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## CAPITAL MARKETS

### MARKET IN FINANCIAL INSTRUMENTS DIRECTIVE (MIFID)

On 30 August 2007, the Council of Ministers approved a decree implementing Directive 2004/39/CE on capital markets which replaced the 1993 Directive on financial investment services.

The main goal of MIFID is the creation of a single market of financial services consistently regulated throughout the European Union.

Among many profiles of interest are a new definition of financial instruments, the creation of the roll of independent financial consultants, the end of the stock exchanges' monopoly on the trading of listed shares and new investor information requirements.

The implementation of MIFID will bring about also a reallocation of competences between Consob and Bank of Italy, with the first being responsible for the supervision on the intermediaries' business practices and the second being responsible for the supervision on intermediaries' financial stability.

In 2006, the joint sections of the Supreme Court seemed to have ended all interpretative doubts by making existential damage on a separate notion from those of moral and biological damages.

After only one year, the third section of the Supreme Court has ruled that existential damage, in that it reflects a person's problem to entertain normal social relations, is a component of biological damage; as such, it is an element that the judge must take into account for determining the total amount of the compensation, but not autonomous grounds for awarding compensation.

### 7 NEW DRAFT ISVAP REGULATIONS

Between July and October 2007, ISVAP published on its website 7 draft regulations intended to carry into effect certain recent provisions of the Insurance Code.

The regulations will enter into force after the end of the phase of public consultations, during which industry members may require amendments.

The new regulation concern:

- (i) the procedure for filing complaints against insurance companies;
- (ii) the keeping of insurance registries;
- (iii) risk classification instructions;
- (iv) the criteria for determining the solvency margin;

## INSURANCE

### EXISTENTIAL DAMAGE

The Supreme Court takes a new view on existential damage.

- (v) the abuse of insurance denomination;
- (vi) financial stability pursuant to legislative decree 30 May 2005 no. 142 and the coordination agreement between Bank of Italy, Consob and ISVAP of 30 March 2006;
- (vii) internal controls, compliance, risk management and outsourcing.

## EMPLOYMENT AND SOCIAL SECURITY

### MOBBING NOT A CRIME

Mobbing is not contemplated by the Penal Code as a crime. Employees who are subject to mobbing may only claim damages in civil courts.

The above principle was laid down by the Fifth Criminal Section of the Supreme Court by judgement no. 3364/2007. The Court has also defined mobbing as “a protracted conduct of persecution aimed at excluding an employee”.

### SAFETY AT THE WORK PLACE

By Law no. 123/2007, the Council of Ministers was given authority to adopt one or more decrees addressing the issue of health and safety at the work place. The Law also contains certain provisions that are immediately applicable such as, noticeably, the one extending the scope of application of Law no. 231/2001, providing for the so called “administrative liability of corporations”, to crimes committed by corporate officers in violation of anti-accident, hygiene and safety at the work place regulations.

## TERMINATION INDEMNITIES IN COMMERCIAL AGENCY

The Revenues Service has clarified that provisions made in the accounts of companies in respect of the clientele and meritocratic indemnities payable to commercial agents upon their termination are not deductible for corporate income tax purposes; such indemnities are deductible only in the fiscal year in which they are actually paid.

The rationale underlying the Service’s ruling is that such indemnities are not a cost which is certain to be incurred by the company, as they only become due if the agency agreement is terminated by the company without cause.

## CONSUMER CODE

### RECENT AMENDMENTS

The Consumer Code has been recently amended with a view to strengthening the protection of consumers against misleading advertising and unfair and aggressive commercial practices.

Under the first profile, the Competition Authority has been given more penetrating enforcement powers and fines have been increased.

Under the second profile, certain commercial practices have been declared unfair or aggressive by definition.

## TRUST

### TAXATION

The Revenues Service has recently clarified that the transfer of assets into a trust is subject to donation or inheritance tax, depending on whether it is accomplished during the life of the settler or after his death pursuant to a will.

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