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Italy

ALTERNATIVE INVESTMENT FUNDS

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This country-specific Q&A provides an overview of alternative investment funds laws and regulations applicable in Italy.

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ITALY

ALTERNATIVE INVESTMENT FUNDS



1. What are the principal legal structures used for Alternative Investment Funds?

Under Italian consolidated financial law (Legislative Decree 58/1998, "ICFL"), coherently with the EU Directive 2011/61 and EU Regulation 231/2013, an AIF is a collective investment scheme – different from the ones regulated under EU Directive 2009/65 – established for the collective management of assets, divided into units/shares and collected among a plurality of investors. AIFs shall be managed as a whole in the interest of the unitholders/shareholders and independently from them, on the basis of a predetermined investment policy.

Basically, AIFs can be classified as contractual or statutory. Although AIFMD provides that AIFs may be set up in the form of a trust agreement also, this opportunity is not regulated by ICLF and is not common in Italian market practice.

AIFs in contractual form are the "fondi comuni d'investimento". They are not corporate legal entities, but a separate pool of assets ("patrimonio autonomo") without legal personality established, managed and represented by SGRs ("società di gestione del risparmio", the Italian AIFMs authorised and supervised by the Bank of Italy and Consob) or by passported EU AIFMs.

AIFs in corporate form are the SICAFs (società di investimento a capitale fisso, i.e. closed-ended) and the SICAVs (società di investimento a capitale variabile, i.e. open-ended). They are established as joint stock companies (società per azioni) with legal personality, governed by their by-laws and can, alternatively: i) commit the management of their assets to an external authorized entity, like SGRs or passported EU AIFMs (in such case are defined "externally managed"); or ii) request the Bank of Italy's authorisation to directly manage their assets (in such case, they are at the same time AIFs and AIFMs, and are defined "internally managed").

Under the ICFL and related implementing regulations (see in particular ministerial decree No. 30/2015), AIFs are expressly classified according to their:

i) asset target, for instance:

1. as private equity/venture capital AIFs (i.e. those AIFs that invest in unlisted companies and/or start-up companies);
2. as real estate AIFs (i.e. those funds that invest at least 2/3 of their assets in real estate properties, rights in rem on real estate assets, real estate companies, other real estate AIFs);
3. as AIFs investing in loans (and/or providing direct lending from the AIF's assets);

ii) category of investors, for instance:

1. retail AIFs (i.e., public at large);
2. reserved AIFs (i.e. professional investors or investors subscribing for more than euro 500,000.00);

iii) open or closed structure (i.e. whether or not they admit, and with what frequency, the possibility of redemption of investors' units/shares during the life of the AIF itself);

iv) method of contribution (i.e. whether the shares/units are to be purchased in cash or whether they can be obtained in exchange for a contribution of assets).

Moreover, ICFL mentions a number of further AIFs, disciplined under EU legislation (for instance, EuVECA, EuSEF and ELTIF) and specifically addresses master-feeder structures, disciplined under Bank of Italy's implementing regulation.

AIFMs managing reserved AIFs can request to be qualified as "below threshold" (sotto soglia), if they manage AIFs' assets for no more than euro 100,000,000.00 with the use of leverage or euro 500,000,000.00 without the use of it. In return, AIFMs sotto soglia have reduced amount of required share

capital and simplified corporate governance and internal controls.

Finally, a peculiar type of internally managed SICAF, named società di investimento semplice (SIS) has recently been introduced in ICFL. SIS has the least requirements in terms of corporate governance and internal control, as well as a reduced amount of required share capital. However, SIS can only invest in small and medium enterprises in start-up phase and cannot collect more than euro 25,000,000.00 (with prohibition of the use of leverage).

From a tax point of view AIFs established in Italy are in principle subject to corporate income tax (IRES).

However, AIFs that comply with certain Italian regulatory rules (or that have certain qualified investors), are exempt from IRES and from withholding taxes on most types of passive income (e.g., dividends, capital gains from portfolio companies and interest from shareholder loans, rental income and capital gains on immovable properties).

AIFs are exempt from Regional Tax on Productive Activities (IRAP), which applies (at a rate from 4.65 to 5.57%) only to the difference between the subscription fees paid to SICAVs and SICAFs and the fees due to placement agents.

As Italian AIFs are in principle subject to IRES, they are regarded as resident entities for Italian tax purposes; therefore, they may, in principle, benefit from tax treaties concluded by Italy.

2. Does a structure provide limited liability to the sponsor and/or manager vis-a-vis investors?

While Italian legal framework does not provide for structures that grant limited liability vis a vis investors, some specific clarifications should be provided on the subject matter.

In contractual AIFs there is not a proper 'sponsor' and such a role is typically addressed by the AIFM itself or by the main/cornerstone investor (so called "reverse inquiry").

ICFL provides for that AIFMs assume the agent's (mandatario) obligations and responsibilities towards the investors. It is worth noting that, under ICFL, it is not permitted to limit or exclude any liability arising from wilful misconduct or gross negligence. Therefore, to

some extent, provisions to limit manager's liability (only for slight negligence) to investors can be envisaged in the fund rules.

In SICAVs and SICAFs, the role of the manager and the role of the 'sponsor' can be properly distinguished and this last can be considered to be held by the promoting partners (soci fondatori).

In this regard there are several subtleties to take into account but, in a nutshell:

- the soci fondatori assume only the responsibilities towards third parties connected to the incorporation of the AIF (e.g., subscription of the share capital, contract with any external manager).
- the managers are responsible towards the investors pursuant to the rules applicable to the members of corporation board of administration.

3. Is there a market preference and/or most preferred structure? Does it depend on asset class?

Italian AIFs are typically of interest to Italian and foreign investors focused on real estate, thanks to the well-developed Italian market, 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. Both those types of AIFs benefit of favourable tax regimes that have been implemented – and recently enhanced, to some extent – by the Italian government to foster investments in that part of the Italian economy.

For example, capital income from participation in so-called Venture Capital Funds, reserved to certain qualifying investors, is tax-exempt. VC Funds are Italian or EU/EEA funds that invest at least 85% of their capital in qualifying unlisted SMEs having specific characteristics. The investment of the VC Fund must be less than EUR2.5 million per year for each SME.

Investments in Italian or European funds, which 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, benefit from a reduction of the income tax due by individuals or a deduction from taxable income subject to IRES, both equal to 40% (in 2019) of the sum invested (50% for 2020 for individuals, with a limit of 100.000Euro per year).

Moreover, AIFs could become the target investment of the so-called "PIR" (individual savings plans), a special

tax exemption regime (on capital income and capital gains) provided for retail Italian-resident investors (other than entrepreneurs) indirectly investing in (mainly unlisted) Italian companies. This incentive has been recently refreshed by the so called Decreto Rilancio, issued to face economic crisis following Covid spread.

Private equity and venture capital AIFs are commonly managed by Italian SGRs and rarely by foreign managers (who are mostly based in the EU, thanks to the EU passport).

Also the main portion of real estate AIFs are managed by SGRs, traditionally established by Italian investors but, in recent years also participated or established by third-party foreign investors (both as investment and for development) through dedicated funds and blind-pool schemes. In any case, there is a huge number of foreign investment management groups which access to the Italian real estate market through dedicated funds managed by third parties SGRs.

Recently, Italian SGRs have established some AIFs focused on investments in NPLs and UTPs, and are evaluating taking advantage of the rules allowing AIFs to originate loans (so called "direct lending") in order to access that portion of the credit market where banks are less active.

4. Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs. hedge)) and, if so, how?

With regard to the different types of AIFs that can be distinguished under Italian regulatory regime, please see answer to question 1.1.

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

- unlisted companies for more than 20% of its assets;
- real estate;
- loans/ direct lending.

5. Are there any limits on the manager's ability to restrict redemptions? What factors determine the degree of liquidity that a manager offers investor of an

Alternative Investment Fund?

Usually, the factors that determine the degree of liquidity of the AIFs' assets are the investment strategies and the use of financial leverage (see also 1.6).

Moreover, the financial regulation permits that, under circumstances specified in the AIF rules/by-laws, the manager may (in the interest of investors) restrict redemptions for a limited period of time (no more than one month). The suspension must be immediately communicated to Bank of Italy and Consob.

The Italian financial authorities, in the presence of events capable of impacting the market at a macro-economic level (e.g. stock market crash of 2008), may impose restrictions on financial markets for limited periods of time to protect the national economy, which may cause the suspension of the AIF's NAV calculation by the AIFMs, thereby limiting redemptions.

On the issue, in July 2020 the Bank of Italy published a consultation document aimed at introducing the permission in the AIFs' rules/bylaws to allow the AIFM to restrict reimbursement in presence of requests exceeding (cumulatively) a determined threshold (at least the 5% of the of the total value of the AIF) for periods of 15 days (consecutively renewable up to a total period of one month).

6. What are potential tools that a manager may use to manage illiquidity risks regarding the portfolio of its Alternative Investment Fund?

Generally speaking, AIFMs should be able to demonstrate to the competent authorities that appropriate and effective liquidity management policies and procedures are in place (taking in due consideration the nature of the AIF, including the type of underlying assets). Liquidity management risk tools usually are: gates, partial redemptions, temporary borrowings, notice periods and pools of liquid assets. Moreover, stress tests should be used to simulate shortage of liquidity of the assets as well as atypical redemption requests.

7. Are there any restrictions on transfers of investors' interests?

Interests in reserved AIFs (i.e. restricted to professional investor or retail investors subscribing for more than euro 500,000.00) can be transferred to the same kind of investor only. Other restrictions may be determined in the rules/by-laws of the AIFs (e.g. pre-emptive rights, co-

sale rights such as drag-along or tag-along rights).

8. Are there any other limitations on a manager's ability to manage its funds (e.g., diversification requirements)?

Retail AIFs are subject to specific mandatory limitations (in terms of leverage, investment diversification and purchase of significant interests) detailed in Bank of Italy's regulations.

Reserved AIFs are essentially free from the rigid investment limitations and the relevant fund rules/by-laws can provide for an investment policy with significant flexibility, in terms of diversification also.

It should also be noted that for AIFs which invest mainly in receivables (purchased from the creditor but also arising from lending activity exercised by the AIF itself): i) is forbidden to hold receivables vis-à-vis the same counterparty for more than 10% of their assets; ii) the receivables must have a duration not exceeding the duration of the AIF; iii) where they derive from a direct lending activity by the AIF, such activity cannot be exercised vis-à-vis consumers; iv) leverage cannot exceed a 1.5 ratio between financial exposure and net asset value (NAV).

On the issue, in July 2020 the Bank of Italy published a consultation document aimed at removing the threshold prescribed under point i) above for reserved AIFs and increasing it to 20 % of total AIF assets for non-reserved AIFs.

9. What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds? Does the tax treatment of the target investment dictate the structure of the Alternative Investment Fund?

Profits distributed by Italian AIFs (other than real estate) and 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 are generally subject to a 26% withholding tax. If the difference is negative, a capital loss is generated.

The withholding tax is final, and no further taxation applies, on Italian resident private individuals and "non-commercial" investors (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; corporations or Italian permanent establishments of non-resident investors to which the units are allocated). Fund's proceeds contribute to the total taxable income and are subject to ordinary taxation. In this case the withholding tax 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 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 without a PE in Italy are subject to a final 26% withholding tax on income derived from participation in Italian AIFs, unless a lower withholding tax rates under an applicable tax treaty are claimed.

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

- international entities or bodies;
- foreign "institutional" investors not subject to tax (eg, partnerships or other tax-transparent entities), established in White List states or territories;
- central banks or 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 are 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 of Italian pension funds or investment funds, in which the fund or the manager is subject to "prudential" vigilance;

- international entities or bodies;
- 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 “non-commercial” resident investors 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;
- “institutional” investors that are not subject to tax, established in White List states or territories; and
- central banks or sovereign wealth fund.

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.

10. What rights do investors typically have with respect to the management or operations of the Alternative Investment Fund?

Open-ended AIFs do not grant to investors any right with respect to their management. With regards to closed-ended AIFs, the investors’ right can be summarised as follows:

- for AIFs subscribed by retail investors the ICFL prescribes that the unitholders’ meeting shall have exclusively the power to substitute the manager;
- for contractual AIFs reserved to professional investors, the fund rules can provide for significant supervisory powers and/or governance rights to the unitholders’ meeting and to the advisory committee, including -but not limited to- the power to substitute the manager;
- for reserved SICAFs, significant powers and/or governance rights (including -but not limited to- the power to substitute the manager) are typically assigned to the shareholders’ meeting.

In any case investors are prevented to perform a day-to-day discretion or control over the management of the AIFs.

11. Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Italian established AIFMs are subject to previous authorisation and ongoing supervision by the Bank of Italy and Consob, pursuant to ICFL rules and implementing regulations. The length of the authorisation process takes three months from the date of the application, save possible request for clarifications and subsequently suspension of the terms.

The performance of investment advisory services in financial instruments is reserved to regulated entities (such as banks, SGRs, investment firms) subject to previous authorisation and ongoing supervision by the Bank of Italy and Consob.

EU AIFMs can perform the management/advisory activities in Italy either through the establishment of an Italian branch or through the freedom to provide services (the so-called “passport”). The AIFM, in both cases, must file a request with its home country authority, based on such authority’s regulations.

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 (or request of clarifications), after further 60 days have elapsed since receipt by the Bank of Italy of notification of the request by the home country authority.

In case of an EU passport request to provide services in Italy without establishing an Italian branch, the EU AIFM can start its activities as soon as the relevant home country authority notifies the Bank of Italy about it.

Non-EU AIFMs cannot operate in Italy without a permanent establishment, therefore, they should necessarily establish an Italian branch -subject to the Bank of Italy previous authorisation- in order to provide their services.

12. Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Reserved AIFs in contractual form are not subject to any approval and can be established just by a resolution of the board of administration of the AIFM (fund rules shall be simply notified to the Bank of Italy and Consob after the setup).

Retail AIFs in contractual form are subject to the previous authorisation by the Bank of Italy. In this case, the fund rules are considered approved if there is no notification of refusal by the Bank of Italy within 60 days after the application for authorisation. The fund rules drafted according to the simplified procedures provided for by the Bank of Italy's regulations (e.g. drafted according to the "simplified scheme") are automatically approved.

Differently, both reserved and retail AIFs in corporate form (i.e. SICAFs and SICAVs) must be previously authorised by the Bank of Italy. The authorisation is issued by the Bank of Italy within 90 days from the application, save possible request for clarifications and subsequently suspension of the terms.

13. Are there local residence or other local qualification or substance requirements?

Pursuant to ICFL, Italian AIFMs shall be incorporated as joint-stock companies and shall have their registered office in Italy. The ICFL and the relevant implementing regulation provide for a number of requirements for Italian AIFMs regarding, inter alia: the minimum share capital, the suitability of the members of the board of directors, the suitability of the subjects holding significant interests in the AIFM, the structure of the corporate group of which (if any) the AIFM is part and other organisational and procedural requirements to be addressed according to the activities performed.

14. What service providers are required?

An AIFM must appoint a depository 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.

AIFMs may outsource (depending on the internal organisation structure of the AIFM) to specialised service providers functions directly related to their organisation (e.g. regulatory compliance, internal audit, fund accounting) or to the specific assets in which the managed AIFs are invested (e.g. project management and property manager services for real estate AIFs; calculation agency and credit special servicing for AIFs investing in credits).

It should be noted that, for the outsourcing of essential or important functions, it is necessary to notify the Bank of Italy of the intention to enter into the relevant agreement and that the same Authority, within 30 days, may begin an evaluation procedure on such contract, at

the conclusion of which the outsourcing activity may be forbidden. In addition specific provisions are provided for in cloud outsourcing in accordance with EBA recommendations.

It should be noted that the AIFM shall always be able to supervise the delegated tasks and take decisions in related key areas in order to not be considered a letter box entity in violation of AIFMD.

15. Are local resident directors / trustees required?

In Italy, unlike in other countries, there is no mandatory requirement for a minimum number of resident directors/ conducting officers. However, the directors of Italian AIFMs (and the head of EU AIFMs Italian branches) are usually based in Italy, since this is considered a good practice both from business and supervisory perspective.

16. What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

Italian branches of EU AIFMs must comply with Italian conduct of business rules and conflicts of interest. The Bank of Italy and Consob exercise their supervision over the Italian branches.

EU AIFMs operating in Italy without the establishment of branches are subject to marketing regulations only (see also 4.1).

From a tax standpoint it shall be considered that, 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 manager has no relevance in establishing the tax residence of the AIF (which, according to Italian tax law, is 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 AIF (or of its investors), also considering that the manager acts autonomously from the AIF (and the investors).

17. What are common enforcement risks

that managers face with respect to the management of their Alternative Investment Funds?

From the regulatory point of view, Consob and the Bank of Italy, for the violations of the ICFL and related financial regulations, can adopt:

1. cash fines against the AIFMs (and not to its directors, statutory auditors or officers) that, depending from the seriousness of the infringement, may be in the range between from euro 30,000.00 up to 5,000,000.00, or up to ten per cent of the total annual turnover of the company or entity, when this amount exceeds euro 5,000,000.00;
2. in case of certain serious infringements, cash fines directly against directors, statutory auditors or officers of the AIFMs that are directly and personally involved in the relevant violations; such cash fines, depending from the seriousness of the infringement, may be in the range between from euro 5,000.00 up to 5,000,000.00;
3. in addition to the above mentioned cash fines and in the most serious cases, (a) removal of the directors, statutory auditors and/or officers of the AIFMs, (b) injunctive reliefs, receivership and/or administrative compulsory winding up of the AIFMs.

Usually, the supervisory activity of the financial authorities, and the sanctions against AIFMs, are mainly focused on: i) fulfilment of the due diligence, fairness and transparency towards investors; ii) adequacy of internal organisation and procedures, especially to prevent conflict of interest between the managers and the investors; iii) adequacy of internal procedures related to the prevention of bribery, corruption and money laundering.

18. What is the typical level of management fee paid? Does it vary by asset type?

Management fees may vary consistently depending on the asset type (real estate, equity and loans), and on the characteristics of AIFs: open/closed, reserved/retail.

19. Is a performance fee typical? If so, does it commonly include a “high water mark”, “hurdle”, “water-fall” or other

condition? If so, please explain.

The use of performance fees, including “high water mark”, “hurdle” or “water fall” conditions, is quite common in reserved AIFs investing in loans, equity interests or real estate assets. As far as reserved AIFs are concerned, the issue of fees and incentives is left to the parties’ agreement.

In retail AIFs, performance fee are allowed only according to the specific provisions determined by Bank of Italy regulations.

As regards the taxation of the “carried interest” generally recognized to the members of the AIFM management team, in 2017 Italian tax law introduced a presumption on the basis of which, if the following 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%:

- the employees and managers 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 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 tax qualification of carried interest is assessed on a case-by-case basis.

20. Are founder shares (which offer a reduce fee structure for initial investors) typical in raising assets for new fund launches?

Founder shares (which offer a reduced fee structure for initial investors and/or preferred returns structures within the waterfall) are a viable tool in raising assets for new fund launches. These structures are quite usual for private equity funds.

21. Are management fee “break-points” offered based on investment size?

There is not a standard market practice on the issue. In reserved AIFs the matter is left to negotiation between AIFM and investors.

22. Are first loss programs used as a source of capital (i.e., a managed account into which the manager contributes approximately 10-20% of the account balance and the remainder is furnished by the investor)?

First loss allocators expressly focused in covering,, typically, hedge funds or venture capital funds initial losses are not frequent in Italy. To some extent, investment arrangements entailing multiple tranches of capital, with each tranche subordinated to the next (so that, as a matter of fact, the first tranche absorbs the risk of possible initial losses), can be negotiated on a case by case basis

23. What is the typical terms of a seeding / acceleration program?

Family office, club deals, so called business angels and equity crowdfunding platforms are the main source of equity investments for start-ups in Italy.

Investment programs vary greatly depending on whether the target is a start-up at the first stage of development (where the projects provide for a substantial part of the external investment to be made in services) or start-ups in the expansion phase, where customized agreements are the standard.

24. What industry trends have recently developed regarding management fees and incentive fees?

In recent years, the incentive fees of retail AIFs significantly reduced their weight. Management fees and incentive fees of reserved AIFs are a matter of negotiations between investors and AIFMs.

With regard to the setting up of the incentive fee, investors, particularly in real estate AIFs, seem to prefer to link the same not to the general performance of the management activities concerning the AIFs but to the fulfilment of specific targets identified in the business plans (such as the completion of a sale, the execution of capital expenditures, the execution of a loan agreement).

25. What restrictions are there on marketing Alternative Investment Funds?

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.

AIFMs willing to market a reserved AIF (either Italian or EU) must submit advance notification to Consob (or, respectively, to their home country authority) and can start marketing once the relevant no-objection communication has been issued by the competent authority.

Authorization is not requested when no active marketing of the AIF is performed directly or indirectly (e.g. club deals and/or subscription of units/shares on a reverse solicitation basis).

Specific regulatory provisions apply when AIFs' units/shares are offered to retail investors outside the offices of the AIFM (or of its placement agent) or by means of distance communication. These offerings must be carried out acting through licensed agents. In addition, retail investors must be given the right to withdrawal from their subscription agreement without paying any indemnity during a seven day delay from the date of execution.

26. Is the concept of “pre-marketing” (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

EU Directive 2019/1160 (regulating pre-marketing at EU level) has not yet been implemented in Italy. However, the “self executing” provisions of this Directive (which must be transposed by 2 August 2021) and the provision contained in the related EU Regulation 2019/1156, as directly applicable EU law, can be already considered part of Italian financial regulation.

27. Can Alternative Investment Funds be marketed to retail investors?

Yes, see also 4.1 above.

28. What are the minimum investor qualification requirements?

No minimum investor qualification requirements are requested to invest in retail AIFs. However, appropriateness / suitability of the investment into an AIF should be considered, on a case by case basis, in light of the investor classification under MiFID regime.

Reserved AIFs can be subscribed only by professional investors (e.g., banks, investment firms, insurance

companies, pension funds, AIFMs and private investors that can, upon request, be treated as a professional client pursuant to MiFID regime) or investors subscribing for more than euro 500,000.00. It is worth noting that a proposal to lower this thresholds - to allow access to reserved AIFs to a wider range of investors (e.g. retail investors investing a minimum amount of euro 100,000.00, non-divisible and subject to a limit of 10% concentration of the financial portfolio, investing under an investment advisory service) - is currently under public consultation.

29. Are there additional restrictions on marketing to government entities or pensions?

No.

30. Are there any restrictions on the use of intermediaries to assist in the fundraising process?

No (provided that such intermediaries are specifically licensed to conduct marketing of the AIFs' units/shares).

31. Is the use of "side letters" restricted?

No.

32. Are there any disclosure requirements with respect to side letters?

Coherently with AIFMD, Italian regulations require that any preferential treatment granted to one or more investors (or investors' category) should be disclosed in the AIF rules or by-laws.

33. What are the most common side letter terms? What industry trends have recently developed regarding side letter terms?

Usually, side letters include the attribution of favourable treatment (discounts) with regard to the fees to be paid to the AIFM, additional governance rights (e.g. the right to appoint a member of the advisory committee/ board of administration) and/or special information/reporting rights.

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