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Alternative Funds

Italy
Di Tanno e Associati

chambers.com

2019

Law and Practice

Contributed by Di Tanno e Associati

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Di Tanno e Associati has a team comprised of 11 partners and 22 associates, with offices in Rome and Milan. The firm offers tax and regulatory services based on the integration of fiscal expertise with corporate and financial competencies. Its clients span all sectors and industries, and its primary practice areas include tax law, tax litigation, tax planning, international taxation, alternative investment funds, extraordinary transactions, M&As and restructuring. Since

its foundation in 1986, Di Tanno e Associati has been a key adviser in various transactions involving both foreign and Italian players in the fund formation sector. The firm has a strong focus on private equity and real estate funds, and provides legal advice in relation to the establishment and support of alternative investment funds, assisting fund managers on all regulatory, tax and legal matters. The firm's work for fund investors is also relevant.

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and investors with respect to fund formation matters, and has consolidated experience in structuring and managing all the related regulatory, corporate and legal matters; as well as incorporation and establishment procedures, including the relevant regulatory accomplishments; corporate governance definition and reorganisation processes; extraordinary transactions, including replacements of management companies; negotiations of investment funds' rules of management and offering documents; and liaising with supervisory authorities. Andrea is a member of the Tax and Legal Committee of AIFI.

1. General

1.1 General Overview of Jurisdiction

Italy is frequently used for the formation of different types of alternative investment funds (AIFs), which are mainly focused on real estate and private equity.

Venture capital and funds of funds markets are also fairly well represented, with a recent boost in venture capital in particular, thanks to certain incentives regarding the tax regime aimed at encouraging investments in SMEs and small mid-caps, which represent the major portion of Italian enterprises.

Private equity and venture capital AIFs are commonly managed by SGRs (*società di gestione del risparmio*, the Italian alternative investment fund managers or AIFMs) and rarely by foreign managers (who are basically based in the EU, thanks to the management passport granted under the Directive 2011/61/EU on alternative investment fund managers, known as the AIFMD).

A significant portion of real estate AIFs are managed by SGRs, which are frequently used by third-party foreign investors to access the real estate market (both as investment and for development) through dedicated funds but also blind-pool schemes. There are also a fair number of foreign investment management groups which opt for the direct establishment of Italian real estate AIFs to be managed by captive SGRs or foreign AIFMs.

Italian AIFs are typically of interest to Italian and foreign investors focused on real estate – thanks to the well-developed Italian market and the many investment opportunities – as well as on private equity and venture capital, given the large number of SMEs and small mid-caps with significant growth margins in the Italian economy.

Finally, in recent years SGRs have established some AIFs focused on investments in debt instruments and receivables (NPLs and UTPs), and are evaluating taking advantage of the rules allowing AIFs to originate loans in order to access that portion of the credit market where banks are less active.

2. Funds

2.1 Types of Alternative Funds

AIFs commonly established in Italy are:

- *fondi comuni di investimento*, either open-end or closed-end, in contractual form;
- SICAFs (*società di investimento a capitale fisso*), closed-end in corporate form; and
- SICAVs (*società di investimento a capitale variabile*), open-end in corporate form.

Private equity, venture capital and real estate funds, as well as funds of funds, are established as closed-end AIFs, while hedge funds are typically established as open-end AIFs.

The majority of AIFs are reserved for professional investors and for retail investors subscribing for more than EUR500,000 (these are defined as “reserved AIFs”). The laws and regulations in place allow reserved AIFs to derogate the limits set with reference to retail AIFs, eg, in terms of risk concentration limits, governance and other functioning mechanisms, which make them a relatively flexible investment structure.

2.2 Fund Structures

AIFs in contractual form can be established, managed and marketed by SGRs (these are authorised and supervised by the Bank of Italy) and by AIFMD-passported EU AIFMs. These AIFs are governed by management rules of a contractual nature and are a segregated pool of assets without legal personality, represented by the SGRs managing them.

SICAFs and SICAVs can either:

- be established, managed and marketed by the same entities described above (and in such case are defined as “externally managed”); or
- request the Bank of Italy’s authorisation to directly manage their assets and market their shares (in such case, they are at the same time an AIF and an AIFM, and are defined as “internally managed”).

These AIFs are established as joint stock companies (*società per azioni*) with legal personality and are governed by their by-laws.

2.3 Regulatory Regime

The Italian legal framework concerning AIFs and AIFMs has been reorganised due to the implementation of the AIFMD. The management of Italian AIFs is governed, in addition to the AIFMD and EU Regulation 231/2013, by Legislative Decree 58/1998 (the so-called Unified Financial Act or UFA); by the Decree of the Ministry of Finance No 30 of 5 March 2015 on the general criteria to be complied with by undertakings in collective investments, including AIFs (Decree 30/15); by the Bank of Italy’s regulation on collective investment management (BoI Regulation); by the Bank of Italy’s and Consob’s joint regulation on the organisation and procedures of intermediaries which provide investment services or collective investment management (Joint Regulation); and by Consob’s regulations implementing the UFA.

An Italian AIF is a scheme established and managed by a manager as a segregated pool of assets divided into units/shares and collected, through one or more issues of units or shares, among a plurality of investors, managed as a whole in

the interest of the unitholders and independently from them on the basis of a predetermined investment policy.

An Italian AIF must be established in closed-end form when it is mainly invested in one or more of the following asset classes:

- financial instruments (equity, funds' units, debt and similar) for more than 20% of its assets;
- real estate;
- receivables, also arising from lending activity exercised by the fund; and
- other goods whose value can be determined at least every half-year.

When the investment policy is focused on other kinds of assets, the AIF can be open end.

As regards the regulatory regime applying to AIFs with a particular focus on investment limitations, as mentioned in **2.1 Types of Alternative Funds**, a distinction should be made between reserved AIFs and retail AIFs, since reserved AIFs, which are the common schemes used for private equity, venture capital, real estate and funds of funds, are subject to significantly fewer limitations than retail AIFs.

In particular, reserved AIFs are not subject to specific mandatory limitations regarding risk concentration, and the relevant rules of management can provide for an investment policy with significant flexibility (except for those areas mentioned below).

Reserved AIFs focusing on real estate must typically abide by the following investment limits:

- they must invest an amount equal to at least two thirds of their total value in what are known as “qualifying assets”:
 - (a) real estate properties;
 - (b) rights in rem on real estate assets, including those arising from leasing agreements that are transferral in nature (so-called “*contratti di leasing immobiliare con natura traslativa*”) and licence relationships (so-called “*rapporti concessori*”);
 - (c) equity interests in real estate companies (so-called “*società immobiliari*”); or
 - (d) other real estate AIFs;
- they can invest the remaining one third of their total value in assets other than the above qualifying assets (eg, listed or unlisted financial instruments, in compliance with the relevant general prohibitions and investment limits provided by laws and regulations); and
- they cannot directly carry out any building activity.

A de facto minimum level of diversification of risks (based on the actual characteristics of the portfolio assets) must be ensured; common market practice sets the concentration

limit for reserved AIFs at a maximum of 80 to 85% of assets to be invested in a single property that has non-diversified urban and functional characteristics or whose related financial risk is concentrated on a single tenant (while retail real estate AIFs' assets cannot be stably invested for more than 20 to 33% – depending on the lease status – in one property having unitary urban and functional characteristics or a single tenant).

Reserved AIFs that differ from real estate AIFs can derogate to basically any investment limit provided for by laws and regulations.

An exception is set forth for those funds which invest mainly in receivables (purchased from the creditor but also arising from lending activity exercised by the AIF): those AIFs cannot hold receivables vis-à-vis the same counterparty for more than 10% of their assets, the receivables must have a duration not exceeding the duration of the AIF, and where they derive from a direct lending activity by the AIF, such activity cannot be exercised vis-à-vis consumers. In addition, leverage cannot exceed a 1.5 ratio between financial exposure and net asset value (NAV).

2.4 Loan Origination

Italian closed-end AIFs can originate loans, as described in **2.3 Regulatory Regime**, in relation to funds that invest in receivables.

In addition, an AIF can grant loans to its portfolio companies within the investment concentration limits provided for in its investment policy and, in the case of retail AIFs, applicable prudential rules.

2.5 Cryptocurrencies and Non-traditional Assets

Investments in non-traditional assets by closed-end AIFs should be allowed, in principle, if the value of such assets can be determined at least every half-year.

The Italian regulatory framework does not contain specific rules allowing or preventing investment by an AIF in cryptocurrencies. However, it is worth mentioning that all financial instruments and cash held by an AIF must be deposited with the depositary, which could represent a limitation in this respect.

2.6 Regulatory Approval Process

Reserved AIFs in contractual form are not subject to any approval and can be established by a resolution of the managing body of the SGR (or of the AIFMD-passported AIFM).

Reserved and retail SICAFs and SICAVs, as well as retail AIFs in contractual form, must be authorised by the Bank of Italy. The length of the authorisation process differs depending on the type of AIF and its structure (for example, internally managed SICAFs and SICAVs need a longer timeframe) but

generally speaking, the authorisation process takes between three and six months from filing to final approval by the Bank of Italy.

2.7 Requirement for Local Investment Managers

It is not necessary to have a local investment manager to manage an Italian AIF. In fact, as a consequence of the implementation of the AIFMD, EU AIFMs can also manage Italian AIFs on a freedom-to-provide-services basis or by establishing a branch in Italy.

2.8 Other Local Requirements

No particular local requirements are provided by law for managing Italian AIFs, apart from those mentioned in **2.7 Requirement for Local Investment Managers**, above.

2.9 Rules Concerning Other Service Providers

SGRs and AIFMs managing Italian AIFs must maintain certain control functions (risk management, compliance, internal audit and anti-money laundering), which can be outsourced to specialised service providers. In addition, they must appoint a depositary with respect to each Italian AIF they manage, an auditing firm for the certification of their and their Italian AIFs' accounts and – with respect to real estate AIFs – independent experts for the valuation of the relevant real estate assets.

There is no mandatory rule that any of these service providers must be Italian based (except for the depositary, which must at least have a branch in Italy), but it should be taken into account that a prudent and diligent evaluation of the skills and experience of the service provider must be carried out by the SGR (or AIFM) during the selection process, hence the appointment of Italian service providers (or foreign ones, provided that they can count on an experienced Italian team) is usually advisable.

2.10 Requirements for Non-local Service Providers

Non-local service providers can generally be appointed by SGRs (or AIFMs) in relation to the management of Italian AIFs, provided that they are authorised to perform the relevant activity in their home EU member state. The depositary must have an established branch in Italy. See **2.9 Rules Concerning Other Service Providers**, above.

2.11 Tax Regime

AIFs established in Italy are in principle subject to corporate income tax (IRES).

However, AIFs that comply with certain Italian regulatory standards (or those that have certain qualified categories of investors), are exempt from IRES and from withholding taxes on most types of passive income (eg, dividends, capital gains from portfolio companies and interest from shareholder loans, rental income and capital gains on immovable properties for real estate AIFs). A final withholding tax or

a substitutive tax at a rate of 26% may apply only to certain specific categories of passive income in the hands of the funds (such as income from certain bonds and debt instruments).

AIFs are exempt from Regional Tax on Productive Activities (IRAP), except for SICAFs and SICAVs, which are subject to IRAP on the difference between the subscription fees and the fees due to placement agents (from 4.65 to 5.57%).

The acquisition/sale and the lease of real estate properties by real estate AIFs can be either VAT exempt or subject to VAT, depending on the circumstances. A registration tax is applicable at a fixed (EUR200) or proportionate (9, 2 or 1%) rate, depending on the circumstances, as well as mortgage and cadastral taxes at a fixed (EUR50 or EUR200) or proportionate rate (respectively 3% and 1%). Transactions on instrumental buildings carried out by real estate AIFs are subject to reduced mortgage and cadastral tax rates (respectively 1.5% and 0.5%).

The acquisition by Italian AIFs of shares and other participating financial instruments issued by Italian resident companies is subject to FTT at a rate of 0.2% (0.1% in certain cases) on the value of the transaction, with the tax being payable by the transferee. Transfer of AIFs' units is not subject to FTT.

Management fees charged by the SGR to the AIFs are exempt from Italian VAT. Services carried out by the custodian bank in relation to the fund are either exempt or subject to Italian VAT depending on the nature of the services rendered. Other services, such as legal advice, are subject to VAT.

2.12 Double-tax Treaties

As Italian AIFs are in principle subject to corporate income tax (IRES), they are not regarded as tax-transparent entities, but as resident entities for Italian tax purposes. Italian AIFs may therefore, in principle, benefit from tax treaties concluded by Italy.

For this purpose, Italian tax authorities have expressly clarified that the Italian tax offices are required to issue, upon request of the SGR, residence certificates for the application of treaties against double taxation.

2.13 Use of Subsidiaries for Investment Purposes

The concept of subsidiaries is hardly applicable to Italian AIFs (especially those in contractual form), given their peculiar nature. However, private equity managers frequently use corporate SPVs, entirely held by AIFs, to purchase target companies as an investment technique connected to financing arrangements.

2.14 Origin of Promoters/Sponsors of Alternative Funds

Besides Italy, promoters and sponsors of Italian AIFs come from several different jurisdictions, including typically the USA, UK, Luxembourg and other EU and Middle East countries.

2.15 Origin of Investors in Alternative Funds

Refer to 2.14 Origin of Promoters/Sponsors of Alternative Funds.

2.16 Destination of Investments Made by Alternative Funds

Italian AIFs invest mainly in Italian assets, although there are some examples of real estate AIFs that have a pan-European investment focus.

2.17 Key Trends

Private equity and venture capital SGRs now have greater interest in establishing new types of closed-end AIFs with the focus on SMEs and small mid-caps, thanks to favourable tax regimes that are being implemented by the Italian government to foster investments in that part of the Italian economy (see 4.7 Tax Regime).

In particular, EU-regulated AIFs, such as European long-term investment funds (ELTIFs) and European venture capital funds (EuVECAs), are currently under the spotlight as they seem to be an interesting alternative to the usual AIF structures and may benefit from particular tax and marketing regimes, thereby widening the range of investors and helping to increase fundraising.

Certain specialised players are also evaluating the establishment of permanent capital vehicles – which provide a longer investment term and allow a different approach to the usual small-medium term of private equity AIFs – and of listed AIFs, with a view to providing investors in closed-end AIFs with the ability to liquidate their investments more easily than they could by counting only on a classic secondary market. This would also help the fundraising process, as closed-end AIFs may become more interesting for investors prevented from investing in non-liquid assets (eg, UCITS and other open-end funds managers).

2.18 Disclosure/Reporting Requirements

SGRs and, to a lesser extent, AIFMs managing Italian AIFs are subject to ongoing reporting duties to the Bank of Italy and Consob as regards their business operations and the managed AIFs.

They must also make available to the investors the documentation and information contemplated by the rules of management of the relevant AIF, including at least, by rule of law, the annual and half-year financial statements of the AIF

and a prospectus showing the NAV per unit/share whenever units/shares are issued or reimbursed.

2.19 Anticipated Changes

Italian regulators and supervisory authorities are currently evaluating whether to reduce the EUR500,000 minimum subscription threshold for retail investors wishing to invest in reserved AIFs. This may have a significant impact on widening the range of investors eligible for the typical structures used for private equity and real estate AIFs.

It is also under evaluation whether to eliminate the authorisation procedure for reserved SICAFs that are externally managed, making their treatment equal to that applied to reserved AIFs in contractual form (see 2.6 Regulatory Approval Process, above).

3. Managers

3.1 Legal Structures Used by Fund Managers

The most common structure used by fund managers operating in Italy is the incorporation and authorisation of an SGR (or the AIFMD-passporting of an EU AIFM) and the subsequent establishment of one or more reserved AIFs in contractual form, as that is the fastest, most efficient and flexible process to get an Italian AIF up and running.

In cases where particular types of investors require the establishment of corporate vehicles, already existing SGRs establish externally managed SICAFs, while internally managed SICAFs are typically used by promoters/sponsors that are foreign or not linked to SGRs.

3.2 Regulatory Regime

In line with the AIFMD and the Italian laws and regulations mentioned in 2.3 Regulatory Regime, the management of Italian AIFs is reserved for SGRs and AIFMD-passported EU AIFMs.

The exercise of collective investment management activity by SGRs is subject to the Bank of Italy's authorisation, which can be granted upon positive evaluation, inter alia, of the business plan, activities plan and organisational structure of the SGR; honourability, professionalism and independence of its directors and controllers; and honourability, business correctness and professional competence of its shareholders and their representatives.

SGRs are formed under the *società per azioni* or SpA (similar to a joint stock company) corporate type, which have a minimum corporate capital set forth by law.

The Bank of Italy, after consulting with Consob, authorises the establishment of an SGR within 90 days from filing (this term may be suspended in the event that, as frequently

happens, the Bank of Italy requires clarifications) when the sound and prudent management of the SGR and respect for the rules on collective investment management are guaranteed.

The exercise of collective investment management activity is based on the independence and autonomy principle, which means that investors, without prejudice to certain governance prerogatives that may be set forth in the rules of management of the AIFs, must not interfere with the management of the assets of an AIF or, in general terms, provide binding instruction to the SGR.

It is also worth highlighting that SGRs are subject to anti-money laundering regulations, and frequently outsource the relevant activity to third parties.

Qualified Participation

The acquisition of “Qualified Participation” in an SGR (ie, 10%, 20%, 30% or 50% of the corporate capital of the SGR, or control over the SGR) can be completed only upon prior clearance by the Bank of Italy.

The entity/person wishing to acquire Qualified Participation must submit certain documents to the Bank of Italy attesting to its (or its representatives’, in the case of entities) honourability, business correctness and professional competence, as well as its financial soundness and its ability to guarantee the safe and prudent management of the SGR and of the managed AIFs. Certain information must also be given, inter alia, on the group to which the entity belongs, on its good standing and on its business relationship with the SGR.

The Bank of Italy has 60 business days to grant its clearance (this term may be suspended in the event that, as sometimes happens, the Bank of Italy requires clarifications). Where there is no communication from the Bank of Italy within the said deadline, the request is considered approved.

The AIFMD Passport

The AIFMD passport can be requested by an AIFM authorised in an EU member state either:

- through the establishment of an Italian branch; or
- on a freedom-to-provide-services basis.

Both options are characterised by a different procedure and by a different impact on the AIFM’s organisation.

Establishment of an Italian branch

In order to get an AIFMD passport aimed at exercising collective investment management activity in Italy by establishing a branch, the AIFM must file a request (a “passport request”) with its home country authority, based on such authority’s regulations. The home country authority must then notify the Bank of Italy about the passport request

within two months from filing of the complete documentation by the AIFM, and immediately inform the AIFM of the notification made to the Bank of Italy. The Italian branch can start its operations in Italy when it receives a “welcome letter” from the Bank of Italy or, in the absence of such letter, after a further 60 days have elapsed since receipt by the Bank of Italy of notification of the passport request by the home country authority. A formal communication must be sent by the Italian branch to the Bank of Italy, which then enrolls it in a special section of the register of AIFMs.

Despite the establishment of an Italian branch, the AIFM’s activity will continue to be supervised by the home country authority in accordance with general EU law principles (the so-called “home country control principle”), save for certain limited derogations.

An AIFM in possession of an AIFMD passport must abide by the following rules in the exercise of management activity through its Italian branch:

- to operate diligently, correctly and with transparency in the best interests of the managed AIFs, the relevant investors and the integrity of the market;
- to ensure that the management activity is exercised independently and in compliance with the purposes, investment policies and risks of the AIFs;
- to be organised in a manner which minimises the risk of conflicts of interest;
- to adopt appropriate measures to safeguard the rights of the investors of the managed AIFs and have adequate resources and appropriate procedures in place to ensure the efficient performance of the services;
- to ensure equal treatment of all the investors of the same AIF in respect of the conditions set forth by Consob and in compliance with the laws of the EU, although in the case of reserved AIFs, preferential treatment of one or more investors or investor categories is allowed;
- to exercise, in the investors’ interests, the voting rights inherent to the financial instruments of the managed AIFs, unless otherwise ruled by law;
- to observe the applicable rules in matters of correctness of conduct (including inducements); and
- to observe the rules in matters of transparency and correctness in marketing of AIFs.

The Bank of Italy and Consob, to the extent of their respective duties, may require that the (Italian branch of the) AIFM communicates data and information and provides documents and records.

It should be noted that once the AIFMD passport has been obtained, an AIFM must still comply, in its management of Italian AIFs, with the rules applicable to Italian AIFs and to the marketing of their units/shares in Italy. These aspects do not necessarily impact on an AIFM’s organisation and pro-

cedure, and BoI Regulation expressly states that the supervisory authority responsible for the evaluation of foreign AIFMs' organisation is the relevant home country authority.

Freedom to provide services

In order to get the AIFMD passport with the aim of exercising collective investment management activity in Italy on a freedom-to-provide-services basis, the AIFM must file the passport request with its home country authority, based on such authority's regulations. The home country authority must then notify the Bank of Italy of the passport request within one month from filing of the complete documentation by the AIFM, and immediately inform the AIFM of its notification of the Bank of Italy, as the AIFM can then start its operations in Italy.

The AIFM's activity will continue to be supervised by the home country authority in accordance with the "home country control principle".

Once the AIFMD passport has been obtained, the AIFM must still comply – as for the case of the establishment of a branch in Italy – with the rules applicable to Italian AIFs in managing the Italian AIFs, and to the marketing of their units/shares in Italy.

3.3 Tax Regime

SGRs are subject to corporate income tax (at a rate of 24%) on management and advisory fees (if any), less management costs incurred (adjusted according to Italian tax rules). SGRs are also subject to regional tax on productive activities (IRAP). The ordinary IRAP rate for financial institutions is 4.65%; however, the applicable IRAP rates may vary in each Italian region by as much as 0.92%.

SGRs are VAT taxpayers in relation to operations carried out by real estate AIFs.

In general terms, SGRs act as withholding tax agents on profits derived by investors from participation in the AIF. Withholding tax can also be applied by other authorised intermediaries in charge of the placement or trading of the fund's units. Should the units of the AIF be deposited with a centralised deposit system managed by an authorised entity, withholding tax will be applied by the withholding tax agent with whom the units have been deposited. In the event that the AIF's units are sold, SGRs are required to apply the withholding tax only if they are in charge of the units' trading. Should this not be the case, the investor could be required to file a tax return and self-apply a 26% substitute tax.

3.4 Rules Concerning "Permanent Establishments"

Italian tax law does not provide rules to ensure that foreign alternative funds with a manager established in Italy do not have a "permanent establishment" (PE) or other taxable presence in Italy.

Before the AIFMD was enacted, Italian tax authorities assessed the existence of a PE in Italy of a foreign fund represented by the team of the Italian advisory company ("dependent agent PE").

After enactment of the AIFMD, the Italian tax authorities issued a circular letter in 2014 clarifying that the place of residence of the fund manager has no relevance in establishing the residence of the fund for tax purposes; indeed, according to Italian tax law, a fund is considered to be resident in the state of its establishment. Likewise, it can reasonably be derived that the management activities carried out in Italy should not trigger a PE in Italy of the foreign fund (or of its investors).

Moreover, in general terms, the manager's activity should not trigger a PE of the fund (ie, of the investors) as it acts autonomously and independently of the fund (ie, of the investors), as an independent agent.

3.5 Taxation of Carried Interest

The Italian tax treatment of carried interest schemes was regulated in 2017. The law introduced a presumption on the basis of which, if certain conditions are met, carried interest qualifies as income from capital or capital gains, taxable at a rate of 26%, and not as employment income subject to individual income tax at a rate of up to 43%.

In particular, in order for the presumption to apply, the following three requirements must be satisfied:

- the employees and managers holding the carried interest-bearing instruments must have invested (and disbursed, in the aggregate) at least 1% of the entire investment made by the fund;
- the carried interest must accrue only after all other investors have received an amount equal to the capital invested plus a minimum return on it (hurdle rate); and
- the employees and managers must hold their investment for five years (or until the fund's exit from the investment).

In the absence of one of the above requirements, the presumption does not apply and the qualification of carried interest will be ascertained on a case-by-case basis.

3.6 Outsourcing of Investment Functions/Business Operations

SGRs can outsource/delegate some of their functions. Specific safeguards are provided with reference to the outsourcing to third parties of specific functions regarding management activity, which is permitted to the extent that the SGR does not become a so-called "letterbox" entity, ie, insofar as the SGR can still be considered the actual manager of the relevant AIF.

In this respect, the Joint Regulation, with reference to outsourcing of important or essential operative functions (mainly risk management and asset management function, but also compliance, internal audit and other essential functions), states that the SGR shall, *inter alia*, adopt specific safeguards concerning the selection process of outsourcers and shall notify the Bank of Italy and Consob in advance of its intention to delegate such functions. The Bank of Italy and Consob may start, within 30 days from the filing, an administrative procedure aimed at prohibiting the delegation/outsourcing (in the absence of which the delegation/outsourcing shall be deemed to be authorised).

3.7 Local Substance Requirements

SGRs are authorised upon positive evaluation by the Bank of Italy of their organisational structure, shareholding and financial soundness.

SGRs must have a minimum corporate capital (from EUR50,000 to EUR1,000,000, depending on the type of AIFs they manage) and assets in proportion with the AUM. In certain cases, they are also required to take out an insurance policy covering their liabilities vis-à-vis their clients.

The particular nature of the collective investment management activity is also reflected in the regulation concerning the organisational requirements of an SGR, which ensure, in general terms, the sound and prudent management of the SGR itself, based on diligence, fairness, transparency and minimisation of conflict of interest risks.

3.8 Local Regulatory Requirements for Non-local Managers

No particular requirement is set, from a strict regulatory standpoint, as regards the organisation of an AIFM's Italian branch that has been deemed suitable by the Bank of Italy to exercise management activity through an AIFMD passport, although, in principle, the structure may be limited to having a legal representative in Italy entrusted with the powers necessary to run its Italian activities.

Nevertheless, the AIFM, through its Italian branch, should ensure its capability to efficiently, correctly and proficiently carry out the management of the Italian AIFs in compliance with the Italian regulatory framework as described in **3.2 Regulatory Regime**, which in practice makes it advisable to provide the Italian branch with an organisation proportionate to the complexity of the managed Italian AIFs and of the related management activities.

4. Investors

4.1 Types of Investor in Alternative Funds

Typical investors in reserved AIFs are institutional investors, family offices and high net worth individuals, either Italian

or foreign. Institutional investors are interested in all asset classes, while family offices and high net worth individuals focus more on private equity and venture capital.

Retail investors not eligible for reserved AIFs do not typically invest in closed-end AIFs (with some exceptions), but rather in open-end AIFs and in UCITS, which however, have an investment focus that differs significantly from the typical AIF.

4.2 Marketing of Alternative Funds

Italian AIFs can basically be marketed to any kind of investor. Reserved AIFs can be marketed only to professional investors and to retail investors who invest at least EUR500,000 in the relevant reserved AIF.

4.3 Rules Concerning Marketing of Alternative Funds

The marketing of AIFs (either Italian or EU) is regulated by the UFA and Consob's relevant implementing regulations, as well as by the AIFMD and EU Regulation 231/2013.

Marketing with respect to retail investors is subject to Consob's approval, while the marketing of reserved AIFs is subject to authorisation by Consob (in the case of Italian AIFs marketed by SGRs, and in such case, this applies also to eligible retail investors – see **4.2 Marketing of Alternative Funds**) or by the AIFM's home country authority (in the case of EU AIFs and of Italian AIFs managed by an EU AIFM, and this also applies to eligible retail investors – see **4.2 Marketing of Alternative Funds**).

4.4 Local Investors

Local investors can invest in Italian AIFs within the limits described in **4.2 Marketing of Alternative Funds**, above.

4.5 Regulatory Regime

SGRs (or AIFMs) willing to market a reserved AIF (either Italian or EU) must submit advance notification to Consob (or, respectively, to their home country authority, see **4.3 Rules Concerning Marketing of Alternative Funds**) and can start marketing once the relevant no-objection communication has been issued by the competent authority. Their notification must include the rules governing the AIF, the offering document and the other documentation listed under Annex III or IV of the AIFMD, as applicable. The process takes around 30 days to be completed. This regime is not applicable to sub-threshold SGRs.

SGRs (or AIFMs) willing to market a retail AIF (either Italian or EU) must submit advance notification to Consob and can start marketing once the relevant no-objection communication has been issued by Consob. Their notification must include the rules governing the AIF, the prospectus and the other offering documentation required under UFA

and Consob regulations. The process takes around 20 days to be completed.

4.6 Disclosure Requirements

For general disclosure requirements with respect to investors, see **2.18 Disclosure/Reporting Requirements**, above.

4.7 Tax Regime

Profits from participation in Italian AIFs other than real estate AIFs are generally subject to a 26% withholding tax applied as advance or final payment depending on the category of the investor. The withholding tax is applied on the profits distributed by the AIF and, in the case of redemption, liquidation or sale of the units, on the difference between the value of the units at the date of redemption or liquidation, or the sale price, and the weighted average subscription or acquisition cost (documented by the investor or, in the absence of documentation, specified by a substitutive declaration). If the difference is negative, a capital loss is generated.

Taxation on investors may vary depending on the type of investor.

The withholding tax is final, and no further taxation applies, on proceeds derived from the participation in AIFs by Italian resident investors not holding the investment in the conduct of a commercial activity (eg, private individuals and non-commercial entities such as compulsory social security entities and bank foundations).

The withholding tax is applied as advance payment to Italian resident investors holding the investment in the conduct of a commercial activity (eg, individual entrepreneurs; Italian resident corporate entities or permanent establishments in Italy of non-resident investors to which the investment is allocated). Proceeds derived by the abovementioned individuals/entities from participation in the fund contribute to the total taxable income of the tax period in which they are realised and are subject to ordinary taxation. In this case the withholding tax, applied in advance, is credited against income taxes (ie, IRES or IRPEF) due in the tax period.

Withholding tax does not apply to insurance companies with regard to units or shares included among the assets held to cover technical provisions of life-insurance branches. No withholding tax applies to investment funds and to pension funds (the latter are subject to a substitute tax at a rate of 20% on the net income accrued in each tax period).

Non-resident investors are subject to a 26% withholding tax on income derived from participation in Italian AIFs. The withholding tax of 26% is final on non-resident investors not having a permanent establishment in Italy, and no further Italian taxation applies. However, non-resident investors

may claim the application of lower withholding tax rates under an applicable tax treaty.

Furthermore, no withholding tax applies on profits perceived by investors who are resident in states or territories which allow an adequate exchange of information with Italy (so-called “White List” states or territories), accrued during the period in which the units or shares are held. Moreover, no withholding tax applies to:

- international entities or bodies established according to international agreements implemented in Italy;
- foreign “institutional” investors not subject to tax (eg, partnerships or other tax-transparent entities), established in White List states or territories;
- central banks or other entities that manage the official reserves of a country (so-called “sovereign wealth fund”).

In order to benefit from the abovementioned exemption, a specific certification procedure is provided.

As regards the tax treatment of investors in real estate AIFs, generally speaking, profits distributed by the fund and the positive difference between the redemption or liquidation value and the weighted average cost of subscription or purchase of the units is subject to withholding tax at the rate of 26%, applied as advance or final payment depending on the category of the investor (see above). The withholding tax is final for non-resident investors. However, the withholding tax does not apply with reference to the following non-Italian resident investors:

- foreign pension funds and foreign investment funds established in White List states or territories, having the same investment purposes as Italian pension funds or investment funds, subject to a form of “prudential” vigilance to be verified with reference to the fund or manager;
- international entities or bodies established according to international agreements implemented in Italy; and
- central banks or other entities that manage the official reserves of a country.

Capital gains from the sale of units of Italian real estate AIFs are generally subject to a substitutive tax at a rate of 26%, applicable to resident investors that do not hold the units in the conduct of a commercial activity and to non-resident investors (capital gain contributes to the taxable income subject to IRES for resident investors carrying out a commercial activity). No taxation applies on capital gains realised by:

- investors resident in White List states or territories;
- international entities or bodies established according to international agreements implemented in Italy;
- “institutional” investors that are not subject to tax, established in White List states or territories; and

- central banks or other entities that manage the official reserves of a country.

A special tax-transparency regime applies to resident investors, other than “institutional investors”, holding participations in real estate AIFs representing more than 5% of the fund’s capital.

Periodic communications sent by the AIF to the investors are subject to stamp duty at a rate of 0.2% applied on the NAV of the units held by the investor by 31 December each year (with an annual limit of EUR14,000 for non-individuals). Such communications are deemed to be provided at least once a year, regardless of their effective transmission to the investor. Specific exclusions are provided.

Italian tax law provides some incentive regimes for investors in collective investment funds that have certain characteristics.

VC Funds

Capital income from participation in so-called Venture Capital Funds (VC Funds) is not subject to taxation. Subscription to VC Funds is reserved for:

- professional investors;
- persons who, upon request, can be treated as professional investors; and
- other investors, as long as they invest at least EUR100,000 and are subject to specific assessment of risk awareness and investment-related experience.

VC Funds are funds, set up in Italy or in other EU or EEA member states, that invest at least 85% of their capital in qualifying SMEs that have specific characteristics (eg, they are unlisted, mainly directly controlled by individual shareholders, incorporated for no longer than seven years, have a place of business in Italy, etc). The remaining 15% of their capital must be invested in listed SMEs having specific dimensional characteristics.

The investment of the VC Fund must be less than EUR2.5 million per year for each SME.

Investment in Start-ups or SMEs

Italian tax law encourages indirect investment in the share capital of innovative start-ups or SMEs, with certain characteristics, through investment funds set up in Italy or in EU or EEA member states, which, at the end of the tax period in which the investment is made, hold (and maintain for at least three years) shares or quotas of innovative start-ups or eligible innovative SMEs for at least 70% of their total assets, without taking into account, for these purposes, investments in so-called certified incubators.

With reference to tax year 2019, the incentive consists of a reduction of the income tax due by individuals or a deduction from taxable income subject to corporate income tax, both equal to 40% of the sum indirectly invested.

ELTIF

Income derived by Italian-resident individuals from investments in ELTIF, and through investment in funds that fully invest their assets in ELTIF units (ELTIF funds), is exempt from taxes on capital income and on capital gains. The incentive applies on a maximum investment of EUR150,000 per year and a total of EUR1.5 million. ELTIF units must be held for five years.

Investments made in ELTIF or ELTIF funds can benefit from this tax incentive provided that:

- the capital raised by the same manager does not exceed EUR200 million each year, up to an overall maximum limit for each manager of EUR600 million; and
- the ELTIF invests at least 70% of the capital in “eligible investment assets” referable to “eligible portfolio companies”, as defined by Regulation (EU) 2015/760, that are resident in Italy or in EU/EEA member states with a permanent establishment in Italy.

The effectiveness of the regime is subject to authorisation by the European Commission.

To date, the benefit is available, experimentally, only for investments made in 2020.

PIR

AIFs could become the target investment of the so-called “PIR” (individual savings plans). PIR is a special exemption regime (on capital income and capital gains) provided for individuals resident in Italy (other than entrepreneurs) and is intended to direct private investment into (mainly unlisted) Italian companies. However, due to the recent introduction of certain investment restrictions in 2019 there has been a sharp decline in the use of this investment scheme.

4.8 FATCA/CRS Compliance Regime

According to Italian law and the ministerial decrees implementing FATCA, SGRs are subject to certain reporting duties regarding accounts held by US persons (eg, citizens or resident individuals, entities other than listed companies, or companies that are members of a group participated in by a listed company). Specific exclusions are provided. SGRs are required to perform due diligence aimed at verifying the US tax residence or citizenship of the investors. In this respect, the SGR may require specific personal information from the investors representing certain “US indicia” (eg, US place of birth, address, etc) to comply with FATCA regulations and shall apply a 30% withholding tax on certain “US-source”

payments made to “non-participating financial intermediaries”.

Except for specific exemption, Italian AIFs may qualify as reporting financial institutions as well as the SGRs. However, for the purpose of fulfilling its communication obligations, an AIF may delegate a third party, ie, the SGR, to go through the so-called “sponsorship system”, under certain conditions.

Moreover, SGRs are required to perform due diligence in order to acquire and communicate to the Italian tax authorities certain information relating to the investors, in the application of Italian regulations implementing international agreements on the exchange of financial information for tax purposes, according to the CRS and EU directives on the mandatory automatic exchange of information in the tax sector.

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