



Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo

(only the Italian version is authentic)

REGULATION N. 15 OF 20 FEBRUARY 2008

REGULATION CONCERNING THE INSURANCE GROUP REFERRED TO UNDER TITLE VII (SHAREHOLDINGS AND INSURANCE GROUP), CHAPTER IV (INSURANCE GROUP) OF LEGISLATIVE DECREE N. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE.

ISVAP

Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest)

Having regard to law n. 576 of 12 August 1982 and subsequent modifications and integrations, on the reform of insurance supervision;

Having regard to legislative decree n. 209 of 7 September 2005 and subsequent modifications and integrations, introducing the Code of Private Insurance;

adopts the following

REGULATION

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TITLE I

General provisions

Article 1

(Legislative sources)

1. This Regulation has been adopted in compliance with articles 5 (2), 85 (5), 87 (1) and 190 (1) of legislative decree n. 209 of 7 September 2005.

Article 2

(Definitions)

1. For the purposes of this Regulation:
 - a) “register” means: the register of insurance groups referred to under article 85 of legislative decree n. 209 of 7 September 2005;
 - b) “control” means: the participation and non-participation relations resulting in the cases referred to under article 72 of legislative decree n. 209 of 7 September 2005;
 - c) “decree” means: legislative decree n. 209 of 7 September 2005 and subsequent modifications and integrations, introducing the Code of Private Insurance;
 - d) “insurance undertaking” means: the undertaking authorised according to the provisions laid down in Community directives on direct insurance;
 - e) “insurance undertaking authorised in Italy” or “Italian insurance undertaking” means: the undertaking with head office in Italy and the Italian branch of an insurance undertaking with head office in a third State, authorised to pursue insurance business or the operations referred to under article 2 of legislative decree n. 209 of 7 September 2005;
 - f) “Community insurance undertaking” means: the undertaking with head office and central administration in a member State of the European Union other than Italy or in a State belonging to the European Economic Area, authorised according to the provisions in EC directives on direct insurance;
 - g) “non-EU insurance undertaking” means: the insurance undertaking with head office and central administration in a State not belonging to the European Union or to the European Economic Area, authorised to pursue insurance business or the operations referred to under article 2 of legislative decree n. 209 of 7 September 2005;
 - h) “insurance holding undertaking” means: the parent undertaking the sole or main object of which is to acquire controlling interests and to manage such holdings and turn them to profit, where those subsidiary undertakings are either exclusively or mainly insurance undertakings, non-EU insurance undertakings or reinsurance undertakings, one at least of such subsidiary undertakings being an insurance undertaking with head office in the territory of the Italian Republic, provided that it is not a mixed financial holding company according to the relevant provisions of Community regulations on the supplementary supervision of undertakings belonging to a financial conglomerate. For the purposes of control exerted mainly over insurance undertakings, non-EU insurance undertakings or reinsurance undertakings the provisions under Title XV, Chapter IV of legislative decree n. 209 of 7 September 2005 and the relevant implementing provisions shall apply;

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- i) “reinsurance undertaking” means: an undertaking exclusively authorised to the pursuit of reinsurance, other than an insurance undertaking or a non-EU insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, an insurance undertaking with head office in a third State or other reinsurance undertakings;
- j) “Italian reinsurance undertaking” means: a reinsurance undertaking with a branch in Italy and a branch of a reinsurance undertaking with head office in another State;
- k) “instrumental undertaking” means: a non-financial company pursuing, exclusively or mainly, ancillary activities in relation to the activities exerted by the companies of the insurance group among which there are those consisting in the ownership and management of real estate, insurance mediation and the management of IT services, claims assessment and settlement and assistance. The ancillary character of the activity must be shown in the company's articles of association;
- l) “ISVAP” or “Authority” means: Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest);
- m) “administrative body” means: the board of directors or, in the undertakings which have adopted the system referred to in article 2409 *octies* of the civil code, the management board;
- n) “control body” means: the board of auditors or, in the undertakings which have adopted a system other than that referred to under article 2380 (1) of the civil code, the supervisory committee or the management supervisory committee;
- o) “restructuring of the insurance group” means: operations such as mergers, acquisitions, transfer and cession of stakes, changes in the articles of association, portfolio transfers and setting up of insurance holding undertakings, promoted by the parent undertaking and falling within a single programme.

Article 3

(Scope)

1. This Regulation shall apply:

- a) to the undertakings which meet the requirements to be classified as parent undertaking in compliance with article 5;
- b) to the insurance undertakings, Italian branches of undertakings with head office in a third State, reinsurance undertakings, insurance holding undertakings and instrumental undertakings included in the insurance group structure according to the composition referred to under article 4.

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TITLE II
Insurance group

Chapter I
Structure of the insurance group

Article 4

(Composition of the insurance group)

1. The insurance group shall be alternatively made up of:
 - a) the parent Italian insurance or reinsurance undertaking and its subsidiaries which are Italian, Community or non-EU insurance undertakings, reinsurance undertakings, instrumental undertakings or insurance holding undertakings, wherever the related undertakings or subsidiaries of the latter undertakings have their head office;
 - b) the parent Italian insurance holding undertaking and its subsidiaries which are Italian, Community or non-EU insurance undertakings, reinsurance undertakings, instrumental undertakings or insurance holding undertakings wherever the related undertakings or subsidiaries of the latter companies have their head office.

Article 5

(Parent undertaking)

1. "Parent undertaking of an insurance group" shall mean:
 - a) the Italian insurance or reinsurance undertaking which directly or indirectly controls at least one insurance or reinsurance undertaking or an instrumental undertaking, and which is not controlled by another insurance or reinsurance undertaking or insurance holding undertaking which may be considered as the parent undertaking;
 - b) the insurance holding undertaking with head office in Italy which is incorporated as a company, controls at least one Italian insurance or reinsurance undertaking and is not controlled by another insurance or reinsurance undertaking or another insurance holding undertaking which may be considered as the parent undertaking.
2. The insurance holding undertaking referred to under paragraph 1 (b) can be regarded as not being the parent undertaking if all the following conditions are met:
 - a) the company's articles of association expressly envisage that access to the management and coordination functions is barred to the company itself;
 - b) the undertaking does not possess any other significant investments other than the ones in the insurance holding undertaking or in the insurance or reinsurance undertaking under (c) below;
 - c) there exists an insurance undertaking or a reinsurance undertaking or another insurance holding undertaking controlled by it which meets the conditions referred to under (a) or (b) above and declares to exercise the management and coordination functions.

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3. Every year the administrative body of the insurance holding undertaking referred to under paragraph 1 (b) shall – after hearing the supervisory body – assess compliance with the condition of control referred to under article 2 (1) (h), and notify ISVAP immediately if such condition is no longer met.
4. Nonetheless it goes without saying that ISVAP has the possibility to identify, also with regard to the parent undertaking, a composition of the insurance group which differs from the notified one.

Chapter II

Functioning and organisation of the insurance group

Article 6

(Powers of the parent undertaking)

1. The parent undertaking shall play the role as referent of ISVAP for the supervision over the insurance group.
2. In the exercise of the management and coordination activity which is peculiar to it the parent undertaking shall adopt, in relation to the subsidiaries of the insurance group, the measures needed to implement the general and specific provisions set by ISVAP for the purposes of a stable and efficient management of the group. These provisions may concern the whole insurance group or single subsidiaries.
3. The parent undertaking shall require from the insurance group subsidiaries significant information, data and situations with respect to the adoption of the measures referred to under paragraph 2.
4. The parent undertaking shall check that each subsidiary of the insurance group complies with the measures adopted by the parent undertaking in accordance with ISVAP's provisions. The parent undertaking shall immediately notify ISVAP of the cases in which certain legal provisions of the State where the foreign subsidiaries of the group have their head office preclude the application of the measures implementing the provisions relating to supervision over the insurance group.
5. Along with the financial statements the parent undertaking shall send ISVAP a report illustrating:
 - a) the instructions given to the group subsidiaries in the performance of the management and coordination activities;
 - b) the internal control mechanisms and risk management processes adopted in compliance with article 87 of the decree and the relevant implementing provisions regarding internal control and risk management, including the findings of the checks made on the insurance group subsidiaries;
 - c) the measures taken in compliance with paragraph 2 in order to implement ISVAP's provisions relating to insurance groups;
 - d) the findings of the checks referred to under paragraph 4.
6. The report referred to under paragraph 5 shall be previously submitted to overview by the parent undertaking's administrative body.

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Article 7

(Duties of the subsidiaries included in the insurance group)

1. The administrative body of the undertakings belonging to the insurance group shall be required to implement the measures adopted by the parent undertaking in application of ISVAP's provisions for the purposes of a stable and efficient management of the group.
2. The administrative body of the undertakings belonging to the insurance group shall be required to provide the parent undertaking with the necessary collaboration as well as with any data, document and information concerning the adoption of the measures by the latter.

Article 8

(Articles of association)

1. The parent undertaking's articles of association shall comply with the following provisions:
 - a) the parent undertaking's objects shall indicate that: "the company, in its capacity as insurance group parent undertaking (corporate name), in the exercise of the management and coordination activity and in compliance with article 87 (3) of the Code of Private Insurance, shall adopt – in relation to the subsidiaries of the group – the measures for the implementation of the provisions set by ISVAP for the purposes of a stable and efficient management of the insurance group";
 - b) the decisions regarding the determination of the criteria for the coordination and management of the insurance group subsidiaries and the implementation of ISVAP's provisions shall be the sole responsibility of the parent undertaking's administrative body;
 - c) in the sole cases referred to under article 5 (1) (b) the articles of association shall indicate that the parent insurance holding undertaking is subject to supervisory controls in compliance with the provisions of the decree, and that the articles of association are subject to ISVAP's assessment.
2. In case the parent undertaking is a branch of an insurance undertaking with head office in a third State or of a reinsurance undertaking with head office in another State the memorandum of the branch shall have to comply with the provisions referred to under paragraph 1 (a) and (b).
3. The articles of association of each insurance group subsidiary shall indicate that the undertaking belongs to that insurance group by pointing out that "the company belongs to the insurance group (corporate name). In that capacity it shall be required to comply with the measures which the parent undertaking, in the exercise of the management and coordination activity, shall adopt for the implementation of the provisions set by ISVAP for the purposes of a stable and efficient management of the group. The company's directors shall provide the parent undertaking with any data and information for issuing the measures".
4. In case the insurance group subsidiary is an insurance holding undertaking the articles of association shall not only indicate the group to which it belongs but also the role attributed to it by the parent undertaking in the coordination of subsidiaries. The articles of association shall also contain the indication that the undertaking is required to observe, and to ensure that its subsidiaries observe, the measures adopted by the parent undertaking in the exercise of the management and coordination activity, and to furnish

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data and information regarding its activity and the activity of its subsidiaries.

Chapter III

Restructuring project of the insurance group

Article 9

(Contents of the project)

1. The parent undertaking intending to restructure the insurance group shall draw up a project, passed by resolution of the administrative body, containing a detailed description of the operations to be carried out; more specifically:
 - a) the single operations making up the restructuring process and how they are scheduled. In case one or more operations are subject to the prior authorisation of a supervisory Authority other than ISVAP it shall be necessary to indicate what supervisory Authority will authorise each operation. In case of mergers, indication shall also be given of those operations in which companies or bodies not belonging to the insurance group are involved;
 - b) the composition of the insurance group at the end of the project;
 - c) the governance and organisation arrangements of the insurance group subsidiaries and the instruments the parent undertaking intends to adopt for the exercise of the management and coordination powers within the group structure resulting from the process; in particular it shall be necessary to illustrate how the process will change internal control mechanisms and the system of risk quantification and monitoring at the level of the insurance group.
2. The parent undertaking shall immediately send the project to ISVAP, along with a copy of the relevant favourable resolution by the administrative body and, in case of changes to the articles of association, a copy of the draft articles of association of the undertakings concerned.

Article 10

(Evaluation of the operations included in the project)

1. The undertakings concerned by the single operations included in the project referred to under article 9 (1) shall submit to ISVAP – where contemplated – the single applications for authorisation along with the documents envisaged by the decree and the relevant implementing provisions. Undertakings may send their applications to ISVAP via the parent undertaking as well.
2. Without prejudice to the procedures envisaged by the decree and the relevant implementing provisions for the authorisation of the single operations, ISVAP may suspend the deadlines of the single procedures in case it deems it necessary, in order to verify that the stable and efficient management of the group is not undermined, to require from the parent undertaking data and information about:
 - a) the adequacy of the technical and organisational profiles of the insurance group resulting from the restructuring process;
 - b) the adequacy of the procedures of risk management and of the internal control mechanisms of the insurance group resulting from the restructuring process.
3. ISVAP shall notify the parent undertaking and the undertakings which sought

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authorisation for the single operations of the suspension of deadlines, and require data and information in compliance with paragraph 2, and of the relevant extension.

Article 11

(Completing the operations included in the project)

1. Should ISVAP authorise single operations of the project the parent undertaking or the single undertakings concerned shall notify ISVAP of the carrying out of those operations within ten days from the date when they are completed and enclose the documents envisaged by the decree and the relevant implementing provisions, or the decision not to carry out the operations, if any.
2. ISVAP shall consequently modify the register of insurance undertakings and the register of insurance groups.

TITLE III

Register of insurance groups

Chapter I

Keeping of the register

Article 12

(Setting up and contents of the register)

1. The register of insurance groups shall be set up within ISVAP.
2. The register of insurance groups shall contain the following indications:
 - a) the name, legal structure, type of business, head office of the parent undertaking and of the other insurance group undertakings and, if different, the parent undertaking's general direction;
 - b) the date of registration of the insurance group and of each individual company of the insurance group;
 - c) the identification code and the name of the insurance group.
3. For a correct keeping of the register and compliance with the relevant requirements, the persons subject to the relevant communications in accordance with the provisions of the decree and of this Title shall pay special attention to the quality and timeliness of the information sent to ISVAP.
4. Through subsequent orders ISVAP shall set out the terms of gathering, also via IT systems, the data referred to under this Title.

Article 13

(Communication for registration in the register)

1. For the registration of the group in the register of insurance groups the companies which meet the requirements to be qualified as parent undertakings in compliance with article 5 shall send ISVAP a specific communication containing the information referred to under

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article 14.

2. The communication referred to under paragraph 1 shall be effected within thirty days from the time when the qualifying requirements are met, and a copy of it shall be transmitted also to the insurance group undertakings.

Article 14

(Contents of the communication for registration in the register)

1. The communication referred to under article 13 shall contain the following information:
 - a) the composition of the insurance group, with its subdivision into Italian and foreign companies;
 - b) the insurance group's map, clearly illustrating the insurance group's structure and its main entities, in the light of the organisation structure referred to under (f);
 - c) the type of control exerted over the insurance group subsidiaries and, in case of participations, the relevant percentage;
 - d) the indication of the holders of a participation higher than five per cent of the parent undertaking's share capital or of controlling interests. In the latter case, the type of control and, in case of participations, the indication of the relevant percentage;
 - e) the indication of the controlling interests and of the participations representing not less than twenty per cent of the corporate capital in companies not belonging to the insurance group, making use of the supervisory standard template referred to under article 213 of the decree and the relevant implementing provisions. Until the issuing of those provisions the standard form referred to under ISVAP Circular 456/2001 shall apply;
 - f) the group's organisation structure and the indications on how the parent undertaking intends to exercise the management and coordination functions;
 - g) whether article 5 (2) applies and if the conditions referred to under that paragraph are met.

Article 15

(Annexes to the communication for registration in the register)

1. In case the parent undertaking is an insurance holding undertaking the communication referred to under article 13 shall be accompanied by the following documents:
 - a) a copy of the parent undertaking's articles of association and last approved balance sheet, if the latter has not yet been transmitted to ISVAP;
 - b) the parent undertaking's fiscal code;
 - c) the documents needed to check the professional, good repute and independence requirements of the persons charged with the parent undertaking's administration, management and control functions, in compliance with article 76 of the decree and the relevant implementing provisions;
 - d) the declarations signed by the parent undertaking's legal representatives, attesting that compliance with the condition of control exerted mainly over insurance undertakings, non-EU insurance undertakings and reinsurance undertakings referred to under article 5 (3) has been assessed;

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- e) a copy – in Italian – of the articles of association of the insurance group companies other than insurance and reinsurance companies clearly showing the type of business carried on.
2. If the parent undertaking is an insurance undertaking the only documents required are those referred to under paragraph 1 (e).
3. The persons charged with administration, management and control functions at insurance or reinsurance undertakings shall not be required to prove that they meet the requirements referred to under 1 (c).
4. As to the documents referred to under paragraph 1 (c), until the entry into force of the provisions implementing article 76 of the decree, the provisions of article 45 (1) of ISVAP Regulation n. 10 of 2 January 2008 shall apply.

Article 16

(ISVAP's checks and registration requirements)

1. ISVAP shall register the insurance group in the register of insurance groups within sixty days of receiving the communication referred to under articles 13, 14 and 15. The deadline shall be suspended if ISVAP asks for information, documents and further data, and it shall begin again from the date on which they are sent.
2. Without prejudice to the parent undertaking's decision-making autonomy in the choice of the organisational models adopted, the group's structure must be designed to guarantee the carrying out of supervisory checks.
3. ISVAP shall not effect the registration in the register of insurance groups if in the insurance group's structure there are elements which constitute a barrier to the implementation of the provisions issued by ISVAP or to the effective exercise of the management and coordination powers by the parent undertaking. In those cases ISVAP shall point to the parent undertaking the changes required. Registration in the register shall be effected after the changes required by ISVAP have been implemented.

Article 17

(Automatic registration)

1. ISVAP may, on its own initiative, verify the existence of an insurance group and its composition.
2. At the end of the verification referred to under paragraph 1 ISVAP shall register the insurance group in the register of insurance groups and inform the parent undertaking thereof; the latter shall immediately inform each insurance group subsidiary.

Article 18

(Changes in the register)

1. For the purposes of updating the register of insurance groups the parent undertaking shall notify ISVAP of any changes in the information contained in the register. For that purpose the changes shall regard the name, legal structure, head office and type of business of the insurance group subsidiaries.

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2. The communication referred to under paragraph 1 shall be effected within ten days of registration in the registrar of companies of the minutes of the shareholders' meeting pertaining to such changes; the group undertakings with head office outside the territory of the Italian Republic shall be notified as soon as possible.
3. The parent undertaking shall immediately inform ISVAP of the changes in the articles of association of the undertakings other than insurance and reinsurance undertakings sent in compliance with article 15 (1) (e), and send it a copy – in Italian – of the articles of association amended.
4. The parent undertaking shall inform ISVAP of the changes in the insurance group's structure deriving from the acquisition or divestment of controlling interests. The communication shall be effected within ten days of the date when the operations are completed.
5. The parent undertaking shall inform ISVAP if the conditions required to meet the requirements to be classified, respectively, as parent undertaking and as subsidiary are no longer met. The communication shall be effected within ten days of the date when the requirements are no longer met.

Article 19

(Removal from the register)

1. ISVAP shall delete the parent undertaking from the register of insurance groups in case of lapse of authorisation, withdrawal of authorisation, administrative compulsory winding up as well as in case of voluntary dissolution or change of the objects. In the latter cases the provisions relating to the parent undertaking's removal from the register of undertakings shall apply.
2. Should ISVAP find – also on its own initiative – that the conditions required to meet the requirements to be classified, respectively, as parent undertaking and as subsidiary are no longer met, it shall also delete the parent undertaking and the group undertakings from the register of insurance groups.

Chapter II

Forms of publication of registration

Article 20

(Publication of registration)

1. In their acts and correspondence the insurance group subsidiaries shall show proof of their registration in the register of insurance groups.

Article 21

(Publication of the register and how to access it)

1. ISVAP shall ensure that the data in the register of insurance groups are updated on the basis of the communications sent in compliance with this Regulation, as well as of the outcome of the checks and assessments it shall make on the basis of this Regulation.
2. ISVAP shall ensure public access to the register of insurance groups by publishing it in its website.

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TITLE IV

Transitional and final provisions

Article 22

(Provisions governing proceedings)

1. For cases not covered by this Regulation the provisions of ISVAP Regulation implementing articles 2 and 4 of law n. 241 of 7 August 1990 shall apply.

Article 23

(Transitional provisions)

1. In the first application, the undertakings which meet the requirements to qualify as parent undertakings in compliance with article 5 shall send ISVAP the communication referred to under articles 13, 14 and 15 within thirty days of the entry into force of this Regulation.
2. In the first application, the sending of the documents referred to under article 15 (e) shall be replaced by declarations signed by the parent undertaking's legal representatives, attesting that the articles of association of the insurance group companies other than insurance and reinsurance companies comply with the provisions of this Regulation, without prejudice to the possibility for ISVAP to request a copy of such documents.
3. In the first application, the parent undertaking and the insurance group companies shall have one year's time from the date of registration in the register to make their articles of association or, in the case referred to under article 8 (2), the memorandum of the branch, compliant with the provisions of this Regulation.

Article 24

(Publication)

1. This Regulation shall be published in the Italian Official Journal and in ISVAP's Bulletin and website.

Article 25

(Entry into force)

1. This Regulation shall enter into force on the day after its publication in the Italian Official Journal.

Rome, 20 February 2008

the President
(Giancarlo Giannini)