FINANCIAL ALERT

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KNF's position regarding dividend policy of commercial banks

The Polish Financial Supervision Authority (KNF) has published its position on the conditions that should be met by commercial banks when paying out dividends equal to 50, 75 and 100% of 2020 profits in the second half of 2021.

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After analyzing the financial position and environment of the banking sector in the first half of 2021, the KNF finds it necessary for commercial banks to in the second half of 2021 adopt a dividend policy based on the mid-term criteria adopted in 2018, subject to additional criteria regarding specific risks associated with foreign currency mortgages, as well as the COVID-19 pandemic.

According to the KNF, a dividend of up to 50% of 2020 profits may be paid out by a bank: that is not implementing a recovery program (recovery program or plan); has a final BION rating of no less than 2,5; has a financial leverage ratio (LR) of more than 5%; a Tier I (CET1) capital ratio of no less than the required minimum, i.e. 4,5% + 56%*add-on + combined buffer requirement, subject to a systemic risk buffer of 3%; a Tier I

(T1) capital ratio of no less than the required minimum: 6% + 75%*add-on + combined buffer requirement, subject to a systemic risk buffer of 3%; and a total capital ratio (TCR) of no less than the required minimum, i.e. 8% + add-on + combined buffer requirement, subject to a systemic risk buffer of 3%.
The KNF stressed that all of the above criteria should be met.

A dividend of up to 75% of 2020 profits may only be paid out by a bank that meets all of the criteria for the payment of a 50% dividend, while also meeting additional capital criteria of the bank's sensitivity to an adverse macroeconomic scenario, measured with regulatory stress tests. The level of such sensitivity is expressed as the difference between TCR in a benchmark scenario and TCR in a shock scenario at the end of the forecast period (2021), subject to regulatory adjustments.
A dividend of up to 100% of 2020 profits may only be paid out by a bank that meets all of the criteria for the payment of a 50% dividend, while also meeting additional capital criteria of the bank's sensitivity to an adverse macroeconomic scenario, providing that the shock scenario does not take into account the capital T1 and T2 issues assumed by the bank.

There will be new regulations on capital market development

A new draft bill amending certain acts to ensure financial market growth and protection of investors calls for changes to 19 acts, including: the CIT Act, the Banking Law, on mandatory insurance and insurance activities, on investment funds, on public offerings and on financial market oversight.

The Ministry of Finance has published a draft bill amending certain acts in connection with ensuring financial market growth and protection of investors (UD 235). The bill is currently being agreed, and the new regulations would become effective 30 days after their publication in the Journal of Laws (but certain changes in the Public Offerings Act would go into affect after 6 months of publication).
In the reasons for the amendments, the Ministry of Finance explained that the intent is to organize and improve the operation of financial market institutions, in particular with regard to removing barriers in access to the financial market, improving financial market oversight, improving protection of financial institution clients, improving protection of minority shareholders and public companies and increasing the degree of digitalization in the fulfillment of oversight responsibilities by the Polish Financial Supervision Authority (KNF) and the Office of the Financial Supervision Authority (UKNF), via appropriate changes to applicable regulations.
The draft provides for amending 19 acts. The proposed changes are meant to streamline legal solutions relating to the rights of the different services to obtain legally protected information, as well as to broaden the obligation to keep information about having provided information to such services confidential. The changes are the result of a proposal submitted by the Task force for the development of procedures in connection with securing property, appointed as part of the Interdepartmental team for the coordination of implementation, monitoring and assessment of the "Program for preventing and combating economic crime for the years 2015-2020".
Among others, the proposed changes include: improving the operation of the institution of calls to subscribe for the sale or exchange of public company shares, including in particular providing fuller protection of minority shareholders of public companies that are subject to takeover; broadening and strengthening the oversight powers of the KNF; granting the KNF additional powers to impose cash fines on supervised entities; regulations on the conduction of audit proceedings by the KNF, including the ability to conduct audit proceedings outside the audited entities' place of business; enabling the use of electronic notifications with regard to audit and other supervisory proceedings conducted by the KNF that do not have the form of an administrative decision; regulations relating to banking outsourcing and sub-outsourcing to simplify their operating procedures and to adapt them to the Guidelines of the European Banking Authority on outsourcing; defining detailed conditions and rules for the outsourcing of banking operations in the case of mortgage banks; removing the requirement for insurance companies to notify the KNF of each mandatory insurance tariff and tariff change; enabling the combination of all closed-end investment funds (FIZ).

New regulations on cross-border investments as soon as this year

The Sejm is working on amending regulations on distributions conducted by collective investment undertakings. The new regulations are to, among others, introduce standardized requirements on marketing communications directed to AIF (alternative investment fund) investors and UCITS (undertakings for collective investment in transferable securities).

The Sejm continues to work on a draft bill amending the Act on investment funds and alternative investment fund management, as well as the Act on trading in financial instruments (Sejm paper 1358). From the Public Finances Committee the draft has been resent to the Sejm's 20 July sitting.

The draft relates to the implementation into the Polish legal system of Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings; implementation into the Polish legal system of Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments.

The new regulations are to, among others, introduce standardized requirements for marketing communications directed to investors in AFI (alternative investment funds) and UCITS (undertakings for collective investment in transferable securities). They also provide for ensuring greater transparency and strengthening investor protection, as well as facilitating access to information on domestic regulations applicable to marketing communications. To this end, the relevant authorities will be required to make such content available on their webpages along with unofficial summaries.

In addition, the amendments will establish a central data base accessible on the Internet. It will pertain to the cross-border marketing of collective investment undertakings and the introduction of an ex ante procedure for the verification of marketing communications by the KNF.

The new regulations widen the scope of information the UCITS (open-ended investment funds) or ZAFI (e.g. closed-ended investment funds) must provide to the oversight authorities (in Poland — the KNF) before commencing cross-border marketing in the EU, as well as introduce clear conditions for ceasing the marketing of UCITS or AIF units or shares in the given EU member state.

Irrespective of the above, the amendments to the Act on trading in financial instruments will introduce a change to adapt to EU regulations on crowdfunding.

Under the initial draft, the solutions were to become effective as of 2 August 2021, with the exception of some regulations that will go into effect on other dates. This date was, however, changed after committee work, and it is now expected that the majority of the new regulations (with some exceptions) will go into effect the day after publication in the Journal of Laws.

KNF's announcement on reimbursing the costs of renting a replacement vehicle

The injured party is not required to use the rental proposed by the insurance company, but must in certain situations be ready to himself cover a portion of the costs of a rental he has chosen insofar as they exceed the costs of the rental offered by the insurance company — says the KNF.

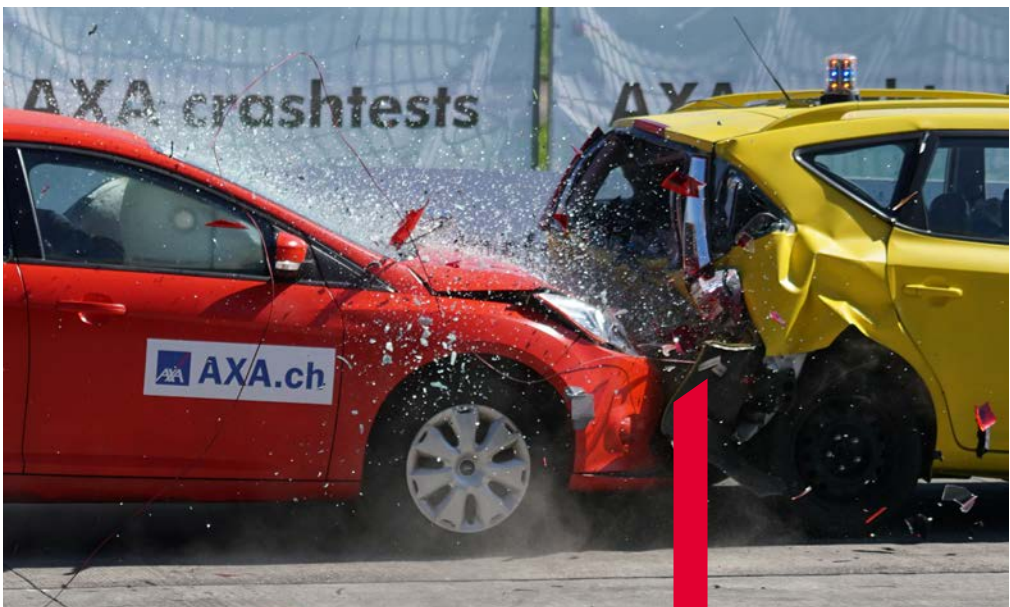
In its announcement of 16 July 2021 the KNF informs that it has analyzed 431 court rulings in cases relating to the cost of a replacement vehicle rented by injured parties without the involvement of the insurance company as part of civil liability insurance for motor vehicles ("CL insurance"), the grounds for which was a Supreme Court ruling of 24 August 2017 (case file III CZP 20/17).

According to the KNF, the analyzed rulings indicate that the insurance company should present to the injured part a viable proposal of a replacement vehicle rental that will in material respects correspond to the injured party's vehicle. Only a proposal that meets such criteria may constitute a basis for refusing to cover that portion of the rental costs which exceeds the rental cost calculated at the rates arising out of a contract that binds the insurer with a cooperating business, if the injured party has rented a vehicle on his own.

The injured party is not required to use the viable rental proposal presented by the insurance company. He must, however, be ready to in certain situations cover a portion of the costs of another rental he has chosen insofar as they exceed the costs arising out of the rental offered by the insurance company.

An assessment of whether a given circumstance means that the insurance company is or is not liable for rental costs incurred by the injured party in excess of the costs of the rental offered by the insurance company, should be performed in the light of all of the circumstances of the given case.

In this context, the KNF explains that the injured party who rents a replacement vehicle at a cost that exceeds the offer made by the insurance company may expect that the insurance company will cover the costs of the rental if: the insurance company did not offer a rental that would in material respects be equivalent to the injured party's damaged or destroyed vehicle (e.g. the insurance company was unable to offer a vehicle that could be rented at the rate proposed to the injured party), or there are so-called special reasons that in the circumstances of the given case mean that the higher rental costs incurred by the injured party should be considered sensible and economically sound (even though the insurance company's proposal included a vehicle equivalent to the one owned by the injured party).



In short:

KNF's product intervention on unit-linked life insurance

On 15 July 2021 the KNF issued a unanimous decision (a so-called product intervention) that prohibits the marketing, distribution and sale of insurance based investment products – unit-linked life insurance contracts that meet at least one of the following two criteria: the average return is less than 50% of the interest rate for the period specified in the decision according to the relevant risk-free interest rate term structure; or the investment rules and restrictions defined in the regulations of the unit-linked fund fail to ensure that the assets of the unit-linked fund will not be invested in contingent convertible instruments.

UKNF demands clear procedures for settling early loan repayments

On 9 July 2021 the UKNF informed that it expects that as part of good market practice lenders will introduce internal systemic solutions to guarantee the proper fulfilment of the obligation arising out of Article 52 of the Consumer Credit Act, and in particular to effectively eliminate the risk of failure to inform the borrower of the funds he is due as a result of a full early repayment of a loan, as well as the risk of failure to return the resulting funds to the borrower by the deadline set in the Consumer Credit Act. In accordance with the provisions of the above-mentioned regulation, the lender is required to settle a loan with the consumer within 14 days of the loan's full early repayment.

UKNF warns against investing in cryptocurrencies using Binance

On 7 July 2021 the UKNF drew attention to warnings that have recently been published by foreign supervisory authorities on the operations of Binance Markets Limited, doing business as part of a group called Binance (Binance Group). The activities of Binance Markets Limited consist of intermediation in the exchange of cryptocurrencies and cryptoassets. This market is generally not regulated or subject to the KNF's supervision. Given, however, the need to protect financial market participants and in view of the warnings issued by foreign supervisory authorities, the UKNF recommends special caution when using the services provided by entities from the Binance Group, as well as when trading in cryptocurrencies and cryptoassets, as this may involve significant risk of financial losses.

European organs call to cease exposures to LIBOR referenced rates

The European Commission, the European Central Bank, the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) have called on the entities they supervise to reduce their exposures to LIBOR referenced rates. The European regulators have stressed that supervised entities that apply LIBOR referenced rates should take active action and not wait until the European Commission uses its powers to select a replacement reference rate. As a reminder, on 5 March 2021 the British supervisory authority — Financial Conduct Authority (FCA) announced that the following reference rates would completely cease to be developed: LIBOR CHF (all settings) — at the end of 2021; LIBOR EUR (all settings) — at the end of 2021; LIBOR GBP, LIBOR JPY (selected settings2) — at the end of 2021; LIBOR USD (selected settings) — 30 June 2023.

Update to approach to the requirement to report phantom share transactions

The UKNF has updated its response to question 16 on the requirement to report transactions based on Article 19 par. 1 of the MAR with respect to so-called phantom shares. Phantom shares do not meet the definition of a financial instrument or derivative instrument if they have been granted to management staff as a substitute component of remuneration that is not subject to negotiations and is conditioned on the fulfilment of specific conditions on the part of both the issuer and the manager. For this reason, in such cases, they are not subject to reporting under Article 19 par. 1 of MAR.

UKNF shared its response to the Supreme Court in the matter of foreign currency mortgages

On 1 July 2021 the UKNF published its position in connection with a ruling issued by the Supreme Court composed of the entire Civil Chamber on 11 May 2021, based on which the Civil Chamber asked the KNF to present its position on resolving the legal matters presented by the First President of the Supreme Court in a request dated 29 January 2021 on residential mortgages denominated in or indexed to a foreign

currency. The full text of the comprehensive position has been published on KNF's website.

UOKiK is checking protection measures against unauthorized banking

The President of the Office of Competition and Consumer Protection (UOKiK) has commenced a proceeding to check how banks handle consumer complaints relating to theft of funds from bank accounts and what mechanisms they use to authenticate transactions. Requests to provide explanations and documentation in such matters have been sent to 18 banks. The President of the UOKiK is acting in response to complaints filed by consumers about money being stolen from their accounts or liabilities being taken out in their name. The problem is the loss of savings or the rejection of complaints by banks. The complaints relate to, for example, fraudsters pretending to be bank employees on the phone or using a fake bank website or spying software to steal consumer data.

Insurers have paid out more than PLN 10 billion to injured parties

In the first quarter of 2021, Poles received PLN 10,2 billion in claims and insurance benefits — show the data presented by the Polish Insurance Chamber (PIU). The greatest increase was recorded in life insurance claims. This is the result of increased mortality caused by the pandemic. As indicated in the report, payments amounted to: PLN 4,8 billion from life insurance policies; PLN 3,8 billion from motor insurance policies (CL + AC); and approximately PLN 1,6 billion from other insurance policies. During the same period of time, we paid PLN 17,6 billion in insurance premiums, or 5,3% more than the year before. At the same time, in the first quarter of 2021 Polish insurers generated PLN 1,1 billion in net profits, or 7,6% more than in the previous year. They also paid PLN 333 million in income taxes.

New regulations on mandatory bank restructuring

The Sejm has passed amendments to the Act on the Bank Guarantee Fund (BFG) meant to improve the process of bank restructuring. The purpose of the amendments is to adapt Polish regulations to EU law, including the BRRD2 Directive, which introduces modified solutions with regard to the minimum requirement for own funds and eligible liabilities (MREL). The intention is to strengthen the ability of banks to cover losses and recapitalize in situations when it is necessary to perform a mandatory restructuring.

The Ministry of Finance has launched a Capital Market Development Strategy Monitor

The Ministry of Finance has launched a Capital Market Development Strategy Monitor (SRRK) that will enable all those who are interested to follow the progress of the Strategy. The Monitor is published on the Ministry-'s webpage and contains information on the actions undertaken by the Ministry and other institutions involved in the realization of the SRRK. It is divided into 10 topic areas: SRRK Organization, International Activities, Strengthening the Quality and Effectiveness of Capital Market Regulations and Oversight, Corporate Governance and Market Transparency, Expansion of Investment Products and Services, Financial Education, Innovation and FinTech, Investors, Issuers, Sustainable Finance.

The National Court Register applications online only — how to report changes

1. Introduction

As of 1 July 2021, entrepreneurs are required to submit applications to the National Court Register only electronically via an ICT system. It is worth noting that the date of entry of the amendment into force has been postponed several times and, moreover, the legislator has not provided for a transitional period during which it would be permissible to submit applications both electronically and on paper.

2. Technical requirements[1]

According to the website in the government domain Court Registers Portal, the recommended web browsers are Firefox, Edge (Chromium) and Chrome, while the Safari browser encounters limitations related to signing documents using a qualified signature. In addition, it is required that the browser allows pop-ups and new browser tabs, scripting and the use of cookies. The required monitor resolution of 800X600 is also indicated, but this is the minimum threshold. The site clearly states that a higher resolution is recommended, preferably full HD.

3. Obligedentities

The electronic KRS is not an obligatory and the only form of filing documents to the register for all entities. The amendment completely computerizes the Register of Entrepreneurs, while the Register of Associations or the Register of Foundations still accepts paper documents submitted in that form. This means that there is no possibility to amend the company register or enter a newly established company otherwise than through the ICT system, while other entities are left with the choice whether to use the electronic system or file documents on paper. Filing documents through the ICT portal requires an account, while the Registry file viewer, KRS search engine or financial documents viewer are available without logging in. Documents can be submitted in doc, rtf, pdf with printout option, txt or odt. Submitting the application in a different form than through the dedicated ICT system results in returning the application without the call for supplementation.

4. Signingdocuments

Documents submitted via the ICT system shall be signed using a qualified electronic signature, a trusted signature (ePUAP) or a personal signature (e-card). Signing documents with the use of a qualified electronic signature and e-ID requires the use of the KIR Szafir SDK Web module — a dedicated component. The signature must be affixed by at least one person whose PESEL number is revealed in the register (shareholder, member of a governing body, trustee, liquidator), unless the entity uses the assistance of a professional attorney.

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5. Copies, write-upsand attachments

The change of the form of filing applications with the National Court Register to purely computerized does not mean that the use of paper documents will be abandoned altogether. Registration courts may issue copies and write-ups in paper form, while correspondence with the applicant will be conducted via the ICT system. In case of attaching attachments to the application, the manner will depend on what attachment is necessary. If it is

necessary to enclose a notarial deed, an excerpt or extract of which has been deposited in the Central Repository of Electronic Excerpts of Notarial Deeds, the applicant will only provide the number of the deed in the application, and after the application is registered, it will be automatically transferred from the Repository via the ICT system and attached to the application. Moreover, it is possible to make individual computer printouts of current and complete information on entities entered in the Register, the force of which is equal to that of documents issued by the Central Information Retrieval System. As a rule, documents which are the basis for entry in the National Court Register may be submitted in the form of copies certified electronically by a proxy or electronic copies of documents (scans). In the case of electronic copies of documents, it is necessary to send the originals or certified paper copies to the court within 3 days of filing the application, and failure to do so will result in a call to supplement formal deficiencies within a week or else the letter will be returned. On the other hand, the copies attached to the motion are certified by affixing a secure electronic signature verified with a valid qualified certificate.

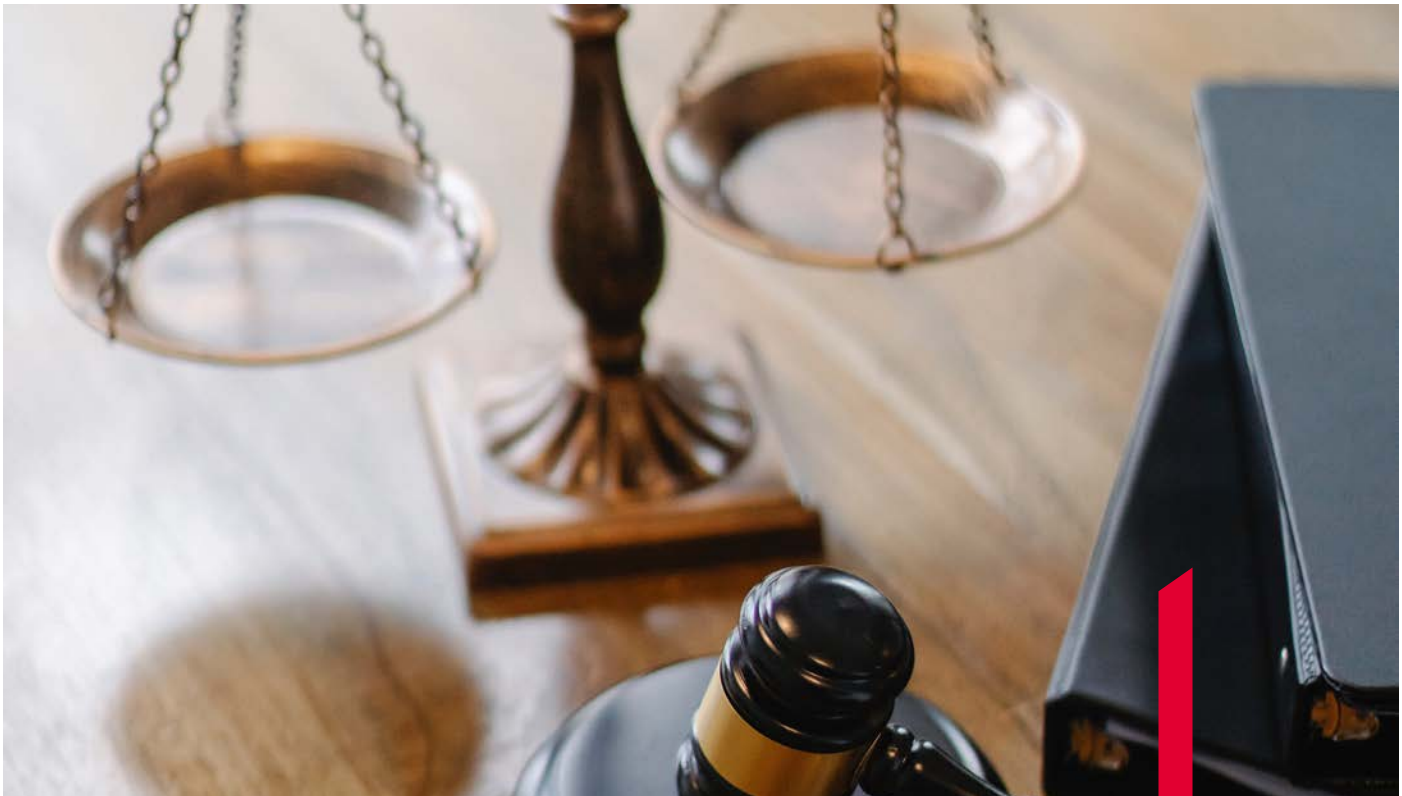
6. Data collected by the court through an ICT system

The registry court receives information from the register of insolvent debtors via an ICT system — e.g. about entries of persons who have been deprived by the bankruptcy court of the right to conduct business activity on their own account and to perform the function of a supervisory board member, representative or attorney in a company, state-owned enterprise, cooperative, foundation or association, as well as information from the National Debtors Register. In turn, through the system of integration of registers, the registry court receives information regarding the foreign entrepreneur on the opening and completion of liquidation, declaration of bankruptcy and completion of bankruptcy proceedings, deletion and cross-border merger.

7. Summary

From 01.07.2021, entrepreneurs are required to submit applications to the KRS only through a dedicated ICT system. Submission of an application to the KRS in another form is impossible and results in return without a call for supplementation of errors. This is a fundamental change to the current model, especially since the legislator did not provide for a transitional period. However, it does not apply to everyone, as the register of entrepreneurs has been fully computerised, while applicants to the register of associations or foundations have the choice of using the ICT system or delivering the application in paper form as before. In view of the change in the model of filing an application with the National Court Register, the manner of filing attachments has also changed and it seems that it is this element that has so far posed the greatest difficulties and doubts for applicants and their attorneys.

[1] https://prs.ms.gov.pl/pomoc/wymagania-systemowe



Discussion of the Q&A published by the FSA regardingobligations on remuneration policy and remuneration report

I. Introduction

Animportantnovelty for the practice of functioning of public companies, introduced by the Act of 16 October 2019 on the amendment of the Act on public offering and the conditions for introducingfinancialinstruments to the organised trading system and on public companies and someotheracts, is the introduction of institutions that have not existed in the Polishlegal order so far, i.e. the remuneration policy for the members of the management board and the supervisoryboard and the remuneration report. Pursuant to Chapter 4A added to the Act on Public Offering, it is the duty of the generalmeeting of shareholders to adopt, by way of a binding resolution, a remuneration policy for members of the management board and the supervisoryboard, specifying the principles for awarding remuneration to members of the company'sbodies. In addition, the supervisoryboardisresponsible for preparingannual remuneration reportsproviding a comprehensiveoverview of remuneration. In particular, thesereportsshouldcontaininformation on allbenefitsreceived by or due to individualboardmembers and supervisoryboardmembers in the lastfinancialyear, as well as a detaileddescription of the components of the remuneration granted to boardmembers in that year.

This regulationcoverscompanies with registeredoffices in the territory of the Republic of Poland, atleast one share of whichisadmitted to trading on a regulated market. However, the provisions of the amendedAct on Public Offering do not apply (pursuant to Article 90c(2) of the Act on Public Offering) to banks, investment fund companies, managers of ATS and brokeragehouses, to the extent in which this isregulated by separateactsregulating the functioning of theseinstitutions. Due to doubtsarising in relation to the interpretation and application of the provisions of Chapter 4A of the Act on Public Offering, the Polish Financial Supervision Authority published a series of information on itswebsite in the form of Q&A.

II. Doubtsabout the remuneration policy and the obligation to prepare a remuneration report

Significantdoubtshavearisen with respect to the timing of the obligation to adopt the remuneration policy. The resolution on the adoption of the remuneration

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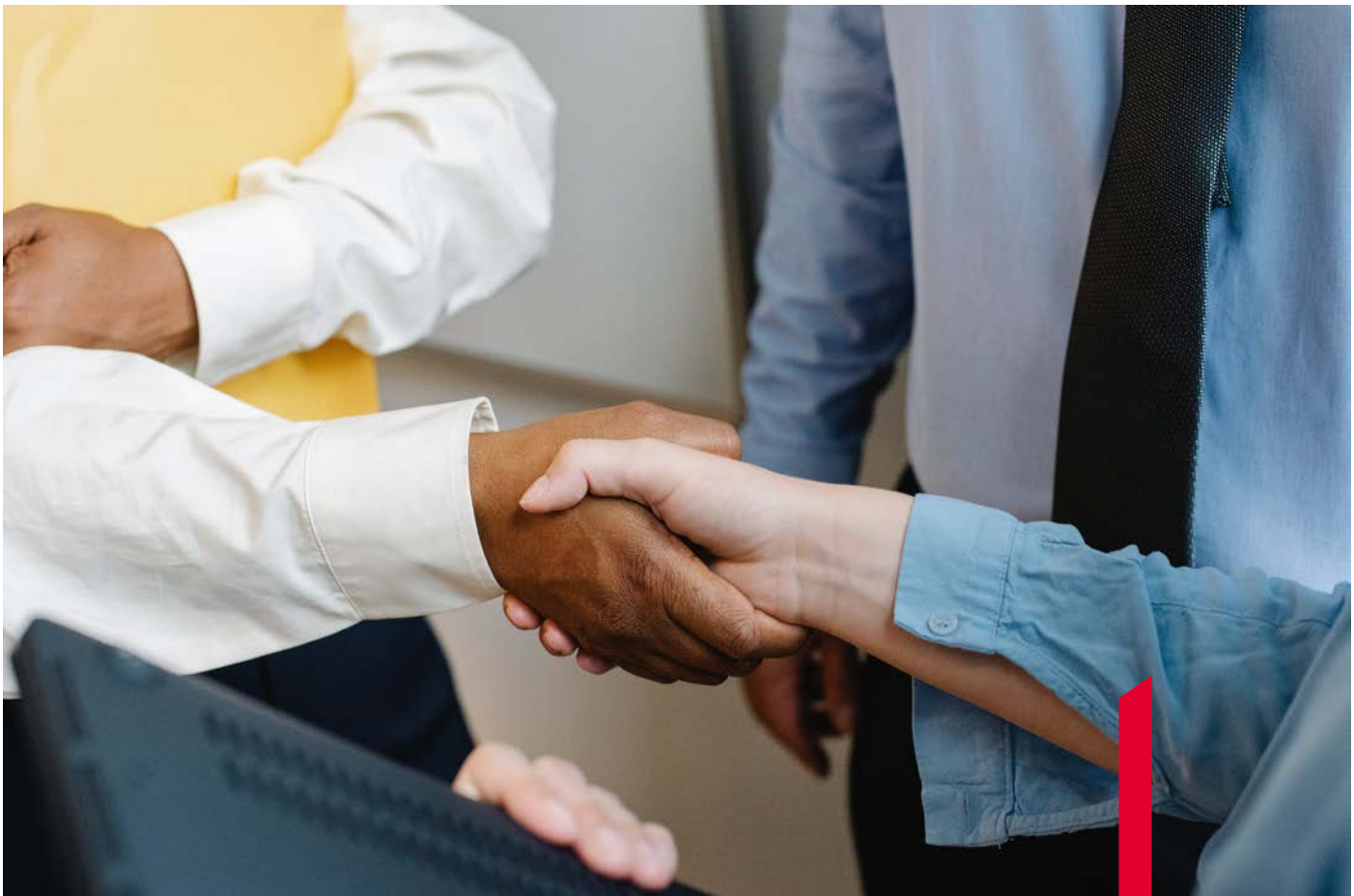
policy should be adopted and enterintoforce by 31 August 2020 at the latest. If the company's-shares are admitted to trading on a regulated market on or after 31 August, such resolution shouldenterintoforceat the latest on the date the shares are admitted to trading on a regulated market. It isdifficult to deny the validity of the FSA'sposition, according to whichArticle 90e Section 3 of the Act on Public Offering, whichstates that if a companydoes not have a remuneration policy in place, it maypay remuneration in accordance with itspreviouspractice and the remuneration policy should be adoptedat the nextgeneralmeeting, does not constitute a temporaryexemption from the obligation to adopt a remuneration policy but onlyindicates a course of action in the event of a breach of the deadline referred to above. A differentinterpretationwould be contrary to the

purpose of the Act and couldlead to numerousabuses.
Anotherdoubtconcerns the period for which the first remuneration report must be prepared. The FSA hasclearlyindicated that the supervisoryboard, as a rule, shouldonlyinclude in its report the remuneration paid out in the period from the date of entryintoforce of the remuneration policy and not for the entireyear in which the remuneration policy was adopted.
Therefore, assuming that a companywhoseshareswereadmitted to trading on a regulated market before 31 August 2020 hasadopted a remuneration policy by that date, the supervisoryboard will be required to prepare a remuneration report covering the period from the date of entryintoforce of the policy until 31 December 2020. The situationissimilar for companieswhoseshareswereadmitted to trading between 1 September 2020 and 31 December 2020. Delaying the entryintoforce of the remuneration policy in both of the abovecases and adopting it in 2021 constitutes a breach of the obligation to prepare a remuneration report for 2020. Companieswhoseshares are admitted to trading after 31 December 2020 are required to prepare the first report the period from the entryintoforce of the policy until 31 December 2021. It shouldalso be borne in mind that if the companyhasalready decided to adopt a remuneration policy in 2019, the first remuneration report shouldcumulativelycover the period from the date of adoption of the policy in 2019 until 31 December 2020.
The preparation of the remuneration policy for the period prior to the effectivedate of the remuneration policy isvoluntary and does not constitute a breach.

III. Doubtsregarding the content of the remuneration report

According to the position of the FSA, the remuneration report shouldincludeboth the benefitsalreadygranted to a member of the authority as well as those for whichthereis a claim for theirpayment. Although the provisions of the Act on Public Offering do not indicate it explicitly, it should be remembered that bothitems (i.e. benefitspaid and benefitsdue) should be disclosedseparately in the report.
Moreover, it is the duty of the supervisoryboard to comprehensivelyindicateallbenefitsgranted to members of the public company'sbodies - boththosereceived (or due) in accordance with the remuneration policy and thosereceived in violation of the policy.
With reference to eachmember of the management board and the supervisoryboard, the remuneration report shouldcontain the amount of the total remuneration dividedintocomponentslisted in Article 90d (3) (1) of the Act on Public Offering, i.e. fixed and variable remuneration components, bonuses and othercash and non-cashbenefits.
However, the aboveprovisionis

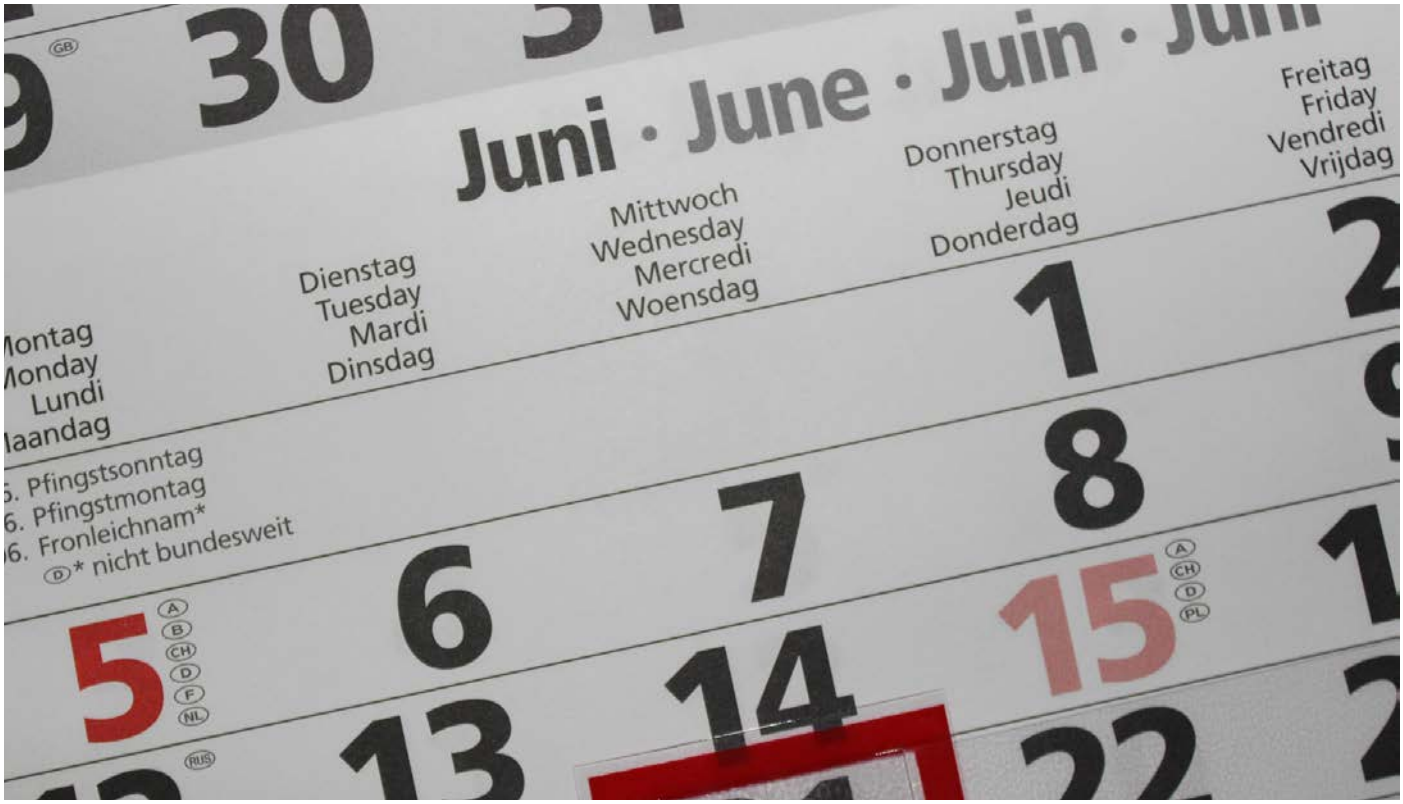


not a closedcatalogue, therefore, the report shouldincludeallbenefits and advantagesgranted to the members of the bodies, regardless of their form — the importantthingis that they are presented in a clear and understandableway.

IV. Doubtsabout the publication of the remuneration report

Article 90g(9) of the Act on Public Offering, according to which the companyshouldpublish the remuneration report on itswebsite, does not specifywhen this obligationshould be fulfilled. Therefore, the report should be madeavailableimmediatelyafter the end of the generalmeeting the subject of which was the adoption of a resolution expressinganopinion on the remuneration report or a discussion of itscontents. It isimportant that the report ispublishedseparately on the website, in a way that allowseasyaccess, withouthaving to search for it in the materials madeavailable by the companybefore the generalmeetings. Consequently, publishing the report via ESPI current report in relation to convening a generalmeeting of shareholdersdoes not constitutecompliance with the obligationreferred to in Article 90g.9 of the Act on Public Offering.

Furtherdoubtsconcern the deadline for the remuneration report to be audited by a statutory auditor, pursuant to the art. 90g sec. 10 of the Act on Public Offering. According to the FSA, the assessment of the report should be conductedbefore the generalmeetingwhichis to adopt a resolution issuinganopinion on the report. This positionseems to be correct. Making the auditor'sassessmentavailable to shareholdersallowsthem to makeaninformeddecision and giveanopinion on the remuneration report based on the analysis of a qualifiedentity.



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