

THE PRIVATE EQUITY
REVIEW

SEVENTH EDITION

Editor
Stephen L Ritchie

THE LAWREVIEWS

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REVIEW

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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Enquiries concerning editorial content should be directed
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ISBN 978-1-912228-21-8

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

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PREFACE

The seventh edition of *The Private Equity Review* follows a turbulent and at times nerve-racking 2017. It was also a year in which private equity demonstrated its strength as an asset class in spite – perhaps because – of that turbulence. Deal activity and fundraising were strong in almost every major market despite fierce competition from public strategic buyers and strong returns in other asset classes, demonstrating private equity’s ability to adapt quickly to changing conditions to find profitable investment opportunities. As a result, we expect private equity will continue to play an important role in global financial markets, not only in North America and Western Europe, but also in developing and emerging markets in Asia, South America, the Middle East and Africa. In addition, we expect the trend of incumbent private equity firms and new players expanding into new and less-established geographical markets to continue, although recent protectionist trends remain a risk factor.

While no one can predict how 2018 will unfold, one can confidently say that private equity will continue to play an important role in the global economy, and will likely seek to expand its reach and influence. It remains to be seen how local markets and policymakers respond.

Private equity professionals need – now more than ever – guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. This review has been prepared with this need in mind. It contains contributions from leading private equity practitioners in 27 different countries, with observations and advice on private equity deal-making and fundraising in their respective jurisdictions.

As private equity has grown, it has also faced increasing regulatory scrutiny throughout the world. Adding to this complexity, regulation of private equity is not uniform from country to country. As a result, the following chapters also include a brief discussion of these various regulatory regimes.

I want to thank everyone who contributed their time and labour to making this seventh edition of *The Private Equity Review* possible. Each of them is a leader in his or her respective market, so I appreciate that they have used their valuable and scarce time to share their expertise.

Stephen L Ritchie
Kirkland & Ellis LLP
Chicago, Illinois
March 2018

Part I

FUNDRAISING

POLAND

Marcin Olechowski, Wojciech Iwański and Mateusz Blocher¹

I GENERAL OVERVIEW

Poland is consistently one of the most desirable destinations for private equity funds investing in central and eastern Europe (CEE). The country has experienced sustained and rapid growth since the 1990s when the market economy was reinstated. As the largest and most populous country in the region, Poland is a regional leader in economic terms with robust GDP growth. In 2016, GDP growth in CEE amounted to 3.1 per cent (nearly double that of the eurozone at 1.6 per cent), while in Poland at the same time it reached a level of 2.7 per cent.² CEE countries continue to be Europe's strongest region for GDP growth, with an estimated growth of 4.5 per cent for 2017.³ The World Bank projects Poland's 2017 economic growth at 4 per cent on the back of robust consumption, inflation under control and a strong labour market. This trend is expected to continue in 2018. At the same time, the World Bank's forecast for central Europe for 2017 and 2018 is 3.7 per cent and 3.4 per cent, respectively.⁴

In 2016, total private equity fundraising in CEE reached €621 million (a 62 per cent year-on-year increase) and private equity investment reached €1.6 billion – slightly exceeding the previous year's result, and was the highest since 2009. Poland remained the regional leader with 45 per cent of the CEE's total investment value and a home to almost a quarter of the companies receiving funding. It was followed by the Czech Republic, Lithuania, Romania and Hungary. These five countries comprised an aggregate 81 per cent of total CEE investment value. Poland was remained also the largest CEE market for exits in 2016, with 35 per cent of regional divestments by value at cost.⁵

In 2016, CEE private equity investment measured as a percentage of GDP was 0.120 per cent on average for the region and remained below the European average of 0.329 per cent. Poland showed results above the CEE regional average.⁶

1 Marcin Olechowski is a partner, Wojciech Iwański is a senior counsel and Mateusz Blocher is an associate at Sołtysiński Kawecki & Szlęzak.

2 Skanska, JLL, Dentons, CEE Investment Report, 2016.

3 Focus Economics, Snapshot for Central & Eastern Europe, 10 January 2018.

4 World Bank's Report, 19 October 2017.

5 Invest Europe, Central and Eastern Europe Statistics 2016, August 2017.

6 Ibid.

CEE buyout funds raised €445 million in 2016, compared with just €94 million in 2015. Buyout investments remained stable year-on-year at €1.2 billion, while growth capital funding continued as the region's second most important type of private equity investment at €285 million and grew 16 per cent year-on-year.⁷

Importantly, despite its sustained growth, the Polish private equity market still remains underdeveloped in comparison with Scandinavian or western European countries, which means that Poland still has high growth potential.

II LEGAL FRAMEWORK FOR FUNDRAISING

Poland has an established and original legal framework permitting the operation of regulated private equity investment vehicles, in particular in the form of UCITS and non-UCITS investment funds. The establishment and operation of such funds and of their managers are regulated under the 2004 Act on Investment Funds and on Management of Alternative Investment Funds (IFA).

Moreover, since 4 June 2016, when the 2016 Act Amending the Act on Investment Funds and Certain Other Acts entered into force, there is an established legal framework for the new category of investment vehicles – namely alternative investment companies (ASI) – that are deemed as alternative investment funds (AIF) under AIFMD.⁸ ASIs are generally non-regulated investment vehicles, in the form of 'ordinary' commercial companies, governed by the applicable rules of the Commercial Companies Code.

In 2017, a number of secondary legal acts regulating terms of conduct were issued, dealing with, *inter alia*, investment funds investing in derivative instruments and setting AIF maximum exposure limits.

i Non-UCITS investment funds (closed-end investment funds (FIZs) and specialised open-end investment funds (SFIOs))

Polish law provides for two types of non-UCITS investment funds: FIZ and SFIO, both managed by an external and regulated investment fund management company (TFI). Such funds are of a specific legal nature that cannot be unambiguously qualified from the perspective of usual EU investment fund classifications (corporate, contractual or trust types of funds). Like corporate entities, Polish investment funds have a separate legal personality and governing bodies. On the other hand, they are strictly distinguished from typical commercial companies.

The IFA allows both an FIZ and an SFIO (provided it applies the principles and investment limits of an FIZ) to be established specifically as a 'non-public assets fund' investing at least 80 per cent of its assets in assets other than (1) securities offered in a public offering or admitted to trading on a regulated market, or both, unless such offering or admission takes place after the purchase of the securities by the fund; and (2) money market

⁷ Invest Europe, Central and Eastern Europe Statistics 2016, August 2017.

⁸ The 2016 Act Amending the Act on Investment Funds and Certain Other Acts – which implements among others, Directive 2011/61/EU of the European Parliament and of the Council on alternative investment fund managers (AIFMD), and also Directive 2014/91/EU amending Directive 2009/65/EU on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (UCITS V).

instruments, unless they have been issued by private companies whose shares are held in the fund's investment portfolio (NPA funds). Such NPA funds also benefit from a slightly lighter regulatory regime than other types of funds.

FIZs

FIZs are often used as 'private' investment vehicles designed to enjoy various legal benefits (*inter alia*, tax benefits) by one or more investors ('dedicated' funds). To date, this practice appears to be accepted by the Polish financial services regulator – the Financial Supervision Commission (KNF) – which has publicly acknowledged that strict supervision of FIZs is not necessary, because FIZs are usually used by qualified investors.

An FIZ structure provides investors and TFIs with relatively broad flexibility in structuring the terms of their cooperation. At the same time, investing through an FIZ is subject to a number of statutory limitations or obligations. It is advisable to pre-agree, in particular, the following issues with the managing TFI before or during establishment of the FIZ.

Payment for certificates

As a rule, investment certificates issued to the investor should be paid for in cash. However, the IFA provides for certain limited possibilities for in-kind contributions (e.g., with transferable securities).

Limited scope of the FIZ's permitted investments

The IFA sets forth a closed list of investments that could be made by an FIZ (*inter alia*, securities, shares in limited liability companies (which, under Polish law, are not securities) and non-standardised derivatives. Under certain conditions, an FIZ may also invest in real estate.

The IFA expressly states that in respect of foreign instruments, the qualification as 'securities' should be made based on the legislation applicable to the company issuing the securities. Furthermore, the instruments acquired by or contributed to the FIZ have to meet the criteria of transferability. Consequently, an FIZ may not become a partner in most Polish – or foreign – law partnerships (unless they issue transferable securities, like the Luxembourg SCSp).

Type of investment certificates

FIZs may issue publicly and non-publicly traded investment certificates qualified as transferable securities under Directive 2014/65/EU on markets in financial instruments (MiFID II). The distinction between publicly and non-publicly traded investment certificates is based on the number of investors to whom certificates would be offered. In principle, should there be fewer than 150 investors, non-public certificates may be issued. The certificates can be either dematerialised or issued in tangible form, as well as in registered or bearer form. In most cases, private equity investors choose non-publicly traded, dematerialised and registered investment certificates, which gives them expected flexibility and allows the avoidance of additional regulatory duties.

Diversification of investments

In order to reduce the investment risk, the IFA requires, *inter alia*, that the aggregate of shares in one entity cannot represent more than 20 per cent of the value of an FIZ's assets. An FIZ is legally obliged to adjust its portfolio to the statutory limits within one year from its registration subject to possible sanctions imposed upon the TFI by the KNF.

In the case of an FIZ operating as a private equity fund, such period is extended to three years. Based on certain further exceptions related to FIZs established for a specified time, Polish TFIs are in a position to prolong the transition period up to six years (or even rolled constantly).

Management

Investors' influence on the management of the FIZ (including the exercise of rights over the assets held by the FIZ) is limited. This is due to the fact that the TFI, as a third-party entity, manages the FIZ and represents it in relation to third parties because the FIZ does not have its own management board (as in the case of 'regular' companies). The management of an FIZ may be assigned by the TFI only to a third party being a qualified investment entity, bank or other entity specified by the IFA and authorised by the KNF (or a similar authority within the EU) to manage investment funds.

Investors' rights are exercised through participation in FIZ's investors' meetings, adopting resolutions in respect of the most crucial issues related to the operation of the FIZ (its liquidation, change of certificates from non-publicly into publicly traded certificates, etc.). The statutes of the FIZ may broaden the investors' meeting authority to granting consent in respect of particular actions; however, actions taken in breach of those consent requirements are legally valid.

If there are at least three investors in an FIZ, its statutes may provide for a board of investors. The board of investors acts as a supervisory body, and monitors the implementation of the fund's investment goal and its investment policy as well as the application of investment limits. Within this scope, the members of the board of investors have access to the fund's books and documents, and the right to demand explanations from the management company. The statutes of an FIZ may broaden the powers of the board of investors.

Distributions

Generally, all distributions to investors from an FIZ's assets result from redemption of their investment certificates. Distribution of profit is an extraordinary case, mainly reserved for FIZs operating as NPA funds and resulting from the direct sale of an FIZ's assets. Rules of redemption of certificates and distribution of profit should be specified in the FIZ's statutes.

SFIOs

SFIOs are not as popular a form of private equity fund as FIZs. The SFIO is a type of an open-end investment fund issuing participation units (financial instruments not qualified as securities), and its statutes may restrict participation in the fund only to certain categories of entities (i.e., legal persons, organisational units without legal personality or natural persons) that make a one-off payment to the fund of an amount not lower than the zloty equivalent of €40,000. The statutes of an SFIO may also specify further conditions of eligibility.

As previously mentioned, SFIOs applying the investment principles and investment limits of an FIZ may benefit from the special rules applicable to NPA funds (in particular, a

longer deadline for diversification of assets and limited possibilities for profit distribution). At the same time, such NPA fund would still be subject to the less flexible principles of operation and regulatory regime of an open-end investment fund, making this form less attractive to private equity investors.

ii Commercial companies

Polish fundraising legal framework after 2016 amendments

Recent implementation of AIFMD into the Polish law – which took place in 2016, with a transitional period that ended only in mid-2017 – significantly affected the use of commercial companies as investment vehicles. Such companies are from that time classified as alternative investment companies (ASIs) and subjected to a regulatory regime not unlike that applicable to other AIFs (i.e., investment funds), including an obligation imposed on the alternative investment company manager (ZASI) to enter into an agreement for the performance of depositary functions with a depositary.

A ZASI might not engage in any business activity other than ASI or AIF management. A ZASI is quite strictly regulated as to its corporate structure, the qualifications of its directors and its applied remuneration policy. Certain capital requirements are applicable to a ZASI, particularly in respect of its own capitals. Transfers of significant batches of shares in a ZASI are also subject to certain restrictions and notification obligations. Outsourcing of ZASI activities is permitted, albeit subject to notification obligation or authorisation by the KNF (depending on the scope of outsourcing). Regulations pertaining to a ZASI are not applicable to a company managing an ASI whose investors (i.e., its limited partners) are members of the same capital group as the managing company, provided that none of those investors is itself an ASI or EU-AIF.

Consequently, the list of non-UCITS-regulated investment vehicles as of today include the following legal forms:

Externally managed	FIZs SFIOs	SKA Limited partnerships (spk)
Internally managed	–	Joint-stock companies (SA) Limited liability companies (Sp. z o.o.)

Importantly, as confirmed in KNF’s position dated 26 April 2017, entities (companies or partnerships) established after 4 June 2016 (the entry into force of the Polish AIFMD implementation), or that at that time did not conduct a business activity consisting in the collection of assets from many investors in order to invest them in the interest of those investors in accordance with a specific investment policy, simply cannot ‘become’ an ASI. Instead, an ASI should be incorporated (organised) and registered from scratch with intention to become an ASI. Entities that existed (and conducted such activity) prior to 4 June 2016 could benefit from a transitional period that permitted them to obtain ASI status.

Limited partnership

A limited partnership combines the features of a typical partnership and a commercial company. It must be established and conducted by at least two entities (natural persons, legal persons or organisational units without legal personality), with at least one partner

– the general partner – bearing unlimited liability towards creditors for obligations of the partnership and at least one partner – the limited partner – having only limited liability and acting as an investor.

A limited partnership that is an ASI has only one general partner, namely a capital company or an European company, with its registered office in Poland or – in some cases – a non-EU Member State. This general partner is the relevant ZASI and must either be authorised by the KNF or – in the case of relatively small-scale operations – entered into the relevant ZASI register. The relevant ZASI is obliged to manage the affairs of the ASI, including at least the management of its portfolio and risk. A single ZASI acting as a general partner may manage more than one ASI in the form of a limited partnership (or a SKA – see below).

Importantly, limited partnerships are tax transparent. Although they are not, technically, legal persons, they possess a legal, judicial and procedural capacity and may in their own name acquire rights, including ownership of immovable property and other rights *in rem*, incur obligations, sue and be sued.

The limited partner is only liable up to the value of its contribution to the limited partnership. On the contrary, the liability of the general partner is unlimited. The general partner holds the liability of all assets severally with the other general partners, and with the limited partnership itself.

A limited partnership is established by way of a partnership deed in the form of a notarial deed, signed by all general partners and registration in the National Court Register. No minimum capital is required.

As a rule, all matters that exceed the ordinary scope of a limited partnership's business require the consent of the limited partner, unless the partnership deed provides otherwise. Investors should consequently make sure that their rights under the deed have been stipulated in a satisfactory way. Furthermore, in accordance with the general rules governing limited partnerships, a limited partner has a right to participate in the partnership's profit in relevant proportion to its actual contribution to the partnership. However, the deed may stipulate otherwise, and investors certainly should consider the partnership's deed in that scope.

Partnership limited by shares (SKA)

An SKA structure combines the elements of a limited partnership and joint-stock company, making it the most composite type of partnership in Poland. Like the limited partnership, the SKA has no legal personality, but it has legal, judicial and procedural capacity, which means that it may acquire rights and incur obligations on its own behalf (e.g., under agreements), as well as have legal standing in court.

An SKA is established by at least one general partner and one shareholder (the general partner and the shareholder may be either natural persons, legal persons or organisational units without legal personality). An SKA being an ASI is no different from a legal partnership as regards its sole general partner, which must be a ZASI.

As in the case of a limited partnership, the general partner's liability for the SKA's obligations is unlimited. The liability is joint and several among the general partners and subsidiaries with regard to the SKA. The shareholders do not bear any liability for the SKA's obligations.

As is the case with a limited partnership, an SKA is required to be entered into the National Court Register. The statutes should specify the value of share capital in an amount

of at least 50,000 zlotys. The share capital consists only of the contributions made by the shareholders (or general partners in cases where the general partner is simultaneously a shareholder).

In respect of the shareholder's economic rights, the shareholder should ensure its right to participate in the profit of the SKA in proportion to the contributions they have made (i.e., at least proportionally to the value of their contributions). It is possible to establish preference shares with regard to the right to dividend of up to 150 per cent of the dividend designated to non-preference shares. In order to increase the attractiveness and legal certainty of the SKA, the SKA's statute may provide that each share taken up or acquired by a shareholder (investor) will give the right to more than one vote (with a maximum of two votes per share). Finally, it is possible to establish preference shares with regard to the distribution of the SKA's assets in the event of its liquidation.

The SKA's statutes may also provide for a supervisory board appointed by the shareholders.

Limited liability company (Sp. z o. o.)

An Sp z o. o. is a simplified form of a capital company. It has legal personality and may be established by any number of shareholders, even by an individual shareholder (except a single limited liability company with only one shareholder). Shareholders are not liable for the company's obligations. The minimum share capital is 5,000 zlotys.

The articles of association must be executed in the form of a deed. After all contributions indicated in the articles of association are made, the management board (and in some cases also the supervisory board or the audit committee) is appointed, and the company is entered into the National Court Register.

Rights and obligations of the shareholders are, as a rule, determined in the articles of association. Polish law allows a wide array of individual rights and obligations that can be granted to or imposed on the shareholders of an Sp. z o. o. Basic shareholders' rights include voting rights and participation in the company's profits.

If the Sp. z o. o. is used as an investment vehicle, it constitutes an ASI. An ASI and the earlier described regulatory framework applicable to limited partnerships and SKAs. Unlike in the latter cases, an ASI being a limited liability company is its own ZASI and cannot engage in business activity other than management of its own investment activity. In particular it cannot act as a ZASI for other ASIs (in the form of a limited partnership or an SKA).

Joint-stock company (SA)

A joint-stock company (SA) is the 'model' capital company in the Polish legal system. The company is a legal person and may be established by any number of shareholders, even an individual shareholder (except a single limited liability company with only one shareholder). Shareholders are not liable for the company's obligations. Minimum share capital is 100,000 zlotys and the value of share capital must be expressly specified in the statutes.

For an SA to be established, the statutes (in the form of a deed) need to be signed by all original shareholders, who in turn must take up all shares in the company. Additionally, two obligatory corporate bodies (the management board and the supervisory board) need to be established.

Rights and duties of shareholders in an SA are similar to those described above in the context of SKAs. This also applies to possible additional rights vested with the general assembly.

If the SA is used as an investment vehicle it constitutes an ASI, which is at the same time its own ZASI.

iii Solicitation

As a rule, distribution of securities (investment certificates in an FIZ and shares in an SKA or SA) constitutes regulated services and is restricted for investment firms. The applicable distribution rules and the scope of mandatory disclosure are in that case subject to Poland's local implementation of MiFID, including mandatory adequacy and appropriateness tests. However, if the investor is qualified as a professional or an eligible counterparty for MiFID purposes, MiFID duties are considerably limited.

It should be noted that pursuing such an activity without the required permit could be subject to criminal responsibility. If a criminal investigation is triggered by the actions of the KNF, the suspected entity is immediately disclosed on the KNF website.

Distribution of units in SFIOs is subject to the special regulation of the IFA and its secondary legislation. Generally, such distribution may be entrusted both to regulated entities (banks, other investment firms, etc.) or non-regulated service providers, with the restriction that they have received a suitable permit issued by the KNF. The investor's orders related to the purchase and redemption of the units may be made through natural persons who cooperate with the above-mentioned distributors on the basis of an agency agreement. Such natural persons may not receive payments designated to buy units or transfer redemption proceeds. Distributors are liable for the actions performed by their agents.

The distribution of participation interests in Polish limited companies, as well as the limited partner's interests (neither of which qualify as securities), are not subject to any specific legal framework.

Private equity investors could, in particular cases, be qualified as consumers. Business – consumer relationships fall under the applicable restrictions contained in the consumer law. While the Polish consumer protection requirements are generally in line with the applicable EU framework, the policy regarding their enforcement by the local consumer protection authorities and courts is relatively restrictive. Moreover, any marketing communication addressed to Polish consumers should always be drafted in a clear and precise manner in order not to confuse consumers. In addition, as a rule, under the Polish consumer protection laws, Polish must be used for all documents related to services provided to consumer clients residing in Poland.

iv Fiduciary duties

Pursuant to the IFA, an investment fund (this applies to both FIZs and SFIOs) must conduct its operations with due regard to the interests of the investor, and in keeping with the investment risk mitigation rules set out by the IFA. A TFI and the fund's depositary are also legally obliged to act independently and in the interest of investors.

If a TFI's actions taken in relation to the management of the fund are considered to be in breach of investors' interests, such TFI (and, arguably, the depositary) would be subject to quite restrictive regulatory sanctions imposed by the KNF.

The 2016 changes in law substantially extended the scope of depositaries' rights and obligations and generally strengthened the position of banks in the financial market. In the current regulatory framework depositaries are obliged not only to keep a given fund's assets and maintain their register, but also to monitor related cash flows. Additional duties were imposed on depositaries also in respect of the assets themselves: the depositary has to verify

whether the assets are stored in duly maintained accounts (in particular whether the accounts are maintained by authorised entities) and whether the fund actually holds rights arising from non-equity instruments entered into the register of its assets. The depositary also ensures that agreements related to the fund's assets are settled without undue delay.

Additionally, depositaries are now expected to act as external compliance controllers for investment funds and are obliged to conduct regular reviews of their activity in this context. Depositaries have also been given the right (and obligation) to sue the relevant TFI at the request of an investor for damages caused by improper conduct of the relevant investment fund. Detailed rights and obligations of depositaries are regulated by agreements concluded by specific depositaries and TFIs.

These changes have had a significant impact on the market, with most TFIs and depositaries entering into new agreements in December 2016, to accommodate to the altered legal framework. These new agreements with depositaries were mostly based on standard contract terms for a depositary agreement developed under the auspices of the Polish Bank Association (Custodian Bank Council).

In the case of commercial companies, the introduction of the ASI regulatory framework imposed a number of fiduciary duties on the relevant ZASIs (i.e., general partners of a limited partnership or an SKA, or the capital companies themselves). ZASIs are required to apply roughly the same standards as investment funds and their managers (i.e., to act in a professional and sound manner, in accordance with fair market practice, and in the best interests of the investors). Additional duties could be specified either in the partnership deed, articles of association, or statutes, or in a separate investment agreement. Legal commentators emphasise, however, that all partners and shareholders have fiduciary duties in relation to the partnership itself.

III REGULATORY DEVELOPMENTS

i Current regulatory framework

The KNF is the 'competent authority' within the meaning of the EU directives. It performs integrated regulatory supervision over local financial services (banking, insurance, pension fund and financial instruments markets, including the investment funds market).

The current regulatory regime applicable to private equity investments encompasses the establishment and operation of FIZs and SFIOs, as well as their management by TFIs, as well as, operation of ASIs and their management by ZASIs.

FIZs

The creation of an investment fund requires:

- a* adoption of the FIZ's statutes by the TFI;
- b* execution of an agreement with a depositary on the maintenance of a register of the fund's assets;
- c* the KNF's authorisation for the establishment of an FIZ (with the reservation outlined below);
- d* collection of payments in the amount stipulated in the fund's statutes (in the case of publicly traded certificates, not less than €40,000); and
- e* entry in the register of investment funds.

The investment fund acquires legal personality upon its registration in the register of investment funds, which is maintained by the District Court of Warsaw. Upon registration, the management company becomes the governing body of the investment fund.

Establishment of an FIZ whose investment certificates are not publicly traded does not require KNF consent. In addition, the scope of KNF supervision over the operations of such a fund is considerably limited. The regulatory burden in this case is moved to supervise the TFI.

SFIOs

The creation of an SFIO, open-end investment funds and public FIZs requires KNF authorisation and entry in the register of investment funds. At the same time, the SFIO is obliged to publish information prospectuses and financial statements.

TFIs

Management of investment funds (including, as a rule, distribution of their units) is reserved to TFIs regulated under the IFA and its secondary legislation. Establishment of a TFI requires a regulatory permit. A permit to act as an investment fund management company may be granted only to a joint-stock company with a registered office in Poland. The scope of the permit covers activities consisting of the establishment and management of investment funds, including intermediation in the redemption or sale and repurchase of investment funds units or certificates, representing investment funds in dealings with third parties and managing a collective portfolio of securities.

The TFI must comply with certain specific requirements, including the capital adequacy requirement and the appointment of managers complying with certain conditions. The scope of activities of the TFI must be limited to the management of funds.

Commercial companies

The operation of commercial companies being classified as ASIs trigger some regulatory duties differentiated according to the value of the investment portfolio. Apart of ZAFI registration or permit requirement, one of the most important issues is that, after the interim period discussed above, if the company is to pursue activity of ASI the KNF filing must be made during the commercial registration process. Subsequent 'requalification' of a commercial company into ASI is no longer possible.

ii Taxation

As of 1 January 2017, FIZs are no longer subject to a general corporate income tax (CIT) exemption, even though significant sources of their income are still exempt from CIT (e.g., dividends payable by capital companies). The latter exemption does not extend to participation in profits of tax-transparent entities (such as partnerships or their equivalents) or interest payable by such entities. In practice, this change will strongly affect FIZs involved in co-investments with banks (e.g., in real estate), which prefer to establish investment vehicles in the form of limited partnerships (see below) and act as limited partners.

Recent changes in CIT applicable to FIZs are equally applicable to SFIOs applying the investment principles and investment limits of an FIZ.

Investors in Polish investment funds are subject to income taxation with respect to proceeds received from the funds (the standard tax rate is 19 per cent, which in the case of foreign investors may be reduced on the basis of respective double tax treaties and internal regulations).

IV OUTLOOK

The current number one topic of discussion in the Polish private equity market is the future impact of the ongoing legislation process aimed at implementing MiFID II into Polish law. The Act Amending the Act on Trading in Financial Instruments and Certain Other Acts (including IFA) is planned to be adopted in Q1 2018. It will bring some important changes to the fundraising regulatory regime, such as introduction of new mandatory information requirements towards the investors, new duties on clients' assets protection and a mandatory participation in a compensation scheme or – alternatively – an obligation to obtain a civil liability insurance protection. Moreover, some discussions are still taking place on the shape of the market after the 2016 implementation of AIFMD and UCITS V directives. It is unquestioned that the above-mentioned changes in the regulatory regime put an end to the 'explosion' of FIZs in the Polish market started with the deregulation of 2011. In turn, the changes in question gave rise to new trends within the currently existing financial structures involving FIZs.

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ISBN 978-1-912228-21-8