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The lawyer oversees the first steps of the fund.

From its structuring to the presentation to investors.

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Raising of capital by Italian managers of private equity funds is becoming more and more similar to the practice of international fundraising, both in terms of the processes involved and in terms of the conditions agreed between investors and fund-manager. This article, and those to follow, aim to describe some of the key phases in fundraising in Italy, paying particular attention to the coexistence of certain written rules (the rules and procedures of the Bank of Italy) with the (no less strict) non-written rules of the practice of international fundraising.

The Organizational Structure of an Italian fund. The most recent fundraising activities of Italian managers (or sponsors) of private equity funds tend to favor the classic organizational structure of an Italian closed-end fund, managed by a management company (*società di gestione*) which is subject to the supervision of the Bank of Italy, and governed by a set of rules authorized by the Bank of Italy.

This choice is influenced by the needs of the managers as well as by those of the investors. Italian individual managers are attracted by the relatively favorable tax treatment of most of their proceeds from the fund (the performance fee or "carried interest", which is only subject to taxation at the fund level, and currently at a rate equal to that applicable to capital gain income). Investors that are not Italian residents appreciate the actual exemption from taxation of distributed fund proceeds (provided that these investors are based in countries with which the Italian tax authorities have concluded certain information exchange agreements).

All this does not mean, however, that other organizational structures do not exist that are functionally close to that of a closed-end fund. There are, of course, Luxembourg or Dutch holding vehicles that may be assisted by an Italian advisor (which structures give rise to thorny issues particularly of a tax nature). And pooled vehicles for investment in Italy have often been structured as Italian joint-stock holding companies, especially for funds raising capital from international investors for the first time. The fiscal advantages of these structures (subject to taxation at capital gain rates, as opposed to corporate income rates) may not compensate for the investors' disadvantage in having the contractual terms of the investment governed by the company's by-laws. In fact, a company's by-laws are not flexible enough to accommodate all the needs of key investors, even if the by-laws are "reinforced" by shareholders' agreements, which, under Italian law, may last no longer than five years. Another structure funded by certain single investors (for example, international hedge funds) is that of the investment platform. This structure is mainly used to finance single ventures, and it allows the investor, which may also engage an Italian manager, to retain veto power on every investment and divestment decision.

The Placement Agent. Italian sponsors seeking capital on international markets are turning more and more frequently to the services of a placement agent. The main task of a placement agent is to create a contact between sponsor and potential international investors. To this end, placement agents also provide comprehensive consulting services for the preparation of the material necessary in supporting the fundraising initiative.

The placement agent helps the sponsor prepare for meetings with investors, by working to outline a strategy that is in line with the past activities of the sponsor's team and that may satisfy the investment policy of potential investors. From this point of view, the placement agent forms a close partnership with the sponsor. This is also reflected in the typical arrangement for the placement agent's compensation, which is based for the most part on the success of finding capital (and – less often – is supplemented by a portion of the management fee paid by the investors to the manager). Sometimes, again underlining a strong alignment of interests, the placement agent will reduce his fees for fund placement against a commission on future investments by the same investors in subsequent funds organized by the same sponsor.

Whatever the remuneration may be, it is normal for the placement agent's fees to be paid exclusively by the fund sponsor. The sole concession usually accepted by investors is that the fund may advance a portion of the management fee to the sponsor in order to provide the sponsor with the necessary moneys to pay the placement fees.

It should therefore come as no surprise that, in deciding whether to accept a mandate, the placement agent will carry out meticulous checks on the potential for success of the fundraising project, particularly in the case of funds turning to international investors for the first time. Clearly, the appointment of a placement agent of solid international reputation constitutes a mark of the fund's quality and may contribute significantly to the fundraising endeavour.

The Private Placement Memorandum. With or without the assistance of a placement agent, the sponsor usually prepares a document to present the fundraising project to prospective investors: the private placement memorandum or "PPM". The PPM explains the investment strategy of the newly constituted fund and reconstructs its track record, *i.e.,* the results of investment and divestment activities previously completed by the sponsor. This enterprise is often very complex, above all for funds turning to international investors for the first time, since the sponsor needs to present accounting details of companies which it may not control (or have ever controlled) and in which it may no longer hold an interest. Similarly difficult is the task of analyzing and confirming the accurateness of such data by the independent auditors that – in the best international practice – are engaged by the sponsor to do so.

The PPM also lays out the organizational structure and the experience of the single members of the team managing the fund, and illustrates the procedures adopted by the sponsor to evaluate potential targets, to provide a dossier to the investment committee and to arrive at an investment or divestment decision.

In addition, the PPM includes a term sheet, which summarizes the main terms and conditions governing the relationship between investors and fund manager, such as which investment areas fall within the fund's scope, any limits to investments by category or value, the amount of the management fee and carried interest, the length of the investment period, the composition and powers of the advisory committee. The term sheet is always subject to careful checks by investors and is often a useful tool in collecting their initial comments on the fund rules.

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(1st in a series of articles on fund raising)