for EOIR (e.g. lawyers, accountants, and auditors), please :**

a. Provide an overview of each of these professions;

1. Entities pursuing activities in the scope of games of chance, betting, card games and games on gaming machines

Games of chance are games, including those arranged online, where the prize is either cash or a material prize and where the result depends primarily on chance. Games of chance are:

- number games – the games where the prize is won by selecting correct numbers, signs or other marks and where the prize level depends on the total stakes paid as well as a keno game where the prize is won by selecting correct numbers and where the prize is the product of the stakes paid and the multiplier defined for individual pay tables;
- cash lotteries where participation is conditional upon purchasing a lottery coupon or other game ticket and where the entity organising the lottery offers cash prizes only;
- telebingo where participation is conditional upon purchasing a game ticket listing random sets of numbers or signs from a predefined set of numbers or signs; telebingo is a nationwide game where the drawing of lots is broadcast on television and the entity organising the lottery offers cash or material prizes;
- cylindrical games where participation is conditional upon choosing numbers, signs or other marks and where the prize depends on the predefined stake-to-winnings ratio with the result determined by means of a rotary device; or cylindrical games arranged online under the same rules;
- dice games;
- cash bingo where participation is conditional upon purchasing random sets of numbers from a predefined set of numbers and where the entity organising the game offers cash prizes only, the level of which depends on the total stakes paid;
- raffle bingo where participation is conditional upon purchasing random sets of numbers from a predefined set of numbers and where the entity organising the game offers material prizes only;
- raffle lotteries where participation is conditional upon purchasing a lottery coupon or other game ticket and where the entity organising the lottery offers material prizes only;
- promotion lotteries where participation is conditional upon purchasing goods, services or other game ticket, whereby participation in the lottery is free and where the entity organising the game offers cash or material prizes;
- audiotote lotteries where participation is conditional upon payable:
  - a) telephone connection,
  - b) short text messaging via the public telecommunications network.

Betting is betting for cash or material prizes determined by guessing:

- the results of a sports competition in which competitors are people or animals and where the participants pay stakes, while the prize depends on the total amount of stakes paid – sweepstake systems;

- the occurrence of different events, including virtual events, where participants pay stakes and where the prize level depends on the stake-to-winnings ratio agreed between the bookmaker and the stake payer – bookmaking services.

Virtual events are computer-generated events related to sports competition of people or animals.

Games on gaming machines are games of chance that are played with the use of mechanical, electromechanical or electronic devices, including computer hardware and games corresponding to the rules of games on gaming machines arranged via Internet, where the prizes are either cash or material prizes and where the game contains an element of a chance.

A material prize in games on gaming machines is also a prize whereby the game can be continued without the need to pay the stake to participate in the game, or an option to start a new game by using the prize won in the previous game.

Games on gaming machines are also games of chance that are played with the use of mechanical, electromechanical or electronic devices, including computer hardware and games corresponding to the rules of games on gaming machines arranged via Internet for commercial purposes, in which a player has no possibility to win cash or material prizes but the game has features of a chance.

Card games include black jack, poker and baccarat, as long as they are played in order to win cash or material prizes.

## 2. Intermediaries in real estate trading

A real estate broker is an entrepreneur pursuing business in the field of brokerage real estate. Real estate brokerage is based on a fee performing activities aimed at concluding contracts by other persons:

- purchase or sale of rights to real estate;
- purchase or sale of the cooperative ownership right to the premises;
- rental or lease of real estate or parts thereof;
- others, the subject of which are rights to real estate or parts thereof.

## 3. Entrepreneurs

An entrepreneur is a natural person, legal person or individual organisational entity that is not a legal person, which has been granted capacity by a separate act legal, conducting business activity. Entrepreneurs are also partners of a civil law partnership in the scope of performed by them business activity.

A business activity is an organised profit-making activity, performed in its own name and in a continuous manner. An activity performed by a natural person whose income due from this activity does not exceed in any month 50% of the amount of minimum remuneration and who has not conducted business activity for the last 60 months does not constitute business activity.

## 4. Notaries

A notary is appointed to perform activities, which the parties are obliged or wish to give notarial form (notarial acts). A notary within the scope of his powers acts as a person of public trust, benefiting from the protection afforded by it public officials. Notarial acts, performed by a notary in accordance with the law, have the nature of an official document.

## 5. Advocates

The profession of an advocate consists in rendering legal assistance, in particular, giving legal advice, drawing up legal opinions, preparing drafts of legal acts and appearing before courts and offices. An advocate has the right to certify copies of documents for compliance with the original presented. Legal assistance is provided to individuals, business entities and organisational units. An advocate is obliged to keep secret everything that he/she learned in connection with the provision of legal assistance. An advocate during and in connection with the performance of professional duties shall enjoy legal protection similar to that of a judge and a prosecutor.

## 6. Attorneys-at-law

The profession of an attorney-at-law consists in rendering legal assistance. Providing legal assistance by an attorney-at-law consists in in particular, rendering legal advice and consultations, drawing up legal opinions, preparing drafts of legal acts and appearing before legal preparing legal opinions, drafts of legal acts and appearing before appearing before authorities and courts as a proxy or defence counsel. An attorney-at-law has the right to certify copies of documents as to the original presented. An attorney-at-law is obliged to keep secret everything that he learned in connection with the provision of legal assistance. An attorney-at-law during and in connection with the performance of professional duties shall enjoy legal protection similar to that of a judge and a prosecutor.

### **b. Confirm, with the relevant reference to the legal basis, that these professions are AML-obliged persons together with the legal basis.**

1. Entities pursuing activities in the scope of games of chance, betting, card games and games on gaming machines – Article 2(1)(20) of the AML/CFT Act.

2. Intermediaries in real estate trading with the exception of real estate brokerage activities aimed at concluding a rental or lease agreement for real estate or a part thereof, in which the monthly rent has been determined in the amount lower than the equivalent of EUR 10 000 – Article 2(1)(18) of the AML/CFT Act.

3. Entrepreneurs pursuing activities consisting in:

a) trade in or intermediation in the trade of works of art, collectors' items and antiques:

- paintings, collages and similar decorative panels, drawings and pastels, executed entirely by the artist, excluding plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated handicraft products handicraft products, painted fabrics for theatrical scenery, for the decoration of studios or similar uses (CN 9701),

- original engravings, prints and lithographs, made in limited numbers copies, black and white or in colour, consisting of one or more sheets, made entirely by the artist sheets, executed

entirely by the artist, regardless of the by the artist, regardless of the process or material used, excluding any mechanical or photomechanical processes (CN 9702 00 00),

- original sculptures and statues of any material, provided that they were made entirely by the artist; casts of sculpture whose limited to eight copies and the making of which was supervised by the artist or his heirs (CN 9703 00 00),

- tapestries (CN 5805 00 00) and wall textiles (CN 6304) made by hand on the basis of original designs provided by the artist provided that their number is limited to 8 copies,

- photographs taken by the artist, published by him or under his supervision signed and numbered, limited to 30 copies in all sizes and bindings,

- postage or revenue stamps, postage stamps, first-edition envelopes circulated, stamped stationery and the like, stamped on the front, or, if not uncovered, declared void and not intended to be for use as valid means of payment (CN 9704 00 00),

- collections and collector's items of zoological value, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest (CN 9705 00 00), as well as collectors' pieces,

- other articles over 100 years old (CN 9706 00 00),

including when such activity is carried out:

- in art galleries or auction houses or

- using a free port understood as a zone or room where the goods are treated as not located in the customs territory of the Member States or third countries, including the use of a free zone,

b) storing works of art, collectors' items and antiques:

- paintings, collages and similar decorative panels, drawings and pastels, executed entirely by the artist, excluding plans and drawings for architectural, engineering, industrial, commercial, topographical or similar purposes, hand-decorated handicraft products handicraft products, painted fabrics for theatrical scenery, for the decoration of studios or similar uses (CN 9701),

- original engravings, prints and lithographs, made in limited numbers copies, black and white or in colour, consisting of one or more sheets, made entirely by the artist sheets, executed entirely by the artist, regardless of the by the artist, regardless of the process or material used, excluding any mechanical or photomechanical processes (CN 9702 00 00),

- original sculptures and statues of any material, provided that they were made entirely by the artist; casts of sculpture whose limited to eight copies and the making of which was supervised by the artist or his heirs (CN 9703 00 00),

- tapestries (CN 5805 00 00) and wall textiles (CN 6304) made by hand on the basis of original designs provided by the artist provided that their number is limited to 8 copies,

- photographs taken by the artist, published by him or under his supervision signed and numbered, limited to 30 copies in all sizes and bindings,

- postage or revenue stamps, postage stamps, first-edition envelopes circulated, stamped stationery and the like, stamped on the front, or, if not uncovered, declared void and not intended to be for use as valid means of payment (CN 9704 00 00),
- collections and collector's items of zoological value, botanical, mineralogical, anatomical, historical, archaeological, paleontological, ethnographic or numismatic interest (CN 9705 00 00), as well as collectors' pieces,
- other articles over 100 years old (CN 9706 00 00),

when such activity is carried out using a free port

– for transactions with a value equal to or greater than the equivalent of EUR 10 000, regardless of whether the transaction is carried out as a single operation or several operations that appear to be related to each other – Article 2(1)(24a) of the AML/CFT Act.

4. Notaries in the scope of activities performed in the form of a notarial deed, comprising:

- a) transfer of the ownership of an asset, including sale, exchange or donation of movable property or real estate,
- b) concluding an agreement on inheritance division, dissolution of co-ownership, life annuity, pension in exchange for the transfer of the ownership of real estate and on distribution of jointly-held assets,
- c) assignment of the cooperative member's ownership right to premises, perpetual usufruct right and alleged promise of a separate ownership of premises,
- d) in-kind contribution following a company establishment,
- e) concluding the agreement documenting the contribution or increase of the contributions to the company or contribution or increase of the share capital,
- f) transformation or merger of companies,
- g) disposal of an enterprise,
- h) disposal of shares in the company

– Article 2(1)(13) of the AML/CFT Act.

5. Notaries in the scope of keeping registers of shareholders of simplified joint-stock companies and undertakes related activities – Article 2(1)(13a) of the AML/CFT Act.

6. Advocates, attorneys-at-law and foreign lawyers in relation to:

- a) purchase or sale of real estate, an enterprise or an organised part of an enterprise,
- b) management of cash, financial instruments or other customer's assets,
- c) concluding an agreement for operating a bank account, a securities account or performing activities related to operating those accounts,
- d) in-kind contribution to a capital company or increasing the share capital of a capital company,
- e) establishing, operating or managing capital companies or trusts

– excluding attornesy-at-law and foreign lawyers practising their profession under the employment relationship or service in offices providing services to public administration authorities, other government and local government units and entities other than:

- civil law partnership (sp.c.) or general partnership (sp.j.) in which the partners advocates, attorneys-at-law, patent attorneys, tax advisers or foreign attorneys permanent practice,

- partnership (sp.p.) in which the partners are advocates, attorneys-at-law and ombudsmen patent, tax advisors or foreign lawyers performing permanent services practice,

- limited partnership (sp.k.) or limited joint-stock partnership (S.K.A.) in which the general partners are advocates, attorneys-at-law, patent attorneys, tax advisers or foreign lawyers practicing on a regular basis

– Article 2(1)(14) of the AML/CFT Act.

7. Entities pursuing activities in the scope of providing bookkeeping services – Article 2(1)(17) of the AML/CFT Act.

8. Entrepreneurs other than other obligated institutions, providing services consisting in:

a) establishing a legal person or an organisational unit without legal personality,

b) fulfilling a function of a member of the management board or enabling other person to fulfil this function or a similar function in a legal person or an organisational unit without legal personality,

c) providing a registered office, address of establishment or address for correspondence and other related services to a legal person or an organisational unit without legal personality,

d) acting or enabling other person to act as a trustee established by means of a legal act,

e) acting or enabling other person to act as a person exercising its rights arising from stocks or shares to the benefit of an entity other than a company listed on the regulated market subject to the requirements related to information disclosure in compliance with the European Union law or subject to equivalent international standards

– Article 2(1)(16) of the AML/CFT Act.

### **33) Please clarify under what circumstances Nominee ownership in Poland is permitted**

There are no law regulations about nominee shareholder or nominee ownership in companies in Poland.

### **34) In respect of a person acting as a Nominee shareholder or director, please provide additional information on the following: Is there a requirement for a nominee to identify himself as such to the legal entity, please provide the legal basis reference.**

The Central Register of Beneficial Owners (CRBR) is a system in which information about beneficial owners, i.e. natural persons exercising direct or indirect control over the company, is collected and processed.

The register collects data on the beneficial owners of :

- registered partnerships,
- limited partnerships,
- limited joint-stock partnerships,
- limited liability companies;
- simplified joint stock companies (from 1 July 2021)
- joint stock companies, with the exception of public companies within the meaning of the Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies (Journal of Laws of 2019, item 623).

The Beneficial Owner of the company is a natural person or natural persons:

- exercising direct or indirect control over the company through their powers, which result from legal or factual circumstances, enabling them to exert a decisive influence on the activities or actions taken by the company, or
- on behalf of whom business relations are established or an occasional transaction is carried out.

In the case of a company - a legal person, other than a company whose securities are admitted to trading on a regulated market, subject to disclosure requirements under the provisions of European Union law or the corresponding provisions of the law of a third country, the real beneficiary of the company is:

- a natural person who is a shareholder or shareholder of a company that holds the ownership right to more than 25% of the total number of shares of that legal person,
- a natural person holding more than 25% of the total number of votes in the company's decision-making body, also as a pledgee or usufructuary, or under agreements with other voting rights,
- a natural person exercising control over a legal person or legal persons who jointly holds the ownership right to more than 25% of the total number of shares or stocks in the company, or jointly holds more than 25% of the total number of votes in the company's governing body, also as a pledgee or usufructuary, or on the basis of agreements with other voting rights,
- a natural person exercising control over the company by having the rights referred to in Art. 3 sec. 1 point 37 of the Accounting Act of September 29, 1994 (Journal of Laws of 2019, item 351), or
- a natural person holding a senior management position in the company's bodies in the event of a documented inability to determine or doubt as to the identity of natural persons

specified in the above points and in the absence of suspicions of money laundering or terrorist financing.

In Poland, the CRBR operation is based on the Act of March 1, 2018 on counteracting money laundering and terrorist financing (Journal of Laws of 2020, item 971), which implements the provisions of the 4th AML Directive.

**35) Please explain how the identification of Beneficial owners of Partnerships in Poland is addressed.**

A report to the Central Register of Beneficial Owners shall be submitted by a person authorised to represent the entity. The report shall be made with the use of electronic communication means free of charge. The report shall be submitted in the form of an electronic document. The report shall bear a qualified electronic signature or a signature confirmed by ePUAP trusted profile and it shall contain the declaration of a reporting person on the authenticity of information reported to the Register. The declaration shall be submitted subject to criminal liability for making false declarations. A person submitting the declaration shall be bound to include the following clause therein: "I am aware of criminal liability for the submission of a false declaration." This clause shall replace the instruction concerning criminal liability for making a false declaration.

Information subject to submission to the Register shall be entered in the Register immediately after its submission or updating. Processing of information concerning beneficial owners collected in the Register shall take place without the awareness of persons such information refers to. Data entered in the Register are deemed authentic. A person submitting information on beneficial owners, including its updates, shall be liable for any damage caused by the submission of false data to the Register as well as by the failure to report data and changes in the data covered by the entry in the Register within the statutory time limit, unless the damage occurred as a result of force majeure or exclusively due to the default of the affected party or a third party for which a person submitting information on beneficial owners and its updates is not liable.

Legal status from 31 November 2021:

A report to the Central Register of Beneficial Owners shall be submitted by a person authorised to represent the entity or a trustee or a person holding an equivalent position in a trust. The report shall be made with the use of electronic communication means free of charge. The report shall be submitted in the form of an electronic document. The report shall bear a qualified electronic signature or a signature confirmed by ePUAP trusted profile and it shall contain the declaration of a reporting person on the authenticity of information reported to the Register. The declaration shall be submitted subject to criminal liability for making false declarations. A person submitting the declaration shall be bound to include the following clause therein: "I am aware of criminal liability for the submission of a false declaration." This clause shall replace the instruction concerning criminal liability for making a false declaration.

An obligated institution records discrepancies between the information collected in the Register and the information about the customer's real beneficiary established by it and takes steps to explain the reasons for these discrepancies. If the recorded discrepancies are confirmed, the obligated institution shall provide the authority competent for the Register with

verified information about these discrepancies, together with the justification and documentation regarding the discrepancies noted. The cooperating units may inform about the recorded discrepancies between the information collected in the Register and the information held about the actual beneficiaries. The information can be transmitted through the electronic system. The authority competent for the Registry after obtaining information about the discrepancies takes steps to clarify them.

The authority competent for the Registry may initiate proceedings to clarify whether the information collected in the Registry is correct and up-to-date. Information on the initiation and termination of the procedure is entered in the Register. The authority competent for the Registry may issue a decision to rectify data in the Register. The decision replaces notification of information.

Information subject to submission to the Register shall be entered in the Register immediately after its submission or updating.

Data entered in the Register are deemed authentic. A person submitting information on beneficial owners, including its updates, shall be liable for any damage caused by the submission of false data to the Register as well as by the failure to report data and changes in the data covered by the entry in the Register within the statutory time limit, unless the damage occurred as a result of force majeure or exclusively due to the default of the affected party or a third party for which a person submitting information on beneficial owners and its updates is not liable.

**36) Please refer to question 47 (b) and (c): Provide additional information to clearly describe the supervisory and enforcement measures (including sanctions, preventive programmes, verification checks, on-site inspections, and audits) applied during the peer review period. Similarly, efforts that were undertaken to measure or evaluate the level of compliance. In both cases, please provide statistics in both cases.**

Zgodnie z ustawą AML/CFT obowiązek ten określa art. 49 ustawy AML/CFT:

„Art. 49. 1. Instytucje obowiązane przechowują przez okres 5 lat, licząc od pierwszego dnia roku następującego po roku, w którym zakończono stosunki gospodarcze z klientem lub w którym przeprowadzono transakcje okazjonalne:

1) kopie dokumentów i informacje uzyskane w wyniku stosowania środków bezpieczeństwa finansowego;

2) dowody potwierdzające przeprowadzone transakcje i ewidencje transakcji, obejmujące oryginalne dokumenty lub kopie dokumentów konieczne do identyfikacji transakcji.

2. Instytucje obowiązane przechowują wyniki analiz, o których mowa w art. 34 ust. 3, przez okres 5 lat, licząc od pierwszego dnia roku następującego po roku ich przeprowadzenia.

3. Przed upływem okresu, o którym mowa w ust. 1 i 2, Generalny Inspektor może zażądać przechowywania dokumentacji, o której mowa w ust. 1 i 2, przez kolejny okres nie dłuższy niż 5 lat, licząc od dnia, w którym upływa okres, o którym mowa w ust. 1 i 2, jeżeli jest to konieczne w celu przeciwdziałania praniu pieniędzy lub finansowaniu terroryzmu.

4. Przepisu ust. 3 nie stosuje się do instytucji obowiązanych, o których mowa w art. 2 ust. 1 pkt 13–18 i 21–23.

5. W przypadku likwidacji, połączenia, podziału lub przekształcenia instytucji obowiązanej do przechowywania dokumentacji stosuje się przepisy art. 76 ust. 1 ustawy z dnia 29 września 1994 r. o rachunkowości.”

Generalny Inspektor podczas swoich kontroli weryfikuje realizację ww. obowiązku przez instytucje obowiązane. W przypadku stwierdzenia nieprawidłowości, zgodnie z art. 147 pkt 6 ustawy AML/CFT, instytucja obowiązana, która nie dopełniła obowiązku przechowywania dokumentacji, o którym mowa w art. 49 ust. 1 i 2 ustawy podlega karze administracyjnej.

Zgodnie z art. 150 ust 1 ustawy, karami administracyjnymi są:

- 1) publikacja informacji o instytucji obowiązanej oraz zakresie naruszenia przepisów ustawy przez tę instytucję w Biuletynie Informacji Publicznej na stronie podmiotowej urzędu obsługującego ministra właściwego do spraw finansów publicznych;
- 2) nakaz zaprzestania podejmowania przez instytucję obowiązana określonych czynności;
- 3) cofnięcie koncesji lub zezwolenia albo wykreślenie z rejestru działalności regulowanej;
- 4) zakaz pełnienia obowiązków na stanowisku kierowniczym przez osobę odpowiedzialną za naruszenie przez instytucję obowiązana przepisów ustawy, przez okres nie dłuższy niż rok;
- 5) kara pieniężna.

W okresie od 2018 r. do 2021 GIIF podczas kontroli on-side zidentyfikował nieprawidłowości w zakresie realizacji obowiązku. Jednakże występują one bardzo rzadko i zazwyczaj ten obowiązek jest realizowany prawidłowo przez instytucje obowiązane.

Pursuant to the AML/CFT Act, this obligation is specified in Art. 49 of the AML/CFT Act:

*Art. 49*

*1. Obligated institutions shall maintain, for the period of 5 years counting from the first day of the year following the year in which business relationships with a customer were terminated or in which occasional transactions were conducted, the following documents:*

*1) copies of documents and the information obtained as a result of application of financial security measures;*

*2) evidence confirming conducted transactions and records of the transactions, said evidence including original documents and copies of documents necessary for identifying a transaction.*

*2. Obligated institutions shall store the results of analyses referred to in Article 34, paragraph 3 for the period of 5 years, counting from the first day of the year following the year of their conduct.*

*3. Prior to the expiry of the period referred to in paragraphs 1 and 2, the General Inspector may demand the storing of the documentation referred to in paragraphs 1 and 2 for the subsequent period not longer than 5 years, counting from the day on which the period referred to in paragraphs 1 and 2 expires, if this is necessary in order to combat money laundering or terrorist financing.*

*4. The provision of paragraph 3 shall not apply to the obliged institutions referred to in Article 2, paragraph 1, subparagraphs 13 to 18, and 21 to 23.*

*5. In the case of liquidation, merger, division or transformation of an institution obliged to store documentation, the provisions of Article 76, paragraph 1 of the Act of 29 September 1994 on Accounting.*

During inspections, the General Inspector verifies the implementation of the above-mentioned obligation by obligated institutions. In the event of irregularities, pursuant to Art. 147 item 6 of the AML/CFT Act, an obligated institution which has not complied with the obligation to keep the documentation referred to in Art. 49 sec. 1 and 2 of the Act is subject to an administrative penalty.

Pursuant to Art. 150 (1) of the Act, the administrative penalties are:

- 1) the publication of the information about an obliged institution and the extent of violation of the provisions of the Act by this institution in the official gazette Biuletyn Informacji Publicznej on a dedicated website of the office providing support for the minister competent for public finance;*
- 2) the order of ceasing of undertaking specific acts by an obliged institution;*
- 3) withdrawal of a concession or permit or removal from the register of regulated activity;*
- 4) the prohibition of discharging duties at an executive post by the person liable for the obliged institution's violation of the provisions of the Act, for a period not exceeding a year;*
- 5) a pecuniary penalty.*

**37) Please refer to Qns; 45-47: Please provide additional information practical aspects of enforcement and monitoring programs carried out by the various supervisory authorities in Poland and also include relevant statistics on outcomes.**

All supervisory authorities referred to in Art. 130 of the AML/CFT Act, in the information submitted to the GIFI on the control results examine the obligation under Art. 49 of the AML/CFT Act. Irregularities in the implementation of this obligation by obligated institutions are very rare.

#### **Element C4.**

**38) In respect to professional privilege extended to tax advisors under Poland's domestic laws, please confirm the steps taken to address the recommendation under Element C.4 from the last review.**

The Law of 5th July 1996 on Tax Advisory (Journal of Laws 2020 item 130) has implemented regulation, which impose on tax advisor, as well as individuals employed by a tax advisor and

entities, having right to perform tax consulting services, obligation on secrecy all facts and information of which they have become aware.

In connection with providing professional services (article 37§1). This confidentiality obligation is not limited in time (art. 37§1a) and it continues after the cease to perform the profession (e.g. after deletions from the list of tax advisors). The guarantor of professional tax advisor secrecy is established in article 37§2 the Law on Tax Advisory – prohibition of examined tax advisor to the facts and information covered by professional secrecy. However abovementioned provision allow to override tax advisor professional secrecy in accordance specified in separate regulations, including Act of 1 March 2018 on counteracting money laundering and terrorist financing (Journal of Laws 2021 item 1132) and provisions chapter 11a section III the Tax Ordinance Act of 29 August 1997 (Journal of Laws 2021 item 1540) regarding tax scheme. Another circumstance and rationale indicate article 180 § 1 Code of Criminal Procedure Act of 6 June 1997 (Journal of Laws 2021 item 534). According to the abovementioned provision the court is entitled, to exempt tax advisor for professional secrecy, for the sake of justice. Then tax advisor might not refuse to testify as to the facts to which this obligation extends. The same rule is possibly to make toward attorney-at-law, advocate, as to the facts covered by these secrets, only when it is necessary for the benefit of the administration of justice, and the facts cannot be established on the basis of other evidence. In preparatory proceedings the court shall decide on examination or permission for examination within a time limit not exceeding 7 days from the delivery of the request of the prosecutor. Therefore, the ability of the Polish tax authority to obtain information held by tax advisors that is covered by professional secrecy is restricted to criminal cases.