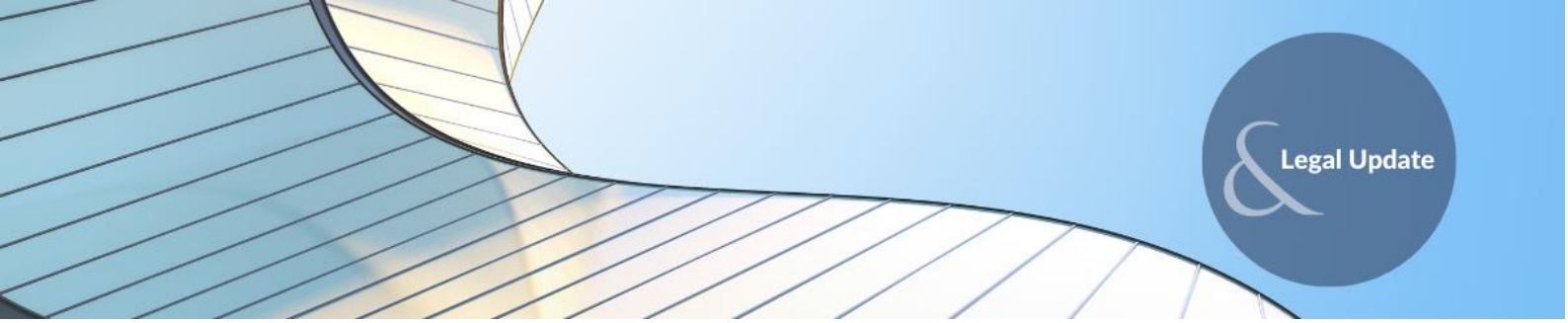

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Regulatory news on self-managed and externally managed SICAVs and SICAFs

Law No.21 of March 5, 2024 (published on March 12, 2024 and effective from March 27, 2024 – "**Law 21/2024**") introduces significant innovations to the regime of investment companies with variable capital ("**SICAV**") and fixed capital ("**SICAF**").

The innovations introduced primarily concern four aspects:

- simplicity of incorporation of SICAFs and SICAVs under external management, equivalent to that of contractual funds;
- confirmation of the asset segregation regime of sub-funds of the same SICAF or SICAV;
- clarity on the procedure for managing insolvency situations;
- business continuity.

This document concentrates in particular on real estate SICAFs, which (differently from SICAV) can be used only for closed-end collective investment schemes. The new regulations, therefore, are aimed at facilitating the use of such vehicles in the **private equity** and **venture capital** sector (also in club deal transaction and as an alternative to financial holding companies) and in **real estate** investments (where SICAFs share the same favourable tax regime as contractual funds).

Hopefully, the new regulations will facilitate the use of SICAFs by investors and asset managers as a more easily practicable alternative to contractual funds.

1. Incorporation and operational simplicity

Until today, the incorporation of a SICAF involved a lengthy approval process with the Bank of Italy ("**Bankit**"), usually not less than around four months, regardless of the choice for the self-managed or externally managed model. Even a direct or indirect change in the shareholder structure, where it involved exceeding a threshold of 10% of the SICAF capital, required an approval process of around three months. These elements have contributed to the limited success of the SICAF amongst institutional investors, despite many foreign investors might prefer – for domestic regulatory reasons – incorporated investment vehicles.

Law 21/2024 amends the rules of the consolidated financial regulations act (Legislative Decree No. 58, 24.02.1998 – "**TUF**") by making a significant simplification for SICAFs (in particular those reserved for professional investors) that choose to outsource management to an Italian asset management company ("**SGR**") or a regulated EU alternative fund manager ("**EU AIFM**").

In this way, the externally managed SICAF is *de facto* likened to a contractual investment fund, making it an alternative vehicle depending on investors' preferences for a corporate or contractual investment vehicle.

Going into detail, the new provisions allow for incorporation as follows:

- SICAF under external management **reserved** for investment professionals: incorporation by the SGR or EU AIFM that takes over its management, which is required to verify the conformity of the bylaws with legal requirements and file them with the Bankit within 10 days of incorporation;

- SICAF under external management **not reserved** for investment professionals: again, incorporation by the SGR/EU AIFM is envisaged, but the start of operations remains subject to the approval of the articles of association (which must meet the regulatory requirements for non-reserved AIFs) by Bankit at the instance of the external manager.

In both cases it is left to the external manager to verify the nature of the investors, with respect to whom the external manager shall conduct the usual AML and KYC checks.

As an additional element of simplification, for externally managed SICAFs – either externally or self-managed –, there are no longer specific requirements for board members, and a review procedure by Bankit does not apply in the case of acquisition or transfer of shareholding interests exceeding 10 percent of the capital.

Bankit and Consob, in their role of supervising the asset management market, shall be able to request information from the external manager on the SICAFs managed as well as conduct inspections and request proof of documents and the performance of acts deemed necessary at these companies.

Except for any new issues that may emerge from any Bankit implementation regulations, the changes introduced shall allow for (i) the **significant reduction of the actual incorporation time** required to set up an externally managed SICAF reserved for professional investors, going from 4-5 months to a few weeks and (ii) the simplification for the establishment of an externally managed SICAF not reserved for professional investors, in consideration of the limited scope of the checks by Bankit.

The approval procedure that applied until now shall thus remain in place only for SICAFs that do not rely on an external manager.

2. Requirements for externally managed SICAF

The essential conditions for the recognition of SICAF status under external management are:

- adoption of the corporate form;
- registered office and general management situated in Italian territory;
- corporate capital no less than 50,000 Euros;
- exclusive corporate purpose consisting on the offering to the public of the shares and other securities representing the collective investment of the participants as provided for in the articles of association to the public;
- entrusting asset and risk management as well as the administration and marketing of the companies' securities to an external manager;
- indication in the bylaws of the company designated as the external manager;
- indication of appropriate procedures to ensure managerial continuity in case of replacement of the external manager;
- entering into agreements with the external manager to enable the board of directors of the SICAF to have the documents and information necessary to verify the correct fulfilment of the manager's obligations as well as to define the timing and manner of the conveyance of such documents and information;
- appointment of a custodian (other than an SGR/EU AIFM) and entering into an agreement between the external manager and the custodian intended to create the availability of information necessary for the performance of the custodian's functions.

3. SICAF sub-funds and asset segregation

In the past some doubts had been raised with regard to the asset segregation regime of the parts of a SICAF, in relation to different (more concise) provisions dedicated to them by Article 35-bis TUF compared to the broader provisions dedicated by Article 36 TUF to the asset segregation of different funds managed by the same SGR.

Through an integration of Article 35-bis TUF, the regime of full asset segregation among the sub-funds of an umbrella SICAF is better specified, fully equating them with the various funds managed by the same SGR. It is clarified, in fact, that of the obligations contracted on behalf of the individual sub-fund, the SICAF is liable exclusively with the assets of the sub-fund itself. In addition, relating to what is already provided for investment funds, it is clarified that no actions by or in the interest of the company's creditors or actions by or in the interest of the depositary or sub-custodian's creditors are allowed on the holdings of the individual sub-fund.

Likewise, no actions by or in the interest of the depositary's or sub-depositary's creditors are allowed on the SICAF's assets. Acts completed in connection with the management of an individual sub-fund shall bear express mention of the sub-fund; failing which the SICAF shall also be liable from its general assets.

The same principles are reiterated for externally managed SICAFs within the new articulation of Article 38 TUF.

Confirming the principle of segregation between sub-funds, the new rules clarify that each sub-fund of a SICAF may generate and distribute income even in the absence of overall profits of the SICAF. Similarly, losses related to a sub-fund are charged exclusively to the assets of the same, to the extent of its amount.

4. Managing insolvency situations

Under the new regulation, if the assets of a SICAF under external management or a sub-fund (in the case of an umbrella SICAF) do not enable the respective obligations to be met and there is no reasonable prospect that this situation can be overcome, one or more creditors or the external manager may request the liquidation of the SICAF or sub-fund to the competent court having jurisdiction. In case the court orders the liquidation, the procedure set forth in Article 57 paragraph 6-bis of the TUF for investment funds will apply.

In this way, SICAFs under external management and, in the case of an umbrella SICAF, each sub-fund, equally with funds, are also taken out of the general corporate insolvency regulations and submitted to a liquidation procedure that is managed under Bankit supervision.

5. Business continuity

To ensure the business continuity of SICAF subject to external management, it is provided that the company must adopt appropriate procedures to ensure continuity in the event of replacement of the external manager.

In the event of liquidation of the external manager or termination of the management contract, it is provided that the board of directors of the SICAF must promptly convene the shareholders' meeting to resolve upon the replacement of the manager. If within two months of the occurrence of either of the indicated events the replacement of the external manager has not been arranged, the SICAF is dissolved.

As an element of greater operational simplicity compared to the contractual investment fund, we highlight the fact that SICAFs have their own tax code and their own VAT number; accordingly, in case of replacement of the manager there is no need to update the relevant contracts and – in real estate – the details of the owner of the properties in the land registries (as it is necessary in case of replacement of the SGR managing a contractual fund).

6. Entry into force and effect

The new regulation applies to all proceedings related to externally managed SICAFs under external management in progress as of March 27, 2024. Within the next six months, therefore by September 27, 2024, the Bank of Italy shall have to remove all SICAFs under external management from the relative register.

Furthermore, a transitory period of 12 months is forecast to allow SICAFs previously established under external management to adjust to the new provisions.

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