



Legal Alert

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Banking, Finance and Restructuring Department

Act on handling of complaints by financial market operators and on the financial ombudsman

The new Act on Handling of Complaints by Financial Market Operators and on the Financial Ombudsman of 5 August 2015 ("Act") was announced on 10 September 2015. The Act **will take effect as of 11 October 2015**, except for the transitional provision concerning the function of the Plenipotentiary of the Prime Minister for the transformation of the Insurance Ombudsman Office into the Financial Ombudsman Office, which will take effect on the day following the announcement date, and the chapter on out-of-court proceedings concerning dispute resolution between consumers and financial market operators, which will take effect as of 1 January 2016.

The Act primarily seeks to enhance the protection of customers of financial market operators by regulating the procedure and time limits for consumer-complaint handling by these operators, and by establishing a new institution of the Financial Ombudsman in lieu of the existing Insurance Ombudsman.

Handling of complaints by financial market operators

The Act applies to financial market operators, namely to banks, investment fund companies, pension funds, cooperative savings and credit unions, national insurance companies, credit institutions or financial institutions, including leasing companies. **For the purposes of the Act any natural person is a customer.**

The Act provides that a complaint may be filed in any unit of a financial market operator that provides services to customers. It may be filed:

- (i) in writing - in person, in the unit of the financial market operator that provides services to customers or by mail within the meaning of the Postal Act;
- (ii) orally - by phone or in person for the record at the operator's facility; and
- (iii) electronically using means of electronic communication, provided that such means were specified for this purpose by a given financial market operator.

When entering into a contract with a customer, a financial market operator must provide detailed information regarding the procedure for complaint filing and handling, i.e. information as to the location and form of filing a complaint, handling time limits and the manner of notifying the customer of the complaint being handled.

On receiving a complaint filed by the customer, a financial market operator must handle the same and respond the customer. **Responses to complaints should be given without undue delay, but not**



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later than within 30 days of the complaint being received. In particularly complex cases, this period may be longer - up to 60 days of the complaint being received. **Where the time limits set out in the Act are not complied with, the complaint is deemed to have been handled in favor of the customer.**

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Financial Ombudsman

The Financial Ombudsman is responsible for taking steps to protect customers of financial market operators, whose interests he represents, including in particular for considering, on a case-by-case basis, applications filed as a result of customer complaints being rejected by the financial market operator in the complaint handling procedure, or for handling applications concerning failure of the financial market operator to timely perform actions required under the complaints that have been handled in favor of the customer.

The Financial Ombudsman will also be responsible for conducting out-of-court proceedings to resolve disputes between financial market operators and their customers.

The costs of activities of the Financial Ombudsman and his Office will be borne by financial market operators in accordance with the Act. The minister responsible for financial institution matters determines, by way of a regulation, the deadlines for payment, the amounts due and the method of calculating the amounts due, with a view to ensuring that the Financial Ombudsman and his Office operate effectively.

A financial market operator is obliged, within 45 days of the end of a calendar year, **to submit to the Financial Ombudsman an annual report** on complaint handling and on a number of customers that brought a legal action as a result of their complaints being handled to their disfavor.

The Financial Ombudsman may also impose administrative fines up to the amount of PLN 100,000.

Out-of-court proceedings to resolve disputes between financial market operators and their customers

Disputes between financial market operators and their customers may be resolved in out-of-court proceedings. The participation of the financial market operator in these proceedings is mandatory.

Proceedings are recorded in a **transcript** which contains information about the venue and time of proceedings, name, surname (name) and address of the parties, the subject matter of the dispute, suggestions for dispute resolution and the dispute resolution outcome. **A transcript is an official document within the meaning of the Civil Procedure Code.** The detailed procedure in matters of resolving disputes between financial market operators and their customers will be determined, by way of a regulation, by the minister responsible for financial institution matters.

Should you have any doubt as to the above issue or require further clarification, please do not hesitate to contact Kochański Zięba and Partners lawyers at your convenience.