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Crisis of Subjects Operating in Italian Financial and Insurance Sectors

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3.1 Introduction

As described in the Chapter *Italian crisis management procedures in banking sector*, Italy early adopted specific crisis and pre-crisis remedies for banks, which have revealed to be particularly effective in the developed financial environment over recent decades.

The evolution of Italian legislation has led to the extension of the successful banking model of crisis management provided by the Consolidation Law on Banking (CLB) to other financial institutions, such as investment firms (*Società di Intermediazione Mobiliare* (SIM)), fund management companies (*Società di Gestione del Risparmio* (SGR)), open-ended investment companies (*Società di Investimento a Capitalevariabile* (SICAV)) and some more relevant financial intermediaries regulated by Art. 106 of the CLB, as well as to insurance companies.

Crisis management procedures for SIM, SGR and SICAV are provided by the Consolidation Law on Finance (CLF),¹ even if its relevant provisions directly refer to CLB dispositions on bank crisis. Financial intermediaries are partly assimilated to banks by the CLB itself; for insurance companies, the Code of Private Insurance (CPI)² provides a special discipline, which, however, traces the model of the CLB.

3.2 Crisis management procedures for financial intermediaries in investment services or activities

The choice to subject the crisis of investment companies (including collective investment companies) to a special legal treatment of
“de-juridicalization”, similarly to what happens with banks, refers to the nature and the constitutional status of the interest protected, which always corresponds, in a nutshell, to the stability of the financial system. In the intention of the Italian Legislator, the close interconnection existing among financial market operators and the need to face the systemic risk generated by a significant distress of each, together with the need of maintaining investors’ confidence in the market, are the prevalent purposes, sufficient to justify the public intervention for preventing and managing crisis situations also of these financial intermediaries.

Pre-crisis and crisis management procedures for these intermediaries, that is, investment firms (Società di Intermediazione Mobiliare (SIM), collective portfolio management companies – including asset management companies (Società di Gestione del Risparmio (SGR)) and open-ended investment companies (Società di Investimento a Capitale variabile (SICAV)) are regulated by Arts 51–58 of the Legislative Decree No. 58/1998, CLF. The discipline is divided into two contexts: cases of violations of laws and regulations (Arts 51–55 CLF) – for which injunctive remedies are provided – and cases of inability to continue the business, that is, crisis situations (Arts 56–58); while the first group of provisions has its own peculiarities, the second is essentially drawn up according to the banking crisis scheme. The competence to intervene is distributed among three Supervisory Authorities, depending on the case: the Consob, as the authority responsible for the transparency and correctness of CLF intermediaries’ conduct, the Bank of Italy, as the authority responsible for risk containment, asset stability and the sound and prudent management of intermediaries and the Minister of the Economy and Finance as the public authority entitled to enact the opening of the crisis procedures.

3.2.1 Injunctive remedies (Arts 51–55 CLF)

Early intervention tools, analogous to CLB’s extraordinary injunctions and with the similar rationale of preventing serious and potentially critical irregularities, are provided for CLF’s intermediaries. This corrective nature is sometimes accompanied, in the CLF, by a marked precautionary function, expressly aimed at avoiding immediate danger for customers or markets and not only at refraining from future crisis. The range of the so-called injunctive remedies is therefore