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Financial disputes: new organisational rules for the conciliation and arbitration chamber at CONSOB effective 15 September 2012

With Resolution No. 18310 of 5 September 2012, the Commission approved new rules for the organisation and operation of the Conciliation and Arbitration Chamber (hereinafter the “**Chamber**”) at Consob and of the Secretariat provided for in art. 2, section 2, of the Regulation which governs the Chamber adopted and issued following a public consultation procedure (the “**Regulation**”) by Resolution No. 18275 of 18 July 2012 enacting the Italian Legislative Decree n. 179 of 8 October 2007.

The new organisational rules of the Chamber, which come into effect 15 September 2012, incorporate a number of operating rules contained in the “By-laws of the Conciliation and Arbitration Chamber at Consob” repealed with effect from 1 August 2012, and adapting them to the new organisational and regulatory context. They also introduce a number of innovations to encourage the use of the Chamber as an alternative system for resolving disputes, reducing the congestion of the judicial system.

The operating rules govern the powers of the chairperson, the tasks of the Chamber, the methods of convening meetings, meeting procedures and minute-taking, the work of the secretariat and other general criteria for appointing conciliators and arbitrators.

The changes instead consist of tools to encourage the use of conciliation or arbitration service, namely the ability for the Chamber to:

- a) make public, in an anonymous reference to the parties and broadcast on Consob’s website, the main points from the results of proceedings;
- b) ask intermediaries to provide adequate disclosure to clients on conciliation and arbitration procedures;
- c) assess the guidelines drawn up by the industrial associations on the subject of conciliation and arbitration.

Pursuant to the opinion of the Council of State of 20 October 2011, the Chamber without subjectivity, is “classified [...] as a technical body, instrumental to Consob but not separate to it” and whose functions, provided autonomously, in any case belong to Consob, which is the final arbiter of the related effects. The regulatory changes introduced in the more general system of civil mediation aimed at conciliation pursuant to Italian Legislative Decree no. 28 of 4 March 2010, the related enactment decrees of the Ministry of Justice, and the experience accrued in the overall Chamber activities derive from Consob.

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