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ITALY

1. **Corporate governance, Amendments to the Civil Code (D. Lgs. 17 January 2003, no. 6, effective 1 January 2004)**

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1. Corporate governance, Amendments to the Civil Code (D. Lgs. 17 January 2003, no. 6, effective 1 January 2004)

Effective 1 January 2004, limited liabilities companies set up as SPA (*società per azioni*) can adopt one of the following three types of governance:

a. **traditional governance system,** characterized by the shareholders meeting appointing the Board of Directors, for the company's management, and the Board of Statutory Auditors, for control over management and for accounting audit, as well as, where required, the Auditor, either a qualified professional or a qualified Audit Firm, in charge for the accounting audit if not performed by the Statutory Auditors Board
b. **dualistic governance system,** characterized by the shareholders meeting appointing the Board of Surveillance, in charge for control over management and for the Financial Statements approval, which appoints the Board of Management, in charge for the company's management. The accounting audit is performed by an Auditor, either a qualified professional or a qualified Audit Firm, appointed by the shareholders meeting
c. **monistic governance system,** characterized by the shareholders meeting appointing the Board of Directors, in charge for the company's management. The Board of Directors appoints among its members a committee for control over management. The accounting audit is performed by an Auditor, either a qualified professional or a qualified Audit Firm, appointed by the shareholders meeting

The dualistic and monistic governance systems have been introduced in order for Italy to conform to the systems which are used in other Countries of the European Union, typically the German dualistic governance system and the British monistic governance system.

Effective 1 January 2004, limited liabilities companies set up as SRL (*società a responsabilità limitata*) continue adopting the **traditional governance system**. However, the new rules allow the quotaholders to adapt the company's by laws in accordance with their specific objectives.

The new rules have also introduced for SPA and SRL various simplifications regarding several formal fulfilments, as well as several alternatives within each governance system. Any of such simplifications or alternatives are to be implemented by amending the company's by laws.

Current by laws in contrast with the newly introduced rules are to be amended by 30 September 2004.

The new rules have also amended the accounting principles for the preparation and presentation of annual and consolidated Financial Statements in order to improve their transparency. In particular, Financial Statements can no longer be affected by the compliance with tax regulations. In fact, recognition of costs in the Income Statement is no longer required in order for them to be tax deductible under the tax reform effective 1 January 2004 (see Tax News International, December 2003). New Civil Code rules are effective for Financial Statements closing after 30 September 2004. Financial Statements closing between 1 January 2004 and 30 September 2004 can be prepared either under prior rules or under current rules.

SPA and SRL are currently preferring to maintain the traditional governance system and are only planning to enjoy the newly introduced simplifications by amending their company's by laws.

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