

Legal Alert

4/2016**AMENDMENT TO THE ACT ON COLLECTIVE INVESTMENT**

The Act no. 361/2015 Coll., which amends and supplements Act no. 203/2011 Coll., on Collective Investment, as amended and which amends and supplements other acts became effective on 18 March 2016 (hereinafter the "**Amendment**"). The Amendment changes not only selected provisions of Act no. 203/2011 Coll., on Collective Investment, as amended (hereinafter the "**Act**"), but also Act no. 513/1991 Coll., the Commercial Code, as amended (hereinafter the "**Commercial Code**"). Certain provisions of the Amendment will become effective on 1 July 2016.

The Amendment brings the following substantial changes.

What is the purpose of the Amendment?

First, the Amendment aims to enable new forms of collective investment by means of investment funds with variable capital with an acronym SICAV (Société d'investissement à Capital Variable), which are commonly used in the financial centres of the European Union (e.g. in Luxembourg) and which was legally introduced in the Czech Republic in 2014. These funds will operate as joint-stock companies with variable capital in comparison to other funds without legal entity. Investment funds with variable capital will regulate their conduct independently or they can be managed by management companies.

Second, the Amendment transposed EU Directive 2014/91/EU, amending EU Directive 2009/65/EC 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 (hereinafter the "**UCITS V Directive**"). The transposition results in the harmonisation of the level of penalties for breaching the law by individual financial market sectors.

What is an investment fund with variable capital?

According to the Commercial Code an investment fund with variable capital (hereinafter an "**Investment fund SICAV**") is a joint-stock company with variable capital as well as a domestic subject of collective investment that may take the form of a standard fund, a special fund or an alternative investment fund.

What is the amount of the registered capital for an Investment fund SICAV?

The registered capital of an Investment fund SICAV means the total number of shares without nominal value with the minimum amount of EUR 125,000. The registered capital does not mean a summary of the nominal values of all shares issued but it equals the company's net asset value.

What is the difference between an Investment fund SICAV and a standard joint-stock company?

The Commercial Code requires identifying the trade name of a joint-stock company with variable capital with the designation "investment fund with variable capital". An Investment fund SICAV does not create an emergency fund and does not issue other types of securities. An Investment fund SICAV cannot provide credit or loans and transfer or lease the company's assets.

An Investment fund SICAV may merge with another fund and also with a fund that is not a legal person. Such a merger requires the shareholders' approval. Within the meaning of the Commercial Code, changing the legal form of an Investment fund SICAV is not allowed. On the other hand, the Act accepts the change of its legal form in the case of merger with another fund. It is possible to split the investment fund in compliance with relevant provisions of the Act. The prior approval of the National Bank of Slovakia is required in the case of dissolution of the company with liquidation.

Can an investment fund create sub-funds?

An Investment fund SICAV may create sub-funds if its bylaws allow it. The sub-fund is an independent accounting part of the assets and liabilities of the investment fund. The shares are issued in each sub-fund individually. These shares hold the right to payment of an interest on profit of the sub-fund and the right to payment of the liquidation balance in the case of winding up the company with liquidation. The name of a sub-fund cannot be interchangeable with the name of another sub-fund and must contain the investment fund's trade name.

What are the new obligations regarding promotion in collective investment?

The transposition of the UCITS V Directive extends the obligations of management companies with respect to promoting funds. Promotion must contain a conspicuous warning regarding the possibility the investment will decline in value as well as the fact that return on investment is not guaranteed.

Prior to investors acquiring securities in a management company and distributing the securities to investors, there is a legal obligation to provide the investors with crucial information regarding the fund. The new legal obligations also arise in respect of the prospectus. The prospectus must contain e.g. specifications regarding remuneration principles, identification of persons who are responsible for granting the remuneration, including information regarding the staff of the remuneration committee or a link to a website that includes the above mentioned information with notification that such information is available upon request in paper form and free of charge. The internal regulations of an Investment fund SICAV, a management company and the depositary must contain a step plan for the reporting of inadequacies by employees and the method of such a report.

Sanctions

If the National Bank of Slovakia finds a violation of the Act by a management company, an Investment fund SICAV or by another person who is subject to supervision in accordance to the Act, the National Bank of Slovakia may impose a fine of up to:

- a) EUR 5,000,000 or up to 10 % of the annual turnover for the previous calendar year in the case of a violation of legal obligations by a legal entity;
- b) EUR 5,000,000 in the case of a violation of legal obligations by a natural person; or
- c) to double the amount of enrichment in case such an amount is determinable.

What is the information obligation of the National Bank of Slovakia in connection with imposing sanctions?

After informing the aggrieved party the National Bank of Slovakia is obliged to immediately publish on its website information regarding the remedies, the nature of the violation, information which enables the aggrieved party to be identified and the fines imposed in the case of exhaustion of remedies, for a period of five years.

Conclusion

The Amendment enables the creation of a new type of investment fund as a legal person. It brings new business opportunities to management and other companies. In the process of establishing a new joint-stock company with variable capital it is necessary to comply with the numerous legal requirements resulting from the relevant provisions of the Act.

Contacts:

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