

## CORPO REVIEW #1

# AIC

Alternative Investment Company  
as a favourable alternative to closed-end  
investment fund

# Alternative Investment Company as a favourable alternative to FIZANs

## What is an Alternative Investment Company ("AIC")?

The alternative investment company was introduced into the Polish legal order on June 4, 2016 by the Act of March 31, 2016, amending the Act on investment funds and certain other acts ("the **Amending Act**"). The purpose of the Amending Act was to implement Directive 2011/61/EU of the European Parliament and of the Council ("**AIFMD**").

An AIC carries out investment activities, and its sole object is to collect assets from several investors with a view to investing them in the interests of those investors by a defined investment policy. AIC classification as an alternative investment fund allows it to establish a liberal investment policy enabling it to invest in a vast spectrum of assets including, but not limited to, equities, securities, currencies, commodities, real estate, receivables and derivatives.

## For whom?

The Alternative Investment Company formula can be used by *Venture Capital* funds, *Private Equity* funds and investors who previously operated through Closed-End Investment Funds, including closed-end private asset investment funds. An AIC may also act as a sole proprietorship.

## AIC management

An AIC can have two types of managers:

- Internally managed AIC - an incorporated company, including a European company, which is itself an AIC;
- External manager of the AIC - the capital company that is the general partner of the AIC.

The AIC Manager has a similar role to that of an Investment Fund Company in the case of Closed-end Investment Funds.



## The attractiveness of the AIC from the regulatory side

Currently, only one AIC manager operates based on a Polish Financial Supervision Authority permit. The others operate based on an entry in the register of AIC managers kept by the PFSA - (this is a simplified procedure for companies whose assets do not exceed EUR 100,000,000 or, if the AIC manager only manages companies that are not leveraged AIF and in which participation rights can be repurchased after at least five years from their acquisition - the equivalent of EUR 500,000,000). In the case of such a structure:

- There is no obligation to have a Depository Bank and an Investment Fund Company, which significantly reduces the operating costs of AIC compared to Closed-End Investment Funds
- Board members do not have to meet the restrictive criteria required by the Act on Funds
- Limited reporting obligations to the FSA (the FSA does not supervise the composition of the AIC's investment portfolio as well as changes to the AIC's internal documents - among other things, the AIC is not required to report changes to its investment policy and strategy)
- There are no minimum initial capital requirements or equity levels
- AIC does not need to employ investment advisers

In the case of Closed-end Investment Funds and Closed-end Investment Funds of Non-Public Assets, annual operating costs due to fund management fees to the IFC and the depository may amount to more than PLN 300,000. In addition, in the case of FIZs and FIZANs, there is a time-consuming obligation to determine the value of the Fund's net assets, which should occur at least quarterly. Valuations of fund assets are then submitted to the FSA. The need for valuations requires the involvement of professional valuation entities and is also sometimes labour-intensive for the funds' portfolio companies. AIC is exempted from the above obligations.

In addition, the manager of an AIC (whether externally or internally managed) is not obliged to adopt a system of internal controls and procedures related to the protection of confidential information, professional secrecy, risk management or the valuation of assets to which the Investment Fund Company managing FIZs and FIZANs is obliged.

## AIC tax benefits

Alternative Investment Companies also make it possible to benefit from several tax advantages. Among others, under Article 17(1)(58a) of the Act of February 15, 1992 on Corporate Income Tax (“**CIT Act**”), the income of AIC obtained in a tax year from the disposal of shares is exempt from tax, provided that AIC, before the date of removal, directly held not less than 5% of shares in the capital of the company whose shares are disposed of, for an uninterrupted period of two years.

Upon fulfilling additional conditions, it is also possible for investors who are natural persons to benefit from a tax credit which **allows an extra 50% of the expenses** for the purchase or acquisition of shares in an AIC or a company in which the AIC holds at least 5% of shares to be charged as tax deductible.



## Questions?

Feel free to contact us!



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### Development of AIC in Poland

According to the FSA's data (as of March 27, 2023), currently, 357 entities are listed in the Register of AIC Managers (plus one entity authorised by the PFSA to manage AICs), a number that should continue to grow due to tax advantages as well as much lower operating costs compared to Closed-End Investment Funds.

Furthermore, one of the objectives of implementing the EU AIFM Directive and its subsequent transposition into the legal orders of the Member States was to increase the protection of investors who engage funds in *collective investment undertakings* ("CIUs"). In the Polish market, there are still many entities whose activities fulfil the prerequisites for recognition as an Alternative Investment Company (entities collecting assets from many investors to invest them in the interests of these investors under a specific investment policy and which are not investment funds).

Companies that carry out activities in the field, as mentioned above, should immediately adapt their activities in compliance with the applicable regulations; otherwise, they are exposed to severe criminal and administrative sanctions.

The development of Alternative Investment Companies (AICs) may be negatively affected by recent proposals of the PFSA. As part of its comments to the draft Act on Capital Market Development, the Commission wants to prohibit the acquisition of shares in AICs by retail clients and the financing of AICs with loans from individuals, which is a typical market practice. Under the Funds Act, shares in AICs can be acquired by both professional clients (financial institutions, entities with significant capital) and retail clients (including natural persons) - in the case of AICs operating in joint-stock companies, limited joint-stock partnerships and European companies, when the offer to acquire shares in the AIC is a public offer.

Currently, AIC managers under Article 70k(1) of the Act on Funds quite commonly recognise individual retail clients as professional clients, provided that the entity in question has the knowledge and experience to make appropriate investment decisions and to assess the risks associated with those decisions properly.

Amongst other things, the PFSA intends to amend Article 70k of the Act on Funds by introducing a minimum investment threshold of EUR 100,000 in AICs, which will condition the recognition of a given entity as a professional client in addition to additional prerequisites of knowledge and experience. The minimum capital threshold for acquiring investment certificates for closed-end investment funds is EUR 40,000.

Taking into account the PFSA's comments may contribute to limiting the development of AICs in Poland. However, they will still remain a more favourable form of business than Closed Investment Funds.