

**Journal of Laws of the Republic of Poland**

Warsaw, 10<sup>th</sup> November 2017

Item 2082

**REGULATION OF THE MINISTER OF FINANCE<sup>1</sup>**

from the 27<sup>th</sup> October 2017

**on terms of payment, amount and manner of calculation of the due payment to cover the cost of activities of Financial Ombudsman and his Office**

On the basis of art. 20 part 5 of the law from the 5<sup>th</sup> August 2015 on examining of complaints by financial market entities and on Financial Ombudsman (Journal of Laws from 2016, items 892 and 1823 and Journal Of Laws from 2017, items 245 and 819), it is ordered as follows:

**§ 1.** Regulation specifies terms of payment, amount and manner of calculation of payments from:

- 1) national insurance institution,
- 2) foreign insurance institution,
- 3) universal pension companies,
- 4) national payment institutions,
- 5) national institutions of electronic money,
- 6) offices of payment services,
- 7) banks,
- 8) savings and credit unions,
- 9) investment fund companies,
- 10) managers of alternative investment companies,
- 11) investment companies,
- 12) lending institutions

to cover the cost of activities of Financial Ombudsman and his Office, hereinafter referred to as “costs of Ombudsman”.

**§ 2.** Amount of due payments to cover the costs of Ombudsman for a given year is calculated as follows:

- 1) product of percentage share of due advance payments from national insurance institution in a given year, in general sum of due advance payments for a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed 0,023% of ascribed gross premiums collected by the national insurance institution within a given year;

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<sup>1</sup> Minister of Finance governs the division of governmental administration – financial institutions, on the basis of § 1 part 2 point 4 of the regulation of the Prime Minister from the 30<sup>th</sup> September 2016 on detailed scope of activities of Minister of Finance (Journal of Laws, item 1595)

- 2) product of percentage share of due advance payments from foreign insurance institution in a given year, in general sum of due advance payments for a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed 0,025% of ascribed gross premiums collected by the foreign insurance institution from insurance agreements concluded in connection with performed insurance activity at the territory of the Republic of Poland within a given year;
- 3) product of percentage share of due advance payments from universal pension company in a given year, in general sum of due advance payments for a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the sum calculated for universal pension company according to art. 20 part 1 point 2 of the law from the 5<sup>th</sup> August 2015 on examining of complaints by financial market entities and on Financial Ombudsman, hereinafter referred to as "law";
- 4) product of percentage share of due advance payments from national payment institution or national institution of electronic money, respectively, in a given year, in general sum of due advance payments in a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the sum calculated respectively for national payment institution or national institution of electronic money according to art. 20 part 1 point 3 of the law, as of the 31<sup>st</sup> December of a given year;
- 5) product of percentage share of due advance payments from office of payment services in a given year, in general sum of due advance payments for a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the sum calculated for office of payment services according to art. 20 part 1 point 4 of the law, for a given year;
- 6) product of percentage share of due advance payments from bank in a given year, in general sum of due advance payments in a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the sum calculated for bank according to art. 20 part 1 point 5 of the law, according to average annual balance assets' sum of the bank, calculated based on the values established as of the last day of each month of a given year;
- 7) product of percentage share of due advance payments from savings and credit union in a given year, in general sum of due advance payments in a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the sum calculated for savings and credit union according to art. 20 part 1 point 6 of the law, according to average annual balance assets' sum of the savings and credit union, calculated based on the values established as of the last day of each month of a given year;
- 8) product of percentage share of due advance payments from investment fund company in a given year, in general sum of due advance payments in a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the product of:
  - a) average annual sum of value of investment funds' assets, collective assets of securities portfolios and portfolios that include one or more financial instruments, managed by a given investment fund company, calculated on the basis of value established as of the last working day of each month of a given year, as well as
  - b) rate of 0,0001%;
- 9) product of percentage share of due advance payments from managers of alternative investment companies in a given year, in general sum of due advance payments in a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the product of:

- a) average annual sum of value of alternative investment companies' assets, managed by a given alternative investment companies' manager, calculated on the basis of values established as of the last day of each month of a given year, as well as
  - b) rate of 0,0001%;
- 10) product of percentage share of due advance payments from investment company in a given year, in general sum of due advance payments for a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the sum calculated for investment company according to art. 20 part 1 point 8 of the law;
- 11) product of percentage share of due advance payments from lending institution in a given year, in general sum of due advance payments in a given year from entities mentioned in § 1, and the total costs incurred by Ombudsman in a given year, provided that the sum doesn't exceed the sum calculated for lending institution according to art. 20 part 1 point 9 of the law, according to average annual assets' sum of the lending institution, calculated based on the values established as of the last day of each month of a given year;

2. The value of total costs incurred by Ombudsman in a given year, included in calculations of the amount of due payments to cover the cost of Ombudsman, described in part 1, is established by subtracting from the costs incurred in a given year by Financial Ombudsman, hereinafter referred to as "Ombudsman", the income of Ombudsman obtained for the mentioned year.

3. If an entity described in § 1 is about to finish its activity, the due advance payment for the last quarter of conducted activity is established as the amount of product of the amount of due advance payment for this quarter, calculated according to § 5-14, and the ratio being a quotient of the number of days, during which the entity conducted its activity in this quarter, as well as the number of days of this quarter, and the advance payment is to be paid until the last day of conducted activity.

4. Advance payment mentioned in part 3 is paid by the entity described in § 1 to the bank account of the Office of Ombudsman. The entity shall concurrently indicate to Ombudsman the basis for advancement calculation, specified in part 3, time frame it concerns and its amount, in form of a declaration which specimen constitutes appendix to the regulation.

**§ 3.** 1. In case of an investment company being a bank and conducting a brokerage activity, the amount of due payments to cover the costs of Ombudsman for a given year and the amount of advance payments is calculated based on principles described in § 2 part 1 point 6 and § 10 respectively.

2. In case a given financial market entity conducts activity within the scope of activity of more than one entity described in § 1, the amount of due payments from such entity to cover the costs of Ombudsman and the amount of due advance payments is calculated based on principles specified for the financial market entity, which scope of activity is predominant in the entity's entire activity.

3. In case described in part 2, the area which is predominant in a given financial market entity's activity is the activity from which the entity obtains the majority of its income, determined as of 31<sup>st</sup> of December of the year preceding the year for which the payment is due and in case of financial market entity commencing its activity, as of the end of the first quarter if conducting its activity.

**§ 4.** 1. The amount of due payments to cover the costs of Ombudsman in a given year is specified by Ombudsman on the basis of information obtained according to § 16 and declarations as described in § 17.

2. Costs of Ombudsman in a given year cannot exceed the costs planned in financial plan of Ombudsman, described in the appendix to budgetary law for a given year.

**§ 5.** 1. National insurance institution establishes quarterly the advance payment for the costs of Ombudsman in the amount being a product of ascribed gross sums of premiums collected in the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,0138%.

2. National insurance institution that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. National insurance institution described in part 2, establishes the first advance payment in the amount being the product of double sum of ascribed gross premiums collected during the first quarter of conducted activity and the rate of 0,0138%.

**§ 6.** 1. Foreign insurance institution establishes quarterly the advance payment for the costs of Ombudsman in the amount being a product of ascribed gross sums of premiums collected from insurance contracts concluded in connection with conducted insurance activity at the territory of the Republic of Poland, in the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,015%.

2. Foreign insurance institution that commences its insurance activity at the territory of the Republic of Poland pays its first advance payment for the second quarter during which the activity is conducted, including conducting such activity in the first quarter.

3. Foreign insurance institution described in part 2, establishes the first advance payment in the amount being the product of double sum of ascribed gross premiums collected from insurance contracts concluded in connection with conducted insurance activity at the territory of the Republic of Poland during the first quarter of conducted activity and the rate of 0,015%.

**§ 7.** 1. Universal pension company establishes quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of the value of assets of open pension fund, managed by this universal pension company, according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,00006%.

2. Universal pension company that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Universal pension company described in part 2, establishes the first advance payment in the amount being  $\frac{1}{2}$  of the product of the value of assets of open pension fund, managed by this universal pension company, according to the state as of the end of the quarter during which the activity is conducted and the rate of 0,00006%.

**§ 8.** 1. National payment institution and national institution of electronic money establish quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of possessed own assets, according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,06%.

2. National payment institution and national institution of electronic money that commence their activity pay the first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. National payment institution and national institution of electronic money described in part 2, establishes the first advance payment in the amount being  $\frac{1}{2}$  of the product of possessed own assets, according to the state as of the end of the quarter during which the activity is conducted and the rate of 0,06%.

**§ 9.** 1. Office of payment services establishes quarterly the advance payment for the costs of Ombudsman in the amount being a product of the value of payment transactions performed in the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,00036%.

2. Office of payment services that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Office of payment services described in part 2, establishes the first advance payment in the amount being the product of double value of payment transactions performed during the first quarter of conducted activity and the rate of 0,00036%.

**§ 10.** Bank establishes quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of the value of sum of balance assets, according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,00066%.

2. Bank that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Bank described in part 2, establishes the first advance payment in the amount being  $\frac{1}{2}$  of the product of the value of sum of balance assets, according to the state as of the end of the first quarter of conducted activity and the rate of 0,00066%.

**§ 11.** 1. Savings and credit union establishes quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of the value of sum of balance assets, according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,0033%.

2. Savings and credit union that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Savings and credit union described in part 2, establishes the first advance payment in the amount being  $\frac{1}{2}$  of the product of the value of sum of balance assets, according to the state as of the end of the first quarter of conducted activity and the rate of 0,0033%.

**§ 12.** 1. Investment fund company establishes quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of:

a) the sum of value of investment funds' assets, collective assets of securities portfolios and portfolios that include one or more financial instruments, managed by this investment fund

company, calculated according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and

b) the rate of 0,00006%.

2. Investment fund company that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Investment fund company described in part 2, establishes the first advance payment in the amount being  $\frac{1}{2}$  of the product of:

a) the sum of value of investment funds' assets, collective assets of securities portfolios and portfolios that include one or more financial instruments, managed by this investment fund company, calculated according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and

b) the rate of 0,00006%.

**§ 13.** 1. Manager of alternative investment companies establishes quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of:

c) the sum of value of alternative investment companies' assets, managed by this manager of alternative investment companies, calculated according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and

d) the rate of 0,00006%.

2. Manager of alternative investment companies that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Manager of alternative investment companies described in part 2, establishes the first advance payment in the amount being  $\frac{1}{2}$  of the product of:

c) the sum of value of alternative investment companies' assets, managed by this manager of alternative investment companies, calculated according to the state as of the end of the first quarter of conducting activity and

d) the rate of 0,00006%.

**§ 14.** 1. Investment company establishes quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of the average value of total income obtained within three full calendar years, prior to the year of the quarter for which the due advance payment is to be paid and the rate of 0,012%.

2. Investment company that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Investment company described in part 2, establishes the first advance payment in the amount being the product of double value of total income for the first quarter of conducted activity and the rate of 0,012%.

4. In case when the period of conducted activity of the investment company doesn't include full calendar year, the advance payment for the costs of Ombudsman is established in the amount being a product of an average value of total income obtained within full quarters of conducted

activity, prior to the quarter for which the due advance payment is to be paid and the rate of 0,012%, subject to provisions in part 2 and 3.

5. In case when the period of conducted activity of the investment company:

1) include full calendar year but doesn't include two full calendar years - the advance payment for the costs of Ombudsman is established in the amount being  $\frac{1}{4}$  of the product of the value of total income obtained within the first full calendar year of conducted activity and the rate of 0,012%.

2) include two full calendar years, but doesn't include three full calendar years – provision of part 1 is applied respectively, provided that the average value of total income is calculated for two full calendar years of conducted activity.

6. In case of foreign investment company and foreign legal entities with registered office at the territory of the state belonging to Organisation for Economic Co-operation and Development or to World Trade Organisation, other than the state which is a member of European Union or party to the agreement on European Economic Area, the value of total income is established on the basis of brokerage activity conducted by these entities at the territory of the Republic of Poland.

**§ 15. 1.** Lending institution establishes quarterly the advance payment for the costs of Ombudsman in the amount being  $\frac{1}{4}$  of the product of assets' sum, according to the state as of the end of the quarter prior to the quarter for which the due advance payment is to be paid and the rate of 0,012%.

2. Lending institution that commences its activity pays its first advance payment for the second quarter during which the activity is conducted, including conducting of activity in the first quarter.

3. Lending institution described in part 2, establishes the first advance payment in the amount being  $\frac{1}{2}$  of the product of assets' sum, according to the state as of the end of the first quarter of conducted activity and the rate of 0,012%.

4. Assets' sum described in part 1 and 3 constitutes balance value of assets as of the end of a given quarter including solely receivables of the lending institution from contracts, to which provisions of the law from the 12<sup>th</sup> May 2011 on consumer credit (Journal of Laws from 2014, item 1497, 1585 and 1662 as well as from 2015, item 1357) are applied, established as of the last day of this quarter.

**§ 16. 1.** In order to calculate the due payments for the costs of Ombudsman's activity for a given year, Ombudsman asks Chairman of Polish Financial Supervision Authority to provide the following data :

- 1) amount of ascribed gross premium of national insurance institutions,
- 2) average annual value of assets of open pension funds, calculated based on values established as of the last day of each month of a given year;
- 3) average annual amount of own funds of national payment institutions and national institutions of electronic money, calculated based on values established as of the last day of each month of a given year;
- 4) value of payment transaction performed by offices of payment services,
- 5) average annual sum of balance assets of banks and credit and savings unions, calculated based on values established as of the last day of each month of a given year;
- 6) average annual sum of value of investment funds' assets, collective assets of securities portfolios and portfolios that include one or more financial instruments, managed by

investment fund companies, calculated based on values established as of the last day of each month of a given year;

- 7) average annual sum of value of alternative investment companies' assets, managed by managers of alternative investment companies, calculated based on values established as of the last day of each month of a given year;
- 8) value of income of investment companies.

2. Chairman of Polish Financial Supervision Authority provides Ombudsman with the required data within 30 days since the request described in part 1 was submitted, in form of electronic document. In case of lack of such data, the Chairman of Polish Financial Supervision Authority informs Ombudsman about the planned date of obtaining the data and after receiving the data, the Chairman forwards the data within 14 days since the receipt thereof.

3. Value of ascribed gross premiums collected by foreign insurance institutions from insurance contracts concluded in connection with conducted insurance activity at the territory of the Republic of Poland, is established based on information obtained from foreign insurance institutions.

4. Value of income from brokerage activity conducted at the territory of the Republic of Poland by foreign investment companies and foreign legal entities with registered office at the territory of the state belonging to Organisation for Economic Co-operation and Development or to World Trade Organisation, other than the state which is a member of European Union or party to the agreement on European Economic Area, is established on the basis of information obtained from these entities.

5. Amount of assets' sum of lending institutions is established on the basis of information obtained from lending institutions.

6. Pieces of information described in part 3-5, are conveyed to Ombudsman for a given year until the 31<sup>st</sup> July of the next calendar year.

**§ 17. 1.** Advance payments described in § 5-15 are paid by financial market entities:

- 1) by the end of the quarter for which the advance payment is due to be paid – in case of advance payments for three first quarters of calendar year;
- 2) until the 31<sup>st</sup> October of a given year – in case of advance payments for the last quarter of calendar year.

2. Advance payments described in § 5-15 are paid by financial market entities at bank account of Office of Ombudsman and the entities at the same time inform Ombudsman about the basis for payments' calculation, the period they concern and their amount, in form of declaration, which specimen is defined by appendix no. 1 to the regulation.

3. Declaration is submitted in form of electronic document .

4. Entities shall use ICT system available at the internet website of Ombudsman in order to submit declaration. In order to obtain access to the system, entity submits to Ombudsman a written motion indicating persons authorised on its behalf to provide information to Ombudsman.

5. Ombudsman suspends submission of advance payments described in § 5-15, for the last quarter of a given calendar year, if the amount of submitted advance payments, after financial market entities paid advance payments for three first quarters of a given calendar year, will be higher than forecasted income to cover the planned costs of Ombudsman.

6. In case as described in part 5, Ombudsman places information about suspending of submission of advance payments at his website.

7. The information is placed at the website of Ombudsman not later than 14 days before the deadline for submission of advance payments, as described in part 1 point 2.

8. Entity which established quarterly advance payment does not exceed the reminder costs, as described in the regulation issued on the basis of art. 15 § 4 of the Law from the 17<sup>th</sup> of June 1966 on administrative enforcement proceedings (Journal of Laws from 2017, item 1201, 1475 and 1954), submits declaration for a given quarter without the necessity to pay the advance payment to cover costs of activity of Ombudsman and its office.

**§ 18.** 1. If the sum of submitted advance payments described in § 5-15 is higher than the payment of due charges calculated on the basis of § 2, an overpayment arises. The overpayment is included in advance payments for the next year or is subject to return at the written motion of financial market entity specified in § 1.

2. Ombudsman establishes the amount of overpayment described in part 1 and informs about the amount competent financial market entities, described in § 1, until the 31<sup>st</sup> October of the next year.

3. Overpayment is subject to return within 30 days since submission of the motion.

**§ 19.** 1. If the sum of submitted advance payments described in § 5-15 is lower than the payment of due charges calculated on the basis of § 2, an underpayment arises.

2. Ombudsman establishes the amount of underpayment described in part 1 and informs about the amount competent financial market entities, described in § 1, until the 31<sup>st</sup> October of the next year.

3. Underpayment shall be covered by financial market entities within 30 days since receipt of information described in part 2.

**§ 20.** Together with information described in § 17 part 2 or § 18 part 2, Ombudsman conveys to financial market entity information about the following:

- 1) amount of sum of submitted advance payments within the year under settlement;
- 2) amount of percentage share of due advance payments from the entity in the total sum of advance payments due to be paid by entities described in § 1, within the year under settlement;
- 3) amount of total costs of Ombudsman, within the year under settlement;
- 4) amount of income of Ombudsman as described in § 2 part 2;
- 5) amount of due payment from the entity to cover costs of Ombudsman.

2. Provision of part 1 is applied appropriately in case when the sum of submitted advance payments equals the amount of due payment calculated on the basis of § 2.

**§ 21.** 1. Advance payments for the costs of Ombudsman for the year 2017 are established and paid according to previous regulations.

2. Managers of alternative investment companies, who were entered into the register of managers of alternative investment companies or obtained permission of the Financial Supervision Authority prior to the day of entering into force of this regulation, pay the advance payments for the costs

of Ombudsman calculated based on provisions of this regulation, within 30 days since its entering into force.

3. Provisions of this regulation shall be applied to the annual settlement of advance payments for the costs of Ombudsman for the year 2017.

**§ 22.** Regulation of the Minister of Finance from the 21<sup>st</sup> March 2016 on terms of payment, amount and manner of calculation of the due payment to cover the cost of activities of Financial Ombudsman and his Office (Journal of Laws, items 397 and 557) becomes null and void.

**§ 23.** Regulation becomes effective after 14 days since its announcement.

Acting on behalf of Minister of Finance and Development: *W. Janczyk*

