

# **High growth companies and how to fund them – a real driver of economic growth?**

**Corporate Acquisitions and Joint Ventures Commission**

**Prague, 2014 – Working Session 04**

## **National Report of Poland**

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The working session in Prague is entitled “*High growth companies and how to fund them – a real driver of economic growth?*” In the working session we plan to address funding alternatives for high growth companies (i.e. companies with significant annual growth over time); opportunities and challenges that both entrepreneurs and investors may encounter in your jurisdiction. The working session will also look at corporate governance issues in connection with investments in high growth companies. This questionnaire mainly concentrates on these two topics in relation to high growth companies, but will also cover commercial and regulatory opportunities and constraints.

## 1. CORPORATE FINANCE – FUNDING ALTERNATIVES

### 1.1 Which financial instruments are typically used when investing in high growth companies; ordinary shares, preference shares, convertibles, warrants, stock options, debt instruments such as bonds, hybrid instruments such as participating debentures etc.?

Financial instruments most commonly used in Poland when investing in high growth companies used by entrepreneurs and for gaining capital are securities listed in the Act on Trading Financial Instruments (Unified text in Official Journal from 2005 No. 183).

There is a principle of exhaustive list of securities provided by the Polish law. The principle means that parties cannot create new securities, except those which have been described in the Act. Polish law securities are only those documents which the law confers such a status. The most common securities are shares, subscription rights, pre-emptive rights, bonds or short-term corporate debt securities.

### 1.2 Please elaborate on the pros and cons of the instruments used (ref. 1.1 above) (Describe 2-3 most widely used instruments more in-depth (any combinations as well, if applicable). Also other features, i.e. typically electronically registered instruments or not? etc.)

Shares are the basic instrument of the financial market through which a joint stock company can raise funds for the investment. Shares are securities combining property rights and non-property rights, arising from participation of a shareholder in the company. There are two kinds of shares: the registered shares or the bearer shares, when only the latter in form of dematerialized shares (occurring in electronic form) may be an object of a trade on a stock exchange. It is related to the nature of stock exchange, that only standardized financial instruments can be its object<sup>1</sup>.

The shares can be traded on Warsaw Trade Exchange, but there is an alternative trading system, NewConnect, financing the growth of young companies with a large growth potential. It is an excellent opportunity for young, growing companies, especially in the high-tech sector, which are too small to be listed on the Warsaw Trade Exchange.

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<sup>1</sup> Code of Commercial Companies Act . Unified text in Official Journal from 2000 No. 1037.

Bonds are the debt securities of the issuer incurring a certain amount of the loan and its repayment obligation to the bondholder within the specified deadline. Bonds are specially used by the entities with high demand for long-term capital. They are considered as a cheaper source of financing the enterprise than, for example, shares as interest, in respect of interest paid to the bondholders are classified as financial expenses and deducted from the tax base due to the enterprise income tax. Issuance of bonds may be secured or unsecured<sup>2</sup>.

The corporate bond market in Poland is still developing. The corporate bonds are currently more often used than in the past considered (next to bank loans) as one of the methods of co-financing large investment projects. In particular, buying bonds with fixed interest rates, assuming holding them to the buyout, we know all future payments on this account.

The disadvantages of bonds include credit risk, when the company is unable to keep up with payments on time or comply with its obligations at all. Another drawback of the corporate bond market in Poland is the fact of unsatisfactory liquidity because of bonds in respect to which there is no transaction during several sessions. Other disadvantages associated with bonds include interest bond risk, reinvestment risk, early redemption, inflation, currency risk.

### **1.3 Are there any regulatory constraints to the instruments used (ref. 1.1 above)?**

Regulatory constraints to the instruments used in par. 1.2. are described in the Act on Trading Financial Instruments (unified text in Official Journal from 2014 No. 183). The main restrictions are connected with the procedure on introducing financial instruments to the market. With reference to the above mentioned, main regulatory constraints are:

- the need of the approval of the prospectus by an administrative decision of Financial Authority,
- as a general rule the necessity to engage the investment firm brokerage in connection with public offer, shares subscription and sale,
- an offer addressed to at least 150 people or unaddressed recipient can be made only on a regulated market or in the alternative trading system and only if financial instruments like securities are admitted to trading on a regulated market or in the alternative trading system.

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<sup>2</sup> Obligation Act . Unified text in Official Journal from 1995 No. 83.

#### **1.4 Is crowdfunding a funding alternative in your jurisdiction? How wide is the practice? If at all, please describe pros and cons.**

Crowdfunding is still a novelty in Poland. Currently, there are eight crowdfunding portals<sup>3</sup> active in Poland and also the newly established Polish Crowdfunding Society with the aim of promoting crowdfunding in Poland. Nevertheless, crowdfunding is perceived rather as an interesting promotion tool for new projects than an effective financing method for entrepreneurs<sup>4</sup>. There also is a legal uncertainty, since no regulation on crowdfunding exists, contrary to e.g. JOBS Act in the USA enacted in 2012.

In Poland a public fundraising is subject to regulation by the Act on public fundraising (unified text in Official Journal from 2013 No.732) originating from 1933, which provides that any activity of collecting donations, either in payment or in kind, requires a special permit of the authorities. Following to Article 3 of the above Act a permit may be issued only if the fundraising is organized in a public interest deserving support. The Act names religion, education, health, social or cultural goals as examples of interests deserving first and foremost support. The permit may be obtained only by societies or organizations with legal personality or committees organized for the purpose of obtaining a particular goal, whereas the aim of collecting donations has to remain in conformity with the articles of association of the particular society or organisation or, respectively, with the founding act of the particular committee. Therefore, in order to perform crowdfunding activities in Poland the above formal requirements have to be met and a special purpose entity should be established.

Moreover, the so called equity based crowdfunding, e.g. investing start up's in exchange for shares in their equity, may qualify as activities involving investing funds e.g. of natural persons collected by way of a proposal to conclude an agreement for participation in such a project. Such activity is reserved exclusively for investment funds and requires a permit of the Financial Supervisory Authority (*KNF*). According to Article 287 of the Polish Act on investments funds of 27 May 2004 (Official Journal 2004, No. 146, Pos. 1546 with amendments), anyone who without the required authorisation carries out the above activities may be liable to a fine of up to PLN 5,000,000 or even to a penalty of imprisonment for up to five years.

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<sup>3</sup> Data published by Crowdfunding.pl Sp. z o. o. on <http://crowdfunding.pl/crowdfunding-w-polsce/#.UsakLVMmAyp>

<sup>4</sup> Marta Czekaj, „*Crowdfunding – zrzuć się na biznes*” in *TREND* Miesięcznik o Sztuce Inwestowania, April 12, 2013, [http://www.gazetatrend.pl/artykuly/502-crowdfunding-zrzuc-sie-na-biznes#\\_ftn1](http://www.gazetatrend.pl/artykuly/502-crowdfunding-zrzuc-sie-na-biznes#_ftn1)

The activity of raising funds for investing in companies may also be qualified as a public offer addressed to potential investors under the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies (Journal of Laws 2005 No. 184 item. 1539).

For the above reasons, crowdfunding cannot be considered as a funding alternative in the Polish jurisdiction.

## **2. INVESTORS VIEWPOINT – OPPORTUNITIES AND CONSTRAINTS, LEGAL AND COMMERCIAL**

### **2.1 Who are typical investors into a high growth company in your jurisdiction? Sources of funding (i.e founders-family-friends, angel investments, venture capital investments, private equity)**

#### a. General remarks

The most common source for financing high-growth companies are equities, whereas the role of external capital is still growing. Next to the bank loans, more and more popular is the use of capital market instruments and funds such as private equity or venture capital and financing through business angels and mezzanine.

#### b. New Connect – alternative trading system for high-growth companies

One of the possibilities of financing high-growth companies is gaining capital via New Connect. New Connect is a stock market based on the alternative trading system operated by Warsaw Stock Exchange<sup>5</sup>. Gaining capital may occur through public or private placement. In case of the first one, the company is a subject to the same procedures as on the main floor of Stock Exchange<sup>6</sup>, whereas private placement gives the advantage, new to the Polish capital market, of an offer targeted at up to 149 identified investors (individual or institutional), irrespective of the size of the issue.

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<sup>5</sup> Przewodnik po rynku NewConnect. [www.newconnect.pl](http://www.newconnect.pl)

<sup>6</sup> Bieleń Robert. Emisja akcji i wprowadzenie ich do obrotu na rynku NewConnect. Przygotowanie spółki do pozyskania kapitału. Warsaw 2012.

NewConnect is in operation since 2007, however, it is still considered as a novelty, although such platforms already operate in Europe, for example, AIM market in London or First North within the Scandinavian group OMX.

c. Private equity funds

In general terms there are two types of operating funds in the Polish market:

- local funds, originating from an/or concentrating their activity in Poland (and/or other CEE countries), and
- big international funds with Poland being just one of its many market around the world.

For both types of funds it is difficult to indicate the prevailing source of their investment finance as most funds do not reveal such information to the public<sup>7</sup>.

Polish private equity/venture capital market is relatively small, especially when compared with Western European countries, however, its foundations and business environment are considered to be strong and attractive<sup>8</sup>. According to the data from European Private Equity and Venture Capital Association, the value of the Polish market in 2012 was estimated at 153 million Euro.

d. Business angels

In Poland, investments done by business angels were initiated in the nineties of the twentieth century during transformational processes<sup>9</sup>. There were eight business angels network in mid-2010. The vast majority of them has been financed by the Operational Program Innovative Economy Measure 3.3<sup>10</sup>. Among the investment business angels united in Leviathan Business Angels there are examples of traditional businesses along with very innovative.

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<sup>7</sup> Jędrzejak Jakub, Frątczak Klaudia, Czeakański Łukasz. Private Equity Jurisdictional Comparison. First Edition 2010.

<sup>8</sup> Polska najlepsza w regionie venture capital. Forbes 2011.  
<http://www.forbes.pl/investor/fundusze/artykuly/Investor-Fundusze-aktualnosci/polska-najlepsza-w-regionie-dla-venture-capital,12974,1>

<sup>9</sup> Kreatywność w biznesie. <http://www.kreatywnie.aniolybiznesu.org/kreatywnosc-w-biznesie/i...>

<sup>10</sup> Bariery w rozwoju rynku aniołów biznesu w Polsce. Ekspertyza dla Ministerstwa Gospodarki..

Noteworthy, is that business angel investment in the company Polidea (a company specializing in applications involving creation and transfer of content to mobile devices), which was declared the best transaction of business angels in Europe<sup>11</sup>.

e. Mezzanine financing

Less popular investment instrument in Poland is mezzanine financing. Currently in Poland, mezzanine financing is subject to funds like private equity/venture capital, for example, Accession Mezzanine Capital, Intermediate Capital Group. Mezzanine financing is also getting more popular among banks, for instance, BRE Bank S.A.<sup>12</sup>

## 2.2 Is there a typical size of the investment into a high growth company in your jurisdiction?

There is no firm data available on the typical size of the investment into a high growth company in Poland. In general terms, it may be concluded that in 1998-2011 private equity/venture capital funds invested in Poland more than 4 billion Euro. In 2009, there was a visible decline in investments, which can be regarded as a consequence of the financial crisis.

The size of the potential investment is defined by each fund individually with regard to the fact that for the entrepreneur more important is the lower limit than the maximum one (good project will always download the additional co-investors). Frequently, the lower limit means sources that fund may invest in the long term projects, so called committed investments, than in a one time-investment.

All in all, the magnitude of the investment depends on many factors, including the size of funds held by the funds, investment strategy and risk. It is worth noting that, in Poland positive dynamics of the investments have been observed, since 2010 contrary to Central and Eastern Europe.

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<sup>11</sup> Polskie anioły biznesu najlepsze w Europie: Firma Polidea wyróżniona.  
<http://www.newsweek.pl/polskie-anioly-biznesu-najlepsze-w-europie...>

<sup>12</sup> Panfil Marek. Mezzanine jako źródło finansowania dla przedsiębiorstwa, 2008.  
[http://ceo.cxo.pl/artykuly/58465\\_1/Mezzanine.jako.zrodlo.finansowania.przedsiębiorstwa](http://ceo.cxo.pl/artykuly/58465_1/Mezzanine.jako.zrodlo.finansowania.przedsiębiorstwa)



### 2.3 Describe the process of documenting the investment (Which documents are typical? Which terms need to be included in the articles to be enforceable? etc.)

The process of documenting the investment depends on the type of the investment into high growth companies. Pointing generally on the documents presented to the investors, usually there are following documents:

- business plan – a document containing basic information about the current activities of the company and details of the investment plan
- the due diligence documents detailing legal and financial situation of the company which allow to assess the financial and legal risks of the business
- an investment teaser containing basic information about the project
- in the next step, offering documents containing detailed information on the planned shares or stocks offer<sup>13</sup>. The offering documents should entail the valuation of the whole enterprise.

Based on the information presented by the Polish Agency for Enterprise Development S.A. concerning the Innovative Economy Program sub 3.3.2., the average cost of preparing documents for obtaining an outside investor is nearly three hundred thousand Polish zloty.

Giving the example of gaining capital via New Connect, for a company considering listing on this alternative trading system following documents required are:

- articles of association (for companies operating in another form), a previous transformation into a joint stock company
- resolution of the company's general meeting on the share issue through a private placement or public offering and on bringing shares to New Connect
- documentation on private placement approved by authorized advisor or public information document (a prospectus or an information memorandum) approved by a supervisory body
- application to the National Depository for Securities for dematerialization of shares.

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<sup>13</sup> Babiarz Andrzej. Koszty związane z pozyskaniem inwestora typu Venture Capital i Private Equity. 2014 <http://www.inwestujwinnowacje.pl/koszty-pozyskania-inwestora/11>

**2.4 Are there incentive schemes for investing into high growth companies (governmental grants (including co-investment funds, state as a guarantor of loans, etc.)?)**

With respect to the incentive schemes the operations of two funds shall be indicated.

Firstly, the National Capital Fund which is a Polish fund created by the government initiative. The fund operates as a specialized vehicle that allocates its fund in other capital funds. As a mechanism of co-financing investments it gives the opportunity to allocate twice as large capitalization of venture capital as can be achieved with the involvement of the National Capital Fund as a public investor. An additional advantage is a priority in reimbursement of capital which is obtained by the private investor. This is particularly important in case of the building fund, which will focus on investing in the most risky projects such as seed and start-up investments.

Another fund is the National Credit Guarantee Fund at Bank Gospodarstwa Krajowego (National Economy Bank). The basis of its operation was an agreement between the Minister of Finance and the National Economy Bank concluded in 1994 . One of the main tasks of the fund was securitizing National Economy Bank loans. Under the provisions of the agreement, guarantee can cover only a bank loan for the purchase of raw materials for production and for the investment<sup>14</sup>.

**2.5 Any instruments referred to in section 1 preferred from the point of view of an investor? Why? Would the answer differ if the investor is international or domestic?**

Domestic investors are still poorly interested in making investments through instruments mentioned in Section 1 above. The reasons for that are rooted in the legal, organizational and economical barriers<sup>15</sup>. According to the international

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<sup>14</sup> Brodowska-Szewczuk Jolanta. The sources of financing the small and medium-sized enterprises, Zeszyty Naukowe Akademii Podlaskiej w Siedlcach, Nr 83, 2009.

<sup>15</sup> Polskie Stowarzyszenie Inwestorów Kapitałowych. Biała księga. Inwestycje w private equity dla polskich inwestorów instytucjonalnych. Warszawa 2007.

investors, the obstacles for making investments in Poland are uncompetitive labor law, unclear tax rules and barriers applying for investment activities<sup>16</sup>.

### **3. ENTREPRENEUR'S VIEWPOINT – OPPORTUNITIES AND CONSTRAINTS, LEGAL AND COMMERCIAL**

#### **3.1 Which company form is most popular?** (Special company forms for high growth companies? Tiers of management typical for a high growth company? Liability point of view?)

A Polish limited liability company (sp. z o.o.) is the most commonly used type of fund vehicle in Poland for many reasons. First of all, a the company is the most simple type of company with low share capital requirements (minimum of PLN 5,000) which, at the same time, carries no direct liability on the shareholders for the company's actions, obligations and liabilities. At the same time, its corporate structure is not as complicated as of a joint stock company (which, for example, must have a supervisory board whereas in a Polish limited liability company a supervisory board is, in most cases, optional). Consequently, even though the shareholders are not directly liable to third parties for the company's actions and liabilities, they can, to a large extent, influence the company operations. With respect to Polish limited liability company there are practically no financial assistance limitations and they may easily provide upstream security for external transaction financing<sup>17</sup>.

The joint stock company (S.A.) is the only type of Polish company that can be publicly listed. There are higher share capital requirements for joint stock companies than for limited liability companies (minimum of PLN 100,000). At the same time it should be noted that Polish joint stock company offer more diverse ways of financing than limited liability company. In a Polish joint stock company it is possible to increase the share capital in a way which is similar to what is commonly known as authorized capital where the decision to issue shares is vested with the board. It is also possible to increase the company's capital conditionally. Finally, in a Polish joint stock company it is possible to issue bonds and/or warrants that are convertible into shares or which provide for a right of pre-

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<sup>16</sup> Polska Agencja Informacji i Inwestycji Zagranicznych S.A. Zagraniczni przedsiębiorcy o barierach inwestycyjnych w Polsce. 2012.

[www.paiz.gov.pl](http://www.paiz.gov.pl)

<sup>17</sup> WKB Wierciński Kwieciński Baehr Wierciński Andrzej, Jędrzejak Jakub, Frątczak Klaudia, Czeakański Łukasz. Private Equity Jurisdictional Comparisons. First Edition 2010.

emption with respect to newly-issued shares. On the other hand, a significant limitation of joint stock company are certain financial assistance limitations<sup>18</sup>.

### **3.2 What sectors are most preferred by high growth companies in your jurisdiction (information and communications technologies, biotech, etc.)?**

Investment preferences vary depending on the expected change of the potential profits in the future. Currently, the most preferred fields are:

- biotechnology,
- electronics,
- IT,
- medicine,
- environmental protection,
- telecommunications.

This does not mean, however, limitations the investment only to this areas. Virtually, every business venture, which demonstrates a serious potential for growth and high chances of success may be of interest<sup>19</sup>.

### **3.3 Are there incentive schemes for entrepreneurs incentivising high growth companies (e.g accelerators/incubators? Other?)**

In a large group of entities operating within the private equity/venture capital certain part of the market can be distinguished, where funds invest in projects with high potential but being in an early phase. The Polish market makes a large group of such funds. One of the most famous is Leviathan fund – Business Angels Seedfund BAS, which invested in such ventures like WebGo!, JakLeci.pl or Polymen. Another fund is, IIF S.A, the only one listed in Warsaw Stock Exchange. Worth mentioning is AIP Seed Capital – a seed fund of Academic Incubators of Entrepreneurship. AIP is a very good source of capital for young high-growth companies.

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<sup>18</sup> WKB Wierciński Kwieciński Baehr Wierciński Andrzej, Jędrzejak Jakub, Frątczak Klaudia, Czeakański Łukasz. Private Equity Jurisdictional Comparisons. First Edition 2010.

<sup>19</sup> Polish Agency for Enterprise Development. Fundusze Seed Capital. 2010..

### **3.4 Any instruments referred to in section 1 preferred from the point of view of an entrepreneur? Why?**

Taking into consideration an investment goals that are willing to be achieved by the entrepreneur, the preferred form seems to be a joint stock company as a legal form that serves an important economic function. Namely, a joint stock company allows raising capital from a wide range of investors, i.e. through the issue of shares on the capital market and the implementation of capital-investment plans.

## **4. CORPORATE GOVERNANCE – CONTROL ISSUES**

### **4.1 In a typical investment into a high growth company, whether a loan related investment or equity investment, how much control would a typical investor take? and what is of particular importance to an entrepreneur? In particular, please elaborate on the following terms from the perspective of your jurisdiction and practice:**

- a. Anti-dilution measures
- b. Rights of first refusal, pre-emption rights, drag and tag along
- c. Protective provisions
- d. Information rights
- e. Dead-lock resolution
- f. Board seats / observer rights
- g. Any other terms specific/important in your jurisdiction?

Generally, in a typical investment into a high growth company, whether a loan related investment or equity investment, a typical investor would take a controlling interest – the figure of 50% of the outstanding shares or voting shares, plus one.

## **5. EXIT STRATEGIES AND TIME HORIZON**

### **5.1 Type of exit which is most common (sale to venture capital/private equity firms/funds, trade sale, write-off, initial public offering)? Typical transaction length?**

Based on the expert opinion prepared for the Ministry of Economy, the most common type of exit from an investment is sale to a foreign investor (61.1%).

An interesting way of exit that appeared in Poland in 2007 is an alternative trading system of Warsaw Stock Exchange - NewConnect (described above). The introduction to NewConnect reaches up to 55.6% of used types of exit from investments.

Another type of exit commonly used is sale to the financial institution or to private equity/venture capital fund (33.3%). Next way of exit is, introduction to the main market of stock exchange (16.7%). Among the ways of exit should be noted also redemption of shares (5.6%) and other ways as 11%.

Depending on the policy of the fund, the industry and the nature of the company and also the situation on the market, an exit takes usually place after 3 to 7 years, however, there are cases of longer and shorter investments.

In principle, the way of exit is agreed during the initial negotiations and can mean the issuance of shares in the public market, the acquisition of a trade investor or other financial institution, buyout of shares by other shareholders, the company's liquidation or management buy-out or else management buy-in<sup>20</sup>. This can be done in several stages or a one-off.

**5.2 How are new investors dealt with in your jurisdiction? How would the issues set out in section 5 above be dealt with? Are initial investment and shareholders' agreements/shareholders' agreements upheld in the next round, or new agreement is entered into?**

Due to the risk associated with a certain weakness of the legal system in Poland, funds like private equity/venture capital that invest in high-growth firms are not the most important sources of gaining capital. From our practice, the circumstances of the exits of investors from the investment may be manifold.

The fund may expire and may be terminated, nevertheless the management company continues to exist and if it only can raise new funds and has good results it can make further investments. In the extreme cases when the investment fails, the fund exits from investment by opening the company's liquidation. The circumstances of an exit from investment will depend on the type and preferences of the investor. Giving an example, an business angel can stay in the company

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<sup>20</sup> Polskie Stowarzyszenie Inwestorów Kapitałowych  
[www.psik.org.pl](http://www.psik.org.pl)

only until the next, larger round of funding while the growth fund may want to remain in the company during subsequent round of financing, until the total exit at a further round, for instance, by introducing shares to the stock exchange<sup>21</sup>.

Regardless of the reasons for an exit from investment, each investor will expect appropriate financial provisions in the investment agreement. Most of that provisions apply to the duty of cooperate in introducing the company to the stock exchange and making initial public offering, which imposes on both sides an obligation to cooperate in the next round. Commonly used are also tag along rights, which is important for the investor in the next round, since a potential buyer cannot guarantee the same level of cooperation as the initial entrepreneur. Last but not least, is the drag along right, especially when a potential buyer is willing to have control interest. In this kind of situation, the investor may require selling together with the entrepreneur owned shares<sup>22</sup>. Appropriate preparation of the agreement at the beginning of the investment will ensure consistent and satisfactory exit for both parties at the proper business time.

## **6. REGULATORY ISSUES**

### **6.1 Any tax implications (positive or negative) that a high growth company encounters in your jurisdiction?**

Lack of uniform interpretations and complicated tax regulations are the biggest brakes on business, regardless of its size or industry. For the biggest tax obstacles the entrepreneurs recognize:

- complexity of tax law and lack of uniform interpretations
- frequency of changing the law, including tax law
- lack of officials' liability for wrong tax decisions

The Personal Income Tax Act has been changed since its adoption around 220 times, the Corporate Income Tax Act about 160 times and the Act on the Good and Services around 40 times since its adoption in 2004.

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<sup>21</sup> Stroiński Rafał T. Staranne przygotowanie do wyjścia z inwestycji gwarancją satysfakcjonującego zakończenia współpracy dla obu stron. Investment Tribune 2012.

<sup>22</sup> Stroiński Rafał T. Staranne przygotowanie do wyjścia z inwestycji gwarancją satysfakcjonującego zakończenia współpracy dla obu stron. Investment Tribune 2012.

According to statistics following tax issues are the biggest obstacles for high-growth companies:

- period of time that an entrepreneur has to wait for the Minister of Finance's interpretation (63.6%)
- lack of officials' liability for taking wrong tax decisions (75.2%)
- level of officials' competence and their attitude to the business (64.3%)
- online administrative procedures (24.8%)
- number of controls carried out by the tax officials (62%)
- execution of the decision before the final settlement of a tax dispute (69%)
- period between informing and implementing tax changes (66.7%)
- complexity and lack of uniform tax provisions (84.5%)
- frequency of changing tax laws (79.8%)<sup>23</sup>.

A key tax barrier is the proper functioning a tax provisions resulting from their frequent changes and their low quality allowing for a variety interpretations.

**6.2 In addition to any of the issues set out above, any other regulatory incentives or constraints with respect to high growth companies? Any constraints deriving from obligation for local participation in a high growth company? Co-investment obligation? etc.**

According to entrepreneurs, the biggest barriers in the way of business development are barriers associated with duration of administrative and civil proceedings, labor laws and the number of required licenses and permissions.

Giving some statistics, the biggest obstacles according to entrepreneurs are:

- procedures for applying for financial sources (58.1%)
- the number of required licenses and permissions (63.69%)
- public procurement procedures (57.4%)
- the labor law provisions (67.4%)
- duration of proceedings before civil and administrative courts 77.5%
- obligations connected with declarations submitted to the administrative authorities (62%)
- procedures connected with the commencement of operations 28.7 %<sup>24</sup>.

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<sup>23</sup> Bariery rozwoju przedsiębiorstw, czyli co najbardziej hamuje wzrost polskich firm. Raport z wyników ankiety przeprowadzonej podczas II Forum Przedsiębiorców Grant Thornton. Grudzień 2013.



Giving just one example, the usual duration of a final determination of the case by the two instances of administrative courts is about 2.5 years. Supposing that reversing a decision is made due to the procedural irregularities, the consideration of the case may take as long as 5 years.

## **7. OTHER**

### **7.1 Please elaborate on any other issues relevant to your jurisdiction with respect to high growth companies which have not been discussed in responses to earlier questions (if any).**

n/a

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<sup>24</sup> Bariery rozwoju przedsiębiorstw, czyli co najbardziej hamuje wzrost polskich firm. Raport z wyników ankiety przeprowadzonej podczas II Forum Przedsiębiorców Grant Thornton. Grudzień 2013.