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| **VI.** | |
| **EXECUTIVE SUMMARY OF THE RIA FINAL REPORT** | |
| VI1. Basic identification data | |
| Title of the proposal: Act amending certain acts in connection with the development of the capital market | |
| Processor / representative of the submitter:  Ministry of Finance | The expected date of entry into effect, in the case of split efficiency expand  *01.2022* |
| Implementation of EU law: No; (if you choose Yes):  - indicate the deadline for implementation: *-*  - indicate whether the proposal goes beyond the requirements set out in the EU regulation?: - | |
| 2. The aim of the act | |
| *The act aims to implement the legislative measures resulting from the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023 (hereinafter also referred to as the “Strategy”). The Strategy is a non-legislative document approved by the Government of the Czech Republic at its meeting on 4 March 2019 (Resolution No. 156).*  *The Strategy contains 27 areas that need to be revised and 34 measures of a legislative and non-legislative nature are proposed for their implementation. The act will focus on legislative measures that require amendment of the law. At the same time, the proposed amendment is in line with the Policy Statement of the Government of the Czech Republic, which states, inter alia: “We will support the development of the financial market and strengthen its resilience. We will also focus on protecting the rights of consumers of financial services and developing financial education.”.* | |
| 3. Aggregated impacts of the act | |
| 3.1 Impacts on the state budget and other public budgets: Yes | |
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| *The introduction of tax support for the Long-Term Investment Account will have a negative impact on the national collection of personal income tax.*  *With regard to the extension of the Financial Arbitrator's material scope in relation to the Long-Term Investment Account, the proposal to introduce this institute into the legal order may entail negative costs for the Financial Arbitrator, or public budgets.*  *In some cases, the proposed legislation may entail increased costs for the CNB.* | |
| 3.2 Impacts on the Czech Republic's international competitiveness: Yes | |
| *International competitiveness is expected to increase as the capital market is expected to evolve under this amendment through modernization and addressing the shortcomings of the existing legislation. In accordance with the Strategy, the proposed legislative solutions are intended to help develop and make the capital market environment more attractive in the Czech Republic.*  *For example, the new sub-funds for joint stock companies and KSIL have as their primary objective to increase the competitiveness of the Czech capital market.* | |
| 3.3 Impacts on the business environment: Yes | |
| *The proposed legislation should predominantly have a positive impact on the business environment, consisting in the development of the capital market.* | |
| 3.4 Impacts on territorial self-governing units (municipalities, regions): Yes | |

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| *The proposed legislation should have certain impacts in relation to the proposed supervisory responsibilities of regional business offices in connection with the change of the Advertising Act.* |
| 3.5 Social impacts: Yes |
| *The proposed adjustments to the Long-Term Investment Account and the adjustment of the new alternative fund should have a positive impact on the savings of Czech households.* |
| 3.6 Impact on consumers: Yes |
| *The proposed legislation should not have any negative impact on consumers. The protection of retail investors should not be reduced by this proposal. Also the regulation in the Bonds Act and the Advertising Act should lead to greater protection of investors in bonds. In relation to the introduction of the institute of investor declaration, it is about strengthening consumer protection.* |
| 3.7 Environmental impacts: No |
| *-* |
| 3.8. Impacts with regard to non-discrimination and gender equality: No |
| *-* |
| 3.9 Impacts on the performance of the State Statistical Service: No |
| *-* |
| 3.10 Corruption risks: No |
| *-* |
| 3.11. Impacts on national security or defence: No |
| - |
| **Abbreviations**  **List of abbreviations of legislation**   |  |  | | --- | --- | | **Execution Order** | Act No. 120/2001 Coll., on Distrainers, as amended | | **Income Taxes Act** | Act No. 586/1992 Coll., on Income Taxes, as amended | | **Supplementary Pension Savings Act** | Act No. 427/2011 Coll., on Supplementary Pension Savings, as amended | | **Management Companies and Investment Funds Act** | Act No. 240/2013 Coll., on Management Companies and Investment Funds, as amended | | **Bonds Act** | Act No. 190/2004 Coll., on Bonds, as amended | | **Capital Market Business Act** | Act No. 256/2004 Coll., on Capital Market Business, as amended |   **List of other abbreviations**   |  |  | | --- | --- | | **CNB** | Czech National Bank | | **CR** | Czech Republic | | **EU** | European Union | | **FA** | Financial Arbitrator | | **CZK** | Czech crown | | **KSIL** | Limited Partnership with Investment Certificates | | **IF** | Investment firm | | **pension fund** | Participation fund or transformed fund | | **SICAV** | Joint Stock Company with Variable Capital (société d'investissement à capital variable) |   **A. GENERAL PART**  **A. Final Regulatory Impact Analysis (RIA)**  **1. GROUNDS FOR SUBMISSION AND OBJECTIVES**  **1.1 Name**  Act amending certain acts in connection with capital market development  **1.2 Problem definition**  The capital market in the Czech Republic is not sufficiently fulfilling its main function, i.e. to effectively redistribute free financial resources from savers and investors (households) to entrepreneurs who need to finance their development. Even for historical reasons, traditional banking financing (deposits and loans) prevails in the Czech Republic today and relying on subsidies from the European Union also plays an important role.  In summary, the obstacles to the development of the capital market in the Czech Republic are, in particular, the conservative distribution of household assets, low old-age savings, low awareness of entrepreneurs about financing oh business and research through the capital market and low supply of domestic investment instruments in comparison with Western Europe.  **1.3 Description of the existing legal situation in the area**  When describing the situation before 1989 it is not possible to talk about the business environment in our country, because it did not exist because of the economy planned by the state. Since the fall of the Iron Curtain, nothing has been done for the capital market to support it. The bad experience with voucher privatization has also not contributed to its attractiveness but has largely stigmatized it.  In view of the above, the Government of the Czech Republic approved at its meeting on 4 March 2019 (Resolution No. 156) a non-legislative document entitled “National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023” (hereinafter referred to as the “Strategy”). This government document is an act signalling that the Czech Republic is interested in supporting the capital market.  The Strategy contains 27 areas that need to be revised and 34 measures of a legislative and non-legislative nature are proposed for their implementation. The act will focus on legislative measures that require amendment of the law. At the same time, the proposed amendment is in line with the Policy Statement of the Government of the Czech Republic, which provides inter alia: “We will support the development of the financial market and strengthen its resilience. We will also focus on protecting the rights of consumers of financial services and developing financial education.”.  The act, which is expected to focus on legislative measures of the Strategy, which require changes of diverse laws, can be used in connection with the description of the legal situation in the area to evaluate as follows.  At present, the state supports only pension funds and life insurance in the form of tax deductions, although old-age savings can also be generated using other financial products. The current legislation is in the Income Taxes Act.  Currently, there are internet advertising portals that allow issuers to offer their bonds without these portals being regulated or subject to CNB supervision, so it is advisable to regulate advertising for investment instruments with the new rules being complied with by all entities performing such advertising, and thus also entities regulated by the CNB (it is proposed take inspiration from the regulation of gambling advertising). The current legislation is in the Advertising Act.  Bailiffs are now obliged to use the XML format only when communicating with banks. This causes unjustified market inequality and higher costs for non-banking financial institutions in executing bailiffs' requests. The existing legislation is in the Execution Order.  At present, the terms of issue and the bonds do not, in principle, contain any information about the issuer, so that it is not possible to assess the issuer's ability to repay these bonds. Typically, the prospectus contains information on both the issue and the issuer, however, the prospectus is not prepared for bond issues up to EUR 1 million. In April 2019, the Ministry of Finance published a public consultation on Corporate Bond Scorecard, which allows investors to better assess the risk of corporate bonds, but there is often the problem that the bond issuer does not disclose its financial information (typically in the Commercial Register), or the information is dated and do not take into account the planned bond issue. Moreover, even if the information is part of the terms of issue (or is included in the prospectus today), it does not allow investors to make a simple comparison of individual issues for the scope of these documents, which in addition do not provide some indicators at all, so it is necessary to search in financial statements (which could not be up-to-date). The existing legislation is in the Bonds Act.  Nowadays, the state supports tax investments in life insurance or pension funds, which impedes usage of other products of old-age savings - this is primarily addressed by the amendment to the Income Taxes Act, but in order to meet it, it is necessary to introduce appropriate sectoral regulation to ensure compliance with at least minimum requirements and supervision of the CNB. Although some advertising portals today report that they are not subject to the CNB supervision, they do so voluntarily and unsystematically, moreover, they do not face penalties for not disclosing this data, and this *disclaimer* is often presented in a grey manner (smaller pale font at the bottom of the website), which should be corrected .  Pension funds have a very limited investment strategy that follows almost literally the regulation of UCITS funds harmonized by EU law, which is characterized, inter alia, by permanently offering redemption to its investors and therefore have to invest only in highly liquid assets (typically listed shares and bonds). In addition, limiting the maximum amount of the remuneration of a pension company, which is additionally designed as an *all-in-one* (i.e. no costs can be charged directly to the fund), and the obligation to reduce this remuneration by the remuneration paid to the fund manager leads to the fact that Czech pension funds do not invest in assets that are common for pension funds in advanced economies, especially in so-called *private equity* funds (funds investing in large unlisted companies with an investment horizon of 10 years) and infrastructure projects. Most of the participants remain in the transformed funds, which are closed to new entrants, but the existing participants continue to contribute regularly, while the transformed funds are due to the “black zero guarantee” (no year can end in loss, otherwise the pension company has to pay the loss from its assets) are investing very conservatively and in most cases are not able to cover inflation, which in the long term leads to devaluation of invested funds. In addition, due to a very conservative strategy (enforced by virtually a guarantee), they invest only in government bonds and bank deposits and thus do not contribute to the development of the capital market in the Czech Republic (and at the same time represent a significant and weighty share of Czech citizens' old-age savings). Although transformed funds are closed to new entrants, existing participants have no incentive to transfer their funds to participation funds which, while not offering a guarantee (and also being more risky), can offer potentially more attractive returns that easily cover inflation in the long run and they can also offer a return on inflation (according to the dynamics of the participant's chosen investment strategy). As a reason why participants do not switch from transformed funds to participation funds , it is often stated that they do not want to lose their entitlements from the transformed fund (e.g. the so-called retirement pension) where the current law does not allow them to participate in the transformed fund, if the participant is at the same time the participant of participation fund.  So far, no investment fund has been established in the Czech Republic as a trust fund - the main reason is that wealthy investors would like to invest for the benefit of their children, but they cannot because their children are not qualified investors. Also, in the Czech Republic, no Limited Partnership with Investment Certificates has been established yet, although amendments have been made in the past to make it more attractive. According to the market proposals it could lead to the use of this legal form, for example, if it was possible to create sub-funds. Similarly, there is a demand for the possibility of sub-funds in a closed-ended joint stock company, which is an investment fund. Making the legal form of a Limited Partnership with Investment Certificates more attractive could also be made possible by the use of the international abbreviation SICAR in the name of the company, or by making the otherwise mandatory regulation of profit distribution in the Corporations Act non-prescriptive and thus more attractive. The current legislation is in the Management Companies and Investment Funds Act.  According to current legislation, a joint-stock company requires registered capital of CZK 2 million or EUR 80 thousand, which is a relatively high amount for start-ups and represents an obstacle to the use of this legal form by innovative *start-ups*. *Start-ups* (and other starting entrepreneurs) therefore prefer to choose a form of limited liability company, where the registered capital of 1 CZK or 1 EUR is sufficient. However, a limited liability company is not suitable for trading on the capital market where it may, for example, issue common certificates, but these cannot be publicly offered or traded on public markets. In addition, a limited liability company is not allowed to issue convertible bonds. Starting businesses have very limited options, how to raise funds on the capital markets and must use for its financing primarily bank loans. However, banks may be reluctant to grant them a loan because they have no history or assets to secure the loan. It is very difficult to finance bonds for the same reasons (they have no history or assets). Access to finance is thus considerably more difficult for starting businesses, which impedes the full development of the Czech national economy and its transformation into an economy with a high added value (mainly created by innovations). There is a special legal form for starting businesses abroad, a form of simpler joint-stock company, for example in France, Slovakia or newly in Poland. The obligation of a notarial deed is also a certain cost of setting up a company. The existing legislation is in the Corporations Act.  The description of the existing legal situation in the given area is described in detail in individual variants.  **1.4 Identification of stakeholders**  Among the so-called affected entities on which the options under consideration will have an impact include:   | **Subject** | **Reason** | | --- | --- | | **• issuers of securities** | The issuer is a company or public corporation (e.g. municipality, state) that issues securities primarily for the purpose of raising funds for the development of its business. Various types of securities can be issued or rendered, of which the best known are shares, bonds and participation certificates. | | **• investors** | An investor is a person who wants to valorise their available funds. The investor is primarily an investment fund, a bank, a pension fund, an insurance company or a natural person. | | **• CNB** | The CNB is the financial market supervisory authority. | | **• investment firm** | An investment firm is a legal entity that provides investment services and provides its customers with access to the capital market. | | **• pension companies** | It is a joint-stock company with a CNB license for the implementation of pension savings and supplementary pension savings. This company will be able to create an alternative participation fund. | | **• distrainers** | The distrainer is a free legal profession which, according to the Execution Order, ensures execution. It is concerned with the introduction of XML format. | | **• Financial Arbitrator** | The Financial Arbitrator is the competent body for settling disputes out of court. It is proposed to extend its material scope with regard to disputes concerning the Long-Term Investment Account. | | **• regional trade licensing offices** | The regional trade licensing office is a department of the regional office. In the context of advertising regulation, it is proposed that they play the role of supervisory authority. |     **1.5 Description of the target state**  The main objective of this proposal is to implement the target situation identified below through legislative measures.  In general, the following target status requirements can be identified:   * improving the quality and resilience of Czech household savings (including retirement savings), * reducing “dependency” of small and medium enterprises on bank financing (and on subsidies from the European Union) * increasing the number of jobs with high added value (strengthening the purchasing power of Czech citizens); and * higher support for innovation (more investment in innovative economy)   The target situation should be realized through:   * **measures to support households (investors):** supporting the creation of old-age savings through the introduction of a tax-supported Long-Term Investment Account, greater protection in investments in high-risk securities, including regulation of advertising; * **measures to support companies (issuers):** facilitating investments for wealthy investors in connection with the creation of a special regime in the framework of regulation of the acceptance of investment offers, development of the investment *crowdfunding* environment in the Czech Republic by introducing basic regulation, * **measures to promote professional market participants (market infrastructure):** allowing invest in pension funds (i.e. transformed and participation funds) to *private equity* funds, enabling the creation of sub-funds and other legal forms than SICAV, support the use of XML when requesting information from financial institutions (especially in execution), support of trading in corporate bonds.   **1.6 Risk assessment**  The proposed legislation aims to contribute to the development of capital in the Czech Republic through legislative measures that result from the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023.  Failure to adopt the proposed legislation, the Czech Republic will not be exposed to the risk of breach of EU commitments. However, failure to adopt the proposed legislation exposes the Czech Republic to the risk of non-implementation of legislative measures resulting from a document to which the Government of the Czech Republic committed itself through Resolution No. 156 of 4 March 2019. Not removing some shortcomings in the existing regulation will impede the development of capital market in the Czech Republic, in particular it will not be possible to create old-age saving alternatively through a new type of account, it will not be possible for a new type of mutual fund to invest more dynamically, furthermore it will not be possible for investors to be more widely and transparently informed of issuers and the issue, duplication between the prospectus and the terms of issue will not be eliminated, the advertising of investment instruments will not be regulated and thus the protection of investors will be reduced, the costs of execution on the financial market will not be reduced, the conditions between permanent arbitration courts will not be levelled, etc.  **2. DRAFT OF VARIANT SOLUTIONS**  In the following section, the evaluation of the impact of the regulation describes the individual evaluated questions, including the proposal of solutions and evaluation of options. The questions were consulted through consultation material published on the website of the Ministry of Finance.  The Ministry of Finance published a public consultation on the draft National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023 on 7 December 2018, with a deadline to comment by 9 January 2019. In this context, it called on capital market participants and the professional public to send any specific proposals with justification of the proposed change, which could be taken into account when preparing the amendment.  After incorporating the comments received and finalizing the text, the Ministry of Finance submitted the Strategy to the Government of the Czech Republic, which approved this document at its meeting on 4 March 2019 (Resolution No. 156).  Subsequently, on 8 August 2019, a document entitled “Consultation Paper on the Planned Legislative Measures Arising from the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023” was published for public consultation. In this context, the Ministry of Finance also invited capital market participants and the professional public to send any specific proposals justification of the proposed change that could be taken into account in the preparation of the amendment. One supervisory authority, one ministry, 6 market associations, one international market association, one trade union representative, one educational institution, 5 market operators and 5 private persons responded to the call.  **Legend to evaluation and variant solutions**  The analysis of solution variants aims to carry out a basic evaluation of whether it is desirable in individual cases to change the current situation and to create new legislation.  The submitter has carried out a cost-benefit assessment with regard to the identified stakeholders. During the evaluation of the impact submitter conducted consultations with the concerned parties. The aim was to obtain data that are otherwise unavailable and to reach relevant conclusions in the analysis. Impact of the variants is not stated on the aggregated basis, but in a structured way according to each specific area to which the stakeholders belong, and groups of entities concerned which are impacted. The so-called multicriterial analysis was used to evaluate and propose solutions.  Multicriterial analysis deals with the evaluation of possible alternatives according to several criteria, while the alternative evaluated according to one criterion is not usually best evaluated according to another criterion. Multicriterial decision-making methods then resolve conflicts between conflicting criteria. It is a method that aims to summarize and organize information about variant solutions. Multicriterial decision-making arises wherever the decision-maker evaluates the consequences of his choice according to several criteria, namely quantitative criteria, which are usually expressed in natural scales (also referred to as numerical criteria) or qualitative criteria where we introduce an appropriate scale, e.g. grading scale or scale “very high - high - average - low - very low” and at the same time we define the direction of better evaluation, i.e. whether the maximum or minimum value is better (decreasing or increasing values).  **Step-by-step method**  Alternatives are identified. It will decide the criteria (factors) that will determine the decision. Detailed assessment of the impact of each alternative on each criterion. Where possible, it expresses yourself in numbers (not necessarily money). Each criterions (factors) are assigned their relative weight (significance). So, there will be indicators of the significance of the main impacts.  **Evaluation of design alternatives**  In particular, the following criteria have been established in the evaluation of alternatives to proposals, with each criterion being assigned the same significance except for the first criterion, which is absolutely crucial to the objectives of this amendment.   1. Whether the proposed alternative sufficiently implements the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023 2. Is the current legislation insufficient or unsatisfactory. Why? 3. If this is not a regulation that could be addressed in other, non-legislative means. 4. What is the purpose pursued by the (considered) legislation. 5. Impact on individual entities. 6. Protection primarily of small but also qualified investors. 7. Capital market development. 8. Possible implementation risks.   With regard to the fact that the proposal is based on the Strategy that includes legislative and non-legislative measures and the non-legislative measures has the submitter obligation to perform under a work sheet resulting from government resolutions, assessment is focused mainly on legislative action, whereas before the Strategy was drafted it was considered whether the target state could also be achieved in a non-legislative way  For legislative measures resulting from the Strategy, the following legal solutions are considered:   * Option 0 - maintaining the current status   Maintaining the status quo would mean that no changes will be made to the acts in question.   * Option 1 - Legislative change through amendment of one of the affected acts   The amendment of the acts in question would take into account the shortcomings that are inconsistent with the development of the capital market and the shortcomings that have emerged during the application practice, and these shortcomings would be remedied,   * Option 2 or 3 - alternative legislative proposal by amending one of the relevant acts   The amendment of the acts in question by an alternative legislative proposal to Option 1 would take into account the shortcomings that are inconsistent with the development of the capital market and the shortcomings that have emerged during the application practice, and these shortcomings would be remedied.    **CONTENT**  [2.1 Establishing a Long-Term Investment Account 10](#_Toc38555307)  [2.2 Simple joint stock company 27](#_Toc38555308)  [2.3 Self-certification of wealthy investors (potential business angels) 33](#_Toc38555309)  [2.4 Regulation of crowdfunding platforms marketing bonds 39](#_Toc38555310)  [2.5 Alternative participation fund 44](#_Toc38555311)  [2.6 Introduction of sub-funds to joint stock companies and KSIL 49](#_Toc38555312)  [2.7 Introduction of mandatory XML format for other financial market institutions 54](#_Toc38555313)  [2.8 Support of trading with corporate bonds and increase of protection of investors in bonds 61](#_Toc38555314)  [2.9 Abolition of compulsory registration of funds pursuant to Section 325a of the Management Companies and Investment Funds Act in list of the CNB 68](#_Toc38555315)  [2.10 Extension of the possibility to be a fiduciary to a management company that is not entitled to exceed the decisive limit and to a person pursuant to Section 15 of the Management Companies and Investment Funds Act 69](#_Toc38555316) **2.1 Establishing a Long-Term Investment Account** **Current status and current legislation**  The financial market offers a range of financial products with a long investment horizon, which are suitable for accumulating assets as a retirement benefit, while only some products are tax-supported by the state. These are mainly pension funds (participation or transformed funds) and life insurance (investment or capital), which is a combination of insurance and investment product. These products are also tax supported through employer contributions. The state also supports the savings in pension funds in the form of a state contribution. In the form of state support, the state also supports building savings, which can theoretically also be used as a long-term savings product.  Pursuant to Section 15 (5) of the Income Taxes Act, it is possible to deduct from the income tax base a contribution totalling not more than CZK 24,000 per year paid by the taxpayer for supplementary pension insurance with state contribution (transformed funds), for supplementary pension savings (participation funds) and/or for pension insurance with a pension insurance institution pursuant to Section 6 (16) of the Income Taxes Act (occupational pension insurance). For pension funds, the amount that can be deducted is equal to the sum of the parts of the monthly contributions that exceeded the amount of the maximum state contribution in each calendar month of the tax period.  Pursuant to Section 15 (6) of the Income Taxes Act, it is also possible to deduct from the tax base of income tax a contribution of a total of not more than CZK 24,000 paid by the taxpayer for private life insurance premiums. It is the aggregate amount, including the case that the person has concluded several agreements on insurance, apply a limit in the amount of 24 000 CZK.  The state motivates citizens to accumulate old-age property not only through tax deductions directly for citizens, but also in the form of support of their employer's contributions under Section 6 paragraph p) of the Income Taxes Act. Here it is possible to deduct up to 50 000 CZK per year (i.e. more than 4 000 CZK per month). Not only income tax, but also social and health insurance are not paid on this sum, as this non-monetary income is exempt from the income tax on the part of the employee on the basis of employment.  As a rule, citizens use products up to the amount supported by the state in the form of a contribution or tax support, or to reach an employer support. According to the APS CR data, only 3.5% of pension fund participants make full use of the state contribution and tax relief and at the same time 6.4 % of people do not even reach the state contribution (i.e. they pay less than CZK 300 per month as a participant's contribution).  Initiatives to revise existing legislation  The current regulation of products intended for the accumulation of old-age savings is also being revised in connection with the effort to develop the capital market in the Czech Republic. The World Bank report on the capital market in the Czech Republic notes that one of the key steps to stimulate interest of investors would be the adoption of some form of "individual savings account" (ISA). The ISA account is widely used in the developed financial markets and helps generate greater investor interest in managing its retirement savings.  The interest pursued by the Ministry of Finance is primarily to ensure the effectiveness of this system so that investors have a sufficient choice of retirement savings products, i.e. to offer products for conservative, but also more profit-oriented investors. In comparison with the range of products that capital market can offer and in comparison, with the foreign legislation range of products addressed to Czech investors is rather limited. Czech investors do not have access to more dynamically oriented products and the offer in the Czech Republic does not follow the trends of more advanced markets.  Due to the aging of the population, the Ministry of Finance is concerned with the question whether it would be desirable to provide support to selected financial products to other financial products, which may offer, for example, a higher possible appreciation, even if  There is inspiration from foreign legislation - a product such as “individual savings account” - ISA, e.g. in the UK[[1]](#footnote-2) designated financial products intended for retail investors and for the accumulation of assets may be designated as ISAs. The basic types of ISA supported by the state in the form of tax advantages (not taxing the proceeds of these assets) are   * 1. Cash ISA usually includes time deposits,   2. Stock and shares ISA allows investment in restricted number of instruments, such as stocks, bonds, mutual funds or money market instruments (range of tools is limited);   3. Innovative Finance ISA allows investment through “peer-to-peer” (P2P) loans;   4. Life-time ISA allows people to 39 years of age save for retirement or to purchase the first property;   5. Junior ISA is intended for persons 18 years of age.   In 2017, approximately 33% of people in the UK owned some of the ISA products.  In USA[[2]](#footnote-3) they have Individual Retirement Account (IRA), in which the distinction is that the traditional (Traditional IRA) or Roth (Roth IRA). An alternative to the IRA is 401(k), which also distinguishes between Traditional and Roth - the name is derived from the relevant provisions of the US Internal Revenue Code. For traditional schemes, a citizen deposits untaxed money and taxes then withdraws from those schemes (does not tax revenues), while for Roth's schemes he deposits taxed money and then neither taxes income nor withdraws. Scheme 401(k) is usually set up by the employer, while the IRA is set up by the citizen himself.  In 2018, approximately 34.5% households owned IRA in the USA.  In Slovakia, a law was adopted in 2015, which introduced the so-called “*dlhodobé investičné sporenie*”, thus bringing support for investment in securities (i.e. creating savings through capital market instruments). Slovakia supports this type of investment of citizens by exempting income from the transfer of securities in the framework of long-term investment savings, so it is similar to the so-called time test in the Czech Republic. The tax advantage does not apply to the initial investment, but only to the revenues acquired by the transfer of securities in the course of “long-term savings” (i.e. investing). Citizen can annually invest maximum of 3 000 EUR (about 75 000 CZK).  **Design of solution variants**  Two variants are considered:   * Option 0 - Maintain the current status * Option 1 - Extend the offer of products intended for savings for old age by a personal savings account   **Option 0 - maintaining the current status**  The current state of supply of financial products intended for old age covers only a limited number of financial products, is intended rather for more conservative investors and does not allow Czech citizens to take advantage of more capital market opportunities. From the practice findings it shows that in the long run usually capital market valorises embedded resources more efficiently than currently offered state-supported products, albeit at the cost of higher risk of loss of investment. The disadvantage of this option is the less risky and thus less profitable way of appreciation of savings without the possibility of the investor to invest more actively and flexibly manage their investments, which also leads to lower responsibility for future savings.  **Option 1 - extend the offer of products intended for savings for old age by a personal savings account - Long-Term Investment Account**  This option would offer investors the opportunity to use other capital market products intended for long-term investments that potentially make it possible to obtain a higher return, albeit at the risk of higher risk. Inspired by foreign legislation, the expansion of the offer would allow Czech investors to benefit from the experience of more advanced economies. In addition, expanding the supply of financial products could lead to greater investor interest in investing in the capital market and could favourably influence the development of the capital market in the Czech Republic. Investors are offered a new product, including the possibility of greater diversification with savings, which inevitably leads to risk spreading and greater investor protection. The Financial Arbitrator would also be entitled to settle any disputes out of court. This option requires a legislative solution. With regard to tax support, it is necessary to incur costs from public budgets. Negative impacts on the state budget can be generated in two ways, which correspond to forms of tax relief:  1. Payments by employers as employee income exempt from income tax  In this case, the negative impact would only be generated because of the extension of the titles to which the employer can contribute, with the exempted income for employees. For the existing titles already unified limit to 50 thousand CZK is and the proposed modification does not change anything for them. Thus, the impact could be generated in cases where it would apply at the same time: the employee will have a Long-Term Investment Account and the employer will be willing to make a new contribution, i.e. beyond the existing exempted contributions (subject to legal conditions). The negative impact of contributing titles cannot be estimated due to lack of data sources. In addition, other factors, such as the development of unemployment, wages or conjuncture or the recession of the Czech economy or real interest rates, may also have an impact on the amount of impact.  However, given the current level of employers 'contributions, the expected Long-Term Investment Account parameters, which are similar to the existing supported products, we do not expect a massive increase in employers' interest in contributing to this new product. Rather, we would expect a change in structure. Based on this assumption, the impact on public budgets of hundreds of millions of CZK per year can be considered.  In this case, a negative impact would have already occurred during 2022, however, given that the Long-Term Investment Account is currently a non-existent product, any year-round impact can only be expected in 2023.  2. Application of the deduction from the taxable amount in respect of contributions paid by the taxpayer  The total maximum amount by which the tax base can be reduced is proposed at CZK 48,000, i.e. it corresponds to the sum of the existing limits. With regard to the proposed effectiveness of the act as of 1 January 2022, it is possible to expect that the potential negative impact will occur in 2023 at the earliest (taxpayers will apply the non-taxable part under the new rules only in the tax return), however, given that Long-Term Investment Account is currently a non-existent product, any year-round impact can only be expected in 2024.  In the case of deductions from the tax base, a negative impact can be generated both by the unification of the deduction limits for existing products (taxpayers preferring one product to which they now apply the maximum deduction will now have the possibility to apply a higher deduction) and also by the expansion of the deduction limits for another product. At present, the estimated tax relief from tax base deductions is CZK 2.6 billion. Considering the total amount of the estimated tax relief, we estimate the negative impact of the unification of the deduction limits to be in lesser hundreds of millions of CZK.  The negative impact of extending the possibility of deduction cannot be estimated due to lack of data sources. In addition, other factors, such as the development of unemployment, wages or conjuncture or the recession of the Czech economy or real interest rates, may also have an impact on amount of the impact. For example, if new 100,000 taxpayers made an attempt to redeem from their tax base of 10,000 tax deductions from Long-Term Investment Account contributions, it would have a negative impact on “DPFOs” of CZK 150 million per annum at the level of public budgets.  This option also presents social impacts, in particular positive impacts on the savings of Czech households.  **Proposal of the most suitable solution**  As the most appropriate solution, it is proposed to extend the conservative list of products intended for savings to old age by a personal savings account, called the Long-Term Investment Account, so option 1 is the most appropriate solution. This account is associated with higher activity of its owner and the need to invest in investment instruments in order to increase their appreciation. Investments should be made in financial products - stocks, bonds or funds, but the account is intended also for saving money in a bank account with the intention to separate the assets and the special register using capital market instruments, if possible, reproduce the assets and use the account in a post-productive age as a retirement enhancement of assets.  Although this variant has a negative impact on the state budget, it has a positive impact on the savings of Czech households. Other positive aspects that have led to a decision under this legislative solution are the positive social impacts in relation to active and responsible investing and managing of savings through this type of account, and last but not least, an increase in financial literacy is also a clear positive.  **Summary of impacts of the chosen Option 1**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + savings of Czech households  + capital market development  + variability in the selection of savings products for old age  + the ability to manage your investments directly and responsibly  + increase in financial literacy  + possibility of alternative dispute resolution through the FA, relief of civil courts (decrease of their use) from a possible dispute | - the burden on public budgets  - the need to adapt to the new legislation  - FA use, higher risk of use  - administrative costs | |  |   **Consultation:**   |  |  | | --- | --- | | Question | 1) Do you agree to join taxpayer limits and to extend their application to Long-Term Investment Account?  2) Do you agree to extend the application of tax depreciation in relation to employer's contributions to the Long-Term Investment Account?  3) Do you agree to apply the 60 + 60 rule to the Long-Term Investment Account?  4) Do you consider it necessary to revise the 60 + 60 rule?  5) Do you agree with the name of this new product “Long-Term Investment Account”?  6) Do you agree to define the circle of persons who will be able to maintain a Long-Term Investment Account?  7) Do you agree with the definition of assets that can be registered in the Long-Term Investment Account?  8) Do you agree with the proposed treatment of asset income in the Long-Term Investment Account?  10) Do you agree with the proposed solution to the distribution of Long-Term Investment Account?  11) Do you consider that there are other issues that need to be addressed in relation to the Long-Term Investment Account? Ideally, in relation to these questions, also suggest your preferred solution.  12) Do you think that other possibilities should be considered in the future, how should the Czech Republic support saving of citizens for old age? If so, state the main features and any foreign inspiration (taking into account the impact of the chosen solution on the state budget). |   **Results of the consultation**  **In general:**  **Supervisory Authority**  *The decision on the introduction of this new product and its possible tax support is a political issue, which is the responsibility of the Ministry of Finance and the Government of the Czech Republic, and therefore we take a neutral stance on the possible creation of the “Long-Term Investment Account” regime. However, we would like to draw your attention to facts that should be taken into account before making this decision.*  *To sum up, the Czech Republic has four levels of tax support for pension products:*  *Level 1 - state contributions to pension products:*   * *in 2018 the Ministry of Finance transferred the state pension contribution (transformed funds) and additional pension savings (participation funds) in the amount of 7.035 billion CZK. It is not known that such contributions exist in any state (except the Czech Republic).*   *Level 2 - tax relief for the participant:*   * *exemption from personal income tax on certain benefits from pension funds, private life insurance and pension insurance,* * *deduction from the personal income tax base for contributions to pension funds and pension insurance, up to CZK 24,000 per year,* * *deduction from the personal income tax base in the case of private life insurance contribution, up to CZK 24,000 per year,* * *the employer's contribution to pension funds, private life insurance and pension insurance up to CZK 50,000 per year is exempt from personal income tax and is not subject to the employee's social security or health insurance contributions.*   *Level 3 - tax relief for employers:*   * *the employer's contribution to pension funds, private life insurance and pension insurance up to CZK 50,000 per employee per year is not subject to employer's social or health insurance.*   *Level 4 - reduced income tax rate of pension funds*   * *the income tax rate of pension funds is 0% instead of 19%.*   *As regards the proposal to apply tax advantages also to the newly introduced "Long-Term Investment Account", we present the following:*  *The “60 + 60” rule is relevant only for the purposes of deduction from the taxable person's income tax base, not for expulsion of the product (existing pension products include surrender options). If a participant has applied a tax deduction and subsequently terminates the contract with surrender payment, it must, with respect to the "60 + 60" rule, tax the funds by which it has reduced its tax base in recent years.*  *The existence of a European variant of the 'Long-Term Investment Account', which is a “pan-European personal pension product” (PEPP) under Regulation (EU) 2019/1238, may be taken into account. The regulatory framework for PEPP lays down, inter alia, distribution requirements and information obligations, and allows for a significant expansion of the range of existing pension products.*  *The British “individual savings account” (ISA) and the Slovak “dlhodobé investičné sporenie” are not pension products. Citizens deposit already taxed money into their accounts, i.e. there is no 1st, 2nd or 3rd degree of tax support applied in the Czech Republic.*  *Of course, the above points do not prevent the Long-Term Investment Account from being subject to tax support in the Czech Republic. As this is a political issue, the CNB is neutral.*  **Market operator No 1**  *In our institutions' view, the only way to increase investor interest in the capital market, financial incentives, money, in the form of tax incentives or reliefs, is the most effective way to ensure greater investor involvement.*  *The development and good functioning of the capital market is essential for the efficient functioning of the economy. There are many studies available to the MF that support these conclusions. The Czech capital market will not develop due to the technical dexterity of legislators or the high expertise of specialists preparing the Strategy. Nothing new genius can be devised. The Czech capital market will not develop thanks to new technologies. Existing technologies are sufficiently efficient and safe and cheap. Promoting capital market development will only occur in the event of a political consensus of the political representatives of the state (government and parliament), whose output will be the environment motivating investors to long-term investment in capital market instruments and, on the other hand, the interest of issuers to use the capital market for their own financing.*  *Of the presented areas, it seems to be the best to use the possibilities under points 2) and 10). ISA and the expansion of pension funds support, but only those, which have a majority in the portfolio of capital market instruments. The terms and conditions for each individual should be adjusted so that its growing portfolio would be recorded in a virtual individual savings (and even a special pension) account. Investing through such an account would be assessed as a single annual amount and would be somehow financial / tax / monetary motivated, e.g. by an extended tax time test, increased state contribution in its pension part, tax depreciation in case of losses, etc. and the greater the concessions or contributions or the broader tax time test, the greater the incentive for investors to invest. E.g. in England, the ISA investment account has an annual investment limit of about GBP 20,000, and all profits from these investments are not subject to any additional tax. It is necessary that the total annual amount is not unnecessarily small and that this product is interesting and fulfils the role even for higher income groups, for example saving / investing 50 thousand. monthly, 600 thousand yearly as in England. Compare incentives for retail investment in France, Sweden and other EU countries. The ISA investment account should not have the same 60/60 product parameters as the retirement account, but should be differentiated (in terms of time, tax, investment amount) so that it is in addition to pension savings (e.g. 0/0 + annual limit) and investors could develop a suitable long-term flexible investment portfolio - thereby giving them greater incentives to use all kinds of investment / savings instruments.*  **Market association No 1**  *To begin with, we would like to say that we consider the initial definition of the introduction of the Long-Term Investment Account as an absolute priority, including the timeframe, to be quite right. It is imperative that the Government of the Czech Republic will be submitted a draft amendment to the relevant laws by the end of 2019 so that this draft can be implemented as soon as possible. This is an issue that has been the subject of a number of discussions for several years and therefore deserves to be adopted in the shortest possible time.”.*  **Ministry No 1**  *The Ministry of Labour and Social Affairs welcomes and supports the development of activities and programs that will increase the motivation of citizens to create additional financial security during their economically active life for the post-productive period, when they will receive the state old-age pension under the first pillar, wherever possible, there has been no significant reduction in living standards due to insufficient financial security in old age. In line with the conclusions of the Commission on Equitable Pensions, we would like to point out that it is also very important for the Ministry of Labour and Social Affairs to address the effectiveness of the system and the improvement of the pay check phase, i.e. ensuring that disbursements are not taken up almost exclusively; as they were created, i.e. ensuring regular income in old age, and allowed security during all or a large part of post-productive life.*  *From the perspective of the Ministry of Labour and Social Affairs, a proposal for a similar instrument does not seem appropriate for the Czech Republic, at least from the point of view of the development phase of retirement benefit systems. The Ministry of Labour and Social Affairs believes that before discussing the possible expansion of financial institutions managing supported forms of savings, it is necessary to first solve the effectiveness of the current third pillar in terms of insufficient revenues and cost regulation, especially in transformed funds, used by about 75 % of people saving on retirement at pension companies. Given the large number of citizens involved, it is unlikely that an increase in the number of people who will start saving for old age can be expected; rather, the transfer of existing clients can be expected when creating more favourable conditions for new institutions.*  *From the perspective of the Ministry of Labour and Social Affairs, the introduction of other state-supported long-term investment accounts for old-age savings could lead to fragmentation of the old-age savings system and further weaken the already low efficiency. Therefore, the Ministry of Labour and Social Affairs prefers to consolidate the system as a priority, for example by setting up a state pension fund, moving clients from existing pension funds to a state pension fund, and to more appropriate profiles of participating funds. These are topics which are, among others, the subject of discussions by the Commission for Fair Pensions.*  *For these and other reasons, the Ministry of Labour and Social Affairs does not support the proposal to introduce a Long-Term Investment Account. We consider this intention of the Ministry of Finance to be such a fundamental intervention in the pension system of the Czech Republic that agreement between the Ministry of Labour and Social Affairs and the Ministry of Finance is highly desirable. Similarly, we consider it appropriate to discuss this intention in the framework of the Commission for Fair Pensions, which, according to the government's policy statement, must also address the forms of individual retirement security.*  **Market association No 3**  *From our point of view, not all the essential aspects of such a proposal are addressed in the Consultation Paper.*  **Market association No 5**  *We support the introduction of a Long-Term Investment Account and it is in our opinion also in the interest of our clients. This will settle the support / advantage for all substitution products (investments, pension savings, investment life insurance). The name of the account itself should reflect not only the long-term but also the sense of saving money for “pension”.*  **Ad 1:**  **Trade union representative**  *Yes, but only with the simultaneous increase in the overall limit, e.g. to 60 thousand CZK annually.*  **Market association No 1**  *In our opinion, it would make more sense to increase the existing limits on the taxpayer in order to increase the incentive to further save for old age. This would also motivate those already using existing old-age savings products to start using Long-Term Investment Accounts. However, we prefer to have a separate limit for pension funds as well as a separate limit for the investment life insurance and the Long-Term Investment Account.*  **Market operator No 1**  *In principle, we agree with the intention to set up one investment account and one retirement savings account through which an individual would be able to invest in many other instruments / funds. As mentioned above under 1), there are many variations of motivation to imagine. It is not appropriate to combine retirement savings accounts and investment accounts into one product.*  *In particular, it is appropriate to distinguish between an individual investment account and an individual pension account. Both have different modes and mostly serve a different purpose. Note however, it is quite common in the UK that savings in the ISA personal investment account also serve as part of investors' income at their retirement age. It is common practice that withdrawals (either one-off or regular) from an ISA account supplement pension income. The reason is usually a combination of different tax structures, generational planning, investment strategies, etc. However, ISA provides investors with great flexibility, by choosing from that account at any time.*  *For an investment account, it is necessary to count with one-time deposits and high withdrawals even before reaching retirement age (e.g. I sell a property and buy a new one after 5 years, meanwhile I want to invest in various e.g. 5 funds through ISA). This simple investment account should complement the pension account. It should offer other tax benefits so that investors are offered more flexibility and incentives to use both the pension and investment accounts. The 60/60 rule would be unfortunate for both types of accounts, as many people already fear that they have access to pension accounts only on their 60th birthday, and that their private pension can become nationalized at any time. As already mentioned, an alternative retirement account could be a personal investment account that would not, for example, offer tax support on initial investment but allow withdrawal without any tax and time burden, but would specify an annual deposit limit for each investment account holder. This is how the UK personal investment account (ISA) works and is very popular in the UK. This account can be opened only by institutions that have obtained permission from the tax office and their duty is to monitor the limits set by investors. ISA does not burden either the investor or the tax office, since profits / withdrawals do not have to be filled in the annual tax clearance.*  *The retirement account should primarily be intended for long-term savings up to the selected retirement age (in the UK, private retirement savings have a retirement age of 10 years lower than the state, i.e. the state retirement age is 65 and the “private”retirement age is 55)with regular payments and its gradual withdrawals, not one-off, after the end of working life. However, the pension part should also be set to higher income groups.*  **Supervisory Authority**  *State aid of 3rd pillar incl. possible changes are currently being discussed on the Commission's Platform for Fair Pensions. The CNB takes a neutral view on the possible extension of tax relief to citizens' contributions to the “Long-Term Investment Account” and related legislative changes. However, it should be noted that it would be appropriate - whether or not extension will take place - to have a thorough discussion of efficiency of 3rd pillar in connection with its tax support.*  *As already mentioned, account should also be taken of the existence of a pan-European personal pension product (PEPP), which makes it possible to significantly broaden the range of existing pension products while imposing, inter alia, distribution requirements and disclosure obligations to participants and tax support to the Long-Term Investment Account as another type of pension product.*  **Market association No 2**  *No, because for those who are already using old-age savings products, this change does not provide any incentive to further increase old-age savings (even for those who do not use existing old-age savings products, this change does not constitute any new incentive). Instead, we propose that the taxpayer limit be raised in connection with the introduction of Long-Term Investment Accounts. This would encourage those already using existing retirement savings products to start using Long-Term Investment Accounts.*  **Market association No 4**  *“The introduction of another state aid product, moreover for the same purpose as it is already supported, does not make much sense in terms of motivation and will only increase the confusion of the market and the unpredictability of the state's access to voluntary pension savings for citizens. We have been criticizing the plan for a long time, especially because we do not notice public demand. In our experience, pension savings should be concentrated in a simple, understandable and safe product in order to allow the calculation of pensions, not to be broken down into different, difficult to compare products, especially if they are to receive the same state aid (tax relief) or similar terms (such as employer's contributions). So-called pension savings for which state aid is granted should logically be registered with one administrator. We do not consider the requirement for the 60 + 60 rule to be sufficient, as existing pension products and their providers are also substantially regulated in other respects (e.g. investment, fee and commission limits). The possible extension of the possibility of drawing state aid to other financial products should ensure comparable conditions in the regulation of such products and thus also the competitiveness on the market. It should be preceded by an analysis of the impact on the pension system whether broad state support for savings in bank accounts or mutual funds will actually contribute to increasing the volume of savings earmarked for retirement security, will lead to disbursement of such savings in the form of pensions and the actual impact such an extension of state aid will mean for the state budget.*  **Market association No 3**  *It can be agreeable to join the limits, but we suggest raising these limits and also suggest that you allow contributions to account beyond these limits.*  **Ad 2:**  **Supervisory Authority**  *The Ministry of Finance is in charge for extending the application of the existing tax breaks for employees in relation to the employer's contributions to pension products as well as to the employer's contributions to the “Long-Term Investment Account”, concerning this matter, the CNB has neutral position. In this context, we would like to point out that the “individual savings account” in the United Kingdom, the “individual retirement account” in the USA and the “dlhodobé investičné sporenie” in Slovakia cannot be considered as inspirational models for this purpose, where the above type of support does not exist. The issue of tax relief for employees on employers' contributions to the “Long-Term Investment Account” should also be generally discussed in the context of effectiveness assessment 3rd pillar.*  **Private person 1**  *It is not clear from the description how this should work. If it was about abolishing of the tax deduction for the employer and replacing it by increasing the limit for the taxpayer, then I disagree. Employer should continue to be motivated to contribute to saving their employees.*  **Educational institution**  *Yes. We support the introduction of the Long-Term Investment Account as a form of old-age security frequent in developed countries in Western Europe.*  **Market association No 4**  *Employer contributions should not be directed to more equally targeted products, especially if other financial products are not treated from the perspective of the possibility of influencing the employee's choice of providing company by the employer’s perspective in similar matter as supplementary pension savings work.*  **Market association No 3**  *The question is, however, whether it would be more appropriate to concentrate only on the exemption of income on the account, i.e. to allow the savings saved not to be taxed and, conversely, to allow the limit to be increased.*  **Ad 3:**  **Market operator No 1**  *No, see above. The investment account should not have a time limit.*  **Private person 2**  *In relation to the possibility of extending assets (stocks, bonds, etc.), a revision of rule 60 + 60 would be appropriate, at least in relation to this "other" asset - e.g. in the form of creating another rule applicable to this type of asset investment as Slovakia uses, e.g. long termism of investment.*  **Market Association No 4**  *We consider this single rule to be inadequate. Furthermore, in our opinion, it would be at least necessary that the Long-Term Investment Account not only allows for a one-off withdrawal, but also a regular payment in the form of a fixed-term pension or life annuity, otherwise it will not fulfil the full role of old-age security. One of the possible forms of payment should be the transfer of funds from such an account to supplementary pension savings, e.g. due to the payment of pre-retirement fund.*  **Ad 4:**  **Market operator No 1**  *It does not seem necessary for a retirement account. Not suitable for an investment account.*  **Trade union representative**  *With regard to the pension purpose, it would be necessary to extend the investment phase to at least 120 months and consider the age shift to 65 years in accordance with the statutory retirement age in the Czech Republic.*  **Ad 5:**  **Market operator No 1**  *It would be more appropriate to set up two new accounts - a personal investment account (let's call it ISA) and a personal pension account (let's call it SIPP), so that it is clear what comes under and does not fall under pension legislation.*  **Trade union representative**  *NO, we propose the name “pension investment account”.*    **Private person No 3**  *No. I believe that the name should reflect the fact that the account is used to secure the pension. Also, the acronym "ÚDI" seems to me somewhat unfortunate. For example, I would suggest a long-term investment pension account (“PÚDI”).*  **Market association No 1**  *Given the application of the 60 + 60 rule, we consider the “personal pension account” to be more appropriate.*  **Private person No 4**  *Rather, a “Personal Long-Term Investment Account” or a “personal savings account”.*  **Ad 6:**  **Trade union representative**  *YES, it is not permissible to offer and maintain an account without the need for their expertise.*  **Market association No 1**  *Yes. Here, we consider it essential that these be exclusively licensed, regulated and supervised entities.*  **Market association No 6**  *We propose to expand the circle of people by credit unions.*  **Market association No 3**  *It is not clear to us what services the account manager will provide. If it was just an administrative account, we see no reason why the circle of people should be limited. If investment services such as portfolio management are also provided, restrictions are in place.*  **Ad 7:**  **Market association No 1**  *We assume that the definition of assets will be the subject of a specific proposal, but we expect that these will only be instruments that are regulated.*  **Private person No 2**  *It would be worth considering restrictions on publicly traded assets (stocks, bonds, etc.). Otherwise, you could buy shares in “doubtful” companies (e.g. empty SPVs).*  **Market association No 3**  *Assets that can be placed on the Long-Term Investment Account are very unclear in the Consultation Paper. However, we would recommend minimizing restrictions as much as possible. We see no reason to limit investment instruments in an account other than as part of the investment service provided.*  **Ad 8:**  **Trade union representative**  *The material does not contain any, only foreign models.*  **Private person No 3**  *The article does not specify the treatment of revenues. Question 2.9. is deleted, has the wrong question been deleted by mistake? In general, I would like to see that the proceeds from the funds of ÚDI (dividends, interest) can be reinvested and (without penalty) continuously withdrawn. A situation where the client would have the opportunity to regularly “touch” the revenues already during the savings phase would have an incentive for further savings.*  **Private person No 2**  *Yes, income from the sale of assets from this account, the funds of which would subsequently be used for a re-investment meeting the account criteria, should not be subject to taxation. If bank deposits (current accounts) were excluded from the appropriate assets of the accounts, it would be appropriate to define the length of the period when the funds must be re-converted from "cash" into the correct assets in the form of shares, bonds, etc.*  **Market association No 3**  *We agree with these points, but while taking into account the comments on point 2.3.*  *Furthermore, it should be possible to transform assets that are already subject to the 60 + 60 regime into assets on a Long-Term Investment Account without tax.*  **Ad 10:**  **Trade union representative**  *YES, it is not permissible to offer and maintain an account without the need for their expertise.*  **Market association No 1**  *Yes. We believe that only regulated entities should be able to offer this account.*  *Any product should be distributed only to those authorized by the investment intermediaries.*  **Private person No 1**  *Any product should be distributed only to those authorized by the investment intermediaries.*  **Private person No 2**  *Yes, I understand that the investment would be purchased from non-taxed income and any withdrawal of funds from the account before meeting the conditions (60 + 60 or, for example, the long-term investment) would be subject to taxation. It is necessary to define in this context:*  *- in what regime would the taxation at exit be carried out - taxation as other income according to Section 10 would seem appropriate*  *- further consider the possibility of maximum taxation of past contributions - e.g. 10 years, as is currently the case for life and pension insurance breaches.*  *- to consider the tax regime for extra funds - that is, beyond the exempted legal limits, i.e. the funds will be invested already once taxed) - the tax regime for such proceeds at exit should only capture realized profit. However, if there is already the possibility of exemption in the Income Taxes Act (e.g. holding securities after a certain period of time (3 years) or exempting trading income of up to 100,000), then this exemption should also apply to withdrawing funds from the account.*  *- similarly, if the shares or bank deposits to this account will flow more benefits in the form of e.g. dividend or interest will be treated with the appropriate tax treatment of those benefits. By default, these incomes are subject to a 15% withholding tax on their payment to individuals. It would be useful to consider this opportunity to introduce non-taxation of such income, if they flow to the account.*  *- in case of breach of conditions and early withdrawal (sale of assets), it would be advisable to set up a tax regime so that only withdrawal of funds is taxed - e.g. deposited untaxed funds 100 and only 80 profit due to loss of share value and not additional taxation 100. it would be appropriate to be able to apply the current tax exemptions in the form of a time test or income level (see above) in case of breach of the conditions.*  **Market association No 4**  *The distribution of the Long-Term Investment Account to serve as a pension product should be subject to regulation similar to that of supplementary pension savings.*  **Ad 11:**  **Market operator No 1**  *Do not mix investment account and pension account into one product. See above.*  **Private person No 3**  *Yes: - In particular, dividends on equities held by ÚDI, as well as interest on bonds, should be exempt from tax (if 60 + 60 is abided).*  *- Direct active asset management in ÚDI by its owner should be allowed (similar to Self Managed Superannuation Funds in Australia)*  **Private person No 1**  *Consider cross-border aspects, i.e. whether or not foreign bank or investment firm branches or even foreign banks and investment firms could run an account without a branch.*  **Market association No 4**  *The above-mentioned need for unification of regulation conditions.*  **Market operator No 3**  *In the questions consulted, I first of all miss the question of whether it makes sense to create another product with state support - the so-called "Long-Term Investment Account". In the introduction it is written that even existing products, the state supports in the form of a contribution or tax support that these products are not fully used by citizens. E.g. low monthly contributions to pension funds. There is a question, then, whether the introduction of another similar product is a solution that will truly increase the interest in long-term savings / investment of citizens? Which of the citizens will really orientate themselves in the flood of various "state-supported" products and will ultimately make the right choice? What will be the cost of the state budget, not only due to state aid / tax relief, but also the control of these contributions, etc.?*  **Market association No 3**  *The proposal appears to be a Long-Term Investment Account as an individually managed account, but also to be available to the general public. This concept goes against current practice, where savings are linked to a specific product: pension savings, investment life insurance, building savings, investment funds. Therefore, great resistance can be expected from the institutions that currently manage these products. We also see the fee structure as a big problem, as it will surely be quite difficult to manage such an account and will require additional fees.*  **Market association No 5**  *The material suggests that the 60 + 60 rule should be maintained when transforming assets in the Long-Term Investment Account so that tax deductions previously applied are not necessary taxed. We would also like to make sure that investment transformation will not result in income tax if the previous investment instruments have not been held for at least 3 years (tax test).*  *We consider it appropriate to harmonize output taxation, for example, where the employer's contribution currently has a different regime for investment life insurance, supplementary pension savings paid once and supplementary pension savings paid regularly.*  *In order to bring the conditions of the product included in the Long-Term Investment Account as close as possible, consideration should be given to identifying the beneficiary who would receive the benefit regardless of the outcome of the succession procedure.*  **Ad 12:**  **Market operator No 1**  *Combination of different investment accounts that offer different features to give investors more options to invest and withdraw (for example, there are life assurance bonds in the UK that offer a withdrawal of 5% pa from the contributed capital with deferred tax liability).*  *Tax advantage for more risky investments = SMEs (eg shares on START market or directly start-up companies). The parameters should be precisely defined. In the UK, for example, there is a 30% tax relief on initial investment in Enterprise Investment Schemes (EISs) and Venture Capital Trusts (VCTs). Shares on the AIM market (similar to the START market in the Czech Republic) may be part of the EIS.*  **Market association No 1**  *See the answer to question 2.1. - In our opinion, it would make more sense to increase the existing limits on the taxpayer in order to increase the incentive to further save for old age. This would also motivate those already using existing old-age savings products to start using Long-Term Investment Accounts. However, we prefer to have a separate limit for pension funds as well as a separate limit for the investment life insurance and the Long-Term Investment Account.*  **Private person No 1**  *Increase the yields of current pension funds (see below).*  **Private person No 4**  *I do not see the possibility-benefits in case of opening an account to minors, but also to parents (grandmother, grandfather) - tax benefits for parents in pension insurance until the child starts work (26 years). And also, the possibility of sending money to parents' account, which will increase their pension and yet again the possibility of applying the tax deduction of the taxpayer as in the case of minors, perhaps increase the 48 000 even to 60 000!? And, above all, to keep the possibility to withdraw money at any time - albeit with some financial loss, but it is necessary to maintain this possibility due to the long-term commitment of the funds. But there should be no shortening of early withdrawals due to death or disability.*  **Market association No 4**  *The main changes in individual retirement savings could be a mandatory contribution from employers and automatic entry into the youth system with the possibility of exit (see e.g. OECD recommendations, reform proposal in Poland, etc.).*  **Market operator No 3**  *No. I think that the state budget will have different concerns / priorities. In addition, is it at all a question whether to promote saving of citizens for old age financially? Isn't it a better way to increase financial literacy? Perhaps this dismal state, among other things, is a result of resignation from the compulsory “leaving examination” in mathematics.* **2.2 Simple joint stock company**  **Current status and current legislation**  In the event that companies or start-up companies want to offer securities publicly, they must establish a joint stock company when choosing from capital companies, as the Corporations Act prohibits public offering of common certificates or their trading on a European regulated or other public market in a limited liability company (Section 137 (4) Corporations Act). A public offer pursuant to Section 34 (1) of the Capital Market Business Act is any communication to a wider range of persons containing information on the investment securities offered and the conditions for their acquisition that are sufficient to enable the investor to make a decision to buy or subscribe for such investment securities. They may be publicly offered investment instruments, inter alia, shares or similar securities representing a share in a legal entity (Section 3 of the Capital Market Business Act). Pursuant to Section 34 (1) of the Capital Market Business Act, public offering of trading on a regulated market is not considered to be a public offering, but the Corporations Act also explicitly prohibits public offering. For this reason, from the capital companies institute of a public offer in this regard can only be used by a joint stock company, and not a limited liability company. The impossibility of public offering deprives companies and start-ups of investment offers from investors. The current legal regulation of a common joint stock company is regulated in Sections 243 - 551 of the Corporations Act. A limited liability company cannot also issue convertible bonds under current legislation. However, a registered capital of CZK 2,000,000 or EUR 80,000 is required for the formation of a joint stock company (Section 246 (2) of the Corporations Act). Articles of association, respectively, the memorandum of association, when establishing a public limited company, also requires the form of a public document (Section 8 of the Corporations Act).  **Design of solution variants**  Three variants are considered:   * option 0 - maintaining the current status * option 1 - abolition of ban on public offering of common certificates * option 2 - creation of a simple joint stock company   **Option 0 - maintaining the current status**  The current state does not allow a public offering of securities other than through the joint stock company, for its foundation it is necessary to have a registered capital of 2 000 000 CZK as a limited liability company prohibits public trading of common certificates. Maintaining the status quo is not a change in costs or benefits.  **Option 1 - abolition of ban on public offering of common certificates**  Abolishing the ban on public offering and trading in common certificates would constitute liberalization in relation to a limited liability company. This solution would be an option for persons wishing to set up a capital company that allows public offering and public trading of participation securities without the need to set up a joint stock company with high costs. Choosing this option does not mean a mandatory cost. The change will not require public costs. Choosing this option requires a change in legislation. With regard to that of a partners in a limited liability company are partners - investors in a closed-ended private company where they can regulate the transfer of their shares themselves in a memorandum of association, we could say that by publicly trading in the stock certificates, they will not have control over who will acquire these participating securities and may have repercussions with regard to their protection, which may be reduced.  **Option 2 - creation of a simple joint stock company**  Creating a simple joint stock company would mean expanding the types of capital companies. A simple joint stock company should not be a sub-type of joint stock company and should not be subject to the requirements of European law. In order not to circumvent this institute, it should not be a fully-fledged joint stock company, but should be designed as a temporary company which compulsorily constitutes a reserve fund with a certain limit, after which it will be compulsorily transformed into common joint stock company. There would also be a number of aspects expressing the simplicity of this institute, e.g. establishing without the need for a notarial deed. This liberalization in relation to the establishment without the need for a notarial deed would lead to a reduction in costs and administration for entities setting up this type of company. The introduction of this institute will not be a mandatory cost. Investor protection is maintained, the impact on the business environment is positive and the Czech Republic's competitiveness is increased. Choosing this option requires a change in the legislative framework.  **Proposal of the most suitable solution**  Under the current situation the best option seems to be to maintain the existing situation and have the possibility of any legislative changes in the future to be more analysed in detail e.g. through *ad hoc* working group. Maintaining the status quo and choosing option 0 does not impose a burden on public budgets or administrative costs with a view to a change in the legal framework but the capital market, in particular *start - up* platforms will not develop.  **Summary of impacts of the chosen Option 0**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + zero administrative costs due to the changeless legal framework | - no changes in capital market development (*start - up* platforms) | |  |  |   **Consultation:**   |  |  | | --- | --- | | Question | 1) Do you welcome the possibility of introducing a simpler form of joint stock company in the Czech Republic?  2) Do you consider the current registered capital of a joint-stock company to be the only restriction that prevents startups from establishing a joint-stock company?  3) What other instruments or measures can simplify a joint-stock company in order to create a simpler joint-stock company?  4) What is the optimum amount of registered capital for a simpler joint stock company?  5) How do you perceive the establishment of a simpler form of joint-stock company and, at the same time, the impossibility of public subscription of shares - as is the case in some foreign regulations?  6) Should a simpler form of joint-stock company be established in the form of a notarial deed?  7) How do you perceive the possibility of issuing only registered book shares and the obligation to register in the share register maintained by the Central Securities Depository? |   **Ad 1:**  **Market operator No 1**  *We do not understand what this form will contribute to the development of the capital market. When the company goes to the capital market for money, it must be of some size, it must have a minimum capital of about EUR 1m. It is not a problem for such a company to have the registered capital of 2 million CZK required by Corporations Act for joint stock company Anyway, a simple joint stock company would have to be transformed into a regular joint stock company, so that it starts from the beginning as a limited liability company with a capital of 1 CZK an then changes into joint stock company when it wants to offer shares or bonds. As mentioned above, the non-institutionalized capital market in the form of PE, VC, BA works very well. We see the MF National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023 as an institutional market development concept, where the goal is to bring more listed issuers and issues so that investors can invest more, both retail and institutional. A simple joint stock company can initially help start-ups before turning to the institutionalized capital market for funding. But we are not sure that private equity, venture capital or business angels will invest in this form, and this is irrelevant for the development of the capital market.*  **Supervisory Authority**  *We do not agree with the MF's proposal to introduce a simpler joint stock company and do not consider the MF's reasoning convincing. First of all, we point out that the law of commercial corporations, as contained in particular in the Corporations Act, is a priori the general regulation for “business” legal entities. If the MF mentions a problem in the cumbersome nature of this general legal regulation (high registered capital for a non-public joint stock company, or a complicated establishment and creation by registration in the Commercial Register), then it should be addressed to all entrepreneurs, respectively all as, not just for start-ups on the capital market. We do not consider the creation of another distinctive form of a legal entity desirable (even only in the capital market area and for “start-ups”) without further detailed analysis, even for the development of the capital market. If the Ministry of Finance states that the main reason for the creation of a simplified company is the possibility to reduce or eliminate the capital requirement, then it should be added that even for a common joint stock company the capital requirement can be reduced from EUR 80,000 to EUR 25,000 , this is allowed by the EU regulations and for a corporation that should raise capital from the public, the amount of EUR 25,000 (approx. CZK 625,000) is relatively small and its further reduction is not desirable. In addition, start-ups can be used to establish a legal form of a limited liability company (without offering the public or offering a capital investment in another form) or modern forms of raising capital (cf. e.g. blockchain and project share). In addition, start-up capital can be hedged from a limited set of individuals - professional investors, or through the issuance of debt securities or non-securities / investment instruments (see blockchain). Establishing a distinctive simplified form of joint stock company only for the needs of start-up would, in our opinion, give rise to the need to define start-ups or other conditions for using the simplified form of joint stock company, otherwise the concept of joint stock company could be completely emptied as practically only listed companies (and potentially also limited issuers' interest in listing quotations). Moreover, it is not clear in the MF material whether a start-up once established in the form of a simple joint stock company would remain in the form of a simple joint stock company forever, even if it was no longer a start-up and the reasons given for the simplified regime would no longer exist. Furthermore, it would be necessary to elaborate the rules for the conversion of a simplified joint stock company into a full-fledged joint stock company (or justify the reason for excluding such conversion), and to analyse in detail the regulation in other countries how much can it inspire the Czech environment, what were its reasons and if they are applicable even in the Czech Republic, all relatively soon after the adoption of the new Corporations Act. Without such an analysis, it is not useful to propose a new form of joint stock company and it cannot be discussed responsibly.*  *We do not agree with the introduction of a simpler form of joint stock company proposed by the MF without further analyses and discussions with representatives of market entities and other stakeholders that would confirm the validity and applicability of such a form. Please note that the consultation paper does not address whether the entrepreneur established in the form of a simplified as could choose this form without specific conditions for its establishment (e.g. be a start-up) and depending on whether he could keep it after it no longer fulfils the conditions for its establishment.*  **Market operator No 3**  *No, I think that it would be sufficient to reduce the required amount of registered capital as to, for example, 500 thousand CZK.*  **Market operator No 2**  *Any simplification is welcome. However, it must not occur that the founding will be misused to hide the final owners, beneficiaries. This could also endanger investors in various types of investment instruments.*  **Market association No 3**  *Overall, we believe that these proposals would rather be supported with a view to developing venture capital investment in the Czech Republic. However, we do not see this issue as critical because of the liberalization of business corporations in Corporations Act. The aim should be: exclusion of certain rules required by European law for public limited liability companies; setting “default” solutions to which shareholders could easily join or modify or exclude. The most suitable form seems to be the sub-form of a classic joint stock company with the possibility of: registered capital of CZK 1; looser rules for the payment of profits and other own resources, including advances; public subscription, respectively; public tenders, with the scope of addressees being limited; looser rules for subscription and acquisition of own shares; free transferability of shares by share type (similar to limited liability company); statutory anchoring of debt to equity conversion; relaxation of the rules on capital increase, in particular the abandonment of constitutive entries in the Commercial Register; ESOP; default arrangements typical of shareholder agreements with publicity in the Commercial Register. The possibility of establishing in a simple form would make the process cheaper, but it would not be systematic in the Czech environment, and we do not perceive this requirement as essential. The abandonment of the public document would be more helpful in changing the share capital and subsequent changes in the articles of association. We prefer book-entry shares only as an option, with compulsory bookkeeping needing to solve the cost problem. It would be more practical to remain in certificated shares/bulk share certificates and to strengthen the importance of the list of shareholders maintained by the company itself or by another independent person (notaries, lawyers).*  **Market association No 5**  *In general, we support efforts to simplify the business environment for start-ups. In this endeavour, however, we consider it more beneficial to initiate a discussion on the removal of the ban on publicly offering and accepting the shares of a limited liability company (rather than creating an entirely new construct of a simple joint stock company). Except for the above-mentioned ban, in our opinion the limited liability company in its present form works sufficiently in terms of start-ups. This is evidenced by the fact that most of them choose the legal form of the company. “Unblocking” the trading of common certificates in this regard, we perceive as a more rational approach, and also because existing companies (start-ups) would not have to adapt (change) their existing legal form.*  **Private person No 7**  *I don't know how you want to be inspired by the Slovakian from of simple joint stock company. For this reason, our lawmakers established a second central depository (ncdcp.sk, the first is cdcp.sk), which is the best example of their incompetence. Slovakia is now probably the only state in the world with 2 central depositories. At the same time, the NCDCP is not exclusively for shares. All other securities are also there. Only shares can be registered only in NCDCP. The depository is generating huge losses and people are not interested in being the only thing that interests me a little is that simple joint stock company in Slovakia publishes data on shareholders. The Commercial Register publishes data on shareholders (partners), but not on shareholders. On the other hand, even this is not absolutely true, because "the end user of the benefits" is published somewhere, so it is all so complicated.*  **Ad 2:**  **Market operator No 3**  *Yes.*  **Supervisory Authority**  *We do not consider the amount of registered capital to be an important element for establishing start-ups, since the capital of start-ups can be secured not only by the public, but also by a limited group of people, through the issuance of debt securities or other constructions. On the contrary, it is not usual for retail investors to enter a generally risky start-up project and, if so, to a limited extent. We consider the premise that start-ups must raise capital from the public through the issuance of shares false.*  **Ad 3:**  **Supervisory Authority**  *We do not see the need for tools or measures. As mentioned above, if the MF considers that other instruments or measures are necessary, the possibility of adapting the general legal regulation of a joint stock company should be primarily analysed, the primary solution should not be to create a new form of legal entity with elements of the joint stock company.*  **Ad 4:**  **Supervisory Authority**  *We believe that the current amount of the registered capital of the company is satisfactory and we do not perceive the market demand for its reduction or the objection that the amount of capital would prevent the business in this form of legal entity. Please note that before the effective date of the Corporations Act (until 31 December 2013), the minimum share capital for public joint stock company (i.e. based on a public offer of shares) was CZK 20,000,000 and for non-public joint stock company and established without public offer of shares CZK 2,000,000. Reducing the share capital requirement below the level required by EU regulations (EUR 25 000) does not seem necessary. The purpose of the investment in the registered capital, respectively the creation of registered capital is not only a guarantee function, but also the accumulation of capital for business (which, moreover, the MF's proposals to facilitate the entry of investors are aimed at). Without minimum deposit amount, respectively registered capital however, even a meaningful business project cannot be launched. In practice, limited liability company, where the deposit is set at CZK 1, the deposit is significantly higher (partly because the project cannot be actually started with CZK 1, and such a company justifiably will not be trusted by the public). Further, according to Section 253 (1) of the Corporations Act, only 30% of the value of the subscribed shares is required for the effective establishment of a public limited company.*  **Market operator No 3**  *500 thousand CZK.*  **Market operator No 2**  *Cost of setting up a company. An amount between 100 and 500,000 CZK is adequate. These are the finances that the company only consumes during its establishment. The subsequent economy of the company will only be about actual performance of the company*  **Ad 5:**  **Supervisory Authority**  *We refer to the disagreement with the introduction of a simpler form of joint stock company, although reserved e.g. for start-ups. In addition, offering shares to the public without further understanding the risks may jeopardize trust in the capital market if start-up shares are generally a high-risk investment. Please note that the CNB constantly strives to protect the retail public and therefore, under the mandate to ensure the safe functioning of the financial market, lays down rules for offering or restricting retail risk investment instruments (see general measures for CFDs and binary options or supervisory benchmark for corporate bonds).*  **Market operator No 3**  *Negatively.*  **Market operator No 2**  *It doesn't make sense to us. According to the accompanying text, we would assume that the intention of this company should be to reach for capital by means of a public subscription. So that it would make Start-ups easier to get to finance. Non-public trading can now be carried out by a limited liability company with issued common certificates.*  **Ad 6:**  **Supervisory Authority**  *In general, we do not agree with the simpler form of joint stock company at this stage.*  **Market operator No 3**  *Maybe.*  **Ad 7:**  **Market operator No 1**  *We are ready to do so, in the case of a small registered capital, the fees would be very low and registration in the CSD Prague would ensure transparency.*  **Supervisory Authority**  *Any simpler form of joint stock company should not reduce the transparency standards introduced in 2013. Without further detailed analysis, however, we generally disagree with the simpler form of joint stock company.*  **Market operator No 3**  *It's restrictive.*  **Market operator No 2**  *Okay. Make them always known owners. It will dispel any suspicions and will not be misused by such companies to mislead or conceal assets.* **2.3 Self-certification of wealthy investors (potential business angels)** **Current status and current legislation**  *Business angels* represent an important capital market financing option for start-ups, which often have financing problems and, due to their high-risk profile, are not suitable for bank loans or for retail-oriented investment funds. *Business angels* are usually former entrepreneurs themselves, providing start-up entrepreneurs with *smart money* inaddition to finance and are benefitting from their advice, observations, knowledge and contacts. This non-financial assistance is particularly important at the earliest stages of development, when management is incomplete and usually inexperienced. The current legislation does not define *business angels* inany way and their existence not regulated, nor are the conditions for their investment.  The issue of *business angels* in the Czech Republic is dealt with in the World Bank study “*Stimulating Business Angels in the Czech Republic*”, which maps the local environment of *business angels* and formulates recommendations for its further development. From the perspective of the regulatory environment, the World Bank sees as essential to the current and future legislation that it does not constitute a barrier to investment by *business angels* in start-up companies, and in cases where it is not possible to remove them, minimize their negative impact, or make possibility to grant an exemption for *business angels* who meet certain minimum criteria. These individuals would then refer to themselves as certified *business angels*.  The World Bank specifically suggests so-called self-certification i.e. The accreditation consisting in obtaining a certain status that would testify that this investor has a certain wealth and experience and is thus a kind of qualified investor, while as indicated by marking self-certification in the recommendations of the World Bank, to obtain this designation the decision of any authority would not be required. The status of certified *business angel* would entail exemption from any restrictions on the acceptance of investment offers and consequently self-certification would de facto waive the protection of a small investor. In this context, analogy to the statement of risk acceptance pursuant to Section 272 (3)(h) or (i) of the Management Companies and Investment Funds Act and the potential extension of the application of this provision to *business angels*, whereby an investment of that amount would have to be made at least once, but not on a case-by-case basis.  A similar arrangement has been found in the UK since 2000 under the “*Financial Services and Markets Act 2000”,* when, when proving certain conditions or declarations of compliance, a potential *business angel* gains the status of “*high net worth individual*” (signing declaration onminimum income / net assets) or “*sophisticated investor”* (signing a risk acceptance statement annually) and subsequently is not subject to any legal restrictions of a protective nature related to the acceptance of investment offers.  In the UK it is further stated that unless it falls within an individual into the above categories (*high net worth individual* or *sophisticated investor*) regimen called “*restricted investor”* will beapplied to him which means that an individual can invest a maximum of the value of 10 % of its net worth (excluding residence and assets in. it and insurance / pension income).  At the same time, the World Bank suggests that the definition of the concept of *business angel* shouldbe construed as a guide only, and the statute itself would therefore depend mainly on the will of the potential bearer whether he wants to be designated as a *business angel.* This recommendation is based on the premise that a *business angel* makes an investment of personal conviction and voluntarily and should therefore not be required to formally register with a government agency, as this could be dissuasive for him.  **Design of solution variants**  Three variants are considered:   * Option 0 - maintaining the current status * Option 1 - to allow so-called self-certification, i.e. accreditation consisting in obtaining a certain status that would certify that a given investor has a certain wealth and experience, or divide investors into several categories according to the British model * Option 2 - introduction of the institute of investor declaration   **Option 0 - maintaining the current status**  The law in the Czech Republic does not provide for the existence of *business angels* and offers only similar categories of qualified investor in Section 272 of the Management Companies and Investment Funds Act, or a professional customer upon request pursuant to Section 2b of the Capital Market Business Act. The current situation does not prevent individuals from becoming an angel investor, but the absence of specific legislation in practice carries, for example, restrictions on accepting investment offers or distributing investment proposals.  **Option 1 - enable self-certification or divide investors into more categories according to the British model**  As a result, *business angels’* certification can help to remove any regulatory barriers to easy distribution of initial investment proposals or to limit the number of investors participating in individual offers. Furthermore, categorizing investors in a system similar to that in the UK could help to protect investors and improve the financial literacy of the population, as investors would identify themselves more closely with their investor category and would have to make a statement in the case of riskier investments. Option 1 requires a change in the legal framework and represents the cost of adapting to this regulation. A negative may be the reluctance to be formally identified as a business angel investor.  **Option 2 - introduction of the institute of investor declaration**  Option 2 is considering introducing an institute of investor declaration aimed at retail investors and thereby protecting them, while the category of the so-called wealthy investor, which is essentially a *business angel,* is exempt from this obligation to make a statement. Such an investor does not need protection as an ordinary investor, and it is therefore considered to adjust the terms of his investment more freely. Therefore, an insurance policy is being considered for small investors, which should prevent these small investors from investing all of their savings by declaring their assets. According to the British model “restricted investor”, it is considered to introduce an explicitly unnamed category of limited investor who, if the investment firm provides him with the main investment services referred to in Section 4 (2)(a) or (e) in respect of investment instruments which are not simple investment instruments, sign a written declaration on its request that it will not invest more than 10% of the value of its assets consisting of cash and investment instruments in those investment instruments and of such investment instruments issued by one issuer more than 5% of the value of its assets consisting of cash and investment instruments.  The semi-professional investor (“wealthy investor”) (modeled on the British “high net worth individual”), which should be defined as a person whose cash and investment property amounts to at least CZK 2 500 000 and whose gross income and profit before tax in last year corresponds to at least CZK 1,000,000, and such a person is obliged to self-certify only if the investment firm provides him with the main investment services referred to in Section 4 (2) (a) or (e) in relation to investment instruments and should normally conduct a suitability and adequacy test - in which case the person shall certify as a ' wealthy investor' by a written declaration .  This option needs changes in the legal framework, for investment firms need to adapt to the new legislation, the negative aspect can be a risk circumvention of the law by simply meeting the formal requirement of a declaration that customer invests only a portion of their savings. A positive feature is the increased protection of retail investors.  **Proposal of the most suitable solution**  The most suitable solution seems to be the option 2. A deeper analysis revealed that so-called business angels investors invest their funds without the need for the law to regulate their investment, albeit positively by explicit self-certification or otherwise. As more necessary appears the need to protect ordinary retail investors so that, before the investment decision, they must declare in writing that they do not invest most of their savings, and it is proposed to exclude from this obligation a person of a so-called wealthy investor who does not need increased protection, which also fulfils to a certain extent the definition of wealthy investors under Czech law (business angels investors). This option for investment firms entails the administrative costs of adapting to the new regulation and extending the supervisory duties of the authority  **Summary of the impact of the chosen Option 2**   |  |  | | --- | --- | | **Benefits / Positives** | **Costs / Negatives** | | + protecting small investors from investing all their savings  + non-imposition of investment restrictions for persons (wealthy investors) who do not need increased protection  + indirect support for *business angels* by defining the wealthy investor in the law | - the risk of a mere formal compliance with the retail investor statement  - amendment of a legal regulation and related obligations, especially for investment firms |   **Consultation:**   |  |  | | --- | --- | | Question | 1) How do you view the World Bank's proposal for self-certification?  2) Should the (self) certification also apply to exceptions other than those mentioned above (i.e. protection related to the acceptance of investment offers)?  3) In your opinion, who should certify those interested in Business Angel status?  4) What do you think should be the key parameters that a business angel should meet, i.e. it is only a question of property or other parameters?  5) How much do you think the definition of a business angel and a qualified investor should blend in? Should the application of Section 272 (1) (h) or (i) of the Management Companies and Investment Funds Act extend similarly to business angels?  6) Shall the 10% restriction be imposed on less experienced investors, as it is in the UK? |   **Results of the consultation**  **In general:**  **Supervisory Authority**  *We agree with the idea of ​​promoting business angels, but we are of the opinion that current legislation is sufficient and does not constitute an obstacle to investments of a similar type. We believe that introducing another “type” of investor into legislation is not necessary. However, if a new type of investor is to be introduced, we propose to use an analogy with a “professional customer on request” pursuant to Section 2b of the Capital Market Business Act or Section 272 of the Management Companies and Investment Funds Act. Therefore, if an investor wishes, he may declare himself to be a professional customer under Capital Market Business Act or a qualified investor under Management Companies and Investment Funds Act investor and this declaration is deposited with the investment firm or manager. We also believe that it should not be a certification granted by an institution or an equivalent to list of certified investors. We believe that this could result in a counterproductive outcome, rather discouraging investors.*  **Market association No 3**  *In our opinion, the regulation of business angels would have a rather negative impact at the moment - some entities might be discouraged because of excessive administration. If self-certification is to be enforced, it should create a market advantage for certified investors, who could thus gain a more favourable status in negotiating their investments, while at the same time providing greater confidence and certainty for the investment beneficiary. We believe that a business angel and a qualified investor are two very different categories, because each of them basically invests in different assets with different risk profiles.*  **Ad 1:**  **Supervisory Authority**  *In our opinion, self-certification is not necessary. The current legislative framework provides ample opportunities for investment in start-ups. We do not see any obstacles in business angel type of investment in current legislation.*  **Market association No 1**  *Without an answer.*  **Market operator No 1**  *We do not understand WB's recommendations very much. If self-certification was entirely voluntary, it would not matter. It should be noted that the corporate finance market in the Czech Republic works very well, all firms in the Czech Republic are under the scrutiny of private equity firms, venture capitalists and business angels.*  **Market association No 2**  *No answer.*  **Market operator No 3**  *I consider the World Bank's proposal for self-certification unnecessary.*  **Private person No 5**  *Positively.*  **Private person No 3**  *I agree.*  **Ad 2:**  **Supervisory Authority**  *No, as mentioned above, in our opinion, self-certification is not necessary.*  **Market Association No 1**  *Without an answer.*  **Market Association No 2**  *Without an answer.*  **Market operator No 3**  *No.*  **Private person No 5**  *I am not sure. It should apply to everything that is otherwise mandatory (all bureaucracy).*  **Ad 3:**  **Supervisory Authority**  *Certification should not be “public status”. If we consider an analogy of voluntary certification, it should be offered by the Czech Capital Market Association (AKAT).*  **Market association No 1**  *Without an answer.*  **Market operator No 1**  *There should be fixed rules for this and there is no need for BA certification. In the UK, a financial advisor must ask the investor to sign the HNW and SI certificate. If the state does not intend to favour BA in some way, for example by taxation, certification is unnecessary administration. Moreover, many investors act as BAs without calling or perceiving themselves this way. They simply provide money and advice to a business they know they think is promising. The relationship between BA and the firm in which they invest is bilateral, the role of the state in this respect is not essential or even desirable.*  **Market association No 2**  *Without an answer.*  **Market operator No 3**  *Nobody.*  **Private person No 5**  *The candidate himself by his statement.*  **Private person No 3**  *I agree with WB's view that the certification process should not be linked to the decision-making of the authorities or institutions but would be a self-certification of the candidate. The need to go through qualification procedures would not contribute to increasing the investment activity of citizens.*  **Ad 4:**  **Supervisory Authority**  *A qualified investor or professional customer on request should meet requirements in areas such as: property, investment experience, regularity of investment, ability to bear high risk.*  **Market association No 1**  *Without an answer.*  **Market association No 2**  *Without an answer.*  **Market operator No 3**  *I consider the proposal to be superfluous.*  **Private person No 5**  *No, respectively, just your decision.*  **Private person No 3**  *Assets and experience, but everyone should decide for himself or herself about their qualifications for this activity.*  **Ad 5:**  **Supervisory authority**  *We propose not to introduce the term “business angel” into the legislation, see also the CNB's general opinion above.*  **Market association No 1**  *Without an answer.*  **Market association No 2**  *Without an answer.*  **Market operator No 3**  *No.*  **Private person No 5**  *A business angel should be more open than a qualified investor.*  **Private person No 3**  *No.*  **Ad 6:**  **Supervisory Authority**  *With the current definition of a qualified investor under the Management Companies and Investment Funds Act and a professional customer upon request under the Capital Market Business Act, such a restriction is not necessary.*  **Market association No 1**  *Without an answer.*  **Market association No 2**  *Without an answer.*  **Market operator No 2**  *You (we) will never protect everyone. It would be another condition that someone will try to circumvent - the principle will probably come up quickly. We live in the Czech Republic. Restrictions will prevent some people who are willing to bear a higher risk, evaluate their assets and protect +/- a similar number of individuals who would invest more of their assets in a product that is not suitable for them. The result will never correspond to the effort and work done. It should be noted that you will never protect everyone, always there will be angry people, and no one will admit their mistake. May people prefer to be educated from young age to retirement and take care of their money. Only then will it make sense. When “hands of people are constantly being led”, they will never be independent, responsible and think. And the state will only endlessly invent their protection, which will never be effective enough.*  **Market operator No 3**  *No.*  **Private person No 5**  *At least for the beginning yes, e.g. for the first 10-20 years of such a law.*  **Private person No 3**  *No.* **2.4 Regulation of crowdfunding platforms marketing bonds** **Current status and current legislation**  For the capital market, priority is given to investment crowdfunding, the development of which is also discussed in the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023. However, it should be noted that the concept of investment crowdfunding has expanded to bond offering platforms since the adoption of the Strategy, taking into account the CNB's FAQ on marketing bond issues on internet platforms.  The above CNB document distinguishes three types of bond platforms, and in the case of the first two types of bond platforms, according to the CNB's interpretation, the features of providing the main investment services are fulfilled, whether accepting and transmitting orders, placing investment instruments or investment advice.  The largest scope for reflection on the potential regulatory adjustment is provided by the so-called pure advertising platforms, where the platform also acts as a service provider (but not an investment provider) and the issuer (natural person) and investors are consumers. The fact that the platform does not provide investment services means that it is not subject to CNB supervision and is not otherwise regulated (like the issuer) - as compared to regulated platforms, it is not obliged to fulfil e.g. obligations arising from EU directives.  The current legislation in force does not regulate crowdfunding or internet platforms marketing bonds.  For the above reasons, it should be considered whether it would be appropriate to introduce regulation of these platforms.  **Design of solution variants**  Three variants are considered:   * Option 0 - keep the current status * Option 1 - it is proposed that the advertising platforms explicitly state on their website that they are not subject to CNB supervision, but to the extent of this declaratory obligation they will nevertheless be subject to CNB supervision and for this purpose will also be listed in the CNB's list * Option 2 - regulation of advertising for investment instruments with the supervision of regional trade licensing offices   **Option 0 - maintaining the current status**  At present, there is a lack of legislation in the Czech Republic that would result in a “disclaimer“ obligation for advertising platforms that would provide greater investor protection, while at the same time there is no regulation of advertising for investment instruments. This reduces the protection of investors in these bonds. Maintaining this situation is a risk for the growth of trading in fraudulent bonds promising unrealistic returns.  **Option 1 - listing of advertising platforms in a list maintained and supervised by the CNB**  In option 1, it was considered that the advertising platforms should explicitly state on their website that they are not subject to CNB supervision, but to the extent of this declaratory obligation they would be subject to CNB supervision and would also be listed for that purpose. This option increases investor protection and increases the costs for the supervisor by imposing a new obligation. The downside to this option may be whether the list of advertising platforms addresses the problem of fraudulent bonds.  **Option 2 - regulation of advertising for investment instruments with the supervision of regional trade licensing offices**  Option 2 considers regulating advertising for all investment instruments primarily in order to ensure at least a minimum level of regulation of advertising portals that are not subject to CNB supervision but nevertheless offer investment instruments to retail clients on their sites. It is contemplated that advertising should warn that no investment is risk free. Supervision of advertising for investment instruments should be performed by regional trade licensing offices. This option represents an increase in the protection of investors in investment instruments, an increase in the costs of regional trade licensing offices with regard to the need for a new supervisory obligation.  **Proposal of the most suitable solution**  Given the negative of option 1, i.e. whether the list of advertising platforms addresses the problem of fraudulent bonds and the added value of CNB supervision, it seems more appropriate to regulate the advertising of advertising platforms of all investment instruments similar to regulation of gambling advertising and regional trade licensing offices. The positive aspect of this option is an increase in investor protection. A negative factor is the need to adapt to the new legislation and the negative costs of regional trade licensing offices, which will be accompanied by a new supervision obligation. However, their burden appears to be less than that of the CNB in ​​option 1, because the regional trade licensing offices are already supervising advertising and there is no need for specialized supervision by the CNB. For this reason, option 2 seems to be the most appropriate.  **Summary of impacts of the chosen Option 2**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + investor protection | - costs of regional trade licensing offices | |  |  |   **Consultation:**   |  |  | | --- | --- | | Question | 1) Do you consider it a problem, in terms of consumer protection, that the advertising platforms are not supervised by the Czech National Bank?  2) Is regulation of advertisement an appropriate way to regulate these platforms, considering that these entities are not subject to regulation related to the provision of investment services? |   **Results of the consultation**  **In general:**  **Supervisory Authority**  *The CNB has recently published a FAQ on internet platforms marketing bonds. This material is intended primarily for platform operators to consider a possible application for a license to perform core investment services under the Capital Market Business Act. Therefore, we believe that mandatory information on whether or not a platform operator is an investment firm authorized under Section 5 of the Capital Market Business Act would be sufficient to inform investors using platform services. We consider the introduction of the list of online advertising platforms offering bonds maintained by the CNB to be superfluous.*  **Market association No 5**  *Although we realize that in some cases the boundaries of providing investment services may not be quite clear (especially for investment advisory), and without at the same time undermining the importance of ad hoc assessment of a particular entity, we tend to believe that these types of platforms usually provide investment services. In these circumstances, we see no reason not to be subject to the relevant public regulation of the Capital Market Business Act. In this respect, we warn against the current legal situation, leaving room for such a qualification of their activities that completely excludes them from the CNB's supervisory powers. Even if no investment services were identified in a specific case, in line with the current CNB trends towards increased protection of retail investors (cf. CNB Supervision Benchmark No 2/2019), we perceive their vulnerability to the bond issues of some issuers with dubious business models. For this reason, we see a certain degree of at least the minimum involvement of the CNB (as a capital market regulator/supervisor) in the operation of Internet platforms solely “advertising” (i.e. de facto intermediating) relevant investment instruments, albeit subject to general advertising regulation rules. We consider the proposed measure of mandatory registration and reporting of the CNB's role in the supervision of these entities to be potentially beneficial. We even believe that stricter regulation would probably be envisaged.*  **Market operator No 2**  *Concerning the text: “With regard to the fact… in its list“: on this text we would like to remark that investors know this very well. Most of them can find it themselves. But they only know about it until something goes wrong. That is, if they choose a title that goes well, they knew about it and they didn't mind the risk. However, if there is a problem, then they did not know anything (and are able to deny the information they have verifiably at their disposal) and try to put their responsibility on someone else.*  **Ad 1:**  **Supervisory Authority**  *From a consumer protection point of view, we do not consider it a problem that internet platforms offering bonds that operate only services of a purely advertising nature are not supervised by the CNB. We believe that the introduction of a list of advertising platforms would not benefit consumer protection. If there were a requirement to maintain such a CNB list, we believe that it would be necessary to introduce a sanction for entities that would not be included in the list. This would mean some form of CNB supervision. The disclaimer that the activities of operators of such platforms is not subject to CNB supervision is meaningless. At the same time, we are concerned that mere entry into the list kept by the CNB should not be misused in marketing materials by the entities concerned. Moreover, if the CNB kept such a list, this would have no significance in terms of consumer protection. The list would serve practically only for registration purposes. It can also be assumed that advertising websites may also apply for registration, where investment instruments may be offered, but which primarily serve for the sale of other items (Aukro, Sbazar). In our opinion, the analogy with the lists kept by the CNB pursuant to Section 596 of the Management Companies and Investment Funds Act cannot be used, for example, for advertising internet platforms offering bonds. Entities included in these lists perform any of the regulated services (e.g. managers, administrators, investment fund depositories) or other activities (e.g. liquidator, trustee).*  **Market association No 1**  *In the interest of consumer protection, we tend to prefer to have the CNB supervise these platforms.*  **Market operator No 1**  *Conversely, if they were somehow supervised and regulated, it would give them the appearance of legitimacy. In principle, we do not mind the action crowdfunding platforms, but it should be clearly indicated that they are not licensed and are not, as well as corporate bonds without a prospectus, intended for the public offering of investment instruments to retail investors. We do not recommend raising putting off of regulatory obligations over EUR 1 million, as allowed by EU legislation in the context of gold-plating by Member States.*  **Market association No 2**  *In the interest of consumer protection, we tend to have the CNB supervise these platforms.*  **Trade union representative**  *YES.*  **Market association No 3**  *We don't.*  **Market operator No 2**  *We are the operator of such platform. As the operator of this platform, we logically cannot see a problem in this, we do everything to do business within the framework of the applicable legislation. Since, unlike many similar and competitive platforms, we are not dependent on selling our own titles, we can cope with some form of regulation. However, we do not want to provide investment advice and facilitate the sale of investments. We do not operate and do not plan to operate such activities.*  **Market operator No 3**  *No.*  **Private person No 1**  *Given the large development of such platforms, the high proportion of consumers investing on such platforms, and the high proportion of high-risk bonds distributed through these platforms, it seems that the stricter regulation and supervision shall be performed.*  **Private person No 5**  *No, on the contrary.*  **Private person No 3**  *Yes.*  **Ad 2:**  **Supervisory Authority**  *We believe that platform operators of a purely advertising nature are subject to advertising regulation. In terms of the capital market, however, their regulation has no practical benefits. The distribution of primary issues involves two basic areas from the point of view of the investor (consumer) and its protection. The first is enough information. In this area, we consider as a step in the right direction the proposal to add further mandatory information to the terms of issue, as stated in the next consultation measure. The second area is the expertise of the distributor of issue and the rules for dealing with the investor, i.e. in this case the operator of the sales (internet) platform and the quality of his services. In this area, the issue of limiting the distribution of primary issues to persons regulated by the Capital Market Business Act may be discussed in this area, where the issue of primary bonds could only be offered by issuers through investment firms.*  **Market association No 1**  *Yes. We consider this to be the key.*  **Market association No 2**  *Yes.*  **Trade union representative**  *YES.*  **Market association No 3**  *We propose to wait for European legislation. We can imagine regulations aiming at greater transparency of platforms for the public, i.e. that the crowdfunding platforms can be labelled in a uniform way and the consumer can easily verify in what regime they invest their money.*  **Market operator No 2**  *It depends how the control is set. This, of course, depends very much on how such advertising regulation should be set up. Already, we are spending quite a lot of money on creating proper marketing campaigns. We strive not to use any misleading statements and if we are unsure, we always consult with an experienced law firm (on financial and investment law). We know in the market that there are misleading ads that no longer meet current standards and legislation. E.g. “Secured bonds”, “risk-free investments” etc. Wouldn't it be easier to start enforcing the current law first? This will lead to the first cultivation of the market, discourage other unfair advertisers, and then come up with another regulation, law or norm. We may find that it will not be needed. If such regulation starts to come up, will it only apply to bonds? Or will it also affect similar products - such as bills of exchange that are traded on a far larger scale than bonds? Without public registers, records in the central depository and them not being subject to any regulation at all. Not to mention the quality and method of public sale.*  **Market operator No 3**  *No.*  **Private person No 1**  *Especially inappropriate is the practice where platforms often use in their promotion the fact that the prospectuses of the bonds, they offer have been approved by the CNB, thus giving less experienced consumers the feeling that there is no risk associated with investing in such bonds. Information about the CNB's approved prospectus should not be used for promotion.*  **Private person No 5**  *No.*  **Private person No 3**  *It is appropriate, but in my opinion inadequate.* **2.5 Alternative participation fund** **Current status and current legislation**  In general, the capital market in the long run (which is typical for investments in pension products) can offer investors a relatively high return. In the Czech Republic, participation funds act as ordinary investment funds and do not have to guarantee any appreciation. They usually offer a so-called dynamic fund (usually investing in shares) and a so-called balanced fund within other participation funds. In the long term, the value is achieved mainly by dynamic participation funds (see above)[[3]](#footnote-4).  Participation pension funds with a dynamic strategy, however, do not invest in *private equity* funds, as they are limited in investment by regulatory fee adjustment and investment in *private equity* funds is fee intensive.  The fee structure of pension funds is determined by law and an *all-in-one* model[[4]](#footnote-5) was chosen. Fees consist of two components - management fees and appreciation fees. The legislator proceeded to regulate fees in an effort to protect participants from too high fees in a situation where it is difficult to withdraw from pension funds without suffering a loss.  Pension companies may charge a management fee of 1% of the assets under management and a fee on appreciation of 15% of their return for the participation funds other than mandatory conservative (i.e. funds with a dynamic strategy).  **Design of solution variants**  Two variants are considered:   * Option 0 - maintaining the current status * Option 1 - expand the possibilities of pension companies to offer a new type of alternative participation fund, respectively to provide similar type of state support as to transformed or participation funds to such type of fund   **Option 0 - maintaining the current status**  The fee regulation of pension funds affects the assets in which pension companies can invest so that they cannot invest in some financial products, as they would not financially cover such an investment. At the same time, the maximum amount of fees is determined by law, i.e. the client is protected by law from too high fees. Thus, the current offer is intended rather for conservative investors who prefer investment security. Option 0 means a zero capital market development, because it does not allow more dynamic, and thus more profitable investing.  **Option 1 - to extend the offer by a new type of alternative participation fund, respectively to provide similar type of state support as to transformed or participation funds to such type of fund**  The current offer of pension funds focus is significantly limited by the fee policy and does not allow investments in potentially very profitable assets, albeit at the cost of higher risk. A new type of participation fund would be an alternative to existing dynamic funds, with the fee policy being set freely for this type of fund, allowing pension companies to invest in, for example, *private equity* funds, and thus offering in the long term possible higher appreciation, albeit at the cost of higher risk of such investment. The negative aspect of option 1 is the riskiness of the investment and reduced investor protection. The benefit is the possibility of a higher return on investment, the possibility of investing in other types of funds, and thus the development of the capital market.  **Proposal of the most suitable solution**  Option 1 seems to be the most appropriate and, with regard to the choice and voluntary option in relation to reduced protection, to make a legislative change and to amend a new type of fund that would suit especially in the long-term investment horizon dynamically oriented clients willing to take a higher risk, and at the same time are willing to pay higher fees for charges in order to get a higher return on their investment.  It is proposed to introduce legislation for the new financial product designed for dynamic investments in order to generate savings for old age, the amount of charges in the case of this fund will be limited by law and the law shall specify the types of assets in which the fund may invest. Investor protection is therefore maintained in this respect.  **Summary impact of selected Option 1**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + possibility to invest in more variable types of funds  + capital market development  + more dynamic investment appreciation in relation to savings on old age | - slightly reduced investor protection |   **Consultation:**   |  |  | | --- | --- | | Question | 1) Do you consider the proposal that the state support of a new alternative (more dynamic) type of participation fund as a suitable solution?  2) How much would you recommend by law to adjust the fees of the new alternative fund?  3) Do you think that the public will be interested in the alternative fund? |   **Results of the consultation**  **In general:**  **Supervisory Authority**  *Investing in alternative assets such as private equity funds or long-term infrastructure projects and companies (railways, motorways, power plants, water supply, etc.) can be an interesting alternative for fund participants looking for a higher percentage appreciation of their invested funds and willing to take a higher risk compared to the current offering of investment strategies of the participation funds.*  *At the same time, however, we see an increased risk in buying riskier stocks into the fund's portfolio, which the pension company would not normally hold in its portfolio due to its stricter criteria, such as liquidity. Pension companies should respond to such a situation by improving their risk management system, given that they now invest mainly in government bonds.*  *In this context, however, we draw attention to the current amendment to Section 114 (1) of the Supplementary Pension Savings Act, under which a pension company is obliged to transfer a participant's funds to a mandatory conservative fund no later than 5 years before the participant's age for entitlement for retirement pension. After this transfer, the participant's contributions, the employer's contributions and the state contributions are only placed in the compulsory conservative fund.*  **Ad 1:**  **Supervisory Authority**  *In principle, we do not oppose the creation of a new type of alternative participation fund if the investment in that fund is based on the informed choice of the participant.*  *A new alternative type of mutual fund may be a suitable solution for a certain segment of clients who do not meet the profit-risk profile of the current offering of participation funds. State aid to this type of fund makes sense in terms of stimulating the volume of funds used to save for retirement. It is possible to expect not only the transfer of funds from the existing participation funds, but also the arrival of new clients who have so far preferred other financial products in saving.*  **Private person 1**  *Yes, this type of participation fund should exist.*  **Market operator No 1**  *In principle, we agree that ordinary investment funds or pension funds intended for collective investment should be able to invest a very small part of their portfolio in private equity. This very small fraction of 1 percent should be explored in other countries and limited to some normal average in developed markets.*  *There is a self-invested personal pension (SIPP) in the UK that allows alternative investments and the purchase of commercial real estate. Over the short time, however, huge practical problems began to emerge, when it was not possible to sell a PE investment or commercial property when it was necessary (e.g. reaching retirement age and transfer to annuity, or paying tax free cash or dividing pensions in the event of divorce or death). The problem was the liquidity and the impossibility to monetize these investments, and it was critical when this type of investment represented a large part of the pension account. At the moment, there are very few SIPP providers in the UK who will allow this type of investment, and if it allows it, the investor has to sign various declarations and must definitely fall into the category of self-certified SI and HNW. This fact, but will not help in the event of death, as those who inherit the SIPP may find themselves in a very complicated situation, and there may be situations where they do not have access to the “money” and may even pay penalties because they will not be able to comply with pension legislation. At present, the situation in the UK is simpler, but it should be noted that their pension legislation has recently been loosen and SIPPs can be passed on forever from generation to generation. There is no obligation to buy “annuity”.*  *The alternative fund itself is not very suitable, but it would be advisable to examine and evaluate the overall structure of SIPPs, as this type of pension account is missing in the Czech Republic. It is an open structure where the investor can choose which funds / shares / bonds he / she wants to invest (not necessarily only PE funds), thus setting his / her investment profile / risk (with or without an advisor). SIPP may have the same investment portfolio as ISA.*  *It would be more appropriate to use the term pension account than a pension fund.*  **Private person No 5**  *Yes, but it must not be at the expense of the participants. I consider the possibility of a one-time change of fees by the fund, as was de facto, when the fees increased from 0.8% to 1% as inadmissible. Participants of participation funds’ fee has been increased by the state and subsequently by the funds without having the real possibility to continue under the original closed conditions or to terminate the original terms prematurely (without loss of state contributions, tax deductions). This reduces the credibility and willingness to enter the 3rd pillar when the state and the funds together change the rules of the game without the usual possibility of ending the product. I do not consider the possibility of terminating a product without state contributions and tax deductions as a possibility.*  **Trade union representative**  *YES, but only if the all-in-one model is the same as for the transformed funds. Concerning pension savings instruments in general, ČMKOS believes that the principle of certainty should be clearly preferred over the risk allegedly yielding high appreciation. Again, experience from the financial crisis has shown that the clients of these various “high-yield” “pension funds” have lost their pensions.*  **Ad 2:**  **Supervisory Authority**  *With regard to the fact that it is to be a state-funded fund, we believe that the amount of the fee should be regulated (similar to the existing participation funds). The amount of the fee should be limited to the normal value so that its creation makes economic sense to the pension company. Thus, it is possible to agree, for example, with the management fee for private equity funds in the usual amount, as stated in the consultation material.*  **Private person No 1**  *There should be a preference for recovery fees over investment volume fees, so there would be incentives for fund managers to maximize returns.*  **Market operator No 1**  *A price limit could be set for administration fee for the SIPP provider, but there should be no limit for individual funds / investments that will be chosen within the account.*  **Private person No 3**  *It does not make sense to mention specific values, but pension funds should be motivated primarily by performance, in the case of equity funds, i.e. a stricter limit on the volume fee and looser on performance fees. However, in general, the fees required by the legislation cannot be too low, given that the fund will only be interesting for dynamic investors, which are few. For financial institutions, too much “strict” product would be unprofitable for a few clients.*  **Private person No 5**  *a) No modification, no restriction. Whichever option they may choose, depending on the cost of the assets in which they will invest. At the same time, whether they have the option to lock the investment (impossibility to withdraw) or at least set up any system of entry and especially exit fee. It is not just private equity investments, but other investments. So far, I miss the real estate fund as a participation fund.*  *b) Do not modify, let it be. Within ISA, there will be better and freer options.*  **Ad 3:**  **Supervisory Authority**  *The public demand for investing in a new alternative fund cannot be estimated on the basis of the available data. However, if it is possible to assess the interest in the new alternative fund by the current interest in investing in dynamic funds, there is no doubt from the available sources that the participants now prefer a more conservative way of investing (balance sheet total of dynamic funds is 18% of total participation funds).*  **Private person 1**  *Yes, such a fund could be interesting.*  **Market operator No 1**  *If an open structure is offered, as is the case with SIPPs in the UK, we think so. The fee structure can more or less be managed by the pension account owner himself.*  **Private person No 3**  *No, interest will be low, in the Czech Republic, citizens are very conservative in relation to investments. Yet support for a more aggressive fund type makes sense - even a conservative investor would be more willing to invest, for example, in a balanced fund instead of a purely bond fund if they see that there are a few more "risky" options. In general, this would have a positive side effect, even if there is less interest in the fund itself.*  **Private person No 5**  *I am not sure. As such, more informed investors and usually wealthier investors are not interested in supplementary pension savings products for other reasons (in particular the risk of a change in conditions by the state without the possibility of terminating the product prematurely while retaining the benefits already granted, nationalization risk)and are rather investing abroad. I explain to the less informed investors the fundamentals of investment, the long-term horizon and they leave these “details” to the manager.* **2.6 Introduction of sub-funds to joint stock companies and KSIL** **Current status and current legislation**  The sub-fund is part of a fund whose investment strategy may differ from the fund. Thanks to the sub-funds it is possible to have different portfolios for different investment projects, while the individual sub-funds are separated from each other by property and accounting. The sub-funds are managed independently in accordance with their own investment strategy. However, under the current legislation, sub-funds may only be set up in the case of a fund in the form of a joint stock company with variable capital (SICAV), which is a special legal form intended for investment funds. There seems to be no reason for the sub-funds to be created only by the SICAV. It is common in foreign law that other entities may create sub-funds.  It would be appropriate to allow investment funds other than joint stock companies with variable share capital to be subdivided, since such a breakdown creates variability in investment strategies and thus greater risk diversification for investors who could change the investment strategy by changing the sub-fund within a single fund. overhead costs, without charging the full amount of the entry and exit fees. Another advantage of the possibility of sub-fund's division of funds into one sub-fund is that the bankruptcy will not affect other sub-funds or the fund itself. In this context, it is necessary to consult whether other legal forms or types of funds could benefit from the sub-funds, whether on the part of investors or fund managers, thus contributing to the liberalization of the investment and investment business environment, which should also impacts on increasing the attractiveness of investment in the Czech Republic.  **Design of solution variants**  Four variants are considered:   * Option 0 - keep the current status * Option 1 - allow the creation of sub-funds of KSIL * Option 2 - allow the creation of sub-funds of closed-end investment fund of a joint stock company * Option 3 - to allow the creation of sub-funds of KSIL and closed-end investment fund of the joint stock company   **Option 0 - maintaining the current status**  The preservation of the current situation puts the Czech Republic at a disadvantage compared to other Member States, such as Luxembourg, which allows the creation of sub-funds for investment funds other than the SICAV. At the same time, there is no need to change legislation or related legislation in tax legislation. Maintaining the status quo is contrary to the Strategy, which explicitly includes in Measure 16 - Further Attraction of Sub-Funds, the plan to allow the creation of sub-funds for legal forms other than the SICAV.  **Option 1 - allow the creation of sub-funds of KSIL**  KSIL is a special type of limited partnership that is specifically applicable to collective investment. KSIL can only act as a qualified investor fund, and it is also forbidden for an investment certificate to be traded on a regulated or public market, as uncontrolled trading could take place and limited partners certificates could acquire non-eligible persons. However, investment certificates are otherwise freely transferable. The shares of limited partners in KSIL are embodied in investment certificates which KSIL would issue separately for each sub-fund. The decision to create sub-funds would, as in the case of the SICAV, result from the statute. The investment assets would be separated into sub-funds from the fund's non-investment assets, etc. This option would help to develop the capital market. The choice of this option would fulfil the requirement of the Strategy to allow the creation of sub-funds for legal forms other than the SICAV. In addition to Management Companies and Investment Funds Act, it would be advisable to amend Section 17b of the Income Taxes Act to also apply the definition of a basic investment fund to the sub-funds of KSIL.  **Option 2 - allow the creation of sub-funds of a closed-end investment fund of a joint stock company**  The administrator of a closed-end investment fund issues securities that are not associated with the right of redemption by their issuer and are closed upon the acquisition of capital from investors. The purpose is also to enable common joint stock companies with normal fixed capital to create sub-funds. The fund's decision to create sub-funds would be based on the fund's statute. This option would help the development of the capital market. The choice of this option would fulfil the requirement of the Strategy to allow the creation of sub-funds for legal forms other than the SICAV. In addition to Management Companies and Investment Funds Act, it would be appropriate to amend Section 17b of the Income Taxes Act to also apply the definition of a basic investment fund to sub-funds of closed-end investment fund of a joint stock company.  **Option 3 - to allow the creation of sub-funds of KSIL and the closed-end investment fund of the joint stock company**  This option is most beneficial for the development of the capital market. It will also lead to major legislative adjustments. The choice of this option would meet the requirements of the Strategy most in order to allow the creation of sub-funds for legal forms other than the SICAV. In addition to Management Companies and Investment Funds Act, it would be appropriate to amend Section 17b of the Income Taxes Act. However, the amendment to § 17b should be minimalist, one sentence should be modified de facto.  **Proposal of the most suitable solution**  Option 3 seems to be the most appropriate solution. This option also seems to have significant support from stakeholders. It would also be beneficial for the development of the capital market. However, account must be taken of the tax implications as some respondents warned.  **Summary of impacts of the chosen Option 3**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + Fulfilment of the measure and plan of the Strategy (Enable the creation of sub-funds for legal forms other than the SICAV)  + Capital market development  + Broader product offer for investors  + Possible increase in the volume of investment in the Czech Republic and related benefits such as higher tax collection. | - The need to amend legislation, including tax legislation.  - Discontinuity of legislation.  - Analysis of the impact on accounting. | |  |   **Consultation:**   |  |  | | --- | --- | | Question | 11.1. Do you welcome legislation that would allow legal forms other than the SICAV to form sub-funds?  11.2. In your opinion, what legal forms other than the SICAV may or should be authorized to create sub-funds?  11.3. How do you assess the potential legislation that would make it possible to create sub-funds of a qualified investor fund which is a limited partnership for investment certificates?  11.4. How do you assess the potential legislation that would make it possible to create sub-funds for an investment fund which is a normal fixed-capital joint stock company? |   **Results of the consultation**  **In general:**  **Private person No 6**  *For Chapter 11, I would like to point out that there is already a rather confusing situation on the financial market in defining different investment options through investment companies, investment funds or mutual funds - see the sheet from my course presentation: If introducing new investment opportunities in sub-funds would make the existing legislation more transparent and simpler, it would benefit retail investors in deciding where to place their available funds.*  **Supervisory Authority**  *We have a neutral position on the proposal. In our opinion, the possibility of creating sub-funds for legal forms other than the SICAV will not lead to the objective of making the collective investment sector more attractive. However, if the new legislation is carefully considered, we do not find the proposal problematic. The legal form of the SICAV is often used. However, the current legislation does not mandate the creation of a sub-fund (s), and more than half of the SICAV merely separates investment assets from non-investment assets without the creation of a sub-fund, with single-sub-fund SICAVs still prevailing (more than a third of all SICAVs). More than three sub-funds have only 6 of the 129 SICAVs. Thus, the attractiveness of a SICAV as a legal form lies in its open structure (the obligation to repurchase investment shares at the investor's request) in combination with legal personality rather than in the possibility of creating sub-funds. The consultation paper argues by reducing the transfer fee between the various sub-funds and the possibility of broader risk diversification. For closed legal forms (common joint stock company and KSIL), however, investment strategies are based on a long-term investment horizon and do not support investor capital transfers. At the same time, both arguments do not succeed without further argumentation because they do not address the advantages of investing in different sub-funds over investing in several investment funds of the same manager. Overall, we do not consider the arguments presented to be sufficient to justify the draft legislation in question. We also emphasize that, with respect to the SICAV and their sub-funds, a number of problems have arisen in practice (segregation of assets, insolvency, entry in public registers, availability of credit financing, etc.). These aspects are addressed only gradually and slowly. Although we do not reduce the benefits of the existence of sub-funds and the SICAV in general, we believe that this experience needs to be taken into account.*  **Ad 1:**  **Market association No 1**  *Yes.*  **Market operator No 1**  *Yes.*  **Supervisory Authority**  *We do not contradict the proposal; however, we believe that the need for new legislation needs to be duly justified. Especially in closed legal forms of investment funds, we do not consider the arguments presented to be relevant (since these types of investment funds are based on a long-term investment strategy and therefore do not count with the transition between individual strategies). We recommend carrying out a thorough analysis of the demand of market representatives, taking into account the legal forms in which the creation of sub-funds is of interest and for what reason. In the case of a specific legislative proposal, it would be necessary to think through the changes comprehensively in order to prevent potential problems (e.g. accounting, insolvency, registrations, etc.).*  **Market association No 2**  *Yes.*  **Market operator No 3**  *No, I think we already have enough forms of funds, and these further adjustments only make the situation unclear and complicate.*  **Market association No 3**  *We generally welcome legislation that will allow the creation of sub-funds for investment funds established as companies with a legal form other than the SICAV. In this context, we only draw attention to the accounting and tax implications that need to be addressed with the sub-funds, e.g. (i) whether the sub-fund constitutes a separate income taxpayer as in the SICAV, (ii) the application of the Parent-Subsidiary Directive to dividend income and revenues from the sale of shares, etc.*  **Ad 2:**  **Market association No** 1  *Yes, we believe that the creation of sub-funds should be possible for all legal forms of investment funds (not only qualified investor funds but also collective investment funds).*  **Supervisory Authority**  *If the proposal is substantively justified and supported by market demand, it is possible to create sub-funds for all legal forms of investment funds. In each specific case, however, it is necessary to think carefully about the particulars and the creation and functioning of the sub-funds.*  **Market association No 2**  *We believe that the creation of sub-funds should be possible for all legal forms of investment funds (not only qualified investor funds but also collective investment funds).*  **Market operator No 3**  *None.*  **Market association No 3**  *This option is most desirable in the form of a joint stock company.*  **Ad 3:**  **Supervisory Authority**  *See answer above.*  **Market association No 2**  *We believe that the creation of sub-funds should be possible for all legal forms of investment funds (not only qualified investor funds but also collective investment funds).*  **Market operator No 3**  *Yes.*  **Market association No 3**  *Unfortunately, in our opinion, the legal form of limited partnership for investment certificates is not viable, because its tax regime is disadvantageous compared to other legal forms. We have already pointed out these disadvantages in recent years. If the tax obstacles were removed, we believe that the possibility of creating sub-funds would further make this legal form that is typical of private equity more attractive.*  **Ad 4:**  **Market association No** 1  *We believe that the creation of sub-funds should be possible for all legal forms of investment funds (not only qualified investor funds but also collective investment funds).*  **Supervisory Authority**  *See answer above.*  **Market association No 2**  *We believe that the creation of sub-funds should be possible for all legal forms of investment funds (not only qualified investor funds but also collective investment funds).*  **Market operator No 3**  *Yes.* **2.7 Introduction of mandatory XML format for other financial market institutions** **Current status and current legislation**  In the course of the execution proceedings, respectively at the moment when the court issues a ruling on the execution order, the distrainer starts to look for the debtor's assets that can be punished. For this purpose, it determines the assets of the debtor (e.g. at insurance company, investment company, investment fund, central depository and other persons authorized to keep records of investment instruments, banks, etc.) and then decides how to execute the execution. The institutions concerned are obliged to disclose to the distrainer at his written request data on the debtor's assets that are known to them from their official activities and similar activities to these (see Section 33 et seq. of the Execution Order)  In practice, the provision of co-operation by financial market entities to distrainers causes unnecessary costs. The banking sector (a financial institution according to the Execution Order) has its special regulation in Section 34 (3) of the Execution Order, which is further specified in Annex 1 to Decree No. 418/2001 Coll. This regulation stipulates that cooperation must be compulsorily requested and consequently cooperation must be provided in an electronic data file in XML format with specific parameters contained in the decree. According to this decree, the automation of cooperation takes place through the exchange of structured data files in XML format delivered via the Data Mailbox Information System (ISDS), or in some other way based on an agreement between the distrainer and the bank. A data message requesting assistance from a distrainer has a specific subject (“XMLEXE SOUC”) by which it can be recognized. The senders can only be bailiffs with their special type of data box. The basic identifier of the liable entity is personal identification number or employer identification number. Each data request requesting cooperation can contain multiple individual queries to liable entities.  **Design of solution variants**  Four variants are considered:   * Option 0 - maintaining the current status. * Option 1 - apply the regulation in Section 34 (3) of the Execution Order to other financial market entities for which the Execution Order uses the abbreviation financial institutions (insurance companies, investment companies and investment funds, investment firms, pension companies, pension funds under a special legal regulation, the Financial Market Guarantee System). At the same time, such an amendment should be supplemented so that the relevant ministry stipulates in a decree a machine-readable format. * Option 2 - a new amendment to Section 34 (2) of the Execution Order, which would establish the duty of a distrainer to request cooperation only in electronic form. * Option 3 - mandatory use of the existing ISB system provided by the Central Securities Depository Prague, which is used in relation to securities kept in the Central Securities Depository Prague’s records and in related registers.   **Option 0 - maintaining the current status**  In practice, the provision of co-operation by financial market entities to distrainers causes unnecessary costs. For example, some distrainers send inquiries about a single debtor to all financial institutions on the market without any prior pre-selection, for example, in accordance with Section 33d of the Execution Order. Financial institutions’ claims have also been recorded[[5]](#footnote-6) that they have to handle over one million requests for interoperability per year, resulting in costs in millions of CZK. Furthermore, following a public consultation, this option appears to be the worst possible.  **Option 1 - apply the regulation in Section 34 (3) of the Execution Order to other financial market entities for which the Execution Order uses the abbreviation financial institutions (insurance companies, investment companies and investment funds, investment firms, pension companies, pension funds under a special legal regulation, the Financial Market Guarantee System). At the same time, such an amendment should be supplemented so that the relevant ministry stipulates in a decree a machine-readable format.**  The banking sector (a financial institution according to the Execution Order) has its special regulation in Section 34 (3) of the Execution Order, which is further specified in Annex 1 to Decree No. 418/2001 Coll. This amendment stipulates that cooperation must be compulsorily requested and consequently cooperation must be provided in an electronic data file in XML format with specific parameters contained in the decree. According to this decree, the automation of cooperation takes place through the exchange of structured data files in XML format delivered via the Data Mailbox Information System (ISDS), or in some other way based on an agreement between the distrainer and the bank. A data message requesting assistance from a distrainer has a specific subject (“XMLEXE SOUC”) by which it can be recognized. The senders can only be distrainers with their special type of data box. The basic identifier of the liable entity is personal identification number or employer identification number. Each data request requesting cooperation can contain multiple individual queries to liable entities.  The processing of requests for cooperation by the bank itself can be automated, semi-automated or manual. Processing requests for interoperability in an automated or semi-automated system consists mainly in downloading all data messages from the data box, recognizing data messages with requests for interoperability and filtering them, processing an XML data file, creating a preview of the data file in a user-friendly graphical form, finding answers to questions, preparing a response, sending a response with a data message to the sender's data box.  If non-banking financial market entities were to introduce an automated system for processing requests for cooperation similar to the automated system at banks, then the costs would be around one million CZK and if the entity already owns an automated system for the cooperation of banks, it will purchase an expansion module worth hundreds of thousands of crowns. According to Aura s.r.o, which operates the „Informační systém soudní exekutor“ (Distrainer Information System), which uses more than half of all distrainers, the cost of extending the automated system for bank cooperation would be minimal, probably even zero.  The need to explicitly specify a machine-readable format has proved redundant since the XML format itself is machine-readable.  This option will also contribute to the protection of small investors by refining the treatment of their personal data and eliminating some of the possible ways of dealing so far.  **Option 2 - a new amendment to Section 34 (2) of the Execution Order, which would establish the duty of the distrainer to request cooperation only in electronic form.**  This variant seems to be a compromise between variant number 0 and variant number 1. Therefore, XML format will not be determined exclusively. This option will also contribute to the protection of small investors by refining the treatment of their personal data and eliminating some of the possible ways of dealing so far. At the same time, there is a high probability that there will still be chaos due to the possibility of sending information through multiple formats. Unlike option 1, there will be more ways to handle personal data. In any case, even under this option, the costs of capital market operators will be saved.  **Option 3 - mandatory use of the existing ISB system provided by the Central Securities Depository Prague, which is used in relation to securities kept in the Central Securities Depository Prague’s records and in related registers.**  Another possible solution proposed by the Czech Banking Association in the framework of comments in the preparation of the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023 would be the mandatory use of the existing ISB system provided by the Central Securities Depository Prague, which is used in relation to securities kept by the Central Securities Depository Prague. and in subsequent records. This system uses an XML format but does not cover securities in the separate register of securities, and therefore would have to be adapted and extended for the purposes of judicial execution. At the same time, the mandatory use of one information system would probably be contrary to the protection of competition. Which the owner of the system, the Central Securities Depository Prague, did not dispute.  This option will also contribute to the protection of small investors by refining the treatment of their personal data and eliminating some of the possible ways of dealing so far.  This option saves the costs associated with option 0.  **Proposal of the most suitable solution**  On the basis of the consultation, the Ministry of Finance considers it most appropriate to adopt a legislative change and to amend the Act with the Option 1, which seems to be the most appropriate solution with regard to the cost and functionality of this system in banking. This solution fulfils the measures of Strategy No. 17 - Support for the use of XML format in requesting information from financial institutions in the execution. This option will result in a change of both the Execution Order and the related decrees. However, these legislative changes should not be significant. Option 0 would entail a large amount of costs, Option 2 would not specify a specific format, and therefore various electronic formats would be sent uneconomically. Option 3 would appear to be anti-competitive, and only one entity, a computer system provider who did not refute competition concerns, was in favour of it in a public consultation.  **Summary of impacts of the chosen Option 1**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + Fulfilment of measures and plan of the Strategy (Support of the use of XML format in requesting information from financial institutions in particular in relation to distrainers).  + Capital market development - computerisation.  + Cost savings for financial institutions.  + Investor Privacy.  + Cost savings for distrainers. | - The need to amend legislation.  - Discontinuity of legislation.  - Initial costs for the non-banking financial institutions, the computerisation - optional possibility to fill in XML manually. | |  |   **Consultation:**   |  |  | | --- | --- | | Question | 1) Please describe how big the problem is for you regarding requests for cooperation in a execution proceedings?  2) Do you consider it appropriate to extend the existing cooperation through XML formats for the banking sector to other financial market entities? Or do you prefer a variant that would make the executor's duty to request cooperation only in electronic form? Or what other solution would you prefer?  3) Is the regulation of XML formats that applies to financial institutions (banks) appropriate for other financial market entities? If so, what data should the XML format contain for other financial market players?  4) Should the new regulation apply only to entities for which the Execution order uses the legal abbreviation of a financial institution? (insurance companies, investment companies, investment funds, investment firms, pension companies, pension funds under special legislation, Financial Market Guarantee System).  5) Is it compulsory to use the existing ISB system provided by the Central Securities Depository (CSD) as a suitable solution for judicial enforcement?  6) In your opinion, are there problems with requests for cooperation even in cases that do not concern judicial execution (e.g. cooperation in judicial proceedings)?  7) Are there any related problems? |   **Results of the consultation**  **In general:**  **Supervisory Authority**  *The Czech National Bank supports standardization, which will lead to more efficient processes in processing requests for cooperation by state authorities. However, as the MF states in its consultation paper, consultation with the relevant state authorities is necessary. From the perspective of supervision of financial market entities, we have no comments on the proposal.*  **Ad 1:**  **Market association No 4**  *These applications significantly increase the administrative agenda of pension companies and burden their costs. Every year, we process around 230,000 calls in the sector, usually manually in 4 steps: sorting, registering, processing of a response and sending a response.*  **Market association No 6**  *Larger credit unions are already using communication in .xml format. However, our smaller members do not have the .xml format implemented to date (one of our members is currently working on full implementation, the other is now considering it).*  **Market association No 2**  *If the XML format is used by the distrainer in accordance with the Act, banks have no problems. Unfortunately, despite the existence of legislation, some distrainers still use a mere scan of a written document (PDF format), which brings increased laboriousness to banks. It is also clear from discussions within the CBA's working structures that, in the case of multiple concurrent executions, complicated situations lead to the problematic payment of subsistence in banks. In view of the Supreme Court's statement, the bank must allow payment at the client's request through all channels offered by the bank. These situations are solved by individual banks differently depending on technical possibilities.*  **Supervisory Authority**  *From the point of view of the CNB's activities as a “financial institution” and a financial institution (the operator of the central depository), requests for cooperation in judicial execution are not a major problem. The CNB handles about 100 to 150 XML requests for cooperation daily. The internal information system ensures automated processing both in relation to cash accounts and accounts within the central depository.*  **Market operator No 1**  *The CSDP has a sophisticated system of providing information to public authorities, including distrainers. Requests are handled through the ISB system. All public authoritites that have signed a contract with the CSDP to use this system have access to this system. On January 25, 2012, a meeting was held with representatives of the Chamber of Distrainers on the possibility of using ISB by distrainers, where, among other things, discussed further steps, namely to find out the possibility of linking ISB with the register of seizure orders, by the fact that the activity will come from the IT staff of the Chamber of Distrainers. Despite this arrangement, no further activity has taken place by the Chamber of Distrainers. Distrainers therefore use a written form or electronic completion of forms for individual requirements. This method is not user-friendly for any of the parties involved, as it unnecessarily time-consumes both distrainers and public authorities information staff.*  **Ad 2:**  **Market association No 1**  *Even the electronic form is not completely cost-free for subjects providing cooperation, on the contrary, the costs of software development and updating are significant. We therefore propose the following amendment to Section 34 (1) of the Execution Order as follows (amendment highlighted):*  *'(1) For the purposes of enforcement proceedings, the distrainer may request the cooperation of a third party pursuant to Section 33 and they shall be obliged to provide it free of charge. The persons referred to in Section 33 (4) to (9) and commodity markets, the regulated market, central depository and other entities entitled to keep records of investment instruments have in providing information the right to reimbursement of reasonable cash expenses, unless special legislation33) states their the right to reimbursement of costs incurred.*  *33) Section 115 (5) of Act No. 256/2004 Coll., on Capital Market Business, as amended*”  **Market association No 4**  *We strongly support the solution via XML format, as well as extending existing legislation on financial institutions to other financial institutions.*  **Market association No 6**  *We believe that the use of XML formats within credit unions is appropriate. However, at the time of its mandatory anchoring, relatively high costs of its implementation could arise on the part of small credit unions. However, that can be expected to be implemented in the future. Now perhaps a variant of the mandatory electronic form of communication is possible.*  **Market association No 2**  *Banks clearly prefer the duty of the distrainer to request cooperation only in electronic form. The proposal applies to other financial institutions other than banks in the sense that the already compulsory automated system for the cooperation of banks could be extended to other financial institutions. CBA understands this effort, supports it, but also appeals that the existing interface in this context should not change in any way and thus not incur additional costs on the part of banks. The material mentions the calculation of the costs of processing responses, and the law talks about reimbursement of immediate costs, but the real fact is that banks respond to a massive number of inquiries completely free of charge (there is perhaps the only institution that is able to recover fees - CSDP).*  **Supervisory Authority**  *We prefer extending the existing synergies through XML formats for the banking sector to other financial market entities. We believe that standardization in this direction is a trend that is also taking place, for example, in financial or other reporting, especially according to European regulations.*  **Market operator No 1**  *At present, requests of distrainers for data from CSDP records are minimal in relation to other public authorities’ applicants, up to approximately 200 queries per year. Despite this fact, the CSDP would prefer to join the ISB system in their case, which would also bring an economic advantage for the CSDP.*  **Ad 3:**  **Market association No 4**  *Yes, it is a suitable adjustment. Since 2016, there has been a proposal for a detailed description of electronic communication within the pension companies sector, which describes a proposal for extending the documents sent to pension companies by distrainers by a descriptive XML file, which was prepared together with the external project support department of the Chamber of Distrainers. However, the final statement of the Chamber of Distrainers is still missing, nor has it been possible to implement it on a voluntary basis.*  **Market association No 6**  *We believe that the use of XML formats within credit unions is appropriate. However, at the time of its mandatory anchoring, relatively high costs of its implementation could arise on the part of small credit unions. However, that can be expected to be implemented in the future. Now perhaps a variant of the mandatory electronic form of communication is possible.*  **Market association No 2**  *In the case of coexistence of paper (PDF format) and electronic (XML format) versions of relevant documents (call for cooperation, execution order, etc.), it is necessary to legally establish the responsibility of the person issuing the document that the content of both types of documents in practice is identical, there have been cases where the PDF version contained data other than the XML version). CBA has issued a standard for its members, which in addition to the existing decree of the Ministry of Justice contains some other data. Recent changes also concern the possibility of extending the exchange of data in the existing XML format with other authorities (issuers).*  **Supervisory Authority**  *We consider the legal regulation of XML formats, which applies to financial institutions, also suitable for other financial market entities. Particular format should be discussed with stakeholders.*  **Market operator No 1**  *The activities of financial market players are diverse and broad. For this reason, we believe that it would be necessary to create several different input sentences in XML format, according to the specifics and scope of work of these entities. Due to the specifics of CSDP activities, the ISB system is fully sufficient in the area of ​​central records and related records of book-entry securities. In case if it was decided to create a unified XML format, then this would have to include all data, which currently includes input sentence for entering the data requirements for the registration of book-entry securities by ISB.*  **Ad 4:**  **Market association No 4**  *It would be useful to extend such arrangements to other entities such as tax authorities, the Czech Social Security Administration, city authorities, customs authorities, which also send a large number of calls for cooperation.*  **Market association No 6**  *If you regulate it compulsorily, then apparently with this definition of entities (i.e. including credit unions).*  **Market association No 2**  *We would like to remind you that there are currently many other issuers of cooperation calls - public administration bodies (e.g. social security administration, health insurance companies, police, courts) that communicate with banks very intensively but are not yet able to use XML query structures. It is therefore logical to consider a more complex automated call processing system and to adapt and expand it in order to reduce costs and increase efficiency on both sides.*  **Supervisory Authority**  *Yes, we believe that the new regulation should apply to financial institutions within the meaning of the Execution Order. We believe that, in terms of the number of applications, this is a typical group of entities where standardization makes sense.*  **Market operator No 1**  *The CSDP does not fall under “financial institutions” or financial institutions pursuant to Section 33 (4) of the Execution Order, but nevertheless believes that a system should be set up that will enable electronic filing and processing of requests not only by distrainers but also by other public authorities. CSDP has its ISB system, which is fully functional and able to cover all requirements for data collection from CSDP records. A certain disadvantage of the ISB system, which is removable, however, is that it currently does not allow batch processing of applications that would be desirable in the case of a large volume of requested entities. It is not excluded that some other entities affected by this legislation use their own systems for handling public authorities’ requirements. If it were decided on a unified XML format, then there is a realistic assumption that an interface could be created that would allow connection to ISB and other individually used systems.*  **Ad 5:**  **Market association No 4**  *We do not use the ISB system in administrative proceedings.*  **Market association No 6**  *No.*  **Supervisory Authority**  *We do not consider using the existing ISB system provided by the Central Securities Depository Prague to be a suitable solution. The legislation should provide for a technology-neutral solution and standardize only the formats or methods of sending, not the designation of a specific entity through which a legal obligation would be ensured.*  **Market operator No 1**  *The ISB system, as used by the CSDP, is prepared for the needs of keeping records of book-entry securities. However, it is a flexible platform that can also be adapted for other subjects according to their type of activity and we are not opposed to this discussion.*  **Ad 6:**  **Market association No 4**  *Yes, mostly in court proceedings, the court requests wider information than court executions, and to a large extent it is required to send copies of documents to the client's contract.*  **Market association No 6**  *Yes. The problem exists with tax authorities that do not always use the possibility of obtaining information from the CEÚ (central accounting of accounts). Another problematic subject is the Czech Social Security Administration, which does not use the XML format.*  **Market operator No 1**  *When providing the public authorities with data, the CSDP encounters problems of an administrative nature only; for example, the applicant has incorrectly filled in the form (typing errors, etc.). Therefore, these are not systemic problems.*  **Ad 7:**  **Market association No 4**  *Related implementation into internal information systems.*  **Market association No 6**  *See previous answer.*  **Supervisory Authority**  *We are not aware of the related problems.*  **Market operator No 1**  *In the opinion of the CSDP, the biggest problem is the need to address the method of verifying the legitimacy of the inquiry by distrainers, for example by verifying the requirement of a specific distrainer against the register of enforceable orders. It is also necessary to solve the following problems, as will be the case, for example, when the requesting entity sends an erroneously processed entry sentence, e.g. in batch mode, whether the whole batch is not processed or only a specific erroneous entry sentence, how to proceed when it does not demonstrate the authority to obtain data for a particular entity and a number of other practical issues. Another problem is that, for some requesting entities, there is no real idea of ​​the amount of costs involved in providing information electronically. Their perception of cash or material costs is based on past times, when only postage, travel etc. were recognized as these. However, in the time of IT technology, this view cannot be accepted. Creating suitable SW, its development with changing legislation, maintenance of systems, purchase of HW equipment brings considerable costs for users and therefore the costs stated in this material for service providers in the amount of CZK 10 are absolutely unrealistic.* **2.8 Support of trading with corporate bonds and increase of protection of investors in bonds** **Current status and current legislation**  The development of the market for corporate bonds has occurred since August 2012 due to the amendment of the Bonds Act when approval of terms of issue was cancelled, which made issues cheaper and more accessible to issuers. The search for alternative ways of valorising money over time, not too much interest on deposits, the above-mentioned facts and other factors have recently taken corporate bonds to the forefront of both investors and issuers. However, this also entails a risk of default in the event of economic shocks or a higher incidence of issuers who do not plan to repay bonds from the outset. Retail investors who do not have experience with similar investments, are not able to evaluate such risks and in pursuit of a better return on investment may wrongly decide and lose their money.  At the same time, however, it should be noted that as of January 2018 investment intermediaries cannot offer bonds without a prospectus approved by the CNB. In addition, the topic of bonds without a prospectus (issues up to CZK 25 million) was part of the public consultation of the Ministry of Finance in the same month. As a result, the act that was prepared passed the third reading in the Chamber of Deputies on 27 November 2019 and is now heading to the Senate (Parliamentary Press 398). The proposal states that even documentary bonds must have assigned ISIN (because of easier traceability of issues) and terms of issue must contain a warning that even the approval of the prospectus by the CNB does not guarantee low risk because CNB does not assess the issuer's ability to repay the bonds nor the veracity of the information contained in the prospectus.  It is also necessary to take into account Supervision *Benchmark* No. 2/2019, published by the CNB on 14 March 2019 on its website. In principle, however, it prohibits offering small inexperienced investors corporate bonds that are not admitted to trading on a regulated market.  However, we still see room for optimizing the market situation by providing more information to retail investors and thereby extending their protection.  **Design of solution variants**  Three variants of the solution are considered:   * Option 0 - maintaining the current status * Option 1 - extension of requirements for terms of issue * Option 2 - anchoring the mini-prospectus   **Option 0 - maintaining the current status**  At present the requirements for emission conditions are defined in Section 9 of the Bonds Act. The current legal situation is limited to the particulars that must be included in the terms of issue, without the current legislation being detailed in that it also requires that the terms and conditions would guide investors information with regard to the appropriate choice of investment mandatorily. This option represents the *status quo* in terms of costs. Maintaining this option in terms of benefits represents a reduction, as the current situation in the bond market represents insufficient investor protection.  **Option 1 - extending the requirements for terms of issue**  In Option 1, it is proposed, in the absence of a prospectus, to extend the terms of issue with information that can help the investor to better assess the issue and the issuer. Such information is, for example, a description of the purpose of the issue, the planned ratio of external funds to equity, annual reports and financial statements of the issuer for the last 2 financial years, information on how the repayment is secured or information that the repayment is not secured etc. This variant idea is to increase costs for issuers while increasing benefits in relation to the protection of small investors and thus in relation to the development and capital market that can be developed with a view to improving the reputation of the market with lower tier bonds (i.e. issue of bonds to 1 mil EUR). On the other hand, this option also represents a reduction in administration in terms of eliminating duplication in the terms of issue and the prospectus.  **Option 2 - anchoring the mini-prospectus**  Introduction of so-called mini-prospectus would constitute a complement to the terms of issue within the documentation, which it is required for the issuer to develop and provide investors in bond issue. The mini-prospectus should allow investors to easily compare issues by comparing key indicators. The mini-prospectus should contain a set of essential information in a clear form in the range of two A4 sheets. The standard of the mini-prospectus would be established by the government by decree. This option would be associated with an increase in costs associated with the need to issue a regulation. It would also entail some increase in costs for issuers, but at the cost of increasing the protection of bond investors.  **Proposal of the most suitable solution**  The most suitable solution seems to be an extension of the requirements of emission conditions, i.e. the choice of option 1. This variant is compared with option 2, more economical and less burdensome, because it does not introduce a new institute and the need to issue implementing legislation, but merely an extension of an existing institution issuing conditions in the current Bonds Act, the content will contain important information about the issuer and the issue that will be part of the terms of issue. Investor protection will be enhanced by extending the data necessary for an objective issue assessment. This option also increases the transparency of the issuer's activities and intentions.  **Summary of impacts of the chosen Option 1**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + protection of investors in bonds  + issue and issuer transparency  + eliminating duplication between the prospectus and the terms of issue and, in this context, reducing the administrative burden  + improving the reputation of the below-the-limit bond market (or state) through regulation | - the administrative costs of adapting to the new arrangements  - robustness of terms of issue |     **Consultation:**   |  |  | | --- | --- | | Question | 14.1. Do you agree with the proposal to extend the requirements of terms of issue?  14.2. Would you agree with the introduction of a key information document (in the form of a mini-prospectus or similar document) for all issues offered?  14.3. What parameters do you think the key information document should include? For example, it is advisable to be inspired by Corporate Bond Scorecard? |   **Results of the consultation**  **In general:**  **Supervisory Authority**  *We agree with extending the terms of issue according to the MF proposal. We consider some of the indicators presented as an example to supplement terms of issue as a suitable additional guide for the investor's decision. However, we have doubts about the need to introduce a document described as a mini-prospectus. On the one hand, we do not see added value in the creation of another document in the issue of bonds; on the other, we are afraid of confusion with the actual prospectus approved by the Czech National Bank under the EU Prospectus Regulation. However, we do not agree with the statement of the Ministry of Finance on Supervisory Benchmark No. 2/2019, published by the Czech National Bank on 14 March 2019. According to current CNB supervision, there are retail customers who do not pass the adequacy test for corporate bonds, i.e. not demonstrating that they have knowledge and experience to understand the risks associated with investing in illiquid corporate bonds while being either outside the target market or even within the negative target market. We do not therefore agree with the view that small investors should be able to invest 10% of their financial assets in high-risk investment instruments whose risks they do not understand.*  **Market operator No 5**  *One can only agree with the description of the significance of corporate bonds within the standard market economy. The background material lacks one of the important aspects of the whole issue - insufficient liquidity in the corporate bond market and thus very limited pricing information. Scorecard is certainly a suitable tool for the initial analysis of the issuer, but the lack of market comparison limits the informative ability of such an instrument. We would also like to propose a small addition to the mini-prospectus. For mini-prospectuses we would recommend, for example: supplementing mini-prospectus with an overview of covenants from the full-value prospectus, Regularly updated statement of the issuer's statutory bodies on covenant fulfilment. Suggestion: Only very limitedly is it possible to motivate bond traders to higher activity. Nevertheless, it is possible to use the web signpost platform to present all available information from individual market participants. Individual banks issue reports on bond market activity, and although it is often only a partial part (issues realized only by the banking group), it is possible to compose a more comprehensive picture of the conditions in the bond market.*  **Private person No 4**  *Unnecessary.*  **Ad 1:**  **Supervisory Authority**  *We agree with the proposal to extend the issue conditions stipulated in Section 9 of the Bonds Act to include some indicators proposed in the consultation material. Specifically, this should include information on the purpose of the issue, the issuer's financial statements and their verification by the auditor, including the presentation of selected economic indicators (e.g. EBITDA) and the structure of the consolidation unit to which the issuer belongs. In this context, we also draw attention to the ESMA General Guidelines on Alternative Performance Indicators (ESMA / 2015 / 1415en). The declared purpose of the Guidelines for the publication of prospectuses and so-called regulated information is to ensure that the information presented is understandable and allows easy analysis. Therefore, alternative performance indicators should be defined, meaningfully labelled and reconciled with the financial statements and their meaning and reliability should be explained. Although the effectiveness of the guidelines is limited to prospectuses and so-called regulated information under the EU Transparency Directive, the stated purpose certainly applies also to issues outside the prospectus regime (perhaps even more due to the anticipated retail nature and lower expertise of investors in small bond issues). On the other hand, we consider the requirement for indicators to be presented for three accounting periods to be too extensive, even for the standard bond prospectus, it is sufficient to provide data for two accounting periods. Furthermore, the question is whether it would be more beneficial to protect retail investors by extending the content of the issuance terms to the issuer's financial statements for the last two accounting periods, either by listing them directly in the issuing terms or by reference (similar to documents included in the prospectus). Mere information as to whether the financial statements stored in the Collection of Documents of the Commercial Register, as stated in the proposal of the Ministry of Finance, seems to us insufficient.*  **Market association No 1**  *Without an answer. Yes.*  **Market operator No 1**  *In particular, public awareness should be raised that unlisted bonds are not intended for individual retail investors. Just as the state does not regulate lending of money between businesses and citizens, it should not regulate the purchase of unlisted bonds, which is nothing more than a securitized lending of money. Mock regulation will only add legitimacy and confusion to retail investors. We strongly support the listing of corporate bonds. It will benefit all portfolio managers not only in fund business. The state should support not only state or semi-state firms in the demand for capital in the form of a public offer of corporate bonds.*  **Market association No 5**  *We do not see a reason for this because, for most retail issues, the relevant information is available from the prospectus to be published on their public offer or their listing on a regulated market. In addition, the prospectus is approved by the CNB, which certifies that the information therein is sufficient to enable the investor to make an informed decision. Moreover, taking into account the fact that in the Czech conditions the prospectus is usually prepared in the form of a single document, i.e. the single document contains the terms of issue and other information published under the Prospectus Regulation, the measures under consideration could impose a duplicate obligation information. This could then be in direct contradiction with the Prospectus Regulation.*  **Market association No 2**  *Yes.*  **Market operator No 2**  *Yes. As we wrote in the previous comments, we do not have a problem with such a procedure. On the contrary, we welcome it. Due to our requirements, terms of issue of issuers that are allowed to advertise their issues with us on the portal are becoming more extensive. However, issuers do not always want to disclose all relevant data. If there is a standard that every issuer will have to comply with, then the work on market cultivation will be greatly facilitated.*  **Market operator No 3**  *No.*  **Private person No 1**  *No, the above information should be provided in the document below.*  **Private person No 3**  *Yes.*  **Ad 2:**  **Supervisory Authority**  *In general, the introduction of this obligation could become an appropriate tool to discourage those issuers who have not considered paying the issue in the future. However, we have reservations about the concept of the so-called mini-prospectus. Firstly, we do not see the added value of creating another document in addition to the terms of issue (we would prefer to extend them), and secondly, we do not agree with its designation. A “mini-prospectus” that an investor may confuse with a standardized prospectus under the EU Prospectus Regulation (may give the impression that it has been approved by the CNB). The CNB does not seek to supervise “below-the-limit” bonds under the EU Prospectus Regulation; it is not important for it in terms of financial stability, the protection of investors as a whole or the development of the capital market.*  **Market association No 1**  *Yes, but the proposal in Annex 2 still seems somewhat incomprehensible to the average consumer.*  **Market association No 5**  *No. We perceive a mini-prospectus or similar document as an unnecessary administrative burden. For most retail issues, there is an obligation under the Prospectus Regulation to produce a summary which, from the perspective of investors, fulfils (or should fulfil) a function similar to the measure under consideration. Therefore, we also see no reason to produce a mini-prospectus (or similar document) which, in turn, would only represent a duplication (in relation to the summary) if not a triple (in relation to the summary in conjunction with the information in the prospectus also outside the summary) .*  **Market association No 2**  *Yes, but the proposal in Annex 2 still seems somewhat incomprehensible to the average consumer.*  **Market operator No 2**  *Need another document? Isn't it enough to enlarge the content of the information in the terms of issue or the prospectus? It is possible to set certain information to always appear e.g. on pages 3 to 8 of the document, but we would not add another document. It only adds to issuers in the administration. We have experience in the insurance and banking sector, where this is done on the basis of European requirements and standards. In practice, however, clients do not care. They will receive 3 documents in which the same is the same (only volume of the information is different). They read one and overlook the other. Which would be risky for bonds. Here, on the contrary, we need investors to learn to read the thoroughly submitted documents.*  **International market association**  *There is ongoing concern that the PRIIPs KID regime has significantly reduced the availability of bonds to retail investors in the EEA (most recently resulting in the exchange of letters between ESAs and the European Commission on the product scope of the PRIIPs regime). 3. This has been partially put down to specific content requirements for the KID PRIIPs. 4. However, the articulation of the PRIIPs KID concept itself has been a significant challenge: a clear purpose for short-form disclosure should be a quick first point of information and not the basis for an informed investment decision. However, the vague position under the PRIIPs regime has raised civil liability risk to the point of undermining and borrower's certainty of funding (ie confidence that the borrowed amount can be used for the whole bond term) - certainly for investment grade benchmark-funding borrowers in the international markets (which consequently prefer to avoid retail investors unless they are clearly outside the product scope of PRIIPs). See more detailed reasoning set out in paragraphs 13-15 of ICMA's 28 September 2018 response3 to UK FCA's Call for Input: PRIIPs Regulation - initial experiences with new requirements. 5. If the proposed Czech KID is anything like the current PRIIPs of KID, it does not seem to be possible for its purpose to inform the investment decision (which “MiniProspectus” title seems to suggest), then it seems likely to replicate the reduced EEA availability at the Czech national level - but for all bonds (not just packaged) and all Czech-based investors (institutional as well as retail). 6. The introduction of the proposed Czech KID therefore seems likely to be severely detrimental to the existing debt markets in the Czech Republic, let alone their future development. 7. It also unclear what additional investor protection benefit would arise from such an introduction, which however seems to diverge from the stated key objectives of the EU Capital Markets Union initiative by imposing a regulatory burden over and above the current regulatory framework. 8. As a minor technical point, it seems PRIIPs made available to retail investors in the Czech Republic would need to duplicately produce both PRIIPs and KID as well as the proposed Czech KID.*  **Market operator No 3**  *No.*  **Private person No 1**  *Yes, such a step could make the market more transparent for investors.*  **Private person No 3**  *Yes.*  **Ad 3:**  **Supervisory Authority**  *See the answer to the previous question.*  **Market association No 1**  *Without an answer.*  **Market association No 5**  *However, we perceive generally positively the Ministry of Finance endeavours to mitigate the unprecedented and disproportionately stringent conclusions of the CNB Supervision Benchmark 2/2019. On the one hand, we understand (and agree) the idea of ​​solving today's (not ideal) situation on the primary bond market (issuer vs. client), and we will welcome some form of regulation of the placement rules. However, the relevant rules should not exceed the imperative of proportionality. If one of the instruments under consideration is to include certain “warnings”, resp. A 'warning' for investors, which can agree with such a procedure.*  **Market association No 2**  *Without an answer.*  **Market operator No 2**  *The following proposal is added from the annex: Purpose of the issue - we would not limit it to so few characters. The purpose must be as specified as possible and investors should know where their finances are going. Only in this way is it possible to monitor the issue and evaluate whether the issuer fulfils the conditions of the issue by its conduct. Alternatively, reference must be made to the article where the investor learns (for example, it may be followed by redemption in the event of a breach, etc. See investor protection, e.g. through the Reinsurance Agent or the Joint Representative). Availability of documents - we are still struggling to publish documents. Given how this is used in the Czech Republic to compete, the question is whether to push issuers to do so. The important thing is to have these documents available to the investor, who decides to invest it - undoubtedly - not a competitor or a journalist… We would add a Business Plan, Reinsurance - must be relevant. It is not only about assets, but also about the means of security - e.g. the Security Agent. Ownership Structure - should apply to the Issuer as well as to all of its issuers or key persons. To be clear how and where they do business and what their results are. We would add - Covenants, a specific overview of debt (what obligations the issuer already has - ideally with the possibility of verifying credit history).*  **Market operator No 3**  *No.*  **Private person No 1**  *Yes, you can be inspired by this suggestion.*  **Private person No 3**  *Yes.*  **Private person No 4**  *Scorecard would be interesting.* **2.9 Abolition of compulsory registration of funds pursuant to Section 325a of the Management Companies and Investment Funds Act in list of the CNB**  **Current status and current legislation**  The public offering of funds of a manager established in a non-member state unauthorized to exceed the relevant limit or the relevant limit not exceeding, in the case of public offering in the Czech Republic, is subject to mandatory entry pursuant to Section 325a of the Management Companies and Investment Funds Act into the CNB list, which is further modified by Section 597 (a) of the Management Companies and Investment Funds Act.  **Design of solution variants**  Three variants are considered:   * Option 0 - maintaining the current status * Option 1 - abolition of compulsory registration of funds pursuant to Section 325a of the Management Companies and Investment Funds Act in the CNB list * Option 2 - prohibiting of public offering of these funds pursuant to Section 325a of the Management Companies and Investment Funds Act in the Czech Republic   **Option 0 - maintaining the current status**  Maintaining the status quo is problematic. In addition, Section 325a of the Management Companies and Investment Funds Act does not stipulate specific conditions for entry in the list kept by the CNB, including, inter alia, the documents and information to be submitted by the CNB applicant, or the electronic form of submission of applications or the deadline for entry. However, given the nature of such funds and the conditions for their operation, it is very difficult to define what conditions should be met when it is difficult to prove the existence of such a fund (e.g. in a third country register) or its manager (not being authorised not being in register ). This entails a great deal of cost, and even if such a delineation were made, it would be very difficult, even impossible, to impose sanctions on such funds (such as the Cayman Islands based fund).  Section 325a of the Management Companies and Investment Funds Act expressly refers to the terms of the public bidding, so it can be concluded, a contrario, that a bid that will not achieve the quality of the *private* bidding can be carried out without fulfilling the condition set out in this provision. However, the provision must be interpreted in conjunction with Section 296 and 297 (2) of the Management Companies and Investment Funds Act, which impose restrictions in relation to this category of funds - only a qualified investor can become an investor.  **Option 1 - abolition of compulsory registration of funds pursuant to Section 325a of the Management Companies and Investment Funds Act in the CNB list**  Such a solution would still allow the possibility of offering these funds, while at the same time relieving the CNB of the problems and costs described in Option 0.  **Option 2 - prohibiting of public offering of these funds pursuant to Section 325a of the Management Companies and Investment Funds Act in the Czech Republic**  Such a solution would deprive the CNB of the problems and costs described in Option 0. It would also harm the attractiveness of the Czech capital market. It is very real situation that the public offering of affected funds in the Czech Republic would be carried out illegally, which would make it difficult or impossible to impose sanctions.  **Proposal of most suitable solution**  Option 1 seems to be the most appropriate solution as it reduces the CNB's costs, clarifies and simplifies the existing legislation.  The CNB will no longer have to solve the problem of proving the existence of such funds (e.g. in a third country register) or their managers, or problematic imposing sanctions on such funds (for example, a Cayman Islands based fund).  This option will also reduce the costs of the previously enrolled financial institutions, as they will not have to enrol. The amendment of the legislation will lead to the deletion of the provision, thus simplifying the legal order. This issue is not based on the Strategy.  **Summary of impacts of the chosen Option 1**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + Capital market development by simplifying regulation.  + Cost savings for financial institutions.  + Save supervisory costs and other supervisory problems.  + Eliminate over-regulation. | - The need to amend legislation. (the Management Companies and Investment Funds Act or related CNB regulations). | |  |   **Consultation**  This issue is based on the CNB's comments in the preparation of this legislation and has since been analysed and consulted with the entities concerned. The chosen option should reflect the achieved consensus. **2.10 Extension of the possibility to be a fiduciary to a management company that is not entitled to exceed the decisive limit and to a person pursuant to Section 15 of the Management Companies and Investment Funds Act** **Current status and current legislation**  The trust fund under the legislation in Management Companies and Investment Funds Act is based on the principle of joint investment of funds and participation in the development of the value of the trust fund for the purpose of investment evaluation. The trust fund provided for in the Management Companies and Investment Funds Act differs from the trust fund provided for in the Civil Code in that it is an investment fund supervised by the CNB. The Investment Trust Fund is a qualified investor fund (Section 101 of the Management Companies and Investment Funds Act), it may not serve as a means of investment offered to the public and cannot be created by earmarking assets from a collective investment fund (Section 148 (1) of the Management Companies and Investment Funds Act).  According to the current wording in the Management Companies and Investment Funds Act, the legal regulation of trust funds as investment funds is conceived in such a way that the beneficiary is at the same time under Section 95 (1)(c)(1) of the Management Companies and Investment Funds Act an investor (qualified investor). Given the nature of the investment fund, the law is based on the logic that the investor and the person to be fulfilled must represent the same entity. In the case of a trust fund which is an investment fund, only the founder of the fund or one who has contractually increased its assets, the so-called contributor, can be considered. Investors of the qualified investor trust fund therefore invest resources for their own benefit. The question is, however, whether it is reasonable to require that the beneficiary must always be an investor and whether the investor could not invest in the benefit of a person who is not an investor who does not face investment risk and is only beneficiary (parent for his / her child, etc.).  Pursuant to Section 1453 of the Civil Code, the fiduciary may be any natural person or legal entity designated by law. At present, the authorization to perform the function of trustee is granted to management companies, which may be fiduciary of an investment fund created as a trust fund, as well as a trust fund that is not an investment fund.  This is further concretized by the fact that a company authorized to exceed the relevant limit, which is authorized to provide investment services to manage the assets of the customer, which includes the investment instrument, at the discretion of the contractual arrangement (hereinafter referred to as “portfolio management”), and with a license pursuant to Section 481 of a Management Companies and Investment Funds Act that is authorized to provide portfolio management investment services may also, as an entrepreneur, also be a fiduciary of a trust fund that is not an investment fund if it is a management company under AIFMD and not UCITS (Section 11 (4) and (6) of the Management Companies and Investment Funds Act).  Pursuant to Section 15 (1) of the Management Companies and Investment Funds Act, a legal person who is not authorized to manage investment funds and in the Czech Republic manages or intends to manage assets consisting in the collecting of funds or money valued from investors or acquired for such funds money-valued assets, for the purpose of its joint investment on the basis of a determined strategy in favour of these investors, must submit an application for entry in the list maintained by the Czech National Bank pursuant to Section 596 (f) and be entered in that list. However, such a person cannot also be a fiduciary who is not an investment fund.  It follows from the foregoing that an investment company which is not authorized to exceed the relevant limit and that a person registered in accordance with Section 15 of the Management Companies and Investment Funds Act cannot be a fiduciary of a trust fund which is not an investment fund. This situation seems to be unnecessarily restrictive to some financial market players, and at the same time there is a clear demand for such managers and customers themselves, as described below.  **Design of solution variants**  Two variants are considered:   * Option 0 - maintaining the current status * Option 1 - extension of the possibility to be a fiduciary to a management company that is not entitled to exceed the decisive limit and to a person pursuant to Section 15 of the Management Companies and Investment Funds Act   **Option 0 - maintaining the current status**  There will be no positives or costs if the status quo is maintained.  **Option 1 - extension of the possibility to be a fiduciary to a management company that is not entitled to exceed the decisive limit and to a person pursuant to Section 15 of the Management Companies and Investment Funds Act**  If a management company that is not entitled to exceed the decisive limit and authorized to provide portfolio management investment service as an entrepreneur and a person registered pursuant to Section 15 of the Management Companies and Investment Funds Act could be a fiduciary of a non-investment trust, it would increase the attractiveness of the capital market, as many more investment companies could perform the function of fiduciary. Demand for such administrators and customers themselves is evident. According to its own statistics, XYZ established more than 1,300 trust funds at the end of November 2018, which makes it a clear market leader, as there were 2,062 trust funds operating in the Czech Republic at the end of October 2019. It should be noted that XYZ is arousing some controversy[[6]](#footnote-7) in the context of regulatory compliance. Finally, the fact that there is a slight discontinuity of the legislation cannot be overlooked.  **Proposal of the most suitable solution**  Option 1 seems to be the most appropriate solution, which significantly increases the attractiveness of the capital market and develops it. This would remove the restrictive situation where only a small group of legal entities could manage trust funds. With the new legislation, two new subsections in Management Companies and Investment Funds Act would probably be added. The new legislation would probably result in administrative costs for the supervisory authority, as it would have to register a larger number of entities under Section 15 of the Management Companies and Investment Funds Act. Nevertheless, the benefits of the chosen option will significantly exceed its negatives.  **Summary of impacts of the chosen Option 1**   |  |  | | --- | --- | | **Benefits / positives** | **Costs / negatives** | | + Significant development of the capital market or the whole national economy in the possibility of more efficient allocation of money mass.  + Cost savings for financial institutions.  + Eliminate over-regulation. | - Need to amend legislation (the Management Companies and Investment Funds Act).  - Discontinuity of the legal order.  - Costs of the supervisory authority for the registration of new entities pursuant to Section 15 of the Management Companies and Investment Funds Act. |   **Consultation**  This issue is based on the opinion of management companies in the preparation of this legislation and has since been analysed and consulted with stakeholders, including the CNB.  **3. SELECTING THE MOST SUITABLE SOLUTION**  Below is a summary of all the solutions that the Ministry of Finance proposes to apply in the present act.   | **Description of the issue** | **Selected variant** | | --- | --- | | Long-Term Investment Account | Option 1 - extending the offer of products intended for savings for old age by a personal savings account - Long-Term Investment Account | | Simple joint stock company | Option 0 - maintaining the current status | | Self-certification of wealthy investors | Option 2 - introduction of the institute of investor declaration | | Regulation of crowdfunding platforms offering bonds | Option 2 - regulation of advertising for investment instruments with the supervision of regional trade licensing offices | | Alternative Participation Fund | Option 1 - to extend the offer by a new type of alternative participation fund, respectively to provide similar type of state support to transformed or participation funds to such type of fund | | Sub-funds for joint stock companies and KSIL | Option 3 - allow the creation of sub-funds of KSIL and closed-end investment fund of the joint stock company | | Required XML format for other financial market entities | Option 1 - application of Section 34 (3) of the Execution Order to other financial market entities for which the Execution Order uses the abbreviation of a financial institution | | Support for trading of corporate bonds | Option 1 - extending the requirements for terms of issue | | Registration of funds in the CNB list | Option 1 - abolition of compulsory registration of funds pursuant to Section 325a of the Management Companies and Investment Funds Act in the CNB list | | Extension of the possibility of being a fiduciary | Option 1 - allow investment in favour of third parties within the trust fund |   **4. IMPLEMENTATION OF RECOMMENDED OPTIONS AND ENFORCEMENT**  The incorporation of recommended variants into the Czech legal order will be done by amending the relevant provisions of the relevant laws. Supervision of fulfilment of obligations in the financial market performs CNB, which may punish offenses as misdemeanours and take action to remedy or other measures. Supervising the regulation of advertising, according to the proposal should perform regional trade offices. If an offense (such as fraud or embezzlement) is committed, law enforcement authorities will be involved.  **5. REGULATORY EFFECTIVITY REVIEW**  The Ministry of Finance will review the effectiveness of the newly introduced regulation 3 years after the entry into force of the act. The MF will continue to consult regularly with market participants and the supervisory authority (CNB), as well as with other interested parties (e.g. representatives of the academic sphere). These consultations will include an analysis of the impact of the new regulation and a discussion on its possible calibration with another amendment. It appears desirable to evaluate primarily the changes in the number of people in the sector, the effectiveness of the extension of the terms of issue, the new results of inspections and surveillance activities, the change in the scope of unfulfilled obligations, costs and benefits of the proposed measures, etc.  **6. CONSULTATION AND DATA SOURCES**  The MF published a public consultation on the draft National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023 in the Czech Republic[[7]](#footnote-8) on 7 December 2018, with the term to express to 9 January 2019. In this context, it invited the capital market participants and the professional public to submit any concrete proposals, including the justification of the proposed change, which could be taken into account in the preparation of the amendment.  After incorporating the comments received and finalizing the text, the Ministry of Finance submitted the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023, to the Government which approved this document at its meeting on 4 March 2019 (Resolution No. 156).  Subsequently, on 8 August 2019, a document entitled “Planned Legislative Measures Arising from the National Strategy for the Development of the Capital Market in the Czech Republic 2019 - 2023” was published for public consultation.[[8]](#footnote-9) In this context, the Ministry of Finance also invited capital market participants and the professional public to submit any specific proposals, including the justification of the proposed change, which could be taken into account in the preparation of the amendment. At the invitation responded one supervisory authority, one ministry, 6 market associations, one international market association, a trade union representative, one educational institution, 5 market operators and 5 private persons.  The analysis of the individual issues examined all available data sources, in particular data available via the Internet, such as lists kept by the CNB, foreign legislation, professional literature, including foreign data, and other data provided by participants in discussions and consultations.  For the sake of transparency, the submitter published the results of these consultations for some of the individual options to which he received feedback. The submitter also received many comments orally, resulting from numerous discussions. At least a summary of these consultations has been attempted by the submitter at the end of the remaining individual options. The submitter is aware of the need to react to the needs of practical functioning and the changes that are taking place in the capital market. When choosing the most appropriate solution, the submitter respected the private law area related to capital market issues, which should be regulated as freely as possible, but also not forgetting the need to protect especially retail investors and also inspired by the legislation of Western European countries.  **7. CONTACTS FOR RIA PROCESSOR**  Mgr. Bc. **Aleš Králík**, LL.M.  Ministry of Finance / Financial Markets II / Capital Market Department  Tel: +420 257 04 24 35, e- mail: ales.kralik@mfcr.cz |  |

1. Between 2016-2017, the UK had an ISA account approximately 22,000,000 residents. Approximately 8.5 million residents in this period deposited cash in Cash ISA, 2.5 million residents in Stocks and Shares ISA, the remaining 11 million residents in this period deposited no savings but had an active ISA account with savings from previous years. Innovative ISA was a new product this year, so only 5,000 people put their savings in it, but it is estimated that 31,000 people have already put their savings in it the following year. Lifetime ISA was established a year later, i.e. in the period 2017-2018, when it was estimated that 166 000 residents invested in it. In addition, according to preliminary estimates, the so-called Junior ISA used 900,000 residents in 2017-2018. Source: Individual Saving Account (ISA) Statistics. [↑](#footnote-ref-2)
2. More than a third of US households, nearly 44 million, owned at least one type of IRA in mid-2017. The traditional IRA was owned by 35 million households, the Roth IRA was owned by 25 million households and nearly 8 million households owned an IRU subsidized at least in part by employers. Source: US Retirement and Education Savings. [↑](#footnote-ref-3)
3. The average appreciation of dynamic participation funds in 2017 was 7.18%, but in 2018 - 8.25%. [↑](#footnote-ref-4)
4. The standard in the area of collective investment and foreign contribution defined voluntary systems is that in addition to the management fee, the fund pays other costs such as transaction costs, securities management fees (custody fees), depository fees, audit. These additional costs depend on the type of securities and investment strategy and are usually in the range of 0.1 - 0.5% in relation to the assets under management. [↑](#footnote-ref-5)
5. Judgment of the Constitutional Court file no. II. ÚS 543/11. [↑](#footnote-ref-6)
6. For example, the CNB suspects XYZ of violating several financial market laws. According to some, under the guise of a trust fund, XYZ offers classic collective investment. If that were the case, it would circumvent the dozens of regulatory and very costly obligations that licensed investment funds have to fulfil. A CNB spokeswoman confirmed that the CNB was intensively checking on XYZ for possible breaches of the Banking Act and Management Companies and Investment Funds Act and that the CNB was taking all legal remedial action. [↑](#footnote-ref-7)
7. https://www.mfcr.cz/cs/soukromy-sektor/kapitalovy-trh/podnikani-na-kapitalovem-trhu/2018/verejna-konzultace-koncepce-rozvoje-kapi-33657 [↑](#footnote-ref-8)
8. https://www.mfcr.cz/cs/soukromy-sektor/kapitalovy-trh/podnikani-na-kapitalovem-trhu/2019/verejna-konzultace-planovana-legislativn-35843 [↑](#footnote-ref-9)