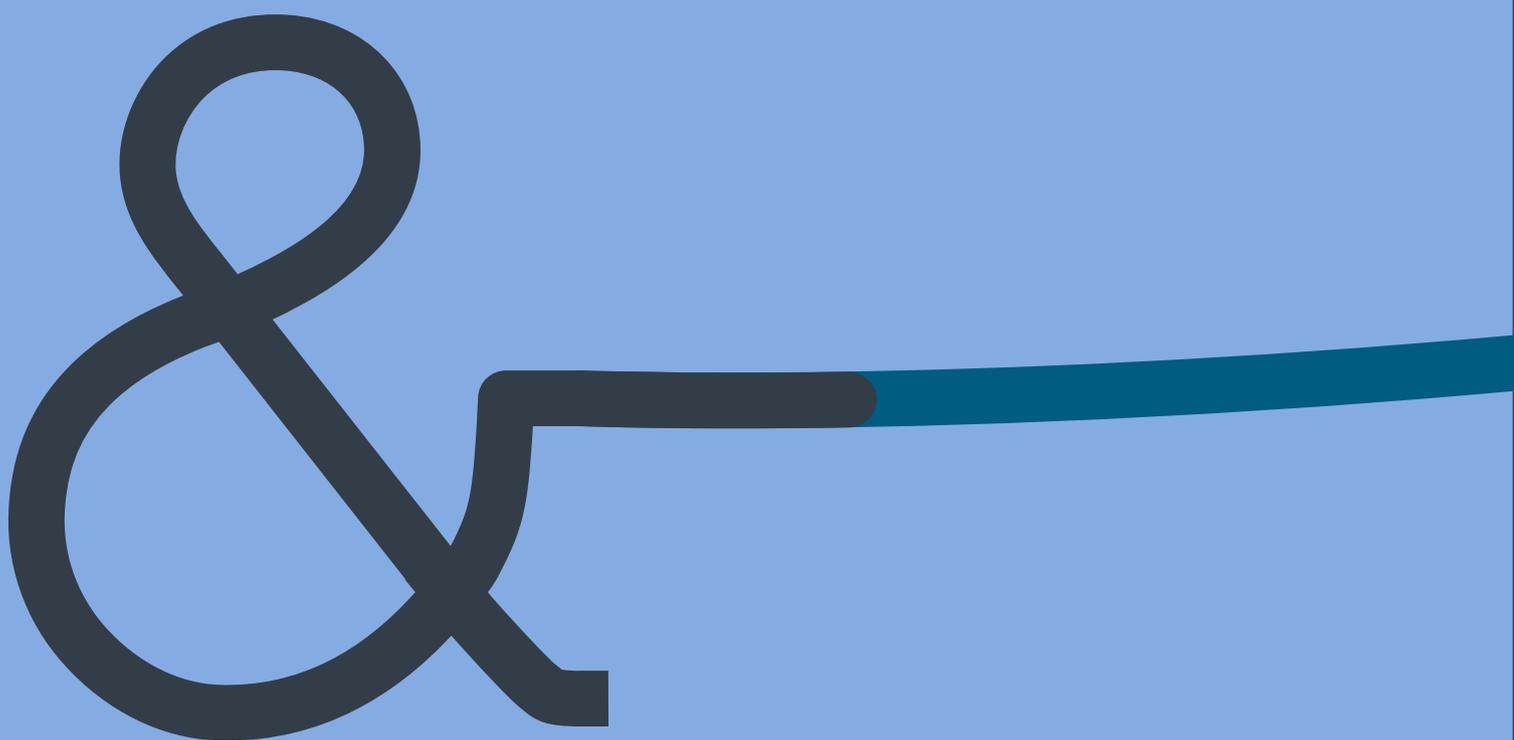


Bird & Bird

How to do crypto business in Poland

A guide by Bird & Bird

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Introduction

Crypto-asset market in Poland

In recent years, Poland has emerged as a vibrant hub within the global cryptocurrency landscape, showcasing a remarkable surge in interest in and the adoption of digital assets, with almost 95% of the Polish population being aware of the existence of cryptocurrencies¹. Fuelled by technological innovation, changing consumer preferences and a friendly regulatory environment, the Polish crypto-asset market has experienced exponential growth, captivating both investors and enthusiasts alike. This burgeoning sector has not only transformed the financial landscape but also positioned Poland as a significant player in the broader cryptocurrency ecosystem. As of April 2024, there are over 1200 Virtual Asset Service Providers (“VASP”) registered in Poland, with an average of almost 50 new VASPs registered each month in 2024².

Legal framework for engaging in crypto-asset activity in Poland

With such rapid growth in the sector, both Polish law and European Union law that is directly applicable in Poland are evolving very fast. Currently, VASP activity is subject to registration with the Register of Virtual Asset Service Providers maintained by the Director of the Tax Administrative Chamber in Katowice, Poland (“**VASP Register**”). However, this will change in the near future when the MiCAR³ will begin to apply later this year. Read the summary below on current applicable regulations to get up to date with the legal requirements that apply to crypto-asset activity in Poland.

Activity as a virtual asset service provider

VASP services

VASP activity is regulated by the Polish AML Act⁴, which allows VASPs to provide the following services in Poland (“**VASP Services**”):

- exchanging between virtual currencies and fiat (e.g., BTC to USD);
- exchanging between virtual currencies (e.g., BTC to ETH);
- intermediating in the exchange between virtual currencies and between virtual currencies and fiat;
- maintaining virtual currencies accounts.

¹ Polish Economic Institute, Report on Popularity of Cryptocurrencies in Poland, Warsaw, September 2023 (https://pie.net.pl/wp-content/uploads/2023/09/PIE-Raport_kryptowaluty_2023.pdf)

² Register of Virtual Asset Service Providers maintained by the Director of the Tax Administrative Chamber in Katowice (https://www.slaskie.kas.gov.pl/c/document_library/get_file?uuid=73ffde9b-0123-4594-8a94-a4d458218386&groupId=3559133)

³ Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ EU L 2023, No. 150, p. 40 as amended).

⁴ The Act of 1 March 2018 on counteracting money laundering and terrorist financing

By way of some more background, Virtual Currency is defined in the Polish AML Act as a digital representation of value which is not:

- legal tender issued by the National Bank of Poland, foreign central banks or other public administration authorities;
- an international unit of account established by an international organisation and accepted by countries that are members of that organisation or cooperate with it;
- electronic money within the meaning of the Polish Payment Services Act⁵;
- a financial instrument within the meaning of the Act on Trading in Financial Instruments⁶;
- a promissory note or a cheque.

Furthermore, virtual currencies must be convertible into legal tender in commercial transactions and accepted as a means of exchange, and must be stored or transferred (traded) electronically.

VASPs are only allowed to provide VASP Services after being registered with the VASP Register.

VASP registration

Until the MiCAR begins to apply, the provision of VASP Services does not require a license or any authorisation but is only subject to registration with the VASP Register.

Registering with the VASP Register is rather straightforward and regulated by the Polish AML Act.

To register as a VASP, a registration application needs to be filed with the Director of the Tax Administrative Chamber in Katowice. It is submitted electronically and subject to stamp duty of PLN 616 (approx. EUR 150). The application requires the provision of the following basic data:

- name and surname or company name of the applicant;
- number in the register of entrepreneurs in the National Court Register (only if such number was granted) and tax identification number⁷;
- list of VASP Services that the applicant intends to provide;
- representation that the application is complete and true, as well as, that the conditions (relevant experience and no criminal record) for conducting VASP activity are met;
- signature (qualified electronic signature, trusted profile or personal signature).

The Director of the Tax Administrative Chamber in Katowice enters the VASP in the VASP Register within 14 days of receiving the application unless there are grounds for refusing to do so (i.e., the application is incomplete and has not been completed by the deadline set or data included in the application is untrue).

The registration process is available in Polish only, but applicants are allowed to act through an attorney in fact.

⁵ The Act of 19 August 2011 on Payment Services

⁶ The Act of 29 July 2005 on Trading in Financial Instruments

⁷ Please note that an applicant receives both these numbers upon establishment in Poland (see more below).

Conditions for conducting VASP activity

VASP activity can be conducted by a natural or legal person or by an organisational unit without legal personality.

Such natural person or in case of a legal person – shareholders that are entrusted with the management of company affairs or authorised to represent the company or members of the management body – should have:

- knowledge (completed training program or course covering practical aspects of activity related to virtual currencies) or experience in the area of VASP activity (performing activities related to virtual currencies for at least one year); and
- no criminal record.

The fulfillment of these requirements is not verified during the registration process, and the applicant simply represents that it meets them. However, whether such requirements have in fact been met can be checked at a later stage during a VASP inspection.

Most Polish VASPs providing VASP Services operate as limited liability companies, because the registration process is faster (in some cases, a company can be established within several days), share capital requirements are low (minimum PLN 5,000 (ca. EUR 1,100)) and the liability of shareholders is low.

A VASP is an obliged entity under the Polish AML Act, which means that it should operate in compliance with the AML Act. This includes applying KYC procedures, reporting suspected money laundering or terrorist financing to the General Inspector of Financial Information, implementing an internal AML procedure and whistleblowing procedure and providing AML training for a VASP's employees.

MiCAR

The MiCAR was published in the Official Journal of the EU some time ago, as it came into force on 9 June 2023. With this in mind, 2024 will mark a turning point for this segment of the financial market, as that part of the MiCA Regulation concerning stablecoins will come into force on 30 June and the rest of the MiCAR will do so on 30 December 2024.

The regulation itself provides a general definition of a crypto-asset⁸ and further divides crypto-assets into three categories: (i) asset-referenced tokens (“**ART**”), (ii) electronic money tokens (“**EMT**”) and tokens that are qualified as neither ART nor EMT.

Even though the MiCAR forms a comprehensive regulatory framework for crypto-assets and related activities, not all assets that could potentially qualify as crypto-assets fall under its scope. This is particularly evident in the case of crypto-assets which resemble in essence financial products that are already subject to different regulations at the EU level. This approach is based on the intention of the EU lawmaker that financial services should be guided by the principles of ‘same activities, same risks, same rules’ and of technology neutrality. Thus, the MiCA Regulation does not apply, for example, to the following types of assets, which qualify as:

- financial instruments (see our [article on criteria and conditions for the qualification of crypto-assets as financial instruments](#));
- deposits, including structured deposits;
- funds, except if they qualify as e-money tokens;

⁸ MiCAR defines crypto-assets broadly as the digital representation of a value or of a right that can be transferred and stored electronically using distributed ledger technology or similar technology.

- unique and not fungible with other crypto-assets (that includes certain NFTs);
- non-life or life insurance products;
- social security schemes.

The MiCAR introduces a new category of regulated entities within the EU financial regulatory framework, that of crypto-asset service provider (“**CASP**”). CASPs are defined as legal persons or other undertakings whose occupation or business is the provision of one or more crypto-asset services to clients on a professional basis and that can provide crypto-asset services in accordance with the MiCAR.

The MiCAR lays down licence requirements for CASPs, which is a novelty for the Polish market since up to now, Polish law required no more than simple registration and compliance with Polish AML laws (see section II above). CASP authorisation is granted in response to an application submitted to the competent authority in the home country (in the case of Poland, the Polish Financial Supervision Authority; Polish: *Komisja Nadzoru Finansowego*, the “**KNF**”). Certain financial entities (e.g., credit institutions, investment firms or e-money institutions) are exempted from the obligation to obtain authorisation and can operate as a CASP subject to simple notification of the competent authority. For those that need CASP authorisation, the good news is that the EU lawmaker decided to establish a time limits for each step of the application process (i.e., 5 working days to acknowledge the receipt of application, 25 working days to assess whether the application is complete, 40 working days to assess whether the applicant complies with MiCAR requirements etc.).

This should make the application process more efficient, and the authorities responsible across all EU Member States should take a similar amount of time to grant authorisation.

CASP authorisation is to be valid for the entire EU (via so-called passporting). The CASP can make use of its authorisation in another EU Member State through the right of establishment, which can be exercised through a branch or through the freedom to provide services, which would require notification to the competent authority in the home member state, which will then notify the competent authority in the host member state. The notification contains basic information on the intended activity in a host member state (e.g., list of crypto-asset services to be provided or the starting date of intended provision of such services).

Moreover, the MiCAR regulates the provision of crypto-assets services on the exclusive initiative of the client (reverse solicitation) – see our [article on ESMA guidelines on reverse solicitation under MiCAR](#).

Unlike the current Polish VASP regime, which only covers the provision of VASP Services, the scope of crypto-asset services that CASPs are to be able to provide will be broader, as it will, for example, cover providing custody and the administration of crypto-assets on behalf of clients, operating a trading platform, providing advice on crypto-assets, providing transfer services for crypto-assets on behalf of clients, providing portfolio management on crypto-assets and the placing of crypto-assets.

If you would like to know more about the MiCAR, please see our publication - [Road to MiCAR](#), where we perform a deep dive into this topic.

Interim period

Under what is referred to as a grand-fathering clause (i.e., Article 143(3) of MiCAR), EU Member States have the option of granting entities already providing crypto-asset services (i.e., VASPs in Poland) in their jurisdictions an additional “transitional period” of up to 18 months during which they can continue to operate without a CASP license. For now, the Polish lawmaker plans to limit this period to 31 December 2025.

The KNF issued a statement on the interim period preceding the application of the MiCAR. This is important because until the MiCAR is fully applicable. The KNF has no formal oversight and supervisory role with respect to the cryptocurrency market. However, the purpose of this is to prepare existing market participants for being placed under KNF supervision and to enable a smooth transition from the current regulatory framework to the MiCAR.

The KNF has advised VASPs to apply the following measures during the interim period:

- adherence to high standards of information directed at potential purchasers and holders of tokens, including an indication of all rights and risks to which purchasers and holders may be exposed, and ensuring compliance with the established redemption requirements set out in the MiCAR;
- preparation and use of:
 - white papers that define the legal nature of a token and are clear, fair and not misleading, and are consistent with the content and requirements of the publication requirements set out in the MiCAR,
 - marketing communications that are clear, fair and not misleading, and are consistent with the requirements set out in the MiCAR;
- equal treatment of token holders, unless otherwise disclosed in the white paper and marketing materials;
- complaint handling policies and procedures that are effective and transparent, and that ensure prompt, fair and consistent handling of complaints received from token holders and other stakeholders in accordance with the requirements set out in the MiCAR.

The requirements stemming from the KNF communication are not formally binding, although the KNF advises VASPs to apply them. Non-compliance in this respect, especially if the activity negatively impacts the interests of customers in the interim period or threatens the integrity of the market, may affect a future assessment of the credibility and reliability of a future authorisation applicant under the MiCAR.

Moreover, the draft Polish Act on Crypto-assets (see section V below) provides grounds for the removal of a VASP from the VASP Register during the interim period.

The Act provides that a VASP can be removed from the register if it: (i) has failed twice to respond to a request addressed to it, in connection with an inspection, (ii) refused to accept a notice addressed to it concerning the authority’s intention of initiating an inspection or (iii) has failed twice to provide information / documents requested by the General Inspector of Financial Information (i.e., AML authority in Poland).

Polish Act on Crypto-Assets

In February 2024, Polish lawmaker released a draft Polish Act on Crypto-assets (the “**Act**”). The Act is still at the consultation stage and may therefore be subject to change. We will provide updates should the Act change materially.

The Act supports the implementation of the MiCAR in Poland, although legislative works are somehow limited since the MiCAR, as an EU Regulation, is directly applicable in Poland. The main purpose of the Act is to define the organization and execution of the supervision of offerors, persons seeking the admission of crypto-assets to trading, ART and EMT issuers and CASPs. For these purposes, the Act names the KNF as the competent authority for the application of the MiCAR.

Moreover, the Act provides some interim measures (we mentioned some of them above – i.e., setting the grand-fathering period and providing grounds for the removal of VASPs from the VASP register).

What is also very important is that the Act provides that applications for registration as a VASP submitted but not processed before the Act will enter into force (30 June 2024) will remain unprocessed. Thus, to benefit from the grand-fathering period for VASPs, we advise submitting an application to be registered as a VASP as soon as possible.

The Act also regulates the following:

- professional secrecy for CASPs → this secrecy obligation pertains to information relating to the legally protected interests of those to whom crypto services are provided, as well as other information obtained in connection with the provision of CASP Services;
- information obligations towards the KNF → the Act provides for a number of different information obligations incumbent on crypto-assets businesses (e.g., the obligation of a CASP to provide the financial supervision authority with information on its activities, its financial position and events that may affect its activities related to the provision of CASP services);
- civil liability related to preparing a crypto-asset whitepaper;
- supervision over market of crypto-assets → the supervision is heavily linked to the establishment of KNF control over crypto-assets businesses which involves, among other things, KNF inspection powers regarding compliance with the Act and the MiCAR;
- blocking transactions, accounts and DLT addresses → the Act introduces provisions allowing crypto-assets accounts to be blocked and transactions to be halted if a crime is suspected;
- maintaining a register of domains and IP addresses → the establishment of this register is intended to facilitate the search for entities that carry on activities in Poland without the required authorisation;
- supervisory measures and administrative sanctions;
- cost of supervision (supervisory fees);
- criminal sanctions.

The Act should in large part enter into force on 30 June 2024.

Conclusions

As Poland's crypto market continues to evolve, businesses must navigate a complex regulatory landscape to ensure compliance and maintain credibility. By understanding and adhering to legal requirements, crypto entrepreneurs can foster trust, protect investors, and contribute to the growth of the industry.

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