

# International **Comparative** Legal Guides



## Alternative Investment Funds **2021**

A practical cross-border insight into alternative investment funds work

**Ninth Edition**

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## 1 Regulatory Framework

### 1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The most relevant provisions regulating the establishment and operation of Italian alternative investment funds (“AIFs”) are set forth in the following laws and regulations:

- Legislative Decree No. 58 of 24 February 1998 (the “**Italian Financial Act**”) (*Testo Unico della Finanza*);
- Ministerial Decree No. 30 of 5 March 2015 (“**Decree No. 30/2015**”);
- Bank of Italy Regulation of 19 January 2005 on collective investment management activities (the “**Bank of Italy Regulation**”) (*Regolamento sulla Gestione Collettiva del Risparmio*);
- Bank of Italy Regulation of 5 December 2019 on internal governance and organisational requirements applying to AIF managers (“**AIFMs**”);
- CONSOB Regulation No. 11971 of 14 May 1999 (the “**Issuers’ Regulation**”) (*Regolamento Emittenti*);
- CONSOB Regulation No. 20307 of 15 February 2018 (the Intermediaries’ Regulation) (*Regolamento Intermediari*); and
- Delegated Regulation (EU) No. 231/2013, implementing Directive No. 2011/61/EU (respectively, the “**AIFMD Delegated Regulation**” and the “**AIFMD**”).

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

Italian AIFMs must be authorised by the Bank of Italy and are subject to the regulatory supervision of the Bank of Italy and the Italian Companies and Exchange Commission (“**CONSOB**”).

No authorisation is required in respect of AIFMs established in other countries of the European Economic Area (“**EEA**”), which are allowed to manage Italian AIFs under the free provision of services or right of establishment in accordance with the AIFMD passport – see also question 1.8.

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

No authorisation is required for the establishment of “**Reserved AIFs**” (*FLA riservati*), i.e. those AIFs whose units or shares can only be offered to:

- professional investors, as defined under Directive No. 2014/65/EU (“**MiFID 2**”); and

- investors qualifying as retail clients under the MiFID 2 who invest at least EUR 500,000 in the AIF – this threshold does not apply to the directors or employees of the AIFM or, in case of Real Estate AIFs (on which see question 1.4), to public institutions contributing their real estate assets in the AIF.

The establishment of “**Non-Reserved AIFs**” (*FLA non riservati*) is subject to the prior approval of the Bank of Italy.

The Bank of Italy’s authorisation is also required for the setting up of Italian AIFs in corporate form – see question 2.1.

### 1.4 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?

#### Open-ended vs closed-ended AIFs

Under the Italian Financial Act, an open-ended collective investment undertaking (OICR) (“**CIU**”) is defined as “*any [CIU] whose investors are entitled to ask for the redemption of the units or shares out of its assets in accordance with the modalities and frequency provided for under the rules, articles of association or offering document of the [CIU]*”. Any CIU that does not qualify as an open-ended CIU in accordance with the above definition is a closed-ended CIU.

Open-ended AIFs may only invest in:

- financial instruments negotiated on a regulated market;
- financial instruments that are not negotiated on a regulated market, but only up to 20% (investments in units or shares of open-ended CIUs that are not listed are not considered for the purpose of the 20% limit); and
- bank deposits.

Investors in an open-ended AIFs are entitled to redeem their units/shares at least once a year. The value of such units/shares must be calculated with the same frequency, or in any event when new units/shares are issued by the AIF. The redemption amount must be paid to the investors within 15 days of the date when the redemption request is submitted to the AIFM.

Closed-ended AIFs may invest their capital in a wider range of assets, including the following illiquid assets:

- real estate properties, rights *in rem* on real estate properties (including those deriving from real estate lease agreements providing for the transfer of property or from public concession contracts), shareholdings in real estate companies, units or shares of other Real Estate AIFs (including foreign AIFs);
- credits and debt securities – including credits deriving from the loans originated by the AIF (see below); and
- other assets tradable on a market, and whose value can be determined with certainty at least on a semi-annual basis.

Investors in a closed-ended AIF are not entitled to ask for the redemption of their units/shares. The redemption can occur only at the expiry of the term of the AIF. Early redemptions are permitted (i) upon the initiative of the AIFM, on a *pro rata* basis to all of the AIF's investors, or (ii) upon request of the investors if new shares/units are issued, provided that the aggregate amount of redemptions does not exceed the aggregate amount collected through the issue of the new shares/units (in case of non-listed AIFs, the AIFM can borrow money to pay the amount of redemptions exceeding such limit up to a maximum of 10% of the gross asset value ("GAV")).

### Real Estate AIFs

"Real Estate AIFs" are closed-ended AIFs investing at least 2/3 of their GAV in real estate properties, rights *in rem* on real estate properties (including those deriving from real estate lease agreements providing for the transfer of property or from public concession contracts), shareholdings in real estate companies, units or shares of other Real Estate AIFs (including foreign AIFs).

The 2/3 threshold is reduced to 51% if at least 20% of the AIF's capital is invested in asset-backed securities having as their underlying asset real estate properties, rights *in rem* on real estate properties or mortgage loans.

The requirement referred to above must be satisfied within 24 months of the date when the AIF starts to operate – but special rules apply to AIFs investing in social housing or similar projects.

### Reserved vs Non-Reserved AIFs

As noted under question 1.3 above, Reserved AIFs can only be marketed to MiFID 2 professional investors and certain other categories of retail investors. The units or shares of Non-Reserved AIFs can be marketed to other categories of investors as well – including, in particular, to retail investors investing less than EUR 500,000 in the AIF.

Non-Reserved AIFs are subject to more stringent requirements in terms of investment diversification, eligible assets, leverage limits, *etc.* These requirements do not apply to Reserved AIFs, which must nonetheless ensure a minimum diversification of their investment portfolio.

The setting up of Non-Reserved AIFs is subject to the prior authorisation of the Bank of Italy. No such authorisation is required for the setting up of Reserved AIFs.

### Credit AIFs

"Credit AIFs" (*FLA di credito*) are closed-ended AIFs which (i) invest in credits deriving from loans originated by third-party lenders, or (ii) engage in direct lending/loan origination activities. Credit AIFs can be established as Non-Reserved AIFs or Reserved AIFs and can operate only towards non-consumer borrowers.

They are subject to specific rules on leverage and eligible investments even if they are set up in the form of Reserved AIFs. In particular, Reserved AIFs investing in credits or engaging in direct lending activities (i) can only invest in receivables having a maturity not exceeding the term of the AIF, (ii) can borrow money only from banks or other authorised lenders up to a maximum leverage ratio of 1.5.

Credit AIFs that are established in other EU Member States can perform their activities in Italy only if they complete a non-object procedure with the Bank of Italy.

### Simplified Investment Companies

Simplified investment companies (*società di investimento semplici*) are internally managed SICAFs (on which see question 2.1 below) investing their capital in SMEs that are not listed on

regulated markets in the form of seed, start-up or early-stage financing. They are subject to a simplified regulatory regime – e.g. in terms of minimum capital and organisational requirements – but can only have up to EUR 25 million of assets under management.

### EU categories

The following additional categories of AIFs are contemplated under the Italian framework on the basis of the corresponding rules applicable at EU level:

- European Venture Capital Funds (EuVECA);
- European Social Entrepreneurship Funds (EuSEF); and
- European Long-Term Investment Funds ("ELTIFs").

Furthermore, special rules apply to AIFs employing leverage on a substantial basis in line with the AIFM framework. According to Article 111 of the AIFMD Delegated Regulation, leverage is employed on a substantial basis if the AIF's exposure calculated according to the commitment method exceeds three times its net asset value ("NAV").

### Contractual vs corporate AIFs

Finally, a key distinction is made under Italian law between AIFs established in contractual (*fondi comuni di investimento*) and corporate (*società di investimento*) form – see question 2.1 for additional details.

#### 1.5 What does the authorisation process involve and how long does the process typically take?

In order to be authorised to operate as an Italian AIFM, the following conditions must be met:

- The company must be incorporated in the form of an Italian joint stock company (*società per azioni*) and the related name must include a reference to its qualification as "asset management company" (*società di gestione del risparmio*).
- The company must have its registered and administrative office in Italy.
- The company must have a minimum share capital equal to the amount determined by the Bank of Italy – which is currently equal to (i) EUR 50,000 for "sub-threshold" AIFMs (on which see below), (ii) EUR 500,000 for AIFMs managing only closed-ended Reserved AIFs, and (iii) EUR 1 million for all other AIFMs.
- The directors, statutory auditors and general manager(s) of the company must comply with certain fit and proper requirements (*i.e.* integrity, professional experience, independence, no interlocking directorates, *etc.*).
- The relevant shareholders of the company (*i.e.* any person holding 10% or more of its share capital or voting rights, or which may exercise a significant influence over its activity) must comply with certain requirements (*i.e.* integrity, correctness, professional competence, financial soundness, *etc.*).
- The group structure of the company must not hinder the exercise of supervisory powers by, and the transmission of the relevant information to, Italian supervisory authorities.
- The company must file with the Bank of Italy a programme of activity (*programma di attività*) and a report on its organisational structure (*relazione sulla struttura organizzativa*) – along with the other documents that are necessary for the authorisation request.

The additional criteria followed by the Bank of Italy for the purpose of the authorisation and the documents and information to be submitted in connection with the related filing are specified in the Bank of Italy Regulation.

Certain simplifications (*e.g.* in terms of minimum capital, internal organisation, documents/information to be filed, *etc.*) apply to "sub-threshold" AIFMs – *i.e.* those AIFMs managing



only Reserved AIFs whose assets under management do not exceed (i) EUR 500 million, if they manage closed-ended Reserved AIFs which do not employ leverage and whose investors are not allowed to ask for the redemption of their units or shares for a period of at least five years after the date of the initial investment, or (ii) EUR 100 million if they manage closed-ended Reserved AIFs employing leverage.

The authorisation to operate as an Italian AIFM is granted by the Bank of Italy upon consultation with CONSOB. The statutory term of the authorisation procedure is 90 calendar days. The term starts to run from the date when a complete application is filed with the Bank of Italy. The authorisation process is usually suspended by the Bank of Italy in order to ask for the transmission of additional documents or information. As a matter of fact, the overall procedure (excluding the pre-filing preparatory work) normally lasts between four and six months.

Please note that the authorisation procedure referred to above applies to the establishment of an Italian AIFM. The setting up of an AIF is not subject to authorisation requirements, unless in case of Non-Reserved AIFs or if the AIF is established in corporate form (see question 2.1 below).

#### 1.6 Are there local residence or other local qualification or substance requirements?

An Italian AIFM must have its registered and administrative office in Italy. It must have its own substance in terms of internal organisation in accordance with the requirements set forth in the regulations issued by the Bank of Italy.

#### 1.7 What service providers are required?

For each AIF it manages, the AIFM must at least appoint:

- a third-party custodian/depositary performing safekeeping and control duties in respect of the assets of the AIF;
- an external auditor; and
- in case of Real Estate AIFs, a third-party independent expert (*esperto indipendente*) performing valuation functions in relation to the real estate assets of the AIF.

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

Italian AIFs can also be managed by companies established in other EEA countries which are authorised to operate as AIFMs in accordance with the national laws of their jurisdiction of incorporation implementing the AIFMD.

EEA AIFMs can manage Italian AIFs by operating on a cross-border basis under the free provision of services, or through an Italian branch under the right of establishment, provided that a “regulator-to-regulator” notification procedure is completed in accordance with the AIFMD passporting rules.

Fund managers or advisers that are not established in the EEA are not allowed to establish or manage Italian AIFs – pending the entry into force of the AIFMD regime applying to third-country AIFMs.

#### 1.9 What relevant co-operation or information sharing agreements have been entered into with other governments or regulators?

The Bank of Italy and CONSOB entered into several information-sharing and other agreements with other regulatory authorities, which are publicly available on their websites.

## 2 Fund Structures

### 2.1 What are the principal legal structures used for Alternative Investment Funds?

Italian AIFs can be established in the form of:

- contractual funds (*fondi comuni di investimento*); or
- investment companies (*società di investimento*).

Investment companies can be either open-ended (*società di investimento a capitale variabile* – “SICAVs”) or closed-ended (*società di investimento a capitale fisso* – “SICAFs”). The establishment of an investment company requires a specific authorisation by the Bank of Italy.

Contractual funds have no legal personality. They are a separate pool of assets (*patrimonio separato*) pertaining to and managed by the AIFM, which is ring-fenced by operation of law from the assets of the AIFM (and those of the custodian/sub-custodians).

Investment companies are legal entities with their own legal personality established in the form of Italian joint stock companies. They can be either internally managed by their board of directors, or externally managed by an AIFM performing portfolio and risk management functions. Internally managed investment companies must be authorised to operate as AIFMs.

Both contractual funds and investment companies can establish internal compartments/sub-funds, which are ring-fenced from the other compartments/sub-funds of the same contractual fund or investment company.

The majority of Italian AIFs are established in the form of contractual funds.

### 2.2 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

The liability of each investor in the AIF is always limited to the amount of capital that is invested in the AIF. This principle applies regardless of the legal structure that is used to set up the AIF – *i.e.* in case of both contractual funds and investment companies.

### 2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

Italian AIFMs must be established as joint stock companies.

### 2.4 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

Redemptions may be suspended only in the exceptional circumstances specifically indicated in the rules or articles of association of the open-ended AIF. The suspension may last for a maximum period of one month. The AIFM must inform the Bank of Italy and CONSOB of any such suspension promptly.

### 2.5 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

No specific restrictions apply to the transfer of investors' interests in AIFs. However, as a matter of practice, the rules or articles of association of Italian AIFs normally provide that any such transfer must be notified in advance to the relevant AIFM.

in order for the AIFM to verify that the transferee is an eligible investor in accordance with the rules applicable to the AIF and to carry out all appropriate checks for the purpose of the applicable anti-money laundering and counter-terrorism financing requirements.

Additional restrictions (e.g. for tax purposes) or exemptions (e.g. for intra-group transfers) may be specified in the rules or articles of association of the AIF, which can also entrust the other investors with pre-emptive or other contractual rights in respect of any transfer of interests in the AIF.

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

Reserved AIFs are not subject to specific diversification requirements or leverage limits. They must nonetheless achieve a minimum diversification of their investments to optimise their investment portfolio. Specific rules on leverage and eligible investments apply to Credit AIFs – see question 1.4 above.

Non-Reserved AIFs are subject to certain diversification requirements and leverage limits, which differ depending on the nature of the assets in which the AIF invests, and whether the AIF is open-ended or closed-ended.

Italian AIFs are subject to the AIFMD rules on asset stripping and notification obligations in case of acquisition of relevant holdings in listed or non-listed companies.

## 3 Marketing

### 3.1 What legislation governs the production and use of marketing materials?

The rules concerning the marketing documentation of Italian AIFs are set forth in the Issuers' Regulation (on which see question 1.1 above).

AIFs that are marketed to retail investors are also subject to the transparency obligations set forth in Regulation (EU) No. 1286/2014 (the “**PRIIPs Regulation**”).

Specific obligations requiring the drafting of a prospectus apply to ELTIFs in accordance with Regulation (EU) No. 2015/760 (the “**ELTIF Regulation**”).

### 3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

Italian AIFMs wishing to market AIFs in Italy or in any other EEA Member State must prepare an offering document (*documento di offerta*) drafted in accordance with Annex 1D of the Issuers' Regulation (the “**Offering Document**”). The contents of the Offering Document are those specified at EU level under Article 23 of the AIFMD.

In addition to the above:

- if the AIF is marketed to retail investors, the AIFM must draft a key information document (“**KID**”) pursuant to the PRIIPs Regulation;
- if the AIF is marketed to retail investors and none of the exemptions from the relevant prospectus requirements apply, the AIFM must draft an offering prospectus (*prospetto d'offerta*); and
- if the AIF qualifies as an ELTIF, the AIFM must draft a prospectus in accordance with the ELTIF Regulation.

Besides the above requirements, in general terms any marketing communication or material that is used by an Italian AIFM must be clear, transparent and non-misleading. Additional requirements on marketing communications will be introduced as a result of Regulation (EU) No. 2019/1156 – which is part of the so-called “cross-border distribution package”, also including Directive (EU) No. 2019/1160 (the “**Cross-Border Distribution Package**”), and will apply starting from 1 August 2021.

### 3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

Unless in case of Non-Reserved AIFs or in the context of the setting up of an Italian investment company, the rules or articles of association of Italian AIFs are not subject to the prior approval of the Bank of Italy. They must nonetheless be filed with the Bank of Italy after they have been approved.

The Offering Document must be filed with CONSOB as part of the AIF marketing notification and is subject to review by CONSOB in the context of such procedure. The KID must also be deposited with CONSOB before the marketing activities are commenced.

Special rules on the approval of the rules or articles of association and the filing of the relevant prospectus apply in case of ELTIFs in accordance with the ELTIF Regulation.

### 3.4 What restrictions are there on marketing Alternative Investment Funds?

The marketing of AIFs is always subject to the prior transmission of a marketing notification in accordance with the AIFMD regime. In case of AIFs that are managed by an Italian AIFM, such marketing notification must be transmitted to CONSOB. In case of EEA AIFMs, the marketing notification must be transmitted to the competent authority of the home Member State of the AIFM.

AIFs that are established in other EEA countries can be marketed in Italy only to professional investors and other investors that are allowed to subscribe for or purchase units or shares of Reserved AIFs. Marketing to Italian retail investors investing less than EUR 500,000 in the AIF is subject to the prior authorisation of CONSOB.

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

No concept of “pre-marketing” is recognised under Italian law. Any promotional or offering activity concerning an AIF is generally considered to amount to a marketing activity under Italian law, thereby triggering the related notification/authorisation requirements.

The Italian rules are, however, expected to be amended as a result of the entry into force of the Cross-Border Distribution Package, which permits pre-marketing activities except if the information presented to potential professional investors: (i) is sufficient to allow investors to commit to acquiring units or shares of a particular AIF; (ii) amounts to subscription forms or similar documents whether in a draft or a final form; or (iii) amounts to constitutional documents, a prospectus or offering document of a not-yet-established AIF in a final form. Additional restrictions and requirements are set out under the Directive (EU) No. 2019/1160, along with the definition of “pre-marketing”. The Directive must be transposed into Italian law by 2 August 2021.

### 3.6 Can Alternative Investment Funds be marketed to retail investors?

Non-Reserved AIFs can be marketed to retail investors.

Reserved AIFs can be marketed only to retail investors investing at least EUR 500,000 in the AIF (or directors or employees of the relevant AIFM). The marketing of EEA AIFs to retail investors that do not satisfy such condition is subject to the prior authorisation of CONSOB.

### 3.7 What qualification requirements must be met in relation to prospective investors?

If the AIFMD marketing notification procedure has been completed, the AIF can be marketed to prospective investors that are eligible to invest in the fund.

The qualification of the investor as a professional or retail investor under the MiFID 2 is relevant in order to determine whether such investor may subscribe for or purchase the units or shares of the relevant AIF – *i.e.* depending on whether the AIF qualifies as Reserved AIF or Non-Reserved AIF.

### 3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

There are no specific restrictions on marketing to public bodies – other than the specific rules defining the range of assets in which such public bodies may invest.

Except for the Italian government and the Bank of Italy – which always qualify as professional investors – public bodies may opt in to be treated as professional clients if: (i) their total revenues exceed EUR 40 million based on the latest management accounts; (ii) they entered into transactions on financial markets for a notional value of at least EUR 100 million in the last three years; and (iii) the personnel responsible for their financial management has adequate skills, experience and knowledge in the field of investment services, investment funds and financial instruments.

### 3.9 Are there any restrictions on the participation in Alternative Investments Funds by particular types of investors (whether as sponsors or investors)?

There are no specific restrictions on the participation in AIFs by particular types of investors. However, certain investors (*e.g.* pension funds, public foundations, insurance undertakings, banks, *etc.*) are subject to specific restrictions in terms of eligible investments and/or regulatory capital requirements applying as a result of the investment, which may limit their ability to invest in AIFs.

### 3.10 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

To the extent that such intermediaries are authorised or passported to carry out the relevant investment services (*e.g.* depending on the cases, placement of financial instruments, reception and transmission of orders, *etc.*) or can in any event distribute third-party AIFs in accordance with the EU regulatory framework, no restrictions should apply to the use of such intermediaries in the fundraising process.

## 4 Investments

### 4.1 Are there any restrictions on the types of investment activities that can be performed by Alternative Investment Funds?

See question 2.6 – Reserved AIFs are not subject to specific diversification requirements or leverage limits (except for Credit AIFs). Non-Reserved AIFs must comply with the investment restrictions set forth in the Bank of Italy Regulation.

Please note that Italian AIFMs can only manage the categories of AIFs falling within the scope of the licence granted to them – *e.g.* if the licence is limited to the management of Real Estate AIFs, the Italian AIFM cannot manage a Credit AIF, unless it applies for an extension of the scope of its licence.

### 4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio, whether for diversification reasons or otherwise?

Besides the eligible assets that are specifically contemplated under the applicable regulations (*e.g.* financial instruments, bank deposits, real estate properties, credits and debt securities, *etc.*), the general principle is that Italian AIFs may invest in all types of assets which are tradable on a market and whose value can be determined with certainty at least on a semi-annual basis.

In the light of the above principle, it is currently being debated whether Italian AIFs can be set up in order to invest in cryptocurrencies or digital assets (*e.g.* non-fungible tokens). The same debate arose in the past in relation to investments in paintings, wines or similar goods.

As to the applicable diversification requirements, see question 2.6 above.

### 4.3 Are there any local regulatory requirements which apply to investing in particular investments (e.g. derivatives or loans)?

Specific rules apply to investments made by Credit AIFs – on which see question 1.4 above.

Credit AIFs must comply with the Italian rules on transparency of banking and financial products and services and must report their credit exposures to the Italian Central Credit Register (*Centrale dei Rischi*).

### 4.4 Are there any restrictions on borrowing by the Alternative Investment Fund?

No restrictions on leverage apply to Reserved AIFs – except for Credit AIFs, which can employ leverage up to a maximum ratio of 1.5.

The following limits apply in case of closed-ended Non-Reserved AIFs:

- Real Estate AIFs can employ leverage up to a maximum ratio of 2;
- Credit AIFs can borrow money up to 30% of their NAV; and
- other AIFs can borrow money up to 10% of their NAV.

Open-ended Non-Reserved AIFs may borrow money up to 10% of their NAV only for treasury management purposes.

#### 4.5 Are there any restrictions on who holds the Alternative Investment Fund's assets?

In case of contractual funds, the assets are legally held by the AIFM as a separate pool of assets (*patrimonio separato*) managed by the AIFM on behalf of the investors. The assets of investment companies are legally owned by such companies.

## 5 Disclosure of Information

#### 5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties, including on environmental, social and/or governance factors?

The disclosure and transparency documentation which must be prepared for the marketing of AIFs and the requirements applying to marketing materials are described under question 3.2 above.

Italian AIFMs are subject to Regulation (EU) No. 2019/2009 on sustainable finance disclosure and must accordingly give specific indications on environmental, social and governance (“ESG”) factors, among others, in the marketing materials referred to above.

Italian AIFMs are subject to reporting obligations *vis-à-vis* the Bank of Italy and CONSOB – including *ad hoc* reporting on specific transactions or events, or periodic reporting (e.g. on internal compliance matters). These reporting obligations include the AIFMD reporting due in accordance with Article 24 of the AIFMD as well as Article 110 and Annex IV of the AIFMD Delegated Regulation.

For each AIF they manage, Italian AIFMs must prepare annual and semi-annual reports.

#### 5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example for the purposes of a public (or non-public) register of beneficial owners?

No, there is no such requirement.

#### 5.3 What are the reporting requirements to investors or regulators in relation to Alternative Investment Funds or their managers, including on environmental, social and/or governance factors?

See question 5.1 above.

#### 5.4 Is the use of side letters restricted?

No, the use of side letters is not restricted. If the side letters provide for a preferential treatment, the related content must be reflected in the rules or articles of association of the AIF.

## 6 Taxation

#### 6.1 What is the tax treatment of the principal forms of Alternative Investment Funds identified in question 2.1?

The tax treatment of the principal forms of AIF is as follows:

- they are not subject to income tax; and

- in case of Italian SICAFs or SICAVs, they are subject to the Italian regional tax on productive activity (*IRAP*) only up to the difference between active and passive commissions. Withholding tax is limited to certain capital gains.

#### 6.2 What is the tax treatment of the principal forms of investment manager/adviser identified in question 2.3?

No specific tax regime applies to Italian AIFMs as a matter of Italian law.

As a consequence, Italian AIFMs are subject to the general rules applying to other Italian companies in accordance with the Italian Tax Code (Presidential Decree No. 917 of 22 December 1986 – *TUIR*).

#### 6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

No, there are not.

#### 6.4 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?

The tax treatment of investors differs depending on (i) whether or not the AIF qualifies as a Real Estate AIF, and (ii) the place where the investor is resident, as per the below summary:

##### (a) Resident investors holding interests in a non-Real Estate AIF

The investment is subject to withholding tax on periodic income at a rate of 26%.

##### (b) Resident investors holding interests in a Real Estate AIF

Institutional investors/non-institutional investors with non-qualified investments: withholding tax on periodic income at a rate of 26%.

Non-institutional investors with qualifying holdings: the income received from the AIF contributes to the formation of the investor's income.

##### (c) Non-resident investors holding interests in a non-Real Estate AIF

Non-taxable regime for non-resident persons identified in Article 6 of Legislative Decree No. 239/1996 (*i.e.* persons that are resident in “white list” jurisdictions, international bodies or entities established under international agreements enforced in Italy; foreign institutional investors, even if not subject to taxation, set up in “white list” jurisdictions; central banks or other bodies that also manage foreign States' official reserves).

Withholding tax on periodic income at a rate of 26% for other non-resident investors.

##### (d) Non-resident investors holding interests in a Real Estate AIF

Same regime applying to resident investors holding interests in a Real Estate AIF in case of pension funds, funds established in “white list” jurisdictions, international bodies or entities established under international agreements enforced in Italy, central banks or bodies that also manage foreign States' official reserves.

Withholding tax on periodic income at a rate of 26% for other non-resident investors.



**6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?**

A tax ruling is not necessary, but it might be advisable in case of any uncertainties/specific queries concerning the tax treatment of certain investments made in the AIF.

**6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's Common Reporting Standard?**

The Italian Tax Authority must exchange information on a yearly basis with the tax authorities of other countries, in accordance with the Common Reporting Standard, based on the common rules concerning the automatic exchange of information on financial accounts, including AIFs.

**6.7 What steps are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 2 (hybrids) (for example ATAD I and II), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' operations?**

Italy implemented the ATAD I and II with Legislative Decree No. 142 of 28 December 2018. Italy is among the countries that signed the MLI on 7 June 2017. However, as of 28 June 2021, the MLI has not yet been ratified.

**6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?**

Subject to certain conditions, Italian AIFs may be eligible for the regime applying to individual savings plans (*Piani Individuali di Risparmio*) ("PIR") – which allow the AIF's investors to benefit from an exemption from withholding taxes if they comply with certain requirements.

The Italian PIR regime applies to Italian individuals (other than in the context of any business/entrepreneurial activity performed by them) and pension funds or institutions.

**6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?**

No, there are not.

**6.10 Are there any meaningful tax changes anticipated in the coming 12 months other than as set out at question 6.6 above?**

No, there are not.

## 7 Trends and Reforms

**7.1 What have been the main trends in the Alternative Investment Funds space in the last 12 months?**

- ELTIFs have become an interesting product to be launched on the Italian market in order to collect capital from high-net-worth individuals or other retail clients – e.g. through private banking networks.
- Asset managers have structured several alternative products benefitting from the Italian tax regime applying to PIRs.
- A few SICAFs have been launched in the form of simplified investment companies in accordance with the rules recently introduced by the Italian government.
- The Italian rules on Credit AIFs have recently been amended in order to delete the minimum diversification requirement of 10%, which was also applicable to Reserved AIFs. Following these amendments, the non-objection procedure with the Bank of Italy in order for EU Credit AIFs to perform direct lending activities in the Italian territory has become more attractive for EU asset managers.
- The attention on ESG factors by Italian regulators and AIFMs has increased in the last few months, and asset managers are structuring products that are specifically focused on ESG-compliant investments.
- Credit AIFs have increasingly been used as a means to facilitate the disposal of non-performing loans by Italian banks.

**7.2 What reforms (if any) in the Alternative Investment Funds space are proposed?**

- The Cross-Border Distribution Package will amend the rules applying to the marketing of AIFs in Italy and permit pre-marketing activities to be carried out towards Italian clients.
- The Italian government recently proposed to amend the conditions applying to retail investors that are allowed to subscribe for or purchase units or shares of Reserved AIFs. According to such proposal, the following categories of retail investors will be allowed to invest in Reserved AIFs – in addition to those already contemplated under the current rules (i.e. retail investors investing at least EUR 500,000 in the AIF, and the directors or employees of the relevant AIFM):
  - retail investors investing at least EUR 100,000 in the AIF, provided that (i) the investment does not exceed 10% of the value of the financial portfolio of such investor (including financial instruments, cash deposits and insurance-based investment products) that is available with the same intermediary or AIFM, and (ii) the investment is made in the context of a MiFID 2 investment advisory service; and
  - MiFID 2-licensed firms which subscribe for or purchase units or shares of the AIF in the context of portfolio management services on behalf of retail investors.



**Angelo Messore** regularly assists Italian and foreign financial institutions in relation to the regulation of banking, financial, insurance, investment and payment services. He has gained significant experience in the analysis and launching of business projects in the fintech space. Angelo assists clients in the setting up and marketing of alternative investment funds, especially those specialised in private debt, direct lending and non-performing loans. He has also worked on several M&A transactions and capital market deals, with a particular focus on financial institutions and fintech companies.

Angelo was admitted to practise in Italy in 2012. He graduated with honours from the Roma Tre University and completed an LL.M. in Finance at the Institute for Law and Finance of Goethe University in Frankfurt am Main (Germany) in 2015. He has prior working experience at the Bank of Italy – where he contributed to the implementation of the AIFMD in Italy – and at the European Central Bank.

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LEXIA Avvocati is a leading Italian full-service firm, widely recognised in the Italian legal market for its remarkable expertise in the field of tech, fintech, crypto-assets and blockchain, green energy, financial institutions and venture capital.

The Firm has a specific expertise in the area of asset management and investment funds, and advises foreign and Italian asset managers and investors in the setting up and marketing of Italian AIFs. The Firm has been involved in the establishment of innovative fund structures, such as, for instance, Italian PIR-compliant ELTIFs, direct lending funds and funds specialised in the purchase and restructuring of non-performing loans. The Firm has

also assisted several foreign asset managers in the non-objection procedure applicable to EU AIFs in order to engage in direct lending activities in Italy.

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