

---

# THE PRIVATE EQUITY REVIEW

---

FIFTH EDITION

EDITOR  
STEPHEN L RITCHIE

LAW BUSINESS RESEARCH

# THE PRIVATE EQUITY REVIEW

---

The Private Equity Review  
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Private Equity Review – Edition 5  
(published in March 2016 – editor Stephen L Ritchie)

For further information please email  
[Nick.Barette@lbresearch.com](mailto:Nick.Barette@lbresearch.com)

# THE PRIVATE EQUITY REVIEW

---

Fifth Edition

Editor  
STEPHEN L RITCHIE

LAW BUSINESS RESEARCH LTD

PUBLISHER  
Gideon Robertson

SENIOR BUSINESS DEVELOPMENT MANAGER  
Nick Barette

SENIOR ACCOUNT MANAGERS  
Thomas Lee, Felicity Bown, Joel Woods

ACCOUNT MANAGER  
Jessica Parsons

MARKETING COORDINATOR  
Rebecca Mogridge

EDITORIAL ASSISTANT  
Sophie Arkell

HEAD OF PRODUCTION  
Adam Myers

PRODUCTION EDITOR  
Anna Andreoli

SUBEDITOR  
Claire Ancell

CHIEF EXECUTIVE OFFICER  
Paul Howarth

Published in the United Kingdom  
by Law Business Research Ltd, London  
87 Lancaster Road, London, W11 1QQ, UK  
© 2016 Law Business Research Ltd  
[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of March 2016, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – [gideon.roberton@lbresearch.com](mailto:gideon.roberton@lbresearch.com)

ISBN 978-1-909830-88-2

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

# THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND  
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND  
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW  
THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW  
THE CARTELS AND LENIENCY REVIEW  
THE TAX DISPUTES AND LITIGATION REVIEW  
THE LIFE SCIENCES LAW REVIEW  
THE INSURANCE AND REINSURANCE LAW REVIEW  
THE GOVERNMENT PROCUREMENT REVIEW  
THE DOMINANCE AND MONOPOLIES REVIEW  
THE AVIATION LAW REVIEW  
THE FOREIGN INVESTMENT REGULATION REVIEW  
THE ASSET TRACING AND RECOVERY REVIEW  
THE INTERNATIONAL INSOLVENCY REVIEW  
THE OIL AND GAS LAW REVIEW  
THE FRANCHISE LAW REVIEW  
THE PRODUCT REGULATION AND LIABILITY REVIEW  
THE SHIPPING LAW REVIEW  
THE ACQUISITION AND LEVERAGED FINANCE REVIEW  
THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW  
THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW  
THE TRANSPORT FINANCE LAW REVIEW  
THE SECURITIES LITIGATION REVIEW  
THE LENDING AND SECURED FINANCE REVIEW  
THE INTERNATIONAL TRADE LAW REVIEW  
THE SPORTS LAW REVIEW

# ACKNOWLEDGEMENTS

---

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

ADVOKATFIRMAET STEENSTRUP STORDRANGE DA

A&L GOODBODY

BAHAS, GRAMATIDIS & PARTNERS

BA-HR DA

BRUUN & HJEJLE

CAMPOS MELLO ADVOGADOS

CAREY

CREEL, GARCÍA-CUÉLLAR, AIZA Y ENRÍQUEZ, SC

CUATRECASAS, GONÇALVES PEREIRA, RL

DLA PIPER FRANCE LLP

ENSAFRICA

GILBERT + TOBIN

HAN KUN LAW OFFICES

HENGELER MUELLER

HERGÜNER BILGEN ÖZEKE ATTORNEY PARTNERSHIP

JACKSON, ETTI & EDU

KHAITAN & CO

KING & WOOD MALLESONS

KIRKLAND & ELLIS LLP

LAW FIRM ROJS, PELJHAN, PRELESNIK & PARTNERS O.P., D.O.O.

LMS – STUDIO LEGALE

MACFARLANES LLP

MAPLES AND CALDER

MCCULLOUGH O’CONNOR IRWIN LLP

MEYERLUSTENBERGER LACHENAL

NADER, HAYAUX Y GOEBEL, SC

PHILIPPI PRIETOCARRIZOSA FERRERO DU & URÍA

PWC

SCHINDLER ATTORNEYS

SCHULTE ROTH & ZABEL LLP

SOŁTYSIŃSKI KAWECKI & SZŁĘZAK

TRILEGAL

URÍA MENÉNDEZ

WONGPARTNERSHIP LLP



# CONTENTS

---

<b>Editor's Preface</b>	.....ix
	<i>Stephen L Ritchie</i>
<b>PART I</b>	<b>FUNDRAISING.....1–268</b>
<b>Chapter 1</b>	<b>AUSTRALIA..... 1</b>
	<i>Deborah Johns</i>
<b>Chapter 2</b>	<b>AUSTRIA..... 12</b>
	<i>Martin Abram and Clemens Philipp Schindler</i>
<b>Chapter 3</b>	<b>BRAZIL..... 21</b>
	<i>Sergio Ros Brasil, Marcus Vinicius Bitencourt, Alex Jorge, Renata Amorim, Marcelo Siqueira and Tatiana Martins</i>
<b>Chapter 4</b>	<b>CANADA..... 38</b>
	<i>Jonathan McCullough, James Beeby and Lisa Andrews</i>
<b>Chapter 5</b>	<b>CAYMAN ISLANDS ..... 51</b>
	<i>Nicholas Butcher and Iain McMurdo</i>
<b>Chapter 6</b>	<b>CHINA..... 62</b>
	<i>James Yong Wang</i>
<b>Chapter 7</b>	<b>COLOMBIA..... 78</b>
	<i>Hernando A Padilla and Federico Cárdenas</i>
<b>Chapter 8</b>	<b>DENMARK..... 90</b>
	<i>Mogens Thorninger and Simon Krogh</i>

<b>Chapter 9</b>	GERMANY.....	99
	<i>Felix von der Planitz, Natalie Bär, Michael Rinas and Helene-Evelyn Windszus</i>	
<b>Chapter 10</b>	INDIA.....	115
	<i>Siddharth Shah and Bijal Ajinkya</i>	
<b>Chapter 11</b>	LUXEMBOURG .....	131
	<i>Alexandrine Armstrong-Cerfontaine</i>	
<b>Chapter 12</b>	MEXICO .....	139
	<i>Hans P Goebel C, Héctor Arangua L and Adalberto Valadez</i>	
<b>Chapter 13</b>	NORWAY .....	149
	<i>Klaus Henrik Wiese-Hansen and Stig Nordal</i>	
<b>Chapter 14</b>	POLAND.....	160
	<i>Marcin Olechowski, Wojciech Iwański and Mateusz Blocher</i>	
<b>Chapter 15</b>	PORTUGAL.....	170
	<i>Francisco Santos Costa and Catarina Correia da Silva</i>	
<b>Chapter 16</b>	SINGAPORE.....	182
	<i>Low Kah Keong and Felicia Marie Ng</i>	
<b>Chapter 17</b>	SLOVENIA.....	192
	<i>Gregor Pajek and Urh Šuštar</i>	
<b>Chapter 18</b>	SOUTH AFRICA .....	202
	<i>Johan Loubser, Jan Viviers and Magda Snyckers</i>	
<b>Chapter 19</b>	TURKEY.....	218
	<i>Ümit Hergüner, Mert Oğuzülgen and Zeynep Tor</i>	
<b>Chapter 20</b>	UNITED KINGDOM .....	232
	<i>Richard Watkins, Lisa Cawley and Jane Scobie</i>	

<b>Chapter 21</b>	UNITED STATES ..... 247 <i>Joseph A Smith and Conrad Axelrod</i>
<b>PART II</b>	<b>INVESTING.....271–566</b>
<b>Chapter 1</b>	AUSTRALIA ..... 271 <i>John Williamson-Noble, Tim Gordon and Chris Morse</i>
<b>Chapter 2</b>	AUSTRIA..... 279 <i>Florian Philipp Cvak and Clemens Philipp Schindler</i>
<b>Chapter 3</b>	BRAZIL..... 289 <i>Sergio Ros Brasil, Marcus Vinicius Bitencourt, Luiz Augusto Osorio and Camila Caetano Cardoso</i>
<b>Chapter 4</b>	CHILE ..... 299 <i>Andrés C Mena, Francisco Guzmán and Arturo Poblete</i>
<b>Chapter 5</b>	CHINA ..... 311 <i>Huimin (Amie) Tang and Xiaoxi Lin</i>
<b>Chapter 6</b>	COLOMBIA..... 335 <i>Hernando A Padilla and Giselle Herrera</i>
<b>Chapter 7</b>	FRANCE..... 346 <i>Maud Manon, Xavier Norlain, Jeremy Scemama and Guillaume Valois</i>
<b>Chapter 8</b>	GERMANY..... 359 <i>Steffen Oppenländer and Heinrich Knepper</i>
<b>Chapter 9</b>	GREECE..... 372 <i>Christos Gramatidis</i>
<b>Chapter 10</b>	INDIA..... 380 <i>Nishant Parikh, Aniruddha Sen and Rohan Ghosh Roy</i>

<b>Chapter 11</b>	IRELAND.....	395
	<i>David Widger</i>	
<b>Chapter 12</b>	ITALY.....	409
	<i>Fabio Labruna</i>	
<b>Chapter 13</b>	LUXEMBOURG .....	419
	<i>Alexandrine Armstrong-Cerfontaine</i>	
<b>Chapter 14</b>	MEXICO .....	429
	<i>Carlos del Rio, Eduardo González and Jorge Montaña</i>	
<b>Chapter 15</b>	NIGERIA.....	444
	<i>Folasade Olusanya, Adekunle Soyibo and Oluwaseye Ayinla</i>	
<b>Chapter 16</b>	NORWAY .....	451
	<i>Peter Hammerich and Markus Heistad</i>	
<b>Chapter 17</b>	POLAND.....	463
	<i>Marcin Olechowski, Borys D Sawicki and Jan Pierzgaliski</i>	
<b>Chapter 18</b>	SINGAPORE.....	475
	<i>Andrew Ang, Christy Lim and Quak Fi Ling</i>	
<b>Chapter 19</b>	SLOVENIA.....	489
	<i>Gregor Pajekis and Aljoša Krdžić</i>	
<b>Chapter 20</b>	SPAIN .....	499
	<i>Christian Hoedl and Diana Linage</i>	
<b>Chapter 21</b>	SWITZERLAND .....	510
	<i>Alexander Vogel, Andrea Sieber and Samuel Ljubicic</i>	
<b>Chapter 22</b>	TURKEY.....	522
	<i>Ümit Hergüner, Mert Oğuzülgen and Zeynep Tor</i>	

<b>Chapter 23</b>	UNITED KINGDOM .....	536
	<i>Stephen Drewitt</i>	
<b>Chapter 24</b>	UNITED STATES .....	551
	<i>Norbert B Knapke II and Paul Anderson</i>	
<b>Appendix 1</b>	ABOUT THE AUTHORS .....	567
<b>Appendix 2</b>	CONTRIBUTING LAW FIRMS' CONTACT DETAILS....	599

# EDITOR'S PREFACE

---

The fifth edition of *The Private Equity Review* comes on the heels of a solid but at times uneven 2015 for private equity. Deal activity and fundraising were strong in North America, Europe and Asia, but the year ended with uncertainty in the face of declining growth in China, Brazil and other developing and emerging markets, increased volatility in commodity, stock, currency and other financial markets, and deflation concerns in developed countries. Nevertheless, 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. As large global private equity powerhouses extend their reach into new markets, home-grown private equity firms, many of whose principals learned the business working for those industry leaders, have sprung up in many jurisdictions to compete using their local know-how.

As the industry continues to become more geographically diverse, private equity professionals need 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 29 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.

While no one can predict exactly how private equity will fare in 2016, it can confidently be said that it will continue to play an important role in the global economy. Private equity by its very nature continually seeks out new, profitable investment opportunities, so its further expansion into growing emerging markets is also inevitable. It remains to be seen how local markets and policymakers respond.

I want to thank everyone who contributed their time and labour to making this fifth 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 2016

## Chapter 17

---

# SLOVENIA

*Gregor Pajek and Urh Šuštar<sup>1</sup>*

### I GENERAL OVERVIEW

The market of investing in private equity investment funds remained active during 2015 and it may well be said that it has been a relatively prosperous few years for fundraising in the Slovenian market. Slovenian investors show increasing interest in such investments as an alternative to the traditional bank deposits or securities listed on the Ljubljana stock exchange (or any other organised market). Pursuant to the data of the Slovenian Securities Market Agency, the activity on the private equity fundraising market stagnated compared to 2014. Nevertheless, the overall fundraising dynamics in 2015 may still be seen as one of the strongest in recent years. Namely, in addition to the six Slovenian alternative investment fund managers<sup>2</sup> who managed seven alternative investment funds, marketing of 37 alternative investment funds was notified to the Securities Market Agency based on the EU passport (mainly by EU-based fund managers). Marketing of almost half of all the alternative investment funds, which are currently in the fundraising phase, has been notified in 2015 as opposed to the rest being notified from 2013 onwards.

All the private equity funds, which were in the fundraising phase and were registered at the Securities Market Agency in 2015 were managed by various boutique local alternative investment funds managers (AIFM), and managed a portfolio with an approximate value of €15 million.<sup>3</sup> Apart from that, the pivotal part of fundraising

---

1 Gregor Pajek is a partner and Urh Šuštar is an associate at Law firm Rojs, Peljhan, Prelesnik & partners o.p., d.o.o.

2 Register of the AFIMs at the SMA, available on <http://www.a-tvp.si/Default.aspx?id=373>, retrieved on 9 February 2016.

3 The estimate is based on the publically available data for the Slovenia-based alternative investment funds.



activities was conducted by other EU-based AIFMs, who marketed their EU-based alternative investment funds (hereinafter as 'AIF'). Some notable examples of fundraising are private equity fundraisings lead by EU-based AIFMs Deutsche Alternative Asset Management and KKR Alternative Investment Management, who further strengthened their position on the Slovenian market of private equity fundraising, as they notified the marketing of five newly established alternative investment funds. Further, it is to be noted that an alternative investment fund manager Sankaty Advisors Europe (associated with Bain Capital) entered the Slovenian private equity fundraising market with notification of marketing of two alternative investment funds.

## **II LEGAL FRAMEWORK FOR FUNDRAISING**

As of late May 2015 the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (AIFMD)<sup>4</sup> is transposed into Slovenian law by the adoption of two acts creating a new local regulatory framework for private equity fundraising, namely an amendment of the Investment Funds and Management Companies Act (ZISDU-3),<sup>5</sup> which predominantly applies to UCITS funds, and the newly adopted Act on Managers of Alternative Investments Funds (ZUAIS).<sup>6</sup> The latter may be deemed a pivotal act regulating the majority of private equity investment funds' fundraising apart from ZUAIS investment funds, which invest according to the principles of venture capital, are further regulated by the Venture Capital Companies Act, which establishes a partially different regulatory regime, which is not described in detail in this article. This article provides a general overview and shall thus describe regulatory framework and market practice with regard to the alternative investment funds (AIF), as the main structural form for private equity fundraising.

### **i Jurisdiction and legal form**

The above-mentioned legal framework provides for a variety of possible structures for an investment fund, which may suit the majority of investment funds. ZISDU-3 governs investment funds, which are designed for the retail market, including UCITS. Nevertheless, the majority of private equity funds according to Slovenian law shall be deemed alternative investment funds and hence are governed by ZUAIS.

A limited liability company structure is the vehicle of choice for most fundraisings of Slovenia-based investment funds. The limited liability company was chosen as the legal form of investment vehicle in all seven investment funds that are registered at the Securities Market Agency and are currently in the fundraising phase in Slovenia.<sup>7</sup> Nevertheless, the majority of EU-based investment funds, the marketing of which was notified to the Securities Market Agency, are structured in the form of limited partnerships according

---

4 Official Journal L 174 of 1 July 2011.

5 Official gazette of the Republic of Slovenia, No. 31/2015 of 4 May 2015.

6 Official gazette of the Republic of Slovenia, No. 32/2015 of 8 May 2015.

7 Register of the AFIMs at the SMA, available on <http://www.a-tpv.si/Default.aspx?id=373>, retrieved on 9 February 2016.

to the law of England and Wales. Only a minority of investment funds marketed and managed on the EU-passport basis are structured as limited liability companies.<sup>8</sup> The reasons Slovenian-based investment funds are not structured as limited partnerships, but rather as limited liability companies, are hard to identify. However, it may be because Slovenian fund managers are more familiar with the limited liability company form and limited partnerships remain largely unused in everyday business practice. Further,<sup>9</sup> the structural inadequacy may be attributed to the fact that the fundraising market is still in its infancy, and that the applicable tax legislation does not provide adequate incentives.

The vast majority of private equity funds, which were marketed on the Slovenian market in 2015 are UK-based, with Slovenia, Ireland, Luxembourg and Austria following. The choice of jurisdiction is currently limited to EU Member States only, as the ZUAIS abolished the existing private placement regime. Furthermore, the ZUAIS currently limits marketing of non-EU based investment funds and marketing by non-EU based investment fund managers. The jurisdiction for the investment fund is mainly based on investor familiarity, but also taking into account the possible business-friendly and tax-efficient environment.

## ii Key legal terms

The ZUAIS provides for a regulatory framework for two main regulatory types of alternative investment fund (non-UCITS), namely a regime for an alternative investment fund (AIF) and a regime for a special investment fund (SIF). The latter represents a sub-type of a general AIF, with certain stricter regulatory requirements.

## iii AIF

The main regulatory regime, which governs the private equity funds, is the one for an alternative investment fund. Generally, there are rather very few limitations in respect to legal structure of the AIF. ZUAIS provides for two main types of legal structure. Firstly, an AIF may be structured as a (separate) pool of assets, whereby the marketable AIF's unit is the share on such pool of assets. Secondly, if the AIF is structured as a company, shares in the capital of such company are units of the AIF. The units of AIFs structured as companies have to be issued in the legal form of securities<sup>10</sup> where an AIF is incorporated as a joint-stock company or in the case of a limited liability company, as business shares (entered into the court or business register of companies).

AIFs are usually managed by an external entity, but may also be internally managed, should the corporate structure of the AIF provide for such possibility and should the management decide not to engage an external AIF manager.

---

8 Register of the AIFs, marketing of which has been notified to the SMA on the basis of EU passport, available at <http://www.a-tvp.si/Default.aspx?id=376>, retrieved on 9 February 2016.

9 See p. 21, in: Žugelj D. et al., *Tvegani kapital: Si upate tvegati?*, Lisac & Lisac, Ljubljana 2001.

10 In such case an AIFM may be required to issue and/or passport a prospectus in accordance with the applicable laws.

An AIF established and managed as explained above, is not limited in its investment policies. As a counterweight for AIF not to be restricted in its investment policies, the ZUAIS limits the possibility to market such AIF only to professional investors in the sense of the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 (MiFID)<sup>11</sup> and wealthy private (high net worth) individuals, who are in certain circumstances deemed as professional investors. Namely, a private individual shall be considered a professional investor (in the sense of MiFID) if such natural person concludes an agreement with a AIFM, whereby it agrees to invest at least €150,000 into the AIF and signs a statement in a separate document testifying that he or she is aware of the risks in connection with such an obligation or investment.

#### **iv Special investment fund**

A special sub-type of AIF is a SIF. A SIF is an AIF that complies with stricter regulatory requirements and obtains the SIF status on the basis of a decision of the Securities Market Agency. The ZUAIS sets forth certain other additional regulatory requirements relating to the permitted types of investments and levels of exposure either to a single investment or to certain types of investments, and also with regard to the AIFM, which manages such SIF.

SIF investments abide by the principle of risk diversification, whereby the fund's exposure to an individual person or a group (entities who are obliged to prepare consolidated accounts) must not exceed 30 per cent of the total net asset value. This limitation does not include different AIFs under the management of the same AIFM, so the SIF which is a fund-of-funds may invest all its assets into its 'sister' funds. The SIF may not invest its assets by granting loans or guarantees for loans, however, the SIF may finance companies with mezzanine capital.

The above-mentioned regulatory requirements with regard to the AIFM and to the permitted types of investments result in the additional possibility of marketing the units of such fund to and raising capital from retail investors, provided that the minimum pay-in requirement amounts to €50,000 (instead of €150,000 as in the case of AIFs as explained above).

All the reasons stated above make SIFs an attractive regulatory option in cases when the target investors include predominately retail investors but the formation of UCITS fund or a fund that is essentially similar to the UCITS fund would impose too strict a regulatory regime.

#### **v Key disclosure items**

For each of the EU AIFs managed by AIFMs and for each of the AIFs that they market in Slovenia, AIFMs have to make available to AIF investors comprehensive information about the marketed funds. Such information is usually made available in the offering memorandum or in the prospectus, should the AIF's units be issued in the form of securities.

---

11 Official Journal L 173 of 12 June 2014.

**vi A description of the investment strategy**

With the aim of ensuring the prospective investors an informed decision prior to investing in the AIF, the ZUAIS prescribes that the AIFM must disclose a set of information. Primarily, the disclosure must include a description of the investment strategy and objectives, the types of assets in which the AIF may invest, the techniques it may employ, along with all associated risks, any applicable investment restrictions, the jurisdiction of establishment of any master AIF and of the underlying funds if the AIF is a fund of funds.

AIFM also has to disclose also the circumstances in which the AIF may use leverage, the types and sources of leverage and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF.

In addition to the above, the offering memorandum also has to include a description of the procedures by which the AIF may change its investment strategy or investment policy.

**vii Financial data**

The AIF also has to disclose financial information. This information comprises the latest annual report and, where available, the historical performance of the AIF.

The disclosure must also contain the latest net asset value of the AIF or the latest market price of the unit or share of the AIF. In addition to the net asset value AIF's valuation procedure and the pricing methodology for assets valuation (including the methods used in valuation of hard-to-value assets) have to be disclosed.

**viii Risks**

Furthermore, the investors have to be provided with a description of the AIF's liquidity risk management, including the redemption rights both in normal and exceptional circumstances, and the existing redemption arrangements with investors. Apart from the information, the required disclosure also includes information on how the AIFM is managing professional responsibility risks.

**ix Legal information and information about the entities engaged in the fundraising**

The disclosure in the offering memorandum has to contain a description of how the AIFM ensures a fair treatment of investors. To the extent an investor obtains preferential treatment or the right to obtain preferential treatment, a disclosure must include a description of such preferential treatment, the type of investors entitled to obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM. In cases where the AIFM delegated the management function or any part thereof or the depositary delegated any of its function, such delegation has to be disclosed.

The disclosure must also contain a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable governing law and legal instruments ensuring recognition and enforcement of judgements in that jurisdiction.

**x Procedure and costs**

The investors also have to be informed about the procedure and conditions for the issue and sale of units or shares of the AIF that is being offered. This disclosure includes the identity and details of the prime broker, depositary, auditor and other contractually engaged partners, including the conflicts of interest policy and about transfer of liability.

The offering memorandum must include a statement of all fees, charges and expenses and of the maximum amounts thereof, which are directly or indirectly borne by investors.

**xi Additional information**

To the extent the AIF is required to publish a prospectus in accordance with the Financial Instruments Market Act (ZTFI)<sup>12</sup> and MiFID, the majority of information required to be disclosed under the ZUAIS is already a part of the prospectus (issued in connection with the AIF's securities). If the prospectus does not include all the necessary information as explained above, the missing information can be disclosed in a separate document (as schedule to the prospectus or an independent offering document).

**xii Methods of solicitation and reverse solicitation**

*Methods of solicitation*

The regulation of marketing of AIFs set forth in the ZUAIS requires the marketing entity to be duly authorised for marketing of AIFs on the Slovenian market (it may obtain a permit for marketing by the Securities Market Agency or notify the marketing on the basis of the EU passport).

Provided that the AIFM is authorised to conduct marketing services it may use methods such as unsolicited telephone calls (cold calls), unsolicited written correspondence and materials, responding to requests for proposals, responding to reverse enquiries, industry events (where entrance may be restricted to certain types of investors), multi and single-client meetings (i.e., face-to-face meetings between the AIFM and one or more clients). Furthermore, Slovenian law does not impose any limitations upon the marketing entity with regard to the content of the materials used in the marketing activities, as long as the content does not represent an unfair competition practice.

In the fundraising phase two sets of promotional activities should be distinguished on Slovenian market. The first set of promotional activities are those that do not represent marketing of AIFs in the sense of the ZUAIS. The second set are promotional activities that offer more precise information regarding the AIFs offered and are thus deemed as marketing of AIFs. For example, the AIFM or other marketing entity shall not be deemed to undertake marketing activities in the sense of the ZUAIS if it includes in its promotional content some factual information and opinion about the private markets industry, factual information about the AIFM (including track record information) and

---

12 Official gazette of the Republic of Slovenia No. 108/10 – official consolidate text, 78/11, 55/12, 105/12 – ZBan-IJ and 63/13 – ZS-K.

deal examples (which can include actual or expected returns). In such case, the activities do not require any kind of permit of the Securities Market Agency or notification through another EU Member State (i.e., 'home Member State').

On the other hand, if the promotional or marketing material consists of details of funds available for investment or offer documents such as offering memoranda and subscription agreements, such activities shall be deemed marketing and hence such conduct requires the AIFM to be duly authorised or notified, as applicable.

### *Reverse solicitation*

A considerable amount of fundraising in Slovenia is conducted via reverse solicitation and the Securities Market Agency adopted a level 2 regulation (detailing the ZUAIS), which (*inter alia*) also defined the reverse solicitation. Reverse solicitation is often used by foreign-based investment fund managers in cases where a major Slovenian company active in the financial sector seeks suitable investments for excess liquidity.

The above-mentioned level 2 regulation sets forth a definition of 'reverse solicitation' in Article 6, in the following wording: 'It is considered that the transaction has not been concluded on the initiative of the manager, if the investor confirms in a written statement before the offer that it has acquired units of an AIF at its own initiative and that the transaction is the result of the investor's request for the purchase of AIF that investor identified in advance.' The definition of reverse solicitation as in force leaves the doors for non-EU or non-authorised managers wide open, so they may reach potential major Slovenian investors on the basis of reverse solicitation.

### *Fiduciary duties of the fund's sponsor to the investors*

Slovenia-based investment funds that have been registered at the Securities Market Agency do not differentiate between the managing entity (i.e., the AIFM) and the sponsor. The roles of these two entities are usually embodied in one entity, as Slovenia-based investment funds take the legal structure of a limited liability company and not a limited partnership (in which the AFIM would be the partner with unlimited liability), so there is no practical need for such separation. The fiduciary duties described hereunder thus usually apply to the AIFM in the case of Slovenia-based investment funds and to the sponsor, if the AIF's management employs that kind of legal structure.

The first group of fiduciary duties that are imposed upon the AIFM by the ZUAIS relates to the obligation to act fairly, professionally, with all due diligence and in the best interests of the AIF under its management and of the investors in those funds.

The second group of fiduciary duties includes the AIFM's obligation to possess and effectively employ the resources and procedures necessary for proper performance of its business activities. Proper performance of the business activities also includes the obligation to adopt reasonable measures to avoid conflicts of interest, or if they cannot be prevented, to ensure that those conflicts are identified, managed and monitored and, where appropriate, disclosed so that it would not adversely affect the interests of the AIF.

### **III REGULATORY DEVELOPMENTS**

In 2015, the AIFM Directive has been fully implemented into Slovenian legal order by adopting two separate acts, namely the ZUAIS an amendment of the ZISDU-3. The renewed legal framework defines the Slovenian Securities Market Agency as the competent authority for the oversight of the financial markets and hence also of the formation and fundraising of the private equity funds. The ZUAIS conferred an obligation and power to the Securities Market Agency to adopt certain level 2 regulation, by which certain aspects are further determined and are intended to make the renewed regulatory framework fully functional.

#### **i Registration of sponsors and of private equity funds**

An external manager of the AIF has to obtain a special permit from the Securities Market Agency if it exceeds a certain thresholds. Namely, Article 38 ZUAIS sets forth that the permit is mandatory if the AIFM either directly or indirectly manages portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total exceed a threshold of €100 million; or, alternatively, when the managed assets in total exceed a threshold of €500 million to the extent the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF. An EU-based AIFM may also market and manage the AIFs under its management on the grounds of EU passport, whereby the AIFM obtains all the necessary approvals with the competent authority of its home Member State, and only notifies managing and marketing with the Securities Market Agency, as the competent authority in Slovenia. EU passporting in Slovenia is also available to sub-threshold AIFMs that obtained the permit with the competent authority in the home Member State on the voluntary basis.

If the AIFM exceeds the above-described thresholds, the ZUAIS (as the pivotal statute) in the field of private equity fundraising provides three separate regimes regulating AIFMs and AIFs, whereby the main distinguishing factor in determination of which of the three regimes shall be applied is the country where the AIFM or AIF are based. Upon determination of the country of origin, different levels of regulation apply in the cases, if the country of origin is Slovenia, or EU Member State or a third (non-EU) country. This legal framework terminated all of the existing private placement regimes and in the case should the AIFM or AIF endeavour to be present on the Slovenian market, it may be done solely according to the legal framework set forth by the ZUAIS.

If the AIFM is Slovenian based, the ZUAIS requires firstly the AIFM to obtain a special permit issued by the Securities Market Agency that may be obtained for the management of the AIFs or only for the marketing (in such case the requirements are not so demanding). If the AIFM obtains such permit, it may commence the marketing of the AIF upon the notification of marketing to the Securities Market Agency.

To the extent the AIFM and the AIF are based in another EU Member State (i.e., their 'home Member State') the requirements attached to the commencement of managing and marketing functions differ to a great extent. In such case an EU-based AIFMs are entitled to manage the AIFs and to market them on the basis of the EU passport. The authority, competent for a full-scope supervision, is the one of the home Member State, and the ZUAIS requires only that the Slovenian Securities Market Agency

is notified of such marketing activities on the Slovenian market. The notification process is carried out in front of the competent authority of the home Member State, who later communicates all the necessary documentation and permit to the Slovenian Securities Market Agency.

The third regulatory framework applies if the AIFM or AIF are non-EU based. However, the legal regime governing management and marketing of non-EU AIFs and non-EU AIFMs is not yet in force and shall become valid when the European Commission adopts an implementing regulation pursuant to Paragraph 6 of Article 67 AIFMD. Until that time, there is no possibility of marketing a non-EU AIF that is managed by an EU or a non-EU AIFM in Slovenia (save for the cases of reverse solicitation).

## **ii Taxation**

Under the Slovenian Corporate Income Tax Act, Slovenian investment funds and other investment funds with tax residency in Slovenia are effectively exempt from payment of corporate income tax (the applicable tax rate is zero per cent), under the condition that the investment fund distributes at least 90 per cent of the previous year's profits to the investors until the end of November of the relevant fiscal year. If the investment fund is a venture capital fund, the tax exemption applies regardless of the above-mentioned condition for the profits achieved from its venture capital investing activities.

Since the above-mentioned framework applies explicitly to UCITS, venture capital companies (established under the Slovenian Venture Capital Companies Act), certain pension funds and insurance companies (to the extent of they perform pension plans as a business activity), it is still uncertain if the zero per cent tax rate applies also to AIFMs established under the ZUAIS. In the absence of an explicit statutory provision it could also be argued that such tax exemption does not apply to AIFMs established under the ZUAIS – this would then result in an obligation to pay corporate income tax at the rate of 17 per cent of the taxable profit. Such situation obviously calls for a revision of the Corporate Income Tax act and its amendment in order to include AIFMs under the zero per cent tax rate exemption.

If the investors in Slovenian investment funds are companies with their tax residency in Slovenia the profits achieved from the units or shares in the investment fund are subjected to the Corporate Income Tax, which is payable by the corporations with a tax residency in Slovenia and amounts 17 per cent of the taxable profits.

If the investors in Slovenian investment funds are natural persons with a tax residency in Slovenia, they are generally subject to income taxation pursuant to the Personal Income Tax Act with respect to proceeds received from the funds and with respect to profits achieved from the sale of the units or shares in such funds. The applicable taxation rate is 25 per cent of the profits (dividends).

## **IV OUTLOOK**

As of 2015, the AIFMD has been fully transposed into Slovenian legal system, whereby the renewed legal framework became fully functional on 10 February 2016, when the Securities Market Agency adopted all the necessary level 2 regulations. Nevertheless, the Slovenian legal order does not provide for a possibility for a fund manager or fund



that is based in a third country (non-EU member), to conduct any fundraising on the Slovenian market, due to the fact that the newly adopted legislation chose to terminate the existing private placement regimes (except in cases of reverse solicitation). Managing and marketing of the non-EU based managers or investment funds shall be permitted upon the adoption of a delegated regulation according to Article 67 AIFMD by the European Commission.

## Appendix 1

---

# ABOUT THE AUTHORS

### **GREGOR PAJEK**

*Law firm Rojs, Peljhan, Prelesnik & partners o.p., d.o.o.*

Gregor Pajek is partner at Law firm Rojs, Peljhan, Prelesnik & partners and has joined the firm in 2010 after his LLM studies and traineeship in the capital markets group at the Frankfurt office of Baker & McKenzie. His fields of expertise include banking, capital markets, finance transactions, and M&A, in which he regularly assists foreign and domestic clients. Recently, Gregor acted in privatisations, private acquisitions, public takeover offers, debt refinancing and restructuring, acquisition finance, securitisations and structured finance transactions involving debt and equity. He also advised international banks and asset management companies in various regulatory issues including cross-border provision of services and provision of services under the AIFMD regime. In the commercial sector he has recently advised companies in covered bonds issue as well as in cash pooling and liquidity management programmes. He regularly advises clients on acquisition financing, takeovers and squeeze-outs and has recently worked on among other things the acquisition of Mercator (the largest Slovenian retailer), a telecommunications operator in Slovenia and in the Helios privatisation. His notable practice area is also the post-acquisition integration process where Gregor advises on general corporate law. Gregor is regularly advising domestic and foreign banks and commercial companies in various insolvency-related matters.

### **URH ŠUŠTAR**

*Law firm Rojs, Peljhan, Prelesnik & partners o.p., d.o.o.*

Urh is an associate at Rojs, Peljhan, Prelesnik & partners, a leading Slovenian corporate law firm, where he practises corporate law, with a primary focus on M&A and capital markets law, competition law, intellectual property law, and litigation.

Urh graduated from the University of Ljubljana (with a master's degree in commercial law) with honours in 2014. As a part of his commercial law specialisation, Urh has attended courses on German civil law, capital markets regulation and private

equity transactions at the University of Munich, and on insurance law at the University of Münster. Recently, Urh has been engaged in private equity transactions involving a white-shoe investment bank acquiring a sports equipment manufacturer, a Luxembourg private equity fund acquiring two shopping malls, and an Austrian MBO transaction in the timber industry. Apart from that, Urh has been advising one of the largest German retail market private equity fund managers on entry into the Slovenian market and a global alternative investment fund manager on the marketing of its investment funds.

**LAW FIRM ROJS, PELJHAN, PRELESNIK & PARTNERS O.P., D.O.O.**

Tivolska 48

1000 Ljubljana

Slovenia

Tel: +386 1 23 06 750

Fax: +386 1 43 25 123

pajek@rppp.si

krdzic@rppp.si

sustar@rppp.si

[www.rppp.si](http://www.rppp.si)