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## CORPORATE FINANCE

### MERCATO ALTERNATIVO DEL CAPITALE ("MAC")

MAC (alternative capital market) is a trading system organized and managed by Borsa Italiana S.p.a. recently established to facilitate the access to investment capital by small and medium size companies.

The admission to MAC may be granted to unrestricted ordinary shares issued by joint stock companies, whose latest financial statements – which must refer to a period of not less than 12 months – have been audited and whose members of the management and auditing bodies possess the relevant requirements indicated in the Consolidated Text of Financial Intermediation.

The admission does not require the prior publication of a prospectus, as the placing and trading of the shares is limited to professional and institutional investors.

## COMPANY LAW

### MORE ON CORPORATIONS MANAGED BY CORPORATIONS

The Milan Notarial Council Commission

for the drawing up of uniform principles of company law has recently laid down important guidelines on this subject.

In the autumn of 2006, the Chamber of Commerce of Milan admitted to registration in the Register of Enterprises a corporation whose articles of associations contained a clause providing for the appointment of another corporation as director (see our previous newsletter).

Legal authors have generally criticized the decision of the Chamber of Commerce, on the basis that such clauses would undermine some basic principles of company law, among which those providing for the personal liability of directors for the breach of their duties.

The Commission has instead expressed the view that such clauses are valid, subject to the limitations and requirements deriving from specific provisions of the law applying to certain types of corporations and to the director-corporation appointing an individual within its organization to conduct the business, who would assume personal liability, with the director-corporation remaining jointly liable with such individual.

The view of the Commission carries significant weight, as Notaries have

primary responsibility for approving articles of associations.

## AMENDMENT OF PROSPECTUS RULES

Legislative decree no. 51 of 28 March 2007, implementing European directive 2003/71/CE, has extensively modified the rules governing the public offering of securities.

Among other amendments, such rules now expressly provide for the liability of the issuer, the offeror, the guarantor and the persons responsible for providing the information included in the prospectus, each in relation to the parts of the prospectus within its responsibility, for the damages suffered by investors who reasonably rely on the truthfulness and completeness of such information, unless they prove that they acted with the diligence necessary to avoid material inaccuracies and omissions. The same responsibility also lies with the intermediaries in charge of the placement.

The action of the investors is subject to a statute of limitations of five years from the publication of the prospectus or, if later, two years from discovering the inaccuracy or omission, on condition that the investor proves the time of discovery.

## INSURANCE

### MORE ON "CLAIMS MADE" CLAUSES

After well known Supreme Court

decision no. 5624/2005 on "claims made" policies (see our previous newsletters) lower Courts have ruled again on the same subject and reached conflicting conclusions.

According to two recent judgments of the Court of Rome delivered by the same Judge, "claims made" clauses are void as they purport to indemnify the insured for claims made against it on the basis of events already occurred at the time of inception of the policy.

Instead, according to judgment no. 46 of 2007 of the Court of Tolmezzo, "claims made" clauses are perfectly valid as they simply define the scope of the coverage.

### CAR FLEETS AND BOATS

The Insurance Code has been amended (section 132, paragraph 2) to introduce the possibility that insurance companies provide coverage for the risks connected to the circulation of car fleets and the navigation of boats under their third party liability insurance.

The new provision has given rise to uncertainties; in particular, it was not clear if companies that only insure car fleets would in any event be subject to the obligation to contract provided by section 130 and the transparency requirements provided by section 131 of the Code.

Following an inquiry filed by one of GSRP's insurance clients, ISVAP, by letter dated 8 February 2007, clarified

that this is not the case.

## PRIVACY – SIMPLER RULES FOR INSURANCE COMPANIES

On several occasions, ANIA has formally requested the Authority for the protection of privacy to prepare standard forms to be used by insurers, also on behalf of other insurance operators, such as co-insurers and brokers, to provide the required information to the insured and to collect their consent to the treatment of their personal data.

As a result, by resolution of 26 April 2007, the Authority has authorized insurers to provide such information and collect such consent also on behalf of other insurance operators involved in different roles in the coverage of the same risk, which would thus be enabled to obtain the insured's personal data from the insurers and treat them.

## EMPLOYMENT AND SOCIAL SECURITY

### JOINT LIABILITY IN CONSTRUCTION CONTRACTS AND SUB-CONTRACTS

Legislative Decree no. 223 of 4 July 2006, converted into Law no. 248 of 4 August 2006, has introduced new provisions on the client/contractor and contractor/sub-contractor joint liability in construction contracts and sub-contracts, whether entered into by private parties or between private parties and Public Administrations.

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Under the new rules, the joint liability concerns not only the payment of social security charges and mandatory workers' compensation charges, but also the payment of withholding taxes on salaries.

The new rules are not yet in force, pending the issue of implementing regulations by the Ministry of Economy, expected at the beginning of next year.

## REAL ESTATE

### SOCIETÀ DI INVESTIMENTO IMMOBILIARE QUOTATE

Società di investimento immobiliare, quotate ("SIIQ's") (listed real estate investment companies) were recently introduced with the express intention of fostering investments in real estate.

SIIQ's are joint stock companies with listed shares whose core business is the leasing of real estate.

These companies are entitled to substantial direct tax benefits if they meet the following requirements:

- none of the shareholders holds directly or indirectly more than 51% of the voting rights or shares in the profits in the measure of more than 51%;

- at least 35% of the shares are owned by shareholders holding 1% or less of the voting rights and sharing in the profits in the measure of 1% or less;

- at least 85% of the net profits deriving from the leasing activity is distributed to the shareholders.

Specific provisions concern the organizational structure and corporate governance.

## TORTS

### COMPANIES ENTITLED TO COMPENSATION FOR HARM TO REPUTATION

With judgment no. 12929 of 4 June 2007, the Supreme Court has upheld the claim of a company to obtain compensation for the harm to its reputation suffered as a consequence of being mistakenly reported to the Automated Credit Risk Service of the Bank of Italy.

The Court has recognized that the right to the protection of reputation belongs not only to individuals, but also to companies, which, in addition to any pecuniary damages, may thus also claim non-pecuniary damages.

## INTELLECTUAL PROPERTY

### CORPORATE DISPUTE RULES OF PROCEDURE NOT APPLICABLE TO INTELLECTUAL PROPERTY ACTIONS

With decision no. 170 of 17 May 2007, the Constitutional Court has declared

unconstitutional the provisions of the Intellectual Property Code extending the application of the controversial rules of procedure for corporate disputes to trademark, patent and unfair competition actions before the Specialized Court Sections on Intellectual Property.

It is still unclear how the above decision will affect pending actions commenced under the corporate dispute rules of procedure.

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