

## How to set up in Italy

### Alternative Investment Fund Manager (AIFM)

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up in Italy.

Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

#### What are the pros?

- Regulator very experienced in dealing with setting up AIFMs
- No material super-equivalent requirements
- Data protection legislation is very similar to the UK in terms of practical application

#### What are the cons?

- Critical/significant outsourcings to non-EU intermediaries will require CONSOB pre-approval



## Alternative Investment Fund Manager

### Licence/Passport Process

- Information on the application process is provided in the Bank of Italy Regulation of 19 January 2015, available on the Bank of Italy website at the following address <https://www.bancaditalia.it/>
- There are no Bank of Italy application templates
- Some additional supporting documents are required and, in particular, a bank's attestation relating to the paid-up share capital, information on the AIFM's sources of funds, the AIFM business plan, the AIFM's ownership structure and documentation evidencing the adherence to a compensation scheme
- The Bank of Italy typically will take from 6 to 8 months (depending on whether the AIFM would manage AIFs whose AUM are sub threshold(s) provided in the applicable regulations) in practice to review and approve an application.
- The process for obtaining the approval of the AIF's Regulation takes around 60 days (unless the AIF is restricted to professional investors in which case no approval should be obtained)
- The procedures for obtaining the authorisation of the AIFM and the approval of the Fund's regulation are usually taken in parallel
- Application documents must be submitted in Italian.

### Conduct of business Prudential rules

- Initial capital of €1 Million - such amount is reduced to €500,000 for AIFM managing closed-ended AIFs whose subscription is restricted to professional investors only and to €50,000 for AIFM managing AIFs whose AUM are sub threshold(s) provided in the applicable regulations
- Plus additional own funds equal to 0.02% of the amount by which the AIFM's AUM exceeds €250 million
- These additional own funds cannot be less than the "fixed overheads requirement" (one quarter of audited annual expenditure)
- Further own funds to cover professional indemnity risks equal to 0.01% of AUM (or appropriate professional indemnity insurance).

### Corporate governance

- Minimum 3 directors —a majority of them should be non-executive directors (likely with at least two independent non-executive directors)
- All directors have to be domiciled in Italy
- Executive directors should be Italian speakers
- Must be of sufficiently good repute and sufficiently experienced
- Integrity, professionalism and independence requirements provided by the Ministry of the Economy and Finance apply to managers, directors and auditors
- Integrity requirements provided by the Ministry of the Economy and Finance apply to holders of at least 10% of the firm's share capital or of the voting rights. Moreover, the following factors are also relevant: the correctness in business relationships, the financial situation of shareholders, the existence of connection of any type with persons influencing the sound and prudent management of the AIFM
- AIFMs can delegate functions to other countries subject to complying with AIFMD delegation rules and in particular the "letter-box test"
- Technically an AIFM can apply for authorisation without having established its first AIF, but AIFM would subsequently need to apply for permission to manage each new AIF
- "Mind and management" will have to be located in Italy, such that day-to-day decision making and key risk functions are located in Italy.

### Regulatory environment

- Regulator very experienced in dealing with setting up AIFMs
- Italy permits an authorised AIFM to provide these "top-up" services of portfolio management, investment advice, safekeeping, reception and transmission of orders
- An Italian AIFM cannot provide services except fund management, portfolio management, investment advice, safekeeping, reception and transmission of orders, and marketing of funds managed by third party managers
- The service of safekeeping can only be provided in relation to units/shares of funds managed by the AIFM
- AIFMs can delegate functions to other countries subject to complying with AIFMD delegation rules and in particular the "letter-box test"
- Technically an AIFM can apply for authorisation without having established its first AIF, but AIFM would subsequently need to apply for permission to manage each new AIF
- Annual CONSOB contribution fees apply, the amount varies depending on the number of investment services provided by the AIFM.

## Alternative Investment Fund Manager

### Tax

- 27.5% corporate tax rate and 4.65% regional tax on productive activities apply
- Dividends paid to non-resident company generally are subject to 26% final withholding tax (with a potential refund of the foreign tax paid on the dividend up to 11/26ths of the Italian withholding tax) unless the rate is reduced under a tax treaty or the dividends qualify for an exemption under the EU Parent-Subsidiary Directive. A domestic final withholding tax of 1.375% (1.20% from 2017) applies to dividends distributed to shareholders resident in EU or EEA countries
- Transfer pricing rules and shell companies regime may apply
- The personal income tax is progressive, rising to a top rate of 43% for income exceeding €75,000, plus local surcharges
- See also a [comparative table](#) of the main taxes and reliefs relevant to setting up a financial services business.

### Employment law

- All executive directors can receive a higher fixed remuneration plus a variable fee depending on the AIF's performance as well as of the results of the function concerned
- Remuneration principles specified in AIFMD and further ESMA guidelines, which include payout related rules but with broad flexibility in regulatory guidance to set out remuneration policies and practices consistently with a proportionality principle (which takes into consideration size of the AIFs managed, their internal organisation and the nature, scope and complexity of their activity)
- No bonus cap for AIFMs, but specific criteria for calculation of bonus are provided in CONSOB regulations
- Rules on remuneration do not apply to AIFMs managing AIFs with AUMs that are below the threshold(s) provided in the applicable regulations
- Notice in case of dismissal - from 15 days to 12 months depending on level and length of service
- Unfair dismissals risk - progressive employment protection depending on length of service. There must be substantial grounds justifying the dismissal, ie performance, conduct, redundancy and the correct process must be followed. If an employee is unfairly dismissed he/she may seek compensation, reinstatement or reengagement. The maximum award of compensation is two years total remuneration package.

### Data protection

- Italian legislation is based on EU directives and regime is very similar to the UK in terms of practical application. The General Data Protection Regulation will be applicable from May 2018.

### Outsourcing

- Many Italian financial institutions have outsourcing arrangements
- Information on critical/significant outsourcings should be made available to the Bank of Italy and CONSOB upon request. Bank of Italy and CONSOB pre-approval and cooperation agreements between supervisory authorities are required for outsourcings of portfolio management services to non-EU intermediaries
- Appropriate oversight will be required per MiFID requirements (including regular audits/reviews and information on the outsourced activities, plus detailed outsourcing agreement)
- Firm remains responsible for any outsourced activity and will be expected to retain/ maintain in-house expertise to supervise/manage the outsourcing.

### Corporate

- An AIFM should be incorporated as a joint stock company
- Capital minimum requirements will apply
- Board of auditors and external auditors must be appointed.

## Key contacts



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