Testo Unico - Second part

Offering Shares to the Public, tender offers; Insider dealing

One of the most important innovations contained in the legislation is the reform of the regulation of public tender offers (art 102-112), the main provisions being as follows:

- It is repealed the Law of 18th of February 1992, n. 149, which previously regulated public tender offers;
- The newly enacted provisions of the Testo Unico render a tender offer mandatory, whenever a company or an individual, following private purchases, owns more than 30% of the ordinary shares of a listed company. The tender offer must be made within 30 days and the offer price must not be less than the arithmetic mean between the weighted mean market price of the last 12 months and the highest price paid in private purchases by the offeror for the shares of the company;
- An equal duty to launch a mandatory tender offer on all the outstanding shares of a listed company is placed upon whoever owns more than 90% of the share capital of such a listed company and does not, within 4 months, provide the market with an amount of outstanding shares sufficient for the smooth operations of market trading. In this latter case of mandatory tender offer the price is decided by Consob;
- A tender offer is mandatory also in the case that the percentages of shareholding in a listed company above mentioned (respectively, 30 and 90%) are reached following private purchases effected by parties acting in concert;
- Art 111 of the *Testo Unico* provides that, following a tender offer for all the ordinary shares of a listed company, the offeror owning more than 98% of the said shares has the right to purchase the outstanding share within 4 months after completion of the offer, provided that it has declared in the tender offer prospectus its intention to exercise such right. In this case of buy out (unique in Italian legislation) of the outstanding shares of minority shareholders, the price of the offer is to be set by an expert appointed by the President of the Tribunal of the place where the issuing company is incorporated;

The *Testo Unico* contains also important provisions aimed at a more effective repression of insider trading practices (arts 180-187). Generally, these provisions give to Consob (and not only to public prosecutors or members of the judiciary) powers of investigation of such practices. For example, Consob can formally request information or documents from whoever appears to have knowledge of the relevant facts and can also convene such persons for a formal interrogation. The results of the investigations effected by Consob are then to be submitted to the public prosecutors.

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Malta

Insurance Business Act, 1998

A number of changes have been made by this Act to the Companies Act 1995, which has now received its third reading and has been officially published. The main changes are the following:

- A new s 84A has been added to the 1995 Act, on the strength of which the Minister may now make regulations regarding what are described as 'cell companies'. The regulations may '*provide for the formation, constitution, authorisation and regulation of cell companies....to carry on the business of affiliated insurance, and any other business as may be prescribed...*'.

  Significantly, the regulations may also provide for '*the manner and the form whereby a cell company may create and issue cell shares.....and make provision for considering individual cells as separate and distinct entities for such purposes as may be established...*'. The terms 'affiliated insurance', 'cell' and 'cell companies' are defined in the Act, which is the only occasion so far where the law has introduced and recognised the concept of cell companies.
- The new law (s 62) exceptionally allows (and regulates) what is termed 'continuance' (often also termed re-domiciliation) of companies to or from Malta in the case of private companies carrying on the business of affiliated insurance.
- Insurance companies having their head office in Malta and which carry on long-term (life) business may not be dissolved and wound up voluntarily (s 42). This means that they may only be dissolved and wound up by the Court in terms of Part V, Title II, Subtitle I of the Companies Act, headed 'Winding up by the Court'.
- S 168(3) of the Companies Act has been replaced by a new section which requires licensed insurance companies to draw up the form and content of their annual accounts in accordance with any regulations or any directives that may be issued under the new Insurance Business Act. Formerly

the subsection only referred to 'regulations'. Insurance directives may be issued by the competent authority (the Malta Financial Services Commission has been appointed as this) to be appointed by the Minister of Finance to administer the new insurance legislation. (Act no. XVII of 1998). The Act comes into force on 1 October 1998

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Turkey

In the Decree Law 559, several articles of the Turkish Commercial Code have been amended including Art 272 establishing the minimum subscribed capital of a company limited by shares.

Under the new Art 272, the minimum amount of the fully subscribed share capital is increased to Turkish Lira: 5,000,000,000 (£11,200/ $18,300). According to the Provisional Art 2 of the Decree Law, companies limited by shares having a share capital less than the new minimum amount are obligated to increase their respective capitals to at least TL 5bn within two years.

This two years' time period is stipulated in the Decree Law by Law no 4366 (Official Gazette 7 June 1998) is extended 'up to December 31, 1998'.

In the event that companies limited by shares do not comply with the new minimum subscribed share capital requirement by the end of the year 1998, they shall be *ipso facto et jure* liquidated.

(Official Gazette dated 27 June 1995)

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Switzerland

Federal Banking Commission Ruling

Public takeover offers; Purchase of own shares

The Swiss Federal Banking Commission has held that Regulations on public takeover offers are applicable to public offers by Swiss companies to repurchase their own shares, following a dispute between three well-known Swiss finance companies and the Federal Takeover Board.

The Stock Exchanges and Securities Trading Act (SESTA) which came into force on 1st January 1998 does not specify whether offers by a Swiss company to repurchase its own shares are subject to public takeover offer rules.

The Commission held that as a matter of principle, public offers by Swiss companies to repurchase their own shares are 'public takeover offers' within the meaning of SESTA. Where the shares are listed on the Stock Exchange, SESTA provides *inter alia* for a duty to treat all shareholders equally and fairly and to provide them with transparent information. SESTA also creates specific reporting and auditing obligations for the offeror and the offeree companies.

The Commission has further acknowledged that some or all of the SESTA requirements can be waived in a given situation if shareholder protection is guaranteed by other means. In its decision, the Commission therefore freed the three companies of compliance with the duties provided for by SESTA, mainly because shareholders had been provided with sufficient information. It was however indicated that the necessary waiver should be obtained from the Federal Takeover Board prior to releasing the public offer.

(Decision of the Public Takeover Offers Chamber of the Federal Banking Commission of 4 March 1998 – Pharma Vision 2000 AG, BK Vision AG, Stillhalter Vision AG)

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UK – England and Wales

The Financial Services and Markets Bill

Financial services

The Treasury published a consultation draft of the wide ranging Financial Services and Markets Bill on the 30 July 1998. The consultation period expires on the 30 October 1998. All that can be appreciated from the consultation draft is the basic skeleton of the new arrangements. The Bill will establish the Financial Services Authority (FSA) as the single regulator of the financial services industry, including banking and insurance business, in the United Kingdom. There will be a single authorisation procedure for anyone proposing to carry on a regulated activity in the United Kingdom. The scope of the Bill is not entirely clear, because so much remains to be determined by rules and statutory instruments which have not yet been published (including the detail of what is to be 'regulated business'). This provides a flexible framework which will enable rapid rule and other changes to cover market and technological developments, without the need for further primary legislation.

The FSA's Chairman and board are appointed and liable to removal by the Treasury and the FSA will be accountable to Treasury Ministers for the way it exercises its statutory functions. The FSA has three general functions – rule making, giving advice and