Giuffrè Scorcelli Rosa & Partners
STUDIO LEGALE

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Giuffrè Scorcelli Rosa & Partners periodically reports and comments on the most significant statutory and case law developments.

THIS ISSUE

COMPANY LAW

CORPORATIONS MANAGED BY CORPORATIONS

Recently, the Register of Companies of Milan has considered admissible the registration of corporations managed by other corporations. This is an absolute novelty for Italy and has led to a widespread academic debate. The prevailing view is that the notion of a corporation managed by another corporation is not compatible with Italian company law. First of all, all requirements set out for the appointment to corporate offices imply that the officers must be individuals and not corporations.
In addition, if such form of corporate management should be considered admissible, any fiduciary obligation between the shareholders of the corporation and the individuals entrusted with the actual management would be lost, as such individuals would only report to the shareholders of the director-corporation. Some have also suggested that this form of corporate management could pursue the hidden objective of limiting unduly the liability of such individuals.

GOVERNANCE MODELS UNDER LEGISLATIVE DECREE 231/2001

Confindustria and A.I.I.A. (Associazione Italiana Internal Auditors) have recently conducted a joint study on the adoption of governance models pursuant to Legislative Decree 231/2001 by non listed companies. The study shows that only 62.5% of the companies interviewed have adopted said governance models. The study also shows a general similarity in the models adopted by non listed companies, thereby indicating that certain problems of interpretation arising from the succinct provisions of the Decree should now be solved.

INSURANCE

TRANSFER ABROAD OF INSURANCE BUSINESS IS TAXABLE EVENT

The Revenue Agency has held that the winding up of a foreign insurance company's permanent establishment in Italy and the continuation of the permanent establishment's activity out of the insurance company's headquarters amount to the transfer abroad of a going business and, as such, constitutes a taxable event in Italy.

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ISVAP REGULATION NO. 5 OF 16 OCTOBER 2006

Regulation no. 5/2006, generally known as the Intermediaries Regulation, came into force on 1 January 2007.

The Regulation purports to lay down a comprehensive discipline of insurance intermediaries.

Insurance intermediation is defined as the activity of "offering insurance contracts or assisting and consulting in the offering of insurance contracts and, if the engagement agreement so provides, in the conclusion of the contracts, or assisting in the management or performance of insurance contracts, with particular reference to claim handling".

According to the Regulation, it is a prerequisite for the carrying out of the activity of insurance intermediation that the intermediary registers in the Unified Register of Intermediaries.

Intermediaries operating in Italy under freedom of establishment and freedom of services must instead register in a dedicated list kept alongside the Unified Register.

The Regulation also holds insurance companies to detailed obligations in relation to the professional training of their staff and consumers' information.

INSURANCE AGENCY AGREEMENTS - EXCLUSIVITY CLAUSES

Pursuant to the combined provisions of Decree Law no. 223/2006 and Decree Law no. 7/2007, exclusivity clauses or clauses providing for the application of minimum prices or maximum discounts contained in property insurance policies are void.

EXCLUSION OF COVERAGE – ARTICLES 1892 AND 1893 OF THE CIVIL CODE

The Tribunal of Grand Instance of Paris has recently adjudicated a dispute under Italian law on the limitation of coverage in a professional liability insurance policy.

The Court has rejected the insured's claim, on the basis of a clause of the policy excluding from coverage "claims arising from circumstances of which the insured knows, or should have reasonably known at the time that the policy takes effect", because documentary evidence showed that the insured knew of the third party's claim before the policy took effect.

According to the Court, the above clause had the function of limiting the scope of the coverage, rather than that of providing a sanction for the insured's failure to disclose known relevant circumstances. As a consequence, the insurer did not have to prove the insured's negligence or wilful misconduct.

EMPLOYMENT

GUIDELINES ON THE USE OF INTERNET AT THE WORK PLACE

On 1 March 2007, the Authority for the Protection of Privacy issued detailed guidelines for the use of computers at the work place, aimed at preventing "the arbitrary use of IT equipment and the violation of the employees' privacy".

The Authority has expressly prohibited employers to read or record staff's' e-mails and to monitor the websites visited by their employees. Such conduct would constitute a form of distant control of the employees' working activity, which is prohibited by Section 4 of the Statute of Workers.

The Authority has also indicated that companies should adopt internal regulations for the use of internet and e-mail at the work place, the content of which has to be agreed with the unions.

Employers should also adopt measures to prevent the risk of improper use by employees of Internet and e-mail at the work place, so as to reduce the need for performing controls later.

If the adoption of such measures is not enough to prevent improper behaviour by the employees, the consequent necessary controls must in any event be conducted gradually. Therefore, first the controls must be directed at the department, office or work group concerned, so as to alert that company's area to the observance of the rules. Only after, if improper behaviour is repeated, the employer may carry out controls on an individual basis.