

**THIS UNOFFICIAL ENGLISH LANGUAGE COURTESY TRANSLATION OF THE ORIGINAL ITALIAN LANGUAGE 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 18 APRIL 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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**SUPPLEMENT TO THE REPORT**  
**OF THE BOARD OF STATUTORY AUDITORS OF FONDIARIA-SAI S.P.A.**  
**PURSUANT TO ART. 2408, PARA. 2 OF THE CIVIL CODE**

On 17 October 2011, the Board of Statutory Auditors of Fondiaria-Sai S.p.A. (hereinafter “Fonsai”) received from Amber Capital Investment Management (hereinafter “Amber”), in its capacity as manager of the fund Amber Global Opportunities Master Fund Ltd, which is a Fonsai shareholder, a complaint pursuant to Art. 2408, para. 2 of the Civil Code in relation to reprehensible circumstances detailed therein, with a simultaneous request to the Board of Statutory Auditors to carry out any necessary investigations in order to determine the merits of the complaint.

In a report of 16 March 2012, presented to the Shareholders’ Meeting of 19 March 2012, the Board of Statutory Auditors reported to the shareholders of Fonsai on the results of the investigations carried out, reserving the right to examine more thoroughly the circumstances referred to in the report and to extend its investigations to other operations carried out by Fonsai and/or other Group companies that might show anomalous signs similar to those highlighted in the report of 16 March 2012.

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## **§ 1. THE AMBER LETTER OF 26 MARCH 2012 AND THE COMPLAINT PURSUANT TO ART. 2408 OF THE CIVIL CODE MADE BY THE SHAREHOLDER FABRIZIO CIROLINI**

On 26 March 2012, following its own complaint pursuant to Art. 2408 of the Civil Code and the report of the Board of Statutory Auditors, Amber sent the undersigned supervisory body a letter (annexed hereunto as **Doc. 1**) in which it:

- lamented the fact that the report pursuant to Art. 2408 of the Civil Code had not been given a reading at the Shareholders' Meeting, even in summary form;
- with specific reference to the requests and invitations made by the Board of Statutory Auditors to the Board of Directors, as well as to the additional investigations indicated by the Board of Statutory Auditors, requested the swift performance of these activities so as to provide full information to the public suitably in advance of the meeting;
- recommended that the supervisory body should closely monitor the activities that the Board of Directors was called upon to carry out;
- requested that, within the context of the thorough examination that the Board of Statutory Auditors had reserved the right to carry out, particular attention should be paid to the impacts that the identified irregularities might have had on the accuracy of the financial information provided by Fonsai;
- stated that some of the issues indicated in its own complaint pursuant to Art. 2408 of the Civil Code had not – in its opinion – been answered in the report of this Board of Statutory Auditors.

In a letter of 28 March 2012 (annexed hereunto as **Doc. 2**), the undersigned Board of Statutory Auditors replied to Amber's letter, noting that:

- any decision relating to the reading at the meeting of the report pursuant to Art. 2408 of the Civil Code had been taken after due debate by the meeting and on the basis of a majority vote, with Amber abstaining from voting;
- the company's Board of Directors had begun preliminary activities for the checks and investigations requested by the Board of Statutory Auditors, establishing a committee of independent directors to appoint legal and financial advisors and expert appraisers for the new property valuations;
- the Board of Statutory Auditors had on that date sent a request for documentation relating to two additional operations not cited in the complaint pursuant to Art. 2408 of the Civil Code.

With respect to the questions which – according to the shareholder Amber – had not been answered in the report pursuant to Art. 2408 of the Civil Code, the Board of Statutory Auditors, believing that it had examined all the issues raised by the shareholder, invited the latter to indicate precisely which points had not been taken into consideration, in order to allow the investigations to be expanded if necessary.

At the closing date of this report, the shareholder Amber has not made any reply to the above letter.

It is noted that the company was informed of the letter received from the shareholder Amber and was advised to take account of the shareholder's declared needs in the organisation of the schedule for the performance of the investigations suggested by the Board of Statutory Auditors.

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The Supervisory Authorities were also informed of the said letter.

The Board of Statutory Auditors of Fonsai also recalls that, during the course of the Shareholders' Meeting of 19 March 2012, the shareholder Fabrizio Cirolini, represented by Prof. Gianfranco d'Atri, submitted a complaint pursuant to Art. 2408 of the Civil Code, requesting the supervisory body to ascertain:

*“ - whether the directors had received from the executive directors all the information requested by them, and whether they had, through appropriate meetings and deliberations:*

- assessed the ISVAP measures and the inspection evaluations;*
- assessed the actuarial models used and their appropriateness;*
- assessed the property appraisals;*
- applied the impairment to POPOLARE VITA;*
- assessed, in the property valuations, the issue of conflicts of interest for certain members of the Board of Directors;*
- examined the expediency of the investments in Greek bonds, insofar as any such investments had been made;*
- assessed any advisory role played by the shareholder UNICREDIT vis-à-vis the company with regard to the financial investments”.*

In view of the generic nature of the requests cited above, in a letter of 28 March 2012 (annexed hereunto as **Doc. 3**) this Board of Statutory Auditors invited the complaining shareholder to supply all the details indicated in the annexed letter.

On 5 April 2012, the Board of Statutory Auditors received an e-mail from Prof. Gianfranco d'Atri stating, further to the complaint submitted at the meeting, that this should be regarded as having been withdrawn (the e-mail in question is annexed hereunto as **Doc. 4**). The Supervisory Authorities were informed of this exchange of correspondence.

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## **§ 2. THE INITIATIVES TAKEN BY THE BOARD OF DIRECTORS**

In view of the foregoing, the Board of Statutory Auditors of Fonsai considers it necessary to report to the meeting on the initiatives taken by the Board of Directors following the circulation of the report pursuant to Art. 2408 of the Civil Code, as well as on the additional investigations carried out by the Board of Statutory Auditors.

On the first point, as you know, in its own report pursuant to Art. 2408 of the Civil Code, this Board of Statutory Auditors identified a series of essential investigations and checks for verifying the material correctness of various aspects of the examined operations, the existence of any damage to Fornai and/or its subsidiaries, any responsible parties, and any possible actions for compensation and/or recovery.

The performance of these activities was recommended to the Board of Directors of the company.

The Board of Directors met on 26 March 2012 to examine the proposals of the Board of Statutory Auditors and decided to delegate to a group of independent directors the appointment of legal and financial advisors and expert appraisers for the valuation aspects relating to the property assets.

A representative of the Board of Statutory Auditors met with these advisors, providing – where requested – the clarifications required for the suggested investigations.

The meeting is informed that these advisors are:

- the firm of lawyers Gianni Origoni, Grippo & Partners, as legal advisor;
- PricewaterhouseCoopers, as financial/accounting advisors;
- REAG, as property appraiser.

The Board of Statutory Auditors has received confirmation that the activities entrusted to the above-mentioned advisors is in progress.

Naturally, the Board of Statutory Auditors has offered its assistance to facilitate the work in progress if possible.

At present, therefore, this Board of Statutory Auditors is not in a position to draw any definitive conclusions from the investigations carried out, or to formulate any specific proposals to the meeting, since only when the work of the above-mentioned appraisers and advisors is completed will it be possible to establish whether the critical issues pointed out by the Board of Statutory Auditors have resulted in damage to Fonsai and/or its subsidiaries concerned in the operations, and consequently to evaluate the taking of any action (as will be suggested by the legal advisors on completion of their analyses) for compensation or recovery or for the management of outstanding relations in order to eliminate any aspects that might be prejudicial to the Group companies involved.

Furthermore, and for the same reasons, the Board of Statutory Auditors does not presently have the wherewithal to answer Amber's question as to whether the financial information provided at the time by Fonsai might have been affected by the irregularities identified by the Board of Statutory Auditors.

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Here too, the investigations requested by the Board of Statutory Auditors are essential for ascertaining the actual scope of the critical issues and their potential impact on the company's financial information.

In view of the above, there follows a report to the meeting on the results of the additional investigations carried out by the Board of Statutory Auditors.

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### **§ 3. “VILLA RAGIONIERI” PROPERTY PROJECT**

#### **3.1 Description of the original operation**

The operation in question involved the construction of a highly specialised oncology centre in the property complex owned by the company Villa Ragionieri S.r.l. (hereinafter “Villa Ragionieri”), wholly owned by Fonsai, comprising land and a building situated in Sesto Fiorentino.

The intended purpose of the centre was to create a collaboration with the public system in order to meet the growing demand in this specific sector from the city of Florence and the Tuscany Region.

#### **3.2 Contracts signed with related parties from 2003 to 2007**

Examination of the minutes of the meetings of Fonsai’s Board of Directors shows that Villa Ragionieri, in order to implement the operation described above, entrusted the associated construction works to the following related parties: Europrogetti S.r.l. (hereinafter “Europrogetti”) and Immobiliare Costruzioni Im.Co S.p.A. (hereinafter “Im.Co.”). In particular, the following tasks were entrusted to Europrogetti:

- (a) on 8 September 2003, a commission relating to the “*design, with variants, of a new nursing home and restoration of the existing construction*”, for a payment of EUR 1,510,000.00 plus VAT;
- (b) on 15 April 2005, a commission relating to the design of planning and architectural variants and associated project management, legal assistance and safety services, for a payment of EUR 700,000.00 plus VAT;
- (c) on 12 November 2007, a commission with a value of EUR 900,000.00 plus VAT, the nature of which is unspecified<sup>1</sup>. At a meeting of Fonsai’s Board of Directors in June 2007, generic reference is made to a widening of the original commission “*taking account of the interventions relating to design variants with different features in terms of architecture, structure and equipment ...*”, made necessary by the need to modify the original layout.

The following tasks were entrusted to the related party Im.Co.:

- (d) on 30 January 2004, a contract concerning, among other things, the performance of works of excavation, filling, demolition of the existing building, consolidation, piling, bracing, new constructions and wooden covering structures, as detailed in the annexes. The agreed payment was EUR 1,500,000.00 plus VAT and the completion date was set at six months from the date of delivery of the site. It was specified in the contract that any intervention not included in the annexes to the contract must form the subject of a separate agreement, and Im.Co. was given a pre-emptive right to the contract for any such works;

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<sup>1</sup> Reference is made to these works and to the fee of EUR 900,000 in a letter from Villa Ragionieri dated 12 November 2007, replying to a previous letter from Europrogetti dated 31 October 2007. The Board of Statutory Auditors has requested a copy of the Europrogetti letter, but at the closing date of this report it has not yet been received from the company.

- e) on 23 June 2004, Rider no. 1 to the contract of 30 January 2004 for the performance of works not included in the first contract but made necessary by the client's new requirements. In particular, the rider covered, among other things, works of removal, clearance and disposal of spoil and polluting waste, the conduct of additional archaeological digs, the construction of temporary cover for the "Villa" building, and the restoration of timber and fresco works in the "Stecca" building. The payment was EUR 782,798.00 plus VAT and the completion date was set at 30 September 2004;
- f) on 18 April 2005, Rider no. 2 to the contract of 30 January 2004 for the performance of additional works of cleaning, landscape gardening, renovation, miscellaneous building works and construction of the reinforced-concrete structure of the new "Extension" building. The agreed payment was EUR 10,520,000 plus VAT and the completion date for the works was set at 31 July 2006;
- g) on 6 February 2006, Rider no. 3 to the contract of 30 January 2004 for the performance of additional construction and finishing works relating to the "Extension", "Stecca" and "Archi" buildings, as described in the annexes to the contract. The agreed payment was EUR 10,400,000.00 plus VAT and the completion date for the works was set at 31 December 2006;
- h) on 2 May 2006, a contract concerning, among other things, reconstruction and consolidation works on the "Villa" building, excavation, demolition and filling works and the rebuilding of wooden roofs, as described in the annexes to the contract. The agreed payment was EUR 2,950,000.00 plus VAT and the completion date for the works was set at 31 December 2006;
- i) on 9 May 2006, a contract concerning the construction of various systems (including air conditioning, water/sanitary services, medical gases and others) in the "Extension", "Stecca" and "Archi" buildings, as described in the annexes. The agreed payment was EUR 4,100,000.00 plus VAT and the completion date for the works was set at 31 December 2006;
- j) on 9 May 2006, a contract concerning the construction of systems in the "Extension", "Stecca" and "Archi" buildings, as described in the annexes. The agreed payment was EUR 2,250,000.00 plus VAT and the completion date for the works was set at 31 December 2006;
- k) on 15 June 2006, a contract concerning the execution of primary development works and, in particular, of roadworks and utility connection works, as described in the annexes. The agreed payment was EUR 225,000.00.

With the exception of the contract cited in letter d) above, the other contracts were delivered to the Board of Statutory Auditors without any annexes.

### **3.3 Measures adopted in conformity with the principles of conduct and guidelines for transactions with related parties**

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As we have just seen, various contracts have been signed – over the years – with related parties in relation to the operation in question.

With regard to the matters that concern us here, it must therefore be considered that:

- **in 2003**, as shown by the Directors' Report annexed to the annual financial statements of Fondiaria Sai, the following principles were in force for transactions with related parties: *“The Board of Directors reserves to its own exclusive competence any deliberations concerning transactions with related parties – as defined by CONSOB Communication No. DEM/2064231 of 30 September 2002 – which, due to their nature, their value or their implementation procedures or timescales, might have an impact on the protection of the corporate assets or on the completeness or accuracy of information – including accounting information – relating to the issuer, to the exclusion of transactions conducted between subsidiaries or between subsidiaries and associated companies. The subsidiaries are instructed to inform the Board of Directors promptly of the most important transactions conducted among themselves when these are not subject to prior examination by the Board of Directors. All transactions conducted with related parties must comply with criteria of material and procedural correctness. Where required by the nature, scale and characteristics of the transaction, the Board of Directors ensures that the transaction is carried out with the assistance of independent experts for the valuation of assets and for obtaining financial, legal or technical advice, through the acquisition of fairness and/or legal opinions. Directors who have an interest in the transaction must promptly and fully inform the Board of Directors about the existence of the interest and its circumstances, assessing on a case-by-case basis the appropriateness of departing from the Board meeting while the matter is discussed or of abstaining from voting. If the matter involves the Chief Executive Officer, the transaction is not carried out. In the cases cited in the preceding paragraph, the deliberations of the Board of Directors must adequately justify the reasons for the transaction and its suitability for the company. The Board of Directors assesses the most appropriate decision in the event that the departure of directors while the matter is discussed might be considered to be prejudicial to maintenance of the necessary quorum for the meeting”*;
- **in 2004**, principles essentially similar to those of the previous year were in force;
- the principles of conduct adopted by Fonsai **in 2005** (on 16 February) and also valid for **2006 and 2007**, for transactions with related parties of the type under consideration – even if carried out through subsidiaries – required, 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 if deemed necessary in relation to the nature, scale and characteristics of the transaction<sup>2</sup>.

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<sup>2</sup> With reference to the nature and value of the transaction, point 3.5 of the principles of conduct adopted by Fonsai covered contracts with a value in excess of EUR 1 million.

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With respect to the contracts examined here thus far, it is noted that the Board of Directors was informed about these only after the fact, following the conclusion of the contracts. In particular:

- during the Board of Directors' meeting of 27 April 2005, only an update was given on the envisaged costs for the interventions relating to the project to be implemented during the course of 2005, without any reference to the fact that contracts had been (and would be) signed with related parties;
- the Board of Directors' meeting of 28 June 2006 was merely informed of the contracts cited in point 2.2, letters a), b), d), e) and f), some of which had already been performed in full by that date.

With reference to the possible acquisition of fairness opinions on the contracts mentioned above, the minutes of the Board of Directors' meeting of 28 June 2006 state that the subsidiary Villa Ragionieri had signed the contracts in question "*following an assessment of the fairness of the payments made by the competent Group structures*". The Board of Statutory Auditors asked to examine this fairness opinion, but the business structures concerned were unable to locate it.

With reference to the assertion in the minutes to the effect that the contracts in question had all been signed prior to the coming into force of the principles of conduct for transactions with related parties, it is pointed out that these principles – as already mentioned – had been approved by the Board of Directors in a resolution of 16 February 2005 (circulated to the business structures on 13 May 2005). At the date of signature of Rider no. 2 to the contract of 30 January 2004 (rider signed in April 2005, with a value of more than EUR 10 million), the principles in question had therefore already been decided.

With reference to the contracts cited in point 2.2, letters g), h), i) and j) (with respective values of EUR 10.4 million, 2.95 million, 4.1 million and 2.25 million), it does not appear to the Board of Statutory Auditors that the conclusion of these contracts had been submitted for prior approval by Fonsai's Board of Directors, which was therefore unable to assess the various aspects of the investment, such as the potential benefits of the transaction, the associated risks, its costs and the choice of contractor.

Furthermore, it does not appear to the Board of Statutory Auditors that the financial conditions of these contracts had been submitted for prior evaluation of their fairness by an independent third party, or that a legal opinion was obtained with regard to the content of the contractual agreements.

In particular, no mention was made of these contracts at the meeting of 28 June 2006, despite the fact that the contracts in question had all been signed by that date.

### **3.4 Subsequent developments in the operation**

On 23 April 2008, two years after the signature of the five contracts signed in 2006, Fonsai's Board of Directors was informed that Im.Co. had been given further commissions and that the contracts were in the process of being formalised.

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In particular, it was stated that the nature of these additional commissions was as follows: *“works for the consolidation of the “Villa” building, construction works additional to those already carried out, for the “Extension”, “Stecca” and “Archi” buildings, construction of technological and electrical systems, execution of primary development works”.*

The Board was also informed that a fairness opinion was currently being obtained on the fairness of the contractual payments.

The signing of these new contracts with Im.Co. was approved by Fonsai’s Board of Directors at the next meeting on 18 June 2008, without any mention being made of the previous 2006 contracts.

This decision was preceded by:

- (i) the declaration by Jonella, Giulia Maria and Gioacchino Paolo Ligresti of interests and shareholdings in the subsidiary Im.Co.;
- (ii) a prior opinion from Fonsai’s Internal Control Committee;
- (iii) a fairness opinion from Scenari Immobiliari on 9 June 2008, which gave a judgment on the fairness of five bids submitted to Villa Ragionieri for the execution of the works in question (one bid for each individual type of intervention, giving a total of five bids).

In the light of the above, if we compare the subject and value (as can be deduced from the minutes of the Board meeting of 23 April 2008 and the fairness opinion of Scenari Immobiliari) of the new commissions decided in 2008 with the corresponding nature and value of the contracts signed in 2006, the impression obtained is that the subject of all of these contracts is entirely or partially the same.

In order to settle this uncertainty, the Board of Statutory Auditors asked to examine the contracts approved in June 2008, but at the closing date of this report the company had not yet provided them.

The operation was brought to the attention of Fonsai’s Board of Directors once again at its meeting of 15 October 2008, on the occasion of the conclusion of two further contracts with Im.Co. concerning:

- (i) the construction of technological systems for a payment of EUR 2,025,000.00;
- (ii) building works for the creation of staircases, a new sewerage system and a new footpath, window and door frames, the construction of bunker structures and others, for a payment of EUR 6,835,000.00.

At the meeting in question, the Board of Directors was told that since the above contracts did not contain any unusual clauses, it was not necessary to obtain a legal opinion on them.

At the end of the meeting of 15 October 2008, Fonsai’s Board of Directors gave a unanimous favourable opinion on the conclusion, by the subsidiary Villa Ragionieri, of the aforementioned contracts with Im.Co. for a total payment of EUR 8,860,000.00 plus VAT.

### **3.5 Measures adopted in the conduct of the operation in conformity with the principles of conduct and guidelines for transactions with related parties<sup>3</sup>**

In conformity with the principles of conduct in force in 2008 for transactions with related parties of the type under consideration, the resolution of 15 October 2008 was preceded by:

- the acquisition of a fairness opinion dated 10 October 2008 from Scenari Immobiliari, which judged the above-mentioned sums to be fair;
- a prior favourable opinion from Fonsai's Internal Control Committee on 15 October 2008;
- a prior declaration of interests by the directors belonging to the Ligresti family.

It must, however, be pointed out that the contracts provided to the Board of Statutory Auditors are dated 1 October 2008 (while the resolution in question is dated 15 October 2008), and are signed only by Im.Co.

The two contracts in question are described as follows:

- Rider no. 4 to the contract of 30 January 2004, with a value of EUR 6,835,000.00;
- Rider no. 1 to the contract of 23 June 2008, with a value of EUR 2,025,000.00.

With reference to the latter contract, it must be remembered – as mentioned above – that the Board of Statutory Auditors has been unable to examine its “base” contract, i.e. the contract of 23 June 2008, since at the closing date of this report it has not received it from the business structures.

From an examination of Rider no. 1 alone, dated 1 October 2008, it has been possible to determine that the subject of the original contract was the construction, on the land at Via Ragonieri, of various technological systems and, more precisely, “... for the “Extension” zone – heating, refrigeration, water and firefighting equipment, air-conditioning equipment for magnetic resonance, outpatient laboratory, operating theatre annexes, operating theatres, diagnostics, intensive care, admissions, operating block changing rooms, day rooms, entrance hall, linear accelerators, kitchen, mortuary, control room, computer room, changing rooms, extraction equipment, filters and external air pressurisation, fluid systems equipment, fancoils equipment, radiators equipment, medical gases, distribution system plants, plumbing and drainage equipment, firefighting equipment, methane gas, external methane gas systems, firefighting potable water, rainwater and biological water systems, irrigation equipment, and – for the “Stecca and Archi” zone – day hospital air-conditioning equipment – offices, restaurant, fluid systems equipment, fancoils equipment, radiators equipment, medical gases – distribution, plumbing and drainage equipment, and firefighting equipment”.

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<sup>3</sup> The principles of conduct adopted by Fonsai in 2008 required the examination and approval (normally in advance) of the Board of Directors or the Executive Committee, following an opinion issued by the Internal Control Committee and the acquisition of fairness and/or legal opinions if deemed necessary in relation to the nature, scale and characteristics of the transaction. With specific reference to the type of transaction and the amount limit above which the adoption of the aforesaid principles of conduct was necessary, it is noted that Art. 3.5 of the Guidelines in force in 2008 expressly referred to contracts with a value of more than EUR 1 million.

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A reading of the subject of the contract of 23 June 2008 has confirmed to the Board of Statutory Auditors the need to also examine the 2008 contracts and compare them with the 2006 contracts, since the said subject appears to be virtually identical to that of the previous contract signed between the same parties on 9 May 2006 and forming part of the 2006 contracts not submitted for examination by the Board of Directors of the Parent Company Fonsai.

### **3.6 The settlement agreement of 2009**

After October 2008, it appears to the Board of Statutory Auditors that the “Villa Ragionieri” operation was not put to Fonsai’s Board of Directors again until the meeting of 24 April 2009, when the Board of Directors was called upon to discuss the signature of a settlement agreement with Im.Co., with a value of EUR 27,938,043.00, for the contractualisation of a series of interventions made by Im.Co. *“as a consequence of the important changes made to the project between mid-2006 and mid-2007”*.

These construction works, it was stated at the Board meeting, had been *“made necessary in addition to the interventions concerning the buildings that make up the complex, for the execution of further extension and equipment works (with particular reference to mechanical and electrical works), as well as the supply of furniture and additional fittings.”*

In particular, it was stated at the Board meeting that, of the total amount of EUR 27,938,943.00 plus VAT involved in the settlement agreement:

- approximately EUR 9 million related to major construction works on the “Extension”, “Stecca” and “Archi” buildings;
- approximately EUR 5 million related to works on the structure of the historic villa;
- approximately EUR 3.5 million related to the adaptation of mechanical equipment to suit the new structures;
- approximately EUR 8.9 million related to the adaptation and renewal of electrical equipment;
- approximately EUR 1.5 million related to the supply of furniture and additional fittings.

Fonsai’s Board of Directors decided in favour of the signature, by the subsidiary Villa Ragionieri, of the settlement agreement in question.

This decision was preceded by:

- the acquisition of a legal opinion from the law firm Ashurst;
- the acquisition of a prior opinion from Fonsai’s Internal Control Committee;
- the acquisition of a fairness opinion from Scenari Immobiliari;
- the declaration by Jonella, Giulia Maria and Gioacchino Paolo Ligresti of interests and shareholdings in the subsidiary Im.Co.

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The Board of Statutory Auditors asked to examine the private deed in question and the appraisal made by Scenari Immobiliari.

In this regard, the following is noted.

Firstly, in the appraisal of 13 March 2009, Scenari Immobiliari states that it has taken into consideration a series of contracts signed between Villa Ragionieri and Im.Co., including 5 contracts dated 23 June 2008 which – in terms of their amount and, in some cases, their subject – would appear to coincide with the 5 contracts signed in 2006, which were not submitted for examination by the appraiser.

Secondly, it is noted that the private deed of 28 April 2009 is somewhat complex, since it is intended to regulate a number of aspects.

In this document, we read that the parties intend it to: (i) confirm and ratify the awarding to Im.Co. of the contract for the execution of additional extension and equipment works, the performance of which will result in definitive completion of the contracted works; (ii) recognise as due to Im.Co., “including by way of final settlement of any claim and/or demand in this regard”, the additional sum of EUR 27,938,043.00.

In the following Article 3, the amount in question is “agreed as a fixed sum between the parties, including by way of settlement, for the increased costs incurred as detailed in Article 1 above and in payment for all works executed in performance of the contract cited in the Preamble and in the aforesaid Article 1”.

The detailed breakdown of the sum in question is as follows:

- construction works on the Extension, Stecca and Archi buildings: EUR 9,054,059.00;
- construction works on the historic villa: EUR 5,019,841.00;
- adaptation of mechanical equipment: EUR 3,509,355.00;
- adaptation and renewal of electrical equipment: EUR 8,864,678.00;
- furniture and additional fittings: EUR 1,490,110.00.

These amounts include “any cost incurred by Im.Co., including, but not limited to, in relation to site closure and/or reduced activity as a consequence of the interventions made and due to be made until time of delivery of the works and equipment to the Client”.

Examination of the appraisal made by Scenari Immobiliari shows that “The final settlement amounts requested by Im.Co. and contained in technical annexes with summary descriptions” were to be paid as of the fourth quarter of 2006 (the construction works) and the third quarter of 2007 (the equipment works), and therefore that these works had already been carried out by the date of the Board of Directors’ decision.

Clearly, this is an extremely complex situation that is difficult for the Board of Statutory Auditors to understand based on the examination of a few of the contracts concluded. [

Because of this, the Board of Statutory Auditors considers it essential for the Board of Directors, drawing on the necessary technical assistance, to conduct a thorough survey of all the contractual relations entered into between Villa Ragionieri and Im.Co., including the contracts not provided to the Board of Statutory Auditors, considering also that the 2009 settlement agreement resulted in a considerable increase in the cost of the project as a whole.



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### **3.7 Payments made by Villa Ragionieri**

With reference to the sums paid by Villa Ragionieri to Im.Co. and Europrogetti in relation to the operation in question, these amount to EUR 72,921,569.44 plus VAT.

There are no outstanding commitments.

It must also be noted that, from the accounting reconstruction provided by the business structures, it would appear that no payment was made under the 2006 contracts, while the 2008 contracts appear to have been duly paid.

However, given the complexity of the situation and the substantial value of the 2009 transaction, it is nevertheless considered necessary to perform a precise reconstruction – in both technical and accounting terms – of the history of relations between the parties.

### **3.8 Current status of the investment**

The property project in question has been completed.

Currently, the building belonging to Villa Ragionieri is leased, under an agreement dated 31 December 2010, to the company Centro Oncologico Fiorentino Casa di Cura Villanova S.r.l., which is subject to management and coordination by Fonsai.

The lease has a term of nine years, renewable for a further period of six years, and the rent is set at 14% of the total annual turnover of the lessee's business.

In accordance with a mechanism already widely seen in leasing agreements between the Group companies Fonsai and Atahotels, the agreement in question provides for a guaranteed minimum annual rent of EUR 5,000,000.00. For the first few years of the lease, this minimum was reduced in consideration of the startup costs that would have to be incurred by the lessee.

More specifically, the agreed scaling of the guaranteed minimum annual rent is as follows:

- EUR 2,500,000.00 for the period 1 January - 31 December 2011;
- EUR 3,250,000.00 for the period 1 January - 31 December 2012;
- EUR 3,750,000.00 for the period 1 January - 31 December 2013;
- EUR 4,000,000.00 for the period 1 January - 31 December 2014;
- EUR 4,250,000.00 for the period 1 January - 31 December 2015;
- EUR 4,500,000.00 for the period 1 January - 31 December 2016;
- EUR 4,750,000.00 for the period 1 January - 31 December 2017;
- EUR 5,000,000.00 from 1 January 2018.

Finally, it must be noted that in February 2012, the appraiser Praxi estimated the market value at 31 December 2011 of the property owned by Villa Ragionieri.

This value was set at EUR 77,660,000.00, a sum lower than the market value at 31 December 2010, again estimated by Praxi in February 2011, of EUR 84,470,000.00.

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### **3.9 Conclusions and proposals of the Board of Statutory Auditors**

With regard to the investment in question, it must be noted that, as was done for the other property transactions with related parties already examined in the report pursuant to Art. 2408 of the Civil Code, it does not appear that any activities of selection of the contractual counterparty through specific competitive procedures were carried out. In particular, it does not appear that there was any examination of alternative prices from parties other than the related party.

For all the reasons indicated in the preceding paragraphs, the Board of Statutory Auditors emphasises the advisability for the Board of Directors, with the necessary technical support, to conduct a thorough survey of all the contractual relations entered into between Villa Ragionieri and Im.Co., including the contracts not provided to the Board of Statutory Auditors and the specifications and bills of quantities annexed to the contracts, considering also that the 2009 settlement agreement resulted in a considerable increase in the cost of the project as a whole.

The Board of Statutory Auditors also considers it essential for the Board of Directors to request from the management bodies of Villa Ragionieri and of the subsidiary Centro Oncologico Fiorentino Casa di Cura Villanova S.r.l. (the lessee of the property) a report on the leasing relationship, in order to verify *(i)* whether the rent is properly paid by the lessee; *(ii)* what proportion of the lessee's turnover is represented by the rent; *(iii)* what is the current operating, capital and financial situation of the lessee Centro Oncologico Fiorentino Casa di Cura Villanova S.r.l..

Finally, the Board of Directors is requested: *(iv)* to request an opinion on the correctness and fairness of the criteria and methodologies used for the conduct of the appraisals conducted within the context of the operations under consideration; *(iv)* in the light of what may emerge from the opinion cited in the preceding point, to obtain a legal opinion on the existence of any breaches and on any legal remedies that might be pursued.

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## § 4.1 THE SPONSORSHIP AGREEMENTS WITH LAITÀ' S.R.L.

### **4.1 Sponsorship agreements with Laità S.r.l.**

The company Laità S.r.l. (hereinafter "Laità"), wholly owned by Compagnia Fiduciaria Nazionale S.p.A., is a related party of Fonsai.

The related status has been confirmed by the Chairman Jonella Ligresti, who on 1 February 2012 included this company in the list of those in which she has an interest and/or shareholdings.

With regard to the contractual relations entered into with this company, it is noted that, according to the documentation available to this Board, the following six sponsorship contracts appear to have been concluded with Fonsai or its subsidiaries:

1. Contract dated 19 May 2003 between Laità and Fonsai, with the following subject: "*Laità grants to Fondiaria - Sai the right to acquire the designation of "Main Sponsor" [...] Laità also grants to Fondiaria - Sai the right to use, freely and without prior authorisation, the wording "Official Sponsor" of Laità for commercial, promotional and advertising initiatives concerning products and services of Fondiaria - Sai [...]*". Laità also undertook, among other things: (i) to include the Fondiaria - Sai logo in a visible form during official competitions, practices and training sessions, and to mention the designation as Main Sponsor in all advertising material relating to the corporate activities; (ii) to include the Fondiaria - SAI trademark in all places where the corporate activities are conducted, to the exclusion of any other trademark. This contract had a term of 15 years, expiring on 1 June 2008, and provided for a total payment of EUR 900,000 plus VAT;
2. Contract dated 19 May 2003 between Laità and Milano Assicurazioni S.p.A., a subsidiary of Fonsai, with the following subject: "*Laità grants to Milano the right to acquire the designation of "Official Sponsor" [...], without prejudice to the designation of "Main Sponsor" granted to Fondiaria - Sai [...]* Laità also grants to MILANO the right to use, freely and without prior authorisation, the wording "Official Sponsor" of Laità for commercial, promotional and advertising initiatives concerning products and services of MILANO [...]. Laità also undertook, among other things: (i) to include the MILANO logo in a visible form during official competitions, practices and training sessions, and to mention the designation as Official Sponsor in all advertising material relating to the corporate activities; (ii) to include the MILANO trademark in all places where the corporate activities are conducted, to the exclusion of any other trademark. This contract had a term of 15 years, expiring on 1 June 2008, and provided for a total payment of EUR 500,000 plus VAT;
3. Contract dated 10 April 2007 between Laità and Uniservizi S.c.r.l., a subsidiary of Fonsai, with the following subject: "*Laità grants to Uniservizi the right to acquire the designation of "Main Sponsor" on behalf of Gruppo Fondiaria - SAI [...]* Laità also grants to Uniservizi the right to use, freely and without prior authorisation, the wording "Official Sponsor" of Laità for commercial, promotional and advertising initiatives

concerning products and services of Gruppo Fondiaria - SAI". Laità also undertook, among other things: (i) to include the Gruppo Fondiaria - SAI logo in a visible form during official competitions and training sessions, and to mention the designation as Main Sponsor in all advertising material relating to the corporate activities; (ii) to include the Gruppo Fondiaria - SAI trademark in all places where the corporate activities are conducted, to the exclusion of any other trademark. This contract had a term from 1 May 2007 to 31 December 2008, and provided for a total payment of EUR 1,000,000 plus VAT;

4. Contract dated 10 July 2009 between Laità and Fonsai, with the following subject: "*Laità grants to Fondiaria Sai the right to acquire the designation of "Main Sponsor" [...] Laità also grants to Fondiaria Sai the right to use, freely and without prior authorisation, the wording "Official Sponsor" of Laità for commercial, promotional and advertising initiatives concerning products and services of Fondiaria Sai [...] Laità also undertakes to mention the designation of Fondiaria - Sai and to affix the trademark "Fondiaria - SAI" and other distinctive signs and symbols belonging to the Sponsor (the "Trademark") in the forms that will be jointly agreed from time to time, in any event ensuring greater visibility with respect to any other official sponsors, in the context of its activity and participation in sporting events*". This contract had a term from 10 July 2009 to 31 December 2009 and provided for a total payment of EUR 980,000,00 plus VAT;
5. Contract dated 30 January 2010 between Laità and Fonsai, with the following subject: "*Laità grants to Fondiaria Sai the right to acquire the designation of "Main Sponsor" [...] Laità also grants to Fondiaria Sai the right to use, freely and without prior authorisation, the wording "Official Sponsor" of Laità for commercial, promotional and advertising initiatives concerning products and services of Fondiaria - SAI [...] Laità also undertakes to mention the designation of Fondiaria - Sai and to affix the trademark "Fondiaria - SAI" and other distinctive signs and symbols belonging to the Sponsor (the "Trademark") in the forms that will be jointly agreed from time to time, in any event ensuring greater visibility with respect to any other official sponsors, in the context of its activity and participation in sporting events*". This contract had a term lasting until 31 December 2010 and provided for a total payment of EUR 980,000.00 plus VAT;
6. Contract dated 15 July 2010 between Laità S.r.l. and Auto Presto & Bene S.p.A., a subsidiary of Fonsai, with the following subject: "*Laità grants to AP&B the right to acquire the designation of "Main Sponsor" [...] Laità also grants to AP&B the right to use, freely and without prior authorisation, the wording "Official Sponsor" of Laità for commercial, promotional and advertising initiatives concerning products and services of AP&B [...] Laità also undertakes to mention the designation of AP&B and to affix the trademark "AP&B" and other distinctive signs and symbols belonging to the Sponsor (the "Trademark") in the forms that will be jointly agreed from time to time, in the context of its activity and participation in sporting events*". This contract had a term from 1 July 2010 to 30 June 2011 and provided for a total payment of EUR 400,000.00 plus VAT.

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#### **4.2 Compliance with prescriptions concerning directors' interests and principles of conduct for transactions with related parties**

With regard to compliance, in the conclusion of the aforementioned contracts, with current prescriptions concerning directors' interests and transactions with related parties, the following is noted.

With reference to the first two contracts of 19 May 2003, respectively between Laità and Fonsai and between Laità and Milano Assicurazioni, it is noted that, at the time, the companies involved did not yet have suitable procedures for the approval of transactions with related parties.

The signature of these contracts therefore falls within the authority of the Chief Executive Officer, who at the time had been awarded all powers of ordinary and extraordinary administration of both companies.

With reference to the contracts concluded between Fonsai and Laità on 10 May 2009 and 30 January 2010, as well as those concluded between the Fonsai subsidiaries Uniservizi S.r.l. and Auto Presto & Bene S.p.A., and Laità, respectively on 10 April 2007 and 15 July 2010, it is noted that, according to the principles adopted by Fonsai, at the dates in question, with regard to transactions with related parties, there was a requirement for sponsorship contracts, among others, *"involving an annual payment of more than EUR 1 million"* to be submitted *"for approval by the Board of Directors or the Executive Committee, normally in advance [...]"*, *"even when they are concluded through subsidiaries"*.

From December 2007 it was also required for the Board of Directors of the Parent Company to deliberate *"after obtaining the opinion of the Internal Control Committee"*.

In relation to the above, it does not appear to the Board of Statutory Auditors that the contracts in question were submitted to Fonsai's Board of Directors, or to the Internal Control Committee for a prior opinion with regard to the 2009 and 2010 contracts, because – according to the information given by the company to ISVAP – the payments agreed in them were below the threshold of EUR 1 million established for referral of the operation for prior deliberation by the Board of Directors of the Parent Company.

It appears that the conclusion of these contracts was therefore carried out by the delegated bodies of the respective companies, within the scope of the powers granted to them. It also appears that these bodies did not see fit to obtain fairness or legal opinions in relation to these contracts.

It is noted that the non-referral of these contracts to the Board of Directors resulted in non-activation of the information procedures in relation to any directors' interests and of the specific justification of the decision as provided for by paragraphs 1 and 2 of Art. 2391 of the Civil Code.

#### **4.3 ISVAP's remarks and the responses made by the company**

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With regard to the above-mentioned contracts, except for the one with Auto Presto & Bene S.p.A., which was not taken into consideration in the Supervisory Authority's investigations, it is noted that ISVAP, on completion of the inspection concluded in April 2011, had identified a number of critical issues, in particular:

- with regard to the contracts concluded between Laità and Fonsai in 2009 and 2010, the Supervisory Authority had observed that:
  - *“the disbursements shown in the accounts are for EUR 1.076 million, in both 2009 and 2010. These amounts represent the cost actually incurred by the company, in the presence, as declared, of non-deductible VAT. The related contracts appear to be unknown to the Board of Directors, despite the fact that the overall cost incurred by the company places this transaction among those required to be submitted for examination by the Board”*;
  - *“the payment envisaged and made for the entire five-year period 2003-2008 (EUR 1.08 million) essentially matches the payment made in the following two financial years (EUR 1.076 million for 2009 and EUR 1.076 million for 2010), without any assessment on this aspect”*;
- with regard to the contract between Laità and Uniservizi S.c.a.r.l., ISVAP had observed that:
  - *“the analogous service agreement in existence with the subsidiary Uniservizi in 2007 (EUR 1.16 million) does not appear to have been submitted for examination by the Board”*;
  - *“with regard to the sponsorship contract between the subsidiaries Uniservizi S.c.r.l. and Laità S.r.l., the following anomaly is pointed out:*
    - *UNISERVIZI S.c.r.l. pays to Laità S.r.l. the same amount as that paid by Laità S.r.l. to Fondiaria - SAI in respect of another contract;*
    - *temporally speaking, there is a broad overlap with the analogous contract between the Parent Company Fondiaria - SAI and Laità S.r.l.”*

With regard to all the above-mentioned contracts, the Supervisory Authority had observed that:

- *“the aforementioned contracts do not appear to have been submitted for examination by the Internal Control Committee, nor does it appear that any fairness or legal opinions were ever obtained as required, in both cases, by the company's internal regulations”*;
- *“it appears that no control measure aimed at evaluating the service rendered has ever been formalised, nor do there appear to be any standardised procedures for the authorisation of payments”*.

Following these remarks from ISVAP, Fonsai's Board of Directors met on 21 July 2011, approving the content of a document explaining the transaction to be submitted to the Supervisory Authority, in which, among other things:

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- it was confirmed that the conclusion of the contracts had not been submitted for prior approval by the Board because the value of the payments to the counterparty was below the threshold identified by the principles of conduct in force at the time;

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- confirmation was given of the company's interest in the transaction because it *"was consistent with the Group's investment policy and was aimed, at that time, at the widespread promotion of the new logo following the merger between La Fondiaria Assicurazioni S.p.A. and SAI S.p.A. [...] In particular, the sponsorship contracts concluded between Fondiaria - Sai/UNISERVIZI and Laità allowed the company to benefit from a service of ongoing diffusion of the corporate trademark during various sporting events held during the period of validity of the said contracts. The diffusion of the corporate logo in programmes, in printed, televised and online advertising material, and in the places where the sporting events in which Laità took part were held from time to time, to the exclusion of any other trademark or, in any event, with a guarantee of the visibility of the corporate trademark, allowed the company to obtain commercial advantages"*;
- it was stated that *"the continuity of the service provided (from 2003 to 2010), which can be documented not only by photographs provided by the company to ISVAP, but also by press reports from the period of promotion and by the description of the events produced during the course of the sporting events, is considered to be proportionate to the disbursements shown in the accounts"*;
- it was stated that *"the transaction is concluded from a perspective of general containment of promotional costs"*.

These clarifications by the company prompted a further note from ISVAP on 2 November 2011, in which the Supervisory Authority – observing that the clarifications given had lacked *"precise supporting evidence relating to the quantum and the quomodo of the activities actually carried out"* – requested any relevant documentation and related evaluation by the Board.

In order to provide the requested clarifications, the Board of Directors met on 29 December 2011 and on 30 December 2011 sent a letter to ISVAP in which it confirmed Fonsai's interest in the promotional activity in question. To demonstrate the sponsorship activity, this letter was also accompanied by photographs and yearbooks for horse racing events on the world circuit for the years 2008, 2009 and 2010 which documented the presence of the company's logo.

The Board of Directors also obtained (and sent to the Supervisory Authority) a legal opinion from Prof. Franco Bonelli and the lawyer Roberto Cera, who – in relation to the analysed sponsorship contracts (which did not include the contracts with Milano and Auto Presto & Bene S.p.A.) – confirmed the accuracy of the statements already made to ISVAP by the company.

#### **4.4 Conclusions and proposals of the Board of Statutory Auditors**

In relation to the transaction described above, the undersigned Board maintains that, without prejudice to that contained herein, there are no significant issues to report in addition to what has already been shown and reported above by ISVAP to the company.

As previously mentioned, it appears that, following examination of the subject of some of the contracts mentioned above, some clear anomalies have emerged.



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In particular:

- the subject of the contract concluded by Uniservizi with Laità, valid from 1 May 2007 to 31 December 2008, which concerns the promotion of the “Fondiaria-SAI Group” logo, appears very similar to the subject of the contract dated 19 May 2003 between Fonsai and Laità (valid until 1 June 2008), which promotes the “Fondiaria-SAI” logo, without referring to the Group;
- the contract concluded by Laità with Auto Presto & Bene S.p.A. (valid from 1 July 2010 to 30 June 2011), which grants to the latter the right to become the “Main Sponsor” on behalf of Laità; however, Laità also granted the same right to Fonsai in a contract dated 30 January 2010, valid until 31 December 2010.

In view of all that has come to light thus far, the undersigned Board considers it appropriate for the following to be acquired by the Board of Directors for the contracts in question:

- a legal opinion, in order to verify whether the company or other Group companies have drawn up contractual agreements with Laità in order to obtain services which could have been obtained according to another contract already in force;
- a fairness opinion, in order to verify whether the remuneration set forth for Laità pursuant to the aforementioned contracts is in line with a normal market remuneration for this type of services;
- in light of what emerges from this fairness opinion, a legal opinion on any remedies that might be pursued.

Moreover, the Board of Statutory Auditors, in view of the fact that the documentation made available by the company shows only the promotion of the “Fondiaria-SAI Group” logo and, in some photographs, the “Fondiaria-SAI” logo, deems it necessary for the Board of Directors to obtain a report from Milano Assicurazioni, Uniservizi S.c.a.r.l. and Auto Presto & Bene S.p.A. on services which were performed in their favour by Laità in execution of the aforementioned contracts.

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## **5. THE CONTRACT WITH EUROPROGETTI IN THE CONTEXT OF THE “VIA DE CASTILLIA” OPERATION**

On page 39 of its report pursuant to Article 2408 of the Italian Civil Code, the Board of Statutory Auditors indicates that, a few days before the Shareholders’ Meeting of 19 March 2012, it learnt of the existence of a contract awarded to the company Europrogetti S.r.l. (a related party of Fonsai) as part of the “Via De Castillia” property transaction.

As previously agreed on that occasion, the Board of Statutory Auditors asked to examine the contract, dated 4 April 2003, in which Milano Assicurazioni had commissioned Europrogetti to survey the project for the construction of a commercial and services building with private parking for public use.

The agreed consideration was EUR 3,920,000.00 plus VAT.

As emphasised on several occasions, in 2003 the Group did not yet have specific principles of conduct for the execution of transactions with related parties.

However, the undersigned Board of Statutory Auditors asked the company whether, despite this, the stipulation of the contract in question would be preceded by the acquirement of any fairness and/or legal opinions.

The company confirmed that in respect to the contract in question, at the time it had not acquired any specific opinion.

Furthermore, the Board of Statutory Auditors requested a copy of the minutes from the meeting of the Board of Directors in which the awarding of the contract in question was discussed. At the closing date of this report, the minutes in question had not yet been provided.

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## **6. THE OPERATIONS FOR THE PURCHASE OF LAND IN BRUZZANO (MI) AND OF BUILDING RIGHTS IN PIEVE EMANUELE (MI)**

### **6.1 The Board of Directors' meeting of 7 July 2009**

The two purchase transactions currently under consideration were examined at the meeting of the Board of Directors of 7 July 2009.

With specific reference to the purchase of land located in Bruzzano, the Board of Directors was informed that these plots were north of Milan (where the headquarters of Milano Assicurazioni and other Group companies were also located); that the area in question was subject to an apportionment plan by way of a change to the local strategic plan; and that in this area Meridiano Bruzzano S.r.l. (wholly owned by Immobiliare Lombarda) had a development initiative under way with Im.Co. and Altair S.p.A. for the building of a residential complex of around 100,000 cubic metres, in addition to commercial buildings and offices.

The selling parties were Im.Co and Altair S.p.A., both related parties of Fonsai.

The Board of Directors was also informed that the communication relating to the start of the construction work could be submitted in 2012 and that the development could then be completed in three years, with good profitability prospects for Fonsai.

The price agreed was EUR 14,054,000.00, and EUR 2,730,000 was assigned to a small plot of the land in question which was the subject of a dispute with a third party. This amount, based on agreements reached with the selling companies, would be withheld by Fonsai until Im.Co. provided a bank or insurance guarantee of the refund due to Fonsai for the amount pertaining to this plot of land in the event of an adverse outcome in the dispute with the third-party claimant.

At the end of the meeting in question, the Fonsai Board of Directors resolved in favour of the purchase of the land in question, subject to:

- a declaration by directors Jonella, Gioacchino Paolo and Giulia Maria Ligresti of interests and shareholdings in the direct parent company of Im.Co. and indirect parent company of Altair;
  - the acquirement of a fairness opinion from independent advisor Scenari Immobiliari dated June 2009, which, pursuant to the conversion method, confirms the fairness of the consideration agreed by the parties;<sup>4</sup>
  - the acquirement of a favourable opinion from the Internal Control Committee of Fonsai.<sup>5</sup>
- No relevant legal opinion was acquired.

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<sup>4</sup> To define "market value" the independent advisor stated that it had used the definition found in Article 2 of ISVAP Measure No. 1915-G of 20 July 2001.

<sup>5</sup> Moreover, the Internal Control Committee pointed out that the assessment of the independent advisor differed, in respect to the discount rate applied, from that drawn up by the same independent advisor for the purchase of building rights in Pieve Emanuele, which will be discussed below. In this regard the Internal Control Committee was presented with an addendum to the valuation which provided clarifications on the methods adopted and the circumstances which recommended the adoption of two different rates.

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The transfer agreements concerning the land in question were not included in the documentation submitted to the Board of Statutory Auditors.

However, the invoices issued by the selling companies were submitted, dated 29 July 2009.

With specific reference to the purchase of building rights in Pieve Emanuele (MI), the Board of Directors was informed that agreements had been defined with the related party Im.Co. regarding the purchase by Fonsai of volumetric building rights on the land in the Municipality of Pieve Emanuele (MI).

Specifically, it was reported to the Board of Directors that the seller Im.Co. was not the owner of the land in question, having sold it in 2007 to the municipality of Pieve Emanuele to fulfil the obligations of the urban planning agreement; that the area in question was subject to an apportionment plan; and that Immobiliare Lombarda and Im.Co. were in the process of a development initiative in the area for the construction of a residential complex along with a commercial-use building, with good profitability prospects for Fonsai.

The price agreed was EUR 2,500,000.00.

At the end of the meeting in question, the Fonsai Board of Directors resolved in favour of the purchase of the building rights in question, subject to:

- a declaration by directors Jonella, Gioacchino Paolo and Giulia Maria Ligresti of interests and shareholdings in the direct parent company of the selling company, Im.Co.;
- the acquirement of a fairness opinion from independent advisor Scenari Immobiliari dated June 2009, which, pursuant to the conversion method, confirms the fairness of the consideration agreed by the parties;<sup>6</sup>
- the acquirement of a favourable opinion from the Internal Control Committee of Fonsai.<sup>7</sup>

No relevant legal opinion was acquired, since this was not considered necessary by the Board of Directors because the transaction did not present any specific issues.

The transfer agreement concerning the building rights in question was not included in the documentation submitted to the Board of Statutory Auditors.

However, the invoice issued by the selling company was submitted, dated 29 July 2009.

## **6.2 Observations of the Board of Statutory Auditors**

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<sup>6</sup> To define “market value” the independent advisor stated that it had used the definition found in Article 2 of ISVAP Measure No. 1915-G of 20 July 2001.

<sup>7</sup> Upon examining the fairness opinion, the Internal Control Committee reported on the clarifications obtained in the addendum of July 2009 from the independent advisor, which illustrated the various elements taken into consideration, which led to the use of two different discounted cash flow rates in the assessment in question and that relating to the sale of the land in Bruzzano.

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Along with the documentation relating to the transactions in question, the Board of Statutory Auditors was also presented with a short note prepared in January 2011 by the company for ISVAP, which explained that *“At present no assignment for the construction of works has been granted with regard to Bruzzano or to building rights in Pieve Emanuele”*.

Given that, on the other hand, the existence of development initiatives in the two areas in question was reported at the meeting of the Fonsai Board of Directors of 7 July 2009, the Board of Statutory Auditors considered it necessary that the Board of Directors clarify the status of the aforementioned development initiatives, determining, if started: (i) the status of the initiative and (ii) whether contracts with related parties were concluded in relation to the initiative; and if not started: (iii) the reasons why it had not been started and (iv) the prospects for use of the property and the building rights purchased, considering in particular that, with regard to the purchase of land in Bruzzano, the Board of Directors’ meeting of 7 July 2009 was informed that the communication relating to the start of the construction work could be submitted in 2012.

The Board of Statutory Auditors considers it necessary – in the context of the analyses that the incoming control body that will replace this one will wish to carry out - for the sales contracts that have not yet been submitted to this Board to also be acquired and examined.

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## **7. CONSTRUCTION OF “THE ONE” HOTEL IN SAN DONATO MILANESE**

With regard to the transaction in question, the Board of Statutory Auditors received the following documents from the company:

- extracts of the minutes of the Board of Directors’ meetings of 16 February 2005, 27 April 2005 and 24 April 2009;
- extract of the minutes of the meeting of the Internal Control Committee of 22 April 2009, with sheet;
- two valuations from Scenari Immobiliari, the first relating to the changes made to the original project and the second to the fairness of the lease agreed with Atahotels.

After examining these documents, together with two other documents previously obtained by the Board of Statutory Auditors (invoice concerning land sale and valuation by Scenari Immobiliari dated November 2004), the undersigned Board was able to reconstruct the transaction as shown below, without prejudice to the need to examine many other documents already requested from the company and which are discussed below.

### **7.1 Description of the original operation**

The operation was resolved upon by the Fonsai Board of Directors at the meetings of 16 February and 27 April 2005, and can be summarised as follows:

- (i) the sale of a buildable area owned by Meridiano Secondo S.r.l. (wholly owned by Immobiliare Lombarda, hereafter “Meridiano Secondo”), located at Via Maastricht, San Donato Milanese, to I.C.E.IN. S.p.A. (hereafter “Icein”), established as a related party of Fonsai;
- (ii) on behalf of the aforementioned related party Icein, the construction on the area which is the subject of the aforementioned sale of an accommodation complex to be leased subsequently to Atahotels, which Progestim (which subsequently became Immobiliare Lombarda), upon sale of the land, undertook to purchase using the off-plan purchasing formula.

The interest for Progestim in the realisation of this operation was described as follows at the meeting of the Board of Directors of 16 February 2005: *“Progestim would transfer all entrepreneurial risks to the construction company, with the latter assuming all commitments of an organisational and site-control nature, which means that Progestim would retain exclusively the role of an investor. Furthermore, the fixed purchase price provides protection against any price reviews affecting the materials and labour. As a result of the operation, therefore, Progestim will become the owner of a property asset at market value, without taking on any of the entrepreneurial charges (and associated risks) which are typical of construction activity, thus limiting its involvement to that of an institutional investor. Furthermore, the lease to Atahotels S.p.A. would guarantee payment of an annual rent equal to 6.4% of the investment”*.

In the minutes of the subsequent meeting of 27 April 2005, it was reiterated that *“the economic interest of the Fondiaria-SAI Group in the operation is represented by ownership of the accommodation complex and the economic exploitation of the same...”*.

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## **7.2 Measures adopted pursuant to the principles of conduct and guidelines for transactions with related parties**<sup>8</sup>

Again after examination of the minutes of the Board of Directors' meetings of 16 February 2005 and 27 April 2005, it was established that, prior to the resolution of the transaction by the Fonsai Board of Directors, the following were approved:<sup>9</sup>

- an initial valuation from the independent advisor Scenari Immobiliari, dated 23 November 2004, which estimated the value of the asset subject to construction at EUR 18 million by applying the income capitalisation method, i.e. applying the capitalisation rate of 6.40% to a rent quantified by the independent advisor at EUR 1,150,087 (16% of the potential turnover of the structure);<sup>10</sup>
- a second valuation by Scenari Immobiliari which assessed the value of the buildable area at no less than EUR 4 million, pursuant to the discounted cash flow method;
- a fairness opinion from KPMG Corporate Finance, which, based on the discounted cash flow method, identified (i) the value of the building at between EUR 15.9 million and EUR 21 million and (ii) the value of the land between EUR 4.4 million and EUR 4.9 million;<sup>11</sup>
- a legal opinion from the law firm Ashurst, which, assuming the rewriting of some clauses and the adoption of some suggestions, confirmed that the contractual agreements were in line with what was generally stipulated between non-related parties.

At the end of the meeting of 27 April 2005, the Fonsai Board of Directors expressed a favourable opinion on the transaction, subject to the abstention from voting of Jonella, Giulia Maria and Gioacchino Paolo Ligresti and the surveyor, Antonio Talarico.

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<sup>8</sup> The principles of conduct adopted by Fonsai on 16 February 2005 for transactions with related parties such as those discussed herein, including any that are carried out through subsidiaries, were subject to, *inter alia*, examination and approval by the Board of Directors or the Executive Committee, normally in advance, and the acquirement of fairness and/or legal opinions where applicable in relation to the nature, scale and characteristics of the transaction.

With reference to the nature of the transaction and its value, point 3.5 of the principles of conduct adopted by Fonsai covered the sale of buildings for a price higher than EUR 4 million.

<sup>9</sup> It should be reiterated that the documentation referenced (except for the fairness opinion of Scenari Immobiliari of November 2004 on the property to be built) has not been examined by the Board of Statutory Auditors since it has not yet been submitted to the company.  
The information reported came entirely from the minutes of the Board of Directors' meeting referenced above.

<sup>10</sup> To define "market value" the independent advisor stated that it had used the definition found in Article 2 of ISVAP Measure No. 1915-G of 20 July 2001.

<sup>11</sup> The minutes of 27 April 2005 show that the KPMG valuations assumed that the accommodation complex would begin generating income by 31 December 2006.

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The minutes of the next meeting held on 24 April 2009 show that, at the same time as the signing of the off-plan sale contract, Progestim had entered into a preliminary lease agreement with Atahotels for a fixed annual rent of EUR 1,150,000.

As previously mentioned, to date the Board of Statutory Auditors has not received the sale contract for the land or the off-plan purchase contract. Therefore it was not able to confirm the presence of any clauses governing changes made, nor whether any contractual penalties for late delivery were present in relation to the off-plan purchase.

Nonetheless, the Board was able to examine the invoice issued by Meridiano Secondo relating to the sale of land and the current account statement of Meridiano Secondo of 31 May 2005, which proved receipt of the sale price of the land.

### **7.3 Subsequent developments in the operation**

From the documentation available to the Board of Statutory Auditors, it does not appear that – subsequent to 2005 – the operation was again submitted to the Fonsai Board of Directors until the meeting of 24 April 2007.

At the time of that meeting, besides reconstructing the origin of the operation, the Board of Directors was told about the changes to the building complex under construction agreed by the parties and executed in order to provide the building with more prestigious and valuable content, considering trends in the sector in terms of both technology and regulations.

The Board of Directors was also informed of the agreement reached by the parties on an extension of the deadline for delivery of the property (a deadline initially set for 31 December 2006) and on an increase in the sale price.

As for the changes made to the original design, a description thereof was provided to the Board of Directors, from both a qualitative and a quantitative standpoint, and the cost was quantified at EUR 10.3 million plus VAT.

The Board was also informed that *“The increased quantitative and qualitative level afforded to the building complex being completed has meant a revision of the rent, which has been established at 16% of the overall amount of revenues, with guaranteed minimum annual rent of EUR 1,698,000.00.”*

It was also noted that a reduction in the rent was provided for the first four years of the lease and that the lease agreement was assigned in the meantime by Atahotels to its subsidiary Ital H&R S.r.l.

At the end of the meeting, the Board of Directors expressed its opinion in favour of the following:

- the extension until 31 May 2009 of the deadline for delivery of the property in question, without the application of any penalty payable by Icein;
- the payment of an increased price of EUR 10.3 million plus VAT;



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- the signing of a lease agreement between Immobiliare Lombarda and Ital H&R S.r.l. under the economic terms described above.

It is worth noting, however, that the aforementioned resolution of the Board of Directors was adopted with respect to changes already made and agreements – on an extension of the deadline, the exclusion of any penalty and an increase in the price – essentially already reached by the parties.

We cannot fail to note that the Board of Directors failed to inquire into the future profitability of the investment, considering the fact that the fairness opinions from Scenari Immobiliari and KPMG, obtained in November 2004, provided for delivery of the property by the fourth quarter of 2006, a deadline long since passed by that date.

#### **7.4 Measures adopted in the conduct of the operation in conformity with the principles of conduct and guidelines for transactions with related parties**<sup>12</sup>

In accordance with the principles of conduct adopted at the time for related-party transactions, prior to the resolution by the Fonsai Board of Directors of 24 April 2009, the following were obtained:

- a fairness opinion from Scenari Immobiliari of 20 April 2009, which denied the fairness of Icein's request for payment of EUR 12.9 million for the changes made, but deemed a price increase of EUR 10.3 million to be fair;
- an opinion from Scenari Immobiliari of 20 April 2009, which found rent of EUR 1,698,000.00 to be fair, having identified a sustainable rent as ranging from EUR 1,523,714 to EUR 1,724,214 and a percentage of property earnings (i.e. the "*portion of turnover that a business operator is capable of paying to the property as annual rent*") set at between 32% and 34%.

No relevant legal opinion was obtained, however, since it was considered that the notarial deed did not pose problems such as to require the issue of a legal opinion.

In addition, it is noted that:

- during the meeting on 24 April 2009, the members of the Ligresti family acknowledged their interests and shareholdings in the parent company of Icein and Ital H&R S.r.l., while directors Marchionni,

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<sup>12</sup> The principles of conduct adopted by Fonsai in 2009 for related-party transactions of the sort being examined – including if entered into through subsidiaries - provided, among other things, for examination and approval, normally beforehand, by the Board of Directors, following the opinion of the Internal Control Committee and the obtainment of fairness and/or legal opinions when deemed necessary due to the nature, scope and characteristics of the transaction.

With reference to the nature of the transaction and its value, point 3.5 of the principles of conduct adopted by Fonsai provided for property purchases and sales with a value in excess of EUR 4 million.

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Paolo Ligresti, Talarico and Spiniello acknowledged that they belonged to the Supervisory Board of Atahotels, the parent company of Ital H&R S.r.l.;

- the resolution by the Fonsai Board of Directors was preceded by the obtainment of a favourable opinion from the Internal Control Committee, which – at a meeting on 22 April 2009 – had expressed an opinion in favour of the signing of the said private instrument.

#### **7.5 Payments made to Icein**

With reference to the amounts paid to Icein, the undersigned Board of Statutory Auditors is waiting to be sent a detailed accounting reconstruction of the transaction.

#### **7.6 Current status of the investment and proposals of the Board of Statutory Auditors**

The property in question was delivered and is currently leased to Ital H&R S.r.l.

With reference to the agreed eventual guaranteed minimum rent, it should be recalled (see page 22 of the report pursuant to Art. 2408 of the Civil Code) that the Atahotels business structures indicated that the said rent will in fact represent approximately 50% of the property's revenues, a figure much higher than the 16% provided for by the lease agreement and the 20% - 25% deemed fair according to theory and the market.

With respect to the property investment in question, the Board of Statutory Auditors therefore makes reference to the considerations and proposals already made in the report pursuant to Art. 2408 of the Civil Code, in the section on hotel lease agreements.

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## **§ 8. PURCHASE OF ALERION SHARES**

### **8.1 The Board of Directors' meeting of 26 March 2010**

The transaction in question was brought to the attention of the Fonsai Board of Directors during the meeting on 26 March 2010, during which the Board was informed that the subsidiary Milano Assicurazioni had received an offer from Finadin S.p.A. (hereinafter simply "Finadin") to acquire the stake held by the latter in Alerion CleanPower S.p.A. (hereinafter simply "Alerion") and comprising 6,600,000 shares, equal to 1.50% of the share capital.

Specifically, the Board was told that Alerion was an electricity business group that based its business on producing electricity from renewable sources, through a diversified portfolio of plants in the wind, photovoltaic and biomass sector, and that Milano Assicurazioni and Fonsai already had shareholdings in the company, with stakes of 1.91% and 1.50% respectively.

The Board of Directors was informed that in recent months Alerion shares had achieved a *"very positive stock market performance both due to the positive general consensus on its business sector and due to the specific improvement of the company's outlook thanks partly to recent authorisations that it has obtained for the construction of new photovoltaic plants."*

It was also noted that the completion of the purchase transaction would have led to an increase in the Fonsai Group's stake in Alerion, to 4.91%, with a consequent increase in the Group's stake in a shareholders' agreement<sup>13</sup> involving the share capital of Alerion, which was associated with the possibility of appointing its own representative to the Board of Directors of the company.

As for the valuation of the stake, it was proposed to use the stock market prices based on the assumption that they would represent the so-called cash equivalent in a non-arbitrary manner, taking as a reference the official Alerion share price posted on the trading day prior to the date of transfer.

It was also noted that – based on existing prices at that time – the payment for the purchase would have been about EUR 3.8 million and that Finadin's sale offer was subject to the fact that the official price for Alerion shares on the day prior to the transfer had to be at least EUR 0.4846.

Finally, the Fonsai Board of Directors was informed that the counterpart body of the subsidiary Milano Assicurazioni had approved the transaction, following the opinion of its Internal Control Committee and subject to a resolution in favour by the Fonsai Board.

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<sup>13</sup> The Board of Statutory Auditors has requested a copy of said agreement, which to date has not been received.

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At the end of the meeting, the Fonsai Board of Directors expressed an opinion in favour of the acquisition by the subsidiary Milano Assicurazioni of 6,600,000 Alerion shares owned by Finadin.

## **8.2 Measures adopted in conformity with the principles of conduct and guidelines for transactions with related parties**<sup>14</sup>

The purchase resolution by the Fonsai Board of Directors was preceded by:

- a fairness opinion from KPMG Advisory S.p.A. dated March 2010 on the methodology for determining the price per share of Alerion used for the sale by Finadin to Milano Assicurazioni<sup>15</sup>;
- an opinion in favour from the Fonsai Internal Control Committee.

No legal opinion was obtained, however, since this was deemed unnecessary in view of the characteristics of the transaction.

In addition, we note that during the meeting on 26 March 2010:

- Jonella, Giulia Maria and Gioacchino Paolo Ligresti acknowledged that they are shareholders of Premafin Finanziaria S.p.A. and hold offices in that company, which is the parent of Finadin;
- Mr Talarico and Jonella and Giulia Maria Ligresti acknowledged that they hold offices in Finadin.

The sale agreement being examined closed on the same day, 26 March 2010, by means of the acceptance of a previous offer from Finadin by Milano Assicurazioni.

According to what appears in an information sheet prepared by the Board of Directors of the company for the Supervisory Authority, the transaction was made on 30 March 2010 at an overall price of EUR 3,799,620.00, equal to 0.5757 per share.

This price, as the company has noted, proved to be not much lower than the one assumed during the Board of Directors' meeting on 26 March 2010 and equal to about EUR 3.8 million, corresponding to about EUR 0.5758 per share.

That sheet also showed that, in the period from 1 to 25 March 2010, the official price of Alerion shares varied between EUR 0.557 to 0.585 per share, and that the minimum price indicated by the seller (as

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<sup>14</sup> The principles of conduct adopted by Fonsai in 2010 for related-party transactions of the sort being examined – including if entered into through subsidiaries – provided, among other things, for examination and approval, normally beforehand, by the Board of Directors or the Executive Committee, following an opinion from the Internal Control Committee and the obtaining of fairness and/or legal opinions when deemed necessary due to the nature, scope and characteristics of the transaction.

With reference to the nature of the transaction and its value, point 3.5 of the principles of conduct adopted by Fonsai included purchases and sales of non-controlling stakes for a price in excess of EUR 2 million.

<sup>15</sup> The said expert concluded that “...the criterion of stock market prices as the cash equivalent for the determination of the Price for the purchase by Milano Assicurazioni S.p.A. of the 1.5% Stake in Alerion is reasonable and not arbitrary in this case.”

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the price below which said seller was not willing to close the transaction) was 16% lower than the official price on 25 March 2010, corresponding to EUR 0.577 per share.

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## **§ 9. RESTRUCTURING AND EXPANSION OF THE “GOLF HOTEL” PROPERTY IN MADONNA DI CAMPIGLIO**

### **9.1 The 2007 contracts**

In 2007, Campo Carlo Magno S.p.A. (a subsidiary of Fonsai through Milano Assicurazioni) entered into the following contracts with Icein:

- on 26 July 2007, contract concerning the execution of the restructuring work for the 4<sup>th</sup> floor, new wing, of the Golf Hotel, for a fee of EUR 509,660.00;
- on 26 July 2007, contract concerning the execution of the restructuring work for the 3<sup>rd</sup> floor, new wing, of the Golf Hotel, for a fee of EUR 531,900.00;
- on 26 July 2007, contract concerning the execution of the restructuring work for the 1<sup>st</sup> and 2<sup>nd</sup> floors, new wing, of the Golf Hotel, for a fee of EUR 1,034,900.00;
- on 26 July 2007, contract concerning the restructuring work for the spaces devoted to the bar, restaurant, club house, ski/golf bag storage area, located in the basement at the Golf Hotel, for a fee of EUR 1,760,000.00;
- on 26 July 2007, contract concerning the supply and placement of frames to be installed in the old area of the Golf Hotel, for a fee of EUR 136,346.00;
- on 26 July 2007, contract concerning the execution of extraordinary maintenance work for the reclamation of the terrace located on the ground floor of the hotel and for the execution of the external sewerage, pool south side, and the filling in of the swimming pool area, for a fee of EUR 136,250.00;
- on 28 November 2007, contract concerning the execution of extraordinary maintenance work for securing the roof of the Alpine hut located in the area in front of the Golf Hotel, for a fee of EUR 123,000.00.

### **9.2 Measures adopted in conformity with the principles of conduct and guidelines for transactions with related parties**<sup>16</sup>

The Fondiaria Sai Board of Directors’ meetings at which the contracting agreements with Icein were discussed are the following:

- Board of Directors’ meeting of 30 April 2007, at which – in order to make the hotel more profitable by making use of space consistent with operating needs – a restructuring was proposed which provided for several interventions listed in the minutes. The Board of Directors was

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<sup>16</sup>The principles of conduct adopted by Fonsai in 2007 for related-party transactions of the sort being examined – including if entered into through subsidiaries – provided, among other things, for examination and approval, normally beforehand, by the Board of Directors or the Executive Committee and the obtainment of fairness and/or legal opinions when deemed necessary due to the nature, scope and characteristics of the transaction. With reference to the nature of the transaction and its value, point 3.5 of the principles of conduct adopted by Fonsai included contracting agreements with a value in excess of EUR 1 million.

informed that Icein had been chosen for the execution of the work for a fee of EUR 3,247,000.00, a figure to which EUR 324,700.00 was to be added as charges for professional services and for the safety plan. The Board of Directors was informed that a fairness opinion would be requested, and it expressed an opinion in favour of awarding the contract (at the fee that would prove fair based on the fairness opinion to be obtained), following declarations of interest by directors<sup>17</sup> Jonella, Giulia Maria and Gioacchino Paolo Ligresti, as holders of interests and shareholdings in the parent company of Icein.

- Board of Directors' meeting of 20 June 2007, at which it was acknowledged that the expert engaged, Scenari Immobiliari, had deemed the amount of EUR 3,247,000.00 (plus professional fees) indicated by Icein to be fair. The Board of Statutory Auditors requested a copy of that fairness opinion, although this had not yet been sent to the company as at the closing date of this report. During the same meeting, the need for further renovation and reorganisation interventions was discussed, aimed at creating a bar, restaurant, club house and ski/golf bag storage area in the basement, the cost of which was quantified by Icein at EUR 1,900,000.00 (plus 10% for professional fees and for the safety plan). The Board was also informed that this amount was deemed fair by Scenari Immobiliari (a copy of that expert's report was also requested by the company, which has not yet been received). The Board of Directors expressed an opinion in favour of awarding the contracts, following declarations of interest by directors Jonella, Giulia Maria and Gioacchino Paolo Ligresti, as holders of interests and shareholdings in the parent company of Icein<sup>18</sup>.

It does not appear to the Board of Statutory Auditors that legal opinions were obtained with respect to the contracts with Icein.

### **9.3 The 2008 contracts**

In 2008, Campo Carlo Magno S.p.A. entered into the following contracts with Icein:

- on 30 April 2008, contract concerning the supply and placement of fittings and accessories, as better described in the contract, at the Golf Hotel, for a fee of EUR 2,378,000.00;
- on 16 May 2008, contract concerning the execution of 3 skylights in the kitchen and restaurant, located in the Golf Hotel basement, for a fee of EUR 153,000.00;
- on 1 July 2008, contract concerning the execution of extraordinary maintenance work for the repair of the roof of the Carlo Magno restaurant dining room located on the ground floor

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<sup>17</sup> Mr Spiniello acknowledged that he holds the office of chairman of Campo Carlo Magno S.p.A. and abstained from voting.

<sup>18</sup> Mr Spiniello acknowledged that he holds the office of chairman of Campo Carlo Magno S.p.A..

- of the Golf Hotel, for a fee of EUR 147,000.00;
- on 1 July 2008, contract concerning the execution of the restructuring work for floors 1, 2 and 3 of the wing devoted to personnel located at the Golf Hotel, for a fee of EUR 1,526,000.00;
- on 3 July 2008, contract concerning the execution of the heated terrace overlooking the Carlo Magno restaurant on the ground floor of the hotel, together with the execution of the lighting equipment and placement of fixtures and fittings, for a fee of EUR 360,000.00;
- on 3 July 2008, contract concerning the execution of the extension of the new collection network for waste water dumped into the pond in front of the hotel in question, which is necessary for the conveyance of rainwater channelled by the rain gutters placed on the façade of the old wing, for a fee of EUR 50,500.00;
- on 3 July 2008, contract concerning the supply and placement of frames on floors 1, 2, 3 and 4 of the old wing at the Golf Hotel, for a fee of EUR 180,000.00;
- on 7 July 2008, contract concerning the execution of extra work for the restructuring of the spaces devoted to the bar, restaurant, club house, ski/golf bag storage area at the Golf Hotel, for a fee of EUR 211,000.00.

#### **9.4 Measures adopted in conformity with the principles of conduct and guidelines for transactions with related parties**<sup>19</sup>

The Fondiaria Sai Board of Directors' meetings at which the contracting agreements with Icein were discussed are the following:

- Board of Directors' Meeting of 26 March 2008, in which it was reported to the Board that the need had emerged to equip the hotel with new furniture and fittings plus accessories. In fact, it was pointed out that the reorganisation work executed required adequate furniture and fittings and that Icein had been chosen to supply and bring into operation the said furniture and fittings for a fee of EUR 2,378,000.00 plus VAT. The Board of Directors was also informed that (i) with respect to that amount an estimate appraisal was obtained from Scenari Immobiliari, which deemed the fee proposed by Icein to be fair; (ii) the Internal Control Committee of Fonsai had expressed an opinion in favour of awarding the contract in question. The Board of

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<sup>19</sup>The principles of conduct adopted by Fonsai in 2008 for related-party transactions of the sort being examined – including if entered into through subsidiaries – provided, among other things, for examination and approval, normally beforehand, by the Board of Directors or the Executive Committee, following an opinion by the Internal Control Committee and the obtainment of fairness and/or legal opinions when deemed necessary due to the nature, scope and characteristics of the transaction. With reference to the nature of the transaction and its value, point 3.5 of the principles of conduct adopted by Fonsai included contracting agreements with a value in excess of EUR 1 million.



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Directors expressed an opinion in favour of signing the contract, following a declaration of interest by Chairman Jonella Ligresti, as holder of interests and shareholdings in the parent company of Icein<sup>20</sup>.

- Board of Directors' Meeting of 18 June 2008, at which the need was made evident for carrying out restructuring, upgrading and extraordinary maintenance interventions, including the reorganisation and repair of the wing devoted to hotel personnel, for which it was also necessary to execute work to be in compliance with health and safety requirements. It was also noted that – for purposes of a better rating for the hotel – it was necessary to complete the heated terrace, in order to make that space overlooking the ground floor restaurant usable even in the winter months, and to replace the frames in the rooms in the old wing, in addition to the work listed at the meeting. For that work, an estimate appraisal was obtained from Icein, which had indicated a fee of EUR 2,290,000.00 plus VAT. The Board of Directors was also informed that (i) with respect to that amount, an expert appraisal was obtained from Scenari Immobiliari, which had deemed the fee proposed by Icein to be fair; (ii) the Internal Control Committee of Fonsai had expressed an opinion in favour of awarding the contract in question. The Board of Directors expressed an opinion in favour of signing the contract, following a declaration of interest by directors Jonella, Giulia Maria and Gioacchino Paolo Ligresti, as holders of interests and shareholdings in the parent company of Icein<sup>21</sup>.

### **9.5 The 2009 contracts**

In 2009, Campo Carlo Magno S.p.A. entered into the following contracts with Icein:

- on 2 March 2009, contract concerning the execution of work to create a new gym located in the basement at the Golf Hotel, for a fee of EUR 50,000.00;
- on 30 April 2009, contract concerning repair work on the water pipes that go through the cavities present below the floor level in the kitchen spaces located on the ground floor of the hotel, for a fee of EUR 126,400.00;
- on 5 June 2009, contract concerning the execution of extra work for the repair of the water pipes that go through the cavities present below the floor level in the kitchen spaces located on the ground floor of the hotel, for a fee of EUR 65,000.00.

Minutes of the Fonsai Board of Directors' meetings at which the three contracts in question were discussed were not delivered to the undersigned Board of Statutory Auditors; however, taken both individually and overall, they are below the threshold provided for the application of the principles of conduct adopted by the Group for related-party transactions.

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<sup>20</sup> Mr Spiniello and the surveyor, Mr Talarico, acknowledged that they hold the office of members of the Supervisory Board of Atahotels, lessee of the hotel structure.

<sup>21</sup> Mr Spiniello acknowledged that he holds the office of chairman of Campo Carlo Magno S.p.A.

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Based on all the contracts listed thus far, Campo Carlo Magno S.p.A. has awarded contracts to Icein from 2007 to 2009 totalling EUR 9,479,046.00.

#### **9.6 The contract with Europrogetti**

On 7 April 2010, Campo Carlo Magno S.p.A. entered into a contract with Europrogetti (a related party of Fonsai, as previously mentioned on several occasions) concerning the preparation of the implementation plan, the design, the project management and the safety and testing in relation to the renovation and expansion interventions to be carried out on the Alpine Hut and Ski Area located in the municipality of Ragoli, activities better described in the contract.

The agreed fee was EUR 700,000.00, of which EUR 140,000.00 was invoiced for on 22 April 2010.

#### **9.7 Measures adopted in conformity with the principles of conduct and guidelines for transactions with related parties**<sup>22</sup>

The Fondiaria Sai Board of Directors' meeting at which the contract with Europrogetti was discussed was held on 16 February 2010.

During that meeting, seeing the advisability of carrying out a series of expansion and restructuring interventions on buildings in the district and specifically the Alpine Hut and the Ski Area, the Board of Directors was told about the need to formalise a design contract, including the preparation of implementation plans and the architectural, structural, systems and execution plans, as well as project management and safety in the design and execution phases, assistance with testing, and coordination of all the necessary activities. Europrogetti was chosen to carry out these activities, and had estimated a fee of EUR 700,000.00 plus VAT. The Board of Directors was also informed that with respect to that amount, an estimate appraisal was obtained from Scenari Immobiliari, which had deemed the fee proposed by Europrogetti to be fair. The Board of Directors expressed an opinion in favour of the signing of the contract, following declarations of interest by directors Jonella, Giulia Maria and Gioacchino Paolo Ligresti as holders of interests and shareholdings in Europrogetti's parent company<sup>23</sup>.

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<sup>22</sup>The principles of conduct adopted by Fonsai in 2010 for related-party transactions of the sort being examined – including if entered into through subsidiaries – provided, among other things, for examination and approval, normally beforehand, by the Board of Directors or the Executive Committee, following an opinion from the Internal Control Committee and the obtainment of fairness and/or legal opinions when deemed necessary due to the nature, scope and characteristics of the transaction. With reference to the nature of the transaction and its value, point 3.5 of the principles of conduct adopted by Fonsai included consulting contracts with a value in excess of EUR 1 million.

<sup>23</sup> Mr Spiniello acknowledged that he holds the office of chairman of Campo Carlo Magno S.p.A.

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### **9.8 Conclusions and proposals of the Board of Statutory Auditors**

The Board of Statutory Auditors notes that it is awaiting a reconstruction from the company of the payments made to Icein pursuant to the abovementioned contracts.

With respect to the investment in question, it must be noted that, as occurred at the time of the other related-party property transactions already examined in the report pursuant to Art. 2408 of the Civil Code, contractual counterparty selection activities with the launch of specific competitive bidding procedures do not appear to have been carried out. In particular, alternative prices offered by parties other than the related party do not appear to have been evaluated.

The Board of Statutory Auditors notes the advisability of the Board of Directors requesting a report from Campo Carlo Magno S.p.A. aimed at (i) clarifying whether the contracts entered into with Icein were all regularly performed by the related party; (ii) updating the Fonsai Board of Directors on the Europrogetti design activity, and clarifying whether payments have been made to Europrogetti in addition to the one indicated above.

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## **§ 10. CONCLUSIONS**

As at the closing date of this report, the inquiries by the Board of Statutory Auditors cannot be said to be finished.

In particular, in the little time available it has not been possible to examine the following transactions:

- transaction intended for the construction of a building complex for office use in Milan at Via Cambi;
- transaction for capitalisation of the subsidiary Meridiano Aurora S.r.l.;
- transaction for the acquisition of 43% of the share capital of a special-purpose vehicle for the execution of the building project in the Milan area known as “Isola”.

In addition, we are still waiting for the company to fulfil several requests for documents necessary in order to obtain a complete view of the transactions examined in this supplemental report, regarding which we have provided the reconstruction which was possible based on the documentation available to date.

It is therefore recommended that the incoming Board of Statutory Auditors bring all the verifications already undertaken to completion, start verifications of the three positions mentioned above and verify the outcome of the requests for additional information from the Board of Directors already begun through the advisors named.

Attached are: 1) copy of the letter sent by the shareholder Amber dated 26 March 2012; 2) copy of the letter sent in response to Amber dated 28 March 2012; 3) letter from the Board of Statutory Auditors to shareholder Cirolini; 4) Prof. D’Atri e-mail letter.

Milan, 18 April 2012

The Board of Statutory Auditors of Fondiaria Sai S.p.A.

Mr Benito Marino  
[signature]

Mr Marco Spadacini  
[signature]

Mr Antonino D’Ambrosio  
[signature]

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Amber Capital  
Investment Management

900 Third Avenue, Suite 200  
New York, NY 10021  
Tel. 1-212-340-7300

Milan, 26 March 2012

For the attention of the  
Board of Statutory Auditors of  
Fondiaria-Sai S.p.A.

In the person of the Chairman  
Mr Benito Giovanni Marino

c/o Fondiaria SAI S.p.A.  
Corso Galileo Galilei 12  
10126 Turin

Faxed in advance: 02/76000720  
E-mailed in advance: [marinost@tln.it](mailto:marinost@tln.it)

Re.: Our complaint pursuant to Art. 2408 of the Civil Code dated 17 October 2011 – your report

The undersigned, Amber Capital LP, as manager of the fund Amber Global Opportunities Master Fund Ltd., shareholder of Fondiaria-Sai S.p.A. (hereinafter “Fondiaria”), has seen your report (the “Report”) posted on the Fondiaria website on 19 March 2011, after the Shareholders’ Meeting ended.

From the content of the Report, from your requests to the Board of Directors and from the conclusions included at the end the Report, it clearly emerges that the complaint is well-founded.

In light of this, we find it irregular at the very least that on 19 March, since some shareholders requested that a full reading of the Report be omitted, the Board of Statutory Auditors agreed not to provide even summary information on what emerged at the Shareholders’ Meeting, the natural recipient of the report. This is also in light of the fact that your conclusions could have influenced the discussion at the meeting. This is the umpteenth episode of a Fondiaria management in total disregard of the laws protecting shareholders, regarding which this Board of Statutory Auditors could have and should have adopted a firm position and carried out its duties fully.

With specific reference to the requests and invitations sent by this honourable Board of Statutory Auditors to the Board of Directors, as well as the willingness of the Board of Statutory Auditors to delve further into and extend its inquiries with respect to other transactions carried out by Fondiaria and/or other Group companies, it is evident that both corporate bodies must complete their activities and provide the public with complete information on the outcome of such activities in a timely manner and, in any case, sufficiently in advance of the date of the Shareholders’ Meeting that is to approve the separate financial statements. A delay in such activities and in making exhaustive information available to the public on the facts reported and on their respective impacts on the income, equity and cash flow situation of the

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Amber Capital  
Investment Management

900 Third Avenue, Suite 200  
New York, NY 10021  
Tel. 1-212-340-7300

Company can only result in further irregularities at the time of approving the separate financial statements. In addition, in light of the facts reported and of what emerges from the Report, it is of primary importance for the oversight body to carefully oversee observance of the principles of proper administration with specific reference to the activities that the Board of Directors is asked to carry out.

In the context of the in-depth inquiries that this honourable Board has reserved the right to make, we request that special attention be paid also to the impacts that the irregularities detected may have had on the accuracy of the financial information provided from time to time by Fondiaria. Merely by way of example, with regard to property transactions, the Board of Statutory Auditors itself suggests an inquiry aimed at ascertaining *“whether the technical and/or market reasons leading the new experts to find in favour of the lower valuation, unlike the previous appraiser, existed at the time of the previous appraisals”*. And that inquiry, in the writer’s opinion, proves absolutely appropriate given that (i) on page 123 of the prospectus prepared for purposes of the capital increase carried out in 2011, it was written that *“during the first quarter of 2011, no situations emerged such as to evince permanent losses on the properties owned”*; (ii) however, in the 2011 financial statements, write-downs of some properties were made. It is surprising that at the time of the previous capital increase, it was not deemed appropriate to verify the valuations of the properties then written down. More generally, in light of all the write-downs made, first at the time of examining the definitive preliminary estimates for the year to 31 December 2011, it must be asked whether the prospectus prepared at the time of the previous capital increase was correct and in compliance with the provisions of Art. 94 of Legislative Decree 58/98, which provides, among other things, that *“A prospectus must contain, in a manner easy to analyse and understand, all the information which, depending on the issuer’s characteristics and the financial products offered, is necessary in order for investors to reach a well-founded judgement on the equity and financial position, earnings and outlook of the issuer and of any guarantors, as well as on the financial products and their respective rights...”*.

In fact, we note that some facts described by us in the complaint pursuant to Article 2408 of the Civil Code are not to be found in the Report. We ask that you kindly clarify whether this is due to your verifications not having turned up any irregularities with respect to those facts.

Best regards,

[signature]  
Joseph Oughourlian  
Managing Partner

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*DR. BENITO MARINO  
CHARTERED ACCOUNTANT  
AUDITOR  
Via Mangoni 42  
20121 Milan  
Tel. 02780724 – Mob. 337 296757*

Milan, 28 March 2012

Amber Capital Investment Management  
Piazza Del Carmine 4  
20121 Milan

Registered mail with return receipt requested  
Faxed in advance to no. 02/72095339

Re.: Your letter of 26 March 2012

Dear Sirs,

We acknowledge receipt of your letter of 26 March.

First, we must note that at the beginning of the shareholders' meeting on 19 March 2012, the undersigned Board of Statutory Auditors mentioned its duty regarding the outcome of the inquiries carried out pursuant to Art. 2408, paragraph 2 of the Civil Code, declaring its willingness to proceed with an immediate reading of the report.

However, the shareholders' meeting – in a resolution adopted by a majority vote with your abstention – preferred to omit a reading of the report, which was nevertheless attached to the meeting minutes and was also posted on the company website, making it available to the shareholders and to the market.

Thus any decision regarding a reading of the report pursuant to Art. 2408 of the Civil Code at the shareholders' meeting was adopted following a regular discussion at the meeting and as part of the ordinary performance of corporate business.

Considering this, it is evident that the accusation sent by you to the undersigned Board of Statutory Auditors, claiming that it had not carried out its functions thoroughly, is completely contrived and baseless.

With reference to the suggestion made to us to oversee the activities that the Board of Directors is called upon to carry out, we note that the company's management body has begun activities preliminary to the verifications and inquiries proposed by the Board of Statutory Auditors, entrusting a committee of independent directors with appointing legal and financial advisors, as well as property experts for purposes of the verifications of value requested by the undersigned Board.

The Board of Statutory Auditors will oversee the performance of such activities, the results of which will then be taken into consideration for purposes of the evaluations incumbent upon it.

We also note that the Board of Statutory Auditors has already requested documentation from the company on two additional transactions not mentioned in our letter of 17 October 2011. Naturally, this activity will be carried out as quickly as possible, in keeping, however, with the complexity of the ascertainment to be made and with the care required in verifications of this nature.

At the time of the next shareholders' meeting, the Board of Statutory Auditors will report to the shareholders on the outcome of the activities carried out to date.

We note finally that the undersigned Board believes that, in the aforementioned report pursuant to Art. 2408 of the Civil Code, it examined all the transactions mentioned by you in your letter of 17 October 2011, answering all the questions posed by you.

However, if, as stated by you, there should be facts that were not taken into consideration by the undersigned Board, we ask you to inform us, indicating them precisely, in order to make it possible to supplement the inquiries, if necessary.

Best regards,

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The Board of Statutory Auditors of Fondiaria SAI S.p.A.  
The Chairman, Mr Benito Marino  
[signature]

Mr Fabrizio Cirolini  
c/o Prof. Gianfranco D'Atri  
via e-mail: [gdatri@yahoo.it](mailto:gdatri@yahoo.it)

Dear Shareholder,

During the last Shareholders' Meeting of Fondiaria – SAI S.p.A. on 19 March 2012, you asked us to verify the following, pursuant to Art. 2408 of the Civil Code:

*“whether the directors had received from the executive directors all the information requested by them, and whether they had, through appropriate meetings and deliberations:*

- *assessed the ISVAP measures and the inspection evaluations;*
- *assessed the actuarial models used and their appropriateness;*
- *assessed the property appraisals;*
- *performed an impairment test on POPOLARE VITA;*
- *assessed, in the property valuations, the issue of conflicts of interest for certain members of the Board of Directors;*
- *examined the expediency of investments in Greek bonds, insofar as any such investments had been made;*
- *assessed any advisory role played by the shareholder UNICREDIT vis-à-vis the company with regard to the financial investments”.*

In relation to the above questions, the undersigned Board of Statutory Auditors notes that they are extremely general.

Furthermore, in order to make a worthwhile evaluation of the questions posed possible for the undersigned Board of Statutory Auditors and to start inquiries with regard thereto, we thus ask you to be more specific on the following:

- identify for which transactions and/or which periods the completeness of the information provided by the executive directors to the other directors should be verified, as well as the ISVAP measures and the inspection evaluations in relation to which it should be verified that the Board evaluated them with *“appropriate meetings and deliberations”*. It is also deemed appropriate for the shareholder to specify the reasons why he is requesting the said verification, and in particular which aspects he deems objectionable;
- with regard to the question on the Board's evaluation of the property appraisals, as well as the issue of conflicts of interest concerning some Board members with regard to such appraisals/transactions, it is deemed necessary here for the shareholder to specify which transactions and/or which appraisals he believes that the undersigned Board should delve further into, as well as the reasons why such verification is being requested, especially with regard to the aspects deemed objectionable. It is noted furthermore that both of the above aspects have already been subject to ample analysis by the undersigned Board with reference to the transactions mentioned by the



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shareholder Amber, in the context of the report pursuant to Art. 2408 of the Civil Code, submitted by the undersigned

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during the company's last Shareholders' Meeting. Reference is therefore made now to that report with regard to the transactions discussed therein, with a request to clarify – referring in such request to the transactions already examined there – which additional aspects of inquiry may be required;

- similar considerations apply also with regard to the additional aspects mentioned, concerning, in particular, the evaluation of the actuarial models used by the company, the performance of an impairment test on POPOLARE VITA, the investments in Greek bonds, and the advisory role of UniCredit with regard to the financial investments. It is noted that, with respect to these questions as well, it is necessary and advisable, for purposes of enabling the undersigned Board to make the inquiries and express its evaluations, for the shareholder to describe the aspects regarding which he is requesting that verifications be made, specifying which aspects he deems objectionable and which, as such, justify the request for inquiries and in-depth study on such topics.

We look forward to your response and remain at your disposal for any clarifications.

Best regards,

Milan, 28 March 2012

For the Board of Statutory Auditors of Fondiaria – SAI S.p.A.  
Mr Marco Spadacini  
[signature]

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From: Gianfranco d'Atri [<mailto:gdatri@yahoo.com>]

Sent: Thursday, 5 April 2012 12:29

To: [marco.spadacini@studiospadacini.it](mailto:marco.spadacini@studiospadacini.it)

Subject: complaint pursuant to 2408

Dear Fondiaria Statutory Auditor:

Further to the complaint submitted at the shareholders' meeting on a shareholder's behalf, I am informing you that it should be understood to be withdrawn, since financial statements and a detailed report by the Board of Statutory Auditors have subsequently been made available, and are currently being studied.

New facts also have emerged and news has appeared concerning management which required in-depth examination by the shareholders, who consider it appropriate to listen to the responses at shareholders' meetings and subsequently emphasise and note particular events, where these have not already been mentioned by the Board of Statutory Auditors.

I also note that at the time of the savings shareholders' meeting, we are expecting a complete explanation of the situation and any response to specific questions from the Board of Directors; kindly ask the administration bodies to participate actively, even though they are under no obligation to do so.

I reserve the right to make further requests for action by the statutory auditors.

Best regards,  
Prof. Gianfranco d'Atri