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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?

Pursuant to the Italian Consolidated Law on Finance ("**CLF**"), an "Italian AIF" is defined as "*the collective investment fund, the Sicav and the Sicaf falling within the scope of Directive 2011/61/EU.*"

Based on the definition above, the following two major categories of AIFs can be identified

(i) AIFs established in contractual form (the "*collective investment funds*", so called "*fondi comuni di investimento*"). They constitute an autonomous pool of assets, without legal personality, which must be managed and represented by a fund manager (so called, "*società di gestione del risparmio*" or "**SGR**");

(ii) AIFs established in the form of corporate entities. They are (a) Fixed Capital Investment Companies (*Società di Investimento a Capitale Fisso,* "**SICAF**") which are closed-ended, and (b) Variable Capital Investment Companies (*Società di Investimento a Capitale Variabile,* "**SICAV**") which are open-ended.

Both SICAFs and SICAVs must be incorporated in the form of joint stock companies, must receive the prior authorization from the Bank of Italy for their incorporation, must have legal personality and, with some exception, are governed by corporate law. Moreover, both SICAFs and SICAVs may directly manage their assets ("self managed") or appoint an external authorized entity to manage them ("third-party managed").

From another perspective, AIFs can be classified as either:

(iii) open ended, in which the investors have the right to request redemption of the units/shares, in accordance with the procedures and frequency laid down in the fund regulations/by-laws and offer documentation. Therefore, the AIF's value / capital is constantly changing, depending on redemptions and new subscriptions.

(iv) closed-ended, in which the investors do not have the right to request for redemptions of the units/shares before the relevant deadline.

With regard to other AIFs classifications made by the Italian laws and regulations, please refer to question below "*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?*"

Please note that on 26 March 2024, the Directive (EU) 2024/927 ("**AIFMD II**") – amending Directive 2011/61/EU on Alternative Investment Fund Managers ("**AIFMD**") and Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities ("**UCITS Directive**") was published in the Official Journal of the European Union.

The AIFMD II entered into force on April 15, 2024 and EU member states have 2 years from that date to transpose the rules into national law: this means that AIFMD II will apply from April 16, 2026, with some rules subject to a transitional period, except for certain provisions relating to reporting requirements on delegation of functions to national competent authorities by AIF and UCITS managers (pursuant to Article 24 AIFMD and Article 20a UCITS Directive) that will be applicable from April 16, 2027. The amendments concern specifically to:

i. delegation agreements;
ii. the granting of loans by AIFs;
iii. liquidity risk management and provisions on liquidity management tools;
iv. supervisory reporting (removal of duplication of reporting requirements, with particular reference to AIFs, existing under EU or national rules, in order to optimize the collection of supervisory data and reduce the administrative burden on managers);
v. the disposals of custodial and depository services (for example, the opportunity of access to AIF depositary services on a cross-border basis t);
vi. extension of the scope of information that AIFMs and UCITS managers shall provide to the Competent Authority during authorization;
vii. information that AIFMs and UCITS managers must share with investors.

These changes have been introduced in order to provide solutions to needs that were identified as a result of the implementation of the AIFMD and the UCITS Directive.

The impact on the Italian law and regulatory rules in force to date will be known only once the implementation of the new EU rules is completed. At the same time, due to the high level of detail characterizing AIFMD II rules, changes to the Italian law and regulatory rules could consist in a mere translation of the new EU rules.

2. Does a structure provide limited liability to the investors? If so, how is this achieved?

There is no specific AIF structure that allows for limitation of liability of managers towards investors, even though the terms of the liability can vary depending on whether the AIF assumes the form of investment fund or SICAF/SICAV. In the first case managers are liable for any misconduct vis-a-vis investors in relation to the management of the AIF under the general rules of civil liability of the agent (*mandatario*) while in the second case managers are liable under the rules applicable to directors of companies.

On 12 March 2024, Law No. 21 of 5 March 2024 was published in the Italian Official Journal (and entered into force as of 27 March 2024). The so called "**Capital Law**" introduces provisions to support the competitiveness of capital markets and provides important innovations to the regime of SICAVs and SICAFs.

In particular, with specific regard to Italian SICAVs or SICAFs, the Capital Law expressly confirms the asset segregation of the sub-funds of the SICAV or SICAF – thought the introduction of other paragraphs in Article 35-bis CLF – in order to align the regulation of these entities with that provided for AIFs established in contractual form. The Capital Law clarifies that the SICAF is liable for the obligations contracted on behalf of the individual sub-fund, exclusively out of the assets of that sub-fund. Furthermore, as already provided for investment funds, it is expressly specified that no actions by or on behalf of the company's creditors, nor actions by or on behalf of the depositary's or sub-custodian's creditors, are permitted on the assets of the individual sub-fund.

Furthermore, the Capital Law expressly provides that each sub-fund of a SICAF may generate and distribute income even in the absence of overall profits of the SICAF. Similarly, losses relating to a sub-fund are charged exclusively to the assets of that sub-fund, up to the amount of the sub-fund.

In many cases the Capital Law introduces clarifications that have already been reached by way of interpretation, but which are nevertheless useful and necessary for the spread of Italian SICAVs or SICAFs.A particular case is represented by third-party managed SICAF/SICAV, as provided by Article 38 of CLF, in which the liability for the management of the assets is entirely attributed by the By-Laws to the external manager (who assumes a statutory role), while the board of directors of the SICAF/SICAV remains liable for "*culpa in vigilando*" only.

This scenario differs from the consequences arising from the possibility for SGR, SICAF, SICAV to delegate third parties to carry out single activities, which does not allow to them to exclude their own responsibility for the delegated activities and must not lead to an emptying out of their powers and competences, otherwise they would be considered a letter-box entity and no longer to be managing an AIF.

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

Historically, contractual funds have been more widely used in Italy. The implementation of AIFMD in Italy introduced closed-end AIFs in the corporate form, the use of which has become more widespread in recent years, especially with regard to real estate, private equity and venture capital funds. The recent diffusion of closed-ended corporate AIFs has been aided even by the well-developed Italian real estate market that – despite the downturn due to the impact of the covid-19 pandemic – is slowly recovering and to the large number of small and medium-sized enterprises (as per the Cerved "*Report on the Performance of SMEs in 2020*", the SMEs in 2020 were approximately 160,000) that, especially in market conditions not plagued by severe liquidity crises, may grant significant margins.

In this context, self-managed SICAFs have found their diffusion especially in club deal type projects or, in any case, with regard to small-size projects (i.e. under-threshold AIFs). While, contractual AIFs continue to be preferred to third party managed SICAFs, since they are characterized by lower complexity and costs compared to funds in corporate form.

The amendments introduced to the Capital Law with regard to third-party managed SICAFs could effectively make them as an alternative instrument to close-ended contractual funds, in some cases simplifying the incorporation and in removing uncertainties determined by the formal rules. To this end, the innovations introduced by Capital Law relate mainly to the following:

i. simplification of incorporation of third-party

SICAFs and SICAVs, which is equated to that of funds under contractual form;
ii. confirmation of the asset segregation regime for sub-funds of the same SICAV or SICAF;
iii. management continuity in case of termination of the contract with the third-party asset manager and/or it is subject to winding up procedure; simplification of the compulsory winding up procedure of the third-party SICAFs and SICAVs, providing for the application of rules regulating the compulsory winding up procedure of contractual funds.

Finally, despite the increase in the diffusion of closed-ended AIFs in corporate form, contractual AIFs remain the most widespread on the Italian market.

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?

As specified in details above (see question related to "*principal legal structures used for Alternative Investment Funds*") the Italian regulatory regime distinguish both between open-ended and closed-ended AIFs.

Notwithstanding the above, the CLF and the relevant implementing regulations provides for some particular types of AIFs included in the above macro categories. In particular:

- real estate AIFs, which must be closed-ended and have to invest at least two-thirds of their assets in the real estate market (this percentage is reduced to 51% in the event that the assets of the AIF are also invested to the extent of not less than 20% of the AIF assets total value in financial instruments representing securitization transactions involving real estate, real estate rights or credits secured by mortgage);
- AIFs reserved to professional investors, which can be both open-ended and closed-ended, and whose units can be invested by professional investors only. However, pursuant to art. 14(2) of the DM 30/2015 (as amended by the D.M. 19/2022), the regulation/by-Laws of AIFs reserved to professional investors may specifically provide that:

    i. non-professional investors may subscribe units or shares for an amount greater than € 500,000.00;
    ii. non-professional investors, in the context of financial advice, may subscribe to or purchase units/shares of the AIF for an initial amount not lower than Euro 100.000, provided that, as a result of the subscription or purchase, the total amount of investments in reserved AIFs does not exceed 10% of the respective financial portfolio (the respect of this limit shall be assessed by the financial intermediary or financial advisor who recommends the subscription or purchase of units/shares in the AIF);
    iii. financial intermediaries may, in the context of the portfolio management service, subscribe to or purchase on behalf of non-professional investors units/shares of the AIF for an initial amount not lower than Euro 100,000.

The AIFs reserved to professional investors are not subject to certain controls (*e.g.* the prior approval of the Bank of Italy of the relevant regulations/by-laws of the AIF) and to prudential rules of risk containment and fractioning established by the Bank of Italy;

- guaranteed AIFs, which guarantee the repayment of the capital invested or the recognition of a minimum return, through specific agreements with third parties or other forms of guarantees selected by the Bank of Italy; and
- credit AIFs which are characterised by carrying out activities involving the purchase of credits already existing and circulating on the market and the granting of loans to parties other than consumers.

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?

Since 1998, the Italian regulatory regime has provided, with respect to open-ended "alternative funds", the possibility to contemplate in the fund regulation the list of cases in which the exercise of the redemption rights could be suspended.

The Regulation concerning the collective asset management – issued by Bank of Italy on 19 January 2015 and currently in force – provides that the open-ended fund's regulation must indicate the cases, of an exceptional nature, in which the redemption may be suspended in the interests of the investors and for a period that could not exceed 30 days. This cases generally refer to situations in which redemption requests, due to their size, would require such a

divestment of assets that, considering the market situation, could be detrimental to the interests of the investors. Under the same Regulation the AIFM may also restrict reimbursements, for a period not exceeding 15 days (without prejudice to the total duration of the 30 days for suspensions related to the same exceptional event), if investors present requests for redemptions (or switches) in excess of a certain amount specified in the fund regulation, which may not in any event be less than 5% of the fund's NAV. In any case, the manager shall promptly inform the Bank of Italy and the relevant investors of any suspension.

Further restrictions to redemptions may be envisaged within the framework of Italian AIFs, reserved to professional investors (hereinafter also "Italian reserved AIFs") thanks to their greater flexibility in their regulations.

The degree of liquidity of an AIF is mainly determined by the portfolio of assets held by the AIF itself, the composition of which must respect the investment limits specifically set out by the Bank of Italy for different types of AIFs (in particular, retail open ended and closed-ended FIAs).

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

There are no specific domestic rules in addition to the rules provided for under the EU Regulation 231/2013 and under Directive 2011/61/EU (which is cross-referenced by the Bank of Italy's Regulation on collective asset management service of 19 January 2015). In particular, AIFMs are required to establish, implement and maintain an adequate and documented risk management policy and to conduct liquidity stress tests to address the risks of potential changes in market conditions that may adversely affect the fund. Risk management policies usually include specific risk management tools which mainly affect the redemption rights, such as redemption gates, redemption suspensions or restrictions.

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

Restrictions on transfers of investors interests are specifically provided by the Italian regulations with regard to the Italian reserved AIFs, whose units cannot be transferred to investors other than eligible investors (i.e. the professional clients and non-professional investors under the conditions set forth by the AIF regulation/by-Laws, according to art. 14(2) of the DM 30/2015). Further restrictions to the transfer of units/shares may be laid down in the AIF rules or By-Laws on a voluntary basis.

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

Pursuant to Italian laws, limitations on a manager's ability to manage funds depend on whether the funds are Italian reserved AIFs or non-reserved AIFs. In particular, non-reserved AIFs are subject to the prudential provisions for risk containment and fractioning, set forth by Bank's of Italy Regulation on collective asset management. Such provisions impose, among others, limitations on:

i. investments, such as a maximum limit of assets which the AIF may be invested in (i.e financial instruments from the same issuer, credits, derivative instruments, etc);
ii. holding of voting rights, such as the limits on the percentage of voting rights that an AIFM, through the fund's assets, can hold in the same company (for example, a FIA cannot hold more than 10% of the voting rights in a listed company);
iii. loans for the development / execution of the AIF's activities (such limitations are calculated as a percentage of the AIF's asset value);
iv. leverage (for example, real estate FIAs may borrow as long as the leverage is not greater than 2).

Except for the Italian reserved AIFs investing in credits, which leverage cannot exceed the limit of 1,5, Italian reserved AIFs are not subject to specific limitations and are essentially governed by the provisions laid down in the AIF's regulations/by-laws. At the same time, the AIF's regulation is required to specifically set out the fund's risk profile, the investment and leverage limits, the means by which the fund intends to generate leverage and the limits on the reuse of financial guarantees received.

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?

AIFs established in Italy are deemed to be resident of Italy

for tax purposes. The place of residence of the AIFM has no relevance in determining the tax residence of the AIF as this solely depends on the State of its establishment.

AIFs deemed to be taxable persons for income tax (IRES) purposes, although they are exempt from said income tax (IRES) and to regional production tax (IRAP) provided that the AIF or the entity in charge of its management are subject to a form of prudential supervision and that the Italian regulatory requirements are satisfied.

On the basis that AIFs are taxable persons for IRES purposes, they are regarded as resident entities for Italian tax purposes and should therefore benefit from tax treaties concluded by Italy (on a case-by-case basis).

The main categories of income realised by AIFs in connection with the investment activities (including capital gains on equity interests or real estate assets, interest on loans, dividends and lease payments for real estate AIFs) are not subject to Italian withholding tax or substitutive taxes.

Certain residual categories of income collected by an AIF are subject to a 26% substitutive tax or withholding at source which represents a final payment of taxes due.

The above tax regime applies to both AIFs that invest in transferable securities and those that invest in other assets, such as receivables and securities representing receivables or tradable assets (other than financial instruments).

Income on a redemption or sale of units or shares in an AIF, as well as periodic distributions received by investors are, in principle, subject to withholding tax at a rate of 26% (levied as a final payment or as an advance payment, depending on the tax status of the investor). The provisions of the AIF rules and legal characterisation as repayment of capital or as proceeds are of relevance to determine whether or not a taxable event may be deemed to occur in the hands of the investors.

Proceeds arising in the hands of corporate investors or commercial entities resident of Italy for tax purposes are subject to a 26% withholding tax levied as an advance payment of the total tax due. Proceeds are considered taxable business income and are subject to IRES in accordance with the general rules that govern business income. In regard to banks, insurance companies and financial entities, proceeds may also form part of the tax base subject to regional production tax (IRAP).

Withholding tax does not apply to insurance companies for units or shares held to cover technical provisions of life-insurance policies. The 26% withholding tax is not levied on proceeds arising in the hands of pension schemes as identified by the law. In this case, proceeds form part of the management result subject to 20% substitutive tax.

The withholding tax is not levied on proceeds arising in the hands of Italian AIFs that invest in another Italian AIFs.

The 26% withholding tax is levied as a final payment in regard to investors other than those listed above.

A tax-transparency regime applies to resident investors, other than certain “institutional investors" that hold interest in real estate AIFs representing more than 5% of the AIF's capital.

Non-Italian resident investors in AIFs investing in assets other than real estate

Proceeds collected by non-Italian resident investors upon a redemption or sale of units or a periodic distribution of proceeds from real estate AIFs are, in principle, subject to a 26% withholding tax levied as a final payment of taxes due in Italy if the non-resident person does not have a permanent establishment in Italy to which the proceeds are attributed.

Proceeds collected by certain categories of non-Italian resident investors (i.e. non-Italian resident persons they satisfy certain conditions; “institutional investors" established in a White List state; organizations established in accordance with international agreements ratified in Italy; and, central banks or organizations that manage the official reserves of foreign states) are exempt from the 26% withholding tax under certain conditions.

Non-Italian resident investors in Real Estate AIFs

Proceeds distributed by Real Estate AIFs upon periodical distributions are in principle subject to a 26% Italian withholding tax. The withholding tax in principle applies on the amount distributed and is levied as a final payment of taxes due in Italy, unless the proceeds may be allocated for tax purposes to a permanent establishment in Italy in which case proceeds form part of the taxable basis subject to corporate income tax (IRES) with a tax credit for the 26% withholding tax levied at source.

Proceeds received by certain non-Italian resident investors and, in particular, White-Listed pension funds and undertakings for collective investment, organizations established under international agreements ratified in Italy and, central banks or organizations that manage the official reserves of foreign states may be exempt from the 26% withholding tax.

The exemption regime applies with respect to non-Italian resident undertakings for collective investment provided that they satisfy certain conditions relating both to their status and documentary requirements.

The Italian Budget Law 2023 amends the domestic rules that govern the taxation in Italy of capital gains realized by non-Italian resident persons on the direct or indirect sale of equity interests in Italian resident companies or entities the value of which derives, either directly or indirectly, for more than 50% from Italian real estate assets. The new provisions need to be considered with respect to the investment in Italian RE AIFs.

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

As a general principle, set out by the CLF, the assets / capital of AIFs established both in contractual or corporate form shall be managed in the investors' interests but independently by the same. This implies that investors do not have any right to be involved in the management and transactions concerning the AIF, since such activities are reserved to the manager.

Provided that under the Italian law the management of the AIF is reserved to SGRs or to the board of directors of the SICAF/SICAV, Article 37 of the CLF provides that, in closed-end funds other than those reserved to professional investors, the participants may meet in general meeting exclusively to resolve on the substitution of the AIFM.

With regard to the Italian reserved AIFs, the majority of scholars considers that the fund's rules or bylaws can attribute to the investors' meeting or to an investors committee advisory and decision powers on single matters provided, provided that such powers do not end up emptying the SGR, which is the only entitled to decide on the fund management operations and to determine the investment strategy (e.g. such bodies can be empowered to analyse and give the management body binding guidelines in case of transactions in conflict of interest).

11. Where customization of Alternative Investment Funds is required by investors, what types of legal structures are most commonly used?

Whereas no legal structure allows the limits set, directly or indirectly, by the regulatory regime on AIFs to be exceeded or circumvented, AIFs that grant greater customization are Italian reserved AIFs, due to the fact that they are not subject to the prudential rules of risk containment and fractioning established by the Bank of Italy and, to the extent they are established in the form of collective investment funds, to the approval of the relevant regulations by the Bank of Italy.

Typically, one of the most frequent requests for customization concerns the rights of voice in the management of the AIF. Such voice rights may be exercised at the meetings of the participants or at an investors committees, within the limits specified in the question above (See "*What rights do investors typically have and what restrictions are investors typically subject to with respect to the management or operations of the Alternative Investment Fund?*")

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

Pursuant to article 32-*quater* of CLF, the management of AIFs in Italy is reserved to Italian AIFMs (SGR, SICAV and SICAF), EU AIFMs and Non-EU AIFMs which manage Italian AIFs.

Such entities are subject to (i) an authorisation or notification procedure, depending on the AIFM's country of residence and to (ii) an on-going supervision by the competent authority.

In particular, the Italian AIFMs shall apply for authorisation – drafted in compliance with regulatory requirements – to the Bank of Italy which approve or rejects the request of authorization, having consulted CONSOB, within 90 days after the date of filing. The authorization process is suspended during CONSOB's consultation and for requests for clarifications; consequently, the overall duration of the authorization process is up to 5-7 months.

EU AIFMs can manage AIFs in Italy, through the establishment of a branch or under the freedom to provide services ("**FOS**"), by sending a prior notification (in case of branch) or communication (in case of FOS) to the home country Supervisory Authority, according to the cross-border rules provided by article 33 of the AIFMD. In both cases, the home country supervisory authority forwards the notification / communication to Bank of Italy and Consob and the EU AIFM can start operating in Italy (i) through the branch, after having received a confirmation letter from Bank of Italy or, in the absence of such confirmation or further requests of clarifications, 60

days after the transmission of the notification by to Bank of Italy; (ii) under FOS, as soon as the relevant home-country Authority notifies the respective communication to Bank of Italy.

Actually, to date it is not possible for a Non-EU AIFM to obtain the authorization to manage AIF in Italy. Although, the CLF regulates the authorisation procedure for Non-EU AIFMs, the Law implementing the AIFMD in Italy introduced a transitional regime pursuant to which the authorization procedure does not apply on a temporary basis, pending the entry into force of the delegated act of the European Commission referred to in Article 67 (6) of the AIFMD, which will lead to the application of the so called "Third Country Marketing Passport".

As far as the advisory related to AIFs is concerned, it qualifies the "*investment advisory service*" and it can be provided by Italian or EU MIFID II investment firms, Italian or EU banks, SGRs and EU managers. To this end such entities must, therefore, be duly authorised by the relevant competent authorities, according to MIFID II rules.

In particular, Italian investment firms are authorized by Consob, having consulted Bank of Italy, within six months from the filing of application, while Italian banks and SGRs intending to provide investments advisory services are authorized by the Bank of Italy, having consulted CONSOB.

EU MiFID II investment firms, EU Banks and EU AIFMs may provide advisory services through (i) the establishment of branches or through associated agents in Italy (in this case the activity can start after two months from the communication made by the home country authority to Consob); (ii) by way of FOS, also by using associated agents established in the member state of origin (in this case the activity can start in the very moment Consob has been informed by the home country authority).

With regards to Non-EU investment companies, the CLF provides that, (i) investment services to retail and "opted-up" professional clients can be provided by establishing a branch in Italy; (ii) investment services to eligible counterparties and professional clients can be provided under FOS regime. As of today, the access to the Italian market by Non-EU Investment firms and banks is subject to an authorization process by Consob, which requires, among others, the existence of a cooperation agreement among the home state Authority, Bank of Italy and Consob.

It should be noted that some types of consultancy, due to their content, do not constitute the provision of investment consultancy services and can also be provided by non-authorised subjects: this, for example, is the case of consultancy on property management provided to real estate managers AIFs.

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

Pursuant to CLF and to the Bank of Italy Regulation on collective asset management, the following rules apply to the AIFs:

- regulations of contractual AIFs (i.e. different from SICAVs or SICAFs) not reserved to professional clients and managed by Italian SGRs, shall be approved by Bank of Italy, after having assessed their compliance with general criteria and contents established by Bank of Italy itself. Unless a refusal from Bank of Italy occurs, the regulation can be considered approved after 60 days from the filing of the application. No prior approval by Bank of Italy is requested for open-ended AIFs if drafted in accordance with the simplified regulation scheme provided by Bank of Italy and for AIFs whose rules differ from rules of other already operating funds set up by the same SGR only with regard to profiles relating to the object, investment policy and other characteristics as well as the expenses regime;
- regulations of contractual AIFs (i.e. different from SICAVs or SICAFs) reserved to professional investors are approved by the AIFM's board of directors, without prior approval by Bank of Italy. Such regulations shall, in any case, be notified (after the AIFM board of directors approval) to Bank of Italy and Consob;
- with reference to corporate AIFs (i.e., SICAFs and SICAVs), the relevant by-laws shall be approved by the Bank of Italy, having consulted Consob, within 90 days from the filing of the complete application (unless suspended due to requests of information from Bank of Italy). The Capital Law amends the provisions of the CLF by making a significant simplification of the incorporation of third-party managed SICAFs and SICAVs (that choose to outsource the management to SGRs or EU AIFMs), especially those reserved for professional investors. In particular:
    - with reference to third-party managed SICAFs and SICAVs reserved to professional investors, no authorization by the Bank of Italy is requested anymore. The SGR or EU AIFM that takes on the management shall provide for the incorporation of the same, shall assess the

consistency of the by-laws with regulatory provisions and shall file them within the Bank of Italy in 10 days following the incorporation of the SICAF or SICAV;
- with regard to third-party managed SICAFs and SICAVs not reserved to professional investors, the incorporation is – in any case – in chief of the SGR or EU AIFM that takes on the management, but the start of operations remains subject to a procedure of approval of the by-laws (which must comply with the regulatory requirements provided for non-reserved AIFs) by the Bank of Italy upon request of the external manager;

- pursuant to the Capital Law, the third-party managed SICAFs and SICAVs are no more listed in the Register of SICAFs and SICAVs kept by the Bank of Italy;
- with reference to EU AIFMs, the relevant regulation shall be approved by Bank of Italy within 30 days after filing of notification made to the Bank of Italy by the Authority of the country of origin of the AIFM, according to the rules of the Bank of Italy regulation implementing the AIFMD. Such notification shall include (in addition to the AIF rules) the agreement with an Italian depository bank with the contents established for by art. 83 of the UE Regulation 213/2013, information regarding possible delegations of the management activity and a certificate of the Authority of the country of origin of the AIFM confirming it is authorised in its country to manage funds with characteristics similar to the AIF it intends to manage in Italy.

14. Does the Alternative Investment Fund require a manager or advisor to be domiciled in the same jurisdiction as the Alternative Investment Fund itself?

Chapter II bis of Title III of the CLF, implementing the AIFMD disposals on AIFMs cross-border transactions, provides that Italian AIFs can be managed by EU and Non-EU AIFMs.

In particular, EU AIFMs can manage Italian AIFs pursuant to the so-called "European passport", which grants these entities the possibility to manage AIFs established in a EU member State different from that of the AIFM, either through the establishment of a branch or under FOS regime. To this end, it is required that the EU AIFM is authorized in the EU home State to manage AIFs similar to the Italian one, whose regulation/by-laws shall be approved by Bank of Italy and has entered into an agreement with a depository. The EU AIFMs shall manage the Italian AIFs in compliance with Italian provisions and regulations dealing with Italian AIFs.

With reference to Non-EU AIFMs, to date it is not possible to obtain the authorization to manage Italian AIF as indicated in the answer to question 12 above.

As far as the advisory service is concerned, Italian regulations do not require advisors to be domiciled in the same jurisdiction as the AIFs, being understood that the provision of financial advisory is subject to prior authorization by Consob (please refer to the question on license/authorisation procedure above).

15. Are there local residence or other local qualification or substance requirements for the Alternative Investment Fund and/or the manager and/or the advisor to the fund?

Italian AIFMs (SGRs, SICAVs and SICAFs) shall be incorporated as joint stock companies and shall be registered in Italy.

Moreover, the CLF and relevant implementing regulations provide for further corporate and organizational requirements, which seek to grant sound and prudent management by the AIFMs, such as, minimum share capital, suitability of persons carrying out administrative, management and control functions, suitability of the shareholders holding significant interests in the AIFM and organizational as well as procedural requirements to be addressed according to the activities performed. All requirements set forth in Italian CLF represent the implementation of the AIFMD in the Italian legal framework, which is currently aligned to the European one.

Italian AIFMs, duly authorized, are subject to the supervision of Bank of Italy and Consob and registered in special registers kept by the Bank of Italy.

In accordance with AIFMD's exemptions, specific and less stringent requirements apply to AIFMs managing portfolios under thresholds set out by article 3 of the AIFMD (so called "sub-threshold" managers), it being understood that even such AIFMs are subject to authorization and to supervision by the competent Italian regulatory authorities.

16. What service providers are required by applicable law and regulation?

As per CLF AIFMD the following service providers are

mandatory required:

1) the appointment of a depository for each of the Italian AIFs, which could be granted to an Italian bank, Italian branch of EU or Non-EU bank, investment firms and Italian branch of EU and non EU investment firms, provided that they are specifically authorized by Bank of Italy to carry out depositary activity;

2) the appointment of an auditing firm or an independent auditor for the certification of the financial statements and for the issuance of the opinion on financial statements of Italian AIFs;

3) with regard to AIFs investing in assets not traded in regulated markets (such as real estate AIFs and AIFs investing in credits), the appointment of independent experts for the valuation of the relevant assets.

Furthermore, according to art. 43 bis of the AIFMD (as amended by the Directive 2019/1160 regarding the cross-border distribution of OICVM and AIFs marketed to retail investors) the AIFMs intending to market AIFs units/shares to retail investors in Italy shall make available to them local facilities in order to perform the following tasks: (i) process investors' subscription, payment, repurchase and redemption orders relating to the FIA's units or shares (ii) provide investors with information on how orders can be made and how repurchase and redemption proceeds are paid (iii) facilitate the handling of information relating to the exercise of investors' rights arising from their investment in the AIF (iv) make the FIA's information and documents available to investors; (v) provide investors with information relevant to the tasks that the facilities perform; (vi) act as a contact point for communicating with the competent authorities.

Such local facilities' duties can be carried out directly by the AIFM, also through electronic means, or by a service provider appointed by the AIFM, but no physical presence in Italy of the entity serving as local facility is required. Considering that – pursuant to second level Italian regulation (currently under public consultation) – "*local facility*" duties shall be carried out by the AIFs or by the service provider "*in compliance with the regulations and supervision concerning the tasks to be performed*", it is noted that those tasks for which a specific authorization/license in Italy is required may only be assigned to entities with such authorizations/licenses in Italy (by way of example, payment intermediation may only be assigned to banks or payment institutions authorized or licensed to operate in Italy).

According to Art. 33 of the CLF and implementing Regulation issued by Bank of Italy on 5 December 2019, AIFMs may outsource internal functions to third parties service providers (such as, portfolio management, internal control functions, anti-money laundering as well as any other function required by the specific type of assets managed by the AIF, such as project management and property manager services for real estate AIFs, calculation agency and credit special servicing for AIFs investing in credits). Should the outsourced function be "important" or "essential" for the AIFM operational business, it shall be notified in advance to Bank of Italy, which has – if any – 30 days to object to the outsourcing of such function.

17. Are local resident directors / trustees required?

According to Italian regulatory framework, a compulsory minimum number of local resident directors or trustees is not expressly required.

Notwithstanding the above, Italian supervisory authorities pay particular attention to adequacy and appropriateness of AIFMs corporate governance and organizational requirements, which are necessary for the proper management of AIFs. To this end, the organization and corporate governance of AIFM is specifically addressed by the CLF and the Bank of Italy Regulation of 5 December 2019, which transposes principles of the AIFMD in Italian domestic legal framework. Particular requirements are established with regard to: (i) quantitative and qualitative composition of corporate bodies, with a clear division of tasks between corporate bodies with internal control function, strategic supervision function and management function (ii) adequate number of independent directors (with the exemption of sub-threshold managers), (iii) information flows with supervisory authorities, (iv) avoidance of overlapping of chairman of management body function and of managing director functions (with the exemption of sub-threshold managers), (v) self-assessment process of corporates bodies, and (vi) constitution of committees.

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

Foreign AIFs' managers and advisers shall comply with CLF and secondary implementing provisions, such as Consob Regulation no. 20307 of 15 February 2018 (the "Intermediaries Regulation") with regard to conduct of business, transparency and fairness, best execution, conflicts of interest and inducements rules and Consob

Regulation no. 11971 of 14 May 1999 (the " Issuers Regulation") with regard to public offering rules.

As far as the set up of Italia AIFs is concerned, the foreign AIFMs aiming at launching Italian AIFs shall comply with the Regulation issued by Bank of Italy on 19 January 2015 and with the ministerial decree no. 30 of 5 March 2015 regarding Italian investment funds' structure (e.g., open-ended or closed-ended fund, minimum and maximum duration) and general criteria which Italian AIFs shall align with (such as disclosure requirements, categories eligible investors with regard to Italian reserved AIFs can be offered, accounting registrations and requirements of the independent experts).

If a foreign EU AIFM operates in Italy through the establishment of a branch, Italian Anti Money Laundering rules apply. In particular, the legislative decree no. 231/2007 and the implementing regulations issued by Bank of Italy on customer due diligence requirements (Regulation of 30 July 2019), organization, procedures and internal controls (Regulation of 26 March 2019) and storage and availability of documents, data and information (Regulation of 24 March 2020).

Moreover, Italian branches of foreign advisers – where applicable – shall comply with Regulation of Bank of Italy of 5 December 2019 relevant for the internal organizational requirements (such as organizational requirements, internal controls and remunerations systems). Furthermore, Italian branches of foreign AIFM and advisers are subjected to the ongoing supervision of Bank of Italy and Consob.

In accordance with the guidance provided by the tax authorities, the fact that a foreign AIFM establishes and manages Italian AIFs on a pure cross border basis in accordance with the AIFMD passport does not, in itself, imply that the AIFM is tax resident in Italy or that a permanent establishment for tax purposes ("PE") of the AIFM exists in Italy. This however does not prevent that the AIFM could be deemed to have a PE on the basis of other elements of "presence" in Italy.

19. What are common enforcement risks that managers face with respect to the management of their Alternative Investment Funds?

The breach of law and regulations set up to protect the reserved nature of the collective asset management activity may lead to the application of punishment and sanctions as provided for by CLF. In particular:

1. carrying out an activity reserved to authorized legal entities (such as managing and marketing of AIFs) without authorization release by bank of Italy and/or Consob constitutes a crime which is punished with 1 to 8 years of imprisonment and with fines from Euro 4.000 to Euro 10.000;
2. the violation by AIFMs of primary law set up to regulate authorization, cross-border operations and marketing of AIFs as well as Regulation (EU) no. 231/2013, Regulation (EU) no. 2015/760 and Regulation (EU) no. 2015/2365 and respective implementing provisions, leads to the application of fines ranging from Euro 10.000 to Euro 5.000.000 (if the violation is committed by natural person), and from Euro 30.000 to Euro 5.000.000 (or 10% of the annual turnover, when available and if it is higher than Euro 5.000.000) if the violation is committed by a legal entity.

Should the infringement result from the breach of corporate representatives' duties, Bank of Italy and Consob may impose administrative fines from Euro 5.000 up to Euro 5.000.000 directly against persons in charge of administrative, management or control functions in the AIFMs.

In addition, Bank of Italy and Consob may (i) remove corporate representatives of Italian AIFMs, (ii) suspend the administrative bodies and (iii) exercise injunctive powers towards Italian AIFMs, UE and Non UE AIFMs (by way of examples, they may order to temporarily/ permanently cease irregular activities, prohibit to undertake new transactions, impose limitations concerning single transactions or single services or activities).

Finally, Bank of Italy may start crisis procedures, by ordering the removal of the management and control bodies of the SGRs, SICAVs and SICAFs and replacing them with commissioners appointed by Bank of Italy. Such crisis procedure may be started when occur serious irregularities in the administration, serious breaches of law provisions, serious losses in company's capital and may lead to the compulsory liquidation of the company.

To the extent that they are compatible, the provisions regarding the crisis procedures apply also to the Italian branches of EU and Non-EU AIFMs.

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

The management fee to be paid to AIFMs generally depends on the characteristics of the fund (such as the investment strategy and the asset type). For instance, in

2018, management fees were estimated to be between 1% and 2% of the capital invested or the net asset value, with lower fees for debt arbitrage funds (0.7%) and above-average fees for equity funds of funds (3.7%).

21. 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.

Both performance fees and carried interest are typically used by AIFMs.

As to the performance fee, in general, the Italian law requires that the calculating methods and criteria are expressly described in the documentation to be made available to investors.

In relation to open-ended AIFs marked to retail investors (excluding funds qualified as EuVECA, EuSEF, private equity and real estate funds), the Regulation of Bank of Italy of 19 January 2015 has been recently amended (December 28, 2021), directly referring to the ESMA "*Guidelines on performance fees of UCITS and certain types of AIFs*".

The fee models taken into consideration by the ESMA Guidelines, as commonly used by such type of AIFs, are: (i) benchmark model, whereby the performance fees may only be charged on the basis of outperforming the reference benchmark; (ii) high-water mark (HWM), whereby the performance fee may only be charged on the basis of achieving a new High-Water Mark (the highest NAV per unit/share) during the performance reference period (iii) high on high (HOH), whereby the performance fee may only be charged if the NAV exceeds the NAV at which the performance fee was last crystallised and (iv) fulcrum model, whereby the level of the fee increases or decreases proportionately with the investment performance of the fund over a specified period of time in relation to the investment record of an appropriate reference indicator (including a negative fee deducted from the basic fee charged to the fund)

The ESMA Guidelines provides, among others the following conditions:

i. the crystallisation frequency (at which the accrued performance fee, if any, becomes payable to the management company) should not be more than once a year, unless the AIFM apply a HWM or HOH model where the performance reference period (i.e. the time horizon over which the performance is measured and compared with that of the reference indicator, at the end of which the compensation for past underperformance can be reset) is equal to the whole life of the fund and it cannot be reset;
ii. if a model based on a benchmark index is applied and the length of the performance reference period is shorter than the whole life of the fund, it should be set equal to at least 5 years;
iii. where a fund employs a HWM model, a performance fee should be payable only where, during the performance reference period, the new HWM exceeds the last HWM. In case the performance reference period is shorter than the whole life of the fund, the performance reference period should be set equal to at least five years on a rolling basis.

The Bank of Italy Regulation also requires that the fund's regulation/by-laws sets a fee cap, related to the NAV, which cannot be exceed by the overall amount of both the management and performance fees.

With reference to the carried interest, such kind of mechanisms are generally implemented through the creation of specific classes of shares/units to be subscribed by the AIFM or its management team. The attribution of the carried interest is often regulated by a water-fall described in the fund documentation, and subordinated to the distribution of a minimum return to the investors (hurdle rate). With respect to tax treatment, special provisions apply in the case of carried interest that satisfy certain conditions as set out by Article 60 of Legislative Decree no. 50/2017. Carried interest may be treated as financial-source income (which is subject to taxation at a rate of 26%) rather than employment income (which is subject to taxation at a rate up to 43%) if the following requirements are met: (a) the shares/units must be issued by an AIF or a company which is resident for tax purposes of Italy or of a White Listed State (i.e. a State that allows an adequate exchange of information between tax authorities); (b) the employees/managers must have invested an amount totally equal to least 1% of the entire investment made in the AIF or the company; (c) income from the securities carrying special profit rights must accrue only after all other investors have received an amount equal to the capital invested plus the hurdle rate; and (d) the employees/managers must hold their investment for a minimum of 5 years or until the date of change of control or replacement of the AIF manager.

22. Are fee discounts / fee rebates or other

economic benefits for initial investors typical in raising assets for new fund launches?

The possibility to recognise to investors fee rebates and/or fee discounts is limited by the general principle of equal treatment of all investors in the same AIF and by the rules on inducements that can be received and/or paid by an AIFM under European legislation, pursuant to Article 24 of Regulation (EU) 231/2013. Furthermore, tax implications of these sort of incentive instruments is to be evaluated on a case by case basis.

Considering the above, economic benefits for initial investors are generally constructed through the issue of different classes of units/shares, for instance allocating to initial investors shares characterized by more favourable conditions.

23. Are management fee "break-points" offered based on investment size?

Management fee break-points are offered, especially in case of Italian reserves AIFs. Because of the same reasons described in the answer to question 22 above, discounts on fees based on the investment size is usually implemented by creating different classes of share/units.

24. 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)?

There are no consolidated market trends in Italy concerning first-loss programs, nor specific Italian provisions regulating the use of such programs. However, it is worth noting that any solutions aiming at realizing first loss programs (or other similar arrangement) shall comply with the general principle of equal treatment of investors, expressly provided by article 23 of Regulation (EU) 231/2013 and implemented in Italy in article 35-decies of the CLF.

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

The terms of seeding and acceleration programs are normally diversified and customized according to the specific transaction. By way of example, the following scheme are typically used for seeding/acceleration purposes:

- involvement of seed investors in the AIFM share capital over certain threshold of investment in the AIFs' units/shares;
- especially with regard to Italian reserved AIFs, units/shares categories dedicated to seed investors or to major investors characterised by lower management fees;
- possibility to coinvest with the AIF for seed/major investors;
- collection of AUM through Exchange Traded Notes (ETN) which allow greater liquidity of the investment.

Crowdfunding platforms can also be used as an alternative for seeding and acceleration programs since, according to Italian law, investment funds that invest mainly in SMEs are allowed to offer their shares/units on crowdfunding platforms. Italian regulation on crowdfunding has been recently amended to adapt the national regulations to the changes introduced at European level by the Regulation (EU) 2020/1503 (Regulation on European Crowdfunding Service Providers – "**ECSP Regulation**") on crowdfunding services and on 1st June 2023, Consob, with Resolution No. 22720, adopted the Regulation on crowdfunding services, implementing the ECSP and Italian primary laws ("**Crowdfunding Regulation**"). The new Crowdfunding Regulation repeals the previous one on "*the raising of capital through online portals*", adopted by Consob with Resolution No. 18592 of 26 June 2013.

The use of crowdfunding platforms must be carefully assessed with regard to AIFs whose participation is reserved for specific categories of investors: the use of such platforms must not, in fact, lead to a circumvention of the limitations on participation in the fund established by law or by the fund rules. To date, the offer of investment funds on crowdfunding platforms is not common in Italy.

26. What industry trends have recently developed regarding management fees and incentive/performance fees or carried interest? In particular, are there industry norms between primary funds and secondary funds?

Most of Italian AIFMs apply both management fees and performance fees, although the proportion between the two components can vary greatly, up to the total absence of the performance fee for some AIFMs.

With regard to Italian open-ended AIFs, market practices comply to ESMA "*Guidelines on performance fees in*

UCITS and certain types of AIFs" since Bank of Italy transposed them into second level Italian regulatory framework and requested the AIFMs to comply with them by March 31st, 2022.

With regard to the application of carried interest, this kind of remuneration for managers and other employees of AIFM is mainly widespread in private equity, venture capital and real estate AIFs and, in particular, in funds reserved to professional investors.

Finally, there are no industry norms regulating management fees, incentive/performance fees or carried interest in a different way between primary and secondary funds.

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

The marketing of Italian AIFs in Italy and in other EU Member States is subject to a prior notification to Consob, according to rules contained in the CLF and in the implementing Consob regulatory rules contained in the so called Issuers Regulation. The notification fulfilments for the Italian AIFM vary according to whether the AIF marketed in Italy is:

- is Italian or from another EU country;
- is open-ended or closed-ended;
- is an Italian reserved AIF or and Italian non-reserved AIF;
- is marketed to professional or retail investors.

Specific notification obligations are then foreseen for EU AIFM according to whether they intend to market in Italy Italian AIFs or AIFs of other EU countries managed by them.

The provisions contained in the Consob Issuers Regulation reflect the provisions contained in articles 31 and following of the AIFMD.

In addition to the notification fulfilments above, depending on the characteristics of the AIFs offering in Italy, the provisions of the CLF and the Issuers Regulation relating to the public offering (establishing the obligation to draft a prospectus and a KIID) may apply. On this regard, starting from January 2023 the rules on key investor information provided by Regulation (EU) 2021/2259 entered into force for UCITS and AIFs. In particular, the Italian implementing law provides that: (i) the use of the PRIIPS KID (Key Information Document) is extended to all investment funds – UCITs and AIFs – intended for retail investors; (ii) as to the non-retail clients, it is possible, alternatively, to provide, in addition to the prospectus, the PRIIPS KID or the KID (Key Information Document) provided by the Regulation (EU) 1286/2014.As far as the Non-EU AIFs and AIFs marketed by Non EU AIFMs are concerned, it is currently not possible to obtain any marketing authorization in Italy (see also the answer to question 12 above).

A further restriction is related to Italian AIFs reserved to professional investors, where the AIF cannot be marketed to retail investors unless the fund Regulation expressly allow them to subscribe or purchase units / shares, according to art. 14(2) of the DM 30/2015(see also the answer to question. 28 below).

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

Art. 42-bis CLF (introduced by Legislative Decree n. 191/2021, implementing Directive (EU) 2019/1160, the cross-border distribution of investments funds Directive) defines the pre-marketing of reserved AIFs as "*the provision of information or communications, whether directly or indirectly, on investment strategies or ideas by an asset management company or EU AIFM, or on behalf thereof, to resident prospective professional investors or those with head office in the EU, in order to survey their interests in an Italian or EU AIF or sector yet to be instituted, or instituted and for which the notification procedure (…), is yet to be activated in the member State in which the prospective investors are resident or have their head office. In any case, under no circumstances can pre-marketing constitute an offer (…)*".

Art. 42-bis CLF specifies that pre-marketing activities cannot be performed in Italy if the information provided to the prospect investors is: (i) sufficient to allow them to commit to subscribe shares or units of the AIF; (ii) equivalent to subscription forms or similar documents, in draft or final form and (iii) equivalent to the final version of the deed of incorporation, prospectus or other documents related to a yet to be instituted AIF. If drafts of prospectus or offering documents are provided to prospect investors, these must not contain sufficient information for the investors to make investment decisions and clearly state that: (a) they do not constitute an offering or invitation to subscribe units/shares of an AIF and (b) the information included therein is not complete and could be subject to changes, therefore investors should not rely on it.

In addition, Consob started a public consultation on proposals to change Consob Regulation n. 11971/1998

concerning financial Issuers, in order to transpose into second level legislation, among others, the notification procedures for starting premarketing activities vis-à-vis Italian professional investors.

The scope of application of Art. 42-bis CLF is limited to Italian or EU AIFMs, so it does not apply to non-EU AIFMs. However, on 26 May 2023, ESMA updated its Q&A on the application of the AIFMD with regard to pre-marketing activity. In particular the question regards the possibility for non-EU AIFMs to carry out pre-marketing activities pursuant to Article 30 (a) of the AIFMD: ESMA states that "*Article 30 (a) of the AIFMD does not cover pre-marketing activities by non-EU AIFMs: therefore, non-EU AIFMs should not be allowed to carry out pre-marketing activities pursuant to the AIFMD. However, national laws, regulations and administrative provisions may allow non-EU AIFMs to carry-out pre-marketing activities at national level and where this is the case, non-EU AIFMs do not benefit from a passport allowing them to carry out these activities in other Member States. In line with recital 12 of Directive (EU) 2019/1160, such national laws, regulations and administrative provisions should not in any way disadvantage EU AIFMs vis-à-vis non-EU AIFMs*".

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

Pursuant to Italian Law, an Italian AIF different from Italian reserved AIF can be marketed to retail investors. Also Italian reserved AIFs can be marketed to retail investors under the conditions set forth the AIF regulation/by-Laws, according to art. 14(2) of the D.M. 30/2015 (see also the answer to question 30 below).

As described in the answer to question 27 above, depending on the characteristics of the offering rules on public offering may apply.

AIFMs intending to market funds in Italy are also obliged to comply with the rules of conduct deriving from MiFID II such as drafting and delivery to the investors pre-contractual and ex-post information, carrying out the appropriateness assessment, complying with product governance rules.

30. Does your jurisdiction have a particular form of Alternative Investment Fund be that can be marketed to retail investors (e.g. a Long-Term Investment Fund or Non-UCITS Retail Scheme)?

In general terms, all AIFs other than Italian reserved AIFs may be marketed to retail investors. Obviously, compliance with product governance rules and other applicable conduct of business rules shall be guaranteed.

Also the regulations/ by-laws of the Italian reserved AIFs may admit the subscription of the relevant units by retail investors, provided that they subscribe or purchase AIFs' units/shares according to art. 14(2) of the D.M. 30/2015). An exception to those rules is made for the participation in the Italian reserved AIFs by directors and personnel of the AIFM falling within the category of retail investors, who can invest in the reserved AIF beyond the limits set forth by art. 14(2) of the D.M. 30/2015 for retail investors. It is worth noting that "personnel" of the AIFM is to be intended as employees and those who otherwise operate on the basis of relationships which imply their inclusion in the AIF's organization, including relationships other than employment.

31. What are the minimum investor qualification requirements for an Alternative Investment Fund? Does this vary by asset class (e.g. hedge vs. private equity)?

With reference to non-reserved AIFs, the Italian legislation does not provide for minimum investor qualification requirements. On the other hand, in order for a prospect to invest in a reserved AIF, such investor must fall within the meaning of *Per Se* Professional Clients or Elective Professional Clients. Nevertheless, retail investors can invest in a reserved AIF under the conditions set forth by the AIF regulation/by-Laws, according to art. 14(2) of the D.M. 30/2015(as above indicated, an exception to those rules is made for the participation in the Italian reserved funds by directors and personnel of the AIFM falling within the category of retail investors, who can invest in the reserved AIF beyond the limits set forth by art. 14(2) of the D.M. 30/2015).

32. Are there additional restrictions on marketing to government entities or similar investors (e.g. sovereign wealth funds) or pension funds or insurance company investors?

Italian laws do not provide for specific restrictions on marketing to pension funds or insurance companies since they fall within the definition of "professional clients".

With reference to government entities, pursuant to Ministerial Decree no. 236/2011, only the Italian Government and the Bank of Italy are considered "*per se*"

public professional clients while all other public entities are considered as retail clients and therefore the restrictions concerning marketing to retail investors apply. Such public entities can request to be treated as professional clients in case they meet certain dimensional and organizational requirements, waiving the protections ensured by the law to retail clients.

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

AIFs can appoint intermediaries to assist in the fundraising process. If such assistance result in a marketing activity carried out by the intermediary, it triggers licencing requirements; in particular, the intermediary carrying out marketing of the AIF's units/shares shall be duly authorized to carry out the placement or the reception and transmission of order services, depending on the activity effectively performed.

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

Italian law does not expressly prohibit the use of side letters, but their use must be assessed on a case-by-case basis. In particular, side letters shall not introduce rights and/or obligations that conflict with the AIF' regulations or by-laws or with the general rules on conflict of interest or equal treatment of funds' participants set forth by EU and Italian laws and regulations. With specific regard to equal treatment of funds' participants, it should be considered that pursuant to art. 35-*decies* of the CLF, preferential treatments – which are often regulated through side letters – may be provided exclusively in relation to Italian reserved AIFs and in compliance with the disclosure requirements provided by the AIFMD.

Finally, it should be considered that the use of side letters cannot be aimed at concealing from the supervisory authorities funds' provisions regulating the relationship between the fund and its participants or other information otherwise included in the fund regulations, since this could constitute an obstacle to the supervisory activity, which is a crime offence under the Italian Law.

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

Pursuant to art. 23 of AIFMD, the AIFM is required to make available to AIF investors, before they invest in the AIF, *inter alia*, the following information: (i) whenever an investor obtains preferential treatment or the right to obtain preferential treatment; (ii) a description of that preferential treatment; and (iii) the type of investors who obtain such preferential treatment and, where relevant.

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

The most common side letter terms usually concern: (i) the possibility for investors to appoint an advisory committee; (ii) subscription commitments; (iii) a commitment by the manager to provide additional information to investors over and above that which is required by the regulations or the bylaws; (iv) interpretative provisions concerning certain aspects of the regulations; (v) the obligation to indemnify the counterparty in the event of a breach of agreement; (vi) the possibility to redeem units in advance.

Notwithstanding the above, the signing of side letters is not a common practice in Italy.

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