

On 14 July 2022, the National Assembly of the Republic of Slovenia passed an Act on the Forms of Alternative Investment Funds (hereinafter “**AFAIF**”), which (re)defines eligible legal forms and (regulated) types of alternative investment funds that may be established in the Republic of Slovenia and in certain segments significantly amends the current regime on the establishment, management and marketing of alternative investment funds (hereinafter: “**AIF**”).

AFAIF was published in the Official Gazette of the Republic of Slovenia on 26 July 2022, whereby it shall enter into force on the 15th day after its publication (i.e., on **10 August 2022**). Nevertheless, AFAIF enacted a two-year transitional period for existing AIF managers (i.e., until **10 August 2024**), within which they shall adjust their operations and the operations of AIFs under their management to the provisions of AFAIF.

Accordingly, the following sections of this document summarize the most important institutes and novelties, which were enacted by AFAIF, and which may have in our opinion a significant impact on the development of market of (alternative) investment funds in the Republic of Slovenia.

Legal Forms of AIF

After AFAIF will enter into force, only the following legal forms of AIFs will be permitted in the Republic of Slovenia:

- alternative mutual fund;
- special limited partnership; and
- investment company.

AFAIF contains certain general rules that apply to all the above-mentioned legal forms of AIFs, namely:

- rules on the AIF documentation (and its mandatory content), which includes at least the deed of establishment and offering document;
- rules on the preparation of AIF`s annual report and its mandatory auditing, if as of the last day of the previous financial year, AIF had more than 50 investors or the value of its assets exceeded EUR 4 million;
- accounting rules of AIF;
- rules on frequency of valuation of AIF`s assets.

In this regard we emphasize that the above-mentioned general rules, as well as the rules on legal forms of AIFs summarized below, **apply to all legal forms and types of AIFs**, namely to AIFs established and managed by “registered” AIF managers (i.e., managers who have not obtained a license to manage AIFs in accordance with the provisions of the Slovenian Alternative Investment Fund Managers Act (AIFMA) and are entered in the register of AIF managers from Article 40 of AIFMA), as well as to AIFs established and managed by “licensed” AIF managers (i.e., managers who have obtained a license to manage AIFs in accordance with the provisions of AIFMA).

Alternative mutual fund represents a pool of assets (without legal personality) that is separate from the assets of the AIF manager and from other assets managed by the AIF manager. Accordingly, this legal form represents a separate pool of assets, which is currently the most common legal form of AIFs established in the Republic of Slovenia, and which is in terms of legal characteristics very similar to the legal form of a mutual fund from the Slovenian Investment Funds and Management Companies Act (IFMCA) that enacts rules on UCITS funds.

With respect to the establishment and management of AIFs in the form of alternative investment fund, AFAIF enacts numerous best practices and solutions that have already been established on the market of (non-regulated) AIFs (such as regarding the content of the management rules and offering memorandum of AIF, valuation of assets and preparation of financial statements, payments and redemptions of fund units and the fund liquidation procedures). In addition, AFAIF enacts rules that eliminate certain ambiguities and obstacles, which have in the past, due to the lack of codified rules, caused numerous practical problems to AIF managers (such as enabling entries of the ownership of the fund's investments into public registers, a clear definition of the separation of the assets of the fund and its manager in the event of bankruptcy or the manager, etc.).

Nevertheless, AFAIF also enacts a **new obligation of the AIF manager (regardless of its regulatory status) to safe-keep the assets of the alternative mutual fund (regardless of its regulatory status) with the custodian** (who does not perform all the custodial services from chapter 2.4.10 of AIFMA in this regard, but only the safe-keeping of assets as determined in Article 117 of AIFMA). The aforementioned obligation to appoint a custodian represents a significant novelty, as until the enactment of AFAIF, the "registered" AIF managers that managed (unregulated) AIFs established in the form of separate pool of assets have not been under obligation to safe-keep the assets of such AIFs with the custodian. We also note, that AFAIF does not define similar obligation with respect to unregulated AIFs established by "registered" AIF managers in the form of special limited partnership or investment company.

Special limited partnership is an AIF established in the form of "dual company" (slo. *dvojna družba*) in which the general partner is the AIF manager, or a company established solely for the purpose of inclusion in the limited partnership as a general partner (so called "dedicated management company"), whose only shareholder is the AIF manager, and which entered into an agreement on the management of the AIF with the AIF manager, and the limited partners are the investors in the AIF. The (general) rules on the limited partnership from the Slovenian Companies Act (CA) shall be applicable also for this form of AIF, unless AFAIF explicitly stipulates otherwise. AFAIF thus contains certain special rules that deviate from the general rules on limited partnership, including the rules on:

- establishment of the special limited partnership;
- management of the special limited partnership (performed by AIF manager on the basis of a special agreement);
- book-keeping and preparation of the annual report; and
- liquidation of the special limited partnership and the prohibition of the compulsory settlement over the special limited partnership.

Investment company is an AIF, the registered share capital of which is divided into shares, and the assets of which are managed by the AIF manager. The (general) rules on the joint-stock companies from CA shall be applicable also for this form of AIF, unless AFAIF explicitly stipulates otherwise. Accordingly, AFAIF contains certain special rules that deviate from the general rules on joint-stock companies, including the rules on:

- establishment of the investment company;
- the minimum amount of registered share capital (i.e., EUR 1 million) and rules on the increase and decrease of the registered share capital;
- book-keeping and preparation of the annual report;
- corporate governance (obligatory two-tier management system, within which the function of the management board shall be performed by the AIF manager on the ground of a special agreement);

- liquidation of the investment company and the prohibition of the compulsory settlement over the investment company.

Types of AIFs

AFAIF comprehensively regulates all eligible types of regulated AIFs that can be established and licensed in the Republic of Slovenia,¹ namely:

- special investment fund; and
- real estate investment company

Special investment fund (SIF) represents a special regulated type of AIF that may be established in any of the above-mentioned legal forms, and which may be (in accordance with certain special requirements) marketed also to retail investors in the Republic of Slovenia. Such requirements are determined in AIFMA, which has, until the enactment of AFAIF, also contained the rules on the establishment and management of SIFs. The rules on SIFs determined in AFAIF do not materially deviate from the rules from AIFMA that has been in force until now, with the exception of explicit limitation of potential investment strategies that the SIF may pursue and which will be after the entry into force of AFAIF limited to the strategy of private equity funds, the strategy of real estate funds and the strategy of funds of funds as defined by Delegated Regulation 231/2013/EU or the loan strategy from Article 88 of AFAIF. Accordingly, after the entry into force of the AFAIF, it will no longer be possible to establish a SIF with any other investment strategy (such as for example the strategy of hedge fund).

Real estate investment company represents a new type of regulated AIF, the investment strategy of which is focused on real estate sector and the units of which may be marketed also to retail investors (in a similar way to the shares of other (public) joint stock companies). The real estate investment company may only be established by a “licensed” AIF manager and only in the legal form of an investment company, whereby its shares shall be listed for trading on an organized market. The procedure for establishing of real estate investment company has also been adjusted accordingly, requiring the AIF manager to obtain, in addition to the license for managing of the real estate investment company, the approval of the prospectus for issuing/listing of shares of the real estate investment company in accordance with the provisions of the Slovenian Markets in Financial Instruments Act (MFIA).

The above-mentioned rules on the investment companies from AFAIF shall be applicable also for this type of AIF, unless AFAIF explicitly stipulates otherwise for the real estate investment company. In this regard we would like to point out in particular the obligation to appoint a custodian (which follows from the fact that the real estate investment company may only be managed by a “licensed” AIF manager) and the special rules in relation to the reduction of the company’s registered share capital, which materially deviate from the general rules from CA and the rules regarding the reduction of the registered share capital of investment companies from AFAIF.

As already mentioned above, the crucial distinguishing feature of the real estate investment company is its specific investment strategy, which is focused on real estate sector. The real estate investment company may invest its assets exclusively in:

- real estate properties and real estate special purpose companies;

¹ With the adoption of AFAIF the entire chapter on the so-called alternative public investment funds (APIF) was deleted from IFMCA. Accordingly, these types of regulated AIFs will no longer be eligible after the entry into force of AFAIF.

- units of other real estate AIFs, the managers of which are licensed in accordance with the legislation adopted as a result of the transposition of the Directive 2011/61/EU, or other relevant license from the competent authority of an EU member state;
- public real estate companies listed on the organized market, the manager of which is a full member of the World Federation of Exchanges.

AFAIF also contains the diversification rules for the investments of real estate investment company, which, inter alia, determine that the real estate investment company's assets shall be simultaneously invested in at least six different real estate properties, whereby the exposure to an individual real estate property on the day of its purchase may not exceed 25% of the value of the real estate investment company's assets. In addition, AFAIF defines significant restrictions regarding the use of financial leverage, whereby we would in this regard highlight a limitation in the value of the borrowed funds, which cannot exceed 50 % of the value of assets of the respective real estate investment company.

Restructurings of AIFs and transfer of management of AIFs

AFAIF determines comprehensive rules on all eligible restructurings of AIFs, namely rules on:

- restructurings of AIFs with legal personality (to which the general rules on corporate restructurings from CA shall generally apply);
- restructuring of alternative mutual fund into special limited partnership or investment company;
- restructurings of real estate investment company;
- restructuring of joint-stock company into investment company, investment company – SIF or real estate investment company.

AFAIF also defines uniform rules regarding the transfer (voluntary and compulsory) of AIF management to another AIF manager, whereby such rules are similar to the rules from AIFMA and IFMCA and thus enacts already tried and tested procedures and practices in the field of transfers of investment fund management.

Ljubljana, 1 August 2022

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