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*Project financing and Infrastructural Fund: governance and  
structure of the complex sponsors.*

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## Summary

Infrastructure does not only represent a key element of competitiveness and economic and social growth, but also a developing industry that will cause, in the coming years, an increasing demand for financial resources. Infrastructural investments have, indeed, a strategic role within the social and economic development of a country.

The aforementioned need of new infrastructures and the need to contain public debt have prompted an evolution in the financing structures of the operations and the ways of aggregation and promotion of the possible initiatives. In this context, the private component of financial resources to be used in infrastructural projects is going to increase more than proportionally. Accordingly, the partnership between public subjects and private investors is going to increase.

A cooperation between public and private sectors for the realization of infrastructural projects - known as Public Private Partnership or, otherwise, by its acronym PPP - is potentially capable to allow the pursuit of ambitious development goals, without prejudice, however, for the unavoidable instances related to public debt control policies. Moreover, in the context of such cooperation, the use of project financing for the funding and the private management of infrastructures and public utilities has also a positive impact on users of public works. All citizens may benefit from the increased efficiency and therefore (at least indirectly) to a lower cost of public services.

The project financing - that focus the attention on the validity of the idea more than and before of the patrimonial strength of the sponsors – if properly applied, is able to ease the reach of a balance between the public debt control and the increase of the infrastructural endowment, through the involvement of lenders and private operators in the implementation and management of those public works, so called “hot” or “lukewarm”, which are able to produce - individually or with the support of public contribution - financial returns capable to cover the costs of construction and management, to serve the debt and to properly remunerate the capital invested.

The incoming of private capitals has traditionally been assured by the “industrial” sponsors, interested in the possible direct returns of the artwork (because end-users or builders or suppliers of the latter). This type of sponsors, certainly has the capability to ensure the supply of specific skills, but it has not a financial strength sufficient to answer the request of equity in the sector.

The outcoming of financial or speculative sponsors is able to answer this need of financial resources. Such sponsors have recently understood that infrastructures - given the relative inelasticity of demand and other elements that characterize it – are a “not related” alternative asset class of investments, useful in order to obtain the diversification of portfolios’ risks and to optimize the medium to long term performances.

Obviously, the “alternative” nature of such investment is connected, by one side, to the need for specific expertise in order to identify and select potential market opportunities and, by the other side, to bigger-dimension investments. Such features have affected the access to the infrastructural market. The segmentation of the initiatives, the specific skills and competences required, the size of investments and impact of country-risk, indeed, have placed significant limits to the number of players able to directly take the investment’s risk and suffer the costs of it, save for the existence of specific reasons (*i.e.* industrial or public) beyond those purely financial.

The asset management industry and the private equity managers could not remain indifferent to such potential investment demand, so the private equity managers have started to include in their portfolios infrastructure assets, according to a logic of portfolio diversification, and then they have developed a range of products specialized in infrastructural investments, the so called infrastructure funds.

The infrastructural funds, whose trend in the last few years has been one of the most significant part of private equity and asset management in general, certainly arise as a privileged instrument to convey private resources in favour of the infrastructural system, through the participation in - and the active contribution in the structuring of - the project financing transactions. In such transactions, the collective investment

vehicle plays as a new type of sponsor, characterized by the multiplicity of interests and issues jointly represented.

The arrangement of these investment structures may be different in practice, because of the applicable home country legal regime. In any case, the need to gather institutional and local investors has led to the coming out of standard characters, that can be assimilated to the paradigm of limited partnership of English law and, everywhere, to the dissociation between managers, sponsors of the vehicle / fund and third parties investors participating in the initiative, so as to enable effective regulation of the relations among them.

In these structures, different actors are involved, whose motivations are not unitarily describable, because they go beyond the common interest in maximizing the return on investment. If this is indeed the typical and absorbing motivation of the participants in collective investment vehicles targeted to “retail” or non-expert investors, with low control requirements and low individual risk rate, on the contrary, in this case the participants, because of their nature and characteristics, have further and different interests. In other words, it is present a component of “industrial” interest, because the participation in the vehicle can get access to opportunities for co-investment or other core business opportunities (for example, advisory agreements, supply agreements, financing agreements, etc.); a component of “public” interest, focused on social needs and on the growth of national infrastructure equipment; and, finally, the abovementioned “financial” component which, even with the purpose to maximize the returns of the portfolio and the diversification of risks, is characterized by the monitoring needs of qualified investors.

All the participants in the collective investment vehicle, then, have a common interest in offsetting the powers of the manager, limiting the conflict of interests, reducing the information asymmetry and managing the moral hazard of the manager.

The success of the commercialization initiative concerning the quotas/shares of the investment vehicle derives from the effectiveness of the answers to these needs of

potential investors and from the ability to balance the different interests of the parties involved. Therefore, in terms of concreteness, the same factors impact also on the possibility that these vehicles collect resources sufficient to enable the performance of a role of flywheel for the development of infrastructural project financing transactions.

In Italy, where the demand for infrastructure is strong while the public resources to be utilized are scarce, collective investment funds specialized in infrastructures have been recently set up.

The binomial SGR - fund presents a richer regulation in comparison to the paradigm of limited partnerships, and therefore less room for contractual autonomy of the subjects involved. The Italian legislation, created to respond to the needs of protection of retail investors, has intervened in the organizational and procedural choices of the manager and it is also subject to a prudential supervision. Furthermore, on the assumption of the “passivity” rule of the participants in the fund, external controls provided for by the Custodian and by the supervisory Authorities are more penetrating than in the limited partnership structure.

The contextual existence of a professional manager and qualified financial investors, with different purposes and interests, different nationalities and legal cultures, has required a sensible effort for the adaptation of the national structure to the international practice, widely proved by facts and justified by the necessary search for a new balance in relation to the traditional structure of the collective investment funds. Instances and experiences of international investors have thus been resolved in the spaces of autonomy granted by national primary and secondary legislation, which applies to the collective management funds.

In order to facilitate the collection of financial resources on both domestic and international markets, the rules of the new funds under Italian law have adopted clauses which ensure a substantial and significant alignment with the international best practices, as highlighted by the analysis of operational solutions and by the comparison of the Italian structures with the principles ILPA.

All the above is expressly aimed to define the benchmarks for the construction of a balanced structure, that can improve the aggregation of different investors and different purposes into a single “complex” entity, collecting useful resources to act as a sponsor for the development of new infrastructure projects.

The second part of this study will deal with the aforementioned development of the collective funds’ rules operating in the infrastructural sector.

After a brief exposure concerning the characteristics and regulatory limits of the law applicable to management companies, this study has the aim of describing and analysing the specific clauses which are or may be present in the infrastructure funds’ rules. Therefore, this study will examine in concrete policies and investment limits of the funds, as well as modalities to participate in the funds and possibilities of diversification available for investors, through the creation of specific classes of units, techniques of the manager and its management for sharing the investment risk, distribution of profits and reimbursement to participants, and, at last, the investment’s control and monitoring prerogatives reserved to the participants.

Finally, the importance of the professionalism of the manager - who is entrusted with any choices related to investments and disinvestments, the monitoring of initiatives in which are invested the fund’s assets as well as the contribution of expertise and specialized support to companies that realize or manage the initiatives concerned, will draw the attention to the incentives and loyalties dynamics of the management and the critical issues related to its replacement.

Moreover, in the context of an European market where the trend is to regulate the activities of alternative funds (to be seen, in this regard, the proposed directive AIFM), it seems possible to envisage a progressive approach process of the supervisory regulation applicable to foreign managers to the Italian regulation, with the consequence of a reduction of the recourse to the regulatory arbitrage.

The conditions listed above, when combined with our country's infrastructure deficit and with the importance of the role that the connections’ network and the relationships with public authorities plays in Italy, should facilitate the establishment of additional funds under Italian law, specialized in the Italian infrastructures

investment and in the Italian market – on the model of F2i SGR SpA and its fund – and competitive with respect to foreign players. The growth of these funds could bring more capital for investments in infrastructure project financing, with the effect of increasing the available resources and, therefore, the transactions realizable in Italy.