

**Article 39**  
*(Mortgages)*

1. For the purposes of recording mortgages banks may elect as domicile their head office.

2. Where the completion of the contract and the disbursement of the money are separate acts, the keeper of the property registers, on the basis of the receipt provided by the beneficiary of the loan, shall note beside the earlier entry that the money has been disbursed and any change in the interest agreed to by the parties; in such cases the interest recorded in the notation shall have the same priority.

3. Bank claims arising from loans with indexing clauses shall be secured by the recorded mortgage up to the total amount effectively owed as a result of the application of such clauses. The adjustment of the mortgage shall be effected automatically where the mortgage record mentions the indexing clause.

4. Mortgages securing loans shall not be subject to revocation in bankruptcy where they have been recorded ten days prior to publication of the judgment declaring the bankruptcy. Article 67 of the Bankruptcy Law shall not apply to payments made by the debtor in respect of real estate loans.

5. Upon discharge of each fifth of the original debt, debtors shall be entitled to a proportional reduction of the amount recorded. They shall also be entitled to the partial release of one or more mortgaged properties where documents produced or professional valuations establish that the remaining encumbered properties constitute sufficient security for the amount still owing, in accordance with Article 38.

6. In the case of condominium buildings or complexes, the debtor and the third-party purchaser of the mortgaged property shall be entitled to a division of the loan into quotas and, accordingly, to a proportionate division of the securing mortgage. The keeper of the property registers shall note the division of the loan and the proportionate division of the mortgage beside the earlier entry.

7. For the purposes of registration and mortgage charges and the honorarium and fees due to the notary, the mortgage documents and formalities, including notations, shall be considered as a single agreement, a single entry in the property registers and a single certificate. The notary's honorarium shall be reduced by half.

**Article 40***(Early repayment and termination of the contract)*

1. Debtors may repay all or part of their debt early by paying the bank a contractually determined all-inclusive early repayment fee. Contracts shall specify the manner of calculating such fee in accordance with the methods laid down by the Credit Committee for the sole purpose of ensuring the transparency of contractual conditions.<sup>1</sup>

2. The bank may cite late payment as cause for the termination of the contract where it has occurred at least seven times, consecutively or otherwise. For this purpose, a payment shall be considered late where it is effected between thirty and one hundred and eighty days after the due date of the instalment.

**Article 41***(Execution)*

1. In actions for execution in connection with real estate credit notice of the contractual right of execution shall not be required.

2. The bank may initiate or proceed with actions for execution on properties mortgaged as security for real estate loans even after a declaration of the debtor's bankruptcy. The official receiver may intervene in the action. Where the sum realized from the execution exceeds the quota allotted to the bank, the excess shall be assigned to the bankruptcy.

3. The custodian of the attached properties, the court-appointed administrator or the official receiver shall pay over to the bank, after deducting expenses for administration and taxes, any income from the properties mortgaged in its favour, until satisfaction of its claims.

4. In ordering the sale or assignment of the property, the court shall provide for purchasers or assignees who do not intend to avail themselves of the right to assume the loan contract provided for in paragraph 5 to pay directly to the bank the part of the purchase price corresponding to the bank's total claims and shall set the time limit for such payment. Purchasers or assignees who do not effect payment within the time limit established

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<sup>1</sup> Paragraph as amended by Article 6.1 of Legislative Decree 342/1999. Article 6.2, of the same decree introduced the following provision:

“The second sentence of paragraph 1 of Article 40 of Legislative Decree 385/1993 as amended by this decree shall not apply to contracts concluded before the date of its entry into force.”

shall be considered in default pursuant to Article 587 of the Code of Civil Procedure.

5. Purchasers or assignees may, without authorization by the court, assume the loan contract signed by the divested debtor, assuming all the obligations related thereto, provided that within fifteen days of the date of the decree provided for in Article 574 of the Code of Civil Procedure or of the date of the purchase or assignment they pay all the instalments due, accessory costs and expenses to the bank. Where the sale is in more than one lot, each purchaser or assignee shall pay the instalments due, accessory costs and expenses on a pro rata basis.

6. The transfer of the attached property and the assumption of the loan under paragraph 5 shall continue to be subject to issue of the decree provided for in Article 586 of the Code of Civil Procedure.

#### **Article 42**

##### *(Notion of public works credit)*

1. Public works credit shall have as its object the granting of loans by banks to public or private persons for the construction of public works or plants of public utility.

2. Where loans are granted to private persons, the public work or public utility requirement must be established by law or by measures adopted by a governmental authority.

3. Loans may be secured by a charge in accordance with Article 46.

4. Where loans are secured by a mortgage on real property the provisions of this Section concerning real estate loans shall apply.

#### **Section II**

##### **Agricultural and fishing credit**

#### **Article 43**

##### *(Notion)*

1. Agricultural credit shall have as its object the granting of loans by banks for agricultural and livestock production and related and collateral activities.

2. Fishing credit shall have as its object the granting of loans by banks for fishing and aquaculture and related and collateral activities.

3. Related and collateral activities shall include agritourism and the preparation, preservation, processing, marketing and promotion of products, as well as other activities specified by the Credit Committee.

4. Agricultural and fishing credit may be granted by way of agricultural bills and fishing bills respectively. Such bills must state the purpose of the loan, the security provided and the location of the project financed. Agricultural bills and fishing bills shall be equivalent to ordinary bills for all legal purposes.

#### **Article 44**<sup>1</sup>

##### *(Security)*

1. Agricultural and fishing loans, including those at short term, may be secured by a charge in accordance with Article 46.

2. Short and medium-term agricultural and fishing loans shall be secured by a legal charge on the following movable property of the borrower undertaking:

- a) crops, finished goods or work in progress;
- b) livestock, commodities, inventory, raw materials, machinery, equipment or other goods acquired with the proceeds of the loan;
- c) receivables, including future receivables, deriving from the sale of the goods referred to in subparagraphs a) and b).

3. The legal charge shall have a priority immediately following that of the property income tax credits referred to in subparagraph 2 of Article 2778 of the Civil Code.

4. In the event of default the magistrate of the jurisdiction in which the property encumbered by the charges referred to in paragraphs 1 and 2 is located may, at the request of the creditor bank and after acquiring summary information, order its seizure and sale. The sale shall be effected in accordance with Article 1515 of the Civil Code.

5. Where agricultural or fishing loans are secured by mortgages on real property, the provisions of Section I of this Chapter concerning real estate loans shall apply.

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<sup>1</sup> Article as amended by Decree Law 1/1994, ratified by Law 135/1994, and subsequently amended by Article 7.1 of Legislative Decree 342/1999.

**Article 45***(The Interbank Guarantee Fund)*

1. Agricultural credit may be backed by a subsidiary guarantee of the Interbank Guarantee Fund, which shall have legal personality and managerial autonomy and be subject to supervision by the Ministry of the Treasury.

2. The Minister of the Treasury, after consulting the Minister for the Coordination of Agricultural, Food and Forestry Policies, shall specify the transactions to which such security shall apply and establish the criteria and limits applicable to Fund interventions, as well as the contributions payable by banks to the Fund in relation to the amount of the loans secured.

3. The internal organization and operation of the Fund shall be governed by bylaws approved by decree of the Minister of the Treasury.

4. The Fund shall have a Special Section, as provided for in Article 21 of Law 153 of 9 May 1975, with autonomous capital and administration. The provisions of paragraphs 2 and 3 shall apply to the Section.

5. The Fund shall also have a Fishing Credit Guarantee Section, with legal personality, autonomous administration and off-budget operations in accordance with Article 9 of Law 1041 of 25 November 1971 and subject to supervision by the Ministry of the Treasury. The provisions of paragraphs 2 and 3 shall apply to the Section.

**Section III****Other operations****Article 46***(Loans to undertakings: charges)*

1. The granting of medium and long-term loans by banks to undertakings may be secured by a special charge on movable property employed in the business that is not recorded in public registers. The charge may be imposed on:

- a) existing or future plants or works, licences or capital goods;
- b) raw materials, work in progress, inventory, finished products, crops, livestock or commodities;
- c) any goods acquired with the proceeds of the loan;

d) receivables, including future receivables, deriving from the sale of goods referred to in the preceding subparagraphs.<sup>1</sup>

2. The charge, on pain of nullity, must be reduced to writing. The writing must specify the encumbered goods or receivables, the creditor bank, the debtor and the person granting the charge, the amount and the conditions of the loan as well as the amount of the charge.

3. The validity of the charge on the goods as against third parties shall be subject to transcription of the writing in which the charge appears in the register referred to in Article 1524, second paragraph, of the Civil Code. Transcription must be effected in the competent offices of the place where the borrower has its head office or resides.<sup>2</sup>

4. The charge provided for in this Article shall have the priority indicated in Article 2777, last paragraph, of the Civil Code and shall not prejudice other rights of preference of equal priority with a date certain prior to that of the transcription.

5. Without prejudice to the provisions of Article 1153 of the Civil Code, the charge may also be enforced against third parties who have acquired rights in the encumbered goods after the transcription referred to in paragraph 3. Where it is not possible to enforce the charge against a third-party buyer, the charge shall be transferred to the consideration received.

6. Notary fees shall be reduced by one half.<sup>3</sup>

#### **Article 47<sup>4</sup>**

##### *(Supported loans and management of public funds)*

1. All banks may grant loans or provide services specified in laws on incentives in force at the time, provided they are governed by a contract with the competent governmental authority and are included among the activities in which they may engage on an ordinary basis. The provisions of

<sup>1</sup> Paragraph as amended by Article 8.1 of Legislative Decree 342/1999.

<sup>2</sup> Paragraph as amended by Article 8.2 of Legislative Decree 342/1999.

<sup>3</sup> Paragraph added by Article 8.3 of Legislative Decree 342/1999.

<sup>4</sup> Article as amended by Article 9.1 of Legislative Decree 342/1999. Article 9.2 of the same decree introduced the following provision:

“The contracts for the provision of services inherent in the management of public funds for credit support referred to in Article 47.2 of Legislative Decree 385/1993 as amended by this decree and assigned at present under statutory provisions must be signed not later than 1 July 2000.”

laws providing for incentives, including those regarding taxes, duties and preferential procedures, shall apply in full to such loans.

2. The assignment and management of public funds for loan support under the laws in force at the time and the provision of services inherent therein shall be governed by contracts between the competent governmental authority and the banks it has chosen. The contracts shall indicate criteria and methods for resolving conflicts of interest between the management of such funds and the banks' activities for own account; for this purpose, banks may set up separate bodies to adopt resolutions concerning supported loans and keep separate accounts. The contracts shall also establish the fees and reimbursements to which banks shall be entitled.

3. The contracts referred to in paragraph 2 may require the bank chosen to manage a public fund for loan support to enter into agreements with other banks to regulate the granting of interest rate support to be paid out of the fund in connection with loans disbursed by such banks. The latter contracts shall be approved by the competent governmental authority.

#### **Article 48**<sup>1</sup>

*(Pledge loans)*

1. Banks may take up the business of granting loans secured by movables governed by Law 745 of 10 May 1938 and by Royal Decree 1279 of 25 May 1939, provided they create the necessary structures and give notice thereof to the Bank of Italy.

### **Chapter VII**

#### **Bankers' drafts and injunctive remedy**

#### **Article 49**

*(Bankers' drafts)*

1. The Bank of Italy shall authorize banks to issue bankers' drafts and other similar or equivalent drafts. The authorization order shall be published in the *Gazzetta Ufficiale della Repubblica italiana*.

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<sup>1</sup> Article as amended by Article 10.1 of Legislative Decree 342/1999. Article 10.2 of the same decree introduced the following provision:

"Paragraph 1 shall not apply to banks already authorized to engage in pledge-loan business at the date of entry into force of this Legislative Decree."

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2. The Bank of Italy, in compliance with the resolutions of the Credit Committee, shall establish the amount, form and manner of payment of the deposits which issuing banks are required to make with the Bank of Italy in connection with drafts referred to in paragraph 1.

**Article 50**  
*(Injunctive remedy)*

1. The Bank of Italy and banks may also request the injunctive remedy provided for in Article 633 of the Code of Civil Procedure on the basis of a statement of account certified to be in conformity with the accounting records by a manager of the applicant bank, who shall also declare that the credit is true and certain.



**TITLE III**  
**SUPERVISION**

**Chapter I**

**Supervision of banks**

**Article 51**

*(Reporting requirements)*

1. Banks shall send the Bank of Italy periodic returns, as well as any other figures or documents it may request, in the manner and within the time limits it establishes. They shall also transmit financial statements in the manner and within the time limits established by the Bank of Italy.

**Article 52**<sup>1</sup>

*(Notifications by boards of auditors and persons appointed to audit the accounts)*<sup>2</sup>

1. Boards of auditors shall inform the Bank of Italy without delay of every act or fact they come to know of in the performance of their duties that may constitute an irregularity in the management of banks or a violation of the provisions governing banking.

2. Firms that audit the accounts of banks shall notify the Bank of Italy without delay of acts or facts found in the performance of the engagement that may constitute a serious violation of the provisions governing banking, jeopardize the continued existence of the undertaking or result in an adverse or a qualified opinion on the annual accounts or a disclaimer. Such firms shall send the Bank of Italy any other information or documents requested.

3. Paragraphs 1 and 2 shall also apply to persons who perform the duties referred to therein at companies that control or are controlled by banks within the meaning of Article 23.

4. The Bank of Italy shall establish procedures and time limits for transmitting the information referred to in paragraphs 1 and 2.

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<sup>1</sup> Article as amended by Article 211.1 of Legislative Decree 58/1998.

<sup>2</sup> Heading as amended by Article 11.1 of Legislative Decree 342/1999.

**Article 53***(Regulatory powers)*

1. The Bank of Italy, in compliance with the resolutions of the Credit Committee, shall issue general regulations concerning:

- a) capital adequacy;
- b) the limitation of risk in its various forms;
- c) permissible holdings;
- d) administrative and accounting procedures and internal control mechanisms.

2. The regulations issued pursuant to paragraph 1 may provide that certain transactions shall be subject to authorization by the Bank of Italy.

3. The Bank of Italy may:

- a) convene the directors, members of the board of auditors and managers of a bank to examine its situation;
- b) order the convening of the governing bodies of a bank, set the agenda for the meeting and propose the adoption of certain decisions;
- c) proceed directly to convene the governing bodies of a bank where the competent bodies have not complied with an order issued under subparagraph b);
- d) adopt specific measures regarding individual banks concerning the matters referred to in paragraph 1, where the situation so requires.

4. Banks, in granting credit to persons connected with or having significant holdings in them, must observe the limits established by the Bank of Italy in compliance with the resolutions of the Credit Committee. Such limits shall be determined exclusively with reference to the capital of the bank and the holding therein of the person applying for the credit. The Credit Committee shall regulate conflicts of interest between banks and their significant shareholders relative to other banking activities.

**Article 54***(Inspections)*

1. The Bank of Italy may carry out inspections of banks and require them to exhibit the documents and records it deems necessary.

2. The Bank of Italy may request the competent authorities of a member state to carry out on-the-spot verifications of branches of Italian

banks established within the territory of such state or agree on other methods of verification.

3. The competent authorities of a member state, after notifying the Bank of Italy, may, directly or by way of persons engaged by them, inspect the branches established in Italy of banks which they have authorized. Where the competent authorities of a member state so request, the Bank of Italy may directly carry out on-the-spot verifications or agree on other methods of verification.

4. Subject to reciprocity, the Bank of Italy may conclude agreements with the competent authorities of non-member states on procedures for the inspection of branches of banks established in their respective territories.

5. The Bank of Italy shall give notice to Consob of notifications received pursuant to paragraph 3.

#### **Article 55**

*(Controls on Italian branches of EC banks)*

1. The Bank of Italy, in compliance with the resolutions of the Credit Committee, shall carry out controls on Italian branches of EC banks.

#### **Article 56**

*(Amendments to bylaws)*

1. The Bank of Italy shall verify that amendments to the bylaws of banks do not conflict with their sound and prudent management.

2. Procedures for entry in the Company Register may not be initiated in the absence of the verification referred to in paragraph 1.

#### **Article 57**

*(Mergers and divisions)*

1. The Bank of Italy shall authorize mergers and divisions involving banks where they are not in conflict with the principle of sound and prudent management. The application of the provisions of Legislative Decree 356 of 20 November 1990 shall be unaffected.

2. Procedures for the entry of a planned merger or division in the Company Register may not be initiated in the absence of the authorization referred to in paragraph 1.

3. The time limit established by Article 2503, first paragraph, of the Civil Code shall be reduced to fifteen days.

4. Charges and guarantees of whatever kind, by whomever granted or however existing in favour of banks absorbed by other banks, banks involved in mergers resulting in the formation of new banks or banks involved in divisions shall maintain their validity and their priority, without the need for any formality or recording, in favour, respectively, of the absorbing bank, the bank resulting from the merger or the bank benefiting from the transfer by division.

## Article 58

### *(Assignment of legal relationships)*<sup>1</sup>

1. The Bank of Italy shall issue instructions for the assignment to banks of businesses, parts of businesses, goods and legal relationships identifiable en bloc. The instructions may provide for transactions of major importance to be subject to authorization by the Bank of Italy.

2. The assignee bank shall give notice of the effected assignment by way of publication in the *Gazzetta Ufficiale della Repubblica italiana*. The Bank of Italy may establish additional forms of publication.

3. Charges and guarantees of whatever kind, by whomsoever granted or however existing in favour of the assignor, and transcriptions in public registers of purchases of assets involved in financial leasing included in the assignment shall maintain their validity and their priority in favour of the assignee without the need for any formality or recording. Special rules established for assigned claims, including those regarding legal proceedings, shall also remain applicable.<sup>2</sup>

4. For assigned debtors, publication pursuant to paragraph 2 shall have the effects referred to in Article 1264 of the Civil Code.

5. Within three months of publication pursuant to paragraph 2, assigned creditors may demand performance by the assignor or the

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<sup>1</sup> Heading as amended by Article 12.1 of Legislative Decree 342/1999.

<sup>2</sup> Paragraph as amended by Article 12.2 of Legislative Decree 342/1999.

assignee of the assigned obligations. Once the three months have expired the assignee shall be solely responsible.

6. Parties to assigned contracts may withdraw from the contract within three months of publication pursuant to paragraph 2, for good cause; in such cases the responsibility of the assignor shall be unaffected.

7. The provisions of this Article shall also apply to assignments in favour of persons, other than banks, included within the scope of consolidated supervision pursuant to Article 65 and in favour of financial intermediaries entered in the special register provided for in Article 107.<sup>1</sup>

## **Chapter II**

### **Supervision on a consolidated basis**

#### **Article 59**

##### *(Definitions)*

1. For the purposes of this Chapter:

- a) control shall exist in the cases established by Article 2359, first and second paragraphs, of the Civil Code. Article 23, paragraph 2, shall apply;
- b) “financial companies” shall mean companies which engage exclusively or primarily in: the activity of acquiring holdings having the characteristics established by the Bank of Italy in compliance with the resolutions of the Credit Committee; one or more of the activities referred to in Article 1, paragraph 2(f), subparagraphs 2 to 12; other financial activities established pursuant to subparagraph 15 of paragraph 2(f);
- c) “instrumental companies” shall mean companies which engage exclusively or primarily in activities of an auxiliary nature with respect to the business of the companies belonging to the group, including real estate management, data processing and other services.

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<sup>1</sup> Paragraph added by Article 12.3 of Legislative Decree 342/1999.

## Section I

### Banking groups

#### Article 60

*(Composition)*

1. A banking group shall be composed of either of the following:
  - a) an Italian parent bank and the banking, financial and instrumental companies it controls;
  - b) a parent financial company and the banking, financial and instrumental companies it controls where the group has a significant banking component, as established by the Bank of Italy in compliance with the resolutions of the Credit Committee.

#### Article 61

*(Parent undertaking)*

1. The parent undertaking shall be the Italian bank or the financial company having its registered office in Italy which controls the component companies of the banking group and which is not, in turn, controlled by another Italian bank or by another financial company having its registered office in Italy which can be considered a parent undertaking under paragraph 2.

2. A financial company shall be considered a parent undertaking where, among all of the companies it controls, the banking, financial and instrumental companies are of decisive importance, as established by the Bank of Italy in compliance with the resolutions of the Credit Committee.

3. Without prejudice to specific provisions governing banking, the parent undertaking shall be subject to the supervisory controls provided for in this Chapter. The Bank of Italy shall verify that the bylaws of the parent undertaking and amendments thereto are not in conflict with sound and prudent management of the group.

4. The parent undertaking, in carrying out its activity of management and coordination, shall issue rules to the components of the group for the implementation of the instructions issued by the Bank of Italy in the interest of the stability of the group. The directors of the companies belonging to the group shall supply all figures and information needed for

the issue of such rules and shall cooperate in complying with the provisions on consolidated supervision.

5. Article 52 shall apply to the board of auditors of a parent financial company.

### **Article 62**

*(Experience and integrity requirements)*

1. The provisions concerning the experience and integrity requirements for persons performing administrative, managerial or control functions in banks shall apply to persons performing such functions in parent financial companies.

### **Article 63**

*(Holdings of capital)*

1. The provisions of Title II, Chapters III and IV, concerning holdings of capital shall apply to parent financial companies.<sup>1</sup>

2. With respect to other companies belonging to the group and their members, the Bank of Italy shall have the powers referred to in Article 21.

### **Article 64**

*(Register)*

1. Banking groups shall be entered in a register kept by the Bank of Italy.

2. The parent undertaking shall notify the Bank of Italy of the existence of the banking group and of changes in its composition.

3. The Bank of Italy may proceed on its own authority to verify the existence of a banking group and enter it in the register and may establish a composition of the group different from that notified by the parent undertaking.

4. Companies belonging to the group shall indicate in their documents and correspondence that they are included in the register.

5. The Bank of Italy shall issue regulations concerning the keeping and updating of the register.

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<sup>1</sup> Article 13.1 of Legislative Decree 342/1999 replaced the words “Chapters III” with “Chapters III and IV”.

## Section II

### Scope and performance of supervision

#### Article 65

*(Persons included within the scope of consolidated supervision)*

1. The Bank of Italy shall carry out supervision on a consolidated basis with respect to the following persons:

- a) companies belonging to a banking group;
- b) banking, financial and instrumental companies at least 20 per cent of whose capital is held by companies belonging to a banking group or by an individual bank;
- c) banking, financial and instrumental companies not included in a banking group but controlled by a natural or legal person who controls a banking group or an individual bank;
- d) financial companies having their registered office in another member state which control an Italian parent undertaking or individual bank, provided such companies are included within the scope of the consolidated supervision of the Bank of Italy pursuant to Article 69;
- e) banking, financial and instrumental companies controlled by persons referred to in subparagraph d);
- f) banking, financial and instrumental companies at least 20 per cent of whose capital is held, jointly or otherwise, by persons referred to in subparagraphs d) and e);
- g) financial companies, other than the parent undertaking and companies referred to in subparagraph d), which control at least one bank;
- h) companies other than banking and financial companies which, without prejudice to the provisions of Article 19, paragraph 6, control at least one bank;
- i) companies other than banking, financial and instrumental companies where they are controlled by an individual bank or where companies belonging to a banking group or persons referred to in subparagraphs d), e), g) and h) hold, jointly or otherwise, a controlling interest.

2. The application to persons included within the scope of consolidated supervision of specific provisions concerning controls and supervision in force at the time shall be unaffected.



**Article 66***(Reporting requirements)*

1. For the purpose of carrying out supervision on a consolidated basis, the Bank of Italy shall require persons referred to in subparagraphs *a)* to *f)* of paragraph 1 of Article 65 to transmit reports, figures and any other relevant information on a periodic or other basis. The Bank of Italy may also require the persons referred to in subparagraphs *g)*, *h)* and *i)* of paragraph 1 of such Article to provide the information needed to carry out supervision on a consolidated basis.

2. The Bank of Italy shall establish the manner and time limits for the transmission of the reports, figures and information referred to in paragraph 1.

3. The Bank of Italy may require the financial statements of persons referred to in subparagraphs *a)* to *g)* of paragraph 1 of Article 65 to be audited.

4. Companies referred to in Article 65 having their registered office in Italy shall provide the parent undertaking or individual bank with the reports, figures and information needed to carry out consolidated supervision.

5. Companies having their registered office in Italy which are included within the scope of supervision on a consolidated basis by the competent supervisory authorities of other member states shall provide the persons specified by such authorities with the information needed to carry out consolidated supervision.

**Article 67***(Regulatory powers)*

1. For the purpose of carrying out consolidated supervision, the Bank of Italy, in compliance with the resolutions of the Credit Committee, may, by way of general or specific regulations, issue instructions to the parent undertaking concerning the banking group as a whole or its components with regard to:

- a)* capital adequacy;
- b)* the limitation of risk in its various forms;
- c)* permissible holdings;
- d)* administrative and accounting procedures and internal control mechanisms.

2. The regulations issued pursuant to paragraph 1 may provide for certain transactions to be subject to authorization by the Bank of Italy.

3. The regulations issued by the Bank of Italy for the carrying out of supervision on a consolidated basis may take account, also with reference to an individual bank, of the situation and activities of persons referred to in subparagraphs *b)* to *g)* of paragraph 1 of Article 65.

### **Article 68**

#### *(Inspections)*

1. For the purposes of supervision on a consolidated basis, the Bank of Italy may carry out inspections of persons referred to in Article 65 and require them to exhibit the documents and records it deems necessary. Inspections of companies other than banking, financial and instrumental companies shall be for the exclusive purpose of verifying the accuracy of figures and information provided for the consolidation.

2. The Bank of Italy may request the competent authorities of a member state to carry out on-the-spot verifications of persons referred to in paragraph 1 established within the territory of such state or agree on other methods of verification.

3. The Bank of Italy, upon request of the competent authorities of other member or non-member states may carry out inspections of companies having their registered office in Italy which are included within the scope of supervision on a consolidated basis by the requesting supervisory authorities. The Bank of Italy may allow the verifications to be carried out by the requesting authorities, an auditor or an expert.<sup>1</sup>

### **Article 69**

#### *(Cooperation between authorities)*

1. The Bank of Italy may conclude agreements with the supervisory authorities of other member states on forms of cooperation and the allocation of specific tasks to each authority with regard to the application of supervision on a consolidated basis to groups operating in more than one country.

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<sup>1</sup> Paragraph as amended by Article 14.1 of Legislative Decree 342/1999.

**TITLE IV****CRISIS PROCEDURES****Chapter I****Banks****Section I****Special administration****Article 70***(The decree)*

1. The Minister of the Treasury, acting on a proposal from the Bank of Italy, may issue a decree dissolving the administrative and control bodies of a bank where:

- a) serious administrative irregularities or serious violations of laws, regulations or bylaws governing the bank's activity are found;
- b) serious capital losses are expected;
- c) the dissolution has been the object of a reasoned request by the administrative bodies or an extraordinary general meeting.

2. The functions of the general meetings and other governing bodies different from those specified in paragraph 1 shall be suspended by effect of the special administration decree, except as provided for in Article 72, paragraph 6.

3. The decree of the Minister of the Treasury and the proposal of the Bank of Italy shall be notified by the special administrators to interested parties upon request, but not before their installation<sup>1</sup> pursuant to Article 73.

4. The decree of the Minister of the Treasury shall be published in abridged form in the *Gazzetta Ufficiale della Repubblica italiana*.

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<sup>1</sup> Article 64.6 of Legislative Decree 415/1996 replaced the words "taking over" with "installation".

5. Special administration shall last for one year from the date of issue of the decree provided for in paragraph 1, unless the decree establishes a shorter period or the Bank of Italy authorizes early closure. In exceptional cases the procedure may be extended by the same process as specified in paragraph 1 for a period of up to six months; the provisions of paragraphs 3 and 4 shall apply insofar as they are compatible.

6. The Bank of Italy may extend the time limit of the procedure by up to two months, even if it has been extended pursuant to paragraph 5, for the acts related to the closure of the procedure, provided the manner of their performance has already been approved by the Bank of Italy.

7. Neither Title IV of the Bankruptcy Law nor Article 2409 of the Civil Code shall apply to banks. Where there is a well-founded suspicion of serious irregularities on the part of directors of a bank or members of its board of auditors in the performance of their duties, members representing one twentieth of the bank's capital, or one fiftieth in the case of banks whose shares are listed on a stock exchange, may file a complaint with the Bank of Italy, which shall issue a reasoned decision.

#### **Article 71**

##### *(Bodies responsible for the procedure)*

1. Within fifteen days of the date of the decree referred to in Article 70, paragraph 1, the Bank of Italy shall issue an order appointing:

- a) one or more special administrators;
- b) an oversight committee composed of between three and five members, which shall appoint its own chairman by majority vote.

2. The Bank of Italy's order and the resolution of the oversight committee appointing its chairman shall be published in abridged form in the *Gazzetta Ufficiale della Repubblica italiana*. Within fifteen days of receipt of notice of their appointment the special administrators shall deposit a copy of the order appointing the bodies responsible for the procedure and of the resolution appointing the chairman of the oversight committee for entry in the Company Register; within the same time limit they shall deposit their signatures. Within fifteen days thereafter notice of the entry shall be published in the official Company Bulletins.

3. The Bank of Italy may remove or replace the special administrators and the members of the oversight committee.

4. The emoluments due to the special administrators and the members of the oversight committee shall be determined by the Bank of Italy in

accordance with criteria it establishes and shall be charged to the bank subjected to the procedure.

5. The Bank of Italy, pending instalment of the special bodies, may appoint one of its own officers as provisional administrator, who shall have the same powers as special administrators. Article 70, paragraph 3, and Article 72, paragraph 9, shall apply.

6. The integrity requirements established pursuant to Article 26 shall apply to the bodies responsible for the procedure.<sup>1</sup>

## **Article 72**

### *(Powers and functioning of the special bodies)*

1. The special administrators shall perform the functions and exercise the powers of the dissolved administrative bodies of the bank. They shall ascertain the bank's situation, eliminate irregularities and promote solutions that are in the interest of the depositors. In the performance of their functions the special administrators shall be public officials.

2. The oversight committee shall take the place of the dissolved control bodies in all their functions and shall give opinions to the special administrators in the cases provided for in this Section or in the directions of the Bank of Italy.

3. The functions of the special bodies shall commence with their installation pursuant to Article 73, paragraphs 1 and 2,<sup>2</sup> and shall cease with their handing the bank over to the bodies that succeed them.

4. The Bank of Italy, by way of instructions to the special administrators or to the members of the oversight committee, may establish special safeguards and limitations on the management of the bank. The members of the special bodies shall be personally responsible for failure to observe the directions of the Bank of Italy; third parties without knowledge of the Bank's directions shall not be prejudiced.

5. Legal action for liability against members of the dissolved administrative and control bodies of the bank under Article 2393 of the Civil Code shall be brought by the special administrators after consulting the oversight committee, subject to authorization by the Bank of Italy. The administrative bodies that succeed the special administrators shall carry on

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<sup>1</sup> Paragraph added by Article 15.1 of Legislative Decree 342/1999.

<sup>2</sup> Article 64.7 of Legislative Decree 415/1996 replaced the words "taking over pursuant to Article 73" with "installation pursuant to Article 73, paragraphs 1 and 2".

the legal actions initiated by the latter and shall report on their progress to the Bank of Italy.

6. The special administrators, subject to authorization by the Bank of Italy, may convene the general meetings and other governing bodies referred to in Article 70, paragraph 2. The agenda shall be established exclusively by the special administrators and may not be modified by the governing body convened.

7. Where more than one special administrator is appointed, such administrators shall decide by majority vote of those in office and their powers of representation shall be validly exercised upon the joint signature of any two of them. The possibility of delegating authority to one or more special administrators for all or some categories of operation shall be unaffected.

8. Resolutions of the oversight committee shall be adopted by majority vote of the members in office; where there is a tie the vote of the chairman shall decide.

9. Civil actions against the special administrators and members of the oversight committee for acts performed in the conduct of their official duties shall be brought subject to authorization by the Bank of Italy.

### **Article 73** *(Initial duties)*

1. The special administrators shall install themselves by taking over the bank from the dissolved administrative bodies with a summary procès-verbal.<sup>1</sup> The special administrators shall acquire a set of accounts. At least one member of the oversight committee shall be present during these operations.

2. Where the absence of the dissolved administrative bodies or any other reason precludes the handing over of the bank, the special administrators shall install themselves on their own authority with the assistance of a notary and, where necessary, of law-enforcement authorities.

3. The provisional administrator shall take charge of the management of the bank and hand over the bank to the special administrators in the manner provided for in paragraphs 1 and 2.

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<sup>1</sup> Sentence as amended by Article 64.8 of Legislative Decree 415/1996.

4. Where the financial statements for the accounting period ended prior to the beginning of special administration have not been approved, the special administrators shall file with the clerk of the court, in place of the financial statements, a report on the bank's assets and liabilities and profits and losses, prepared on the basis of the information available. The report shall be accompanied by a report of the oversight committee. In no case shall profits be distributed.

#### **Article 74**<sup>1</sup>

*(Suspension of payments)*

1. In exceptional circumstances the special administrators, in order to protect the interests of creditors, may suspend payment of the bank's liabilities of whatever kind and the restitution to customers of financial instruments connected with services referred to in the legislative decree transposing Directive 93/22/EEC. The measure shall be adopted after consulting the oversight committee and subject to authorization by the Bank of Italy, which may issue directions for its implementation. The suspension shall be for a period of up to one month, which may be extended in the same manner for an additional two months.

2. During the suspension period forced executions or actions to perfect security interests involving the bank's properties or customers' securities may not be initiated or prosecuted. During the same period mortgages may not be registered on the bank's immovable property nor may any other rights of preference on the bank's movable property be acquired, except in the case of enforceable court orders issued prior to the beginning of the suspension period.

3. The suspension shall not constitute insolvency.

#### **Article 75**

*(Final duties)*

1. At the end of the procedure the special administrators and the oversight committee shall prepare separate reports and transmit them to the Bank of Italy. The Bank of Italy shall arrange for the closure of special administration to be made public by way of a notice in the *Gazzetta Ufficiale della Repubblica italiana*.

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<sup>1</sup> Article as amended by Article 64.9 of Legislative Decree 415/1996.

2. The closure of the accounting period in progress at the start of special administration shall be delayed for all legal purposes until the end of the procedure. The special administrators shall draw up the financial statements which shall be submitted to the Bank of Italy for its approval within four months of the closure of the procedure and published as required by law. The accounting period to which the financial statements drawn up by the special administrators refer shall constitute a single tax period. Within one month of approval by the Bank of Italy the bodies that succeed the special administrators shall file the income tax return relative to such period in accordance with the tax laws in force at the time.

3. The special administrators, before ceasing their functions, shall provide for the reconstitution of the bank's ordinary governing bodies. The succeeding bodies shall take over the bank from the special administrators in the manner provided for in Article 73, paragraph 1.

#### **Article 76<sup>1</sup>**

##### *(Provisional management)*

1. Without prejudice to what is established by the preceding Articles, in the cases specified in Article 70, paragraph 1, and as a matter of urgency the Bank of Italy may provide for one or more administrators to take over the provisional management of the bank with the powers of the administrative bodies. During such time the functions of the administrative and control bodies shall be suspended. Officers of the Bank of Italy may be appointed as administrators. In the performance of their functions the administrators shall be public officials.

2. Provisional management may not last for more than two months. Article 71, paragraphs 2, 3, 4 and 6, Article 72, paragraphs 3, 4, 7 and 9, Article 73, paragraphs 1 and 2, Article 74 and Article 75, paragraph 1, shall apply insofar as they are compatible.

3. Where the administrative and control bodies are dissolved pursuant to Article 70, paragraph 1, during provisional management, the administrators referred to in paragraph 1 shall have the same powers as those conferred on the provisional administrator provided for in Article 71, paragraph 5.

4. At the end of provisional management the succeeding bodies shall take over the bank from the administrators referred to in paragraph 1 in the manner provided for in Article 73, paragraph 1.

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<sup>1</sup> Article as amended by Article 16.1 of Legislative Decree 342/1999.



**Article 77**

*(Branches of non-EC banks)*

1. In the case of special administration of branches of non-EC banks established in Italy, the special administrators and the oversight committee shall assume the powers of the administrative and control bodies of the parent bank with regard to such branches.

2. The provisions of this Section shall apply insofar as they are compatible.

**Section II****Special measures****Article 78**

*(Banks authorized in Italy)*

1. The Bank of Italy may prohibit banks authorized in Italy from undertaking new transactions or order the closure of branches for violation of laws, regulations or bylaws governing their activities, for management irregularities or, in the case of branches of non-EC banks, for insufficiency of funds.

**Article 79**

*(EC banks)*

1. In the case of violations by EC banks of the rules concerning branches or the provision of services within Italy, the Bank of Italy may order the bank to put an end to such irregularities and shall inform the competent authorities of the member state in which the bank has its registered office so that any necessary measures may be taken.

2. Where the competent authorities take no measures or measures that prove inadequate, where the irregularities committed could jeopardize the general good, or where it is a matter of urgency to protect the interests of depositors, investors and others to whom services are provided, the Bank of Italy shall adopt the necessary measures, including the prohibition of

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new transactions and the closure of the branch and shall give notice to the competent authorities of such measures.

### Section III

#### Compulsory administrative liquidation

##### Article 80

*(The decree)*

1. The Minister of the Treasury, acting on a proposal from the Bank of Italy, may issue a decree revoking authorization to engage in banking and ordering the compulsory administrative liquidation of banks, even where special administration is in effect, or liquidation under the ordinary rules, where the administrative irregularities or the violations of laws, regulations or bylaws or the losses referred to in Article 70 are exceptionally serious.

2. Compulsory liquidation may be ordered in the manner provided for in paragraph 1 upon a reasoned request by the administrative bodies, the extraordinary general meeting, the special administrators or the liquidators.

3. The decree of the Minister of the Treasury and the proposal of the Bank of Italy shall be notified by the liquidators to interested parties upon request, but not before their installation<sup>1</sup> pursuant to Article 85.

4. The decree of the Minister of the Treasury shall be published in abridged form in the *Gazzetta Ufficiale della Repubblica italiana*.

5. From the date of issue of the decree the functions of the administrative and control bodies, general meetings and every other governing body of the bank shall cease. The provisions of Article 93, paragraph 1, and Article 94, paragraph 2, shall be unaffected.

6. Banks shall not be subject to insolvency proceedings other than compulsory liquidation as provided for in this Section; for matters not expressly provided for herein, the provisions of the Bankruptcy Law shall apply insofar as they are compatible.

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<sup>1</sup> Article 64.10 of Legislative Decree 415/1996 replaced the words “taking over” with “installation”.

**Article 81***(Bodies responsible for the procedure)*

1. The Bank of Italy shall appoint:

- a) one or more liquidators;
- b) an oversight committee composed of between three and five members, which shall appoint its own chairman by majority vote.

2. The Bank of Italy's order and the resolution of the oversight committee appointing its chairman shall be published in abridged form in the *Gazzetta Ufficiale della Repubblica italiana*. Within fifteen days of receipt of notice of their appointment the liquidators shall deposit a copy of the decree of the Minister of the Treasury, of the order appointing the bodies responsible for the compulsory liquidation procedure and of the resolution appointing the chairman of the oversight committee for entry in the Company Register; within the same time limit the liquidators shall deposit their signatures. Within fifteen days thereafter notice of the entry shall be published in the official Company Bulletins.

3. The Bank of Italy may remove or replace the liquidators and the members of the oversight committee.

4. The emoluments due to the liquidators and the members of the oversight committee shall be determined by the Bank of Italy in accordance with the criteria it establishes and shall be charged to the liquidation.

**Article 82***(Judicial finding of insolvency)*

1. Where a bank not subject to compulsory administrative liquidation is insolvent, the court of the place where the bank has its registered office, upon request by one or more creditors, upon petition of the public prosecutor or on its own authority, shall declare insolvency by way of a ruling in camera after consulting the Bank of Italy and the legal representatives of the bank. Where the bank is under special administration, the court may also declare insolvency upon petition of the special administrators after consulting the special administrators, the Bank of Italy and the superseded legal representatives of the bank. The provisions of the first paragraph, second sentence, and of the third, fourth, fifth, sixth and eighth paragraphs of Article 195 of the Bankruptcy Law shall apply.

2. Where a bank, even if it is of a public nature, is insolvent at the time a compulsory administrative liquidation decree is issued and insolvency has not been declared under paragraph 1, the court of the place where the bank has its registered office, upon petition of the liquidators or of the public prosecutor or on its own authority, shall issue a finding of insolvency by way of a ruling in camera after consulting the Bank of Italy and the superseded legal representatives of the bank. The provisions of the third, fourth, fifth and sixth paragraphs of Article 195 of the Bankruptcy Law shall apply.

3. A judicial declaration of insolvency under the preceding paragraphs shall have the effects referred to in Article 203 of the Bankruptcy Law.

#### **Article 83**<sup>1</sup>

*(Effects of the decree on the bank, creditors and pre-existing legal relationships)*

1. From the date of the installation of the liquidating bodies pursuant to Article 85, and in any case from the third day following the date of issue of the compulsory administrative liquidation decree, payment of liabilities of whatever kind and the restitution of third parties' assets shall be suspended.

2. From the time limit referred to in paragraph 1, Articles 42, 44, 45 and 66 and the provisions of Title II, Chapter III, Sections II and IV, of the Bankruptcy Law shall apply.

3. From the time limit referred to in paragraph 1, no actions against the bank in liquidation may be brought or prosecuted, except as provided for in Articles 87, 88 and 89 and paragraph 3 of Article 92, nor may forced executions or actions to perfect security interests in the bank's properties be initiated or prosecuted on any grounds. For civil actions of any kind deriving from the liquidation, the only competent court shall be the court of the place where the bank has its registered office.

#### **Article 84**

*(Powers and functioning of the liquidating bodies)*

1. The liquidators shall be vested with the legal representation of the bank, perform all actions pertaining to it and carry out the operations of the liquidation. In the performance of their functions the liquidators shall be public officials.

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<sup>1</sup> Article as amended by Article 64.11 of Legislative Decree 415/1996.

2. The oversight committee shall assist the liquidators in the performance of their functions, supervise their actions and give opinions in the cases referred to in this Section or in the directions of the Bank of Italy.

3. The Bank of Italy may issue directives concerning the implementation of the procedure and establish that some categories of operation and action shall be subject to its authorization and preliminary consultation with the oversight committee. The members of the liquidating bodies shall be personally responsible for failure to observe the directives of the Bank of Italy; third parties without knowledge of the Bank's directives shall not be prejudiced.

4. The liquidators shall present annually to the Bank of Italy a report on the bank's accounts and assets and liabilities, and on the progress of the liquidation, accompanied by a report of the oversight committee.

5. Legal action for liability against members of the dissolved administrative and control bodies of the bank under Articles 2393 and 2394 of the Civil Code shall be brought by the liquidators after consulting the oversight committee, subject to authorization by the Bank of Italy.

6. Article 72, paragraphs 7, 8 and 9, shall apply to the liquidators and the oversight committee.

7. In carrying out the procedure, the liquidators, subject to authorization by the Bank of Italy and with the approval of the oversight committee, may avail themselves, on their own responsibility, of the assistance of third parties, whose fees shall be charged to the liquidation. In exceptional cases the liquidators, subject to authorization by the Bank of Italy, may at their own expense delegate the performance of individual actions to third parties.

### **Article 85**

#### *(Initial duties)*

1. The liquidators shall install themselves by taking over the bank from the dissolved administrative bodies or from the ordinary liquidating bodies with a summary procès-verbal.<sup>1</sup> The liquidators shall acquire a set of accounts and shall then take the inventory.

2. Article 73, last sentence of paragraph 1 and paragraphs 2 and 4, shall apply.

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<sup>1</sup> Sentence as amended by Article 64.12 of Legislative Decree 415/1996.

**Article 86**  
*(Assessment of liabilities)*

1. Within one month of their appointment the liquidators shall notify each creditor, by registered letter with acknowledgment of receipt, of the amounts payable to each as they appear in the accounting records and documents of the bank. The notice shall be understood to be given subject to reservation of the right to contest creditors' claims.

2. Similar notice shall be sent to persons appearing to hold property rights with respect to assets and financial instruments in the bank's possession connected with services referred to in Legislative Decree 58 of 24 February 1998<sup>1</sup> and to customers entitled to the restitution of such financial instruments.<sup>2</sup>

3. The Bank of Italy may establish additional forms of disclosure for the purpose of making known the time limits within which creditors must submit proof of claim in accordance with paragraph 5.

4. Within fifteen days of receipt of the registered letter the creditors and holders of rights referred to in paragraph 2 may present or send, by registered mail with acknowledgment of receipt, their claims to the liquidators accompanied by supporting documentation.

5. Within sixty days of the publication of the liquidation decree in the *Gazzetta Ufficiale della Repubblica italiana* the creditors and holders of rights referred to in paragraph 2 who have not received notice under paragraphs 1 and 2 shall request the liquidators, by way of a registered letter with acknowledgment of receipt, to allow their claims and restore their assets, presenting documents which prove the existence, nature and extent of their rights.

6. The liquidators, within thirty days from the expiry of the limitation period referred to in paragraph 5, shall present to the Bank of Italy, after consulting the superseded directors of the bank, the list of admitted creditors and the amounts of the claims allowed for each, indicating the existence and order of rights of preference, as well as the lists of the holders of rights referred to in paragraph 2 and of the persons whose request for allowance of their claims has been denied. Customers entitled to the restitution of financial instruments connected with services referred

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<sup>1</sup> Article 17.1 of Legislative Decree 342/1999 replaced the words "legislative decree transposing Directive 93/22/EEC" with "Legislative Decree 58/1998".

<sup>2</sup> Paragraph as amended by Article 64.13 of Legislative Decree 415/1996.

to in Legislative Decree 58 of 24 February 1998<sup>1</sup> shall be entered in a special separate section of the statement of liabilities.<sup>2</sup>

7. Within the time limit referred to in paragraph 6 the liquidators shall file the lists of preferred creditors and holders of rights referred to in paragraph 2, as well as of the persons belonging to the same categories whose request for allowance of their claims has been denied, with the clerk of the court of the place where the bank has its registered office for inspection by those having entitlement.

8. Subsequently, the liquidators, by way of a registered letter with acknowledgment of receipt, shall notify their decision without delay to those whose request for allowance of their claims has been denied in whole or in part. The filing of the statement of liabilities shall be made public by way of a notice in the *Gazzetta Ufficiale della Repubblica italiana*.

9. Once the acts referred to in paragraphs 6 and 7 have been completed, the statement of liabilities shall be enforceable.

#### **Article 87**

##### *(Objections to the statement of liabilities)*

1. Persons whose claims have not been allowed in whole or in part may present objections to the statement of liabilities regarding their own position and to the recognition of rights in favour of persons included in the lists referred to in Article 86, paragraph 7, within fifteen days of receipt of the registered letter referred to in Article 86, paragraph 8, and persons whose claims have been admitted may present objections within the same time limit starting from the publication of the notice referred to in Article 86, paragraph-8.

2. Objections shall be presented by filing with the clerk of the court a petition to the president of the court of the place where the bank has its registered office.

3. The president of the court shall assign all actions relating to the same liquidation to a single examining magistrate. In courts which are divided into sections, the president shall assign the actions to one section whose president shall then designate a single examining magistrate. The examining magistrate shall issue an order setting the date of a hearing at which the liquidators and parties shall appear before him, give notice of the order to the objecting party at least fifteen days prior to the date of the

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<sup>1</sup> Article 17.1 of Legislative Decree 342/1999 replaced the words “legislative decree transposing Directive 93/22/EEC” with “Legislative Decree 58/1998”.

<sup>2</sup> Last period added by Article 64.14 of Legislative Decree 415/1996.

hearing and set a time limit within which notice of the petition and the order shall be given to the liquidators and the parties. The objecting party shall file an appearance at least five working days prior to the date of the hearing or the objection will be deemed to have been withdrawn.

4. The examining magistrate shall prepare the various actions in objection and submit them to the panel to be decided in a single judgment. However, where a number of objections are ready for decision and others require additional preparation, the magistrate shall issue an order separating the actions and submitting those that are ready for decision to the panel.

5. Where necessary to the decision of contested claims, the magistrate shall require the liquidators to exhibit an extract of the list of unsecured creditors referred to in Article 86, paragraph 6; the list shall not be filed.

#### **Article 88**

*(Appeals and petitions for cassation)*

1. Appeals by the parties or the liquidators from the judgment of the court may be filed within fifteen days of the date of notification of the judgment. Article 87, paragraph 4 insofar as it is compatible, and paragraph 5, shall apply to appellate proceedings.

2. The limitation period for filing petitions for cassation shall be reduced by half and shall run from the date of notification of the appellate judgment.

3. Judgments issued at each level on objections shall be enforceable where appeals may no longer be taken.

4. For matters not expressly provided for in this Article or Article 87, actions in objection shall be subject to the provisions of the Code of Civil Procedure concerning civil trials.

#### **Article 89<sup>1</sup>**

*(Late petitions)*

1. After the filing of the statement of liabilities and until such time as all allotments and restitutions have been completed, creditors and holders of rights referred to in Article 86, paragraph 2, who have not received notice under Article 86, paragraph 8, and who have not been included in

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<sup>1</sup> Article as amended by Article 64.15 of Legislative Decree 415/1996.



the statement of liabilities may seek to enforce their rights in accordance with Article 87, paragraphs 2 to 5, and Article 88. Such persons shall sustain the expenses caused by the delay in filing the petition unless they are not responsible for the delay.

### **Article 90**

#### *(Liquidation of assets)*

1. The liquidators shall have all the powers necessary to realize the bank's assets.

2. The liquidators, with the favourable opinion of the oversight committee and subject to authorization by the Bank of Italy, may assign assets and liabilities, the business or parts of the business, as well as assets and legal relationships identifiable en bloc. Assignments may be effected at any stage of the procedure, including prior to the filing of the statement of liabilities; the assignee shall be responsible only for liabilities appearing in the statement of liabilities. The provisions of Article 58, paragraphs 2, 3 and 4, shall apply even where the assignee is not a bank or one of the other persons referred to in paragraph 7 thereof.<sup>1</sup>

3. Where necessary and to assure the best realization of the bank's assets, the liquidators, subject to authorization by the Bank of Italy, may continue the business of the undertaking or of certain branches of activity, in accordance with the cautionary recommendations of the oversight committee. The continuation of the business of the undertaking decided at the installation of the liquidating bodies within the time limit established by Article 83, paragraph 1, excludes the dissolution by operation of law of pre-existing legal relationships that is provided for in the legislation referred to in paragraph 2 of such article.<sup>2</sup>

4. Also for the purpose of paying allotments to persons having entitlement, the liquidators may contract loans, undertake other kinds of borrowing operations and offer the bank's assets as security, in accordance with the directions and cautionary recommendations of the oversight committee and subject to authorization by the Bank of Italy.

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<sup>1</sup> The words "or one of the other persons referred to in paragraph 7 thereof" were added by Article 18.1 of Legislative Decree 342/1999.

<sup>2</sup> Sentence added by Article 64.16 of Legislative Decree 415/1996.

**Article 91**<sup>1</sup>*(Restitution and allotment of assets)*

1. The liquidators shall restitute assets as well as financial instruments connected with services referred to in Legislative Decree 58 of 24 February 1998 and allot the bank's liquidated assets in the order established by Article 111 of the Bankruptcy Law. Emoluments and refunds due to the bodies responsible for the special administration procedure and to the administrators of the provisional management that preceded the compulsory administrative liquidation, if any, shall be treated as equivalent to expenses referred to in Article 111, paragraph 1, subparagraph 1, of the Bankruptcy Law.<sup>2</sup>

2. Where the separation of the bank's assets from those of customers entered in the special section of the statement of liabilities is respected in accordance with Article 19 of Legislative Decree 58 of 24 February 1998<sup>3</sup> but the separation by customer of the assets of such customers is not respected or the financial instruments are not sufficient to effect all the restitutions, the liquidators shall, where possible, effect restitutions in conformity with paragraph 1 pro rata according to the rights on the basis of which each customer has been admitted to the special section of the statement of liabilities or liquidate the financial instruments belonging to customers and allot the proceeds on the same pro rata basis.

3. Customers entered in the special section of the statement of liabilities shall participate with unsecured creditors in conformity with Article 111, paragraph 1, subparagraph 3 of the Bankruptcy Law, in full where the separation of the bank's assets from those of customers is not respected, and for the part of their rights not satisfied in the cases provided for in paragraph 2.

4. The liquidators, after consulting the oversight committee and subject to authorization by the Bank of Italy, may make partial allotments and restitutions to all the persons having entitlement or to certain

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<sup>1</sup> Article as amended by Article 64.17 of Legislative Decree 415/1996.

<sup>2</sup> Paragraph as amended by Article 19.1 of Legislative Decree 342/1999.

<sup>3</sup> Article 19.2 of Legislative Decree 342/1999 replaced the words "legislative decree transposing Directive 93/22/EEC" with "Legislative Decree 58/1998". The provisions concerning the separation of assets previously contained in Article 19 of the legislative decree transposing Directive 93/22/EEC (Legislative Decree 415/1996) are currently contained in Article 22 of Legislative Decree 58/1998.

categories of such persons, even before all the assets have been realized and all the liabilities assessed.

5. Without prejudice to the provisions of paragraphs 8, 9 and 10, the allotments and restitutions must not jeopardize the possibility of final assignment of the quotas and assets due to all the persons having entitlement.

6. In effecting allotments and restitutions where there are claims of creditors or other interested parties whose admission to the statement of liabilities has not been decided, the liquidators shall set aside the amounts and the financial instruments corresponding to the allotments and restitutions not effected to such persons for distribution or restitution to them in the event of recognition of their rights or, failing such recognition, for release to the persons having entitlement.

7. In the cases referred to in paragraph 6, the liquidators, with the favourable opinion of the oversight committee and subject to authorization by the Bank of Italy, may acquire suitable guarantees in substitution of the amounts set aside.

8. Claims and requests presented after the expiry of the limitation periods established by Article 86, paragraphs 4 and 5, shall be eligible to participate only in subsequent allotments and restitutions, if any, and to the extent allowed by the liquidators, or, after the filing of the statement of liabilities, by the judge deciding on objections presented under Article 87, paragraph 1.

9. Persons who file late proof of claim under Article 89 shall participate only in such allotments and restitutions as may be effected after the filing of the petition.

10. In the cases referred to in paragraphs 8 and 9, property rights and rights of preference shall be enforceable where the assets to which they refer have not been disposed of.

11. Until the financial instruments under management by the bank have been restituted or liquidated, the liquidators shall arrange for them to be managed with a view to minimizing risk.

**Article 92**<sup>1</sup>  
(Final duties)

1. Once the assets have been realized and before the last allotment to the creditors or the last restitution to customers, the liquidators shall present the closing statement of accounts of the liquidation, the statement of source and application of funds and the allotment plan, accompanied by their own report and a report by the oversight committee, to the Bank of Italy, which shall authorize the filing of the above documents with the clerk of the court. The liquidation shall constitute a single accounting period, also for tax purposes; within one month of the filing the liquidators shall present the income tax return for the period in accordance with the tax laws in force at the time.

2. The filing shall be made public by way of a notice in the *Gazzetta Ufficiale della Repubblica Italiana*. The Bank of Italy may establish additional forms of publication.

3. Within twenty days of publication in the *Gazzetta Ufficiale della Repubblica Italiana* interested parties may initiate legal actions by filing a petition with the court. The provisions of Article 87, paragraphs 2 to 5, and Article 88 shall apply.

4. Once the limitation period referred to has expired without the initiation of legal actions or once such actions have been decided by an enforceable judgment, the liquidators shall proceed with the final allotment or restitution in accordance with the provisions of Article 91.

5. Amounts and instruments which cannot be distributed shall be deposited in the manner established by the Bank of Italy for subsequent distribution to persons having entitlement without prejudice to the provisions of Article 91, paragraph 7.

6. Articles 2456 and 2457 of the Civil Code shall apply.

7. The fact that petitions and judgements are pending, including the judgement on the state of insolvency, shall not preclude performance of the final duties provided for in the preceding paragraphs and the closure of the compulsory administrative liquidation procedure. Such closure shall be subject to the setting aside of amounts or the acquisition of guarantees in accordance with Article 91, paragraphs 6 and 7.

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<sup>1</sup> Article as amended by Article 64.18 of Legislative Decree 415/1996.

8. After the closure of the liquidation procedure the liquidators shall maintain their legitimacy in subsequent legal proceedings in the same or higher courts. Articles 72, paragraphs 7 and 9, 81, paragraphs 3 and 4, and 84, paragraphs 1, 3 and 7 of this decree shall apply to the liquidators in the performance of the activities connected with such proceedings.

9. In the event of assignments under Article 90, paragraph 2, of this decree, the liquidators shall be excluded, at their request, from judgements concerning the legal relationships assigned if the assignee has succeeded.

### **Article 93**

#### *(Composition with creditors)*

1. At any stage of the compulsory liquidation the liquidators, after obtaining the opinion of the oversight committee, or of the bank itself in accordance with Article 152, second paragraph, of the Bankruptcy Law, and that of the liquidating bodies, may propose a composition with creditors to the court of the place where the undertaking has its registered office. The proposed composition must be authorized by the Bank of Italy.

2. The proposed composition must indicate the percentage to be offered to unsecured creditors, the time of payment and any guarantees.

3. The obligation to pay the quotas indicated in the composition may be assumed by third parties with the total or partial release of the debtor bank. In such case, actions by the creditors for the execution of the composition may be brought only against the assignees within the limits of their respective quotas.

4. The proposed composition and the opinion of the liquidating bodies shall be filed with the clerk of the court. The Bank of Italy may establish other forms of publication.

5. Within thirty days of the filing interested parties may present objections by filing a petition with the clerk of the court, notice of which shall be given to the liquidator.

6. The court shall decide with a judgment in camera on the proposed composition, taking account of the objections and of the opinion on the latter rendered by the Bank of Italy. The judgment shall be made public by way of filing with the clerk of the court and by other means established by the court. Notice of the filing shall be given in writing to the liquidators and to objecting parties by the clerk of the court. Article 88, paragraph 1, first sentence, and paragraphs 2, 3 and 4, shall apply.

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7. During the composition procedure the liquidators may effect partial distribution of assets as provided for in Article 91.

#### **Article 94**

*(Implementation of the composition and closure of the procedure)*

1. The liquidators, assisted by the oversight committee, shall supervise the implementation of the composition in accordance with the directives of the Bank of Italy.

2. Once the composition has been implemented, the liquidators shall convene a meeting of the members of the bank to adopt a resolution modifying the corporate purpose in relation to the revocation of the authorization to engage in banking. Where the modification of the corporate purpose is not effected, the liquidators shall take the measures referred to in Articles 2456 and 2457 of the Civil Code.

3. Article 92, paragraph 5, of this Legislative Decree and Article 215 of the Bankruptcy Law shall apply.

#### **Article 95**

*(Branches of foreign banks)*

1. Where the competent authorities have revoked an EC bank's authorization to engage in banking, the Italian branches of the bank may be subjected to compulsory administrative liquidation pursuant to the provisions of this Section insofar as they are compatible.

2. Branches of non-EC banks shall be subject to the provisions of this Section insofar as they are compatible.

**Section IV**<sup>1</sup>**Depositor guarantee schemes****Article 96**<sup>2</sup>*(Deposit protection schemes)*

1. Italian banks shall join one of the depositor guarantee schemes established and recognized in Italy.

2. Branches of EC banks operating in Italy may join an Italian guarantee scheme for the purpose of supplementing the protection offered by the guarantee scheme of their home member state.

3. Branches of non-EC banks authorized in Italy shall join an Italian guarantee scheme unless they participate in an equivalent foreign guarantee scheme.

4. Guarantee schemes shall be private-law entities. The financial resources for the pursuit of their purposes shall be provided by participating banks.

5. The members of the governing bodies and those who work for guarantee schemes shall be bound by professional secrecy with regard to all the information and figures such schemes possess by virtue of their institutional activity.

**Article 96-bis**<sup>3</sup>*(Interventions)*

1. Guarantee schemes shall make payments in cases of compulsory administrative liquidation of banks authorized in Italy. For branches of EC banks in Italy which are members of an Italian guarantee scheme on a supplementary basis, payments shall be made where the guarantee scheme of the home member state has intervened. Guarantee schemes may provide for additional cases and forms of intervention.

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<sup>1</sup> Section added by Article 2 of Legislative Decree 659/1996.

<sup>2</sup> Article as amended by Article 2 of Legislative Decree 659/1996.

<sup>3</sup> Article added by Article 2 of Legislative Decree 659/1996.

2. Guarantee schemes shall protect depositors of EC branches of Italian banks; they may also provide protection for depositors of non-EC branches of Italian banks.

3. Claims relative to repayable funds acquired by banks in the form of deposits or other forms and to bankers' drafts or other similar credit instruments shall be eligible for payment.

4. The following shall be excluded from protection:

- a) bearer deposits and other repayable bearer funds;
- b) bonds and claims arising from acceptances, promissory notes and securities transactions;
- c) the bank's share capital, reserves and other elements of capital;
- d) deposits arising from transactions for which there has been a conviction for crimes referred to in Articles 648 *bis* and 648 *ter* of the Penal Code;
- e) deposits from central government departments, regions, provinces and municipalities and other local authorities;
- f) deposits made by banks in their own name and on their own behalf as well as banks' claims;
- g) deposits from: financial companies referred to in Article 59, paragraph 1, subparagraph b); insurance companies; collective investment undertakings; other companies of the same banking group;
- h) deposits, including those made by nominees, from members of the governing bodies and senior managers of the bank or of the banking group's parent undertaking;
- i) deposits, including those made by nominees, from members who hold at least 5 per cent of the share capital of the bank;
- l) deposits for which the depositor has, on an individual basis, obtained from the bank rates and conditions which helped to aggravate the bank's financial situation on the basis of the findings of the liquidators.

5. The maximum payment for each depositor may not be less than two hundred million lire.

6. Claims not excluded pursuant to paragraph 4 which are enforceable against the bank in compulsory administrative liquidation in accordance with the provisions of Section III of this Title shall be eligible for payment.

7. Payment shall be made, up to an amount equivalent to ECU 20,000, within three months of the date of the decree of compulsory administrative



liquidation. The time limit may be extended by the Bank of Italy in exceptional circumstances or special cases for a period not exceeding a total of nine months. The Bank of Italy shall establish the procedures and time limits for payment of the balance due and shall revise the ECU 20,000 limit in order to adjust it to any changes in Community legislation.

8. Guarantee schemes shall succeed to the rights of depositors in respect of the bank in compulsory administrative liquidation within the limits of the payments made and, within such limits, shall have priority in receiving allotments from the liquidation with respect to depositors who have received such payments.

#### **Article 96-ter**<sup>1</sup>

##### *(Powers of the Bank of Italy)*

1. The Bank of Italy, having regard to the protection of savers and the stability of the banking system, shall:

- a) recognize guarantee schemes and approve their bylaws, provided such schemes do not have features entailing an unbalanced distribution of insolvency risks within the banking system;
- b) coordinate the activity of guarantee schemes with banking crisis procedures and supervisory activity;
- c) regulate payment procedures, *inter alia* with reference to joint accounts;
- d) authorize interventions by guarantee schemes and exclusions of banks from such schemes;
- e) verify that the protection provided by foreign guarantee schemes to which branches of non-EC banks authorized in Italy belong is equivalent to that provided by Italian guarantee schemes;
- f) regulate the public notice that banks are required to give with the aim of informing depositors about the guarantee scheme in which they participate and the various types of claim covered;
- g) regulate the procedures for coordination with the competent authorities of other member states regarding the participation of branches of EC banks in an Italian guarantee scheme and their exclusion therefrom;
- h) issue measures implementing the rules contained in this Section.

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<sup>1</sup> Article added by Article 2 of Legislative Decree 659/1996.

**Article 96-quater**<sup>1</sup>  
*(Exclusions)*

1. Banks may be excluded from guarantee schemes in the event of exceptionally serious failure to comply with the obligations arising from membership thereof.

2. Subject to approval by the Bank of Italy, guarantee schemes shall notify a bank of its failure to comply and grant a time limit of one year to fulfil the obligations referred to in paragraph 1. Once such limitation period, which may be extended by up to one year, has expired without the bank complying, guarantee schemes shall, subject to authorization by the Bank of Italy, give notice to the bank of its exclusion.

3. Funds acquired up to the date of receipt of the notice of exclusion shall be covered by the guarantee. The excluded bank shall promptly inform depositors of such notice in the manner specified by the Bank of Italy.

4. The authorities that issued banking authorization shall revoke it upon cessation of participation in guarantee schemes; the possibility of ordering compulsory administrative liquidation pursuant to Article 80 shall be unaffected.

5. The exclusion procedure may not be initiated or continued in respect of banks subject to special administration.

**Section V**<sup>2</sup>  
**Voluntary liquidation**

**Article 97**  
*(Substitution of ordinary liquidating bodies)*

1. Without prejudice to the provisions of Article 80, where the procedure for the ordinary liquidation of a bank is not carried out in a regular and expeditious manner, the Bank of Italy may order the substitution of the liquidators and the members of the oversight bodies.

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<sup>1</sup> Article added by Article 2 of Legislative Decree 659/1996.

<sup>2</sup> Section added by Article 3 of Legislative Decree 659/1996.

2. The order of substitution shall be published in the manner provided for in Article 81, paragraph 2.

3. The substitution of the liquidating bodies shall not cause any change in the liquidation procedure.

## **Chapter II**

### **Banking groups**

#### **Section I**

#### **Parent undertaking**

#### **Article 98**

*(Special administration)*

1. Without prejudice to the provisions of this Article, the provisions of Chapter I, Section I, of this Title shall apply to the parent undertaking of a banking group.

2. In addition to the cases provided for in Article 70, special administration of a parent undertaking may be ordered where:

- a) there has been serious non-compliance in the performance of the activity referred to in Article 61, paragraph 4;
- b) a company belonging to the banking group has been subjected to bankruptcy proceedings, controlled administration, composition with creditors, compulsory administrative liquidation, special administration, the procedure provided for in Article 2409, third paragraph, of the Civil Code, or to any other analogous procedure provided for in special laws, and the financial or operational equilibrium of the group could be seriously affected.

3. Special administration of the parent undertaking shall last for a period of one year from the date of issue of the decree of the Minister of the Treasury unless the decree itself establishes a shorter period or the Bank of Italy authorizes its early closure. In exceptional cases the procedure may be extended for a period of up to one year.

4. The special administrators, after consulting the oversight committee and subject to authorization by the Bank of Italy, may remove or replace some or all of the directors of the companies belonging to the group for the

purpose of making necessary changes in management policy. The new directors shall remain in office until the end of special administration of the parent undertaking at the latest. Directors who are removed shall be entitled only to an indemnity equal to the ordinary compensation due to them for the remainder of their appointment or for a period of six months, whichever is shorter.

5. The special administrators may request a judicial finding of insolvency of the companies belonging to the group.

6. The special administrators may request the companies belonging to the group to provide figures, information and any other elements which may be useful in the performance of their duties.

7. To facilitate the overcoming of financial difficulties, the special administrators may order the suspension of payments in the manner and with the effects provided for in Article 74, the limitation periods of which shall be tripled.

8. The Bank of Italy may provide for the filing of the financial statements referred to in Article 75, paragraph 2, to be publicized by way of special notices.

### **Article 99**

#### *(Compulsory administrative liquidation)*

1. Without prejudice to the provisions of this Article, the provisions of Chapter I, Section III, of this Title shall apply to the parent undertaking.

2. In addition to the cases referred to in Article 80, compulsory administrative liquidation of the parent undertaking may be ordered where non-compliance in the performance of the activity referred to in Article 61, paragraph 4, is exceptionally serious.

3. The liquidators shall file annually with the clerk of the court of the place where the parent undertaking has its registered office a report on the state of the accounts and the progress of the liquidation, accompanied by information concerning the implementation of the procedures to which other companies belonging to the group have been subjected and any actions which may have been taken to protect depositors. Such report shall be accompanied by a report of the oversight committee. The Bank of Italy may provide for the filing of the report to be publicized by way of special notices.

4. The provisions of Article 98, paragraphs 5 and 6, shall apply.

5. Where there has been a judicial finding of insolvency, the liquidators shall be responsible for bringing the revocation actions referred to in Article 67 of the Bankruptcy Law with respect to other companies belonging to the group. Such actions may be brought for the acts specified in Article 67, subparagraphs 1), 2) and 3), of the Bankruptcy Law which were effected in the five years prior to the compulsory liquidation decree and for the acts specified in subparagraph 4) and in the second paragraph of such Article which were effected in the three years prior to the order.

## **Section II**

### **Group companies**

#### **Article 100**

*(Special administration)*

1. Without prejudice to the provisions of this Article, where the parent undertaking is subjected to special administration or compulsory administrative liquidation, the provisions of Chapter I, Section I, of this Title shall apply, where the conditions obtain, to companies belonging to the group. A request to the Bank of Italy for special administration may also be made by the special administrators or the liquidators of the parent undertaking.

2. Where a company belonging to the group is subjected to controlled administration or an official receiver has been appointed by court order as provided for in Article 2409, third paragraph, of the Civil Code, such procedures shall be converted into special administration. The competent court, upon request or on its own authority, shall declare with a ruling in camera that the company is subjected to special administration and shall order the transfer of the record to the Bank of Italy. The bodies of the terminated procedure and those of the special administration shall promptly effect the handing over of the company and give notice thereof in the manner established by the Bank of Italy. The effects of acts legally completed shall not be prejudiced.

3. Where the companies belonging to the group to be subjected to special administration are subject to supervision, the order shall be adopted after consulting the competent supervisory authority, which in an emergency may be given a time limit within which to formulate its opinion.

4. The duration of special administration shall be independent of that of the procedure to which the parent undertaking has been subjected. The provisions of Article 98, paragraph 8, shall apply.

5. To facilitate the overcoming of financial difficulties, the special administrators, acting in agreement with the special administrators or the liquidators of the parent undertaking, may order the suspension of payments in the manner and with the effects provided for in Article 74, the limitation periods of which shall be tripled.

#### **Article 101**

##### *(Compulsory administrative liquidation)*

1. Without prejudice to the provisions of this Article, where the parent undertaking is subjected to special administration or compulsory administrative liquidation, the provisions of Chapter I, Section III, of this Title shall apply to the group companies which a court has declared to be insolvent. For banks belonging to the group the application of the provisions of Section III shall be unaffected. A request for compulsory liquidation may also be made to the Bank of Italy by the special administrators or the liquidators of the parent undertaking.

2. Where companies belonging to the group are subjected to bankruptcy proceedings, compulsory administration or other insolvency proceedings, such procedures shall be converted into the compulsory liquidation governed by this Article. Without prejudice to the prior finding of insolvency, the competent court, upon request or on its own authority, shall declare with a ruling in camera that the company is subjected to compulsory liquidation under this Article and shall order the transfer of the record to the Bank of Italy. The bodies of the terminated procedure and those of the liquidation shall promptly effect the handing over of the company and give notice thereof in the manner established by the Bank of Italy. The effects of acts legally completed shall not be prejudiced.

3. The liquidators shall have the powers referred to in Article 99, paragraph 5.

#### **Article 102**

##### *(Procedures applicable to individual companies)*

1. Where the parent undertaking has not been subjected to special administration or compulsory administrative liquidation, the companies belonging to the group shall be subjected to the procedures established by

laws applicable to them. Notice of such orders shall be given immediately to the Bank of Italy by the issuing administrative or judicial authorities. The administrative or judicial authorities overseeing the procedures shall inform the Bank of Italy of any circumstances that emerge during the procedures which may be relevant for the purposes of supervision of the banking group.

### **Section III**

#### **Common measures**

#### **Article 103**

*(Bodies responsible for the procedures)*

1. Without prejudice to Articles 71 and 81, the same persons may be appointed to more than one of the bodies responsible for the special administration or compulsory administrative liquidation of companies belonging to the same group where this is considered likely to facilitate the procedures.

2. A special administrator or liquidator who by virtue of being a special administrator or liquidator of another company belonging to the group has an interest conflicting with that of the company in a particular transaction must disclose such interest to any other special administrators or liquidators, the oversight committee and the Bank of Italy. In the event of omission, members of the oversight committee with knowledge of the conflict shall give such notice. The oversight committee may establish special safeguards and formulate guidelines with respect to the transaction, for the non-observance of which the special administrators or the liquidators shall be personally responsible. Without prejudice to its power to remove or replace members of the bodies responsible for the procedures, the Bank of Italy may issue directives or, where appropriate, appoint a special administrator or liquidator to carry out particular actions.

3. The emoluments due to special administrators, liquidators and members of the oversight committee shall be determined by the Bank of Italy in accordance with the criteria it establishes and shall be charged to the companies. The emoluments shall be determined on the basis of an overall evaluation of the services associated with any appointments held in other procedures involving the group.

**Article 104***(Jurisdiction)*

1. Where the parent undertaking is subjected to special administration or compulsory administrative liquidation, the competent court for revocation actions under Article 99, paragraph 5, and for all controversies between companies belonging to the group shall be the court in whose jurisdiction the parent undertaking has its registered office.

2. Where the parent undertaking is subjected to special administration or compulsory administrative liquidation, the competent court for appeals from administrative measures concerning or connected with the procedures of the special administration or compulsory administrative liquidation of the parent undertaking and group companies shall be the *tribunale amministrativo regionale* in Rome.

**Article 105***(Groups and companies not entered in the register)*

1. The provisions of the preceding Articles shall also apply to groups and companies which, even though they are not entered in the register referred to in Article 64, meet the conditions for entry therein.



**TITLE V****PERSONS OPERATING IN THE FINANCIAL SECTOR****Article 106***(General register)*

1. The pursuit on a public basis of the activities of acquiring holdings, granting loans in whatever form, providing money transmission services and trading in foreign exchange shall be restricted to financial intermediaries entered in a register kept by the UIC.<sup>1</sup>

2. Financial intermediaries specified in paragraph 1 may only engage in financial activities, without prejudice to any restrictions on such activities established by law.

3. Entry in the register shall be subject to the following conditions:

- a) legal form of a *società per azioni*, *società in accomandita per azioni*, or *società a responsabilità limitata* or *società cooperativa*;
- b) corporate purpose in conformity with the provisions of paragraph 2;
- c) paid-up share capital of not less than five times the minimum capital required for the formation of a *società per azioni*;
- d) members and corporate officers satisfying the requirements established by Articles 108 and 109.

4. The Minister of the Treasury, after consulting the Bank of Italy and the UIC:

- a) shall specify the content of the activities referred to in paragraph 1 and the circumstances in which their pursuit shall be considered to involve the public. Consumer credit shall be considered to involve the public even where it is limited to members;
- b) may, by way of derogation from the provisions of paragraph 3, where financial intermediaries carry on certain kinds of activity, limit the choice of legal form, allow the adoption of other legal forms and establish different capital requirements.

5. The UIC shall specify conditions for entry in the register and shall notify the Bank of Italy and Consob of entries therein.<sup>2</sup>

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<sup>1</sup> Article 20.1 of Legislative Decree 342/1999 replaced the words “by the Minister of the Treasury, who shall avail himself of the UIC” with “by the UIC”.

<sup>2</sup> Paragraph as amended by Article 20.2 of Legislative Decree 342/1999.

6. The UIC may require financial intermediaries to provide figures, information, records and documents and, if necessary, may carry out on-the-spot verifications of such intermediaries, also with the cooperation of other authorities, for the purpose of verifying compliance with the requirements for entry in the register.<sup>1</sup>

7. Persons performing administrative, managerial or control functions in financial intermediaries shall inform the UIC, in the manner it establishes, of similar positions held in other companies or entities of whatever kind.

**Article 107**  
*(Special register)*

1. The Minister of the Treasury, after consulting the Bank of Italy and Consob, shall establish objective standards with reference to the activity carried on, the volume of business and the ratio of debt to equity capital, on the basis of which to determine the financial intermediaries which must be entered in a special register kept by the Bank of Italy.

2. The Bank of Italy, in compliance with the resolutions of the Credit Committee, shall issue directions to financial intermediaries entered in the special register concerning capital adequacy and the limitation of risk in its various forms as well as administrative and accounting procedures and internal control mechanisms. Where necessary, the Bank of Italy may adopt measures concerning individual intermediaries in such matters. With reference to certain kinds of activity the Bank of Italy may also issue regulations aimed at ensuring that they are carried on in a regular manner.<sup>2</sup>

3. Intermediaries shall send the Bank of Italy, in the manner and within the time limits it establishes, periodic returns, as well as any other figures or documents it may request.

4. The Bank of Italy may carry out inspections with the power to request the exhibition of documents and records deemed necessary.

4-bis. The Bank of Italy may prohibit intermediaries from undertaking new transactions for violation of laws or regulations issued pursuant to this decree.<sup>3</sup>

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<sup>1</sup> Paragraph as amended by Article 20.3 of Legislative Decree 342/1999.

<sup>2</sup> Paragraph as amended by Article 64.19a) of Legislative Decree 415/1996.

<sup>3</sup> Paragraph added by Article 64.19b) of Legislative Decree 415/1996.

5. Financial intermediaries entered in the special register shall remain entered in the general register; paragraphs 6 and 7 of Article 106 shall not apply to such intermediaries.

6. Financial intermediaries entered in the special register, where they have been authorized to provide investment services or acquired repayable funds in an amount exceeding their capital, shall be subject to the provisions of Title IV, Chapter I, Sections I and III; Article 57, paragraphs 4 and 5, of the Consolidated Law on Financial Intermediation issued pursuant to Article 21 of Law 52 of 6 February 1999 shall apply in place of Article 86, paragraphs 6 and 7, and Article 87, paragraph 1.<sup>1,2</sup>

7. Article 47 shall apply to intermediaries entered in the register established by paragraph 1 that engage in the granting of loans in whatever form.<sup>3</sup>

### **Article 108**

#### *(Integrity requirements for members)*

1. The Minister of the Treasury, after consulting the Bank of Italy and the UIC, shall establish the integrity requirements for members of financial intermediaries in regulations issued under Article 17, paragraph 3, of Law 400 of 23 August 1988.

2. In the regulations referred to in paragraph 1 the Minister of the Treasury shall establish the percentage of capital which must be held for such paragraph to apply. For this purpose shares or capital parts held through subsidiary companies, trust companies or nominees shall also be considered.

<sup>1</sup> Paragraph added by Article 211.2 of Legislative Decree 58/1998.

<sup>2</sup> Article 213 of Legislative Decree 58/1998 establishes the following transitional provision: "Conversion of bankruptcy into compulsory administrative liquidation. 1. From the date of entry into force of this decree bankruptcy procedures for intermediaries referred to in Article 107 of the 1993 Banking Law for which the conditions indicated in paragraph 6 thereof are satisfied and the statement of liabilities has not yet been declared enforceable shall be converted into compulsory administrative liquidation procedures. 2. Without prejudice to the judicial finding of insolvency already declared, the court, proceeding on its own authority or otherwise, shall declare the company subject to compulsory liquidation with a ruling in camera and shall order the transfer of the record to the Ministry of the Treasury for the issue of the related decree and to the Bank of Italy. 3. The bodies of the terminated procedure and those of the compulsory liquidation shall promptly effect the handing over of the company and give notice thereof in the manner established by the Bank of Italy. The effects of acts legally completed shall not be prejudiced."

<sup>3</sup> Paragraph added by Article 21.1 of Legislative Decree 342/1999.

3. Failure to satisfy such requirements shall preclude the exercise of the voting rights attaching to the shares or capital parts in excess of the above-mentioned limit. In the event of non-compliance, resolutions may be challenged under Article 2377 of the Civil Code where the required majority would not have been reached without the votes attaching to the aforementioned shares or capital parts. Challenge of the resolution shall be obligatory for directors and members of the board of auditors. The shares or capital parts for which voting rights may not be exercised shall be counted for the purposes of establishing the due constitution of the general meeting.

#### **Article 109**

*(Experience and integrity requirements for corporate officers)*

1. The experience and integrity requirements for persons performing administrative, managerial or control functions in financial intermediaries shall be established by the Minister of the Treasury, after consulting the Bank of Italy and the UIC, in regulations issued under Article 17, paragraph 3, of Law 400 of 23 August 1988.

2. Failure to satisfy the requirements shall result in disqualification from office. The disqualification shall be declared by the board of directors within thirty days of the appointment or of its learning of subsequent failure.

3. The regulations referred to in paragraph 1 shall establish the causes requiring temporary suspension from office and its duration. The suspension shall be declared in the manner established by paragraph 2.

4. In the event of inaction by the board of directors, the Bank of Italy shall declare the disqualification or suspension from office of persons performing administrative, managerial or control functions in financial intermediaries entered in the special register.

#### **Article 110**

*(Notification requirements)*

1. Any person who, through subsidiary companies, trust companies, nominees or otherwise, holds a larger percentage of the capital of a financial intermediary than that established by the Bank of Italy shall notify the financial intermediary and the UIC or, where the financial intermediary is entered in the special register, the Bank of Italy. Variations

in holdings shall be notified where they result in holdings exceeding the limit established by the Bank of Italy.

2. The Bank of Italy shall establish the grounds, manner and time limits for the notices referred to in paragraph 1, including cases in which the voting rights are exercisable by or attributed to a person other than the member.

3. The UIC or, where financial intermediaries are entered in the special register, the Bank of Italy may request information from any interested parties for the purpose of verifying compliance with the requirements referred to in paragraph 1.

4. Voting rights attaching to shares or capital parts for which notice has not been given may not be exercised. In the event of non-compliance with such prohibition, resolutions may be challenged under Article 2377 of the Civil Code where the required majority would not have been reached without the votes attaching to the aforementioned shares or capital parts. Where financial intermediaries are entered in the special register, the challenge may also be initiated by the Bank of Italy within six months of the date of the resolution or, where the resolution must be entered in the Company Register, within six months of such entry. The shares or capital parts for which voting rights may not be exercised shall be counted for the purpose of establishing the due constitution of the general meeting.

#### **Article 111**

##### *(Deletion from the general register)*

1. The Minister of the Treasury, acting on a proposal from the UIC, shall order deletion from the general register:

- a) for non-compliance with the provisions of Article 106, paragraph 2;
- b) where one of the conditions referred to in Article 106, paragraph 3, sub-paragraphs a), b) and c), is no longer met;
- c) in the event of serious violations of laws or of regulations adopted under this Legislative Decree.<sup>1</sup>

2. The Bank of Italy, Consob or the UIC within the scope of their respective authority may propose deletion from the register. In the case of financial intermediaries entered in the special register, deletion from the

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<sup>1</sup> Paragraph as amended by Article 22.1 of Legislative Decree 342/1999.

general register shall be ordered only after deletion from the special register by the Bank of Italy.<sup>1</sup>

3. The order of deletion from the register shall be issued, except as a matter of urgency, following notification of the charges to the financial intermediary concerned and consideration of briefs to be submitted within thirty days. Such notification shall be effected by the UIC or, where financial intermediaries are entered in the special register, by the Bank of Italy.

4. Within two months of notification of the deletion order the directors shall convene a meeting of the members to modify the corporate purpose, take other action pursuant to the order or adopt a resolution for the voluntary liquidation of the company.

5. This Article shall not apply in the cases provided for in Article 107, paragraph 6.<sup>2</sup>

#### **Article 112**

*(Notifications by the board of auditors)*

1. Copies of the minutes of meetings and reports of the board of auditors concerning violations of the provisions of this Title by financial intermediaries shall be transmitted to the UIC or, where intermediaries are entered in the special register, to the Bank of Italy.

2. The minutes and reports shall be transmitted by the chairman of the board of auditors within ten days of their compilation.

#### **Article 113**

*(Persons operating on a non-public basis)*

1. The pursuit primarily on a non-public basis of activities referred to in Article 106, paragraph 1, shall be restricted to persons entered in a special section of the general register. The Minister of the Treasury shall issue regulations implementing this paragraph.

2. The provisions of Article 108 and those of Article 109 referring to integrity requirements shall apply.

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<sup>1</sup> Paragraph as amended by Article 64.20 of Legislative Decree 415/1996 and subsequently by Article 22.2 of Legislative Decree 342/1999.

<sup>2</sup> Paragraph added by Article 211.3 of Legislative Decree 58/1998.

**Article 114**  
*(Final provisions)*

1. Without prejudice to Article 18, the Minister of the Treasury shall regulate the pursuit in Italy of activities referred to in Article 106, paragraph 1, by persons whose registered office is located in a foreign country.

2. The provisions of this Title shall not apply to persons already subject by law to substantially equivalent forms of supervision of their financial activities. The Minister of the Treasury, after consulting the Bank of Italy and the UIC, shall verify whether the conditions for exemption exist.

3. [Repealed] <sup>1</sup>

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<sup>1</sup> Paragraph repealed by Article 4.1 of Legislative Decree 333/1999.

**TITLE VI****DISCLOSURE OF TERMS AND CONDITIONS OF CONTRACT****Chapter I****Banking and financial transactions and services****Article 115***(Scope)*

1. The provisions of this Chapter shall apply to activities carried on in Italy by banks and financial intermediaries.

2. The Minister of the Treasury may specify other persons who shall be subject to the provisions of this Chapter in consideration of the activities they carry on.

3. The provisions of this Chapter shall apply to transactions referred to in Chapter II of this Title for matters not otherwise regulated.

**Article 116***(Public notices)*

1. On all premises open to the public, notices shall be provided showing interest rates, prices, charges for customer notifications and every other economic condition concerning the transactions and services offered, including interest on arrears and the value dates for the recognition of interest. Such notices may not make reference to usage.

2. The Minister of the Treasury, after consulting the Bank of Italy, shall establish with regard to government securities:

- a) methods and parameters for the determination of the maximum placement commission chargeable to customers;
- b) methods and parameters designed to ensure full disclosure of the determination of yields;
- c) any additional public notice, disclosure or advertising requirements to be complied with in placement activity.

3. The Credit Committee shall:



- a) specify the transactions and services which shall be subject to disclosure requirements;<sup>1</sup>
- b) issue regulations concerning the form and content of the public notice, the manner in which it is to be provided and the conservation of the documents corroborating the information made public;
- c) establish uniform methods for the disclosure of interest rates and the computation of interest and other items affecting the economic aspects of contractual relationships;
- d) specify the essential elements among those referred to in paragraph 1 that must be disclosed in advertisements and offers, in whatever form they may be effected, with which the persons referred to in Article 115 announce the availability of transactions and services.

4. Such provision of information to the public shall not constitute a public offer under Article 1336 of the Civil Code.

#### **Article 117**

##### *(Contracts)*

1. Contracts shall be reduced to writing and customers shall be given a copy.

2. The Credit Committee may provide that certain types of contract may be completed in a different form where there are justified technical reasons.

3. Failure to comply with the prescribed form shall render the contract null and void.

4. Contracts shall state the rate of interest and every other price and condition to be applied, including in the case of credit agreements any increase in charges in respect of arrears.

5. The possibility of modifying interest rates or any other price or condition in a manner unfavourable to the customer must be expressly stated in the contract in a clause specifically approved by the customer.

6. Clauses which refer to usage for the determination of interest rates or any other price or condition to be applied shall be null and deemed not to be part of the contract, as shall those which provide for rates, prices or conditions less favourable to the customer than those made public.

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<sup>1</sup> Article 23.1 of Legislative Decree 342/1999 suppressed the words "after consulting the Bank of Italy and Consob".

7. In the event of non-compliance with paragraph 4 or of nullity under paragraph 6, the following terms and conditions shall apply:

- a) for lending and deposit transactions respectively, the minimum and the maximum nominal interest rate on twelve-month Treasury bills or other similar securities specified by the Minister of the Treasury, issued in the twelve months preceding the completion of the contract;<sup>1</sup>
- b) the other prices and conditions made public during the period of the contractual relationship for corresponding categories of transactions and services; in the absence of disclosure, nothing shall be payable.

8. The Bank of Italy may establish that certain contracts or securities, designated by a particular name or on the basis of specific qualifying criteria, shall have a standardized content. Contracts and securities which do not conform shall be null and void. The responsibility of the bank or financial intermediary for violation of the regulations of the Bank of Italy shall not be affected.

#### **Article 118**

##### *(Unilateral alteration of contracts)*

1. Where continuing contracts contain agreements providing for the unilateral alteration of rates, prices or other terms or conditions, unfavourable variations shall be notified to the customer in the manner and within the time limits established by the Credit Committee.

2. Alterations which do not comply with the provisions of this Article shall be without effect.

3. Within fifteen days of receipt of written notice or of other forms of notice pursuant to paragraph 1 the customer may terminate the contract without penalty and in its settlement obtain the application of the conditions previously applied.

#### **Article 119**

##### *(Periodic notifications to customers)*

1. Where a contract is continuing, persons referred to in Article 115 shall provide the customer with a clear and complete written report on the

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<sup>1</sup> The rates in question are reported in Banca d'Italia, *Bollettino Economico*, Appendice, Serie Statistiche, table on "Aste dei Buoni ordinari del Tesoro".

relationship at the expiry of the contract and at least once a year. The Credit Committee shall establish the content and form of such report.

2. For current accounts, the statement of account shall be sent to the customer annually or, at the customer's choice, half-yearly, quarterly or monthly.

3. In the absence of a written objection by the customer within sixty days of receipt, statements of account and other periodic notifications to customers<sup>1</sup> shall be deemed to be approved.

4. The customer, the person succeeding to him on whatever grounds or the person assuming administration of his assets shall be entitled to receive at their own expense, within a reasonable time and in any case within ninety days, a copy of the documentation concerning individual transactions effected within the last ten years.<sup>2</sup>

### **Article 120**

*(Value-dating and methods of computing interest)*<sup>3</sup>

1. Interest on deposits of cash, bankers' drafts issued by the same bank and cheques drawn on the branch where the deposit is made shall be payable from the day of deposit and accrue until the day of withdrawal.

2. The Credit Committee shall establish the methods and criteria of compounding of interest accrued in banking transactions, prescribing in any case that in current account transactions interest payable and receivable by customers shall be computed with the same periodic intervals.<sup>4</sup>

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<sup>1</sup> Article 24.1 of Legislative Decree 342/1999 added the words "and other periodic notifications to customers".

<sup>2</sup> Paragraph as amended by Article 24.2 of Legislative Decree 342/1999.

<sup>3</sup> Heading as amended by Article 25.1 of Legislative Decree 342/1999.

<sup>4</sup> Paragraph added by Article 25.2 of Legislative Decree 342/1999. Moreover, Article 25.3 of the latter provided as follows: "3. Clauses concerning the compounding of interest contained in contracts concluded prior to the date of entry into force of the resolution referred to in paragraph 2 shall be valid and enforceable up to such date and subsequently must be adjusted to with such resolution, which will also establish the procedures and time limits for the adjustment. In the absence of adjustment, clauses shall be without effect and their invalidity may be enforced only by the customer."

## Chapter II

### Consumer credit

#### Article 121

##### *(Notion)*

1. Consumer credit shall mean the granting of credit in the course of a trade, business or profession in the form of deferred payment, a loan or other similar financial accommodation to a natural person acting for purposes outside his business, trade or profession (a consumer).

2. The granting of consumer credit shall be restricted to:

- a) banks;
- b) financial intermediaries;
- c) persons authorized to sell goods or services in Italy, exclusively in the form of deferred payment of the price.

3. The provisions of this Chapter and of Chapter III insofar as they are compatible shall apply to third parties intervening in consumer credit business.

4. The provisions of this Chapter shall not apply:

- a) to loans larger or smaller than the respective limits established by the Credit Committee by a resolution which shall take effect on the thirtieth day following its publication in the *Gazzetta Ufficiale della Repubblica italiana*;
- b) to supply contracts under Article 1559 ff. of the Civil Code, provided they are completed in writing in advance and a copy given to the consumer at the time of completion;
- c) to loans repayable in a single payment within eighteen months for which the only charges, if any, are not computed as interest, provided the amount of such charges is contractually determined;
- d) to loans made without any direct or indirect consideration in the form of interest or other charges, with the exception of the reimbursement of documented out-of-pocket expenses actually incurred;
- e) to loans intended for the purpose of acquiring or retaining a property right in land or in an existing or projected building, or for the purpose of renovation or improvement;

- f) to hiring agreements, provided they include the express clause that the title to the hired good may at no time be transferred, with or without consideration, to the hirer.

### **Article 122**

#### *(Annual percentage rate of charge)*

1. The annual percentage rate of charge (APR) shall be the total cost of the credit charged to the consumer, expressed as an annual percentage of the amount of credit granted. The APR shall include interest and all the costs to be sustained for the use of the credit.
2. The Credit Committee shall establish the method of computing the APR, specifying the items to be computed and the computation formula.
3. Where loans may be obtained only through the intervention of a third party, the cost of such intervention must be included in the APR.

### **Article 123**

#### *(Public notice)*

1. Article 116 shall apply to consumer credit transactions. The public notice shall include a statement of the APR and the period of its validity.
2. Advertisements and offers effected by any means whereby a person indicates the interest rate or other figures concerning the cost of credit shall state the APR and the period of its validity. The Credit Committee shall specify the cases in which the APR may be stated by way of a representative example where there are justified technical reasons.

### **Article 124**

#### *(Contracts)*

1. Article 117, paragraphs 1 and 3, shall apply to consumer credit agreements.
2. Consumer credit agreements shall state:
  - a) the amount and conditions of the loan;
  - b) the number, amounts and due dates of the instalments;
  - c) the APR;
  - d) details of the circumstances in which the APR may be altered;
  - e) the amount and specification of any charges not included in the computation of the APR. Where such charges cannot be stated

exactly, a realistic estimate must be provided; apart from such charges nothing shall be payable by the consumer;

- f) any security required;
- g) any insurance cover required of the consumer and not included in the computation of the APR.

3. In addition to the requirements of paragraph 2, consumer credit agreements for the purchase of certain goods or services shall contain, on pain of nullity:

- a) an itemized description of the goods or services;
- b) the cash purchase price, the price established by the contract and the amount of any down payment;
- c) the conditions for the transfer of title where such transfer is not immediate.

4. No sum may be required of or charged to the consumer except on the basis of express contractual provisions. Clauses referring to usage for the determination of the economic conditions to be applied shall be null and deemed not to be part of the contract.

5. Where contractual clauses are omitted or null they shall be replaced by law in accordance with the following criteria:

- a) the APR shall be equal to the nominal minimum interest rate on twelve-month Treasury bills or other similar securities specified by the Minister of the Treasury, issued in the twelve months preceding the completion of the contract;
- b) the credit shall expire after thirty months;
- c) no security or insurance cover shall be provided in favour of the lender.

### **Article 125**

#### *(Other consumer protection provisions)*

1. The provisions of Article 1525 of the Civil Code shall also apply to all consumer credit agreements in connection with which a charge is imposed on the goods purchased with the proceeds of the loan.

2. The right to anticipate performance or terminate the contract without penalty shall pertain only to the consumer, with no possibility of agreement to the contrary. Where the consumer exercises the right to anticipate performance he shall be entitled to an equitable reduction in the total cost of the credit, determined in the manner established by the Credit Committee.

3. Where a creditor's rights under a consumer credit agreement are assigned, the consumer shall still be entitled to plead any defence against the assignee that was available to him against the assignor, including set off, also by way of derogation from the provisions of Article 1248 of the Civil Code.

4. Where there is non-performance by a supplier of goods or services, a consumer who has given notice of the delay without satisfaction shall have a right of action against the lender within the limits of the credit granted, provided there is an agreement whereby the lender has the exclusive right to grant credit to customers of the supplier.

5. The responsibility referred to in paragraph 4 shall also extend to third parties to whom the lender has assigned the rights attaching to the credit agreement.

#### **Article 126**

*(Special rules for overdraft facilities)*

1. Contracts with which banks and financial intermediaries grant consumers an overdraft facility not associated with the use of a credit card shall contain, on pain of nullity, the following indications:

- a) the credit limit and the expiry date;
- b) the annual interest rate and an itemized description of the applicable charges from the date the contract is completed, as well as the conditions that may determine the alteration of such terms during the life of the contract. Apart from such charges nothing shall be payable by the consumer;
- c) the manner of terminating the contract.

### **Chapter III**

#### **General rules and controls**

#### **Article 127**

*(General rules)*

1. Derogations from the provisions of this Title may be made solely to the advantage of the customer.

2. The nullity provisions of this Title may be enforced only by the customer.

3. The resolutions within the scope of the authority of the Credit Committee that are provided for in this Title shall be adopted by the Committee, acting on a proposal from the Bank of Italy; the proposal shall be formulated after consulting the UIC for persons operating in the financial sector entered only in the general register established by Article 106.<sup>1</sup>

**Article 128**<sup>2</sup>  
*(Controls)*

1. For the purposes of verifying compliance with the provisions of this Title, the Bank of Italy may acquire information, records and documents and carry out on-the-spot verifications of banks and financial intermediaries entered in the special register established by Article 107.

2. For financial intermediaries entered only in the general register established by Article 106 and persons specified in Article 155, paragraph 5, the controls provided for in paragraph 1 shall be carried out by the UIC, which to this end may request the cooperation of other authorities.

3. With reference to persons specified in Article 121, paragraph 2, sub-paragraph c), the control provided for in paragraph 1 shall be delegated to the Minister for Industry, who shall also be responsible for imposing the sanctions provided for in Article 144, paragraphs 3 and 4, and Article 145, paragraph 3.

4. With reference to persons specified pursuant to Article 115, paragraph 2, the Credit Committee shall indicate the authorities competent to carry out the controls provided for in paragraph 1 and impose the sanctions provided for in Article 144, paragraphs 3 and 4, and Article 145, paragraph 3.

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<sup>1</sup> Paragraph added by Article 26.1 of Legislative Decree 342/1999.

<sup>2</sup> Article as amended by Article 27.1 of Legislative Decree 342/1999.



5. In the event of repeated violations of the provisions concerning public notices, the Ministry of the Treasury, acting on a proposal from the Bank of Italy or the UIC or from the other authorities indicated by the Credit Committee pursuant to paragraph 4, within the scope of their respective authority, may order the suspension of the activity, including that of single branches, for a period not exceeding thirty days.

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**TITLE VII**  
**OTHER CONTROLS**

**Article 129**<sup>1</sup>  
*(Issues of securities)*

1. Issues of securities and offers in Italy of foreign securities of an amount not exceeding one hundred billion lire or the larger sum decided by the Bank of Italy may be freely effected where the securities are of a type provided for by law and have the characteristics established by the Bank of Italy in compliance with the resolutions of the Credit Committee. The computation of such amounts shall include all the operations of the same issuer in the previous twelve months.

2. Issues of securities and offers in Italy of foreign securities that may not be freely effected pursuant to paragraph 1 must be notified to the Bank of Italy by the interested parties.

3. The notice shall state the quantity and characteristics of the securities as well as the procedures and timetable established for the operation. Within fifteen days of receipt of the notice the Bank of Italy may request additional information.

4. The operation may be effected twenty days after receipt of the notice or, where requested, of the additional information. For the purpose of ensuring the stability and efficiency of the securities market, within the same twenty-day limit the Bank of Italy may, in compliance with the resolutions of the Credit Committee, prohibit operations that may not be freely effected pursuant to paragraph 1 or defer the execution of the operations of an amount exceeding the limit established pursuant to paragraph 1.

5. The provisions of paragraphs 1, 2, 3, 4 and 6 shall not apply to:

- a) government securities or securities guaranteed by the government;
- b) shares, provided they are not representative of an interest in closed or open-ended collective investment undertakings;
- c) the issue of units or securities representative of an interest in Italian collective investment undertakings;

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<sup>1</sup> Article as amended by Article 64.21 of Legislative Decree 415/1996.

*d)* the marketing in Italy of units or securities representative of an interest in collective investment undertakings situated in other member states of the European Union and complying with the provisions of EU law.

6. The Bank of Italy, in compliance with the resolutions of the Credit Committee, may establish, with reference to the quantity and characteristics of the securities, the nature of the issuer and the procedures established for the operation, types of operation which shall be exempted from the notification requirements or subjected to a simplified notification procedure.

7. The Bank of Italy may require reports from issuers and offerors on the securities placed in Italy or issued by Italian companies and entities. Such reports may also cover operations that do not have to be notified pursuant to paragraphs 1, 5 and 6.

8. The Bank of Italy shall issue regulations implementing this Article.

**TITLE VIII**<sup>1</sup>**SANCTIONS****Chapter I****Unauthorized banking and financial activity****Article 130***(Unauthorized fund-raising)*

1. Any person who engages in fund-raising on a public basis in violation of Article 11 shall be punished by imprisonment for a term of between six months and three years and by a fine of between twenty-five million and one hundred million lire.

**Article 131***(Unauthorized banking)*

1. Any person who engages in fund-raising on a public basis in violation of Article 11 and grants credit shall be punished by imprisonment for a term of between six months and four years and by a fine of between four million and twenty million lire.

**Article 132**<sup>2</sup>*(Unauthorized financial activity)*

1. Any person who engages on a public basis in one or more of the financial activities referred to in Article 106, paragraph 1, without being entered in the register referred to in such article shall be punished by imprisonment for a term of between six months and four years and by a fine of between four million and twenty million lire.<sup>3</sup>

2. Any person who engages primarily on a non-public basis in one or more of the financial activities referred to in Article 106, paragraph 1, without being entered in the special section of the general register referred

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<sup>1</sup> Title divisions and their headings as amended by Articles 64.22, 64.25, 64.28, 64.32, 64.33a) and 64.34 of Legislative Decree 415/1996.

<sup>2</sup> Article as amended by Article 5 of Law 108/1996 and subsequently by Article 64.23 of Legislative Decree 415/1996.

<sup>3</sup> Paragraph as amended by Article 28.1 of Legislative Decree 342/1999.

to in Article 113 shall be punished by imprisonment for a term of between six months and three years.

**Article 132-bis**<sup>1</sup>

*(Report to the public prosecutor)*

1. Where there is a well-founded suspicion that a company engages in fund-raising, banking or financial activity in violation of Articles 130, 131 and 132, the Bank of Italy or the UIC may file a report with the public prosecutor for the purposes of the adoption of the measures provided for in Article 2409 of the Civil Code.

**Article 133**

*(Unauthorized use of banking names)*

1. The use in the name or in any logo or communication addressed to the public of the words *banca, banco, credito, risparmio* or other words or expressions in Italian or in a foreign language likely to deceive as to authorization to engage in banking shall be prohibited for all persons other than banks.

2. The Bank of Italy shall determine on a general basis the cases in which, because of the existence of administrative controls or other circumstances, the words or expressions referred to in paragraph 1 may be used by persons other than banks.

3. Any person who contravenes the provisions of paragraph 1 shall be punished by a pecuniary administrative sanction of between two million and twenty million lire. The same sanction shall apply to any person who, by providing information in any form, falsely leads others to believe he is subject to supervision by the Bank of Italy in accordance with Article 107.<sup>2,3</sup>

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<sup>1</sup> Article added by Article 29.1 of Legislative Decree 342/1999.

<sup>2</sup> The second sentence was added by Article 64.24 of Legislative Decree 415/1996.

<sup>3</sup> Article 30.1 of Legislative Decree 342/1999 replaced the words "pecuniary administrative sanction" with "fine" and "penalty" with "sanction".

## Chapter II

### Supervisory activities

#### Article 134

*(Protection of banking and financial supervision)*

1. Persons performing administrative, managerial or control functions in banks, financial intermediaries or legal persons included within the scope of consolidated supervision who, in communications to the Bank of Italy, misrepresent facts concerning the economic conditions of such banks, financial intermediaries or legal persons or conceal, in whole or in part, facts concerning such conditions for the purpose of obstructing the performance of supervisory functions shall be punished by imprisonment for a term of between one and five years and by a fine of between two million and twenty million lire unless the act constitutes a more serious offence.

2. In cases other than those provided for in paragraph 1, persons performing administrative, managerial or control functions in banks, financial intermediaries, legal persons included within the scope of consolidated supervision or other companies subject to the supervision of the Bank of Italy who obstruct such supervision shall be punished by imprisonment for a term of up to one year and by a fine of between twenty-five million and one hundred million lire.

## Chapter III

### Banks and banking groups

#### Article 135

*(Offences under company law)*

1. The provisions of Chapters I, II and V of Title XI of Book V of the Civil Code shall apply to persons performing administrative, managerial or control functions in banks, including those not formed as a company.

**Article 136***(Obligations of banks' corporate officers)*

1. Persons performing administrative, managerial or control functions in a bank may not contract obligations of any kind or enter directly or indirectly into purchase or sale agreements with the bank which they administer, manage or control without a prior resolution adopted unanimously by the administrative body and the favourable vote of all the members of the control body, except where abstention is required by law.

2. The same provisions shall apply to persons performing administrative, managerial or control functions in a bank or company belonging to a banking group with regard to the obligations and agreements referred to in paragraph 1 entered into with such company and to loans contracted with other companies or banks belonging to the group. In such cases the obligation or agreement must be approved in the manner provided for in paragraph 1 by the governing bodies of the contracting company or bank and have the consent of the parent undertaking.

3. Non-compliance with the provisions of paragraphs 1 and 2 shall be punished in accordance with Article 2624, first paragraph, of the Civil Code.

**Article 137***(False representations to banks)*

1. Unless the act constitutes a more serious offence, persons who, for the purpose of obtaining credit for themselves or for the firms they administer or of modifying the conditions on which credit was first granted, fraudulently provide a bank with false figures or information regarding the incorporation or the profits and losses, assets and liabilities or financial situation of the firms interested in such credit, shall be punished by imprisonment for a term of up to one year and by a fine of up to ten million lire.

2. Unless the act constitutes a more serious offence, persons performing administrative or managerial functions in a bank and bank employees who, for the purpose of granting credit or causing credit to be granted, modifying the conditions on which credit was first granted or avoiding the revocation of the credit granted, knowingly fail to report figures or information in their possession or who, during the examination of a credit application, use false information or figures on the incorporation or the profits and losses, assets and liabilities or financial situation of the

applicant shall be punished by imprisonment for a term of between six months and three years and by a fine of up to twenty million lire.

#### **Article 138**

*(Misrepresentation of a bank's situation)*

1. Any person who, in whatever form, spreads false, exaggerated or tendentious information regarding banks or banking groups which is likely to disturb financial markets, create panic among depositors or undermine the public's confidence shall be punished in accordance with the penalties provided for in Article 501 of the Penal Code. Article 501 of the Penal Code, Article 2628 of the Civil Code and Article 181 of Legislative Decree 58 of 24 February 1998 shall be unaffected.<sup>1</sup>

### **Chapter IV**

#### **Holdings of capital**

#### **Article 139<sup>2</sup>**

*(Holdings of capital in banks and parent financial companies)*

1. Omission of applications for authorization under Article 19, violation of the notification requirements established by Article 20, paragraph 2, and violation of the provisions of Article 24, paragraph 1, first sentence, and paragraph 3, shall be punished by a pecuniary administrative sanction of between ten million and one hundred million lire.

2. Unless the act constitutes a more serious offence, any person who makes false representations in applications for authorization under Article 19 or in notifications under Article 20, paragraph 2, shall be punished by imprisonment for a term of up to three years.

3. The pecuniary administrative sanctions established by paragraph 1 and the penalties established by paragraph 2 shall apply to the same violations with respect to holdings of capital in parent financial companies.

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<sup>1</sup> Article 31.1 of Legislative Decree 342/1999 replaced the words "Article 181 of Legislative Decree 58/1998" with "Article 5 of Law 157/1991".

<sup>2</sup> Article as amended by Article 64.26 of Legislative Decree 415/1996.



**Article 140**<sup>1</sup>

*(Notifications concerning holdings of capital in banks, companies belonging to a banking group and financial intermediaries)*

1. Omission of notifications provided for in Article 20, paragraphs 1, 3, first sentence, and 4, Article 21, paragraphs 1, 2, 3 and 4, Article 63 and Article 110, paragraphs 1, 2 and 3, shall be punished by a pecuniary administrative sanction of between ten million and one hundred million lire.<sup>2</sup>

2. Unless the act constitutes a more serious offence, any person who makes false representations in notifications referred to in paragraph 1 shall be punished by imprisonment for a term of up to three years.

**Chapter V****Other sanctions****Article 141**<sup>3</sup>

*(False notifications concerning financial intermediaries)*

1. Unless the act constitutes a more serious offence, notifications under Article 106, paragraphs 6 and 7, containing false statements shall be punished by imprisonment for a term of up to three years.

**Article 142**<sup>4</sup>

[Repealed]

**Article 143**<sup>5</sup>

*(Issues of securities)*

1. Failure to comply with the provisions of Article 129, paragraphs 2 and 4, shall be punished by a pecuniary administrative sanction of not less than ten million lire and not more than one half the total value of the

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<sup>1</sup> Article as amended by Article 64.27 of Legislative Decree 415/1996.

<sup>2</sup> Paragraph as amended by Article 32.1 of Legislative Decree 342/1999.

<sup>3</sup> Article as amended by Article 64.29 of Legislative Decree 415/1996.

<sup>4</sup> Article repealed by Article 64.30 of Legislative Decree 415/1996.

<sup>5</sup> Article as amended by Article 64.31 of Legislative Decree 415/1996.

operation; failure to comply with paragraphs 3, 6 and 7 of such article shall be punished by a pecuniary administrative sanction of between one million and fifty million lire.

#### **Article 144**

##### *(Other pecuniary administrative sanctions)*<sup>1</sup>

1. Persons performing administrative or managerial functions and employees shall be liable to a pecuniary administrative sanction of between one million and fifty million lire for non-compliance with the provisions of Articles 18, paragraph 4, 26, paragraphs 2 and 3, 34, paragraph 2, 35, 49, 51, 53, 54, 55, 64, paragraphs 2 and 4, 66, 67, 68, 106, paragraphs 6 and 7, 107, 109, paragraphs 2 and 3, 145, paragraph 3, 147 and 161, paragraph 5, or with the related general regulations or particular measures issued by the credit authorities.<sup>2</sup>

2. The sanctions established by paragraph 1 shall also apply to persons performing control functions for violation of the provisions referred to in paragraph 1 and for failure to ensure compliance with such provisions by others. For violation of Articles 52 and 61, paragraph 5, and 112,<sup>3</sup> the sanction established by paragraph 1 shall apply.

3. Persons performing administrative or managerial functions, employees and persons referred to in Article 121, paragraph 3, shall be liable to a pecuniary administrative sanction of between two million and twenty-five million lire for non-compliance with the provisions of Articles 116 and 123 or with the related general regulations or particular measures issued by the credit authorities.

4. Persons performing administrative or managerial functions, employees and persons referred to in Article 121, paragraph 3, shall be liable to a pecuniary administrative sanction of up to one hundred million lire for non-compliance with the provisions of Article 128, paragraph 1, or for obstructing the control functions provided for in that Article. The same sanction shall apply to the spurious splitting of a single consumer credit agreement into multiple agreements where at least one is for an amount less than the lower limit established by Article 121, paragraph 4, subparagraph *a*).

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<sup>1</sup> Heading as amended by Article 64.33a) of Legislative Decree 415/1996.

<sup>2</sup> Paragraph as amended by Article 64.33b) of Legislative Decree 415/1996.

<sup>3</sup> Article 64.33c) of Legislative Decree 415/1996 replaced the words “52 and 61.5” with “52 and 61.5, and 112”.

5. The pecuniary administrative sanctions established for employees by paragraphs 1, 3 and 4 shall also apply to persons working under contracts whereby they are inserted into the bank's organization, even in a form different from salaried employment.<sup>1</sup>

## Chapter VI

### General provisions concerning administrative sanctions<sup>2</sup>

#### Article 145<sup>3</sup>

*(Sanction procedures)*

1. For the violations referred to in this Title punishable by an administrative sanction, the Bank of Italy or the UIC within the scope of their respective authority, having notified the charges to the interested persons and the interested bank, company or entity, considered briefs submitted within thirty days and taken account of the totality of information gathered, shall submit a proposal to the Minister of the Treasury for the application of sanctions.

2. The Minister of the Treasury, acting on the proposal of the Bank of Italy or the UIC, shall impose sanctions with a decree stating the grounds for the decision.

3. The decree imposing sanctions pursuant to Article 144, paragraphs 3 and 4, shall be published in abridged form within thirty days of its notification, by and at the expense of the bank, company or entity with which those responsible for the violations are connected, in at least two daily newspapers of national circulation of which one shall be an economic newspaper. The decree imposing other sanctions provided for in this Title shall be published in abridged form in the Bulletin referred to in Article 8.

4. Appeal from the decree of the Minister of the Treasury may be taken to the Court of Appeal of Rome. The appeal must be communicated to the authority that proposed the measure within thirty days of the notification of the decree appealed from and must be filed with the clerk of the Court of Appeal within thirty days of such communication. The

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<sup>1</sup> Paragraph added by Article 33.1 of Legislative Decree 342/1999.

<sup>2</sup> Words introduced by Article 64.34 of Legislative Decree 415/1996.

<sup>3</sup> Article as amended by Article 64.35 of Legislative Decree 415/1996 and subsequently by Article 34.1 of Legislative Decree 342/1999.

authority that proposed the measure shall transmit the record referred to in the appeal to the Court, together with its observations.

5. Appeal shall not suspend execution of the decree. Where serious reasons exist, the Court of Appeal may order suspension in a ruling stating the grounds for the decision.

6. At the request of the parties, the Court of Appeal shall establish time limits for the submission of memoranda and documents and may grant a hearing with or without the personal appearance of the parties.

7. The Court of Appeal shall decide upon the appeal in camera, having heard the public prosecutor, in a ruling stating the grounds for the decision.

8. A copy of the Court's ruling shall be sent by the clerk of the Court of Appeal to the authority that proposed the measure, *inter alia* for publication in abridged form in the Bulletin referred to in Article 8.

9. Collection of the sanctions referred to in this Title shall be effected by means of the role according to the time limits and procedures established by Presidential Decree 602 of 23 September 1973 as amended by Legislative Decree 46 of 26 February 1999.

10. The banks, companies or entities with which those responsible for violations are connected shall answer for payment of the pecuniary sanction and shall be held to the exercise of the right of recourse against those responsible for the violation.

11. The provisions of Article 16 of Law 689 of 24 November 1981 shall not apply to the pecuniary administrative sanctions provided for in this Title.

**TITLE IX****TRANSITIONAL AND FINAL PROVISIONS****Article 146***(Oversight of payment systems)*

1. The Bank of Italy shall promote the regular operation of payment systems. For this purpose it may issue regulations to ensure the efficiency and reliability of clearing and payment systems.

**Article 147***(Other powers of the credit authorities)*

1. The credit authorities shall continue to exercise, with respect to all banks operating in Italy, the powers established by Article 32, first paragraph, subparagraphs d) and f), and Article 35, second paragraph, subparagraph b), of Royal Decree Law 375 of 12 March 1936, ratified with amendments by Law 141 of 7 March 1938 and subsequent amendments.

**Article 148**<sup>1</sup>

[Repealed]

**Article 149***(Banche popolari)*

1. *Banche popolari* existing on 20 March 1992 shall, within five years of that date, alter the face value of their shares to conform with the value established by paragraph 2 of Article 29.

2. Members of *banche popolari* who on 20 March 1992 held shares exceeding the limit established by paragraph 2 of Article 30 but with a face value not exceeding fifteen million lire may continue to hold such shares.

3. Within three years of the entry into force of this Legislative Decree, *consorzi economici a garanzia limitata* which engage in banking must be transformed into *società per azioni* or *banche popolari*, or adopt resolutions for mergers with banks that result in such companies or banks.

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<sup>1</sup> Article repealed with effect from 1 January 1999 as a consequence of the combined effect of Article 6.3 and Article 11.2 of Legislative Decree 43/1998 and point 2 of the relevant Treasury decree of 28 September 1998.

Resolutions of the general meetings on such matters shall be adopted by the majorities established by the bylaws for amendments thereto; where in relation to the object of such amendments the bylaws provide for different majorities, the smallest shall apply. Members' right of withdrawal shall not be affected.

### **Article 150**

*(Banche di credito cooperativo)*

1. *Banche di credito cooperativo* formed before 1 January 1993 may maintain their original name provided the expression *credito cooperativo* is added to it.

2. Banks referred to in paragraph 1 shall comply with the provisions of Articles 33, paragraph 1, 34, paragraphs 1 and 2, and 35, paragraph 2, of this Legislative Decree by 1 January 1997. The necessary amendments to bylaws shall be approved by the majorities established therein for resolutions of ordinary general meetings.

3. *Banche di credito cooperativo* formed before 22 February 1992 shall not be held to comply with the provisions of Article 33, paragraph 4, concerning the lower limit of the face value of shares.

4. Paragraph 3 of Article 21 of Law 59 of 31 January 1992 as substituted by paragraph 9 of Article 42 of Legislative Decree 481 of 14 December 1992 shall be substituted by: "3. Articles 2, 7, 9, 11, 12, 14, paragraph 4, 18, paragraphs 3 and 4, and 21, paragraphs 1 and 2, of this Law shall apply to *banche di credito cooperativo*."

5. The Bank of Italy shall issue instructions for gradual compliance with the requirements of Article 35, paragraph 1, by *banche di credito cooperativo* whose outstanding loans to non-members at the close of the 1992 financial year exceeded the limit.

6. The provisions of Article 37 shall apply from the approval of the financial statements for 1993. The necessary amendments to bylaws shall be adopted by the majorities established therein for adoption of resolutions by ordinary general meetings.

**Article 151**

*(Banks still having public-law status)*

1. The operations, organization and functioning of the remaining banks having public-law status shall be governed by this Legislative Decree, their bylaws and any other provisions referred to therein.

**Article 152**

*(Casse comunali di credito agrario  
and monti di credito su pegno di seconda categoria)*

1. By 1 January 1996 *casse comunali di credito agrario* and *monti di credito su pegno di seconda categoria* which may not accept deposits from the public must take the necessary steps leading to the cessation of their credit activities or to their dissolution. At the expiry of such limitation period, the banks that have not complied shall be placed in liquidation.

2. Pending the adoption of the measures referred to in paragraph 1, *monti di credito su pegno di seconda categoria* which may not accept deposits from the public may continue to engage in the activity of granting pledge loans. Such entities shall be subject to the provisions of this Legislative Decree insofar as they are compatible.

**Article 153**

*(Provisions concerning specific credit transactions)*

1. Pending the issue by the Bank of Italy of the regulations referred to in Article 38, paragraph 2, the relevant provisions of preceding laws shall continue to apply.

2. The provisions governing mortgage bonds, although abrogated, shall continue to apply to such bonds still in circulation, except for those providing for intervention by the Bank of Italy.

3. Non-banks authorized to effect agricultural credit transactions shall continue to engage in such activity within the limits specified in their respective authorizations.

4. Where national and regional laws refer to the provisions of Royal Decree Law 1509 of 29 July 1927, ratified with amendments by Law 1760 of 5 July 1928, or to those of the Ministerial Decree of 23 January 1928 and subsequent amendments, they shall continue to be supplemented by such provisions.

5. Pending the completion of the agreements referred to in Article 47, existing provisions concerning the allocation and management of public funds for supporting credit shall continue to apply.

#### **Article 154**

*(The Interbank Guarantee Fund)*

1. The provisions of Article 22 of Presidential Decree 601 of 29 September 1973 shall apply to the Fund, the Special Section and the Guarantee Section for Fishing Credit referred to in Article 45.

#### **Article 155**

*(Persons operating in the financial sector)*

1. Persons who engage in the activities referred to in Article 106, paragraph 1, shall comply with the provisions of paragraph 2 and paragraph 3, subparagraph *b*), of that Article within eighteen months of the entry into force of this Legislative Decree.

2. Article 107 shall also apply to the financial companies for innovation and development provided for in Article 2 of Law 317 of 5 October 1991.

3. Pawnbrokers referred to in the third paragraph of Article 32 of Law 745 of 10 May 1938 shall be subject to the provisions of Article 106.

4. *Consorti di garanzia collettiva fidi, di primo e di secondo grado*, including those formed as *società cooperative* or *società consortili*, and engaging in the activities referred to in Article 29, paragraph 1, of Law 317 of 5 October 1991 shall be entered in a special section of the register established by Article 106, paragraph 1. Title V of this Legislative Decree and Articles 2, 3 and 4 of Decree Law 143 of 3 May 1991, ratified with amendments by Law 197 of 5 July 1991, shall not apply to such entities. Entry in the section shall not authorize them to effect transactions restricted to financial intermediaries.<sup>1</sup>

5. Persons who engage on a professional basis in money-changing, consisting in spot negotiation of means of payment in foreign currency, shall be entered in a special section of the register established by Article 106, paragraph 1. The provisions of Articles 106, paragraph 6, 108, 109 referring to the integrity requirements, and 111 shall apply to such persons. Entry in such section shall not entail authorization to engage in other

<sup>1</sup> Paragraph as amended by Article 35.1 of Legislative Decree 342/1999.



business reserved to financial intermediaries. The Minister of the Treasury, after consulting the Bank of Italy and the UIC, shall issue measures implementing this paragraph, specifying, in particular, the activities that may be performed jointly with money-changing. The Minister of the Treasury shall also establish provisional rules governing the authorizations already granted to money-changers pursuant to Article 4, paragraph 2, of Decree Law 143 of 3 May 1991, ratified with amendments by Law 197 of 5 July 1991.<sup>1</sup>

6. Persons other than banks, already operating at the date of entry into force of this provision, who on a non-profit-basis traditionally raise funds of modest amount and grant small loans may continue to carry on their activity, considering its marginal nature, in compliance with the operating procedures and quantitative limits established by the Credit Committee.<sup>2</sup>

#### Article 156

*(Amendment of legislative provisions)*

1. Article 10 of Decree Law 143 of 3 May 1991, ratified with amendments by Law 197 of 5 July 1991, shall be substituted by:

“Article 10 (*Duties of the board of auditors*). - 1. Without prejudice to the provisions of the Civil Code or special laws, the members of the boards of auditors of the intermediaries referred to in Article 4 shall control compliance with the provisions of this Decree. A copy of the findings and objections of the board of auditors concerning violations of the provisions referred to in Chapter I of this Decree shall be transmitted within ten days to the Minister of the Treasury. Omission of transmission shall be punished by imprisonment for a term of up to one year and by a fine of between two hundred thousand and two million lire.”

2. Article 1, paragraph 1, subparagraph *c*), of Law 52 of 21 February 1991 shall be substituted by:

“*c*) the assignee is a bank or a financial intermediary governed by the 1993 Banking Law enacted pursuant to Article 25, paragraph 2,

<sup>1</sup> Paragraph added by Article 35.2 of Legislative Decree 342/1999. Moreover Article 38 of Legislative Decree 342/1999 provided as follows: “Time limits for implementing measures. 1. The measures implementing the provisions of this Legislative Decree shall be issued within one hundred and twenty days from the date of its entry into force.”

<sup>2</sup> Paragraph added by Article 35.2 of Legislative Decree 342/1999.

of Law 142 of 19 February 1992 whose corporate purpose includes factoring.”

3. Article 11, second paragraph, of Law 349 of 12 June 1973 shall be substituted by:

“Non-compliance with the provisions of Article 9, first paragraph, shall be subject to the fine provided for in Article 144, paragraph 1 of the 1993 Banking Law enacted pursuant to Article 25, paragraph 2, of Law 142 of 19 February 1992. Article 145 of the 1993 Banking Law shall apply.”

4. Article 213 of Royal Decree 635 of 6 May 1940 shall be substituted by:

“Article 213. – Objects not redeemed within thirty days of the expiry of the loan shall be sold at public auction according to the rules contained in Articles 529ff. of the Code of Civil Procedure or by a different proceeding proposed by the agent and approved by the police.”<sup>1</sup>

5. Paragraph 3 of Article 4 of Presidential Decree 148 of 31 March 1988 shall be substituted by:

“3. Banks and other financial intermediaries shall carry out currency and foreign exchange transactions in compliance with the provisions governing them.”<sup>2</sup>

6. Article 58 of Law 448 of 23 December 1998 shall be substituted by:

“Article 58 (Bonds of *società cooperativa*). 1. *Società cooperativa* issuing bonds pursuant to Article 11 of Legislative Decree 385 of 1 September 1993 shall be subject to the provisions of Articles 2411ff. of the Civil Code and, where the conditions obtain, to auditing in the manner established by Article 15, paragraph 2, of Law 59 of 31 January 1992, as well as the provisions of Articles 114 and 115 of Legislative Decree 58 of 24 February 1998 insofar as they are compatible with the legislation on cooperatives.”<sup>3</sup>

7. In paragraph 1 of Article 3 of Law 489 of 26 November 1993 the words “, after consulting the Bank of Italy” shall be deleted.<sup>4</sup>

<sup>1</sup> Paragraph added by Article 36.1 of Legislative Decree 342/1999.

<sup>2</sup> Paragraph added by Article 36.1 of Legislative Decree 342/1999.

<sup>3</sup> Paragraph added by Article 36.1 of Legislative Decree 342/1999.

<sup>4</sup> Paragraph added by Article 36.1 of Legislative Decree 342/1999.

**Article 157**

*(Amendments to Legislative Decree 87 of 27 January 1992)*

1. Article 1 of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“Article 1 (*Scope*). - 1. The provisions of this Decree shall apply:

- a) to banks;
- b) to management companies provided for in Law 77 of 23 March 1983;
- c) to parent financial companies of banking groups entered in the register;
- d) to companies provided for in Law 1 of 2 January 1991;
- e) to persons operating in the financial sector provided for in Title V of the 1993 Banking Law enacted pursuant to Article 25, paragraph 2, of Law 142 of 19 February 1992 and to companies engaging in financial activities referred to in Article 59, paragraph 1, subparagraph b), of the 1993 Banking Law.

2. The Minister of the Treasury, with regard to persons referred to in paragraph 1, subparagraph e), shall establish criteria for exemption from application of this Decree, with particular reference to the importance of the business of a financial nature in relation to the total business carried on, to the persons with whom the business is carried on, to whether or not the portfolio of participating interests is of a financial nature, and to the need to avoid disparate methods and techniques of presentation with a view to the drawing up of consolidated financial statements.

3. For the purposes of this Decree acquiring holdings for subsequent transfer shall be considered financial activity.

4. For the application of this Decree persons referred to in paragraph 1 shall be defined as credit and financial institutions.

5. For companies governed by Law 1 of 2 January 1991 the provisions of this Decree shall be implemented in consideration of the special nature of such Law by regulations issued by the Bank of Italy after consulting<sup>1</sup> the Commissione nazionale per le società e la borsa (Consob).”

2. Article 4, paragraph 3, of Legislative Decree 87 of 27 January 1992 shall be substituted by:

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<sup>1</sup> Article 63.1 of Legislative Decree 415/1996 replaced the words “in agreement with Consob” with “after consulting Consob”.

“3. For the purposes of this Decree control shall exist in the circumstances referred to in Article 59, paragraph 1, subparagraph a), of the 1993 Banking Law.”

3. Article 5 of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“Article 5 (*Powers of the authorities*). - 1. Credit and financial institutions shall comply with the regulations issued by the Bank of Italy on the layout of financial statements intended for the public, whether prepared on a solo or consolidated basis, and on the manner and time limits for the publication of financial statements.

2. The powers conferred by paragraph 1 shall also apply for amendments, additions and updates of the layouts established by this Decree and to the adaptation of Italian law to the law, principles and orientations of the European Community.

3. For persons operating in the financial sector and entered in the special register provided for in Article 107 of the 1993 Banking Law the instructions of the Bank of Italy shall be issued after consulting<sup>1</sup> Consob. For companies referred to in Law 77 of 23 March 1983 the instructions of the Bank of Italy shall be issued after consultation with Consob. For companies referred to in Law 1 of 2 January 1991 the instructions shall be issued by the Bank of Italy after consulting<sup>2</sup> Consob, in consideration of the special nature of such Law.

4. Regulations issued in the exercise of the powers established by this Article shall be published in the *Gazzetta Ufficiale della Repubblica italiana*”.

4. Article 11, paragraph 3, of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“3. The provisions of paragraph 2 shall apply to financial companies and entities which are part of banking groups entered in the register established pursuant to Article 64 of the 1993 Banking Law”.

5. Article 19, paragraph 1, of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“1. In alternative to what is provided for in Article 18, holdings in subsidiary undertakings and in undertakings over which a significant influence is exercised may be valued, with reference to one or more

<sup>1</sup> Article 63.1 of Legislative Decree 415/1996 replaced the words “in agreement with Consob” with “after consulting Consob”.

<sup>2</sup> Article 63.1 of Legislative Decree 415/1996 replaced the words “in agreement with Consob” with “after consulting Consob”.

of the aforementioned undertakings, in accordance with the method specified in this Article. Significant influence shall exist where the investor undertaking disposes of at least one fifth of the voting rights exercisable at ordinary general meetings of the investee undertaking”.

6. Article 23, paragraph 1, subparagraph *b)*, of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“*b)* the register of subsidiary undertakings and of those subject to significant influence within the meaning of Article 19, paragraph 1, held directly or through trust companies or nominees, indicating for each the name, head office, net worth, profit or loss for the latest financial year, percentage held and value attributed to the holding in the balance sheet;”

7. Article 24, paragraph 3, of Legislative Decree 87 of 27 January 1992 is repealed.

8. Article 25 of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“Article 25 (*Parent undertaking*) - 1. For the purposes of Article 24 a parent undertaking shall be:

*a)* the parent credit institution or financial company of a banking group entered in the register established pursuant to Article 64 of the 1993 Banking Law;

*b)* a financial institution that controls undertakings referred to in Article 28, paragraph 1, subparagraphs *a)* and *b)*, and which is not in turn controlled by credit or financial institutions which are required to prepare consolidated financial statements.

2. Provisions concerning entities and companies that have issued securities listed on a stock exchange shall be unaffected.”

9. Article 26, paragraph 3, of Legislative Decree 87 of 27 January 1992 is repealed.

10. Article 26, paragraph 5, of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“5. Parent undertakings referred to in Article 25, including those managed on a unified basis within the meaning of paragraph 1 or paragraph 2 of this Article, shall draw up consolidated financial statements exclusively on the basis of paragraph 4, except in the case of parent banks or parent financial companies of banking groups entered in the register established pursuant to Article 64 of the 1993 Banking Law. Provisions concerning entities and companies that

have issued securities listed on a stock exchange shall be unaffected.”

11. Article 27, paragraph 3, of Legislative Decree 87 of 27 January 1992 is repealed.

12. Article 28 of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“Article 28 (*Undertakings included in the consolidation*) - 1. The consolidation shall include the parent undertaking or the undertakings managed on a unified basis and subsidiary undertakings, wherever formed, provided the latter belong to one of the following categories:

- a) credit and financial institutions;
- b) undertakings that engage exclusively or primarily in instrumental activities as defined by Article 59, paragraph 1, subparagraph c), of the 1993 Banking Law.

2. The parent credit institution or financial company of a banking group entered in the register established pursuant to Article 64 of the 1993 Banking Law, shall include in the consolidation the undertakings constituting the group.”

13. Article 45 of Legislative Decree 87 of 27 January 1992 shall be substituted by:

“Article 45 (Pecuniary administrative sanctions). — 1. - Persons performing administrative, managerial or control functions in credit and financial institutions shall be liable to a pecuniary administrative sanction of between one million and fifty million lire<sup>1</sup> for violation of the provisions of Chapter I, Article 3; Chapter II, Sections I, II, III and V; Chapter III, Sections II and IV; Chapter IV, Article 41; Chapter V, Articles 42, paragraph 1, 43 and 46; as well as the measures referred to in Article 5.

2. – Article 145 of Legislative Decree 385 of 1 September 1993 shall apply.

3. – Paragraphs 1 and 2 of this Article shall apply to persons referred to in Article 1, paragraph 1, subparagraph e), only if they are entered in the special register established by Article 107 of Legislative Decree 385 of 1 September 1993.”<sup>2</sup>

<sup>1</sup> Article 63.3 of Legislative Decree 415/1996 replaced the words “between fifteen million and ninety million lire” with “between one million and fifty million lire”.

<sup>2</sup> Law 77/1983, except for Articles 9 and 10-ter, and Law 1/1991 were repealed by Article 214.1 of Legislative Decree 58/1998, which reformed the legislation governing the matter.

**Article 158**<sup>1</sup>

[Repealed]

**Article 159***(Special statute regions)*

1. Supervisory evaluation shall be reserved to the Bank of Italy.
2. Where the administrative measures provided for in Articles 14, 31, 36, 56 and 57 fall within the authority of the regions, the Bank of Italy shall deliver, for purposes of supervision, a binding opinion.
3. The provisions of paragraphs 1 and 2 and of Articles 15, 16, 26 and 47 shall be mandatory and shall prevail over any previously issued contrary provisions. The powers of regional authorities for matters governed by Article 26 shall be unaffected.
4. Special statute regions which are granted powers in matters governed by Directive 89/646/EEC under the implementing provisions of their respective statutes shall adopt measures for the transposition of such Directive in accordance with the principles of the mandatory provisions contained in the preceding paragraphs.

**Article 160**<sup>2</sup>

[Repealed]

**Article 161***(Provisions repealed)*

1. The following provisions are or remain repealed:
  - Royal Decree 646 of 16 July 1905;
  - Law 441 of 15 July 1906;
  - Royal Decree 472 of 5 May 1910;
  - Royal Decree 1620 of 4 September 1919;
  - Royal Decree Law 1709 of 2 September 1919, ratified by Law 1158 of 6 July 1922;
  - Royal Decree 932 of 9 April 1922;
  - Royal Decree Law 2283 of 7 October 1923;

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<sup>1</sup> Article repealed by Article 66.2c) of Legislative Decree 415/1996.

<sup>2</sup> Article repealed by Article 211.4 of Legislative Decree 58/1998.

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- Royal Decree Law 3148 of 15 December 1923, ratified by Law 473 of 17 April 1925;
  - Royal Decree Law 993 of 4 May 1924, ratified with amendments by Law 255 of 11 February 1926;
  - Royal Decree 2063 of 23 October 1925;
  - Royal Decree Law 1297 of 1 July 1926, ratified by Law 531 of 14 April 1927;
  - Royal Decree Law 1511 of 7 September 1926, ratified by Law 1107 of 23 June 1927;
  - Royal Decree Law 1830 of 6 November 1926, ratified by Law 1108 of 23 June 1927;
  - Royal Decree Law 187 of 13 February 1927, ratified by Law 2537 of 22 December 1927;
  - Royal Decree Law 1509 of 29 July 1927, ratified by Law 1760 of 5 July 1928, and subsequent amendments;
  - The Ministerial Decree of 23 January 1928 and subsequent amendments. The provisions of paragraph 3 of this Article shall be unaffected;
  - Royal Decree Law 1817 of 5 July 1928, ratified by Law 3154 of 25 December 1928;
  - Royal Decree Law 2307 of 4 October 1928, ratified by Law 3040 of 13 December 1928;
  - Royal Decree 967 of 25 April 1929 and subsequent amendments;
  - Royal Decree 225 of 5 February 1931;
  - Royal Decree Law 693 of 19 March 1931, ratified by Law 1640 of 17 December 1931;
  - Royal Decree Law 1398 of 13 November 1931, ratified with amendments by Law 1581 of 15 December 1932;
  - Law 635 of 30 May 1932;
  - Royal Decree Law 721 of 24 May 1932, ratified by Law 1710 of 22 December 1932;
  - Law 805 of 30 May 1932;
  - Law 1281 of 3 June 1935;
  - Article 9 of Law 1143 of 13 June 1935;
  - Royal Decree Law 1883 of 4 October 1935, ratified by Law 225 of 9 January 1936;



- Royal Decree Law 375 of 12 March 1936, ratified with amendments by Law 141 of 7 March 1938, and subsequent amendments, except for Title III and Articles 32, first paragraph, subparagraphs *d)* and *f)*, and 35, second paragraph, subparagraph *b)*;
- Royal Decree Law 376 of 12 March 1936, ratified by Law 169 of 18 January 1937;
- Royal Decree Law 2008 of 15 October 1936, ratified by Law 50 of 4 January 1937;
- Royal Decree Law 1561 of 12 August 1937, ratified by Law 2352 of 20 December 1937;
- Royal Decree 1706 of 26 August 1937 and subsequent amendments;
- Royal Decree Law 204 of 24 February 1938, ratified with amendments by Law 778 of 3 June 1938;
- Law 378 of 7 April 1938;
- Law 745 of 10 May 1938, except for Articles 10, 11, 12, first and second paragraphs, 13, 14, 15 and 31;
- Royal Decree Law 883 of 3 June 1938, ratified by Law 86 of 5 January 1939;
- Royal Decree 1279 of 25 May 1939, except for Articles 37, 38, 39, 40, second and third paragraphs, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52;
- Law 1797 of 16 November 1939;
- Law 1922 of 14 December 1939;
- Law 657 of 21 May 1940;
- Law 933 of 10 June 1940;
- Royal Decree 1955 of 25 November 1940;
- Articles 2766 and 2778, subparagraphs 3 and 9, of the Civil Code, approved by Royal Decree 262 of 16 March 1942;
- Viceregal Legislative Decree 226 of 14 September 1944;
- Chapter III of Viceregal Legislative Decree 416 of 28 December 1944;
- Chapters III and IV of Viceregal Legislative Decree 417 of 28 December 1944;
- Legislative Decree 76 of the Provisional Head of State of 12 August 1946;

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- Legislative Decree 244 of the Provisional Head of State of 13 October 1946;
  - Legislative Decree 370 of the Provisional Head of State of 23 August 1946;
  - Royal Legislative Decree 453 of 29 May 1946;
  - Royal Legislative Decree 491 of 2 June 1946;
  - Legislative Decree 691 of the Provisional Head of State of 17 July 1947, except for Articles 3, 4, 5 and for the foreign exchange authority conferred on the Credit Committee by Article 1, first paragraph;
  - Legislative Decree 1418 of the Provisional Head of State of 15 December 1947;
  - Legislative Decree 1419 of the Provisional Head of State of 15 December 1947;
  - Legislative Decree 1421 of the Provisional Head of State of 15 December 1947;
  - Legislative Decree 105 of 10 February 1948 and subsequent amendments;
  - Legislative Decree 569 of 16 April 1948;
  - Law 474 of 29 July 1949;
  - Law 445 of 22 June 1950;
  - Law 717 of 10 August 1950;
  - Law 1095 of 17 November 1950;
  - Law 1350 of 27 November 1951;
  - Chapters V and VI of Law 949 of 25 July 1952, except for Articles 21, 37, 38, first and second paragraphs, 39, first paragraph, 40, first paragraph, and 41, second paragraph;
  - Law 3093 of 11 December 1952;
  - Law 101 of 24 February 1953;
  - Law 208 of 13 March 1953;
  - Law 298 of 11 April 1953;
  - Law 102 of 8 April 1954;
  - Law 742 of 31 July 1957;
  - Law 1295 of 24 December 1957 and subsequent amendments, except for Articles 2, fourth paragraph, 3, seventh paragraph, and 5;
  - Article 155 of Presidential Decree 645 of 29 January 1958;
  - Law 607 of 21 July 1959;
  - Law 1235 of 11 October 1960;
  - Law 1320 of 23 October 1960;

- Law 39 of 3 February 1961;
- Law 456 of 21 May 1961;
- Law 562 of 27 June 1961;
- Law 850 of 28 July 1961;
- Law 1306 of 24 November 1961;
- Law 265 of 30 April 1962;
- Articles 1, 2, 3 and 4 of Law 1679 of 25 November 1962;
- Presidential Decree 1907 of 12 December 1962;
- Law 407 of 10 May 1964;
- Law 627 of 5 July 1964;
- Law 1244 of 31 October 1965;
- Law 297 of 11 May 1966;
- Law 1262 of 24 December 1966;
- Articles 6, 7, 8 and 16 of Law 700 of 6 August 1967 and every other provision of such Law concerning the organization, functions and operations of the “Credit Section” of Banca Nazionale delle Comunicazioni;
- Article 41 of Law 800 of 14 August 1967;
- Law 1084 of 31 October 1967;
- Law 1178 of 28 October 1968;
- Law 120 of 27 March 1969;
- Article 4 of Law 970 of 10 December 1969;
- Law 866 of 28 October 1970;
- Presidential Decree 896 of 21 August 1971;
- Law 917 of 26 October 1971;
- Law 1033 of 3 December 1971;
- Law 848 of 5 December 1972;
- Law 812 of 29 November 1973;
- Presidential Decree 916 of 8 November 1973;
- Law 75 of 11 March 1974;
- Law 392 of 14 August 1974;
- Law 395 of 14 August 1974;
- Articles 11 and 12 of Decree Law 376 of 13 August 1975, ratified with amendments by Law 492 of 16 October 1975;
- Article 2 of Law 492 of 16 October 1975;

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- Article 11 of Law 403 of 1 July 1977;
  - Law 23 of 10 February 1981;
  - Articles 10, 11 and 13 of Law 423 of 1 August 1981;
  - Article 15 of Law 72 of 19 March 1983;
  - Article 11 of Law 77 of 23 March 1983 and subsequent amendments;
  - Article 3 of Law 359 of 18 July 1984;
  - Law 360 of 18 July 1984;
  - Articles 12 and 21 of Law 49 of 27 February 1985;
  - Articles 9, 9 *bis*, 10, 11 and 21 of Law 281 of 4 June 1985 and subsequent amendments;
  - Law 114 of 17 April 1986;
  - Law 115 of 17 April 1986;
  - Article 2 of Law 458 of 27 October 1988;
  - Articles 1, 2, 3, paragraph 1, Article 4, paragraphs 1, 2, 3 and 4, Articles 5 and 6, paragraphs 2 and 3, and Articles 8 and 15 of Law 302 of 28 August 1989. The provisions of paragraph 2 of the present Article shall be unaffected;
  - Article 5 of Law 218 of 30 July 1990;
  - Title V of Law 287 of 10 October 1990 and subsequent amendments;
  - Article 18 and Title VII of Legislative Decree 356 of 20 November 1990;
  - Law 175 of 6 June 1991;
  - Article 6, paragraphs 1, 2, 2 *bis*, 4 *bis*, 5, 6, 8, 9 and 10, Article 7 and Article 8, paragraph 2 *ter*, of Decree Law 143 of 3 May 1991, ratified with amendments by Law 197 of 5 July 1991. The provisions of paragraph 2 of the present Article shall be unaffected.
  - Article 2, paragraph 6, of Law 317 of 5 October 1991;
  - Article 1 of Law 207 of 17 February 1992, without prejudice to the provisions of Article 2, paragraph 1, of such Law;
  - Legislative Decree 481 of 14 December 1992, except for Articles 43, 45 and 49, paragraphs 5 and 6;
  - Legislative Decree 528 of 30 December 1992.

2. The following provisions are repealed but shall continue to be applied until the entry into force of the regulations issued by the credit authorities pursuant to this Legislative Decree:

- Article 36 of Law 454 of 2 June 1961;
- Law 74 of 5 March 1985;
- Presidential Decree 350 of 27 June 1985;
- Articles 10, 11, 12, 13 and 14 of Law 302 of 28 August 1989;
- Articles 23 and 24 of Law 428 of 29 December 1990;
- Legislative Decree 301 of 10 September 1991;
- Legislative Decree 302 of 10 September 1991, except for the tax provisions of Article 2, paragraph 5;
- Article 2 of Law 52 of 21 February 1991;
- Article 6, paragraphs 3 and 4, Article 8, paragraphs 1, 2 and 2 *bis*, and Article 9 of Decree Law 143 of 3 May 1991, ratified with amendments by Law 197 of 5 July 1991;
- Chapter II, Section I, of Law 142 of 19 February 1992;
- Law 154 of 17 February 1992, except for Article 10;
- Decree 334 of 12 May 1992 of the Minister of the Treasury.

3. Articles 28 and 31 of the Ministerial Decree of 23 January 1928, as subsequently amended, shall continue to be applied until Article 152 of this Legislative Decree has been implemented.

3-bis. Paragraphs 4, 5 and 6 of Article 4 of Presidential Decree 148 of 31 March 1988 are repealed; nonetheless, they shall continue to be applied until the implementation of Article 155, paragraph 5, of this Legislative Decree.<sup>1</sup>

4. All other provisions not compatible with this Legislative Decree are hereby repealed.

5. Regulations issued by the credit authorities pursuant to provisions which have been repealed or replaced shall continue to be applied until the entry into force of regulations issued pursuant to this Legislative Decree.

6. Contracts already completed and actions for execution in process at the entry into force of this Legislative Decree shall continue to be governed by the previous provisions.

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<sup>1</sup> Paragraph added by Article 37.1 of Legislative Decree 342/1999.

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7. Authorizations for holdings already allowed under the initial application of Title V of Law 287 of 10 October 1990 shall remain in effect unless revoked.

**Article 162**  
*(Entry into force)*

1. This Legislative Decree shall enter into force on 1 January 1994.

## **Decreto del Ministro del Tesoro - 29.10.93**

**Publicato nella Gazz. Uff. 12 novembre 1993, n. 266**

**Integrazione al decreto ministeriale 19 dicembre 1991 relativo alle modalità di attuazione delle disposizioni di cui all'art. 2 del decreto-legge 3 maggio 1991, n. 143, convertito, con modificazioni ed integrazioni, dalla legge 5 luglio 1991, n. 197, recante: "Provvedimenti urgenti per limitare l'uso del contante e dei titoli al portatore nelle transazioni e prevenire l'utilizzazione del sistema finanziario a scopo di riciclaggio".**

IL MINISTRO DEL TESORO

VISTO il decreto-legge 3 maggio 1991, n. 143, convertito, con modificazioni, dalla legge 5 luglio 1991, n. 197, recante "Provvedimenti urgenti per limitare l'uso del contante e dei titoli al portatore nelle transazioni e prevenire l'utilizzazione del sistema finanziario a scopo di riciclaggio";

VISTO il decreto ministeriale 19 dicembre 1991, pubblicato nella Gazzetta Ufficiale 28 dicembre 1991, n. 303, contenente le modalità di attuazione delle disposizioni di cui all'art. 2 del citato decreto-legge 3 maggio 1991, n. 143, convertito, con modificazioni, dalla legge 5 luglio 1991, n. 197, in tema di identificazione e registrazione cui sono soggetti gli intermediari finanziari;

VISTA la Direttiva del Consiglio CEE n. 308 del 10 giugno 1991, relativa alla prevenzione dell'uso del sistema finanziario a scopo di riciclaggio;

CONSIDERATI i lavori del Gruppo di Azione Finanziaria Internazionale (GAFI) costituito a Parigi a seguito del vertice dei Capi di Stato e di Governo dei sette Paesi maggiormente industrializzati del 14 e 15 luglio 1989;

RAVVISATA l'esigenza di integrare le modalità di attuazione del richiamato art. 2 del decreto-legge 3 maggio 1991, n. 143, convertito, con modificazioni, dalla legge 5 luglio 1991, n. 197, con riguardo ai rapporti intercreditizi internazionali, escluse le operazioni che comportano trasferimenti di disponibilità per conto della clientela;

SENTITO il parere del Comitato istituito ai sensi del decreto del Ministro del tesoro n. 209538 in data 8.6.93 per la risoluzione delle problematiche connesse all'applicazione del decreto-legge 3 maggio 1991, n. 143, convertito, con modificazioni, dalla legge 5 luglio 1991, n. 197.

RITENUTA l'urgenza di provvedere ai sensi e per gli effetti dell'articolo 6 del D.L.C.P.S. 17 luglio 1947, n. 691;

**D E C R E T A**

Il citato decreto ministeriale 19 dicembre 1991 è così integrato.

1. Al paragrafo 2.5, dopo il primo periodo è inserito il seguente secondo periodo:

"Parimenti, gli obblighi non sussistono per le operazioni e i rapporti posti in essere tra banche, altri intermediari abilitati aventi sede o succursale in Italia e banche o succursali situate all'estero.

In ogni caso, per le materiali movimentazioni di contante e di titoli al portatore, effettuate anche per il tramite di vettori specializzati, vanno acquisiti e registrati il codice dell'anagrafe dei corrispondenti bancari esteri di banche italiane attribuito (o da attribuire) dall'Ufficio Italiano dei Cambi, la data, la causale, il codice paese estero e l'importo dell'operazione, distinguendo mediante apposito codice la parte in contante."

Le modalità di utilizzo dei codici dei corrispondenti bancari esteri saranno precisate nelle note che saranno emanate dall'Ufficio Italiano dei Cambi e pubblicate nella Gazzetta Ufficiale della Repubblica.

2. Al paragrafo 3, dopo il quinto periodo è aggiunto il seguente sesto periodo:

"Per le operazioni e i rapporti intrattenuti dalle banche e dagli altri intermediari abilitati aventi sede o succursale in Italia con organismi internazionali, autorità governative di Stati esteri ed uffici postali esteri, vanno acquisiti e registrati il codice dell'anagrafe dei corrispondenti esteri attribuito (o da attribuire) dall'Ufficio Italiano dei Cambi, la data, il codice paese estero e, per le sole operazioni, la causale e l'importo."

Le modalità di utilizzo dei codici dei corrispondenti esteri saranno precisate nelle note che saranno emanate dall'Ufficio Italiano dei Cambi e pubblicate nella Gazzetta Ufficiale della Repubblica.

3. Al paragrafo 4.1, alla fine del quinto periodo sono aggiunte le seguenti parole:

"o altro intermediario abilitato e ciò sia comprovato da idonea attestazione da questi rilasciata."

4. Al paragrafo 4.1, dopo il quinto periodo sono aggiunti i seguenti sesto e settimo periodo:

"Per l'accensione di conti, depositi o altri rapporti continuativi dall'estero presso le banche e gli altri intermediari abilitati aventi sede o succursale in Italia, le complete generalità di chi effettua l'operazione e dell'eventuale soggetto per conto del quale l'operazione viene eseguita possono essere acquisite anche non in presenza di detti soggetti qualora i dati stessi siano stati rilevati da:

1) banche aventi sede legale e amministrativa in Paesi aderenti al Gruppo d'Azione Finanziaria Internazionale (banche GAFI), ovvero da succursali situate in tali Paesi di banche nazionali e di banche GAFI;

2) succursali situate in Paesi non aderenti al GAFI di banche nazionali e di banche GAFI, a condizione che la banca casa madre dichiari di aderire, nell'esercizio dell'attività svolta presso quelle succursali, ai principi e alle cautele delle Raccomandazioni emanate dal GAFI;

3) Autorità Consolare, che vi provvede nelle forme d'uso.

L'avvenuta identificazione deve essere comprovata da idonea attestazione."

5. Il Ministro del Tesoro può sospendere le esenzioni di cui al punto 1 del presente decreto e disporre - anche ai fini dell'effettuazione delle analisi statistiche di cui all'art. 5, comma 10, della legge 5 luglio 1991, n. 197 - l'identificazione di soggetti insediati in determinati paesi nonché la registrazione di specifiche categorie di rapporti ed operazioni.

6. Restano fermi gli obblighi di identificazione e registrazione per le operazioni compiute per conto della clientela come disciplinati dai decreti del Ministro del tesoro del 19 dicembre 1991 e del 7 luglio 1992, nonché gli obblighi e gli adempimenti contenuti nel decreto-legge 3 maggio



1991, n. 143, convertito, con modificazioni, dalla legge 5 luglio 1991, n. 197, e in particolare quelli riguardanti la segnalazione delle operazioni sospette.

Il presente decreto sarà pubblicato nella Gazzetta Ufficiale della Repubblica italiana.

Roma, 29 ottobre 1993

**IL MINISTRO: BARUCCI**

L. 12-8-1993 n. 310

Norme per la trasparenza nella cessione di partecipazioni e nella composizione della base sociale delle società di capitali, nonché nella cessione di esercizi commerciali e nei trasferimenti di proprietà dei suoli.

Pubblicata nella Gazz. Uff. 20 agosto 1993, n. 195.

**L. 12 agosto 1993, n. 310 <sup>(1)</sup>.**

**Norme per la trasparenza nella cessione di partecipazioni e nella composizione della base sociale delle società di capitali, nonché nella cessione di esercizi commerciali e nei trasferimenti di proprietà dei suoli <sup>(1/circ)</sup>.**

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<sup>(1)</sup> Pubblicata nella Gazz. Uff. 20 agosto 1993, n. 195.

<sup>(1/circ)</sup> Con riferimento al presente provvedimento è stata emanata la seguente circolare:

- *Ministero dell'industria, del commercio e dell'artigianato*: [Circ. 18 novembre 1999, n. 3472/C.](#)

1. 1. <sup>(2)</sup>.

2. <sup>(3)</sup>.

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<sup>(2)</sup> Sostituisce il terzo comma dell'[art. 2479 del codice civile](#).

<sup>(3)</sup> Aggiunge un comma all'[art. 2479 del codice civile](#).

2. 1. <sup>(4)</sup>.

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<sup>(4)</sup> Aggiunge l'[art. 2479-bis al codice civile](#).

3. 1. Gli amministratori di società a responsabilità limitata devono, entro sessanta giorni dalla data di entrata in vigore della presente legge, presentare il libro dei soci alla cancelleria del tribunale competente o ad un notaio per la vidimazione.

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4. 1. <sup>(5)</sup>.

2. <sup>(6)</sup>.

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<sup>(5)</sup> Sostituisce la rubrica dell'[art. 2435 del codice civile](#).

<sup>(6)</sup> Aggiunge un comma all'[art. 2435 del codice civile](#)

5. 1. <sup>(7)</sup>.

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(7) Sostituisce l'[art. 2493 del codice civile](#).

6. 1. <sup>(8)</sup>.

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(8) Sostituisce il secondo comma dell'[art. 2556 del codice civile](#).

7. 1. A decorrere dalla data di entrata in vigore della presente legge i notai che ricevano atti o autentichino scritture private aventi ad oggetto trasferimenti di terreni ovvero di esercizi commerciali devono comunicare, entro il mese successivo a quello della stipula, al questore del luogo ove è ubicato l'immobile i dati relativi alle parti contraenti, o loro rappresentanti, al bene compravenduto e al prezzo indicato. Qualora sulla base di elementi comunque acquisiti vi sia la necessità di verificare se l'atto negoziale sia stato posto in essere per le finalità indicate nell'articolo 12-*quinquies*, comma 1, del [decreto-legge 8 giugno 1992, n. 306](#), convertito, con modificazioni, dalla [legge 7 agosto 1992, n. 356](#), il questore può richiedere al notaio rogante o autenticante copia dell'atto e al notaio competente copia di ogni altro atto o contratto che sia connesso o comunque collegato con l'atto negoziale per il quale è stata fatta inizialmente la richiesta.

2. Al notaio che nel termine indicato nel comma 1 omette ripetutamente di effettuare le comunicazioni, si applicano le sanzioni previste dall'articolo 147 della [legge 16 febbraio 1913, n. 89](#).

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8. 1. Il rilascio della autorizzazione all'esercizio di un'attività commerciale, nonché il trasferimento della gestione o della titolarità di un'impresa commerciale devono essere comunicati, a cura del segretario comunale, entro venti giorni dall'adozione del provvedimento di autorizzazione o di subingresso, al questore territorialmente competente, con indicazione dei dati relativi ai soggetti, o loro rappresentanti, al tipo di attività commerciale svolta e all'ubicazione dell'esercizio.

2. Le disposizioni di cui al comma 1 si applicano dalla data di entrata in vigore della presente legge.

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9. 1. Fino all'attuazione del registro delle imprese, in deroga al terzo comma dell'articolo 100 delle disposizioni di attuazione e transitorie del codice civile, il deposito di cui al secondo comma dell'articolo 2556 del codice civile, come sostituito dall'articolo 6 della presente legge, deve essere effettuato a cura del notaio che ha rogato o autenticato l'atto, nel termine ivi previsto, presso la cancelleria del tribunale competente e iscritto nei successivi trenta giorni nel registro delle ditte della competente camera di commercio, industria, artigianato e agricoltura.

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12.

D.L. 8 giugno 1992, n. 306. **Modifiche urgenti al nuovo codice di procedura penale e provvedimenti di contrasto alla criminalità mafiosa** (*Gazzetta Ufficiale* Serie gen. - n. 133 dell'8 giugno 1992), convertito, con modificazioni, nella L. 7 agosto 1992, n. 356 (*Gazzetta Ufficiale* Serie gen. - n. 185 del 7 agosto 1992).

(1) *Il provvedimento contiene anche modifiche ad altre leggi che sono state ivi riportate e che qui si omettono.*

(Estratto).

TITOLO II.  
MODIFICHE AL CODICE PENALE  
E DISPOSIZIONI  
IN MATERIA DI ARMI,  
DI STUPEFACENTI  
E DI RICICLAGGIO.

CAPO II.  
DISPOSIZIONI  
IN MATERIA DI ARMI,  
DI STUPEFACENTI E DI RICICLAGGIO.

**12 quater.** (*Ricettazione di armi, riciclaggio e reimpiego simulati*). 1. Fermo quanto disposto dall'articolo 51 del codice penale, non sono punibili gli ufficiali di polizia giudiziaria della Direzione investigativa antimafia o dei servizi centrali e interprovinciali di cui all'articolo 12 del D.L. 13 maggio 1991, n. 152, convertito, con modificazioni, dalla L. 12 luglio 1991, n. 203, i quali, al solo fine di acquisire elementi di prova in ordine ai delitti di cui agli artt. 648 bis e 648 ter del codice penale, procedono alla sostituzione di denaro, beni o altre utilità provenienti da taluno dei delitti indicati nei suddetti articoli, o altrimenti procedono in modo da ostacolarne l'identificazione della provenienza ovvero in modo da consentirne l'impiego.

2. Fermo quanto disposto dall'art. 51 del codice penale, non sono altresì punibili gli ufficiali di polizia giudiziaria della Direzione investigativa antimafia o dei servizi centrali e interprovinciali di cui all'articolo 12 del D.L. 13 maggio 1991, n. 152, convertito, con modificazioni, dalla

L. 12 luglio 1991, n. 203, i quali, al solo fine di acquisire elementi di prova in ordine a delitti concernenti armi, munizioni od esplosivi, acquistano o ricevono od occultano o comunque si intronnettono nel fare acquisire, ricevere od occultare le armi, le munizioni o gli esplosivi medesimi.

3. Delle operazioni indicate nei commi 1 e 2 è data immediata notizia all'autorità giudiziaria, se richiesta dagli ufficiali di polizia giudiziaria procedenti, può, con decreto motivato, differire il sequestro del denaro, dei beni o delle altre utilità, ovvero delle armi, delle munizioni o degli esplosivi fino alla conclusione delle indagini disponendo se necessario specifiche prescrizioni per la conservazione.

4. L'esecuzione delle operazioni indicate nei commi 1 e 2 è disposta dal capo della polizia-direttore generale della pubblica sicurezza, dal comandante generale dell'Arma dei carabinieri ovvero della Guardia di finanza a seconda che si tratti di servizio appartenente all'una o all'altra forza di polizia: è disposta dall'Alto commissario per il coordinamento della lotta alla delinquenza di tipo mafioso quando ad essa procedono ufficiali di polizia giudiziaria della Direzione investigativa antimafia.

**12 quinquies.** (*Trasferimento fraudolento di valori*) (1). 1. Salvo che il fatto costituisca più grave reato, chiunque attribuisce fittiziamente ad altri la titolarità o disponibilità di denaro, beni o altre utilità al fine di eludere le disposizioni di legge in materia di misure di prevenzione patrimoniali o di contrabbando, ovvero di agevolare la commissione di uno dei delitti di cui agli artt. 648, 648 bis e 648 ter del codice penale, è punito con la reclusione da due a sei anni (2).

2. Fuori dei casi previsti dal comma 1 e dagli artt. 648, 648 bis e 648 ter del codice penale, coloro nei cui confronti pendono procedimenti penali (3) per uno dei delitti previsti dai predetti articoli o dei delitti in materia di contrabbando, o per delitti commessi avvalendosi delle condizioni previste dall'articolo 416 bis del codice penale ovvero al fine di agevolare l'attività delle associazioni previste dallo stesso articolo, nonché per i delitti di cui agli articoli 416 bis, 629, 630, 644 e 644 bis del codice penale e agli articoli 73 e 74 del testo unico delle leggi in materia di disciplina degli stupefacenti e sostanze psicotrope, prevenzione, cura e riabilitazione dei relativi sta-

ticante copia dell'atto e al notaio competente copia di ogni altro atto o contratto che sia connesso o comunque collegato con l'atto negoziale per il quale è stata fatta inizialmente la richiesta.

«2. Al notaio che nel termine indicato nel comma 1 omette ripetutamente di effettuare le comunicazioni, si applicano le sanzioni previste dall'articolo 147 della L. 16 febbraio 1913, n. 89».

(3) *Le originarie parole «colore nei cui confronti sono svolte indagini» sono state sostituite dalle attuali «colore nei cui confronti pendono procedimenti penali» a norma dell'art. 1 del D.L. 17 settembre 1993, n. 369, convertito, con modificazioni, nella L. 15 novembre 1993, n. 461.*

(4) *Le originarie parole «ovvero nei cui confronti si procede per l'applicazione di una misura di prevenzione personale» sono state sostituite dalle attuali «ovvero nei cui confronti è in corso di applicazione o comunque si procede per l'applicazione di una misura di prevenzione personale» a norma dell'art. 1 del D.L. 17 settembre 1993, n. 369, convertito, con modificazioni, nella L. 15 novembre 1993, n. 461.*

(5) *Le originarie parole «sono puniti con la reclusione da due a quattro anni» sono state sostituite dalle attuali «sono puniti con la reclusione da due a cinque anni» a norma dell'art. 1 del D.L. 17 settembre 1993, n. 369, convertito, con modificazioni, nella L. 15 novembre 1993, n. 461.*

(6) *La Corte costituzionale, con sentenza n. 48 del 17 febbraio 1994, ha dichiarato l'illegittimità costituzionale di questo comma.*

**12 sexties.** (1) (2) (*Ipotesi particolari di confisca*). 1. Nei casi di condanna o di applicazione della pena su richiesta a norma dell'art. 444 del codice di procedura penale, per taluno dei delitti previsti dagli artt. 416 bis, 629, 630, 644, 644 bis, 648, esclusa la fattispecie di cui al secondo comma, 648 bis, 648 ter del codice penale, nonché dall'art. 12 quinquies, comma 1, del decreto legge 8 giugno 1992, n. 306, convertito, con modificazioni, dalla legge 7 agosto 1992, n. 356, ovvero per taluno dei delitti previsti dagli artt. 73, esclusa la fattispecie di cui al comma 5, e 74 del testo unico delle leggi in materia di disciplina degli stupefacenti e sostanze psicotrope, prevenzione, cura e riabilitazione dei relativi stati di tossicodipendenza, approvato con decreto del Presidente della Repubblica 9 ottobre 1990, n. 309, è sempre disposta la confisca del denaro, dei beni o

ti di tossicodipendenza, approvato con D.P.R. 9 ottobre 1990, n. 309, ovvero nei cui confronti è in corso di applicazione o comunque si procede per l'applicazione di una misura di prevenzione personale (4), i quali, anche per interposta persona fisica o giuridica, risultano essere titolari o avere la disponibilità a qualsiasi titolo di denaro, beni o altre utilità di valore sproporzionato al proprio reddito, dichiarato ai fini delle imposte sul reddito, o alla propria attività economica, e dei quali non possano giustificare la legittima provenienza, sono puniti con la reclusione da due a cinque anni (5) e il denaro, beni o altre utilità sono confiscati (6).

(1) *L'originaria rubrica «Trasferimento fraudolento e possesso ingiustificato di valori», è stata così sostituita dall'art. 1 del D.L. 20 giugno 1994, n. 399, convertito, con modificazioni, nella L. 8 agosto 1994, n. 501. Si veda, inoltre, l'art. 3 dello stesso D.L. che si riporta:*

«1. Il denaro, i beni e le altre utilità di cui sia stato disposto il sequestro o la confisca a norma dell'art. 12 quinquies, comma 2, del decreto legge 8 giugno 1992, n. 306, convertito, con modificazioni, dalla legge 7 agosto 1992, n. 356, sono restituiti a chi ne abbia diritto, salvo che l'autorità giudiziaria competente provveda a norma dell'art. 2 del presente decreto, ovvero applichi taluna delle disposizioni in materia di sequestro o di confisca previste dal codice penale, dal codice di procedura penale o da leggi speciali».

(2) *Si veda l'art. 2 della L. 12 agosto 1993, n. 310, recante norme per la trasparenza nella gestione di esercizi commerciali e nei trasferimenti di proprietà dei suoli, che si riporta:*

«1. A decorrere dalla data di entrata in vigore della presente legge i notai che ricevano atti o autentichino scritture private aventi ad oggetto trasferimenti di terreni ovvero di esercizi commerciali devono comunicare, entro il mese successivo a quello della stipula, al questore del luogo ove è ubicato l'immobile i dati relativi alle parti contraenti, o loro rappresentanti, al bene compravenduto e al prezzo indicato. Qualora sulla base di elementi comunque acquisiti vi sia la necessità di verificare se l'atto negoziale sia stato posto in essere per le finalità indicate nell'articolo 12 quinquies, comma 1, del D.L. 8 giugno 1992, n. 306, convertito, con modificazioni, dalla L. 7 agosto 1992, n. 356, il questore può richiedere al notaio rogante o auten-

delle altre utilità di cui il condannato non può giustificare la provenienza e di cui, anche per in-terposta persona fisica o giuridica, risulta essere titolare o avere la disponibilità a qualsiasi titolo in valore sproporzionato al proprio reddito, di- chiarato ai fini delle imposte sul reddito, o alla propria attività economica. Le disposizioni indi- cate nel periodo precedente si applicano anche in caso di condanna e di applicazione della pena su richiesta, a norma dell'articolo 444 del codice di procedura penale, per taluno dei delitti commes- si per finalità di terrorismo o di eversione dell'or- dine costituzionale (3).

2. Le disposizioni del comma 1 si applicano anche nei casi di condanna o di applicazione del- la pena su richiesta a norma dell'art. 444 del co- dice di procedura penale, per un delitto commes- so avvalendosi delle condizioni previste dall'art. 416 bis del codice penale, ovvero al fine di age- volare l'attività delle associazioni previste dallo stesso articolo, nonché a chi è stato condannato per un delitto in materia di contrabbando nei casi di cui all'art. 295, secondo comma, del testo unico approvato con decreto del Presidente della Repubblica 23 gennaio 1973, n. 43.

3. Fermo quanto previsto dagli artt. 100 e 101 del testo unico delle leggi in materia di disci- plina degli stupefacenti e sostanze psicotrope, prevenzione, cura e riabilitazione dei relativi sta- ti di tossicodipendenza, approvato con decreto del Presidente della Repubblica 9 ottobre 1990, n. 309, per la gestione e la destinazione dei beni confiscati a norma dei commi 1 e 2 si osservano, in quanto compatibili, le disposizioni contenute nel decreto legge 14 giugno 1989, n. 230, conver- tito, con modificazioni, dalla legge 4 agosto 1989, n. 282. Il giudice, con la sentenza di con- danna o con quella prevista dall'art. 444, comma 2, del codice di procedura penale, nomina un amministratore con il compito di provvedere alla custodia, alla conservazione e all'ammini- strazione dei beni confiscati. Non possono essere nominate amministratori le persone nei cui con- fronti il provvedimento è stato disposto, il co- niuge, i parenti, gli affini e le persone con essi conviventi, né le persone condannate ad una pena che importi l'interdizione, anche tempora- nea, dai pubblici uffici o coloro cui sia stata irro- gata una misura di prevenzione.

4. Se, nel corso del procedimento, l'autorità giudiziaria, in applicazione dell'art. 321, comma

2, del codice di procedura penale, dispone il se- questro preventivo delle cose di cui è prevista la confisca a norma dei commi 1 e 2, le disposizioni in materia di nomina dell'amministratore di cui al secondo periodo del comma 3 si applicano an- che al custode delle cose predette.

4 bis. Si applicano anche ai casi di confisca previsti dai commi da 1 a 4 del presente articolo le disposizioni in materia di gestione e destina- zione dei beni sequestrati o confiscati previste dalla legge 31 marzo 1965, n. 575, e successive modificazioni; restano comunque salvi i diritti della persona offesa dal reato alle restituzioni e al risarcimento del danno (4).

4 ter. Con separati decreti, il Ministro dell'in- terno, di concerto con il Ministro della giustizia, sentiti gli altri Ministri interessati, stabilisce an- che la quota dei beni sequestrati e confiscati a norma del presente decreto da destinarsi per l'at- tuazione delle speciali misure di protezione pre- viste dal decreto legge 15 gennaio 1991, n. 8, con- vertito, con modificazioni, dalla legge 15 marzo 1991, n. 82, e successive modificazioni, e per le elargizioni previste dalla legge 20 ottobre 1990, n. 302, recante norme a favore delle vittime del terrorismo e della criminalità organizzata. Nei decreti il Ministro stabilisce anche che, a favore delle vittime, possa essere costituito un Fondo di solidarietà per le ipotesi in cui la persona offesa non abbia potuto ottenere in tutto o in parte le restituzioni o il risarcimento dei danni conse- guenti al reato (5).

4 quater. Il Consiglio di Stato esprime il pro- prio parere sugli schemi di regolamento di cui al comma 4 ter entro trenta giorni dalla richiesta, decorsi i quali il regolamento può comunque es- sere adottato (4).

(1) Questo articolo è stato aggiunto dall'art. 2 del D.L. 20 giugno 1994, n. 399, convertito, con modificazioni, nella L. 8 agosto 1994, n. 501.

(2) Le disposizioni contenute in questo articolo sono state espressamente fatte salve dall'art. 6 della L. 7 marzo 1996, n. 108, recante disposizioni in materia di usura.

(3) L'ultimo periodo di questo comma è stato aggiunto dall'art. 24 della L. 13 febbraio 2001, n. 45.

(4) Questo comma è stato aggiunto dall'art. 24 della L. 13 febbraio 2001, n. 45.

## TITOLO V. MODIFICHE ALLE NORME DELL'ORDINAMENTO GIUDIZIARIO E ALLE DISPOSIZIONI IN MATERIA DI SOSPENSIONE DI TERMINI PROCESSUALI.

21 *sexies*. (Reversibilità delle funzioni). 1. I magistrati che ricoprono un ufficio con funzioni di legittimità o con funzioni a queste ultime equi- parate ai fini dei requisiti richiesti per la loro at- tribuzione possono essere destinati, a domanda, anche ad un ufficio con funzioni di merito.

2. I magistrati che ricoprono un ufficio con funzioni di appello o con funzioni a queste ulti- me equiparate ai fini dei requisiti richiesti per la loro attribuzione possono essere destinati, a do- manda, a qualunque altro ufficio con funzioni di merito.

## TITOLO VII. ATTIVITÀ DI PREVENZIONE.

25 bis. (Perquisizioni di edifici). 1. Fermo quanto previsto dall'articolo 27, comma 2, della L. 19 marzo 1990, n. 55, gli ufficiali di polizia giudiziaria possono procedere a perquisizioni lo- cali di interi edifici o di blocchi di edifici dove abbiano fondato motivo di ritenere che si trovi- ano armi, munizioni o esplosivi ovvero che sia ri- fugiato un latitante o un evaso in relazione a ta- luno dei delitti indicati nell'articolo 51, comma 3 bis, del codice di procedura penale ovvero ai de- litti con finalità di terrorismo (1).

2. Nel corso delle operazioni di perquisizione di cui al comma 1 può essere sospesa la circola- zione di persone e di veicoli nelle aree interessa- te.

3. Delle operazioni di perquisizione di cui al comma 1 è data notizia immediatamente, e co- munque entro dodici ore, al procuratore della Repubblica presso il tribunale del luogo in cui le operazioni sono effettuate il quale, se ne ricorro- no i presupposti, le convalida entro le successive quarantotto ore.

(1) Le parole: «ovvero ai delitti con finalità di terrorismo» sono state inserite dall'art. 3, comma 2, del D.L. 18 ottobre 2001, n. 374, convertito, con modificazioni, nella L. 15 dicembre 2001, n. 438.

25 ter. (1) (Intercettazioni preventive). 1. Fer- mo quanto previsto dall'articolo 226 delle norme di attuazione, di coordinamento e transitorie del codice di procedura penale, approvate con de- creto legislativo 28 luglio 1989, n. 271, su richie- sta del Ministro dell'interno o, per sua delega, del direttore della Direzione investigativa anti- mafia, dei responsabili a livello centrale dei ser- vizi centrali e interprovinciali di cui all'articolo 12 del D.L. 13 maggio 1991, n. 152, convertito, con modificazioni, dalla L. 12 luglio 1991, n. 203, o del questore, il procuratore della Repub- blica presso il tribunale del capoluogo del di- stretto ove le operazioni devono essere eseguite può autorizzare con decreto l'intercettazione di conversazioni o comunicazioni telefoniche e di altre forme di telecomunicazione, ovvero del flusso di comunicazioni relativo a sistemi infor- matici o telematici (2) nonché l'intercettazione di comunicazioni tra presenti anche se queste av- vengono nei luoghi indicati dall'articolo 614 del codice penale, quando le intercettazioni medesi- me siano necessarie per l'attività di prevenzione e di informazione in ordine ai delitti indicati nel- l'articolo 51, comma 3 bis, del codice di procedu- ra penale.

2. La durata delle operazioni non può supe- rare i quaranta giorni, ma può essere prorogata dal procuratore della Repubblica con decreto motivato per periodi successivi di venti giorni, qualora permangano i presupposti indicati nel comma 1. Su richiesta dei soggetti legittimati ai sensi del medesimo comma 1, il procuratore del- la Repubblica può autorizzare che le operazioni di intercettazione siano eseguite con impianti di- versi da quelli esistenti presso la procura della Repubblica.

3. Gli elementi acquisiti attraverso le inter- cettazioni sono privi di ogni valore ai fini proces- suali. Le registrazioni, una volta ultimate le ope- razioni, sono trasmesse al procuratore della Re- pubblica che ha autorizzato le operazioni stesse.

(1) Ai sensi dell'art. 5, comma 2, del D.L. 18 ottobre 2001, n. 374, convertito, con modificazio- ni, nella L. 15 dicembre 2001, n. 438, sono abro- gate le disposizioni concernenti le intercettazioni preventive.

(2) Le parole da: «ovvero del flusso» a «infor- matici o telematici» sono state inserite dall'art. 13 della L. 23 dicembre 1993, n. 547, recante modifi-

**CIRCULAR N° 182 of 31 July 1992*****Data acquisition pursuant to the law on money-laundering***

As you will know, article 2, subsection 1 of decree law 143 of 3 May 1991, enacted with amendments as law 197 of 5 July 1991, mentions the insurance institutions and undertakings among intermediaries that are required to identify and record whoever carries out operations entailing the transmission or movement of any form of payment whose amount is in excess of ITL twenty million.

Article 5, subsection 10 of the foregoing law provides that the Ministry of the Treasury can avail itself of *Ufficio Italiano dei Cambi* (the Italian Foreign Exchange Office), which operates in conjunction with the sectoral supervisory authorities, to ascertain, *inter alia*, compliance with the provisions on the transfer of securities on the part of licensed intermediaries as well as, on the basis of selective criteria, the observance of the adequacy of the reporting procedures, as provided for by article 3 of the law in question on the part of the subjects required to comply with them.

In order to determine how many operations have been conducted through insurance institutions and undertakings, Isvap, in agreement with the Italian Foreign Exchange Office, has drawn up a form to report operations having a value greater than ITL 20 million recorded in the period between 1 January and 31 July of this year. The purpose of this survey is to discover the frequency of such operations, whether incoming or outgoing, conducted by insurance operators in the framework of their financial activities recorded during the foregoing period of observation.

In this regard it should be stated that not only non-life insurance companies but also life assurance ones are required to compile the form because, as stated earlier, only operations for amounts in excess of ITL 20 million are the subject matter of the reporting.

Furthermore, it is deemed appropriate to recall that, under subsection 2 of article 13 of decree-law 625 of 15 December 1979, enacted with amendments as law 15 of 6 February 1980, as replaced by article 2 of the law in question, operations conducted at different times and within a limited period of time, even if individually having an amount of less than ITL 20 million, must also be indicated when they form part of a single operation for a total amount in excess of ITL 20 million.

The attention of the institutions and undertakings to which this circular is addressed is drawn to the fact that the form in question, duly filled in and signed by the legal representative of the undertaking, must reach Isvap – EDP Office, no later than 30 September 1992.

I look forward to receiving your reply,

the President  
(Domenico Fortini)

## **Instructions for compiling the survey form**

The circular has already indicated the subjects that are required to compile the form. However, undertakings must indicate their particulars by making reference to their name currently used by both ANIA (*the association of Italian insurers*) and Isvap. As regards the specific matter of the various items, please take note of the following:

### **1. The logistic-territorial arrangements for keeping the register**

The register provided for by article 13, subsection 5 of law 15 of 6 February 1980, as replaced by article 2 of law 197 of 5 July 1991, must be kept at the head office. However, the survey also sets out to discover if records of the operations performed are kept by sub-offices (directly managed agencies), agencies (offices managed by agents) and self-employed workers (brokers).

### **2. Data centralisation**

It is deemed worthwhile recalling and premising that the data, under article 13, subsection 4 of law 15 of 6 February 1980, as replaced by article 2 of law 197 of 5 July 1991, must be recorded within 30 days and that this term runs, for insurance institutions and undertakings, from the day of their receipt from agents and other self-employed workers, who, in their turn, must forward them within a maximum period of 30 days. It is with reference to this second term that this survey wishes to know if data transmissions are performed on a more frequent basis.

### **3. Medium used for records**

The decree of the Ministry of the Treasury of 19 December 1991 (Official Journal n° 303 of 28 December 1991), at point 5, lays down the transitional provisions under which – until the setting up of the Computerised Data Base – the data and information must be kept in special registers or other ledgers either in paper format or based on electronic accounting systems. Therefore, the survey intends to discover which of the two recording medium systems is used.

### **4. Number of operations recorded in the reference period**

The overall number of operations with an individual amount in excess of ITL 20 million registered under the foregoing law in the period 1 January 1992 – 31 July 1992 must be indicated.

### **5. Instruments for controlling fractioned operations**

In the event of fractioned operations, i.e. operations divided into different payments and/or collections whose amount exceed ITL 20 million, the type of instrument used for the reporting must be indicated.

### **6. Procedures for identifying and reporting operations according to article 3**

It should be premised and recalled that article 3, subsection 1 of law 197 of 5 July 1991, lays down, *inter alia*, that the person in charge of the sub-office, agency office or other operational unit of one of the subjects indicated in article 4 of the law in question, is obliged to immediately report to the person in charge of the activities or the legal representative or to one of his/her delegates every operation that involves money, assets or proceeds that are believed to derive from any of the crimes indicated in article 648-bis of the criminal code.

In subsection 2 of the foregoing article 3 it is provided that the person in charge of the operation, the legal representative or one of his/her delegates examine the

reports submitted to them and, in the event that they consider them to be justified, they must immediately transmit them to the head of Police in the place where the operation took place.

Given the foregoing, the survey sets out to discover if the undertaking has ever adopted particular procedures for the objective of identifying and reporting suspicious operations.

**7. Internal control procedures and checks**

It is also necessary to discover whether the undertaking has adopted particular internal control procedures on the correctness of the data recorded on the register (article 3, subsection 8 of law 197 of 5 July 1991).

**8. Instructions for harmonising the conduct of peripheral offices**

It is also desired to learn whether specific indications have been issued to peripheral offices on the obligations provided for in the foregoing law.

**9. Training and vocational initiatives**

The survey also wishes to know whether specific training and educational activities have been implemented concerning the obligations deriving from the law in question (article 3, subsection 8 of law 197/1991).

**10. Availability of electronic equipment**

The survey wants to ascertain the percentage level of IT equipment distributed to the central office and peripheral offices and the percentage of peripheral institutions with both permanent and intermittent connections to the head office (i.e. the percentages will be indicated in whole figures).

In conclusion, it should be noted that where spaces exist for the inclusion of additional details, such spaces should only be used for reporting indications deemed worthy of mention.



## SURVEY FORM

INSURANCE BODY OR UNDERTAKING

CODE □□□□

Name

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REGISTERED OFFICE

City	Street and civic number	Postal Code
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Tax-Payer Code

□□□□□□□□□□

Reference period of information: 1/1/1992 – 31/7/1992

- 1) Logistic-territorial arrangements for keeping the register according to law 197/91

<input type="checkbox"/> HEAD OFFICE <input type="checkbox"/> SUB-AGENTS <input type="checkbox"/> AGENCIES <input type="checkbox"/> SELF-EMPLOYED PERSONS
Further details: _____

- 2) Data centralisation

<input type="checkbox"/> DAILY <input type="checkbox"/> WEEKLY <input type="checkbox"/> MONTHLY <input type="checkbox"/> OTHER
Further details: _____

- 3) Medium used for records

At peripheral offices	At head office	Further details
<input type="checkbox"/> Paper	<input type="checkbox"/> Paper	_____
<input type="checkbox"/> Electronic Accounting system	<input type="checkbox"/> Electronic Accounting system	_____

- 4) Number of operations recorded in the reference period of over ITL 20,000,000    □□□□□□□□

- 5) Instruments for controlling fractioned operations

<input type="checkbox"/> Manual instruments	<input type="checkbox"/> IT instruments
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- 6) Procedures for identifying and reporting operations according to article 3 of law 197/91

<input type="checkbox"/> YES	Further details: _____
<input type="checkbox"/> NO	_____

**(tick the relevant boxes)**

## 7) Internal control procedures and checks

<input type="checkbox"/> 1	YES	Further details: _____
<input type="checkbox"/> 2	NO	_____

## 8) Instructions for harmonising the conduct of peripheral offices

<input type="checkbox"/> 1	YES	Further details: _____
<input type="checkbox"/> 2	NO	_____

## 9) Training and vocational initiatives according to the provisions of law 197/91

<input type="checkbox"/> 1	YES	Further details: _____
<input type="checkbox"/> 2	NO	_____

## 10) Availability of electronic equipment

## AT HEAD OFFICE

<input type="checkbox"/> 1	None	<input type="checkbox"/> 2	PC	<input type="checkbox"/> 3	Mini-computer	<input type="checkbox"/> 4	Mainframe	<input type="checkbox"/> 5	Other
	□□%		□□%		□□%		□□%		□□%
Further details: _____									
_____									

## IN PERIPHERAL OFFICES

<input type="checkbox"/> 1	None	<input type="checkbox"/> 2	PC	<input type="checkbox"/> 3	Mini-computer	<input type="checkbox"/> 4	Other
	□□%		□□%		□□%		□□%
Further details: _____							
_____							

Is the peripheral office linked up to the central edp centre	<input type="checkbox"/> 1	YES	<input type="checkbox"/> 2	NO
		□□%		□□%

the Person in Charge

(tick the relevant boxes)

# Decree Law 143 of 3 May 1991

(Published in *Gazzetta Ufficiale* no. 106 of 8 May 1991)

**Urgent provisions to limit the use of cash and bearer instruments in transactions and prevent the use of the financial system for purposes of money laundering (ratified with amendments by Law 197 of 5 July 1991 [Published in *Gazzetta Ufficiale* no. 157 of 6 July 1991] and subsequently amended by Legislative Decree 153 of 26 May 1997 [Published in *Gazzetta Ufficiale* no. 136 of 13 June 1997])**

THE PRESIDENT OF THE REPUBLIC

Having regard to Articles 77 and 87 of the Constitution;

Having regard to the extraordinary necessity and urgency of subjecting transfers of cash to registration and identification requirements in order to prevent laundering of the proceeds of criminal activities and of providing rules regulating financial activities and introducing sanctions for the illegal use of credit cards;

Having regard to the resolution adopted by the Council of Ministers in its meeting of 3 May 1991;

Acting on a proposal from the President of the Council of Ministers and the Minister of the Treasury, in concert with the Minister of the Interior, the Minister of Justice, the Minister of Finance, the Minister of Industry and Minister of Posts and Telecommunications;

Issues the following Decree Law:

## CHAPTER I

### Article 1

#### *Limitation of the use of cash and bearer instruments*

1. Transfers of cash or bearer bank or postal passbooks or bearer instruments in lire or foreign currency, effected for whatsoever reason between different parties, shall be prohibited when the total amount of the value to be transferred is more than twenty million lire. Nevertheless, such transfers may be carried out by means of the authorized intermediaries referred to in Article 4; for cash, the procedures indicated in paragraphs 1-*bis* and 1-*ter* shall be followed.<sup>1</sup>

1-*bis*. Cash transfers by means of an authorized intermediary must be effected on the basis of instructions accepted in writing by the intermediary upon prior delivery of the cash to the intermediary. From the third working day following that of

acceptance, the beneficiary shall be entitled to obtain payment in his province of domicile.<sup>2</sup>

1-*ter*. Communication by the debtor to the creditor of the acceptance referred to in paragraph 1-*bis* shall produce the effect referred to in the first paragraph of Article 1277 of the Civil Code and, where the creditor is in default, the effects of the deposit provided for in Article 1210 of the Civil Code.<sup>3</sup>

2. Postal money orders, Bank of Italy drafts, postal cheques, bank cheques and cashier's cheques in amounts of more than twenty million lire must bear the individual or corporate name of the beneficiary and the non-negotiability clause. The Minister of the Treasury may fix limits for the use of other means of payment considered likely to be used for purposes of money laundering.<sup>4</sup>

2-*bis*. The balance in bearer bank or postal passbook savings accounts may not be more than twenty million lire.<sup>5</sup>

3. The provisions of paragraphs 1 and 2 shall not apply to transfers to which one or more authorized intermediaries are party, or to transfers between such intermediaries effected directly or by means of specialized carriers.<sup>6</sup>

4. The provisions concerning payments to the central government or other public entities and disbursements by them, howsoever arranged, to other persons shall be unaffected. The possibility of payment provided for in Article 494 of the Code of Civil Procedure shall likewise be unaffected.

5. (*Suppressed by Law 197 of 5 July 1991*).

6. (*Suppressed by Law 197 of 5 July 1991*).

7. Acquirers of cashier's cheques, Bank of Italy drafts or equivalent instruments made out to third parties and bearing the words "*non-trasferibile*" [non-negotiable] may apply to withdraw the funds upon returning the instrument to the issuer.

8. (*Suppressed by Law 197 of 5 July 1991*).

## Article 2

### *Identification and registration requirements*

1. Article 13 of Decree Law 625 of 15 December 1979, ratified with amendments by Law 15 of 6 February 1980, as replaced by Article 30.1 of Law 55 of 19 March 1990, shall be replaced with the following:

"Article 13 - 1. Any person who carries out transactions involving the transmission or transfer of means of payment of whatsoever type in an amount of more than twenty million lire at any of the below must be identified by the staff responsible therefor and must indicate in writing, under

his own personal responsibility, the complete identifying particulars of the person, if any, on whose behalf the transaction is carried out:

- a) general government offices, including post offices;
- b) credit institutions;
- c) securities firms;
- d) commission dealers authorized to operate in the area contiguous with the floor of a stock exchange;
- e) stockbrokers;
- f) companies authorized to market securities door to door;
- g) securities investment fund management companies;
- h) trust companies;
- i) insurance companies and institutions;
- l) Monte Titoli S.p.A.;
- m) intermediaries whose primary object or, in any case, primary activity is one of the following: lending in whatsoever form, including financial leasing; acquisition of holdings; trading in foreign exchange; collection, payment and funds transfer services, also by means of the issue and management of credit cards.

2. The provisions of paragraph 1 shall also apply when, owing to the nature and procedures of the transactions set up, there is reason to believe that several transactions effected at different times within a certain period of time, even if individually below the threshold amount specified in paragraph 1, nonetheless constitute parts of a single transaction.

3. For the purposes of applying paragraph 2, the persons referred to in subparagraphs a) to m) of paragraph 1 must make available to the responsible staff technical instruments permitting the transactions carried out by the customer at the same office of the entity or institution during the week preceding the day of the transaction to be known in real time.

4. The date and payment details of the transaction, the amount of the individual means of payment, complete identifying particulars and the identity document of the person effecting the transaction, as well as complete identifying particulars of any person on whose behalf the transaction is carried out, must be easily retrievable and always filed within thirty days in a single data bank of the public or private person with whom the transaction is

carried out. Intermediaries referred to in paragraph 1 shall be required to identify transactions effected in cash by means of a special code. For insurance companies and institutions, the time limit shall elapse from the day they receive the data from their agents and other independent collaborators, who in their turn must forward the data within thirty days. With effect from 1 January 1992, the data relating to cash transactions in amounts of more than twenty million lire shall be integrated with the tax number, when attributable, of the person carrying out the transaction and that of the person, if any, on whose behalf the transaction is carried out. From 1 January 1992 onwards, the same data are to be acquired at the time every account, deposit or other continuing relationship is set up. For accounts, deposits and continuing relationships in existence at the above-mentioned date, such data are to be fully integrated by 31 December 1992. Insurance companies and institutions shall acquire the tax number within the time limits indicated above; with reference exclusively to relationships already in existence, the tax number shall be acquired only where the total amount of premiums exceeds twenty million lire a year. The data referred to in this paragraph may be used for tax purposes in accordance with the provisions in force.

5. The data bank shall be set up and managed on a computerized basis and must be updated and structured in ways that will facilitate searches. The procedures for acquiring and filing data, as well as the standards and computer compatibilities to be observed, will be laid down with a decree of the Minister of the Treasury, to be issued by 30 June 1992 and published in the *Gazzetta Ufficiale*. Until the establishment of the above-mentioned data bank, which must take place within six months of the publication of the decree, the information referred to in paragraph 4 must be contained in a special register.

6. The records referred to in paragraphs 4 and 5 shall be retained for ten years.

7. Unless the act constitutes a more serious crime, staff responsible for the transaction that infringe the provisions of the preceding paragraphs shall be punished by a fine of between five million and twenty-five million lire.

8. Unless the act constitutes a more serious crime, executors of transactions who fail to provide the identifying particulars of the person, if any, on whose behalf they effect the transaction or who provide false particulars shall be punished by imprisonment for a term of between six months and one year and by a fine of between one million and ten million lire."

2. The provisions of Article 13 of Decree Law 625 of 15 December 1979, ratified with amendments by Law 15 of 6 February 1980, as subsequently replaced by paragraph 1 of this Article, and the related implementing provisions shall also apply to transfers referred to Article 1 of this Decree and shall have effect from the thirtieth day following the date of the entry into force of the law ratifying this Decree. The technical instruments referred to in Article 13.3 of Decree Law 625/1979 must be

made available to the responsible staff within one year following the date of entry into force of the law ratifying this Decree.

3. The Minister of the Treasury shall annually present to the competent parliamentary committees a report on the application of the provisions concerning registration of transactions referred to in Article 13 of Decree Law 625/1979, as subsequently amended by paragraph 1 of this Article.

### **Article 3**

#### *Reporting transactions<sup>7</sup>*

1. The head of a branch, office or other place of business of one of the persons referred to in Article 4, irrespective of the authorization to effect transfers referred to in Article 1, shall be required to report without delay to the head of the business or the legal representative or his delegate every transaction which, owing to its characteristics, size, nature or any other circumstance known to him by virtue of the duties he performs, also taking into account the income-earning capacity and activity of the person involved, leads him to believe, on the basis of the evidence available to him, that the money, assets or benefits involved in said transactions may derive from one of the crimes indicated in Articles 648-*bis* and 648-*ter* of the Penal Code. The characteristics referred to in the preceding sentence shall include, in particular, the execution of a multiplicity of transactions not justified by the activity performed by the person himself or, where known, by members of the same household or employees or collaborators of any one undertaking or by a nominee.

2. The head of the business, the legal representative or his delegate shall examine the reports received and, where he finds them well-founded, taking account of all the available evidence, including that derivable from the data bank referred to in Article 2.1, shall transmit them without delay electronically or by other means to the Italian Foreign Exchange Office [Ufficio italiano dei Cambi] without any indication of the name of the person making the report, where possible before carrying out the transaction.

3. The Minister of the Treasury, after consulting the committee referred to in Article 3-*ter*, in concert with the Minister of the Interior, the Minister of Justice and the Minister of Finance, shall issue a decree establishing provisions on the use of electronic procedures for transmitting reports to the Italian Foreign Exchange Office. The Italian Foreign Exchange Office shall issue the related implementing instructions.

4. The Italian Foreign Exchange office:

- a) shall carry out the necessary checks on reports referred to in paragraph 2, including checks of cases of failure to report that are known to it on the basis of the records contained in its own archives;

b) may, where necessary, make use of the records contained in the registry of accounts and deposits referred to in Article 20.4 of Law 413 of 30 December 1991 in accordance with the procedures established by a decree issued by the Minister of the Treasury after consulting the committee referred to in Article 3-ter in concert with the Minister of Finance, the Minister of Justice and the Minister of the Interior:

c) may acquire further data and information from persons referred to in Article 4 concerning the reports transmitted;

d) may use the results of analyses carried out pursuant to Article 5.10 of this Law, as well as of analyses concerning individual anomalies, utilizing, where necessary, information that may be requested of persons referred to in Article 4;

e) shall carry out checks involving the responsibilities of the competent supervisory authorities with the participation of representatives of such authorities, who shall integrate the reports with further evidence derivable from the records in their possession;

f) without prejudice to the provisions of Article 331 of the Code of Penal Procedure, shall transmit the reports, completed pursuant to this paragraph and accompanied by a technical report, without delay to the Bureau of Antimafia Investigation and the special foreign exchange unit of the Finance Police, which shall inform the National Antimafia Prosecutor thereof, in the event that the reports concern organized crime, or shall close the case and inform such investigative authorities of its decision.<sup>8</sup> In carrying out the necessary checks and the controls provided for in Article 5.10, the members of the special foreign exchange unit shall also exercise the powers attributed to them by the provisions concerning foreign exchange. Such powers shall be extended to the revenue officers of the regional revenue units of the Finance Police, whom the special foreign exchange unit may delegate to perform the duties entrusted to it by this Decree.

5. Without prejudice to the provisions on secrecy of records of investigation, where the report is not followed up the investigative authorities referred to in paragraph 4f) shall inform the Italian Foreign Exchange Office, which shall notify the head of the business, the legal representative or his delegate. The investigative authorities<sup>9</sup> shall inform Italian Foreign Exchange Office of any other circumstance in which facts and situations are found the knowledge of which may be utilized in order to prevent the financial system from being used for money laundering purposes.

6. The Italian Foreign Exchange Office, *inter alia* at the request of the investigative authorities referred to in paragraph 4f), may suspend the transaction for up to forty-eight hours, provided that this will not be detrimental to the course of the investigation and to the current operations of the intermediaries, and shall immediately notify such investigative authorities thereof.



7. Reports transmitted within the meaning and for the effects of this Article shall not constitute infringements of obligations of secrecy. Reports and the measures referred to in paragraph 6, adopted in conformity with this Article and for the purposes provided thereby, shall not involve liability of any kind.

8. Persons required to make the reports referred to in paragraph 1 and whosoever knows said reports in whatsoever way shall be prohibited from disclosing them except in the cases provided for in this Article.

9. Persons referred to in Article 4 must, in compliance with the criteria that may be issued with the implementing provisions referred to in Article 4.3c), establish adequate procedures designed to prevent their being involved in money laundering operations, strengthening the system of internal controls and checks to that end and implementing specific staff training programmes.

10. All the information possessed by the Italian Foreign Exchange Office and by other supervisory and control authorities relating to the implementation of this Decree shall be covered by professional secrecy, also with respect to governmental authorities. The Italian Foreign Exchange Office may nonetheless exchange information concerning suspicious transactions with the other supervisory authorities referred to in Article 11 of this Law and with similar authorities of foreign States that pursue the same objectives, subject to reciprocity also with regard to the confidentiality of the information. The provisions of Law 675 of 31 December 1996 concerning the treatment of personal data shall be unaffected. The investigative authorities referred to in paragraph 4f) shall supply to the Italian Foreign Exchange Office the information in their possession necessary to integrate the information to be transmitted to such authorities of foreign states; except in the cases referred to in this paragraph, the provisions of Articles 9 and 12 of Law 121 of 1 April 1981 shall continue to apply.<sup>10</sup>

11. All the data flows referred to in this Article shall normally be transmitted using electronic procedures.

### **Article 3-bis**

#### *Confidentiality of reports*<sup>11</sup>

1. In the event of reports pursuant to Articles 331 and 347 of the Code of Penal Procedure, the identity of persons and intermediaries referred to in Article 4 that have made the transaction reports shall not be mentioned even if it is known.

2. The identity of persons and intermediaries may be divulged only when the judicial authority, with a reasoned decree, considers it indispensable for the purposes of verifying the crimes for which proceedings have been opened.

3. Except in the cases referred to in paragraph 2, in the event of the seizure of records or documents the necessary precautions shall be adopted to ensure the confidentiality of the identity of the persons who made the transaction reports.

4. Intermediaries referred to in Article 4, within the scope of their organizational autonomy, shall ensure uniform conduct on the part of staff in identifying transactions referred to in Article 3.1 and may prepare procedures for the examination of transactions, possibly with the use of electronic instruments, serving to assist staff on the basis of the records of the single computerized data bank provided for in Article 2 and according to the implementing instructions issued by the Bank of Italy, after consulting the Italian Foreign Exchange Office, in agreement with the competent supervisory authorities within the scope of their respective authority.

5. Intermediaries referred to in Article 4 shall adopt adequate measures to ensure the utmost confidentiality of the persons making reports. Records and documents in which the identifying particulars of such persons are indicated shall be kept safe under the direct responsibility of the head of the business or the legal representative or his delegate.

### **Article 3-ter**

#### *Guidance committee*<sup>12</sup>

1. For the exercise of the functions of guidance of the activities performed by the Italian Foreign Exchange Office, only with regard to the matters referred to in Article 3 of this Decree and without prejudice to the functional, organizational and operational autonomy of the Italian Foreign Exchange Office in the exercise of its institutional tasks, a committee shall be established at the Ministry of the Treasury chaired by the director general of the Treasury and composed of a representative of the Bank of Italy with the rank of central manager and by a representative of the Ministry of the Interior, Ministry of Finance, Ministry of Justice and Ministry for Foreign Trade with a rank not lower than that of general manager or the equivalent. The director of the Italian Foreign Exchange Office shall participate in the meetings of the committee. The members of the committee shall be bound by professional secrecy regarding the information and data they come to know as members of the committee.

2. The Ministry of the Treasury shall issue a decree establishing the operating procedures of the committee referred to in paragraph 1, without additional charges to the State budget.

3. The committee shall annually conduct an overall examination of the activity performed by the Italian Foreign Exchange Office in implementing the provisions referred to in Article 3 of this Decree, in order to evaluate the progress and the results of the activity and to formulate proposals aimed at enhancing the effectiveness of anti-money-laundering action.

4. The Italian Foreign Exchange Office shall transmit a half-yearly report on its activity to the committee referred to in paragraph 1 and shall also provide all the information necessary for the exercise of the committee's functions, including

information on exchanges of information with authorities of foreign States that pursue the same objectives.

## Article 4

### *Implementing provisions*

1. The intermediaries authorized, within the limits of their own institutional activities, to effect transfers referred to in Article 1 shall comprise the offices of general government, including post offices, credit institutions, securities firms, commission dealers authorized to operate in the area contiguous with the floor of a stock exchange, stockbrokers, companies authorized to market securities door to door, securities investment fund management companies, trust companies, insurance companies and institutions, and the company Monte Titoli S.p.A. referred to in Law 289 of 19 June 1986, as well as other intermediaries authorized pursuant to paragraph 2.<sup>13</sup>

2. The Minister of the Treasury, in concert with the Minister of the Interior, the Minister of Justice, the Minister of Finance and the Minister of Industry, after consulting the Bank of Italy and the Companies and Stock Exchange Committee (Consob), shall determine the conditions upon fulfilment of which other intermediaries may, upon application, be authorized by the Minister of the Treasury to effect transfers referred to in Article 1. The primary object or primary activity of such intermediaries must in any case be one of the following: lending in whatsoever form, including financial leasing; acquisition of holdings; trading in foreign exchange; collection, payment and funds transfer services, also by means of the issue and management of credit cards.<sup>14</sup>

3. The Minister of the Treasury, in concert with the Minister of the Interior, the Minister of Justice, the Minister of Finance, the Minister of Industry and the Minister for Foreign Trade, shall be vested with the authority, exercised by issuing a decree, to be communicated to the competent parliamentary committees, to:

a) modify the threshold amounts specified in Article 1 of this Decree and in Article 13 of Decree Law 625 of 15 December 1979, ratified with amendments by Law 15 of 6 February 1980, as subsequently replaced by Article 2.1 of this Decree;<sup>15</sup>

b) determine the cases in which the circulation of instruments referred to in Article 1.2 shall not be subject to the non-negotiability clause;<sup>16</sup>

c) issue provisions implementing the provisions of this Chapter after consulting the Interministerial Committee for Credit and Savings, providing for adequate forms of publicizing the persons referred to in paragraphs 1 and 2.<sup>17</sup>

4. For matters concerning the post offices, the provisions referred to in paragraph 3 shall also be issued in concert with the Minister of Posts and Telecommunications.

## Article 5

### *Sanctions, procedures and controls*

1. Without prejudice to the legal effect of the acts, from the date of entry into force of this Decree infringements of the provisions of Article 1 shall be punished by a pecuniary administrative sanction of up to 40 per cent of the amount transferred.<sup>18</sup>
2. Officers of government departments, public officials and intermediaries authorized pursuant to Article 4 who in the course and within the limits of their official duties learn of infringements referred to in Articles 1.1, 1.2 and 1.2-*bis* shall report them within thirty days to the Minister of the Treasury for the notification and the other measures provided for in Article 14 of Law 689 of 24 November 1981. In the case of infringements involving bank cheques, cashier's cheques or similar instruments, the reports must be made by the bank that accepts the instruments for deposit and the bank on which the instruments are drawn.<sup>19</sup>
3. Infringement of the requirement indicated in paragraph 2 shall be punished by a pecuniary administrative sanction of up to 30 per cent of the amount of the transaction.<sup>20</sup>
4. Failure to set up the data bank referred to in Article 2.1 shall be punished by imprisonment for a term of between six months and one year and by a fine of between ten million and fifty million lire.<sup>21</sup>
5. Unless the act constitutes a crime, failure to make the reports provided for in Article 3 shall be punished by a pecuniary sanction of up to one half of the value of the transaction.<sup>22</sup>
6. Unless the act constitutes a crime, infringement of the prohibition laid down in Article 3.7 shall be punished by imprisonment for a term of between six months and one year and by a fine of between ten million and one hundred million lire.<sup>23</sup>
7. Infringements of the provisions issued with the decree provided for in Article 4.3c) shall be punished by a pecuniary administrative sanction of up to one hundred million lire.<sup>24</sup>
8. The sanctions shall be imposed by a decree issued by the Minister of the Treasury, having regard to the opinion of the commission provided for in Article 32 of the codified law on foreign exchange approved by Presidential Decree 148 of 31 March 1988. The provisions of Law 689 of 24 November 1981, except those contained in Article 16, shall apply.
9. The Minister of the Treasury shall issue a decree determining the remuneration of the members of the commission referred to in paragraph 8.
10. The Italian Foreign Exchange Office, in agreement with the competent supervisory authorities, shall verify the compliance of authorized intermediaries with

the provisions regarding asset transfers laid down in this Chapter, as well as, on the basis of selective criteria, compliance with and the adequacy of the reporting procedures referred to in Article 3 on the part of the persons subject to such reporting requirements. The Minister of the Treasury shall establish by decree the general criteria with which the Italian Foreign Exchange Office shall, for the purpose of bringing to light possible occurrences of money laundering in given geographical areas, effect statistical analyses of the aggregated data relating to the operations of each authorized intermediary. The Italian Foreign Exchange Office shall be authorized to collect the aforesaid data, by means including direct access, from the data bank referred to in Article 2.1. The Italian Foreign Exchange Office, on the basis of general criteria established by decree of the Minister of the Treasury, shall issue the technical implementing provisions, to be published in the *Gazzetta Ufficiale della Repubblica italiana*, with which intermediaries shall be required to comply. Without prejudice to the provisions of Article 331 of the Code of Penal Procedure, where anomalies that are significant for the purposes of identifying occurrences of money laundering come to light, the Italian Foreign Exchange Office, after carrying out the necessary financial analysis, in agreement with the competent supervisory authority, shall notify them to investigative authorities referred to in Article 3.4f). Control of compliance with the provisions of this Chapter by every other person shall be effected by the special foreign exchange unit of the Finance Police.<sup>25</sup>

11. Records relating to persons notified of infringements of the provisions of this Decree shall be retained in the information system of the Italian Foreign Exchange Office until the conclusion of the proceedings.

12. Records relating to persons in whose regard a definitive sanction has been issued on the basis of this Article shall be retained in the information system of the Italian Foreign Exchange Office for a period of five years from the date of issue of the decree referred to in paragraph 8.

13. Where the irregular transfers of assets were carried out by means of credit institutions or other authorized intermediaries entered in registers or subject to administrative authorizations, the measures with which the pecuniary administrative sanctions provided for in this Decree were imposed shall be communicated to the supervisory authorities and, where appropriate, to the professional associations for the actions within their respective spheres of competence.

14. In the first paragraph of Article 63 of Presidential Decree 633 of 26 October 1972, as replaced by Article 7 of Presidential Decree 463 of 15 July 1982, the words "acquired in respect of the accused in the exercise of criminal and foreign exchange police powers and capacities" shall be replaced by the following: "acquired in respect of the accused, whether directly or reported by and obtained from other police, in the exercise of criminal police powers, even apart from the cases of derogation provided for in Article 51-*bis*".

15. In the third paragraph of Article 33 of Presidential Decree 600 of 29 September 1973, as replaced by Article 2 of Presidential Decree 463 of 15 July 1982, the words "acquired in respect of the accused in the exercise of criminal and foreign exchange

police powers" shall be replaced by the following: "acquired in respect of the accused, whether directly or reported by and obtained from other police, in the exercise of criminal police powers, even apart from the cases of derogation provided for in Article 35".

## **Chapter II**

### **Article 6**

*Register of intermediaries in the financial sector*

*Article repealed by Article 161 of Legislative Decree 385 of 1 September 1993*

### **Article 7**

*Special register*

*Article repealed by Article 161 of Legislative Decree 385 of 1 September 1993*

### **Article 8**

*Integrity requirements for members and officers*

*Article repealed by Article 161 of Legislative Decree 385 of 1 September 1993*

## **CHAPTER III**

### **Article 9**

*Suspension from offices*

*Article repealed by Article 161 of Legislative Decree 385 of 1 September 1993*

### **Article 10**

*Duties of the board of auditors*

1. Without prejudice to the provisions of the Civil Code and special laws, auditors of intermediaries referred to in Article 4 shall oversee compliance with the rules laid down in this Decree. The verifications and objections of the board of auditors concerning infringements of the rules laid down in Chapter I of this Decree shall be transmitted in copy within ten days to the Minister of the Treasury. Failure to effect transmission shall be punished by imprisonment for a term of up to one year and by a fine of between two hundred thousand and two million lire.<sup>26</sup>

### **Article 11**

*Cooperation among supervisory authorities*

1. In derogation of the obligation of professional secrecy, the administrative authorities that supervise credit institutions and the other entities, companies and firms indicated in Article 4 may exchange information and cooperate with each other, and exchange information and cooperate, under conditions of reciprocity, with the competent administrative authorities of foreign states, in pursuit of the purposes of this Decree.<sup>27</sup>

## Article 12

### *Credit cards, payment cards and documents that give entitlement to withdrawals of cash*

1. Any person who for his own benefit or for the benefit of others unlawfully, not being the holder, uses credit cards or payment cards or any other similar document that gives entitlement to make withdrawals of cash or purchase goods or services shall be punished by imprisonment for a term of between one and five years and by a fine of between six hundred thousand and three million lire. The same penalty shall apply to any person who for his own benefit or for the benefit of others forges or alters credit cards or payment cards or any other similar document that gives entitlement to make withdrawals of cash or purchase goods or services, or who possesses, transfers or acquires such cards or documents that are of unlawful provenance or are in any way forged or altered, as well as payment orders produced with them.<sup>28</sup>

## Article 13

### *Application of sanctions*

1. The sanctions referred to in Article 5 shall apply from the date of entry into force of the Law ratifying this Decree.<sup>29</sup>

## Article 14

### *Entry into force*

1. This Decree shall enter into force on the day following the date of its publication in the *Gazzetta Ufficiale della Repubblica italiana* and shall be presented to Parliament for ratification into Law.

<sup>1</sup> Paragraph as replaced by Law 197 of 5 July 1991 and subsequently amended by Article 15 of Law 52 of 6 February 1996, published in *Supplemento Ordinario, Gazzetta Ufficiale* no. 34 of 10 February 1996.

<sup>2</sup> Paragraph added by Law 197 of 5 July 1991.

<sup>3</sup> Paragraph added by Law 197 of 5 July 1991.

<sup>4</sup> Paragraph as replaced by Law 197 of 5 July 1991.

<sup>5</sup> Paragraph added by Law 197 of 5 July 1991 and as subsequently replaced by Article 15 of Law 52 of 6 February 1996.

<sup>6</sup> Paragraph as replaced by Law 197 of 5 July 1991.

<sup>7</sup> Article as replaced by Article 1 of Legislative Decree 153 of 26 May 1997. Previously, paragraphs 1 and 2 had been amended and paragraph 7 replaced by Law 197 of 5 July 1991. For the date from which the provisions of the aforesaid Article 1 have effect, see Article 2 of Legislative Decree 153 of 26 May 1997.

<sup>8</sup> As amended by Article 151.2a) of Law 388 of 23 December 2000, published in *Gazzetta Ufficiale* no. 302 of 29 December 2000.

<sup>9</sup> As amended by Article 150.4 of Law 388 of 23 December 2000.

- <sup>10</sup> Sentence added by Article 151.2b) of Law 388 of 23 December 2000.
- <sup>11</sup> Added by Article 3 of Legislative Decree 153 of 26 May 1997.
- <sup>12</sup> Added by Article 3 of Legislative Decree 153 of 26 May 1997.
- <sup>13</sup> Paragraph as amended by Law 197 of 5 July 1991.
- <sup>14</sup> Paragraph as replaced by Law 197 of 5 July 1991.
- <sup>15</sup> Subparagraph as replaced by Law 197 of 5 July 1991.
- <sup>16</sup> Subparagraph as amended by Law 197 of 5 July 1991.
- <sup>17</sup> Subparagraph as amended by Law 197 of 5 July 1991.
- <sup>18</sup> Paragraph as amended by Law 197 of 5 July 1991.
- <sup>19</sup> Paragraph as amended by Article 15 of Law 52 of 6 February 1996.
- <sup>20</sup> Paragraph as replaced by Law 197 of 5 July 1991.
- <sup>21</sup> Paragraph as amended by Law 197 of 5 July 1991.
- <sup>22</sup> Paragraph as replaced by Law 197 of 5 July 1991.
- <sup>23</sup> Paragraph as amended by Law 197 of 5 July 1991.
- <sup>24</sup> Paragraph as amended by Law 197 of 5 July 1991.
- <sup>25</sup> Paragraph as replaced by Law 197 of 5 July 1991 and subsequently by Article 4 of Legislative Decree 153 of 26 May 1997.
- <sup>26</sup> As replaced by Article 156 of Legislative Decree 385 of 1 September 1993, published in *Supplemento Ordinario, Gazzetta Ufficiale* no. 230 of 30 September 1993.
- <sup>27</sup> Paragraph as amended by Law 197 of 5 July 1991.
- <sup>28</sup> Paragraph as amended by Law 197 of 5 July 1991.
- <sup>29</sup> As replaced by Law 197 of 5 July 1991.



## **Legislative Decree 212 of 12 July 1991**

Regulations for ways for public administration accessing the data system of the Inland Revenue personal data files

The President of the Republic

Having seen Article 76 and 87 of the constitution;

Having seen Article 14 of Law 407 of 29 December 1990, with which the Government was delegated to adopt a legislative decree for regulating ways for public administration accessing the data system of the inland revenue personal data files;

Having seen Article 14 of Law 400 of 23 August 1998;

Having seen the decision of the Council of Ministers, adopted at the meeting of 12 June 1991;

On proposal of the Minister of Finance;

Issues the following legislative decree:

### Article 1

1. The public administrations may request the Ministry of Finance for authorization to access the information system of the personal data files for checks necessary to combat laundering of moneys of illegal origin. The regulation shall be applied also public administrations, institutes and entities which by law supply to citizens welfare benefits, for the purpose of assessing the limits of income on which the welfare in question is conditioned. Access is authorized for the purpose of achieving the goals indicated in the request and with reference to the data available in the system at the time of the same access, by the general manager of the General Office for the organization of revenue services.

### Article 2

1. Access to authorized data, news and information can take place by interrogation via terminals, for implementing daily operations which concern a limited number of subjects, or through direct link up between computers.

2. The means of interconnection, even though different in terms of architecture, to the linked up environments of the system and to the type of application envisaged shall conform to those codified by international bodies and of wide diffusion.
3. The information centre of the General Office for the organization of revenue services shall indicate to the requesting administration the characteristics necessary for access to the forms envisaged in paragraph 1.
4. The costs for permitting access, calculated periodically, are charged to the requesting administration and are decided, for each type of link up, by the information centre of the organization for revenue services on the basis of the consistency permit of the revenue technical office. The payments involved shall be done yearly at the appropriate section of the provincial State treasury, directly or through postal current account on item 2319 in the income account other and diverse for the Ministry of Finance; a copy of the receipt of the provincial treasury shall be send to the information centre for the organization of revenue services.

#### Article 3

1. The administrations, institutes and entities making the request shall use the data acquired though access to the information system of the revenue data files, exclusively for achieving the goals for which the access was authorized, as well as in respect of confidentiality in Article 15 of the Presidential decree 605 of 29 September 1973, where this does not constitute an impediment for arriving at the goals for which the access to the documents in the revenue data files was requested; for the purposes of applying that regulation each operator shall be identified beforehand.
2. The public administrations, institutes and entities envisaged in the second sentence of paragraph 1 of Article 1, once they have acquired the data on the income limits shall give notice of the beginning of the proceedings on the revision of the welfare benefits through personal communication to the interested party, in accordance with Article 7 and 8 of law 241 of 7 August 1990.

#### Article 4

2. This legislative decree shall enter into force the day after its publication in the Gazzetta Ufficiale of the Italian Republic.

319. SICUREZZA PUBBLICA

T) Mafia e persone pericolose

D.L. 29-10-1991 n. 345

Disposizioni urgenti per il coordinamento delle attività informative e investigative nella lotta contro la criminalità organizzata.

Pubblicato nella Gazz. Uff. 31 ottobre 1991, n. 256, e convertito in legge, con modificazioni, con l'art. 1, L. 30 dicembre 1991, n. 410 (Gazz. Uff. 30 dicembre 1991, n. 304). L'art. 2 della stessa legge ha, inoltre, disposto che restano validi gli atti ed i provvedimenti adottati e sono fatti salvi gli effetti prodotti ed i rapporti giuridici sorti sulla base dell'articolo 2 del decreto-legge 29 dicembre 1990, n. 412, dell'articolo 2 del decreto-legge 1° marzo 1991, n. 61, e dell'articolo 4 del decreto-legge 3 maggio 1991, n. 141.

**D.L. 29 ottobre 1991, n. 345 <sup>(1)</sup>.**

Disposizioni urgenti per il coordinamento delle attività informative e investigative nella lotta contro la criminalità organizzata.

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(1) Pubblicato nella Gazz. Uff. 31 ottobre 1991, n. 256, e convertito in legge, con modificazioni, con l'art. 1, L. 30 dicembre 1991, n. 410 (Gazz. Uff. 30 dicembre 1991, n. 304). L'art. 2 della stessa legge ha, inoltre, disposto che restano validi gli atti ed i provvedimenti adottati e sono fatti salvi gli effetti prodotti ed i rapporti giuridici sorti sulla base dell'articolo 2 del decreto-legge 29 dicembre 1990, n. 412, dell'articolo 2 del decreto-legge 1° marzo 1991, n. 61, e dell'articolo 4 del decreto-legge 3 maggio 1991, n. 141.

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**1. Consiglio generale per la lotta alla criminalità organizzata.**

1. Presso il Ministero dell'interno è istituito il Consiglio generale per la lotta alla criminalità organizzata, presieduto dal Ministro dell'interno quale responsabile dell'alta direzione e del coordinamento in materia di ordine e sicurezza pubblica. Il Consiglio è composto:

- a) dal Capo della polizia - Direttore generale della pubblica sicurezza;
- b) dal Comandante generale dell'Arma dei carabinieri;
- c) dal Comandante generale del Corpo della guardia di finanza;
- d) dall'Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa;
- e) dal Direttore del Servizio per le informazioni e la sicurezza democratica;
- f) dal Direttore del Servizio per le informazioni e la sicurezza militare.

2. Il Consiglio generale per la lotta alla criminalità organizzata provvede, per lo specifico settore della criminalità organizzata, a:

- a) definire e adeguare gli indirizzi per le linee di prevenzione anticrimine e per le attività investigative, determinando la ripartizione dei compiti tra le forze di polizia per aree, settori di attività e tipologia dei fenomeni criminali, tenuto conto dei servizi affidati ai relativi uffici e strutture, e in primo luogo a quelli a carattere interforze, operanti a livello centrale e territoriale <sup>(2)</sup>;

criteri per razionalizzarne l'impiego;

c) verificare periodicamente i risultati conseguiti in relazione agli obiettivi strategici delineati e alle direttive impartite, proponendo, ove occorra, l'adozione dei provvedimenti atti a rimuovere carenze e disfunzioni e ad accertare responsabilità e inadempienze;

d) concorrere a determinare le direttive per lo svolgimento delle attività di coordinamento e di controllo da parte dei prefetti dei capoluoghi di regione, nell'ambito dei poteri delegati agli stessi.

3. Il Consiglio generale emana apposite direttive da attuarsi a cura degli uffici e servizi appartenenti alle singole forze di polizia, nonché dell'organismo previsto dall'articolo 3.

4. All'Ufficio per il coordinamento e la pianificazione delle forze di polizia del Dipartimento della pubblica sicurezza sono attribuite le funzioni di assistenza tecnico-amministrativa e di segreteria del Consiglio.

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(2) Lettera così modificata dalla legge di conversione 30 dicembre 1991, n. 410.

## 2. Attività informativa.

1. Nell'ambito delle attività per le informazioni e la sicurezza dello Stato previste dalla legge 24 ottobre 1977, n. 801 <sup>(3)</sup>, ferme restando le attribuzioni e la disciplina degli ordinamenti ivi previsti, spetta al SISDE ed al SISMI, rispettivamente per l'area interna e quella esterna, svolgere attività informativa e di sicurezza da ogni pericolo o forma di eversione dei gruppi criminali organizzati che minacciano le istituzioni e lo sviluppo della civile convivenza. A tal fine, il Presidente del Consiglio dei Ministri, con proprio decreto, di concerto con i Ministri della difesa e dell'interno, emana le direttive e determina i criteri di adeguamento dell'attività informativa del SISDE e del SISMI alle specifiche finalità previste dal presente decreto.

2. Salvo quanto disposto dall'articolo 9 della legge 24 ottobre 1977, n. 801 <sup>(3)</sup>, le informazioni e ogni altro elemento relativi a fatti comunque attinenti a fenomeni di criminalità organizzata di tipo mafioso, di cui il SISDE ed il SISMI vengano in possesso, devono essere immediatamente comunicati all'Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa ai sensi dell'ultimo comma <sup>(4)</sup> dell'articolo 1 del decreto-legge 6 settembre 1982, n. 629 <sup>(5)</sup>, convertito, con modificazioni, dalla legge 12 ottobre 1982, n. 726, e successive modificazioni ed integrazioni.

2-bis. Per l'espletamento delle attività previste dai commi 1 e 2, il personale del nucleo di cui all'articolo 1-ter, comma 1, del decreto-legge 6 settembre 1982, n. 629 <sup>(5)</sup>, convertito, con modificazioni, dalla legge 12 ottobre 1982, n. 726, come introdotto dall'articolo 2 della legge 15 novembre 1988, n. 486, è restituito ai servizi di appartenenza <sup>(6)</sup>.

2-ter. I commi 1 e 2 dell'articolo 1-ter del D.L. 6 settembre 1982, n. 629 <sup>(5)</sup>, convertito, con modificazioni, dalla L. 12 ottobre 1982, n. 726, come introdotto dall'articolo 2 della L. 15 novembre 1988, n. 486, sono soppressi <sup>(6)</sup>.

2-quater. L'Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa svolge le funzioni previste dalla normativa vigente fino al 31 dicembre 1992. A decorrere dal giorno successivo

delega nei confronti dei prefetti e del Direttore della Direzione investigativa antimafia di cui all'art. 3, <sup>Annex 73</sup> nonché nei confronti di altri organi e uffici dell'Amministrazione della pubblica sicurezza, secondo criteri che tengano conto delle competenze attribuite dalla normativa vigente ai medesimi organi, uffici e autorità. Le competenze previste dal comma 3 dell'art. 1-ter del D.L. 6 settembre 1982, n. 629 <sup>(7)</sup>, convertito, con modificazioni, dalla L. 12 ottobre 1982, n. 726, come introdotto dall'art. 2 della L. 15 novembre 1988, n. 486, sono devolute al Capo della polizia-Direttore generale della pubblica sicurezza <sup>(7/a)</sup>.

*2-quinquies.* A decorrere dal 1° gennaio 1993 <sup>(7/b)</sup> la rubrica denominata «Alto Commissario per il coordinamento della lotta alla delinquenza di tipo mafioso» istituita nello stato di previsione della spesa del Ministero dell'interno dall'articolo 4 della L. 15 novembre 1988, n. 486, è soppressa e gli stanziamenti previsti sui corrispondenti capitoli, nonché quello specificamente indicato per l'Alto Commissario dal comma 3 dell'art. 17 del D.L. 15 gennaio 1991, n. 8 <sup>(7/c)</sup>, convertito con modificazioni, dalla L. 15 marzo 1991, n. 82, sono trasferiti sui capitoli della rubrica «Sicurezza pubblica» del medesimo stato di previsione della spesa, rispettivamente per le esigenze di funzionamento della Direzione investigativa antimafia e per gli oneri complessivi concernenti le misure di protezione di coloro che collaborano con la giustizia. Le spese relative all'organizzazione, al funzionamento degli uffici e dei servizi e al personale posti alle dirette dipendenze della Direzione investigativa antimafia (DIA), nonché le spese riservate, sono iscritte in apposita sottorubrica, nell'ambito della rubrica «Sicurezza pubblica», da istituire nello stato di previsione del Ministero dell'interno <sup>(7/d)</sup>. Le spese riservate non sono soggette a rendicontazione e per esse il direttore della DIA è tenuto a presentare, al termine di ciascun esercizio finanziario, una relazione sui criteri e sulle modalità di utilizzo dei relativi fondi al Ministro dell'interno, che autorizza la distruzione della relazione medesima <sup>(7/d)</sup>. Il Ministro del tesoro è autorizzato ad apportare, con propri decreti, le occorrenti variazioni di bilancio <sup>(8)</sup>.

*2-sexies.* In relazione a quanto stabilito dal comma *2-quater*, il Ministro dell'interno con propri decreti provvede a trasferire alla Direzione investigativa antimafia le dotazioni immobiliari, nonché i mezzi e le attrezzature tecnico-logistiche di cui l'Ufficio dell'Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa abbia a qualsiasi titolo la disponibilità e determina, di concerto con le Amministrazioni interessate, l'assegnazione alla medesima Direzione investigativa antimafia del personale in servizio alla data del 31 dicembre 1992, presso l'Ufficio predetto <sup>(8/a)</sup>.

3. Il controllo sulle attività previste dal comma 1 è esercitato dal Comitato di cui all'articolo 11 della legge 24 ottobre 1977, n. 801 <sup>(9)</sup>, con l'osservanza delle modalità e procedure ivi indicate.

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(3) Riportata al n. A/XXII.

(3) Riportata al n. A/XXII.

(4) Comma così corretto con avviso pubblicato nella Gazz. Uff. 6 novembre 1991, n. 260.

(5) Riportato al n. T/III.

(5) Riportato al n. T/III.

(6) Comma aggiunto dalla legge di conversione 30 dicembre 1991, n. 410.

(5) Riportato al n. T/III.

(6) Comma aggiunto dalla legge di conversione 30 dicembre 1991, n. 410.

(7/a) Successivamente, il comma 2-*quater* è stato così sostituito dall'art. 1, L. 7 agosto 1992, n. 356 <sup>Annex 73</sup> (Gazz. Uff. 7 agosto 1992, n. 185).

(7/b) Data così precisata dall'art. 1, L. 7 agosto 1992, n. 356 (Gazz. Uff. 7 agosto 1992, n. 185).

(7/c) Riportato alla voce Ordinamento giudiziario.

(7/d) Periodo aggiunto dall'art. 10, L. 23 dicembre 1993, n. 559, riportata alla voce Amministrazione del patrimonio e contabilità generale dello Stato.

(7/d) Periodo aggiunto dall'art. 10, L. 23 dicembre 1993, n. 559, riportata alla voce Amministrazione del patrimonio e contabilità generale dello Stato.

(8) Comma aggiunto dalla legge di conversione 30 dicembre 1991, n. 410.

(8/a) Comma aggiunto dall'art. 1, L. 7 agosto 1992, n. 356 (Gazz. Uff. 7 agosto 1992, n. 185).

(9) Riportata al n. A/XXII.

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### 3. Direzione investigativa antimafia.

1. È istituita, nell'ambito del Dipartimento della pubblica sicurezza, una Direzione investigativa antimafia (D.I.A.) con il compito di assicurare lo svolgimento, in forma coordinata, delle attività di investigazione preventiva attinenti alla criminalità organizzata, nonché di effettuare indagini di polizia giudiziaria relative esclusivamente a delitti di associazione di tipo mafioso o comunque ricollegabili all'associazione medesima.

2. Formano oggetto delle attività di investigazione preventiva della Direzione investigativa antimafia le connotazioni strutturali, le articolazioni e i collegamenti interni ed internazionali delle organizzazioni criminali, gli obiettivi e le modalità operative di dette organizzazioni, nonché ogni altra forma di manifestazione delittuosa alle stesse riconducibile ivi compreso il fenomeno delle estorsioni <sup>(10)</sup>.

3. La Direzione investigativa antimafia nell'assolvimento dei suoi compiti opera in stretto collegamento con gli uffici e le strutture delle forze di polizia esistenti a livello centrale e periferico.

4. Tutti gli ufficiali ed agenti di polizia giudiziaria debbono fornire ogni possibile cooperazione al personale investigativo della D.I.A. Gli ufficiali ed agenti di polizia giudiziaria dei servizi centrali e interprovinciali di cui all'articolo 12 del decreto-legge 13 maggio 1991, n. 152 <sup>(11)</sup>, convertito, con modificazioni, dalla legge 12 luglio 1991, n. 203, devono costantemente informare il personale investigativo della D.I.A., incaricato di effettuare indagini collegate, di tutti gli elementi informativi ed investigativi di cui siano venuti comunque in possesso e sono tenuti a svolgere, congiuntamente con il predetto personale, gli accertamenti e le attività investigative eventualmente richiesti. Il predetto personale dei servizi centrali e interprovinciali della Polizia di Stato, dell'Arma dei carabinieri e del Corpo della guardia di finanza, a decorrere dal 1° gennaio 1993, è assegnato alla D.I.A., nei contingenti e con i criteri e le modalità determinati con decreto del Ministro dell'interno, di concerto con i Ministri della difesa e delle finanze <sup>(10)</sup>.

5. All'Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa, ferme restando le attribuzioni previste dal decreto-legge 6 settembre 1982, n. 629 <sup>(7)</sup>, convertito, con modificazioni, dalla L. 10 ottobre 1982, n. 726 e successive modificazioni e integrazioni, è attribuita la responsabilità generale

delle attività svolte dalla D.I.A., delle quali riferisce periodicamente al Consiglio generale<sup>Annex 73</sup> di cui all'articolo 1, e competono i provvedimenti occorrenti per l'attuazione, da parte della D.I.A., delle direttive emanate a norma del medesimo art. 1<sup>(12)</sup>.

6. Alla D.I.A. è preposto un direttore tecnico-operativo scelto fra funzionari appartenenti ai ruoli della Polizia di Stato, con qualifica non inferiore a dirigente superiore, e ufficiali di grado non inferiore a generale di brigata dell'Arma dei carabinieri e del Corpo della guardia di finanza, che abbiano maturato specifica esperienza nel settore della lotta alla criminalità organizzata. Il direttore della D.I.A. partecipa alle riunioni del Consiglio generale di cui all'articolo 1, cui riferisce sul funzionamento dei servizi posti alle sue dipendenze e sui risultati conseguiti<sup>(13)</sup>.

6-bis. Con gli stessi criteri indicati al comma 6 è assegnato alla D.I.A. un vice direttore con funzioni vicarie<sup>(14)</sup>.

7. La D.I.A. si avvale di personale dei ruoli della Polizia di Stato, dell'Arma dei carabinieri e del Corpo della guardia di finanza.

8. Il Ministro dell'interno, sentito il Consiglio generale di cui all'articolo 1, determina l'organizzazione della D.I.A. secondo moduli rispondenti alla diversificazione dei settori d'investigazione e alla specificità degli ordinamenti delle forze di polizia interessate, fermo restando che in ogni caso, nella prima fase, l'organizzazione è articolata come segue:

- a) reparto investigazioni preventive;
- b) reparto investigazioni giudiziarie;
- c) reparto relazioni internazionali ai fini investigativi.

9. Alla determinazione del numero e delle competenze delle divisioni in cui si articolano i reparti di cui al comma 8 si provvede con le modalità e procedure indicate nell'articolo 5, settimo comma, della legge 1<sup>o</sup> aprile 1981, n. 121<sup>(15)</sup>, e successive modificazioni e integrazioni. Con le stesse modalità e procedure si provvede alla preposizione ed assegnazione del personale ai reparti e alle divisioni, secondo principi di competenza tecnico-professionale e con l'obiettivo di realizzare nei confronti dei titolari degli uffici predetti di pari livello una sostanziale parità ed equiordinazione di funzioni, anche mediante il ricorso al criterio della rotazione degli incarichi.

10. In attuazione di quanto stabilito nel presente articolo, con decreto del Ministro dell'interno, da adottarsi nel termine di trenta giorni dalla data di entrata in vigore del presente decreto, saranno dettate norme per l'unificazione nella D.I.A. di tutte le attività dell'ufficio dell'Alto Commissario che riguardano compiti assegnati dal presente decreto al medesimo organismo.

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(10) Comma così modificato dalla legge di conversione 30 dicembre 1991, n. 410.

(11) Riportato al n. T/XVII.

(10) Comma così modificato dalla legge di conversione 30 dicembre 1991, n. 410.

(7) Riportato al n. T/III.

(12) Comma così sostituito dalla legge di conversione 30 dicembre 1991, n. 410.

(14) Comma aggiunto dalla legge di conversione 30 dicembre 1991, n. 410.

Annex 73

(15) Riportata al n. A/XXX.

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**3-bis. Personale a disposizione per le esigenze connesse alla lotta alla criminalità organizzata.**

1. Per le esigenze connesse allo svolgimento dei compiti affidati all'Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa dalla vigente normativa e per quelle connesse all'attuazione del decreto-legge 31 maggio 1991, n. 164 <sup>(16)</sup>, convertito, con modificazioni, dalla legge 22 luglio 1991, n. 221, su proposta del Ministro dell'interno, un'aliquota di prefetti, nel limite massimo del 15 per cento della dotazione organica, può essere collocata a disposizione, oltre a quella stabilita dall'articolo 237 del testo unico delle disposizioni concernenti lo statuto degli impiegati civili dello Stato, approvato con decreto del Presidente della Repubblica 10 gennaio 1957, n. 3, e in deroga ai limiti temporali ivi previsti <sup>(17)</sup>.

2. In relazione a quanto stabilito dall'articolo 2, comma 1, su proposta del Ministro dell'interno, un contingente di dirigenti generali della Polizia di Stato, nel numero massimo di cinque unità, può essere collocato in posizione di fuori ruolo presso la Presidenza del Consiglio dei ministri, anche in eccedenza all'organico previsto per il SISDE dalle disposizioni vigenti <sup>(18)</sup>.

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(16) Recante misure urgenti per lo scioglimento dei consigli comunali e provinciali e degli organi di altri enti locali, conseguente e a fenomeni di infiltrazione e di condizionamento di tipo mafioso.

(17) Vedi, anche, il comma 4 dell'art. 2, D.Lgs. 19 maggio 2000, n. 139.

(18) Aggiunto dalla legge di conversione 30 dicembre 1991, n. 410.

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**4. Disposizioni concernenti il personale.**

1. Nella prima attuazione del presente decreto, la dotazione di personale e mezzi da porre a disposizione della Direzione investigativa antimafia è determinata con decreto del Ministro dell'interno, di concerto con il Ministro del tesoro, sentito il Consiglio generale di cui all'articolo 1. Al funzionamento della Direzione investigativa antimafia, nonché ai compiti attinenti alla gestione tecnico-logistica e alla direzione e amministrazione del personale alla stessa assegnato, provvede il Dipartimento della pubblica sicurezza. All'assegnazione del personale appartenente ai ruoli direttivi della Polizia di Stato e ai ruoli degli ufficiali, nei gradi equivalenti, dell'Arma dei carabinieri e del Corpo della guardia di finanza, si provvede con l'osservanza delle modalità e procedure indicate ai commi 2, 3 e 4 <sup>(19)</sup>.

2. Entro quarantacinque giorni dalla data di entrata in vigore del presente decreto, il Presidente del Consiglio dei Ministri, con proprio decreto, da adottarsi su proposta del Ministro dell'interno, bandisce un concorso unico nazionale riservato agli appartenenti alla Polizia di Stato, all'Arma dei carabinieri e al Corpo della guardia di finanza, di qualifica non inferiore a commissario o grado equiparato e non superiore a vice questore aggiunto o grado equiparato, ai fini dell'assegnazione alla D.I.A. Al concorso, da effettuarsi mediante selezione per titoli di servizio, sono ammessi a partecipare i funzionari ed ufficiali



concorso nella Gazzetta Ufficiale della Repubblica italiana.

3. Con apposito decreto del Ministro dell'interno, da adottarsi in deroga a quanto stabilito al comma 4 dell'articolo 17 della legge 23 agosto 1988, n. 400 <sup>(20)</sup>, sono dettate le disposizioni concernenti le modalità di svolgimento del concorso, l'individuazione delle categorie dei titoli di servizio da ammettere a valutazione, il punteggio massimo da attribuire a ciascuna categoria, nonché la composizione della commissione esaminatrice.

4. I funzionari e gli ufficiali risultati vincitori del concorso per titoli di servizio di cui al comma 2 sono assegnati, con decreto del Ministro dell'interno, alla D.I.A., previa comunicazione alle amministrazioni interessate. Ai predetti funzionari e ufficiali, ferme restando le posizioni di stato e il trattamento economico loro attribuiti dai rispettivi ordinamenti, si applicano per tutta la durata della loro permanenza presso la D.I.A. le disposizioni di cui ai commi 2 e 3 dell'articolo 3 della legge 15 novembre 1988, n. 486 <sup>(21)</sup>.

4-bis. In aggiunta al personale assegnato a norma del comma 2, l'Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa, su proposta del direttore della D.I.A., può richiedere l'assegnazione nominativa di funzionari ed ufficiali in misura non superiore al 5 per cento della dotazione di personale stabilita al comma 1. Ai predetti funzionari e ufficiali, nonché ai dirigenti e al rimanente personale, alla cui assegnazione si provvede con decreto del Ministro dell'interno, di concerto con i Ministri della difesa e delle finanze, si applicano le disposizioni richiamate al comma 4 <sup>(22)</sup>.

4-ter. Al perfezionamento e all'aggiornamento periodico del personale assegnato alla D.I.A. si provvede mediante appositi corsi svolti dalla scuola di perfezionamento per le forze di polizia, di cui all'articolo 22 della legge 1° aprile 1981, n. 121 <sup>(23)</sup>, e da sezioni interforze presso gli istituti di istruzione previsti dalla medesima legge <sup>(22)</sup>.

5. Con successivo provvedimento legislativo saranno istituiti appositi ruoli di investigatori speciali del Ministero dell'interno, determinandone il relativo ordinamento, le dotazioni organiche, gli stati giuridici e le progressioni di carriera, i trattamenti economici in attività di servizio e di quiescenza, e saranno dettate le particolari disposizioni riguardanti il personale già impiegato presso la D.I.A.

6. Al fine di assicurare i collegamenti tra la D.I.A. e gli altri uffici, reparti e strutture delle forze di polizia, ivi compresi i servizi di cui all'articolo 12 del decreto-legge 13 maggio 1991, n. 152 <sup>(24)</sup>, convertito, con modificazioni, dalla legge 12 luglio 1991, n. 203, la dotazione organica dei prefetti di prima classe è incrementata di un'unità da assegnarsi al Dipartimento di pubblica sicurezza con funzioni di vice direttore generale, direttore centrale della polizia criminale.

7. <sup>(25)</sup>.

8. <sup>(25)</sup>.

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(19) Periodo così sostituito dalla legge di conversione 30 dicembre 1991, n. 410.

(20) Riportata alla voce Ministeri: provvedimenti generali.

(21) Riportata al n. T/XII.

(22) Comma aggiunto dalla legge di conversione 30 dicembre 1991, n. 410.

(23) Riportata al n. A/XXX.

(22) Comma aggiunto dalla legge di conversione 30 dicembre 1991, n. 410.

(24) Riportato al n. T/XVII.

(25) Comma soppresso dalla legge di conversione 30 dicembre 1991, n. 410.

(25) Comma soppresso dalla legge di conversione 30 dicembre 1991, n. 410.

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##### 5. Relazione al Parlamento.

1. Il Ministro dell'interno riferisce, ogni sei mesi, al Parlamento sull'attività svolta e sui risultati conseguiti dalla Direzione investigativa antimafia e presenta, unitamente con la relazione di cui all'articolo 113 della legge 1° aprile 1981, n. 121 <sup>(23)</sup> un rapporto annuale sul fenomeno della criminalità organizzata.

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(23) Riportata al n. A/XXX.

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##### 6. Copertura finanziaria.

1. All'onere derivante dall'attuazione del presente decreto, valutato in lire 547 milioni per l'anno finanziario 1991 ed in lire 9.000 milioni per gli anni 1992 e 1993 e a regime, si provvede mediante riduzione dello stanziamento iscritto al capitolo 2653 dello stato di previsione del Ministero dell'interno per l'anno finanziario 1991 e corrispondenti capitoli per gli anni successivi <sup>(26)</sup>.

2. Il Ministro del tesoro è autorizzato ad apportare con propri decreti, le occorrenti variazioni di bilancio.

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(26) Comma così modificato dalla legge di conversione 30 dicembre 1991, n. 410.

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##### 7. Entrata in vigore.

1. Il presente decreto entra in vigore il giorno successivo a quello della sua pubblicazione nella Gazzetta Ufficiale della Repubblica italiana e sarà presentato alle Camere per la conversione in legge.

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## **Ministerial Decree 19 December 1991.**

### **IV. 2.4.**

– *Ways for implementing the provisions in Article 2 of Decree Law 143 of 3 May 1991, converted, with amendments and supplements, by Law 197 of 5 July 1991, containing, "Urgent Measures for limiting the use of cash and bearer bonds in transactions and prevention of the use of the financial system for money laundering purposes"*<sup>1</sup>

The Treasury Minister

Having seen the legislative decree of the Interim head of State 691(2) of 17 July 1947;

Having seen decree law 143 of 3 May 1991, converted, with amendments and supplements, by law 197 of 5 July 1991, containing, "Urgent Measures for

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<sup>1</sup> Gazzetta Ufficiale 303 of 28 December. On preventing the use of the financial system for purposes of recycling proceeds from illegal activities, see also D.L. 143/91 cited in the text, Legislative decree 125 of 30 April 1997 (in III, II); Legislative decree 153 of 26 May 1997 (in III, 12); Legislative decree 374, of 25 September 1999 (in III, 14) and communications of the Ministry of the Treasury published here in IV, 2, 2 and in IV, 2.3.

limiting the use of cash and bearer bonds in transactions and prevention of the use of the financial system for money laundering purposes”;

Having seen in particular Article 2, paragraph 1, of Law 197 of 5 July 1991, which substitutes Article 13 of decree law 626 of 15 December 1979, converted, with amendments by law 15 of 6 February 1980, as substituted by Article 30, paragraph 1, of Law 55 of 19 March 1990<sup>2</sup>

Having seen Article 30, paragraph 2, of law 55 of 19 March 1990<sup>3</sup>;

Having seen his own decrees of 3 May 1990 and 4 July 1990, issued in implementation of the above Article 30, paragraph 1, of law 55 of 1990;

Having considered the need to proceed with the updating and integration of the provisions contained in the above decrees;

Having regard to the urgency to provide, in conformity with and for the effects of Article 6 of the above legislative decree 691 of the Interim Head of State of 17 July 1947;

#### Decrees

Ways for implementing the provisions on the identification and registering to which financial intermediaries are subject.

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<sup>2</sup> Gazzetta Ufficiale 69 of 23 March 1990.

1. *Subjects under obligations of identification and registering.* – Any persons conducting transactions or opening accounts, deposits or other continuative relations with the following subjects shall be identified by the personnel charged with doing so.

- a. Public administrative offices, including post offices;
- b. Credit institutes;
- c. Real estate companies;
- d. Brokerage firms with access to the floor of the stock exchange;
- e. Foreign exchange agents;
- f. Companies authorized to sell securities door-to-door;
- g. Mutual investment fund companies;
- h. Trust companies;
- i. Assurance companies and entities;
- l. Monte Titoli S.p.A.;
- m. Intermediaries whose main business or which in any case carry out mainly one or more of the following activities: financial lending under any form, including financial investment; share holding; foreign exchange dealings; funds

collection, payment and transferring services also  
by means of issuing and managing credit cards.

The intermediaries in m) shall observe the obligations of identifying and registering irrespective of the license to carry out transfer operations in Article 1 of decree law 143 of 3 May 1991, converted, with amendments by law 197 of 5 July 1991<sup>4</sup>.

In cases of accrediting or paying orders from abroad they are obliged to identify and register the intermediaries operating in the national territory which originates the transaction.

2. *Transactions and relations to which are applied the obligations of identifying and registering.* –

2.1 Transmission or handling means of payments.

The obligations apply every time there is an actual transfer or handling of means of payments of amounts above 20 million lire – or the corresponding lire equivalent of means of payment in foreign currency – independent of the fact that the operation carried out by cash, correspondence, through night safe, ATM, or through institutes specialized in transporting valuables and irrespective of the ways in which the operation is recording in accounts.

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<sup>4</sup> In III, 8.

For means of payment is meant, aside from cash, bank drafts or cheques, all kinds of travellers cheques, special paper of the Note-Issuing Bank, special paper of the Banco di Napoli and Banco di Sicilia, cheques and postal orders, accredit or payment orders (i.e. bank transfers and vouchers linked to credit and payment cards).

## 2.2. Transferring cash or bearer bonds

The obligations applied also in cases in which the intermediary acts as channel as per Article 1 of Law 197 of 1991<sup>5</sup>, or has in any case part in the transfer of cash or bearer bonds, in lire or in foreign currency, carried out for any reason between different subjects, of a total amount above 20 million lire. Such operations shall be carried out only by intermediaries licensed in Article 4 of the law in question, within the limits of its own institutional activities.

## 2.3. Split up operations

The obligations exist also when, by the nature and ways the operations carried out, it can be inferred that many operations done at different times and within a certain period of time, even if singularly not above the limited amount of 20 million lire, nevertheless constitute a single operation.

By 7 July 1992 the subjects indicated in point 1 of this decree shall make available to appointed personnel - for the purposes of assessing if it is a

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<sup>5</sup> In III, 8.

question of parts of a single operation – the appropriate technical instruments for recognizing in real time the operations carried out by the client at the same branch of the entity or institute on the day of the operation or on work days within the seven previous days.

Until such time as these instruments become available it shall be understood that many operations done on the same work day and with the same window operator shall constitute parts of a single operation.

#### 2.4. Accounts, deposits and other continuative relations

From 1 January 1992 the obligations shall exist when any account, deposit or other relation continuative, personal or bearer, in cash or securities of whatever amount is opened.

By ‘account’ is meant in the sense of handling account such as current account and similar accounts; excluded are temporary bank accounts.

The word “deposit” does not include certificates of deposit and similar securities.

The expression “other continuative relations” is understood in the sense of a single term, contractual relation within the exercise of the institutional activities of the intermediary, that can give rise to many operations of deposit, withdrawal or transfer of cash or other valuables. In the expression “other continuative relations” are included relations of safe-deposit boxes and closed deposits; excluded however are secured relations.



2.5. Exceptions to the obligations of identifying and registering

The obligations. In the terms given above, shall not apply for operations and relations in the preceding paragraphs carried out by intermediaries licensed as per Article 4 of Law 197/1991.

Excluded from the obligations in question are transfers of funds within the state treasury and payments arranged by the public administration, through the State treasury, with the exception of payment operations linked to the national debt.

The obligations are also excluded for accounts, deposits and other continuative relations between provincial sectors of the State treasuries, the Bank of Italy and the Ufficio Italiano dei Cambi.

Also the obligations do not exist for operations and relations existing between banks, other licensed intermediaries having their head office or branch in Italy and banks or branches abroad.

In any case, for the actual handling of cash and bearer bonds, done also through special service vehicles, the following shall be collected and registered, the personal code of the correspondent banks abroad of Italian banks attributed (or to be attributed) by the Ufficio Italiano dei Cambi, the

date, the reasons the code of the foreign country and the amount of the operation, distinguishing by means of the special code the part in cash<sup>6</sup>

3. *Information to collect and register.* – The data and information to collect and register are:

The date and reason for the operation;

The amount of the single means of payment or bearer bonds;

The complete details (name, surname, place and date of birth, address) and the details in the identification document shown by those who perform the operation for themselves or third parties;

The complete details or, in the case of non physical persons, the name and head office of the eventual subject on whose account the operation was carried out;

In the case of credit or payment orders the person originating the order, the beneficiary and the intermediaries who carry out the operation shall be indicated.

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<sup>6</sup> The last two sentences were added by Ministerial decree of 29 October 1993 (Gazzetta Ufficiale 266 of 12 November 1993).

The same decree sets out that the ways for using the codes of foreign corresponding banks shall be precisely set down in the notes to be issued by the Ufficio Italiano dei Cambi and to be published in the Gazzetta Ufficiale.

The provision establishes also that the Minister of the Treasury can suspend the exemptions introduced by the paragraphs in question and issue – also for the purpose of doing statistic analyses as per Article 5, paragraph 10 l. 197 of 5 July 1991 – the identification of subjects in certain countries, as well as the registration of specific categories of relations and operations.

The amount of the means of payment shall be shown distinguishing, by means of the assigned code, the part in cash of the total amount of the means of payment.

From 1 January 1992, the data on the operation to be carried out in cash of amounts above 20 million lire shall also contain the fiscal code, when attributable, both of the subject who carries out the operation and the subject for who the operation is done.

The data personal details, including the fiscal code, shall be collected and registered from 1 January 1992 in the place where every account, deposit or other continuative relation is opened. For accounts, deposits and continuative relations existing before that date, the data shall be completely integrated by 31 December 1992. The intermediary shall not have to show operations done after that date by the client who has not made possible the integration of the data.

Within the limits of the relations already existing the firms and assurance entities shall acquire the fiscal code only in cases in which the total amount of the premiums is above 20 million lire a year.

For the operations and relations with the banks and by the other licensed intermediaries with head office or branch in Italy with international bodies, government authorities of foreign states and foreign postal offices, the code of registered details of the foreign correspondents attributed (to be attributed) by the Ufficio Italiano dei Cambi, the data, the foreign country code and, for the operations only, the reasons and the amount<sup>7</sup>.

#### 4. Operational procedures –

##### a. Identification procedures.

The identification of the one who does the transaction shall be done every time whether it is a question of a physical or a legal person, owners of the existing nominative relations or their delegate and/or proxy who have already been identified as such, it is sufficient to indicate the name and surname or registered name and details of the relationship.

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<sup>7</sup> Sentence added by Ministerial Decree of 29 October 1993 (Gazzetta Ufficiale 266 of 12 November 1993). The same decree establishes that the ways to use the codes of the foreign correspondents must be set down in the notes to be issued by the Ufficio Italiano dei Cambi and to be published in the Gazzetta Ufficiale.

In the case of persons exhibiting or presenting, the identification shall be made of those who materially set up the operation, including also the indication of the subjects or the nominatives the operation refers to; that is the case that the exhibitors or presenters act on behalf of an other physical person or on behalf of a legal person.

In the case of transactions done through night safe or ATMs or through institutes specialized in transporting valuables, or through correspondence or in any case not done at the bank counter, because of the impossibility of identifying who materially perform the transaction, the obligation exists to indicate the owner of the account, the deposit or the relations to which the transaction refers.

In the case of sending by correspondence the means of payment for instalments of a mortgage or other connected obligations, the transaction shall be referred to the owner of the mortgage. In case of inheritance of the debt, in the case they are in possession of acts or documents to prove the inheritance, the transaction shall be referred to the subject indicated in those acts or documents as the new debtor. Similarly in the case of sending the means of payment by correspondence to extinguish part or all the credits surrendered, the transaction shall be referred to the subject indicated as debtor in the acts or documents that prove the cession that are in the possession of the intermediary.

Identifying data on the opening of accounts, deposits or other continuative relations shall be collected in the presence of the owner of relation or his proxy, if there are not already owners of other relations at the same intermediary<sup>8</sup> or other licensed intermediary and this is attested to by a declaration made by them.

For opening accounts, deposits or other continuative relations from abroad at the banks or other licensed intermediaries with head office or branch in Italy, the complete particulars of the one making the operation and the eventual subject on whose account the operation was done can be collected also without the presence of the above subjects if the data is collected by:

1. banks with head office or administrative office in member countries of the International Action Financial Group (FATF banks), or from branches located in those countries of national banks and FATF banks;

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<sup>8</sup> The words that follow were added by Ministerial Decree 29 October 1993 (Gazzetta ufficiale 12 November 1993, 266).

2. branches located in countries not members of the FATF of national banks and FATF banks , on condition that the parent bank declares to belong, in the exercise of its activities carried out in the branches, to the principles and cautions of the recommendations issued by the FATF;
3. consular authorities, who so provide in the established way.

The identification carried out shall be confirmed by appropriate declaration<sup>9</sup>.

#### 4.2. Ways of registering. Data Base.

The data shall be easily accessible and, in any case, inserted within thirty days in a single data file belonging to the public or private subject where the transaction is done.

For firms and assurance entities the deadline begins from the day in which they receive the data from the agents and other autonomous collaborators, who, in their turn, shall send the data in question within thirty days.

In the interval of time that could happen between the realizing the transaction and the issue of the data and information in the data file , to ensure the easy accessibility, the intermediaries shall set up appropriate evidence, also in the separate units and operators.

To avoid duplication of registrations, for compliances on trust only the intermediary who comes into contact with the client shall be present also if the relation is set up on behalf of operators under the legal obligations.

Within six months of the publication of the decree in paragraph 5, subparagraph 1 of Article 2 of decree law 143 of 3 May 1991, converted, with amendments by law 197/1991<sup>10</sup>, the intermediaries shall establish a data file. The data and the information shall be kept in the data file for a period of ten years from the performance of the single operations. Data on the opening of accounts, deposits or other continuative relations shall be kept up to ten years after the extinction. All other obligations for conserving documents shall remain in force.

Personal details and other identifying data for accounts, deposits and other continuative relations, may be kept in data files different from the

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<sup>9</sup> The last two sentences were added by Ministerial Decree 29 October 1993 (Gazzetta ufficiale 12 November 1993, no.266).

<sup>10</sup> In III, 8.

consolidated data file, on condition that the possibility of accessing addition company information is guaranteed.

5. *Interim Regulations.* – Until the establishment of the data base, the data and information shall be kept in appropriate registers or in other written formats also by systems of electric accounting and shall be kept for the period of ten years from the realization of the single operation. Data on opening accounts, deposits or other relations shall be kept for ten years after the extinction.

Specifically, for registers not deriving from electric accounting, they shall be numbered progressively and signed on every page, under the responsibility of the office chief and other persons authorized to do so, with an indication at the end of the last page of the number of pages making up the register and affixing the signatures of the same persons. This applies obviously when the offices in question decide not to certify and stamp the required registers voluntarily.

Subjects who are already under obligation, because of other legal or administrative regulations, to keep a register of clients may avail of existing registers provided they contain or in any case be completed with all the information requested.

6. *Last regulations.* – This decree replaces the previous decrees of 3 May 1990 and 4 July 1990, issued in implementation of Article 30 of Law 55 of 19 March 1990.

# **Legge n. 266 del 11 agosto 1991**

## **Legge Quadro sul volontariato**

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### **Art. 1.**

#### **Finalita' e oggetto della Legge**

1. La Repubblica Italiana riconosce il valore sociale e la funzione della attivita' di volontariato come espressione di partecipazione, solidarieta' e pluralismo, ne promuove lo sviluppo salvaguardandone l'autonomia e ne favorisce l'apporto originale per il conseguimento delle finalita' di carattere sociale, civile e culturale individuate dallo Stato, dalle Regioni, dalle prov. autonome di Trento e di Bolzano e dagli Enti locali.

2. La presente legge stabilisce i principi cui le Regioni e le prov. autonome devono attenersi nel disciplinare i rapporti fra le istituzioni pubbliche e le organizzazioni di volontariato nonche' i criteri cui debbono uniformarsi le amministrazioni statali e gli Enti locali nei medesimi rapporti.

### **Art. 2.**

#### **Attivita' di volontariato**

1. Ai fini della presente legge per attivita' di volontariato deve intendersi quella prestata in modo personale, spontaneo e gratuito, tramite l'organizzazione di cui il volontario fa parte, senza fini di lucro anche indiretto edesclusivamente per fini di solidarieta'.

2. L'attivita' del volontariato non puo' essere retribuita in alcun modo nemmeno dal beneficiario. Al volontario possono essere soltanto rimborsate dall'organizzazione di appartenenza le spese effettivamente sostenute per l'attivita' prestata, entro limiti preventivamente stabiliti dalle organizzazioni stesse.

3. La qualita' di volontario e' incompatibile con qualsiasi forma di rapporto di lavoro subordinato o autonomo e con ogni altro rapporto di contenuto patrimoniale con l'organizzazione di cui fa parte.

### **Art. 3.**

#### **Organizzazioni di volontariato**

1. E' considerato organizzazione di volontariato ogni organismo liberamente costituito al fine di svolgere l'attivita' di cui all' art. 2, che si avvalga in modo

determinante e prevalente delle prestazioni personali, volontarie e gratuite dei propri aderenti.

2. Le organizzazioni di volontariato possono assumere la forma giuridica che ritengono piu' adeguata al perseguimento dei loro fini, salvo il limite di compatibilita' con lo scopo solidaristico.
3. Negli accordi degli aderenti, nell'atto costitutivo o nello statuto, oltre a quanto disposto dal codice civile per le diverse forme giuridiche che l'organizzazione assume, devono essere espressamente previsti l'assenza di fini di lucro, la democraticita' della struttura, l'elettivita' e la gratuita' delle cariche associative nonche' la gratuita' delle prestazioni fornite dagli aderenti, i criteri di ammissione e di esclusione di questi ultimi, i loro obblighi e diritti. Devono essere altresì stabiliti l'obbligo di formazione del bilancio, dal quale devono risultare i beni, i contributi o i lasciti ricevuti, nonche' le modalita' di approvazione dello stesso da parte dell'assemblea degli aderenti.
4. Le organizzazioni di volontariato possono assumere lavoratori dipendenti o avvalersi di prestazioni di lavoro autonomo esclusivamente nei limiti necessari al loro regolare funzionamento oppure occorrenti a qualificare e specializzare l'attivita' da essa svolta.
5. Le organizzazioni svolgono le attivita' di volontariato mediante strutture proprie o, nelle forme e nei modi previsti dalla legge, nell'ambito di strutture pubbliche o con queste convenzionate.

#### **Art. 4.**

##### **Assicurazioni degli aderenti ad organizzazioni di volontariato**

1. Le organizzazioni di volontariato debbono assicurare i propri aderenti, che prestano attivita' di volontariato, contro gli infortuni e le malattie connessi allo svolgimento dell'attivita' stessa, nonche' per la responsabilita' civile verso terzi.
2. Con [decreto del Ministero dell'industria, del commercio e dell'artigianato](#) da emanarsi entro sei mesi dalla data di entrata in vigore della presente legge, sono individuati meccanismi assicurativi semplificati, con polizze anche numeriche o collettive, e sono disciplinati i relativi controlli.

#### **Art. 5.**

##### **Risorse economiche**

1. Le organizzazioni di volontariato traggono le risorse economiche per il loro funzionamento e per lo svolgimento della propria attivita' da:
  - a) contributi degli aderenti



- b) contributi di privati
- c) contributi dello Stato, di Enti o di istituzioni pubbliche finalizzati esclusivamente al sostegno di specifiche e documentate attività o progetti
- d) contributi di organismi internazionali
- e) donazioni e lasciti testamentari
- f) rimborsi derivanti da convenzioni
- g) entrate derivanti da attività commerciali e produttive marginali

**2.** Le organizzazioni di volontariato, prive di personalità giuridica, iscritte nei registri di cui all' [art. 6](#), possono acquistare beni mobili registrati e beni immobili occorrenti per lo svolgimento della propria attività. Possono inoltre, in deroga agli articoli 600 e 786 del codice civile, accettare donazioni e, con beneficio d'inventario, lasciti testamentari, destinando i beni ricevuti e le loro rendite esclusivamente al conseguimento delle finalità previste dagli accordi, dall'atto costitutivo o dallo statuto.

**3.** I beni di cui al comma 2 sono intestati alle organizzazioni. Ai fini della trascrizione dei relativi acquisti si applicano gli articoli 2659 e 2660 del codice civile.

**4.** In caso di scioglimento, cessazione ovvero estinzione delle organizzazioni di volontariato, ed indipendentemente dalla loro forma giuridica, i beni che residuano dopo l'esaurimento della liquidazione sono devoluti ad altre organizzazioni di volontariato operanti in identico o analogo settore, secondo le indicazioni contenute nello statuto o negli accordi degli aderenti o, in mancanza, secondo le disposizioni del codice civile.

## **Art. 6.**

### **Registri delle organizzazioni di volontariato istituiti dalle Regioni e dalle province autonome**

**1.** Le Regioni e le province autonome disciplinano l'istituzione e la tenuta dei registri generali delle organizzazioni di volontariato.

**2.** L'iscrizione ai registri è condizione necessaria per accedere ai contributi pubblici nonché per stipulare le convenzioni e per beneficiare delle agevolazioni fiscali secondo le disposizioni di cui, rispettivamente, agli [articoli 7](#) e [8](#).

**3.** Hanno diritto ad essere iscritte nei registri le organizzazioni di volontariato che abbiano i requisiti di cui all' [art. 3](#) e che alleghino alla richiesta copia dell'atto costitutivo e dello statuto o degli accordi degli aderenti.

4. Le regioni e le province autonome determinano i criteri per la revisione periodica dei registri, al fine di verificare il permanere dei requisiti e l'effettivo svolgimento dell'attività di volontariato da parte delle organizzazioni iscritte. Le Regioni e le province autonome dispongono la cancellazione dal registro con provvedimento motivato.

5. Contro il provvedimento di diniego dell'iscrizione o contro il provvedimento di cancellazione e' ammesso ricorso, nei termini di trenta giorni dalla comunicazione, al tribunale amm.vo regionale, il quale decide in camera di consiglio, entro trenta giorni dalla scadenza del termine per il deposito di ricorso, uditi i difensori delle parti che ne abbiano fatto richiesta. La decisione del tribunale e' appellabile, entro trenta giorni dalla notifica della stessa, al Consiglio di Stato, il quale decide con le medesime modalita' e negli stessi termini.

6. Le Regioni e le prov. autonome inviano ogni anno copia aggiornata dai registri all'Osservatorio Nazionale per il volontariato, previsto dall'[art. 12](#).

7. Le organizzazioni iscritte nei registri sono tenute alla conservazione della documentazione relativa alle entrate di cui all'[art. 5, comma 1](#), con l'indicazione nominativa dei soggetti eroganti.

## **Art. 7.**

### **Convenzioni**

1. Lo Stato, le Regioni, le prv. autonome, gli Enti locali e gli altri Enti pubblici possono stipulare convenzioni con le organizzazioni di volontariato iscritte da almeno sei mesi nei registri di cui all'[art. 6](#) e che dimostrino attitudine e capacita' operativa.

2. Le convenzioni devono contenere disposizioni dirette a garantire l'esistenza delle condizioni necessarie a svolgere con continuita' le attività oggetto della convenzione, nonché il rispetto dei diritti e della dignita' degli utenti. Devono inoltre prevedere forme di verifica delle prestazioni, di controllo della loro qualita' e le modalita' di rimborso spese.

4. La copertura assicurativa di cui all'[art.4](#) e' elemento essenziale della convenzione e gli oneri relativi sono a carico dell'Ente con il quale viene stipulata la convenzione medesima.

## **Art. 8.**

### **Agevolazioni fiscali**

1. Gli atti costitutivi delle organizzazioni di volontariato di cui all'[art.3](#) della presente legge, costituite esclusivamente per fini di solidarieta', e quelli connessi allo svolgimento delle loro attività sono esenti dall'imposta di bollo e dall'imposta di registro.

2. Le operazioni effettuate dalle organizzazioni di volontariato di cui all' [art.3](#) della presente legge, costituite esclusivamente per fini di solidarieta', non si considerano cessioni di beni ne' prestazioni di servizi ai fini dell'imposta sul valore aggiunto: le donazioni e le attribuzioni di eredita' o di legato sono esenti da ogni imposta a carico delle organizzazioni che perseguono esclusivamente i fini suindicati.

3. All'articolo 17 della legge 29 dicembre 1990, nr 408, dopo il comma 1 e' aggiunto il seguente: "1-ter. Con i decreti legislativi di cui al comma 1, e secondo i medesimi principi e criteri direttivi, saranno introdotte misure volte a favorire le erogazioni liberali in denaro a favore delle organizzazioni di volontariato costituite esclusivamente ai fini di solidarieta', purché le attivita' siano destinate a finalita' di volontariato, riconosciute idonee in base alla normativa vigente in materia e che risultano iscritte senza interruzione da almeno due anni negli appositi registri. A tal fine, in deroga alla disposizione di cui alla lettera a del comma 1, dovrà essere prevista la deducibilita' delle predette erogazioni, ai sensi degli articoli 10, 65 e 110 del testo unico delle imposte sui redditi, approvato con decreto del Presidente della Repubblica 22 dicembre 1986, nr. 317, per un ammontare non superiore a lire 2 milioni ovvero, ai fini del reddito d'impresa, nella misura del 50 per cento della somma erogata entro il limite del 2 per cento degli utili dichiarati e fino ad un massimo di lire 100 milioni.

4. I proventi derivanti da attivita' commerciali e produttive marginali non costituiscono redditi imponibili ai fini IRPEG e ILOR qualora sia documentato il loro totale impiego per i fini istituzionali dell'organizzazione di volontariato. Sulle domande di esenzione, previo accertamento della natura e dell'entita' delle attivita', decide il [Ministro delle finanze](#) con proprio decreto, di concerto con il Ministro per gli affari sociali.

## **Art. 9.**

### **Valutazione dell'imponibile**

1. Alle organizzazioni di volontariato iscritte nei registri di cui all'articolo 6 si applicano le disposizioni di cui all'articolo 20, comma 1, del decreto del Presidente della Repubblica 23 settembre 1973, nr. 538.

## **Art. 10.**

### **Norme regionali e delle province autonome**

1. Le leggi regionali e provinciali devono salvaguardare l'autonomia di organizzazione e iniziativa del volontariato e favorirne lo sviluppo.

2. In particolare disciplinano:

a) le modalita' cui dovranno attenersi le organizzazioni per lo svolgimento delle prestazioni che formano oggetto dell'attivita' di volontariato, all' interno delle

strutture pubbliche e di strutture convenzionate con le Regioni e le province autonome;

b) le forme di partecipazione consultiva delle organizzazioni iscritte nei registri di cui all' [articolo 6](#) alla programmazione degli interventi nei settori in cui esse operano;

c) i requisiti ed i criteri che danno titolo di priorit  nella scelta delle organizzazioni per la stipulazione delle convenzioni, anche in relazione ai diversi settori di intervento;

d) gli organi e le forme di controllo, secondo quanto previsto dall'[articolo 6](#);

e) le condizioni e le forme di finanziamento e di sostegno delle attivita' di volontariato;

f) la partecipazione dei volontari aderenti alle organizzazioni iscritte nei registri di cui all'[articolo 6](#) ai corsi di formazione, qualificazione e aggiornamento professionale svolti o promossi dalle Regioni, dalle province autonome e dagli Enti locali nei settori di diretto intervento delle organizzazioni stesse.

## **Art. 11.**

### **Diritto all' informazione ed accesso ai documenti amministrativi**

1. Alle organizzazioni di volontariato, iscritte nei registri di cui all'articolo 6, si applicano le disposizioni di cui al capo V della legge 7 agosto 1930, nr. 241.

2. Ai fini di cui al comma 1, sono considerate situazioni giuridicamente rilevanti quelle attinenti al perseguimento degli scopi statuari delle organizzazioni.

## **Art. 12.**

### **Osservatorio nazionale per il volontariato**

1. Con decreto del Presidente del Consiglio dei ministri e su proposta del Ministro per gli affari sociali, e' istituito l'Osservatorio nazionale per il volontariato, presieduto dal Ministro per gli affari sociali o da un suo delegato e composto da dieci rappresentanti delle organizzazioni e delle federazioni di volontariato operanti in almeno sei regioni, da due esperti e da tre rappresentanti delle organizzazioni sindacali maggiormente rappresentative. L'Osservatorio, che si avvale del personale, dei mezzi e dei servizi messi a disposizione dal Segretario generale della Presidenza del Consiglio dei ministri, ha i seguenti compiti:

a) provvede al censimento delle organizzazioni di volontariato ed alla diffusione della conoscenza delle attivita' da esse svolte.

b) promuove ricerche e studi in Italia e all'estero;

- c) fornisce ogni utile elemento per la promozione e lo sviluppo del volontariato;
  - d) approva progetti sperimentali elaborati anche in collaborazione con gli Enti locali; da organizzazioni di volontariato iscritte nei registri per far fronte ad emergenze sociali e per favorire l'applicazione di metodologie di intervento particolarmente avanzate.
  - e) offre sostegno e consulenza per progetti di informatizzazione e di banche-dati nei settori di competenza della presente legge;
  - f) pubblica un rapporto biennale sull'andamento del fenomeno e sullo stato di attuazione delle normative nazionali e regionali;
  - g) sostiene, anche con la collaborazione delle Regioni, iniziative di formazione ed aggiornamento per la prestazione dei servizi
  - h) pubblica un Bollettino periodico di informazione e promuove altre iniziative finalizzate alla circolazione delle notizie attinenti l'attività di volontariato;
  - i) promuove, con cadenza triennale, una Conferenza nazionale del volontariato, alla quale partecipano tutti i soggetti istituzionali, i gruppi e gli operatori interessati.
2. E' istituito, presso la Presidenza del Consiglio dei ministri-Dipartimento per gli affari sociali, il Fondo per il volontariato, finalizzato a sostenere finanziariamente i progetti di cui alla lettera d) del comma 1.

### **Art. 13.**

#### **Limiti di applicabilità**

1. E' fatta salva la normativa vigente per le attività di volontariato non contemplate nella presente legge, con particolare riferimento alle attività di cooperazione internazionale allo sviluppo, di protezione civile e a questo connesse con il servizio civile sostitutivo di cui alla [legge 15 dicembre 1972, nr. 772](#).

### **Art. 14.**

#### **Autorizzazione di spesa e copertura finanziaria**

1. Per il funzionamento dell'Osservatorio nazionale per il volontariato, per la dotazione del Fondo di cui al [comma 2 dell'articolo 12](#) e per l'organizzazione della Conferenza nazionale del volontariato di cui al [comma 1, lettera i\) dello stesso articolo 12](#), e' autorizzata una spesa di due miliardi di lire per ciascuno degli anni 1991, 1992 e 1993.

2. All'onere di cui al comma 1 si provvede mediante corrispondente riduzione dello stanziamento iscritto, ai fini del bilancio triennale 1991-1993, al capitolo 6856 dello

stato di previsione del Ministero del tesoro per l'anno finanziario 1991, all'uopo utilizzando parzialmente l'accantonamento "Legge-quadro sulle organizzazioni di volontariato".

3. Le minori entrate derivanti dall'applicazione dei [commi 1 e 2 dell'articolo 8](#) sono valutate complessivamente in lire 1 miliardo per ciascuno degli anni 1991, 1992 e 1993. Al relativo onere si fa fronte mediante utilizzazione dello stanziamento iscritto al capitolo 6856 dello stato di previsione del Ministero del tesoro all'uopo utilizzando parzialmente l'accantonamento: "Legge quadro sulle organizzazioni di volontariato".

## **Art. 15.**

### **Fondi speciali presso le Regioni**

1. Gli Enti di cui [all'articolo 12, comma 1](#), del decreto legislativo 20 novembre 1990, nr. 356, devono prevedere nei propri statuti che una quota non inferiore ad un quindicesimo dei propri proventi, al netto delle spese di funzionamento e dell'accantonamento di cui alla [lettera d\) del comma 1](#), venga destinata alla costituzione di fondi speciali presso le Regioni al fine di istituire, per il tramite degli Enti locali, centri di servizi a disposizione delle organizzazioni di volontariato, e da queste gestiti, con la funzione di sostenerne e qualificarne l'attività.

2. Le Casse di risparmio, fino a quando non abbiano proceduto alle operazioni di ristrutturazione di cui all'articolo 1 del citato decreto legislativo nr. 356 del 1990, devono destinare alle medesime finalità di cui al comma 1 una quota pari ad un decimo delle somme destinate ad opere di beneficenza e di pubblica utilità ai sensi dell'articolo 35, comma 3, del regio decreto 25 aprile 1923, nr. 967, e successive modificazioni.

3. Le modalità di attuazione delle norme di cui ai commi 1 e 2, saranno stabilite con [decreto del Ministro del tesoro](#), di concerto con il Ministro per gli affari sociali, entro tre mesi dalla data di pubblicazione della presente legge.

## **Art. 16.**

### **Norme transitorie e finali**

1. Fatte salve le competenze delle Regioni a statuto speciale e delle province autonome di Trento e di Bolzano, le Regioni provvedono ad emanare o adeguare le norme per l'attuazione dei principi contenuti nella presente legge entro un anno dalla data della sua entrata in vigore.

## **Art. 17.**

### **Flessibilità nell'orario di lavoro**

**1.** I lavoratori che facciano parte di organizzazioni iscritte nei registri di cui all'[articolo 6](#), per poter espletare l'attività di volontariato, hanno diritto di usufruire delle forme di flessibilità dell'orario di lavoro o delle turnazioni previste dai contratti o dagli accordi collettivi, compatibilmente con l'organizzazione aziendale.

**2.** All'articolo 3 della legge 29 marzo 1983, nr. 93 e' aggiunto, in fine, il seguente comma: "Gli accordi sindacali disciplinano i criteri per consentire ai lavoratori, che prestino nell'ambito del comune di abituale dimora la loro opera volontaria e gratuita in favore di organizzazioni di volontariato riconosciute idonee dalla normativa in materia, di usufruire di particolari forme di flessibilità degli orari di lavoro o di turnazioni, compatibilmente con l'organizzazione dell'amministrazione di appartenenza". La presente legge munita di sigillo di Stato sarà inserita nella raccolta Uff.le degli Atti Normativi della Repubblica Italiana. E' fatto obbligo a chiunque spetti di osservarla e di farla osservare come legge dello Stato.

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Percorso di Navigazione: Ricerca



L. 18-2-1992 n. 172

Conversione in legge, con modificazioni, del decreto-legge 31 dicembre 1991, n. 419, recante istituzione del Fondo di sostegno per le vittime di richieste estorsive.

Pubblicata nella Gazz. Uff. 28 febbraio 1992, n. 49.

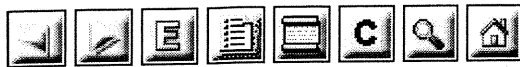
**L. 18 febbraio 1992, n. 172 <sup>(1)</sup>.**

**Conversione in legge, con modificazioni, del *decreto-legge 31 dicembre 1991, n. 419*, recante istituzione del Fondo di sostegno per le vittime di richieste estorsive.**

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(1) Pubblicata nella Gazz. Uff. 28 febbraio 1992, n. 49.







Percorso di Navigazione: Ricerca > L. 18-02-1992, n. 172 > D.L. 31-12-1991, n. 419 > L. 18-02-1992, n. 172 > L. 18-02-1992, n. 172 > D.L. 31-12-1991, n. 419 > D.L. 31-12-1991, n. 419

## D.L. 31-12-1991 n. 419

### Istituzione del Fondo di sostegno per le vittime di richieste estorsive.

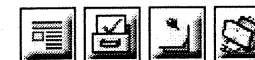
Pubblicato nella Gazz. Uff. 2 gennaio 1992, n. 1 e convertito in legge, con modificazioni, dall'art. 1, primo comma, L. 18 febbraio 1992, n. 172 (Gazz. Uff. 28 febbraio 1992, n. 49). Il comma 2 dello stesso art. 1 ha, inoltre, delegato il Governo ad adottare i decreti legislativi previsti dalla L. 15 dicembre 1990, n. 395, entro il termine del 31 ottobre 1992, con l'osservanza dei principi, modalità e criteri direttivi contenuti nella legge stessa. Il comma 3 ha disposto che restano validi gli atti ed i provvedimenti adottati e sono fatti salvi gli effetti prodottisi ed i rapporti giuridici sorti sulla base del D.L. 29 ottobre 1991, n. 346.

### *10. Disposizioni processuali.*

1. Quando è necessario per acquisire rilevanti elementi probatori ovvero per la individuazione o cattura dei responsabili dei delitti di cui agli articoli 600, 600-bis, 600-ter, 600-quater, 600-quinquies, 601, 602, 629, 644, 648-bis e 648-ter del codice penale e di cui all'articolo 3 della *legge 20 febbraio 1958, n. 75*, il pubblico ministero può, con decreto motivato, ritardare l'esecuzione dei provvedimenti che applicano una misura cautelare, dell'arresto, del fermo dell'indiziato di delitto o del sequestro. Nei casi di urgenza il ritardo dell'esecuzione dei predetti provvedimenti può essere disposto anche oralmente, ma il relativo decreto deve essere emesso entro le successive quarantotto ore <sup>(11)</sup>.

2. Per gli stessi motivi di cui al comma 1 gli ufficiali di polizia giudiziaria possono omettere o ritardare gli atti di propria competenza, dandone immediato avviso, anche oralmente, al pubblico ministero competente per le indagini, e provvedono a trasmettere allo stesso motivato rapporto entro le successive quarantotto ore.

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(11) Comma così modificato prima dalla *legge di conversione 18 febbraio 1992, n. 172*, poi dall'art. 8, *L. 7 marzo 1996, n. 108* ed infine dall'art. 8, *L. 11 agosto 2003, n. 228*.



LEGGE 28 novembre 1984, n. 792 (G.U. n. 329 del 29/11/1984).

### **Istituzione e funzionamento dell'albo dei mediatori di assicurazione.**

La Camera dei deputati ed il Senato della Repubblica hanno approvato;

Il Presidente della Repubblica

Promulga la seguente legge:

#### Art. 1

##### *Definizione*

Agli effetti della presente legge è mediatore di assicurazione e riassicurazione, denominato anche broker, chi esercita professionalmente attività rivolta a mettere in diretta relazione con imprese di assicurazione o riassicurazione, alle quali non sia vincolato da impegni di sorta, soggetti che intendano provvedere con la sua collaborazione alla copertura dei rischi, assistendoli nella determinazione del contenuto dei relativi contratti e collaborando eventualmente alla loro gestione ed esecuzione.

#### Art. 2

##### *Attività del mediatore*

L'attività di mediatore di assicurazione o riassicurazione non può essere esercitata in nome proprio od altrui da chi non è iscritto all'albo.

Non è consentita la contemporanea iscrizione all'albo dei mediatori di assicurazione o riassicurazione e all'albo nazionale degli agenti di assicurazione.

L'esercizio dell'attività di mediazione assicurativa e riassicurativa, compresa la partecipazione di controllo di società esercenti tale attività, è precluso agli agenti e produttori di assicurazione, alle imprese di assicurazione ed agli enti pubblici e loro dipendenti.

#### Art. 3

##### *Albo dei mediatori*

E' istituito, entro sei mesi dall'entrata in vigore della presente legge, presso il Ministero dell'industria, del commercio e dell'artigianato - Direzione generale delle assicurazioni private e di interesse collettivo - l'albo dei mediatori di assicurazione e riassicurazione.

Non può essere prestata dalla stessa persona fisica la contemporanea attività di mediatore di assicurazione e riassicurazione.

L'albo è suddiviso in due sezioni:

- a) alla prima sono iscritte le persone fisiche;
- b) alla seconda sono iscritte le società.

Nelle rispettive sezioni sono tenuti distinti i mediatori di assicurazione da quelli di riassicurazione.

L'albo è soggetto alla revisione almeno ogni cinque anni.

L'elenco degli iscritti all'albo nonché tutte le variazioni sono comunicati, a cura del Ministero dell'industria, del commercio e dell'artigianato, alle camere di commercio, industria, artigianato e agricoltura.

A cura del Ministero dell'industria, del commercio e dell'artigianato l'albo è aggiornato alla data del 31 dicembre di ogni anno e pubblicato entro i tre mesi successivi.

Per ciascun iscritto alla prima sezione dell'albo devono essere indicati almeno il nome, il cognome, la data di nascita, il comune di residenza o domicilio e la data di iscrizione; per gli iscritti

alla seconda sezione dell'albo, devono essere indicati la ragione o la denominazione sociale con la specificazione del tipo di società, la sede statutaria, il nome dei legali rappresentanti e dei preposti all'esercizio dell'attività di mediazione.

#### Art. 4

#### *Condizioni per l'iscrizione delle persone fisiche*

Per ottenere l'iscrizione nella prima sezione dell'albo è necessario:

- a) essere cittadino italiano o cittadino di uno degli Stati membri della Comunità economica europea ovvero, se non cittadino, residente nel territorio della Repubblica italiana, a condizione che analogo trattamento sia fatto nei Paesi di origine a favore dei cittadini italiani, salvo il caso degli apolidi;
- b) godere dei diritti civili;
- c) avere domicilio nel territorio della Repubblica;
- d) non aver riportato condanna per delitti contro la pubblica amministrazione, contro l'amministrazione della giustizia, contro la fede pubblica, contro l'economia pubblica, l'industria e il commercio, contro il patrimonio, e per i delitti societari, fallimentari, valutari e tributari, per i quali la legge commina la pena della reclusione non inferiore ad un anno o nel massimo a tre anni, nonché per altro delitto non colposo per il quale la legge commina la pena della reclusione non inferiore nel minimo a due anni o nel massimo a cinque anni, oppure condanna comportante interdizione da pubblici uffici, perpetua o di durata superiore a tre anni, salvo che non sia intervenuta la riabilitazione, ovvero condanna per omessa contribuzione nei confronti degli enti previdenziali ed assistenziali;
- e) non essere stato dichiarato fallito, salvo che sia intervenuta la riabilitazione;
- f) aver aderito al fondo di garanzia costituito nell'ambito del Ministero dell'industria, del commercio e dell'artigianato per risarcire gli assicurati e le imprese di assicurazione dei danni derivanti dalla propria attività e non garantiti dalla polizza di cui alla successiva lettera g). Il fondo è amministrato da un comitato, composto da tre rappresentanti del Ministero dell'industria, del commercio e dell'artigianato, da tre rappresentanti del Ministero del tesoro e da tre mediatori eletti dagli iscritti all'albo, nominato con decreto del Ministro dell'industria, del commercio e dell'artigianato e presieduto da un componente eletto dal comitato stesso, che lo sceglie tra i rappresentanti del Ministero dell'industria, del commercio e dell'artigianato. Il fondo è alimentato dai contributi degli aderenti; la misura dei contributi, comunque non inferiore allo 0,50 per cento delle provvigioni annualmente acquisite rispettivamente dai mediatori di assicurazione e dai mediatori di riassicurazione, è fissata annualmente con decreto del Ministro dell'industria, del commercio e dell'artigianato, tenendo conto dell'anzianità di esercizio dell'attività e del volume di affari. Con decreto del Ministro dell'industria, del commercio e dell'artigianato saranno stabilite le disposizioni necessarie alla costituzione e al funzionamento del fondo;
- g) avere stipulato con almeno cinque imprese, non appartenenti tutte allo stesso gruppo finanziario, in coassicurazione una polizza di assicurazione della responsabilità civile per negligenze od errori professionali, comprensiva della garanzia per infedeltà dei dipendenti, destinata al risarcimento dei danni nei confronti degli assicurati e delle imprese di assicurazione, il cui ammontare di copertura è stabilito annualmente, per classi di volume di affari, dal Ministro dell'industria, del commercio e dell'artigianato, con proprio decreto, sentita la commissione di cui all'art. 12 della presente legge;
- h) aver superato una prova di idoneità consistente in un esame scritto ed in un colloquio nelle seguenti materie:  
disciplina giuridica dei contratti di assicurazione e mediazione;  
disciplina giuridica dell'esercizio delle assicurazioni private;

nozioni sulla disciplina tributaria delle assicurazioni;  
 principi di tecnica assicurativa;  
 per i mediatori di riassicurazione l'esame deve anche comprendere:  
 nozioni di tecnica riassicurativa;  
 nozioni di diritto internazionale e comparato.

Per la partecipazione alla prova di idoneità occorre essere muniti di titolo di studio non inferiore al diploma di istituto di istruzione secondaria di secondo grado.

La commissione d'esame, i programmi, le modalità ed i compensi per i componenti della commissione sono determinati con decreto del Ministro dell'industria, del commercio e dell'artigianato, sentita la commissione di cui all'art. 12. Le funzioni di segreteria sono svolte da due funzionari della Direzione generale delle assicurazioni private e di interesse collettivo.

Sono esonerati dalla prova di idoneità:

- a) coloro che, già iscritti all'albo, chiedono nuovamente l'iscrizione entro due anni dalla cancellazione avvenuta, sempre che tale cancellazione non sia stata determinata da provvedimenti disciplinari;
- b) coloro che abbiano svolto per almeno un quadriennio, in modo continuativo, mansioni direttive in una impresa di assicurazioni, pubblica o privata, o in una impresa di cui al successivo art. 5, o siano stati per lo stesso periodo agenti di assicurazione iscritti nella prima sezione del relativo albo.

#### Art. 5

##### *Condizioni per l'iscrizione delle società*

Per ottenere l'iscrizione nella seconda sezione dell'albo, le società debbono dimostrare di essere in possesso dei seguenti requisiti:

- a) avere la sede legale in Italia e gli uffici direzionali ubicati nello stesso comune;
- b) l'oggetto sociale deve essere limitato all'attività di mediazione assicurativa o riassicurativa, con esclusione di qualsiasi altra attività che non persegua direttamente o indirettamente il raggiungimento o il consolidamento dell'oggetto sociale;
- c) l'amministratore delegato e il direttore generale debbono essere iscritti all'albo, e avere esercitato per almeno cinque anni l'attività di mediatore di assicurazione o di riassicurazione;
- d) essere legalmente rappresentate e gestite nella sede principale e in eventuali sedi secondarie da persone iscritte alla prima sezione dell'albo;
- e) avere aderito al fondo di garanzia di cui all'art. 4, primo comma, lettera f);
- f) avere stipulato la polizza di cui all'art. 4, primo comma, lettera g).

Le società che esercitano la mediazione riassicurativa devono disporre di un capitale sociale non inferiore a duecento milioni.

E' fatto obbligo alle società che esercitano contemporaneamente la mediazione assicurativa e riassicurativa di proporre alle due attività persone fisiche diverse provviste ciascuna dei requisiti richiesti dall'art. 4. La domanda di iscrizione, inoltre, deve essere corredata dalla seguente documentazione:

- 1) copia autentica dell'atto costitutivo e dello statuto nonché della prova dell'avvenuto loro deposito presso l'ufficio del registro delle imprese e della relativa iscrizione;
- 2) certificato attestante l'iscrizione alla camera di commercio, industria, artigianato e agricoltura competente per territorio;
- 3) elenco nominativo degli amministratori, dei rappresentanti legali e dei gestori della società.

#### Art. 6

##### *Condizioni per l'iscrizione di persone fisiche della Comunità economica europea*

Possono essere iscritti nella sezione prima dell'albo i cittadini di uno Stato membro della Comunità economica europea, che provino, attraverso un attestato rilasciato dalla competente autorità di controllo, di aver svolto per quattro anni l'attività di mediatore di assicurazione e riassicurazione in uno qualsiasi dei Paesi della Comunità economica europea, come dipendenti o in qualità di dirigenti di impresa esercente detta attività. Il termine di quattro anni di cui al comma precedente è ridotto:

- a) a due anni se si sono altresì svolte per almeno tre anni funzioni con responsabilità in materia di acquisizione, gestione ed esecuzione di contratti di assicurazione al servizio di uno o più mediatori di assicurazione o di riassicurazione o di una o più imprese di assicurazione;
- b) ad un anno se si è ricevuta per l'attività di mediatore una formazione preliminare comprovata da un certificato rilasciato o riconosciuto dalla competente autorità dello Stato di origine o di provenienza.

L'interessato deve inoltre provare per documento equipollente o dichiarazione sostitutiva il possesso dei requisiti di cui all'art. 4, primo comma, lettere c), d), e), f) e g).

#### Art. 7

##### *Condizioni per l'iscrizione di persone giuridiche della Comunità economica europea*

Le imprese di cui all'art. 5 della presente legge che hanno sede legale in uno Stato membro della C.E.E. e che intendono esercitare la loro attività nel territorio della Repubblica italiana sono iscritte nella sezione seconda dell'albo dei mediatori con la stessa procedura prevista per le imprese che hanno sede legale in Italia.

La documentazione prevista dal terzo comma dell'art. 5, numeri 1) e 2), può essere sostituita con dichiarazioni equipollenti rilasciate dall'autorità di controllo dello Stato di origine, ovvero da altra autorità competente designata dallo Stato membro d'origine o di provenienza, ai sensi dell'art. 9, n. 2, della direttiva n. 77/92 del Consiglio C.E.E. del 13 dicembre 1976.

#### Art. 8

##### *Condizioni comuni per l'esercizio dell'attività di mediatore*

I mediatori di assicurazione o di riassicurazione sono tenuti a trasmettere alla Direzione generale delle assicurazioni private e di interesse collettivo del Ministero dell'industria, del commercio e dell'artigianato, il rendiconto complessivo annuale dei contratti mediati, raggruppati per i singoli mandanti della mediazione e per imprese cui competono le coperture assicurative.

Se trattasi di società, il bilancio deve essere trasmesso al Ministero dell'industria, del commercio e dell'artigianato dopo essere stato assoggettato alla revisione contabile qualora le provvigioni annualmente liquidate siano superiori a lire tremila milioni.

I mediatori di assicurazione o riassicurazione che hanno ottenuto l'iscrizione all'albo debbono, entro due anni dalla comunicazione dell'iscrizione e, successivamente, ogni anno, dimostrare:

- a) di aver effettuato le mediazioni in misura sufficientemente diversificata tra più imprese di assicurazione e riassicurazione e in particolare che i premi versati ad un unico gruppo assicurativo o riassicurativo non siano superiori al 30 per cento dell'importo complessivo dei premi dei contratti di assicurazione acquisiti in ciascun biennio;
- b) che il portafoglio mediato non derivi da meno di dieci fonti di affari che non appartengano allo stesso gruppo finanziario;
- c) che i premi risultanti dai contratti riguardanti le fonti di affari che appartengono allo stesso gruppo finanziario non siano superiori al 50 per cento dell'importo complessivo dei premi dei contratti di assicurazione mediati in un biennio.

Sono considerati appartenenti allo stesso gruppo finanziario le società controllate ai sensi dell'art. 2359 del codice civile.

Qualora una delle condizioni di cui alle precedenti lettere a), b) e c) non venga rispettata, la Direzione generale delle assicurazioni private e di interesse collettivo del Ministero dell'industria, del commercio e dell'artigianato intima al mediatore di ottemperarvi non oltre il termine dell'esercizio successivo. Ove il mediatore non ottemperi si procede alla cancellazione dall'albo.

Le società sono tenute a comunicare al Ministero dell'industria, del commercio e dell'artigianato le eventuali variazioni dei soggetti di cui all'art. 5, primo comma, lettere c) e d), entro e non oltre due mesi dall'avvenuta variazione.

Il Ministero dell'industria, del commercio e dell'artigianato ha facoltà di proporre accertamenti presso gli uffici dei mediatori e, se trattasi di società, presso la sede legale delle stesse, per controllare l'adempimento e l'osservanza delle disposizioni stabilite dalla presente legge.

## Art. 9

### *Sanzioni e radiazione dall'albo*

Le persone che svolgono l'attività di mediatore di assicurazione e riassicurazione senza essere iscritte all'albo di cui all'art. 3 o che, essendovi iscritte, operano in violazione delle disposizioni della presente legge sono soggette ad una sanzione amministrativa non inferiore al 5 per cento e non superiore al 20 per cento del premio di ciascun contratto di assicurazione o di riassicurazione mediato in violazione della presente legge. Analoga sanzione viene irrogata alle imprese assicuratrici o riassicuratrici che accettino mediazioni assicurative da soggetti che operino in violazione della presente legge. Le sanzioni amministrative sono irrogate dal prefetto della provincia in cui è stata commessa l'infrazione o, nel caso in cui questa sia stata commessa nel territorio di più province, dal Ministro dell'industria, del commercio e dell'artigianato. Per il relativo procedimento si applicano le disposizioni contenute negli articoli 6 e 8 della legge 24 dicembre 1975, n. 706.

Qualora le violazioni poste in essere da soggetti iscritti all'albo di cui all'art. 3 rivestano carattere di particolare gravità, si procede, secondo i casi, alla irrogazione anche di una delle seguenti sanzioni disciplinari:

- a) richiamo;
- b) censura;
- c) radiazione dall'albo.

Il richiamo consiste in una dichiarazione di biasimo serio; è motivato ed inflitto per lievi trasgressioni. Viene notificato all'iscritto mediante lettera raccomandata con avviso di ricevimento.

La censura è disposta per rilevanti manchevolezze. Viene notificata all'iscritto con le stesse modalità del richiamo. Di essa è data comunicazione entro quindici giorni anche alla camera di commercio, industria, artigianato e agricoltura competente per territorio.

La radiazione determina la decadenza immediata dal diritto di esercitare l'attività di mediatore ed è inflitta per fatti di particolare gravità; di essa è data comunicazione con le stesse modalità di cui al comma precedente alla camera di commercio, industria, artigianato e agricoltura competente per territorio. La radiazione di una società dalla sezione seconda dell'albo comporta l'automatica radiazione dei suoi legali rappresentanti dalla sezione prima dell'albo stesso.

## Art. 10

### *Procedimento disciplinare*

Il procedimento disciplinare è promosso dalla commissione di cui all'art. 12.

Il presidente della commissione dispone i necessari accertamenti e, verificati sommariamente i fatti, ordina la comunicazione all'interessato dell'apertura del procedimento disciplinare, nomina il relatore e fissa la data della seduta per la trattazione orale. Tra la data del

decreto di fissazione della seduta e la comparizione dell'interessato deve intercorrere un termine libero non inferiore a sessanta giorni.

La comunicazione all'interessato deve essere fatta mediante lettera raccomandata con avviso di ricevimento e deve contenere l'avvertimento che gli atti del procedimento restano, per venti giorni dalla data della ricezione, a disposizione presso la Direzione generale delle assicurazioni private e di interesse collettivo, con facoltà per l'interessato stesso di estrarne copia. Deve altresì contenere l'invito all'interessato di far pervenire alla commissione, almeno venti giorni prima della data fissata per la seduta, eventuali scritti o memorie difensive e documenti probatori.

L'interessato ha facoltà di intervenire alla seduta per svolgere oralmente la propria difesa.

Nel giorno fissato per la trattazione orale la commissione, sentiti il relatore e il mediatore sottoposto a procedimento disciplinare, sempreché ne abbia fatto richiesta, prende le proprie deliberazioni, che comunica al Ministro dell'industria, del commercio e dell'artigianato. La sanzione disciplinare è irrogata con decreto del Ministro dell'industria, del commercio e dell'artigianato.

Contro il provvedimento di radiazione dall'albo può essere proposta impugnazione davanti all'autorità giudiziaria ordinaria.

#### Art. 11

##### *Altri casi di cancellazione*

Oltre che per radiazione, si procede alla cancellazione dall'albo in caso di:

- 1) rinuncia all'iscrizione;
- 2) mancato esercizio dell'attività, senza giustificato motivo, per oltre un anno;
- 3) perdita di uno dei requisiti di cui agli articoli 4 e 5;
- 4) condanna irrevocabile per uno dei delitti di cui all'art. 4, primo comma, lettera d);
- 5) mancata osservanza delle disposizioni di cui all'art. 8;
- 6) dichiarazione di fallimento.

Si procede, altresì, alla cancellazione qualora si accerti che è venuta meno l'efficacia della garanzia di cui all'art. 4, primo comma, lettere f) e g), e all'art. 5, primo comma, lettere e) ed f).

La persona fisica o giuridica cancellata dall'albo a norma del comma precedente o dell'art. 10 può esservi reinscritta purché siano decorsi almeno tre anni dalla data della cancellazione e, se questa è derivata da condanna o da fallimento, sia intervenuta la riabilitazione.

Sulla domanda di reinscrizione decide il Ministro dell'industria, del commercio e dell'artigianato, sentita la commissione di cui all'art. 12.

#### Art. 12

##### *Commissioni per l'albo*

Presso il Ministero dell'industria, del commercio e dell'artigianato è istituita la commissione per l'albo dei mediatori di assicurazione e riassicurazione.

La commissione esercita i poteri di cui all'art. 10 ed è organo consultivo del Ministero dell'industria, del commercio e dell'artigianato per tutte le altre questioni concernenti la formazione e la tenuta dell'albo.

La commissione è composta:

- 1) da un Sottosegretario di Stato del Ministero dell'industria, del commercio e dell'artigianato, che la presiede;
- 2) dal direttore generale delle assicurazioni private e di interesse collettivo, con funzioni di vicepresidente;
- 3) da un funzionario con qualifica dirigenziale della Direzione generale delle assicurazioni private e di interesse collettivo;
- 4) da quattro rappresentanti degli iscritti all'albo;
- 5) da un rappresentante delle imprese di assicurazione.

I membri di cui ai numeri 4) e 5) del precedente comma sono designati dalle organizzazioni nazionali di categoria maggiormente rappresentative e sono nominati per un triennio dal Ministro dell'industria, del commercio e dell'artigianato; qualora le rispettive organizzazioni non provvedano alle designazioni entro trenta giorni dalla richiesta, il Ministro procede alla nomina, d'ufficio.

La commissione decide a maggioranza dei suoi membri; a parità di voti prevale il voto del presidente.

Le funzioni di segretario della commissione sono esercitate da un funzionario della Direzione generale delle assicurazioni private e di interesse collettivo.

La commissione, oltre alle funzioni di cui alle precedenti disposizioni, esercita funzioni di controllo sull'etica professionale degli iscritti e vigila sul corretto esercizio dell'attività di mediatore; promuove iniziative atte ad elevare la qualificazione e l'aggiornamento professionale dei mediatori.

#### Art. 13

##### *Domanda di iscrizione e tassa di concessione governativa*

La domanda per l'iscrizione all'albo deve essere corredata dai documenti comprovanti il possesso dei requisiti di cui agli articoli 4 e 5. Il richiedente che debba sostenere la prova di idoneità di cui all'art. 4, primo comma, lettera h), deve unire, alla domanda di iscrizione, richiesta di ammissione a detta prova.

All'atto della presentazione della domanda di iscrizione all'albo dei mediatori, il richiedente è tenuto ad eseguire il versamento della tassa di concessione governativa di lire centomila, prevista al n. 117, lettera b), della tariffa annessa al decreto del Presidente della Repubblica 26 ottobre 1972, n. 641. Il versamento deve essere effettuato all'ufficio del registro di Roma e la relativa attestazione di versamento deve essere allegata alla domanda.

Coloro che abbiano ottenuto l'iscrizione all'albo sono inoltre tenuti al pagamento, se iscritti alla prima sezione, di una tassa annuale di lire centomila, se iscritti alla seconda sezione di una tassa annuale di lire cinquecentomila da versarsi in modo ordinario entro il 31 gennaio, a partire dall'anno successivo a quello in cui è stata disposta l'iscrizione.

A decorrere dall'anno 1985, con decreto del Ministro dell'industria, del commercio e dell'artigianato, di concerto con il Ministro del tesoro, si procederà all'adeguamento delle tasse annuali di iscrizione di cui al comma precedente.

#### Art. 14

##### *Copertura finanziaria.*

All'onere derivante dall'attuazione della presente legge, valutato in lire 50 milioni per ciascuno degli esercizi finanziari 1984, 1985 e 1986, si farà fronte a valere sulle entrate di cui al terzo comma del precedente art. 13.

Il Ministro del tesoro è autorizzato ad apportare, con propri decreti, le occorrenti variazioni di bilancio.

#### Art. 15

##### *Disposizioni finali e transitorie.*

Dalla data di entrata in vigore della presente legge l'uso della qualifica di mediatore di assicurazione o riassicurazione o di termini equipollenti, nonché l'attività di mediatore di assicurazione o riassicurazione sono vietati a tutti coloro che non siano iscritti all'albo.

Coloro che alla data di entrata in vigore della presente legge esercitano sul territorio della Repubblica l'attività di mediatore di assicurazione o riassicurazione possono continuare a svolgere l'attività stessa a condizione che, nel termine perentorio dei successivi sessanta giorni, presentino al Ministero dell'industria, del commercio e dell'artigianato domanda per l'iscrizione all'albo, dimostrando di essere in possesso dei requisiti richiesti per l'iscrizione e certificando, a mezzo



dell'associazione di categoria o in alternativa con dichiarazioni rilasciate da non meno di cinque imprese assicuratrici o riassicuratrici e da non meno di cinque aziende fonti di affari, da quanto tempo esercitano l'attività di mediazione.

Nella prima applicazione della presente legge hanno diritto ad essere iscritti nella prima sezione dell'albo, anche indipendentemente dal requisito di cui all'art. 4, primo comma, lettera h, le persone fisiche che, da almeno un triennio, esercitano l'attività di mediatore di assicurazione o riassicurazione come titolari o legali rappresentanti di imprese iscritte presso l'ufficio del registro delle imprese.

Nella prima applicazione della presente legge hanno diritto ad essere iscritte nella seconda sezione dell'albo, anche indipendentemente dai requisiti di cui all'art. 5, primo comma, lettere b, c e d, le società che, da almeno un quinquennio, esercitano l'attività di mediatore di assicurazione o riassicurazione e che siano iscritte presso l'ufficio del registro delle imprese.

Le società devono comunque, a pena di decadenza dall'iscrizione all'albo, provvedere a conformarsi alle prescrizioni dell'art. 5, primo comma, lettere b, c e d, entro il termine di due anni dall'entrata in vigore della presente legge.

#### Art. 16

##### *Modifiche alla legge istitutiva dell'albo nazionale degli agenti di assicurazione.*

Alla legge 7 febbraio 1979, n. 48, sono apportate le seguenti modifiche:

1) l'art. 3 è sostituito dal seguente:

«Art. 3. - L'esercizio diretto o indiretto dell'attività di agenti di assicurazione, compresa la partecipazione finanziaria in società esercenti tali attività, è precluso ai mediatori di assicurazione o riassicurazione, denominati anche brokers, ed agli enti pubblici e loro dipendenti»;

2) alla lettera c) dell'art. 4, dopo le parole: «contro il patrimonio», sono aggiunte le seguenti: «per il quale la legge commina la pena della reclusione non inferiore nel minimo ad un anno o nel massimo a tre anni».

3) al n. 1) dell'art. 5, dopo le parole: «pubblica o privata», sono aggiunte le seguenti: «o di una impresa prevista dall'art. 5 della legge istitutiva dell'albo dei mediatori di assicurazione».

La presente legge, munita del sigillo dello Stato, sarà inserita nella Raccolta ufficiale delle leggi e dei decreti della Repubblica italiana. E' fatto obbligo a chiunque spetti di osservarla e di farla osservare come legge dello Stato.

Data a Roma, addì 28 novembre 1984.

PERTINI

CRAZI - ALTISSIMO - VISENTINI - ROMITA - GORIA

L. 24 novembre 1981, n. 689<sup>1</sup>.

Modifiche al sistema penale.

## Capo I - Le sanzioni amministrative.

### Sezione I - Principi generali.

#### 1. Principio di legalità.

Nessuno può essere assoggettato a sanzioni amministrative se non in forza di una legge che sia entrata in vigore prima della commissione della violazione.

Le leggi che prevedono sanzioni amministrative si applicano soltanto nei casi e per i tempi in esse considerati.

#### 2. Capacità di intendere e di volere.

Non può essere assoggettato a sanzione amministrativa, chi al momento in cui ha commesso il fatto, non aveva compiuto i diciotto anni o non aveva, in base ai criteri indicati nel codice penale, la capacità di intendere e di volere, salvo che lo stato di incapacità non derivi da sua colpa o sia stato da lui preordinato.

Fuori dei casi previsti dall'ultima parte del precedente comma, della violazione risponde chi era tenuto alla sorveglianza dell'incapace, salvo che provi di non aver potuto impedire il fatto.

#### 3. Elemento soggettivo.

Nelle violazioni cui è applicabile una sanzione amministrativa ciascuno è responsabile della propria azione od omissione, cosciente e volontaria, sia essa dolosa o colposa.

Nel caso in cui la violazione è commessa per errore sul fatto, l'agente non è responsabile quando l'errore non è determinato da sua colpa.

#### 4. Cause di esclusione della responsabilità.

Non risponde delle violazioni amministrative chi ha commesso il fatto nell'adempimento di un dovere o nell'esercizio di una facoltà legittima ovvero in stato di necessità o di legittima difesa.

Se la violazione è commessa per ordine dell'autorità, della stessa risponde il pubblico ufficiale che ha dato l'ordine.

I comuni, le province, le comunità montane e i loro consorzi, le istituzioni pubbliche di assistenza e beneficenza (IPAB), gli enti non commerciali senza scopo di lucro che svolgono attività socio-assistenziale e le istituzioni sanitarie operanti nel Servizio sanitario nazionale ed i loro amministratori non rispondono delle sanzioni amministrative e civili che riguardano l'assunzione di lavoratori, le assicurazioni obbligatorie e gli ulteriori adempimenti, relativi a prestazioni lavorative

<sup>1</sup> Pubblicata nella Gazz. Uff. 30 novembre 1981, n. 329, S.O.

stipulate nella forma del contratto d'opera e successivamente riconosciute come rapporti di lavoro subordinato, purché esaurite alla data del 31 dicembre 1997<sup>2</sup>.

#### *5. Concorso di persone.*

Quando più persone concorrono in una violazione amministrativa, ciascuna di esse soggiace alla sanzione per questa disposta, salvo che sia diversamente stabilito dalla legge.

#### *6. Solidarietà.*

Il proprietario della cosa che servi o fu destinata a commettere la violazione o, in sua vece, l'usufruttuario o, se trattasi di bene immobile, il titolare di un diritto personale di godimento, è obbligato in solido con l'autore della violazione al pagamento della somma da questo dovuta se non prova che la cosa è stata utilizzata contro la sua volontà.

Se la violazione è commessa da persona capace di intendere e di volere ma soggetta all'altrui autorità, direzione o vigilanza, la persona rivestita dell'autorità o incaricata della direzione o della vigilanza è obbligata in solido con l'autore della violazione al pagamento della somma da questo dovuta, salvo che provi di non aver potuto, impedire il fatto.

Se la violazione è commessa dal rappresentante o dal dipendente di una persona giuridica o di un ente privo di personalità giuridica o, comunque, di un imprenditore nell'esercizio delle proprie funzioni o incombenze, la persona giuridica o l'ente o l'imprenditore è obbligato in solido con l'autore della violazione al pagamento della somma da questo dovuta.

Nei casi previsti dai commi precedenti chi ha pagato ha diritto di regresso per l'intero nei confronti dell'autore della violazione.

#### *7. Non trasmissibilità dell'obbligazione.*

La obbligazione di pagare la somma dovuta per la violazione non si trasmette agli eredi.

#### *8. Più violazioni di disposizioni che prevedono sanzioni amministrative.*

Salvo che sia diversamente stabilito dalla legge, chi con una azione od omissione viola diverse disposizioni che prevedono, sanzioni amministrative o commette più violazioni della stessa disposizione, soggiace alla sanzione prevista per la violazione più grave, aumentata sino al triplo.

Alla stessa sanzione prevista dal precedente comma soggiace anche chi con più azioni od omissioni, esecutive di un medesimo disegno posto in essere in violazione di norme che stabiliscono sanzioni amministrative, commette, anche in tempi diversi, più violazioni della stessa o di diverse norme di legge in materia di previdenza ed assistenza obbligatorie<sup>3</sup>.

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<sup>2</sup> Comma aggiunto dall'art. 31, comma 36, *L. 23 dicembre 1998, n. 448*, riportata alla voce Amministrazione del patrimonio e contabilità generale dello Stato.

<sup>3</sup> Comma aggiunto dall'art. 1-sexies, *D.L. 2 dicembre 1985, n. 688*, riportato alla voce Invalidità, vecchiaia e superstiti (Assicurazione obbligatoria per).

La disposizione di cui al precedente comma si applica anche alle violazioni commesse anteriormente all'entrata in vigore della legge di conversione del D.L. 2 dicembre 1985, n. 688, per le quali non sia già intervenuta sentenza passata in giudicato<sup>4</sup>.

#### *8-bis. Reiterazione delle violazioni.*

Salvo quanto previsto da speciali disposizioni di legge, si ha reiterazione quando, nei cinque anni successivi alla commissione di una violazione amministrativa, accertata con provvedimento esecutivo, lo stesso soggetto commette un'altra violazione della stessa indole. Si ha reiterazione anche quando più violazioni della stessa indole commesse nel quinquennio sono accertate con unico provvedimento esecutivo.

Si considerano della stessa indole le violazioni della medesima disposizione e quelle di disposizioni diverse che, per la natura dei fatti che le costituiscono o per le modalità della condotta, presentano una sostanziale omogeneità o caratteri fondamentali comuni.

La reiterazione è specifica se è violata la medesima disposizione.

Le violazioni amministrative successive alla prima non sono valutate, ai fini della reiterazione, quando sono commesse in tempi ravvicinati e riconducibili ad una programmazione unitaria.

La reiterazione determina gli effetti che la legge espressamente stabilisce. Essa non opera nel caso di pagamento in misura ridotta.

Gli effetti conseguenti alla reiterazione possono essere sospesi fino a quando il provvedimento che accerta la violazione precedentemente commessa sia divenuto definitivo. La sospensione è disposta dall'autorità amministrativa competente, o in caso di opposizione dal giudice, quando possa derivare grave danno.

Gli effetti della reiterazione cessano di diritto, in ogni caso, se il provvedimento che accerta la precedente violazione è annullato<sup>5</sup>.

#### *9. Principio di specialità.*

Quando uno stesso fatto è punito da una disposizione penale e da una disposizione che prevede una sanzione amministrativa, ovvero da una pluralità di disposizioni che prevedono sanzioni amministrative, si applica la disposizione speciale.

Tuttavia quando uno stesso fatto è punito da una disposizione penale e da una disposizione regionale o delle province autonome di Trento e di Bolzano che preveda una sanzione amministrativa, si applica in ogni caso la disposizione penale, salvo che quest'ultima sia applicabile solo in mancanza di altre disposizioni penali.

Ai fatti puniti dagli articoli 5, 6 e 12 della legge 30 aprile 1962, n. 283, e successive modificazioni ed integrazioni, si applicano soltanto le disposizioni penali, anche quando i fatti stessi sono puniti

<sup>4</sup> Comma aggiunto dall'art. 1-sexies, D.L. 2 dicembre 1985, n. 688, riportato alla voce Invalidità, vecchiaia e superstiti (Assicurazione obbligatoria per).

<sup>5</sup> Articolo aggiunto dall'art. 94, D.Lgs. 30 dicembre 1999, n. 507.

I risultati della revisione dell'analisi sono comunicati all'interessato a mezzo di lettera raccomandata con avviso di ricevimento, a cura del dirigente del laboratorio che ha eseguito la revisione dell'analisi.

Le comunicazioni di cui al primo e al quarto comma equivalgono alla contestazione di cui al primo comma dell'articolo 14 ed il termine per il pagamento in misura ridotta di cui all'articolo 16 decorre dalla comunicazione dell'esito della prima analisi o, quando è stata chiesta la revisione dell'analisi, dalla comunicazione dell'esito della stessa.

Ove non sia possibile effettuare la comunicazione all'interessato nelle forme di cui al primo e al quarto comma, si applicano le disposizioni dell'articolo 14.

Con il decreto o con la legge regionale indicati nell'ultimo comma dell'art. 17 sarà altresì fissata la somma di denaro che il richiedente la revisione dell'analisi è tenuto a versare e potranno essere indicati, anche a modifica delle vigenti disposizioni di legge, gli istituti incaricati della stessa analisi.

#### *16. Pagamento in misura ridotta.*

È ammesso il pagamento di una somma in misura ridotta pari alla terza parte del massimo della sanzione prevista per la violazione commessa, o, se più favorevole e qualora sia stabilito il minimo della sanzione edittale, pari al doppio del relativo importo, oltre alle spese del procedimento, entro il termine di sessanta giorni dalla contestazione immediata o, se questa non vi è stata, dalla notificazione degli estremi della violazione<sup>9</sup>.

Nei casi di violazione [del testo unico delle norme sulla circolazione stradale e] dei regolamenti comunali e provinciali continuano ad applicarsi, [rispettivamente l'art. 138 del testo unico approvato con D.P.R. 15 giugno 1959, n. 393, con le modifiche apportate dall'art. 11 della L. 14 febbraio 1974, n. 62, e] l'art. 107 del testo unico delle leggi comunali e provinciali approvato con R.D. 3 marzo 1934, n. 383.

Il pagamento in misura ridotta è ammesso anche nei casi in cui le norme antecedenti all'entrata in vigore della presente legge non consentivano l'oblazione.

#### *17. Obbligo del rapporto.*

Qualora non sia stato effettuato il pagamento in misura ridotta, il funzionario o l'agente che ha accertato la violazione, salvo che ricorra l'ipotesi prevista nell'art. 24, deve presentare rapporto, con la prova delle eseguite contestazioni o notificazioni, all'ufficio periferico cui sono demandati attribuzioni e compiti del Ministero nella cui competenza rientra la materia alla quale si riferisce la violazione o, in mancanza, al prefetto<sup>10</sup>.

Deve essere presentato al prefetto il rapporto relativo alle violazioni previste dal testo unico delle norme sulla circolazione stradale, approvato con D.P.R. 15 giugno 1959, n. 393, dal testo unico per la tutela delle strade, approvato con R.D. 8 dicembre 1933, n. 1740, e dalla L. 20 giugno 1935, n. 1349, sui servizi di trasporto merci.

<sup>9</sup> Comma così modificato dall'art. 52, D.Lgs. 24 giugno 1998, n. 213, riportato alla voce Istituto di emissione e ordinamento monetario

<sup>10</sup> Vedi il D.P.R. 29 luglio 1982, n. 571, riportato al n. A/LVI e l'art. 1, D.Lgs. 24 aprile 2001, n. 252.

Nelle materie di competenza delle regioni e negli altri casi, per le funzioni amministrative ad esse delegate, il rapporto è presentato all'ufficio regionale competente.

Per le violazioni dei regolamenti provinciali e comunali il rapporto è presentato, rispettivamente, al presidente della giunta provinciale o al sindaco.

L'ufficio territorialmente competente è quello del luogo in cui è stata commessa la violazione.

Il funzionario o l'agente che ha proceduto al sequestro previsto dall'articolo 13 deve immediatamente informare l'autorità amministrativa competente a norma dei precedenti commi, inviandole il processo verbale di sequestro.

Con decreto del Presidente della Repubblica, su proposta del Presidente del Consiglio dei ministri, da emanare entro centottanta giorni dalla pubblicazione della presente legge, in sostituzione del D.P.R. 13 maggio 1976, n. 407, saranno indicati gli uffici periferici dei singoli Ministeri, previsti nel primo comma, anche per i casi in cui leggi precedenti abbiano regolato diversamente la competenza.

Con il decreto indicato nel comma precedente saranno stabilite le modalità relative alla esecuzione del sequestro previsto dall'articolo 13, al trasporto ed alla consegna delle cose sequestrate, alla custodia ed alla eventuale alienazione o distruzione delle stesse; sarà altresì stabilita la destinazione delle cose confiscate. Le regioni, per le materie di loro competenza, provvederanno con legge nel termine previsto dal comma precedente.

#### *18. Ordinanza-ingiunzione.*

Entro il termine di trenta giorni dalla data della contestazione o notificazione della violazione, gli interessati possono far pervenire all'autorità competente a ricevere il rapporto a norma dell'articolo 17 scritti difensivi e documenti e possono chiedere di essere sentiti dalla medesima autorità.

L'autorità competente, sentiti gli interessati, ove questi ne abbiano fatto richiesta, ed esaminati i documenti inviati e gli argomenti esposti negli scritti difensivi, se ritiene fondato l'accertamento, determina, con ordinanza motivata, la somma dovuta per la violazione e ne ingiunge il pagamento, insieme con le spese, all'autore della violazione ed alle persone che vi sono obbligate solidalmente; altrimenti emette ordinanza motivata di archiviazione degli atti comunicandola integralmente all'organo che ha redatto il rapporto.

Con l'ordinanza-ingiunzione deve essere disposta la restituzione, previo pagamento delle spese di custodia, delle cose sequestrate, che non siano confiscate con lo stesso provvedimento. La restituzione delle cose sequestrate è altresì disposta con l'ordinanza di archiviazione, quando non ne sia obbligatoria la confisca.

Il pagamento è effettuato all'ufficio del registro o al diverso ufficio indicato nella ordinanza-ingiunzione, entro il termine di trenta giorni dalla notificazione di detto provvedimento, eseguita nelle forme previste dall'articolo 14; del pagamento è data comunicazione, entro il trentesimo giorno, a cura dell'ufficio che lo ha ricevuto, all'autorità che ha emesso l'ordinanza.

Il termine per il pagamento è di sessanta giorni se l'interessato risiede all'estero.

La notificazione dell'ordinanza-ingiunzione può essere eseguita dall'ufficio che adotta l'atto, secondo le modalità di cui alla legge 20 novembre 1982, n. 890<sup>11</sup>.

L'ordinanza-ingiunzione costituisce titolo esecutivo. Tuttavia l'ordinanza che dispone la confisca diventa esecutiva dopo il decorso del termine per proporre opposizione, o, nel caso in cui l'opposizione è proposta, con il passaggio in giudicato della sentenza con la quale si rigetta l'opposizione, o quando l'ordinanza con la quale viene dichiarata inammissibile l'opposizione o convalidato il provvedimento opposto diviene inoppugnabile o è dichiarato inammissibile il ricorso proposto avverso la stessa.

### *19. Sequestro.*

Quando si è proceduto a sequestro, gli interessati possono, anche immediatamente, proporre opposizione all'autorità indicata nel primo comma dell'articolo 18, con atto esente da bollo. Sull'opposizione la decisione è adottata con ordinanza motivata emessa entro il decimo giorno successivo alla sua proposizione. Se non è rigettata entro questo termine, l'opposizione si intende accolta.

Anche prima che sia concluso il procedimento amministrativo, l'autorità competente può disporre la restituzione della cosa sequestrata, previo pagamento delle spese di custodia, a chi prova di averne diritto e ne fa istanza, salvo che si tratti di cose soggette a confisca obbligatoria.

Quando l'opposizione al sequestro è stata rigettata, il sequestro cessa di avere efficacia se non è emessa ordinanza-ingiunzione di pagamento o se non è disposta la confisca entro due mesi dal giorno in cui è pervenuto il rapporto e, comunque, entro sei mesi dal giorno in cui è avvenuto il sequestro.

### *20. Sanzioni amministrative accessorie.*

L'autorità amministrativa con l'ordinanza-ingiunzione o il giudice penale con la sentenza di condanna nel caso previsto dall'articolo 24, può applicare, come sanzioni amministrative, quelle previste dalle leggi vigenti, per le singole violazioni, come sanzioni penali accessorie, quando esse consistono nella privazione o sospensione di facoltà, e diritti derivanti da provvedimenti dell'amministrazione.

Le sanzioni amministrative accessorie non sono applicabili fino a che è pendente il giudizio di opposizione contro il provvedimento di condanna o, nel caso di connessione di cui all'articolo 24, fino a che il provvedimento stesso non sia divenuto esecutivo.

Le autorità stesse possono disporre la confisca amministrativa delle cose che servirono o furono destinate a commettere la violazione e debbono disporre la confisca delle cose che ne sono il prodotto, sempre che le cose suddette appartengano a una delle persone cui è ingiunto il pagamento.

È sempre disposta la confisca amministrativa delle cose, la fabbricazione, l'uso, il porto, la detenzione o l'alienazione delle quali costituisce violazione amministrativa, anche se non venga emessa l'ordinanza-ingiunzione di pagamento.

<sup>11</sup> Comma aggiunto dall'art. 10, L. 3 agosto 1999, n. 265.

La disposizione indicata nel comma precedente non si applica se la cosa appartiene a persona estranea alla violazione amministrativa e la fabbricazione, l'uso, il porto, la detenzione o l'alienazione possono essere consentiti mediante autorizzazione amministrativa.

### *21. Casi speciali di sanzioni amministrative accessorie.*

Quando è accertata la violazione del primo comma dell'articolo 32 della legge 24 dicembre 1969, n. 990, è sempre disposta la confisca del veicolo a motore o del natante che appartiene alla persona a cui è ingiunto il pagamento, se entro il termine fissato con l'ordinanza-ingiunzione non viene pagato, oltre alla sanzione pecuniaria applicata, anche il premio di assicurazione per almeno sei mesi.

Nel caso in cui sia proposta opposizione ovvero l'ordinanza-ingiunzione, il termine di cui al primo comma decorre dal passaggio in giudicato della sentenza con la quale si rigetta l'opposizione ovvero dal momento in cui diventa inoppugnabile l'ordinanza con la quale viene dichiarata inammissibile l'opposizione o convalidato il provvedimento opposto ovvero viene dichiarato inammissibile il ricorso proposto avverso la stessa.

Quando è accertata la violazione dell'ottavo comma dell'articolo 58 del testo unico delle norme sulla circolazione stradale, approvato con D.P.R. 15 giugno 1959, n. 393, è sempre disposta la confisca del veicolo.

Quando è accertata la violazione del secondo comma dell'articolo 14 della legge 30 aprile 1962, n. 283, è sempre disposta la sospensione della licenza per un periodo non superiore a dieci giorni.

### *22. Opposizione all'ordinanza-ingiunzione.*

Contro l'ordinanza-ingiunzione di pagamento e contro l'ordinanza che dispone la sola confisca, gli interessati possono proporre opposizione davanti al giudice del luogo in cui è stata commessa la violazione individuato a norma dell'articolo 22-bis, entro il termine di trenta giorni dalla notificazione del provvedimento<sup>12</sup>.

Il termine è di sessanta giorni se l'interessato risiede all'estero.

L'opposizione si propone mediante ricorso, al quale è allegata l'ordinanza notificata

Il ricorso deve contenere altresì, quando l'opponente non abbia indicato un suo procuratore, la dichiarazione di residenza o la elezione di domicilio nel comune dove ha sede il giudice adito<sup>13</sup>.

Se manca l'indicazione del procuratore oppure la dichiarazione di residenza o la elezione di domicilio, le notificazioni al ricorrente vengono eseguite mediante deposito in cancelleria.

Quando è stato nominato un procuratore, le notificazioni e le comunicazioni nel corso del procedimento sono effettuate nei suoi confronti secondo le modalità stabilite dal codice di procedura civile.

L'opposizione non sospende l'esecuzione del provvedimento, salvo che il giudice, concorrendo gravi motivi, disponga diversamente con ordinanza inoppugnabile<sup>1415</sup>.

<sup>12</sup> Comma così modificato dall'art. 97, D.Lgs. 30 dicembre 1999, n. 507.

<sup>13</sup> Comma così modificato dall'art. 97, D.Lgs. 30 dicembre 1999, n. 507.



**22-bis. Competenza per il giudizio di opposizione.**

Salvo quanto previsto dai commi seguenti, l'opposizione di cui all'articolo 22 si propone davanti al giudice di pace.

L'opposizione si propone davanti al tribunale quando la sanzione è stata applicata per una violazione concernente disposizioni in materia:

- a) di tutela del lavoro, di igiene sui luoghi di lavoro e di prevenzione degli infortuni sul lavoro;
- b) di previdenza e assistenza obbligatoria;
- c) urbanistica ed edilizia;
- d) di tutela dell'ambiente dall'inquinamento, della flora, della fauna e delle aree protette;
- e) di igiene degli alimenti e delle bevande;
- f) di società e di intermediari finanziari;
- g) tributaria e valutaria.

L'opposizione si propone altresì davanti al tribunale:

- a) se per la violazione è prevista una sanzione pecuniaria superiore nel massimo a lire trenta milioni;
- b) quando, essendo la violazione punita con sanzione pecuniaria proporzionale senza previsione di un limite massimo, è stata applicata una sanzione superiore a lire trenta milioni;
- c) quando è stata applicata una sanzione di natura diversa da quella pecuniaria, sola o congiunta a quest'ultima, fatta eccezione per le violazioni previste dal regio decreto 21 dicembre 1933, n. 1736, dalla legge 15 dicembre 1990, n. 386 e dal decreto legislativo 30 aprile 1992, n. 285.

Restano salve le competenze stabilite da diverse disposizioni di legge<sup>16</sup>.

**23. Giudizio di opposizione.**

Il giudice, se il ricorso è proposto oltre il termine previsto dal primo comma dell'articolo 22, ne dichiara l'inammissibilità con ordinanza ricorribile per cassazione.

<sup>14</sup> Comma così modificato dall'art. 97, D.Lgs. 30 dicembre 1999, n. 507.

<sup>15</sup> La Corte costituzionale, con sentenza 5-24 febbraio 1992, n. 62 (Gazz. Uff. 4 marzo 1992, n. 10 - Serie speciale), ha dichiarato l'illegittimità degli artt. 22 e 23, L. 24 novembre 1981, n. 689, in combinato disposto con l'art. 122 c.p.c., nella parte in cui non consentono ai cittadini italiani appartenenti alla minoranza linguistica slovena nel processo di opposizione ad ordinanze-ingiunzioni applicative di sanzioni amministrative davanti al pretore avente competenza su un territorio dove sia insediata la predetta minoranza, di usare, su loro richiesta, la lingua materna nei propri atti, usufruendo per questi della traduzione nella lingua italiana, nonché di ricevere tradotti nella propria lingua gli atti dell'autorità giudiziaria e le risposte della controparte.

<sup>16</sup> Articolo aggiunto dall'art. 98, D.Lgs. 30 dicembre 1999, n. 507.

Se il ricorso è tempestivamente proposto, il giudice fissa l'udienza di comparizione con decreto, steso in calce al ricorso, ordinando all'autorità che ha emesso il provvedimento impugnato di depositare in cancelleria, dieci giorni prima della udienza fissata, copia del rapporto con gli atti relativi all'accertamento, nonché alla contestazione o notificazione della violazione. Il ricorso ed il decreto sono notificati, a cura della cancelleria, all'opponente o, nel caso sia stato indicato, al suo procuratore, e all'autorità che ha emesso l'ordinanza.

Tra il giorno della notificazione e l'udienza di comparizione devono intercorrere i termini previsti dall'articolo 163-bis del codice di procedura civile<sup>17</sup>.

L'opponente e l'autorità che ha emesso l'ordinanza possono stare in giudizio personalmente; l'autorità che ha emesso l'ordinanza può avvalersi anche di funzionari appositamente delegati.

Se alla prima udienza l'opponente o il suo procuratore non si presentano senza addurre alcun legittimo impedimento, il giudice, con ordinanza ricorribile per cassazione, convalida il provvedimento opposto, ponendo a carico dell'opponente anche le spese successive all'opposizione<sup>18</sup>.

Nel corso del giudizio il giudice dispone, anche d'ufficio, i mezzi di prova che ritiene necessari e può disporre la citazione di testimoni anche senza la formulazione di capitoli.

Appena terminata l'istruttoria il giudice invita le parti a precisare le conclusioni ed a procedere nella stessa udienza alla discussione della causa, pronunciando subito dopo la sentenza mediante lettura del dispositivo. Tuttavia, dopo la precisazione delle conclusioni, il giudice, se necessario, concede alle parti un termine non superiore a dieci giorni per il deposito di note difensive e rinvia la causa all'udienza immediatamente successiva alla scadenza del termine per la discussione e la pronuncia della sentenza.

Il giudice può anche redigere e leggere, unitamente al dispositivo, la motivazione della sentenza, che è subito dopo depositata in cancelleria.

A tutte le notificazioni e comunicazioni occorrenti si provvede d'ufficio.

Gli atti del processo e la decisione sono esenti da ogni tassa e imposta.

Con la sentenza il giudice può rigettare l'opposizione, ponendo a carico dell'opponente le spese del procedimento o accoglierla, annullando in tutto o in parte l'ordinanza o modificandola anche limitatamente all'entità della sanzione dovuta. Nel giudizio di opposizione davanti al giudice di pace non si applica l'articolo 113, secondo comma, del codice di procedura civile<sup>19</sup>.

<sup>17</sup> Comma così sostituito dall'art. 99, *D.Lgs. 30 dicembre 1999, n. 507*.

<sup>18</sup> La Corte costituzionale, con *sentenza 28 novembre - 5 dicembre 1990, n. 534* (Gazz. Uff. 12 dicembre 1990, n. 49 - Serie speciale), ha dichiarato l'illegittimità dell'art. 23, comma 5, nella parte in cui prevede che il pretore convalidi il provvedimento opposto in caso di mancata presentazione dell'opponente o del suo procuratore alla prima udienza senza addurre alcun legittimo impedimento, anche quando l'illegittimità del provvedimento risulti dalla documentazione allegata dall'opponente. Con *sentenza 11-18 dicembre 1995, n. 507* (Gazz. Uff. 27 dicembre 1995, n. 53 - Serie speciale), la Corte costituzionale ha dichiarato l'illegittimità costituzionale del comma quinto, dell'art. 23, nella parte in cui prevede che il pretore convalidi il provvedimento opposto in caso di mancata presentazione dell'opponente o del suo procuratore alla prima udienza senza addurre alcun legittimo impedimento, anche quando l'amministrazione irrogante abbia ommesso il deposito dei documenti di cui al secondo comma dello stesso art. 23.

<sup>19</sup> Periodo aggiunto dall'art. 99, *D.Lgs. 30 dicembre 1999, n. 507*.