



# Legal alert

## The PFSA's position on determining the moment when the notification obligation arises in connection with a change in the amount of the share capital of a public company

Capital market participants had certain legal concerns regarding how to determine the exact moment of the emergence of the obligation to notify of a change in the share in the total number of votes in a public company under Article 69 of the Public Offering Act<sup>[1]</sup> in connection with an increase or decrease in the share capital of a public company. In order to address these concerns, on 5 July 2024 the Office of the Polish Financial Supervision Authority (the "UKNF" or the "PFSA") published its position on the subject, including the legal interpretation applied by the PFSA for this purpose (the "PFSA Position")<sup>[2]</sup>.

### **Ordinary increase or decrease in the share capital**

According to the PFSA Position, the obligation to submit a notification under Article 69 of the Public Offering Act in the context of an ordinary increase or a decrease in the share capital of a public company **arises on the date when the relevant change in the company's articles of association and the increase/decrease in its share capital are recorded in the National Court Register.**

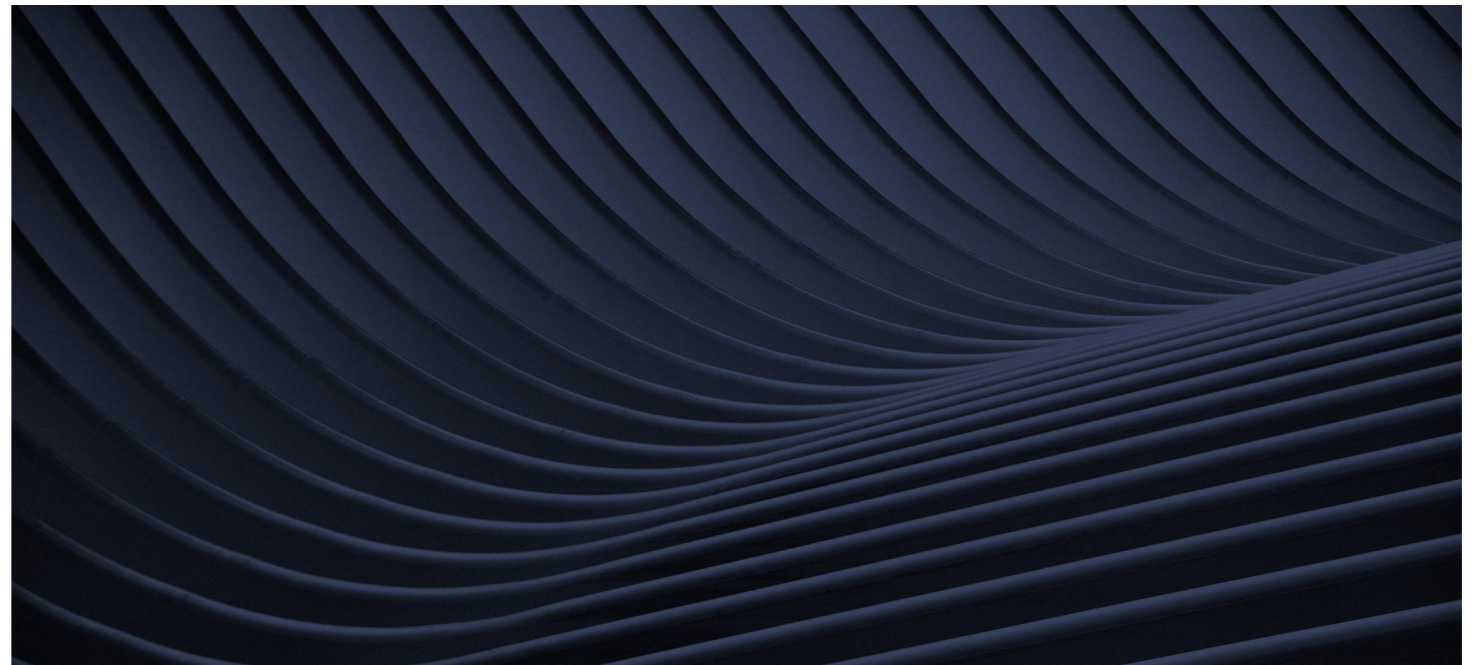
This is due to the fact that voting rights attached to shares arise (in the case of a share capital increase) or cease to exist (in the case of a share capital decrease) precisely at the moment when the registry court enters the share capital change into the National Court Register.

[1] Act of 29 July 2005 on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and on Public Companies.  
[2] PFSA position of 5 July 2024 on determining the moment of the emergence of the obligation to submit a notification of a change in the share in the total number of votes in connection with an increase or decrease in the share capital of a public company.

## **Conditional share capital increase**

According to the PFSA Position, in the case of a conditional increase in the share capital of a public company, the shares in which are registered in a depository for securities, the obligation to submit a notification under Article 69 of the Public Offering Act **arises at the moment when the shares are registered in a shareholder's securities account or an omnibus account.**

This is because, in the case of a conditional increase in the share capital, the share capital increases, and consequently the voting rights attached to the newly issued shares arise, at the time when the shares are registered in a shareholder's securities account or an omnibus account and not when the registry court enters the conditional share capital into the National Court Register.



## **How a shareholder should monitor changes regarding their share in the total number of votes**

The PFSA Position also provides an interpretation of how shareholders should monitor events that will result in an increase or decrease of their share in the total number of votes.

According to the PFSA Position, performance of the obligation to submit the notification under Article 69 of the Public Offering Act should be subject to more stringent due diligence requirements, including those regarding the timeliness of the performance of such obligation. A holder of a significant shareholding in a public company is required to monitor changes in the company's share capital on an ongoing basis, even if such changes result from actions in which the shareholder was not personally involved.

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Consequently, a shareholder having a significant share in the total number of votes in a public company should ensure they learn of any changes in their shareholding as soon as a change occurs and becomes publicly known, for example as a result of the publication of a change in the National Court Register.

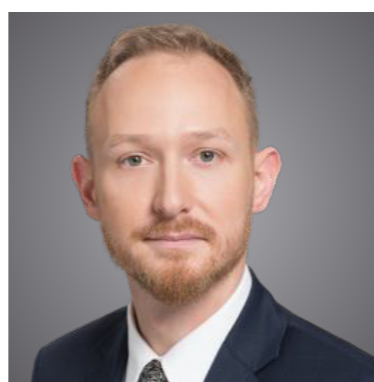
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