

**THIS UNOFFICIAL ENGLISH LANGUAGE COURTESY TRANSLATION OF THE ORIGINAL ITALIAN LANGUAGE SECOND SUPPLEMENT TO THE REPORT OF THE BOARD OF STATUTORY AUDITORS OF FONDIARIA-SAI S.P.A. (THE “COMPANY”) PURSUANT TO ARTICLE 2408, PARAGRAPH 2, OF THE ITALIAN CIVIL CODE, DATED 25 JUNE 2012 AND RELATED TO THE COMPLAINT OF AMBER CAPITAL INVESTMENT MANAGEMENT (THE “REPORT”), IS FOR INFORMATION PURPOSES ONLY AND SHOULD NOT BE RELIED UPON.**

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**SECOND SUPPLEMENT TO THE REPORT PURSUANT TO ARTICLE 2408 paragraph 2  
of the Italian Civil Code OF THE BOARD OF STATUTORY AUDITORS OF  
FONDIARIA-SAI SPA REGARDING THE COMPLAINT RECEIVED FROM THE  
SHAREHOLDER AMBER**

On 18 April 2012 the Board of Statutory Auditors of Fondiaria-Sai S.p.A. (subsequently abbreviated to Fonsai) provided a supplement to their report pursuant to Article 2408 of the Civil Code of March 2012 (subsequently the Report Supplement) in which they described the following transactions:

- Villa Ragionieri real estate transaction;
- sponsorship agreements with Laità;
- real estate transaction for the purchase of land in Bruzzano and for the purchase of building rights in Pieve Emanuele;
- real estate transaction relating to Hotel The One in San Donato Milanese;
- purchase of the Alerion shares;
- real estate transaction for the remodelling and expansion of the Golf Hotel.

At the end of its Report Supplement the Board of Statutory Auditors specified that the enquiry activities had not completed, as they were still awaiting documentation related to the above transactions.

In addition the Board of Statutory Auditors specified that they had not been able to examine the following in the little time they had available:

- transaction for the construction of an office complex at Via Cambi in Milan;
- capitalisation of the subsidiary Meridiano Aurora Srl;
- purchase of 43% of the share capital of a vehicle company for the realisation of a building project in the Isola area of Milan,

thereby leaving the role of bringing to a conclusion all the verifications previously undertaken, and starting enquiries into the three above positions, to the incoming Board of Statutory Auditors.

As is known, the Board of Statutory Auditors, which wrote the report pursuant to Article 2408 of the Civil Code and the Report Supplement, was terminated through the expiry of its mandate and the undersigned Board of Statutory Auditors comprising Messrs Giuseppe Angiolini, Giorgio Loli and Antonio D'Ambrosio was appointed on 24 April 2012.

The undersigned Board of Statutory Auditors then continued the enquiry process already undertaken by the previous control body and reports below on the outcomes of its investigations.

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## **§ 1. VILLA RAGIONIERI REAL ESTATE PROJECT**

The complex real estate transaction in question is described on pages 7 to 16 of the Report Supplement.

More specifically, it lists the lease and/or services agreements with the related parties along with the deliberations by which the signature of the agreements was authorised, where found (refer to the Report Supplement for a detailed examination of the contracts previously voted on by the parent Fonsai and the contracts disclosed only subsequently), as well as the safeguards taken in accordance with the Fonsai standards of conduct for transactions with related parties, where adopted.

The Board of Statutory Auditors which published the Report Supplement then highlighted two situations, during that process, worthy of greater depth of enquiry, which are commented on in the following.

### **1.1 The contracts of 23 June 2008**

On page 10 of the Report Supplement it was highlighted that on 23 April 2008 the Fonsai Board of Directors learned that two additional roles had been assigned to Im.Co and that the contracts were being formalised.

Specifically, it was stated that the object of these additional roles was: "*works for the consolidation of the building named Villa, for further building works in addition to those already carried out; works for the installation of technological and electrical systems for the buildings Extension, Stecca and Archi, and works for primary town planning constructions*".

The signing of these new roles over to Im.Co was approved by the Fonsai Board of Directors during the next meeting of 18 June 2008.

The Board of Statutory Auditors observed in the Report Supplement that – by comparing the subject and the value (as taken from the minutes of the Board of 23 April 2008 and from the Scenari Immobiliari fairness report) of these new engagements voted on in 2008 and the corresponding subject and value of the contracts signed with Im.Co in 2006 – one is given the impression that the subject of all the aforesaid contracts corresponded wholly or in part.

In light of this, the Board of Statutory Auditors asked to examine the contracts approved in June 2008.

These agreements were subsequently provided and examined by the undersigned, which verified that the contracts of 23 June 2008 effectively had the same subject and the same payment as those of 2006.

Following a request for clarifications sent to the company, the Fonsai offices explained that the contracts of May 2006 were not executed and were replaced by the contracts of 23 June 2008. The payments statement provided by the company showed that there were no payments for the contracts of 2006.

### **1.2 The contracts of 28 October 2008**

On page 11 of the Report Supplement, the Board of Statutory Auditors showed that the Villa Ragionieri real estate transaction was again brought to the attention of the Fonsai Board of Directors in the meeting of 15 October 2008 for the signature of two additional contracts with Im.Co, having the subject:

- (i) the installation of technical systems, for a payment of EUR 2,025,000.00;
- (ii) building works for the construction of stairs, a new drainage system and a new walkway, for doors and windows, for the construction of bunker structures and others for a payment of EUR 6,835,000.00

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and that the contracts delivered to the Board of Statutory Auditors were signed only by Im.Co and were dated 1 October 2008, while the associated resolution occurred subsequently, on 15 October 2008.

The two contracts were qualified as:

- addendum 4 to the contract of 30 January 2004 for a value of EUR 6,835,000.00;
- addendum 1 to the contract of 23 June 2008 for a value of EUR 2,025,000.00.

Following a document request to the company, the undersigned were able to examine the two contracts dated 28 October 2008, qualified – similarly to those described above – as addendum 4 and addendum 1, as contracts having identical subjects and payments as those dated 1 October 2008 and initially delivered to the Board of Statutory Auditors.

Again in this case, given the clear duplication of the contract, a request for clarification was sent to the company, which specified that the contracts of 1 October 2008 were not executed and were replaced by the contracts of 28 October 2008.

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Having received the clarifications from the company regarding the above contracts, the undersigned auditors recall the further examination proposed by the previous Board of Statutory Auditors in the Report Supplement.

Specifically, given the evident complexity of the transaction and its value, the Board of Statutory Auditors restates the advisability for the Board of Directors, with the necessary technical support, to carry out a careful examination of all contractual agreements entered into between Villa Ragionieri and Im.Co, also bearing in mind that the transaction in 2009 gave rise to a considerable increase of the cost of the total project.

The Board of Statutory Auditors also considers it essential for the Board of Directors to request from the management of Villa Ragionieri and from the subsidiary Centro Oncologico Fiorentino Casa di Cura Villanova Srl (the tenant of the property) a report

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on the historical status of the letting relationship, in order to verify (i) whether the rental payment is regularly paid by the tenant; (ii) what proportion of the tenant's turnover is represented by the rent (iii) what is the current income, capital and financial position of the tenant Centro Oncologico Fiorentino Casa di Cura Villanova Srl.

Lastly it is requested that the Board of Directors requests: (iv) an opinion on the correctness and reasonableness of the criteria and methods used for the appraisals carried out in relation to the transactions under examination; (v) in light of what may emerge from the opinion referred to in the above point, a legal opinion on the potential existence of violations and on any potential remedies that may be attempted.

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## **§ 2. CONSTRUCTION OF HOTEL THE ONE IN SAN DONATO MILANESE**

As regards the transaction in question, the Board of Statutory Auditors refers initially to what was previously illustrated and described in the Report Supplement.

In the meantime, the requested documents were supplied by the company, more specifically:

- contract for the purchase of the land of 30 April 2004;
- fairness opinion of KPMG of 4 April 2005;
- legal opinion of 26 April 2005;
- off-plan sale contract of 4 May 2005;
- preliminary lease agreement of 4 May 2005;
- deed of acknowledgement of the off-plan sale of 20 May 2009;
- lease agreement of 20 May 2009;
- reconstruction of the payments made to the related party Icein.

From the examination of this documentation, and in addition to what is already reported in the Report Supplement, we can illustrate the following.

### **2.1 The contracts**

The land on which The One was built was transferred to Meridiano Secondo on 30 April 2004 from the company Asio Srl for the payment of EUR 3,800,000.00.

On 4 May 2005 an off-plan sale contract was entered into between the parties Icein (vendor) and Progestim (purchaser) with the following principal clauses:

- payment of EUR 18 million plus VAT, 5.4 million plus VAT of which to be paid on signature of the agreement as a deposit and part payment of the transfer price, and the balance conditional on the progress report of the works;
- option for applying changes which do not alter the object of the sale, with payment of the corresponding costs conditional on the progress report of the works;
- delivery date of the building 31 December 2006, with a tolerance of three months;
- inclusion of a penalty for delay in the delivery of the building of an amount of EUR 5,000.00 for each day of delay.

The signature of this agreement (voted on on 27 April 2005 – see page 28 of the Report Supplement) was also preceded by fairness opinions by KPMG, as well as by Scenari Immobiliari.

The Board of Statutory Auditors were able to examine this final document verifying that – as reported in the minutes of the board meeting of 27 April 2005, KPMG identified (i) the value of the property in a range between EUR 15.9 and 21 million inclusive and (ii) the value of the land in a range between EUR 4.4 and 4.9 million inclusive, all based on the assumption of the property generating revenue by 31 December 2006.

In addition, a legal opinion issued by Fonsai was examined in April 2005 by the law firm, Ashurst, which confirmed that the contract was in line with the agreements as would be reasonably negotiated between unrelated companies in similar circumstances.

As already indicated in the Report Supplement, it can be seen from the minutes of a board meeting of 24 April 2009, that at the same time as the off-plan sale contract, Progestim had entered into a preliminary lease agreement with Atahotels with an annual fixed rent of EUR 1,150,000.

Effectively, the contract was shown to have been entered into on 4 May 2005. The term of the lease was set at nine years, renewable for an additional nine years and the rent was indicated as 16% of the total amount of the tenant's revenue, but with a minimum annual guaranteed amount of EUR 1,150,000.00 with effect from the sixth year of the lease.

For the first five years of the lease however, an increasing payment regime was prescribed.

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As already anticipated in the Report Supplement (see page 29), the financial conditions of the lease agreement were changed upon entering into the definitive lease agreement (dated 20 May 2009). And in fact, while the fixed fee remained 16% of the tenant's revenue, the minimum amount guaranteed to the lessor was changed from the original 1,150,000.00 to EUR 1,698,000.00. For the first five years of the lease an increasing amount was then set out for the payment, with amounts increased over those of the preliminary agreement. Note that on 20 April 2009 Scenari Immobiliari found for the fairness of a lease payment of EUR 1,698,000.00, having identified a sustainable payment as being between 1,523,714 and 1,724,214 inclusive and a proportional percentage (which means the "amount of turnover that the operator is able to pay to the owner as an annual lease payment") in a range between 32 and 34% inclusive.

Lastly, the Report Supplement acknowledged the increase of the purchase price of the property in question, an increase which was included in the deed of acknowledgement of the off-plan sale concluded on 20 May 2009 upon delivery of the property built by Icein.

Specifically, Article 4 acknowledged the fact that, as a consequence of the amendments agreed to the original plan, the price of the off-plan sale, originally calculated to be EUR 18 million, was recalculated to EUR 28.3 million, an increase of EUR 10.3 million.

## **2.2 Payments made to Icein.**

The company provided a statement of payments made to Icein, corresponding to the amounts indicated in the contracts, totalling EUR 28.3 million plus VAT.

The payments in question were made between 2005 and 2009.

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### **§ 3. VILLA CAMBI REAL ESTATE TRANSACTION**

#### **3.1 Description of the original transaction**

The transaction in question involved the construction of a building with 14 floors above ground and four below ground with a connection to another existing building, on the area located in Milan at Via Cambi, purchased in 2009 by the Municipality of Milan at the price of EUR 10,750,500.00.

The purpose of the entire transaction was to transfer the property built to UniCredit Real Estate, which also owned the adjacent property to the one being built.

The project was undertaken by means of a vehicle company, Crivelli Srl (subsequently Crivelli)<sup>1</sup>, which awarded the contracts necessary for the works.

The transaction was examined and deliberated on by the Immobiliare Lombarda Board of Directors on 28 June 2007, during which the CEO, given that the area acquired in 2006 was adjacent to a UniCredit-owned property, specified that "UniCredit RE was contacted to confirm its interest in expanding its offices, via the construction of a property designed according to its functional requirements." It was also noted that "*a proposal for the sale of the area and the finished building, with finishings already agreed, was formalised for a turnkey payment of EUR 59,500,000.00, plus taxes*" and that, in the case of construction via a vehicle company, the purchase of the property would have to take place by means of the acquisition of the company. During the same meeting, UniCredit's availability to finance the construction by means of a mortgage loan was also discussed.

At the end of the meeting described above, the Immobiliare Lombarda Board of Directors unanimously voted in favour of the operation.

On 2 August 2007 Immobiliare Lombarda entered into a preliminary agreement with UniCredit Real Estate SpA for the purchase of shares representing the entire share capital of Crivelli, as owner of the real estate project described above. The agreed price was EUR 59,500,000.00, of which 12 million was paid upon signature of the agreement. It was then agreed that - in the event of Crivelli having borrowing debts or losses carried forward - these debts or losses would have to be subtracted from the transfer price.

On 27 December 2007, Crivelli entered into the loan agreement necessary for the realisation of the project, for the amount of EUR 38,000,000.00.

The transaction was not subject to prior examination by the parent Fonsai.

#### **3.2 The contracts**

In order to implement the transaction described above, the vehicle company Crivelli assigned the associated construction works to the following related parties: Marcora SpA (subsequently Marcora); ICEIN SpA (Icein) and Mi.Pr.Av Srl (Miprav)<sup>2</sup>.

**With specific reference to the related party Marcora**, the following agreements were entered into:

1. on 27 February 2008, contract for the construction of the building referred to in the point above. The fee for the contract was EUR 18,100,000.00 plus VAT, to be paid, in the amount of 10% upon the order as an advance payment, in the amount of 85% conditional on the monthly progress report and 5% following final testing. The contract specified that all unanticipated works or interventions would be subject to separate agreement, and over which Marcora was granted a pre-

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<sup>1</sup> The company was controlled fully by Immobiliare Lombarda SpA (subsequently Immobiliare Lombarda) and, after its partial de-merger in October 2009, it became controlled by Immobiliare Fondiaria SAI Srl.

<sup>2</sup> Between 2009 and 2010 the following contracts were also entered into with non-related parties: (i) with Tekser Srl for the issue of energy certification for a payment of EUR 11,660.00; (ii) with architect (i) Pier Giorgio Meregalli for the land registration of the building for a payment of EUR 11,000.00; (ii) with CNS SpA for the supply and installation of mobile walls for a payment of EUR 109,319.95.

emption right for assigning the associated works. The term for the delivery of the building was set at 31 December 2010.

2. on 8 May 2009, contract for works in addition to those of the original contract, some of which were for the following: redefinition of the original plans of the electrical, mechanical and lift systems, the partial provision of the structural plans, the amendment of the design of the facade, additional services required by third-party entities such as monitoring of the railway tunnel underneath. The fee for the additional contract was EUR 7,566,961.62 plus VAT, to be paid in the amount of 95% conditional on the monthly progress report and 5% following final testing. The term for the completion of the works was set at 31 December 2010. On the same date an order was issued by Marcora for the value of EUR 465,258.45 for the realisation of the works relating to the site safety obligations.
3. on 17 November 2010, contract for the realisation of additional works over the original contract and works of addendum 1, which included the following: supply and installation of heating cables to service the access ramp to the parking area; supply and installation of sink and taps in the medical room; supply and installation of autoclave tank; change of the firefighting system in the underground floors from wet to dry; addition of plant management systems; construction of ventilation system in the rooms on below ground floor IV; site downtime deposit and advanced delivery premium reimbursement; works for connecting to sewer network; painting of reinforced concrete walls of the underground floors. The fee for the additional contract was EUR 805,980.00 plus VAT, to be paid in the amount of 95% conditional on the monthly progress report and 5% following final testing. The term for the completion of the works was set at 23 November 2010.

**With specific reference to the related party Miprav**, the following agreements were entered into:

1. on 12 October 2007, professional engagement for the performance of works necessary for the construction of the building, including: the outline plans, summary of quantities, definitive plans, detailed quantities, construction details, specifications, safety coordination and relations with entities. The fee for the contract was EUR 1,500,000.00 plus VAT, to be paid, in the amount of 20% on the order as an advance payment; in the amount of 30% on delivery of the documentation necessary for municipal approval; 15% on delivery of the definitive plans and safety plan; 25% conditional on the monthly progress report and 10% following final testing.
2. on 19 May 2009, professional engagement for the drafting of the plan variant. The fee for the contract was EUR 400,000.00 plus VAT, to be paid, in the amount of 20% on the order as an advance payment; in the amount of 30% on delivery of the documentation necessary for municipal approval; 8% on delivery of the definitive plans; 2% on delivery of the definitive structural plans; 30%, in 8 twice-monthly tranches starting from October 2009 and 10% following final testing.
3. on 11 November 2010, the professional engagement for issuing the Fire Prevention Certificate and for drafting the plans for the construction of the ventilation system on below ground floor IV. The fee for the engagement was EUR 85,000.00 to be paid entirely following final testing.

**With specific reference to the related party Icein**, it was awarded the contract on 3 March 2009 for the drafting of the environmental report as an integral part of the Excavation Plan. The agreed fee was EUR 94,183.75. The order issued did not specify any payment conditions.

### **3.3 Safeguards adopted in accordance with the codes of conduct and guidelines for transactions with related parties**

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As seen above, various contracts were entered into with related parties during the period of years as part of the transaction under examination. For that which is of interest here, it is necessary to consider that:

1. the codes of conduct adopted by Fonsai in 2007 for related party transactions of the type under examination, even if concluded by means of subsidiary companies, require, among other things, the examination and approval, normally in advance, of the Board of Directors or the Executive Committee and the acquisition of fairness and/or legal opinions where deemed necessary in relation to the nature, extent and characteristics of the transaction<sup>3</sup>;
2. the codes of conduct adopted by Fonsai in the years from 2008 to 2010<sup>4</sup> for transactions with related parties of the type under examination, even if entered into by means of subsidiary companies, require, among other things, the examination and approval, normally in advance, of the Board of Directors or the Executive Committee subject to the opinion of the Internal Control Committee and the acquisition of fairness and/or legal opinions, where deemed necessary according to the nature, extent and characteristics of the transaction.

In spite of the above, entering into:

- the contract with Marcora on 27 February 2008 of a value of EUR 18 million and
- the contract with Miprav on 12 October 2007 of a value of EUR 1.5 million

was not subject to prior examination by the Fonsai Board of Directors, which was therefore not able to assess the various aspects of the investment, such as the associated costs and risks and the selection of contractor firms.

However, it has been shown that the financial conditions of the two contracts in question were however subject to prior examination of fairness by two experts<sup>5</sup>.

In each case, legal opinion was not acquired on the specific clauses of the contracts entered into.

### **3.4 Subsequent developments in the transaction**

The entire transaction was brought to the attention of the Fonsai Board of Directors only at the meeting of 24 April 2009, for the signature of the agreements for engaging the related parties Marcora and Miprav with the tasks for the realisation of the variant works.

During this meeting it was specified that the initial plan had undergone changes meaning that it would now be possible to increase the commercial surface area under construction, and therefore an associated increase of the sales price by EUR 4 million was agreed with the purchaser.

During the same meeting it was also specified that works not initially anticipated had been carried out and that they had generated a noticeable increase of costs, among which, the structural works necessary for the interference with the underground railway tunnel, the movement of the service rooms and the construction of recreational rooms in place of the fitness area.

At the end of the meeting of 24 April 2009, the Fonsai Board of Directors then authorised the signature of contracts for the variant works with Marcora and Miprav.

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<sup>3</sup>With reference to the nature of the transaction and its value, point 3.5 of the codes of conduct adopted by Fonsai includes contracts of works and services of a value greater than 1 million.

<sup>4</sup>With reference to the nature of the transaction and its value, point 3.5 of the codes of conduct adopted by Fonsai includes contracts of works and services of a value greater than 1 million.

<sup>5</sup>In particular, the documentation examined showed that:

1. the value of the contract with Marcora was subject to prior assessment by Reag SpA (Reag) of 28 February 2008, which, while having revealed the objective impossibility of estimating 69% of the unitary costs given the limited description of certain items, deemed the Marcora proposal to be in line with market values in terms of total measurable costs. The consultant in actual fact identified a cost of around 2.2 million lower than the contractor; however it considered this difference acceptable, both due to the role of General Contractor taken on by Marcora, and due to the risks typically taken on by the contractor for potential site problems;

2. the value of the role awarded to Miprav on 12 October 2007 was assessed by Scenari Immobiliari, which, on 30 June 2007 deemed the amount of EUR 1.5 million to be fair.

### **3.5 Safeguards adopted during the transaction in accordance with the codes of conduct and guidelines for transactions with related parties**

In compliance with the codes of conduct in being in 2009 for transactions with related parties of the type under examination (already described in 3.3 above), the following were acquired:

- a) assessment of the Reag expert of 26 March 2009 on the fairness of the price proposed by Marcora for the additional works to be included in the contract, who expressed an opinion of general fairness, also considering the role of General Contractor of the firm and that the supply of the more costly part of the systems would be made site side.
- b) assessment of the Reag expert of 21 April 2009 on the fairness of the professional role granted to Miprav. The expert, as regards the variant works decided, found for the fairness of the professional fee of EUR 400,000.00 proposed by Miprav, as in application of the professional tariffs the fee would have been greater;
- c) assessment of the Reag expert of 25 March 2009 on the fairness of the charges calculated for compliance with safety regulations. The expert found that the Coordinator's safety charges were fair compared to the normal market costs;
- d) provisional favourable opinion of the Fonsai Internal Control Committee of 22 April 2009.

Also note that the resolution of the Fonsai Board of Directors of 24 April 2009 was taken upon the declaration of interest of the directors belonging to the Ligresti family. Moreover Mr Viglianisi acknowledged his forming part of the Marcora Board of Directors.

The transaction was again discussed by the Fonsai Board of Directors in the meeting of 10 November 2010 during which the management board was informed that, as the end of the construction works approached, it became necessary to make additional variants attributable to the adjustment of fire prevention regulations or to adjust the civil and system plans annexed to the preliminary agreement. The Board of Directors was then informed of the need to sustain an additional cost of approximately EUR 1.2 million plus VAT, around EUR 990,000 of which to be paid to Marcora and around EUR 85,000 of which to be paid to Miprav (plus approximately EUR 110,000 to be paid to a non-related party supplier).

At the end of the meeting of 10 November 2010, the Fonsai Board of Directors then authorised the signature of contracts for the variant works with Marcora and Miprav, subject to:

- a) the assessment of the Reag expert of 29 October 2010 on the fairness of the price proposed by Marcora for the additional works to be included in the contract, which expressed an opinion of general fairness, also considering the role of General Contractor of the firm;
- b) assessment of the Reag expert of 5 November 2010 on the fairness of the professional role granted to Miprav. The expert, as regards the variant works decided on, found for the fairness of the professional fee of EUR 85,000.00 proposed by Miprav;
- c) provisional favourable opinion of the Fonsai Internal Control Committee of 8 November 2010.

Also note that the resolution of the Fonsai Board of Directors of 10 November 2010 was taken upon the declaration of interest of the directors belonging to the Ligresti family. Moreover the surveyor, Talarico stated that he held the role of chairman of the controlling company Crivelli.

### **3.6 Current investment status**

The real estate project in question was concluded in November 2010 within the terms envisaged by the original contracts.

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The firms confirmed that the amounts prescribed in the contracts in favour of the related parties were all paid and that the related firms Marcora and Miprav did not make any further claim for payment.

On 29 November 2010 Immobiliare Fondiaria-SAI transferred 100% of the share capital of Crivelli to UniCredit RE for the payment of EUR 27,525,640.00, paid at the same time as signing the agreement.

At the meeting of the Board of Directors of 30 November 2010, the Fonsai management board was informed of the transfer of the company owning the property constructed and the fact that the transaction had enabled a capital gain of around EUR 13 million.

In relation to the total cost of around 8.4 million of the variants decided on in 2008, the sale price of the property was increased by only around EUR 4 million. The company, in a communication to ISVAP in August 2011, clarified that one part of the works not initially envisaged was not attributable to the increase of the surface area, but involved important structural works (necessary specifically for the interference with the railway tunnel underneath the building), works that, by their nature, the vendor remained liable for.

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Note however that the Board of Statutory Auditors does not believe that these considerations were made at the time of the meeting of the Fonsai Board of Directors. The company, in the same document described above, also clarified that the transaction allowed them to realise a capital gain of around 27% of the book value and of around 84% of the net invested capital.

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#### **§ 4. REMODELLING AND EXPANSION OF THE GOLF HOTEL PROPERTY IN MADONNA DI CAMPIGLIO**

With reference to the real estate transaction in question, the Board of Statutory Auditors previously indicated in the Report Supplement all the contracts entered into with Icein, their subject and their value.

The board meetings have already been referred to during which the contracts were discussed and any safeguards adopted in accordance with the codes of conduct, in force from time to time, were illustrated, for fulfilling the transactions with related parties.

On the request of the Board of Statutory Auditors the fairness opinions not yet examined by the Board of Statutory Auditors as at April 2012 were then provided by the company. More specifically:

- an initial fairness opinion of June 2007 (referred to in the board meeting of 20 June 2007) regarding the amount of EUR 3,247,000.00, deemed to be fair. In the opinion issued, the expert engaged specified that the fairness of the engagement was confirmed with: (i) price tariff for the building works in Lazio; (ii) price tariff for the building works in Lombardy; (iii) price tariff for the building works in Milan; (iv) price tariff for the building works of the Trento Chamber of Commerce (CCIAA).
- a second fairness opinion of June 2007 (referred to in the board meeting of 20 June 2007) regarding the amount of EUR 1,900,000.00 deemed it to be fair. In the opinion issued, the expert engaged specified that the fairness of the engagement was confirmed with: (i) price tariff for the building works in Lazio; (ii) price tariff for the building works in Lombardy; (iii) price tariff for the building works in Milan; (iv) price tariff for the building works of the Trento Chamber of Commerce (CCIAA).

An expert estimate report of 13 January 2009 was then delivered in which a fairness opinion was expressed for the amounts of the works amounting in total to EUR 646,000.00 (as well as EUR 45,000.00 of professional charges).

These works were divided into "*incremental works*" (such as the construction of the gym); "*extraordinary maintenance works*" (such as security works in the Lodge; the painting of the well-being centre; roofing in the old wing and other works); "*works for the improvement of the elevator system*".

Page 3 of the estimate report reads "the fairness of the amount was verified with the items of the Milan price tariff for building works - 2008."

Again with reference to the transaction under examination, the company lastly provided a statement summarising the payments made to Icein. These payments, made in a period between 2007 and 2010 inclusive, amounted to EUR 11,742,567.60 (VAT inclusive).

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## **§ 5. PURCHASE OF 43% OF THE HOLDING IN THE COMPANY HEDF Isola Scs (PORTA NUOVA ISOLA PROJECT)**

### **5.1. Description of the original transaction**

The transaction, illustrated at the Milano Assicurazioni Board of Directors meeting of 9 November 2009, envisaged the purchase by Milano:

- of the holding, amounting to 43% of the share capital of the company HEDF Isola scs, owned by the related party Im.Co; and
- the acquisition, by Milano, again from Im.Co of a loan of EUR 13.9 million (including interest) deriving from the shareholder loan provided by Im.Co to HEDF Isola scs

for a total payment of EUR 15.5 million.

These acquisitions were aimed at the entry of Milano, in partnership with the HINES group, into the real estate project called Porta Nuova Isola.

The Luxembourg registered company HEDF Isola scs held, via the company HEDF Isola sarl, 100% of the shares in the Italian company Isola Srl, the owner of the area on which the real estate project would be realised. This project involved the building of around 30,000 m<sup>2</sup> of buildings, of which around 22,000 as dwellings<sup>6</sup>, as part of the broader project for the redevelopment of the urban area of Milan known as Porta Nuova, including the improvement, in addition to the area called Porta Nuova Isola, which is part of the transaction under examination, also of the areas Porta Nuova Garibaldi and Porta Nuova Varesine, all projects for the redevelopment of the entire area for Expo 2015, promoted by HINES Group.

For such scope the transaction also envisaged Milano Assicurazioni, in place of Im.Co, falling within the agreement that regulated the relationships between the shareholders of HEDF scs (Partnership Agreement), thereby assuming all the associated rights and obligations.

Following the purchase of the holding in HEDF scs by Milano it was also set out that the transaction would develop as follows:

- the area subject to the real estate project would be conferred into a closed fund called Fondo Isola, of which the original partners would be shareholders;
- the shareholders of HEDF scs would enter into a new Partnership Agreement in force of which, *inter alia*, (i) "the payments made in the past by the Limited Partner IMCO to HEDF as interest-bearing loans in the amount of around EUR 12.2 million and the associated interest of around EUR 1.8 million" would be converted "into financial instruments respectively called *Special Profit Participating Bonds (SPPB) and Special-Interest Profit Participating Bonds (SIPPB)*"; (ii) "all future payments to HEDF scs" would be made "in the form of subscription of *Profit Participating Bonds (quasi-equity securities that confer the right to participation in the profits of HEDF scs according to a preset remuneration mechanism)*".

In force of the agreements above it was prescribed that the maximum commitment for Milano Assicurazioni, in relation to the development of the project, would remain unchanged over that taken on in turn by Im.Co, and would therefore be a total amount of EUR 9.2 million, to be considered net of the commitments already met by Im.Co<sup>7</sup>.

<sup>6</sup>More specifically the project involved the building of:

- two towers of 16 and 23 storeys respectively (of approx. 18,000 m<sup>2</sup> for residential use and approx. 200 m<sup>2</sup> for commercial use);
- 4/5 storey terraced buildings (approx. 3800 m<sup>2</sup> for residential use and approx. 200 m<sup>2</sup> for commercial use);
- a 10 storey building almost entirely (approx. 6300 m<sup>2</sup>) for office use, and approx. 400 m<sup>2</sup> for commercial use;
- two buildings for "cultural" use of 2,200 m<sup>2</sup>.

<sup>7</sup>The project did in fact envisage a maximum total commitment for Im.Co – and therefore for Milano, to replace the former in force of the aforesaid contract of November 2009 – of EUR 21.4 million, from which the amount already paid in by Im.Co under the shareholder loan then acquired from Milano, in the amount of around 12.2 million, would be subtracted. The

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The interest for Milano Assicurazioni in the transaction described above was identified with a view to the consolidation of the investment of the insurance company in the Porta Nuova Project, in which it was one of the three parties, in consideration of the fact that Milano was already participating in the Garibaldi and Varesine projects; it was specified in particular that *"the investment was complementary for the company as it was located on a geographically contiguous area predominantly for residential use compared with the Porta Nuova Garibaldi project, which instead saw the surface area developed predominantly for office use."*

## **5.2. Safeguards adopted in accordance with the codes of conduct and guidelines for transactions with related parties<sup>8</sup>**

Given that it concerned a transaction with a related party, the resolution for the transaction by the Milano Board of Directors was preceded by acquiring:

- a fairness opinion from the KPMG expert who, also with the support of the REAG expert as regards the analysis of the rationale of the Business Plan of Fondo Isola, identified for the participation, a range of values between EUR 13.7 and 18.1 million inclusive, therefore deeming the payment identified by the Board of Directors to be fair<sup>9</sup>;
- opinion from Maisto on the tax aspects of the transaction;
- favourable provisional opinion of the Milano Assicurazioni Internal Control Committee, which met on 3 November 2009;
- favourable provisional opinion of the Fondiaria – SAI Internal Control Committee, which met on 2 November 2009.

The Milano Board of Directors did not deem it necessary to acquire a legal opinion on the contract, having traced *"the documents used in 2005 and 2006 by Fondiaria – SAI and Milano for participating in the Porta Nuova Garibaldi and Porta Nuova Varesine projects respectively"* and not finding any *"specifically legal issues while also anticipating the issue of declarations and guarantees typical for this type of transaction by the vendor Im.Co."*

Moreover, the resolution was also preceded by the declaration of interest in the transaction by the Directors Jonella, Gioacchino Paolo and Giulia Maria Ligresti, as holders of participations and interests in the company Sinergia Holding di Partecipazioni SpA, parent of Im.Co and by the Director Mr Rubino, as chief executive officer of Sinergia and Chairman of Im.Co.

The transaction was therefore unanimously approved by the Milano Assicurazioni Board of Directors, but subject to the favourable opinion of the parent Fonsai which was issued during the meeting of the Board of the Directors held again on 9 November 2009.

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maximum residual commitment for Milano would therefore be calculated as the difference between the maximum amount of at risk-commitments, EUR 21.4 million, and the commitments already met by Im.Co, EUR 12.2 million, or precisely EUR 9.2 million, as indicated during the Milano Assicurazioni Board of Directors meeting of 9 November 2009, in which it was specified that: *"The maximum total investment commitment of Milano Assicurazioni with reference to the Porta Nuova Isola project, in terms of cash commitments in loans to be provided and any guarantees issued (at-risk commitments pursuant to the Partnership Agreement), shall remain unchanged over that taken on by Imco. The residual commitment of Milano Assicurazioni, excluding the commitments already honoured by Imco under the Partnership Agreement, amounts in total to EUR 9.2 million, including the guarantees (around 2 million)."*

<sup>8</sup>The codes of conduct adopted by Milano Assicurazione in force in 2009 for transactions with related parties of the type under examination, require, among other things, the examination and approval, normally in advance, of the Board of Directors subject to the opinion of the Internal Control Committee and the acquisition of fairness and/or legal opinions, where deemed necessary according to the nature, extent and characteristics of the transaction.

<sup>9</sup>It was shown in particular that, for the purposes of the assessment of the value of the holding, KPMG requested the REAG real estate expert to carry out a preliminary assessment of the rationale of the assumptions and hypotheses included in the Fondo Isola business plan, with specific reference to the fairness of sales revenue, that is the unitary market values by usage designation, unitary construction costs by usage designation and the timescales relating to revenue and costs anticipated for the project. It was illustrated to the Board that, based on the analyses, REAG *"considers that, as at the reference date of 30 September 2009, the revenue, while in the high band of the values expressed by the reference real estate market, the construction costs, the soft costs and the timetable were fair"*. Based on the data validated by the REAG experts, KPMG then estimated the value of the participation by applying the discounted dividends method (DDM), *"according to which a company is valued according to the flow of dividends, net of capital increases, which the company is able to distribute to shareholders in the future"*.

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The transaction was also communicated to ISVAP in accordance with the industry regulations, on 19 November 2009.

In execution of the aforesaid resolution, the sales agreement concerning the participation and the loan referred to above was entered into, via an exchange of proposal and acceptance of 26 November 2009, entitled, "Agreement for purchase and sale of partnership interest and note in HEDF Isola scs"; through the effect of this moreover, Milano Assicurazioni also complied with the document that regulates relationships between the shareholders of HEDF scs with the assumption of all the associated obligations.

### **5.3. Subsequent developments in the transaction**

According to the Notes to the financial statements of Milano Assicurazioni as at 31/12/2010, the holding of Milano and HEDF scs was reduced, during this period, to 29.56% of the share capital of the company, following its transformation

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from scs to sa, without amending the lending commitments of Milano Assicurazioni.

**5.4. Payments made by Milano Assicurazioni in relation to the Isola project and investment status**

According to the reports of the company the cash payments made into the Isola project as at May 2012 amounted in total to EUR 13,735,694.2 (which includes the loan originally provided by Im.Co and then converted into Profit Participating Bonds) and remaining commitments are anticipated in a maximum of EUR 7.7 million.

The timetable set on the date of acquisition of the holding by Milano Assicurazioni envisaged the end of 2012 as the term for the construction works, while the marketing phase was anticipated to complete in the first quarter of 2013. The latest update of the timetable (April 2012) envisaged the construction works completing by April 2013, while the marketing of the residential units and offices was to be completed by the end of 2013.

The latest business plan specifically set out that the preliminary sales contracts for the sale of these residences would be defined in the period April 2012 – July 2013, while completion of the deeds would be anticipated between July and December 2013.

The sale (or the profitability) of the office portion was estimated to be realised by September 2013.

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## **§ 6. ADDITIONAL DOCUMENTATION EXAMINED**

Lastly, note that the following were examined:

- the shareholders' agreement existing at the time of the acquisition of the Alerion holding (see p. 32 of the Report Supplement);
- the purchase agreement for land located in Bruzzano of 29 July 2009 (see p. 24 of the Report Supplement);
- the purchase agreement for building rights located in Pieve Emanuele of 29 July 2009 (see p. 24 of the Report Supplement);

From an examination of this documentation, no significant elements emerged such as to be added to what has already been illustrated in the Report Supplement.

On the express request of the Board of Statutory Auditors, the company then confirmed that no additional payments have been made to the company Laità Srl (see p. 17 of the Report Supplement) in addition to those indicated in the Report Supplement.

Lastly, with reference to the capitalisation of the subsidiary Meridiano Aurora (a transaction that the previous Board of Statutory Auditors were required to examine), from an examination of the documentation provided by the company it can be confirmed that the capitalisation was conducted in order to allow the subsidiary to carry out the remodelling works of its own property located at Via Clitunno 34/36, Rome.

The company confirmed that the remodelling works were assigned to non-related third party companies.

Milan, 25 June, 2012

For the Board of Statutory Auditors of Fondiaria  
Sai SpA,  
The Chairman  
Giuseppe Angiolini

