

## 2012 Corporate Governance Report and Ownership Structure

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## Corporate Governance Report and Ownership Structure

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### 1. Introduction

Pursuant to Article 123 *bis* of Italian Legislative Decree no. 58/1998, as implemented by Article 89 *bis* of the Issuers' Regulations, adopted by Consob under resolution no. 11971 dated 14 May 1999, listed companies are obliged to draw up an annual disclosure report on their Corporate Governance system and on compliance with the Code's recommendations (as defined below). This report must be made available to the shareholders at least 21 days before the shareholders' meeting for the approval of the annual financial statements and forwarded at the same time to Borsa Italiana S.p.A. who will make it available to the general public. The report is also published in the "investor relations" section on the Company website: [www.tiscali.com](http://www.tiscali.com).

Fulfilling the prescribed obligation and with the intention of providing extensive corporate disclosure to the shareholders and the investors, Tiscali S.p.A.'s ("**Tiscali**" or the "**Company**") Board of Directors has drawn up this report (the "**Report**"), in compliance with the guidelines published by Borsa Italiana S.p.A. and in light of the indications provided by Assonime in this connection.

Therefore, the Report is split into two parts. The first part fully illustrates the corporate governance model adopted by Tiscali and describes the directors and officers, as well as the shareholding structure and provides other information as per the afore-mentioned Article 123 *bis* of Italian Legislative Decree no. 58/98. The second part by contrast provides detailed disclosure regarding compliance with the Code's recommendations by means of a comparison between the choices made by the Company and said recommendations of the Code. In accordance with the Code, on 30 March 2012 the Board of Directors assessed the size, composition and functioning of said Board and its Committees deeming them to be in line with the operational and organisational needs of the Company also taking into account the professional, experience-related and managerial characteristics of its components as well as the presence, out of a total of five members, of four non-executive directors, of which two non-executive, independent Directors. In this assessment, the Board also took into account the appointments covered by the Directors in other companies.

### 2. Corporate Governance structure

#### 2.1 General standards

The term "Corporate Governance" defines the series of processes for managing the corporate activities with the aim of creating, protecting and increasing the value for the shareholders and investors over time. These processes must ensure the achievement of the corporate objectives,

the maintenance of socially responsible conduct, transparency and responsibility vis-à-vis the shareholders and the investors.

In order to ensure the transparency of management's operations, correct market disclosure and protection of the socially relevant interests, the corporate governance system adopted by Tiscali fully draws on the recommendations of the Code of Conduct (the "**Code**"), approved by the Corporate Governance Committee in March 2006, as updated from time to time. The Company adopts practices and principles of conduct, formalized in procedures and codes, in line with Borsa Italiana S.p.A.'s indications, CONSOB recommendations and with the best practice seen at national and international level; furthermore, Tiscali has equipped itself with an organizational structure suitable for correctly handling business risks and potential conflicts of interest which may occur between Directors and shareholders, majorities and minorities.

## **2.2 Adopted model**

In relation to the system of management and control, the Company has adopted the traditional model, which envisages the presence of the Board of Directors and the Board of Statutory Auditors; the Company believes that this system permits a clear division of the roles and responsibilities entrusted to the directors and auditors and efficient management of the Company.

## **2.3 Directors and Auditors, and the company appointed to audit the accounts**

At present, the governing bodies are the Board of Directors, the Board of Statutory Auditors and the Shareholders' Meeting.

### Board of Directors

The shareholders' meeting held on 21 December 2009, appointed the current Board of Directors comprising:

*Chairman and Chief Executive Officer*

Renato Soru

*Directors*

Gabriele Racugno

Luca Scano

Victor Uckmar

Franco Grimaldi

*Company Secretary*

Luca Naccarato

The office of Chairman and the powers of the Chief Executive Officer were granted to Renato Soru during the Board Meeting held on 21 December 2009. The appointment of the current Directors will expire with the approval of the 2011 annual financial statements.

#### Board of Statutory Auditors

On 21 December 2009, the ordinary shareholders' meeting took steps to supplement the Board of Statutory Auditors, replacing the outgoing Chairman of the previous Board of Statutory Auditors, Aldo Pavan, with the first of those not elected from the same list, Paolo Tamponi; therefore, the Board comprises:

<i>Chairman</i>	Paolo Tamponi
<i>Statutory Auditors</i>	Piero Maccioni Andrea Zini
<i>Alternate Auditors</i>	Rita Casu Giuseppe Biondo

The appointment of the current Auditors will expire with the approval of the 2011 annual financial statements.

#### Executive in charge of drawing up the Company's accounting documents

As envisaged by Article 14 of the Articles of Association, in pursuance of the provisions of Italian Law no. 262/2005, on 21 December 2009 the Board of Directors took steps to appoint Luca Scano, Director of the Company and General Manager of the Italian subsidiary Tiscali Italia S.p.A., as executive in charge of drawing up the Company's accounting documents. The office will expire with the renewal of the Board of Directors following approval of the 2011 annual financial statements.

#### Independent Auditing Firm

The accounts auditing appointment was granted to Reconta Ernst & Young S.p.A. by the shareholders' meeting held on 29 April 2008. This appointment will expire with the approval of the 2016 annual financial statements by the shareholders' meeting.

#### Committees

During the Board Meeting held on 21 December 2009, following the appointment of the new Board of Directors, the following internal Committees were established:

- *Internal Audit Committee*, comprising Victor Uckmar (Chairman), Franco Grimaldi and Luca Scano.
- *Remuneration Committee*, comprising Franco Grimaldi (Chairman), Victor Uckmar and Gabriele Racugno.

Obviously, these Committees will expire together with the Board of Directors or with approval of the financial statements as of 31 December 2011.

### Supervisory Body

The Supervisory Body, previously made up of Pasquale Lionetti, was added to during the board meeting held on 5 August 2011 and now comprises the lawyer Michele Schirò, an external member acting as Chairman, Mr. Carlo Mannoni, head of the regulatory affairs division of the Company, and Mr. Pasquale Lionetti who also covers the appointment of head of Internal Auditing. The Supervisory Body remains in office until approval of the financial statements as of 31 December 2011 and carries out supervisory functions also for the subsidiary Tiscali Italia SpA.

## **2.4 Shareholding structure**

As at the date of this Report, the authorized share capital came to EUR 103,124,052.77, while that subscribed and paid-in totalled EUR 92,019,488.07; it is represented by 1,861,494,666 ordinary shares lacking par value, freely transferrable under the terms of the law without there being certificates which grant specific rights of control.

The following table contains indication of the name or corporate name of the shareholders with the right to vote who hold an equity investment of more than 2% and who have informed the Company and CONSOB of their equity investment. No restrictions on the right to vote are envisaged.

<i>Shareholder</i>	<b>Shares held</b>	<b>Percentage</b>
<b>Renato Soru</b>	<b>331,133,617</b>	<b>17.79%</b>
<i>directly*</i>	278,928,283	14.98%
<i>via Andalus Ltd</i>	1,483,109	0.08%
<i>via Monteverdi S.r.l.</i>	17,609,873	0.95%
<i>via Cuccureddus S.r.l.</i>	33,112,352	1.78%

The remaining 82.21% of the share capital is held by the market. The Company is not aware of the existence of any shareholders' or other similar agreements.

### Warrants

The shareholders' meeting held on 30 June 2009, resolved the issue of warrants, together with the share capital increase. In the light of the execution of the above mentioned increase, in November 2009, the Company issued 1,799,819,371 warrants. Warrant holders are entitled to subscribe ordinary shares of the Company at the ratio of 1 conversion share for every 20 warrants exercised at the price of EUR 0.80 per conversion share. Currently 414,940 warrants have been exercised and 20,747 shares have been issued against a share capital increase of EUR 16,597.60. The

warrants can be exercised until 15 December 2014 in accordance with the Tiscali S.p.A. 2009-2014 Warrant Regulations which can be found in the “Shares” section on the website at [www.tiscali.com](http://www.tiscali.com).

#### Share Based Incentive Plans

On 3 May 2007, the shareholders’ meeting approved a stock option plan in favour of the Chief Executive Officer at that time and key managers of the Company and its Italian subsidiaries, involving a maximum of 7,837,274 options before the reverse split, equating to 783,727 options after the reverse split transaction. Subsequently, the Board executed that resolution by allocating a total of 3,760,000 options to employees and 3,593,143 to the Chief Executive Officer at that time, in consideration of the shares pre-reverse split. In the light of the waiver by Tommaso Pompei of all his options which took place on 1 October 2009, and on expiry of the right of nearly all the beneficiaries, there are no convertible options to-date. The Stock Option plan will expire on 3 May 2012 on expiry of the fifth year of validity. No new incentive plans are envisaged at present.

#### Authorised increases pursuant to Article 2443 of the Italian Civil Code

The shareholders’ meeting held on 30 June 2009 resolved to grant the Board of Directors the faculty to increase the share capital against payment, in one or more tranches, over a maximum period of three years as from the authorising resolution, up to a maximum amount of EUR 25 million by means of the issue of ordinary shares lacking par value to be offered under option to shareholders in proportion to the shares held by each one of them in pursuance of Article 2441.1 of the Italian Civil Code. The Board of Directors may carry out the increase if the Talk Talk Group, which is the purchaser of the Group's UK business, is granted a certain payout on the funds deriving from the sale of Tiscali UK still under guarantee. During 2010, an agreement was formally drawn up with the Talk Talk Group in relation to the payouts on the funds under guarantee, therefore the same were released in favour of the Company with a deduction which does not give rise to the above condition. Therefore, the increase should not be carried out and shall cease on expiry as of 30 June 2012.

#### Shareholders’ agreements

With regard to the existence of shareholders’ agreements as per Article 122 of Italian Legislative Decree no. 58/98, it is pointed out that on the 15 May 2009, the Company and Renato Soru had entered into a shareholders’ agreement concerning the exercise of the voting rights in the Company. In particular, Renato Soru had made a commitment, as regards the investment he holds in total directly or indirectly in Tiscali S.p.A., to approve any proposal by the Board of Directors of the Company during shareholders’ meetings within the sphere of the debt restructuring transaction for Tiscali S.p.A. and its subsidiaries. On completion of the plan for reorganising the Tiscali Group,

to which the Agreement was functionally linked, the same has fulfilled its function and has ceased to be effective between the Parties as communicated to the general public and the competent authorities in the legal forms on 2 July 2011. Therefore, no shareholders' agreements exist to-date, as far as the Company is aware.

## **2.5 Amendments to significant company agreements following the change of control**

In the case of a change of control in the Company or some of the Group companies significant in accordance with the loan agreements with the Senior Lenders, the amendment of these loan agreements is envisaged. In particular the change of control involves the obligation to make prepayments with reference to the loan agreements referred to above as described in further detail in the table in the note "Non-current financial liabilities" in the 2011 Financial Statements.

## **3. Disclosure on compliance with the recommendations contained in the Code of Conduct for Listed Companies**

### **3.1 Board of Directors**

#### Role

The Board of Directors has a prominent role to play in Company life, being the body responsible for running the Company, providing strategic and organizational guidelines and, as such, for identifying Company objectives and monitoring their achievement.

This body is invested with all ordinary and extraordinary powers of administration pursuant to Article 14 (Powers of the Management Body) in the Company's Articles of Association.

The Board of Directors examines and approves strategic, industrial and financial plans for the Company and the Group to which it belongs, and reports to the Board of Statutory Auditors on a quarterly basis on activities carried out by the Company or its subsidiaries and operations which are of major significance from an economic, financial and balance sheet perspective.

The powers and duties exercised by the Company's Board of Directors in its role as provider of strategic guidelines, supervisor and monitoring body for Company Activities, as set out in the Company's Articles of Associations and implemented in corporate codes of practice, are largely consistent with what is laid down by Article 1 of the Code.

#### Composition

Article 10 (Management of the Company) of the Articles of Association states that the Board of Directors may comprise between three and eleven members, as decided by the Shareholders' Meeting. As at the date of this Report, the Board of Directors comprised five members. The Board of Directors also includes the Internal Audit Committee and Remuneration Committee.

### Chairman of the Board of Directors and Chief Executive Officer

In accordance with the Company's Articles of Association, the Chairman of the Board of Directors calls and conducts board meetings and coordinates its activities. For Board meetings, the Chairman ensures that Directors receive all necessary documentation, well in advance, to allow the Board to knowledgeably discuss the business under examination.

The Articles of Association also state that the Board of Directors, within legal limits, may appoint one or more Chief Executives, establishing the powers within the sphere due to them and within legal limits. The Board of Directors has granted executive powers to the Chief Executive Officer. CEO powers may be exercised up to a maximum value of EUR 25 million.

The Chairman and CEO report to the other Directors and to the Board of Statutory Auditors during Board meetings and on other occasions, held at least once a quarter, on operations of significant economic or financial value performed by the Company or its subsidiaries. They also provide the Board of Directors meetings with adequate and on-going information on atypical or unusual transactions for which approval does not rest with the Board, and on significant operations implemented within the scope of powers and duties conferred upon the CEO. Except in cases of necessity or emergency, such matters are normally also submitted for prior examination by the Board of Directors so that they may decide upon them in a knowledgeable and considered manner. Given the limited composition of the Board of Directors and the particular operating needs of the Company, the circumstance that the offices of Chief Executive Officer and Chairman of the Board of Directors are both covered by Renato Soru is deemed functional for management purposes. The constant presence of the Directors and the Auditors during board meetings, the valence of the Internal Audit Committee and its on-going activities and participation in company operations along with the incisiveness and efficacy of the control action carried out by the independent directors, suggest that the co-existence of the two offices covered by the same Renato Soru cannot cause any detriment for the Company's governance. Different solutions may be evaluated at the time of renewal of the Board of Directors.

### Non-executive, minority and independent directors

In compliance with the provisions of Italian Law no. 262/2005 and subsequent amendments, the Articles of Association envisage the presence of at least one independent director if the Board is made up of up to seven members, and at least two independent directors if the Board is made up of more than seven members. The Company in any event complies with the Code and, at present, there are two independent directors with a Board of 5 members of which just Renato Soru, Chief Executive Officer and Chairman, is in possession of the executive powers delegated by the Board. Furthermore, the list voting mechanism envisaged by the Articles of Association for the election of the members of the Board ensures the appointment of at least one director taken from the list



which has obtained the second greatest number of votes and which is not in any way associated with the shareholders who have presented or voted for said list.

As envisaged by the Code, at the time of appointment and in any event once a year when this Report is prepared, the Board evaluates the Directors' independence on the basis of information provided by the Directors themselves, and provides the market with appropriate information in this respect by publishing said Report. It is hereby confirmed that two of the independent directors, Victor Uckmar and Franco Grimaldi, possess the independence requisites compliant with the matters indicated by the applicative principles and criteria as per the Code and the Consolidated Finance Law.

In relation to the management and audit appointments in other companies, the Board did not consider it necessary to define general criteria regarding the maximum number of offices compatible with efficient performance of the role of director in the Company, without prejudice to the duty of each Director to assess the compatibility of the offices of director and auditor, covered in other companies listed on organised markets, in finance, banking and insurance companies or those of a significant size, with the diligent performance of the duties undertaken as Company Director. The offices covered by the current Board members in their capacity as directors of other listed companies, banks or insurance companies or businesses of a significant size, are listed below. None of the Directors cover roles in boards of statutory auditors of other listed companies, banks or insurance companies or businesses of a significant size.

***Roles in boards of directors of other listed companies, banks and insurance companies and businesses of a significant size***

Renato Soru:	Chairman and Chief Executive Officer Tiscali Italia S.p.A.
Luca Scano:	-
Gabriele Racugno:	Director - Banco di Sardegna S.p.A. – Director Sogaer S.p.A.
Victor Uckmar:	Chairman - Class Editori S.p.A. - Director - Xerox Italia S.p.A.
Franco Grimaldi:	-

In the specific “governance” section of the website, the Company publishes the professional résumés of its Directors, so that the shareholders and investors can assess the professional experience and the authoritativeness of the Board members.

## Board meetings

The Board of Directors meets regularly and in any event at the time of the approval of the quarterly reports, the half year report and the draft annual financial statements. It is consolidated practice that also outside executives and consultants are called to take part in the meetings of the Board of Directors depending on the specificities of the matters dealt with. As can be seen in the tables below, during 2011 the Board of Directors met four times, so as to discuss and approve the periodic accounting figures. During 2012, the Board met twice, inclusive of the session which approved this report. All the Directors and the members of the Board of Statutory Auditors took part in the majority of the meetings, as illustrated by the breakdown shown below.

	<b>25 March 2011</b>	<b>12 May 2011</b>	<b>5 August 2011</b>	<b>10 November 2011</b>	<b>28 February 2012</b>	<b>30 March 2012</b>
<b>2011-2012 Board meetings</b>						
Directors present	5	5	5	4	5	4
Percentage	100%	100%	100%	80%	100%	80%
Statutory Auditors present	3	3	2	3	3	3
Percentage	100%	100%	66.6%	100%	100%	100%

The average duration of the Board meetings was approximately 90 minutes. The Board of Directors and the Board of Statutory Auditors are sent draft copies of the documents to be approved beforehand, together with all the disclosure documentation instrumental to the various resolutions. The sending of the documentation is seen to by the Company Secretariat which takes steps to collate the documents from the appointed sectors and forward them with the utmost notice possible; tendentially the documentation is sent in one go together with the calling of the board meeting; by way of exception, if they are not available, certain documents can be sent after the calling but always with suitable notice before the meeting.

On 10 November 2011, the Board of Directors approved the calendar of its meeting for 2012, thus modified subsequently:

- 30 March 2012 (Approval of the draft annual financial statements at 31 December 2011),
- 10 May 2012 (Approval of the Quarterly Report at 31 March 2012),
- 15 May 2012 (Annual shareholders' meeting),
- 2 August 2012 (Approval of the Half-year Report at 30 June 2012),
- 13 November 2012 (Approval of the Quarterly Report at 30 September 2012).

### Appointment of Directors

Article 11 (Board of Directors) of the Articles of Association specifies a voting list for the appointment of Directors, guaranteeing the appointment of a certain number of Directors from those listed who have not obtained the majority of votes, and ensuring transparency and correctness of the appointment procedure. Shareholders are entitled to present lists if, alone or together with other shareholders, they represent at least the percentage of the share capital envisaged by applicable legislation. This mechanism ensures, therefore, that even minority Shareholders have the power to submit their own lists. Everyone with a voting right may vote for one list only.

The appointment of the Directors takes place as follows (a) five sevenths of Directors are appointed from the list receiving the majority of votes expressed by Shareholders; (b) the remaining Directors are appointed from the other lists. For this purpose, the votes obtained by the lists are progressively divided by one, two, three, four, five, etc., according to the number of Directors to be elected. The quotients obtained thus are then progressively assigned to candidates on each list, in accordance with their respective order. The quotients assigned thus to candidates on the various lists are compiled into a single list in descending order. Those elected are the candidates with the highest quotients, in any event after appointment of the candidate first on the list receiving the second highest number of votes, and who is in no way connected with that first list, and after the appointment of one or two independent directors, depending on whether the Board comprises more or less than seven members, in accordance with Italian Law no. 262/2005, as amended by Italian Legislative Decree no. 303/2006.

Pursuant to the aforementioned Article 11 (Board of Directors), the lists containing the proposals for appointment to the office of Director must be filed at the Company's registered office at least twenty-five days prior to the date envisaged for the Shareholders' Meeting, together with the professional CVs of individuals appearing on the lists and a declaration from each accepting their candidature and declaring the inexistence of reasons for ineligibility or incompatibility and that the honourable and professional qualifications required under applicable law and by the Articles of Association exist, as essentially in line with the principles and application criteria contained in Article 5 of the Code. The lists and the accompanying documentation must be made public in accordance with the legal formalities at least twenty-one days before the date envisaged for the Meeting. In the event of resolution to appoint individual members of the Board of Directors, the voting list appointment mechanism is not applicable, Article 11 (Board of Directors) of the Articles of Association specifying its use only in the event of integral renewal of the Board.

Based on the provisions of the aforementioned Article 11 (Board of Directors) and in the light of the above considerations, to-date it has not been considered necessary to establish a special Appointments Committee in that the Directors' appointment mechanism ensures an impartial and

fair system with respect to minority shareholders. In light of the imminent renewal of the Board of Directors, envisaged with the approval of the financial statements as at 31 December 2011, and the Committees within the Board, the possible unification of the Appointments Committee with the Remuneration Committee will be assessed.

The report on operations attached to the financial statements at 31 December 2011 contains an overview of the Board Members' remuneration system (see the note "Remuneration of Directors, Statutory Auditors and managers with strategic responsibilities" in the 2011 financial statements); for greater disclosure, reference should be made to the Remuneration Report which will be submitted to the shareholders' meeting called to approve the financial statements as of 31 December 2011.

Subsequent to the enforcement of Italian Law no. 120/2011, the Company will take steps to appoint its corporate bodies in compliance with said law. To-date, the Board has ascertained not to adopt a plan for the succession of the executive directors.

### **3.2 Shareholders' meetings**

Consistent with the principles and application criteria contained in Article 9 of the Code, the Company encourages and facilitates the participation of shareholders in meetings, providing any Company-related information requested by the shareholders in accordance with regulations governing price-sensitive communications. To facilitate the receipt of information and attendance at meetings by its shareholders, and to facilitate access to documentation which, pursuant to and in accordance with law must be made available to them at the registered offices when meetings are due to be held, the Company has made said information available in a special "investor relations" section of its website at [www.tiscali.com](http://www.tiscali.com), allowing said information to be downloaded in electronic format.

As indicated in application criteria 3 of Article 9 of the Code, on 16 July 2001 the Shareholders' Meeting adopted its own AGM Regulations, subsequently updated by the shareholders' meeting held on 29 April 2011, also available on the Company website. The AGM Regulations were adopted with the aim of ensuring an orderly and functional performance of the shareholders' meetings, precisely defining rights and duties of all the participants and establishing clear and unambiguous rules without wishing in any way to limit or prejudice the right of each shareholder to express their opinions and formulate requests for clarification on the business placed on the agenda. The Board of Directors believes that minority Shareholders' prerogatives have been respected when adopting resolutions, in so far as the current Articles of Association do not provide for majorities other than those laid down by law.

Pursuant to Article 2370 of the Italian Civil Code and Article 8 (Participation in shareholders' meetings) of the Articles of Association, shareholders can take part in meetings if they have provided the Company with the communication sent by the authorised broker as per current

provisions, proving ownership of the shares as of the so-called record dates, as well as any voting proxy.

### **3.3 Board of Statutory Auditors**

#### Appointment and composition

Consistent with Article 8 of the Code, in relation to the appointment of Statutory Auditors, Article 18 (Board of Statutory Auditors) of the Articles of Association envisages a voting list system which guarantees the transparency and correctness of the appointment procedure and protects minority shareholders' rights.

Shareholders are only entitled to present lists if, alone or together with other shareholders, they can prove that they hold at least the percentage of the share capital envisaged by applicable legislation. Five candidates must be indicated on each list, by means of a consecutive number, in order of professional seniority of the candidates. Each Shareholder may submit, or jointly submit, one list only and each candidate may be listed in one list only or be disqualified. The list of nominations must be filed at the Company's registered office at least twenty-five days prior to the date of the next Shareholders' Meeting, together with the professional CVs of individuals appearing on the lists and a declaration from each accepting the candidature and declaring the inexistence of reasons for ineligibility or incompatibility and that the honourable and professional qualifications required under applicable law and by the Articles of Association are met. The lists and the accompanying documentation must be made public in accordance with the legal formalities at least twenty-one days before the date envisaged for the Meeting.

Each shareholder may vote for just one list. The Auditors are elected as follows: a) two Statutory Auditors and two Alternate auditors are elected, in the order in which they appear on the list receiving the most votes; b) the third Statutory Auditor is the first candidate on the list receiving the second highest number of votes. In accordance with Italian Law no. 262/2005, as amended by Italian Legislative Decree no. 303/2006, the person appearing first on the list receiving the second highest number of votes is appointed Chairman of the Board of Statutory Auditors.

On 30 April 2009, the ordinary shareholders' meeting applied the voting list mechanism described above for the appointment of the current Board of Statutory Auditors, which will remain in office until the date of the meeting called to approve the annual financial statements at 31 December 2011. Following the presentation of the lists, Aldo Pavan, Piero Maccioni and Andrea Zini were appointed as Statutory Auditors. Rita Casu and Giuseppe Biondo were elected as Alternate auditors. Aldo Pavan was elected Chairman of the Board of Auditors. Following the resignation of the Chairman of the Board of Statutory Auditors, Aldo Pavan, on 12 November 2009, the ordinary shareholders' meeting held on 21 December 2009 took steps to supplement the Board of Statutory Auditors, replacing the outgoing Chairman Aldo Pavan with the first of those not elected from the same list, Paolo Tamponi. Therefore, the Board of Statutory Auditors currently comprises Paolo

Tamponi (Chairman), Piero Maccioni and Andrea Zini (Statutory Auditors), Rita Casu and Giuseppe Biondo (Alternate auditors).

### Requisites

Article 18 (Board of Statutory Auditors) of the Articles of Association envisages that at least one of the Statutory Auditors and at least one Alternate auditor, must be chosen from those listed on the official register of auditors with at least three years' experience in the auditing of accounts. Auditors failing to meet the aforementioned condition must have a total of at least three consecutive years' experience in specific company purpose-related duties and, in any event, in the telecommunications sector. The aforementioned article also states that Auditors who are already Statutory Auditors for more than five listed companies may not be appointed.

In the specific "investor relations" section of the website at [www.tiscali.com](http://www.tiscali.com), the Company publishes the professional résumés of its Statutory Auditors, so that the shareholders and investors can assess the professional experience and the authoritativeness of the members of the Board of Statutory Auditors.

### Activities

The members of the Board of Statutory Auditors operate independently, in constant liaison with the Internal Audit Committee, regularly attending its meetings, and with the Internal Audit Department, in accordance with the principles and application criteria indicated in Article 8 of the Code.

Subsequent to the enforcement of Italian Law no. 120/2011, the Company will take steps to appoint its corporate bodies in compliance with said law.

### **3.4 Board of Directors internal committees and other governance bodies**

As recommended by the provisions of Article 4 of the Code, the Board of Directors has set up its own Internal Audit Committee and Remuneration Committee. Subsequent to the appointment of the new Board of Directors, which will take place during the shareholders' meeting for the approval of the financial statements as of 31 December 2011, steps will be taken to re-establish the committees within the Board as per the Code and, therefore, the Risk Management Committee (which in fact incorporates the functions currently carried out by the Internal Audit Committee), the Remuneration Committee, the Appointments Committee in the most efficient forms with respect to the structure of the Company's management body and with possible unification of the latter two; along with the appointment of the Lead Independent Directors and the Director appointed to oversee the Internal Audit System (which might be the same Chairman of the Risk Management Committee). Furthermore, the Executive appointed to draw up the Company's accounting documents and the Supervisory Body will also be appointed, both expiring with the approval of the financial statements as of 31 December 2011.

#### Internal Audit Committee (see reference)

With regard to the Internal Audit Committee, reference should be made to the following section Internal Auditing.

#### Remuneration Committee

Since March 2001 the Company's Board of Directors has set up its own Remuneration Committee, as recommended by Article 6 of the Code and relevant application criteria. The Board of Directors also approved Remuneration Committee Regulations which envisaged that said committee should comprise three members, mainly chosen from among the Board members without executive functions. A Chairman is elected from among the members, by means of majority vote. The Remuneration Committee makes proposals to the Board of Directors for the remuneration of the Chief Executive Officer and the other Directors who cover specific offices; it makes general recommendations to the Board of Directors regarding the remuneration of the executives with strategic responsibility for the Group, aids the Board of Directors in the preparation and implementation of any remuneration plans based on shares or financial instruments, and assesses the adequacy and application of the Remuneration Policy. As part of its functions, the Committee may avail itself of outside consultants, at the Company's expense. The Committee meets when it considers it necessary, upon the request of one or more members. The provisions of the Articles of Association, in as far as they are compatible, apply for the calling of said committee and the business of its meetings.

During the Board Meeting held on 21 December 2009, the newly appointed Board established an internal Remuneration Committee, comprising the two independent Directors Franco Grimaldi and Victor Uckmar, as well as the Director Gabriele Racugno, who does not cover any executive position within the Company or the Group. The Director Franco Grimaldi was appointed Chairman of the Committee. The Committee proposed the terms of the administration agreement with the Chief Executive Officer Renato Soru, approved by the Board on 26 March 2010. Furthermore, the Remuneration Committee prepared the Remuneration Report, subsequently approved by the Board of Directors, to which reference is made for further information.

#### Appointments Committee

To-date, the Board of Directors has not deemed it necessary to set up an Appointments Committee in so far as the voting list system as defined by Article 11 (Board of Directors) of the Articles of Association ensures the protection of minority shareholders' rights. In addition, the voting list system requires proposals for the appointment of Directors to be submitted by shareholders subject to candidate suitability selection. Further to the coming renewal of the Board of Directors, the Company will take steps to possibly establish the Appointments Committee.

### **3.5 Internal auditing**

Back in October 2001, the Company formalized the internal audit organizational set-up. Following the amendments to the Code of Conduct for listed companies and the suggestions of Borsa Italiana S.p.A., on 25 March 2004 the Board of Directors took steps to up-date the organizational set-up of the Company's internal audit system, on the basis of a proposal made by the Internal Audit Committee on 24 March 2004. The current internal audit set-up is in line with the matters envisaged by the principles and applicative criteria contained in Article 7 of the Code.

#### Internal audit system

The internal audit system is the set of processes dedicated to monitoring efficiency of Company operations, the reliability of its financial data, the observance of laws and regulations, and the safeguarding of Company assets.

The internal audit system is the responsibility of the Board of Directors, which sets guidelines for the system and periodically verifies its adequacy and correct functioning, ensuring that the main business risks are identified and appropriately managed.

The Director appointed to this task identifies the main business risks, submits them for the attention of the Board of Directors and implements the Board's recommendations by developing, managing and monitoring the internal audit system. He is assisted in this task by an Internal Audit Coordinator, appointed by the CEO on the recommendation of the Internal Audit Committee. The Coordinator is equipped with all means necessary to perform this support role.

The Internal Audit Coordinator has no line manager, and reports directly to the CEO, the Internal Audit Committee and the Board of Statutory Auditors at least once every three months. To-date, the Internal Audit Coordinator was identified as the person with operational responsibility for coordinating activities within the Internal Audit department, since he has no direct line manager and is in possession of the professional skills necessary to perform his duties as recommended by the Code.

To further reinforce the requirement of independence, the Internal Audit Coordinator and therefore also the Internal Audit department, report to the Chairman of the Internal Audit Committee. From an administrative standpoint, the Internal Audit Coordinator and therefore the Internal Audit department, report to the CEO. The provision of suitable means required by the Internal Audit Coordinator and therefore the Internal Audit department, is included in the CEO's executive powers. The Internal Audit Committee, in reviewing the work plan submitted by the Internal Audit Coordinator, also assesses the suitability of the means granted by the CEO to the Internal Audit Coordinator, based on the number of Internal Auditors and their responsibilities and qualifications in relation to the specific work plan.



During the period covered by the previous Report, the main activities carried out with regard to the internal audit by the Coordinator, the Committee and the Internal Audit department, were as follows:

- checking the implementation of the updating of the “Organisational, management and control model” for the main companies in the Group and activities relating to the integration of the Group’s Supervisory Body which took place during the Board meeting held on 5 August 2011;
- achievement of the 2011 audit plan, in particular, with checking of certain controls and related activities and finalisation of the related audit report;
- drafting of the 2012 audit plan;
- activities for checking the adequacy of the administrative and accounting procedures for the formation of the 2011 financial statements for the purpose of assessing the related efficacy. This work also has the aim of issuing the certificate as per Article 154 *bis* of the Consolidated Finance Law, introduced by Italian Decree Law no. 262/2005 as amended by Decree Law no. 303/2006 *et seq.*.

On the basis of the checks carried out, the Board of Directors deemed the internal audit system to be adequate for the Company’s needs, as well as in line with current legislation and the Code’s recommendations.

#### Internal Audit Committee

In accordance with the recommendations of the Code, the Board of Directors has set up an Internal Audit Committee to provide advice and recommendations, comprising three non-executive Directors, two of which are independent. The Internal Audit Committee is a sub-group of the Board of Directors, its function being to advise and recommend. Its objective is to improve the effectiveness and strategic guidance capacity of the Board of Directors with regard to the Internal Audit system. In particular:

- a) helping the Board of Directors to set guidelines for the internal audit system and periodically verify its adequacy and correct functioning, ensuring that the main business risks are identified and appropriately handled;
- b) assessing the work plan prepared by the Internal Audit Coordinator and receiving the Coordinator’s periodic reports;
- c) together with the Company’s administration managers and independent auditing firm, verifying adequacy of the accounting standards used and their uniformity for the purpose of drafting the consolidated financial statements;
- d) assessing proposals submitted by auditing firms for the role of independent auditor, and the proposed work plan for the independent audit and the results expressed in the report and letter of recommendations, along with the day-to-day contact with the independent auditing firm;

- e) assessing proposals of an advisory nature formulated by the independent auditing firm - or its affiliated companies - in favour of Group companies;
- f) assessing proposals of an advisory nature in favour of Group companies that are for significant amounts;
- g) reporting to the Board of Directors on tasks performed and on the adequacy of the internal audit system, at least once every six months on approval of the annual and half-year reports;
- h) performing additional tasks as assigned by the Board of Directors.

The entire Board of Statutory Auditors, its Chairman or a Statutory Auditor designated by the Chairman, take part in the Committee's work. Two of the members of the Committee are qualified as independent. Should it not be possible to guarantee that the composition of the Internal Audit Committee has a majority of non-executive and independent Directors, the Committee will have just two members, including at least one who is independent. This solution is preferable to having a majority of non-independent Directors, albeit temporary. If for a certain period the Internal Audit Committee is composed of two members only, the entire Board of Statutory Auditors is always invited to attend committee meetings. In addition, if for a certain period the Committee membership is reduced to two members only, and the number of votes is equal, then the independent Director has the casting vote. The Chairman of the Internal Audit Committee may invite the CEO and other parties, e.g. the independent auditing firm, the General Manager, if appointed, and the CFO, to Committee meetings in relation to specific items on the agenda for which their presence may prove useful.

Meetings of the Internal Audit Committee are normally held prior to Board of Directors' meetings scheduled for approval of the quarterly, half-year and draft annual reports, and in any event at least once every six months. The Chairman of the Internal Audit Committee ensures that the committee members receive the necessary documentation and information well in advance of the meeting, unless necessity and urgency prevail. The work of the meetings is in any event summarised in written minutes.

During the Board Meeting held on 21 December 2009, the newly appointed Board established an Internal Audit Committee internally, comprising the two independent Directors Franco Grimaldi and Victor Uckmar, as well as the Director Luca Scano, who has proven experience with regard to accounting and finance as required by the Code. The Director Victor Uckmar was appointed Chairman of the Committee.

During 2011, the Internal Audit Committee met four times during the Board meetings for approval of the accounting reports: 24 March, 12 May, 5 August and 10 November; in 2012, 30 March. All the Committee meetings, except that held on 30 March 2012, where two of the members of the Committee were present, were attended by all the members and the Board of Statutory Auditors was represented by all or two of its members.

## **4. Internal checking relating to accounting and financial information**

### **4.1 Foreword**

The Internal Audit System on company information must be understood as a process which, as it involves several company functions, provides reasonable assurances about the reliability of the financial information, the fairness of the accounting documents and compliance with the applicable regulations. The weighty correlation with the risk management process is evident, consisting in the process for identifying and analysing those factors that might prejudice the attainment of corporate goals; the main purpose is to determine how those risks can be handled and adequately monitored and made innocuous as far as possible. An ideal and effective risk management system can in fact mitigate any negative impact on company goals, amongst which the reliability, accuracy, fairness and timeliness of the accounting and financial information.

### **4.2 Description of the main features of the risk management and internal control systems in existence with regard to the financial information process**

#### **A) Stages of the risk management and internal control system in existence with regard to the financial information process.**

##### *Identifying risks on financial information*

The work of identifying risks is carried out first and foremost by the selection of relevant entities (companies) at Group level and, subsequently, by the analysis of risks that reside in the corporate processes from which the financial information originates.

This work includes: i) defining the quantitative criteria with regard to the income and asset contributions provided by individual companies in the last accounting statement and the rules for selection with internal relevance thresholds. Considering qualitative elements is not excluded: ii) identifying significant processes, associated with material data and information, that is accounting items in relation to which a possibility exists that is not remote for the containment of errors with a potential significant impact on financial information.

For each significant account, the identification of the most relevant 'statements' is made, in constant compliance with assessments based on risk analysis. The account statements are represented by the existence, completeness, needfulness, valuation, rights and obligations and presentation and information. Risks thus refer to the possibility that one or more account statements may not be correctly represented, with a consequential impact on the information itself.

##### *Assessment of risks on financial information*

The assessment of risks is carried out both on an overall company basis and at the level of specific processes. The first sphere includes the risks of fraud, of incorrect functioning of the computer systems or other unintentional errors. At a process level, the risks connected with financial

information (underestimation, overestimation of items, inaccuracy of information, etc.) must be analysed at the level of the activities that make up the processes.

#### *Identifying checks in relation to identified risks*

First of all attention is paid to the checks at corporate level, which can be connected to information/data and to the related statements, which must be identified and assessed both through the monitoring of the repercussion at the process and at a general level. Checks at corporate level are aimed at preventing, identifying and offsetting any significant errors, even if not operating at a process level.

#### *Assessment of checks in relation to identified risks*

The assessment of the checking system used is carried out in accordance with various elements: timeliness and frequency; sufficiency; operational compliance; and organisation assessment. The overall analysis of checks for each risk is autonomously defined as a summary of the assessment process at the level of adequacy and compliance that corresponds to those checks. The analyses sum up considerations about the effectiveness and efficiency of the checks on each individual risk and the overall assessment of the management of risks is broken down into assessments of existence, appropriateness and compliance. The information flows with the results of the activity are supplied to the management bodies by the Executive in charge of drawing up the Company's accounting documents.

### **B) Roles and functions involved.**

The Executive in charge is in essence at the top of a system that supervises the formation of the financial information and takes steps to inform the senior management in this connection. With the purpose of pursuing his/her assignment, the Executive in charge has the option of specifying the organisational lines for an appropriate structure in the context of his/her own duties; he/she has the resources and tools to carry out the work; and has the option of working with other organisation units.

A multiplicity of corporate functions contribute to providing information of an economic-financial nature. Thus, the Executive in charge sets up a systematic and fertile relationship with said functions. The Executive in charge is required to inform the Board of Statutory Auditors in good time if any critical items of an accounting, asset or financial nature were to emerge.

The Consolidated Accounts Function serves as an intermediate level and as a link between the Executive in charge and the individual Administrative Reporters for checking defined relevancies within the Tiscali Group and arranging to gather, check, assemble, and monitor the information received from the latter. The Consolidated Accounts Function cooperates with the Executive in charge with regard to the documentation of the accounting processes and their related updating over time.

The Administrative Reporters for the various Group subsidiaries gather the operating information at local level, check it and guarantee the appropriate information flows with regard to compliance with the outside regulations involved from time to time.

A constant flow of information is expected between the three levels described above, by means of which the Reporters inform the Consolidated Accounts Function, and by means of the latter the Executive in Charge, in accordance with the provisos under which the work of management is carried out and the process of preparing accounting and financial documents is checked for any critical items emerging during the period and for the remedial action to overcome any problems.

It is believed that the model used will enable sufficient guarantees to be provided for correct accounting and financial information. It is however stressed that it is impossible to be certain that no malfunctions or anomalies liable to affect accounting and financial information will occur, even in the presence of correctly configured and operational internal control systems.

#### **5. Organisation, management and control model pursuant to Italian Legislative Decree no. 231/2001**

The Company has for some time adopted the "Organisation, management and control model pursuant to Italian Legislative Decree no. 231/2001" (hereinafter the Model); during 2010, the updating process was concluded, mainly aimed at adapting the Model to the new legislative measures and the new Company and Tiscali Group set-up. The new model, together with the new Code of Ethics, was approved by the Board of Directors on 12 November 2010. The Supervisory Body operates without interrupting its supervisory activities on the functioning and the observance of said Model. It should be noted that, in consideration of its specificities and its particular exposure to risk, the leading Italian subsidiary, Tiscali Italia S.p.A., also up-dated its "Organisation, management and control model", by means of resolution of the Board of Directors dated 17 November 2010; the Supervisory Body already appointed continued to operate without interruption. The Board Meeting held on 5 August 2011 supplemented the composition of the Supervisory Body pursuant to Italian Decree Law no. 231/2011, appointing the lawyer Michele Schirò as external member acting as Chairman, and Mr. Carlo Mannoni, head of the Company's Regulatory Affairs, who join Mr. Pasquale Lionetti, tasked with Internal Auditing and already a member of the Supervisory Committee. The Body thus made up expires with the approval of the 2011 financial statements and until that date also operates on behalf of the subsidiary Tiscali Italia S.p.A.

## **6. Regulations for transactions with related parties**

On 12 November 2010, further to the affirmative opinion of the independent directors, the Company's Board of Directors approved the new Regulations for Transactions with Related Parties as per Article 2391 *bis* of the Italian Civil Code and Consob Regulation no. 17221 dated 12 March 2010. The regulations discipline Transactions with related parties carried out by Tiscali S.p.A. and its subsidiary or associated companies, and came into force as from 1° January 2011 as published on the Company website, in the Investor Relations section. Following the issue of the Regulations, the Group entered into three transactions with related parties which were approved by the Board of Directors on 30 March 2012 having been approved by the Committee for Minor Transactions made up of Victor Uckmar, acting as Chairman, Gabriele Racugno and Franco Grimaldi. The Regulations for transactions with related parties are available on the Company website [www.tiscali.com](http://www.tiscali.com) in the section "Documents/Disclosure Documents".

## **7. Handling of confidential information and market communications. Investor Relations**

The Company has an Investor Relations Office responsible for communications with shareholders and institutional investors. The Investor relations office arranges, amongst other things, for the wording of press releases and in accordance with the type of communiqué, it carries out the internal approval procedure jointly with the Legal and Company Affairs department. Furthermore, it concerns itself with publication, also by means of a network of qualified outside companies that carry out such work professionally.

Disclosure is ensured not only by means of press releases, but also via periodic encounters with institutional investors and the financial community, as well as by extensive documentation made available on the company website at [www.tiscali.com](http://www.tiscali.com) in the "investor relations" section. Recourse to on-line communication, which is mainly used by the non-institutional public, is considered strategic by the Company, since it makes standardized disclosure of the information possible. Tiscali undertakes to systematically see to the accuracy, completeness, continuity and up-dating of the financial matters disclosed via the Company website. It is also possible to contact the Company using a special e-mail address ([ir@tiscali.com](mailto:ir@tiscali.com)).

The Directors, Statutory Auditors and top management of Tiscali and its subsidiaries are obliged to observe the confidentiality of the documents and information acquired during their activities. Any dealings between these parties and the press or other means of mass media, as well as with financial analysts or institutional investors, which involve confidential documents or information

concerning Tiscali or the Group, may take place solely via the head of investor relations, unless they involve interviews or declarations made by the executive directors.

The company managers and, in any event, all the employees and collaborators are obliged to keep price sensitive information and documents acquired because of and during their activities confidential and not to communicate such information to others except for official or professional reasons, unless these documents or information have already been made public in the prescribed forms. The above parties are prohibited from giving interviews to press bodies, or making public declarations in general, which contain information on significant events, qualifiable as "privileged" as per Article 181 of Italian Legislative Decree no. 58/1998, unless such information has been included in press releases or documents already disclosed to the public, or expressly authorized by the Investor Relations office. In compliance with the matters indicated by Article 114.2 of Italian Legislative Decree no. 58/1998, on 17 November 2004 a procedure was circulated within the Group with the aim of disciplining the communication to the Parent Company of price sensitive events which have occurred within the sphere of pertinence of the subsidiary companies.

In replacement of the Code of Conduct on Internal Dealing adopted by the Company in November 2002, and in enactment of the new Article 115 *bis* of Italian Legislative Decree no. 58/1998 on keeping a register of persons with access to privileged information, the Company established a register of persons (held by the Investor Relations Office) who, based on their business or profession or in relation to duties performed, have access to such information. In accordance with the aforementioned legislation, the IT-managed register contains: the identity of each person with access to privileged information, the reason that person was entered on the register, the date of registration, and the date of any updates to information relating to that person.