



Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo

REGULATION N. 26 OF 4 AUGUST 2008

REGULATION CONCERNING PARTICIPATIONS ACQUIRED BY INSURANCE AND REINSURANCE UNDERTAKINGS REFERRED TO IN TITLE VII (SHAREHOLDINGS AND INSURANCE GROUP), CHAPTER III (PARTICIPATIONS HELD BY INSURANCE AND REINSURANCE UNDERTAKINGS) 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 as subsequently amended and supplemented, on the reform of insurance supervision;

HAVING REGARD to legislative decree n. 209 of 7 September 2005 as subsequently amended and supplemented, introducing the Code of Private Insurance;

adopts the following

REGULATION

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TITLE I
Provisions of a general nature

Article 1
(Legislative sources)

1. This Regulation has been adopted in compliance with articles 80 (3), 190 (1) and 191 (1) i) of legislative decree n. 209 of 7 September 2005.

Article 2
(Definitions)

1. For the purposes of this Regulation:
 - a) "control" shall mean: the participation and non-participation relations resulting in the cases referred to in article 72 of legislative decree n. 209 of 7 September 2005;
 - b) "decree" shall mean: legislative decree n. 209 of 7 September 2005, establishing the Code of Private Insurance;
 - c) "insurance group" shall mean: the group of companies as referred to in article 82 of legislative decree n. 209 of 7 September 2005 and its relevant implementing provisions;
 - d) "head of an insurance-led financial conglomerate" shall mean: a mixed financial holding company as per article 1 (v) of legislative decree n. 142 of 30 May 2005, which is at the head of a financial conglomerate where ISVAP has been identified as its coordinator pursuant to the same decree;
 - e) "Italian insurance undertaking" shall mean: an undertaking with head office in Italy and the Italian branch of an insurance undertaking with head office in a third country, authorised to pursue insurance business or the operations referred to in article 2 of legislative decree n. 209 of 7 September 2005;
 - f) "reinsurance undertaking" shall mean: 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 country, or other reinsurance undertakings;
 - g) "Italian reinsurance undertaking" shall mean: a reinsurance undertaking with head office in Italy and the Italian branch of a reinsurance undertaking with head office in a third country;
 - h) "insurance holding company" shall mean: 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 or a reinsurance 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. In order for there to be control exerted mainly over insurance undertakings, non-EU insurance undertakings and reinsurance undertakings the provisions under article 4 of ISVAP Regulation n. 18 of 12 March 2008 concerning the verification of the adjusted solvency in accordance with Title XV, Chapter IV of legislative decree n. 209 of 7 September 2005 shall apply;

- i) "participations" shall mean: the shares, capital parts and other financial instruments that confer administrative rights or in any case the rights provided for by the last paragraph of article 2351 of the civil code;
- j) "significant participations" shall mean: the participations referred to in article 7 identified by ISVAP according to the criteria laid down in article 80 of the decree;
- k) "free assets" shall mean: that part of the undertaking's assets not representing technical provisions;
- l) "assets other than free assets" shall mean: the undertaking's assets representing technical provisions as shown in the register referred to in article 42 of decree;
- m) "close links" shall mean: a relationship in which two or more natural or legal persons are linked by:
 - 1) control as per article 72 of the decree;
 - 2) a participation representing at least 10% of the capital or voting rights, regardless of whether it is held directly or through subsidiaries, trust companies or third parties, or a participation that, although not exceeding the above-mentioned limit, makes it possible to exercise a significant influence over the company (even if it is not a dominant influence);
 - 3) a link where the same persons are under the control of the same subject, or are anyhow managed on a unified basis pursuant to a contract or provisions of their memoranda or articles of association, or when the administrative bodies are mainly made up of the same persons, or when there are important and durable reinsurance links;
 - 4) a technical, organisational, financial, legal and family relation such as to have a relevant influence on the running of the company.

Article 3 (Scope)

1. The provisions of this Regulation shall apply to:
 - a) Italian insurance and reinsurance undertakings;
 - b) insurance holding companies with head office in Italy and heads of insurance-led financial conglomerates

which acquire or intend to acquire participations, also through subsidiaries, trust companies or third parties, in other companies, including the subscription of participations when a company is set up or capital is increased.

Article 4 (General principles)

1. The undertakings referred to in article 3 (1) a), taking also account of the participations already held, may acquire controlling interests or significant participations only if the investment does not undermine the undertaking's stability, having particular regard to the nature and performance of the business pursued by the related undertaking, to the size of the investment in relation to the undertaking's assets as well as to the need to ensure that investments are diversified and spread so as to ensure an adequate level of security, quality, liquidity and profitability of such investments.
2. The undertakings referred to in article 3 (1) a) shall monitor their investments in participations in order to continuously check the existence of the conditions required for holding such participations and the risks for the undertaking's stability.
3. The undertakings referred to in article 3 (1) b), when acquiring controlling interests or significant participations shall assess the impact of such participations on their stability, having special regard to the verification of solvency envisaged in Title XV of the decree

and its relevant implementing provisions and of capital adequacy as laid down in legislative decree n. 142 of 30 May 2005 and its relevant implementing provisions. The assessment is made taking also account of the participations already held, having particular regard to the nature and performance of the business pursued by the related undertaking and to the size of the investment in relation to the undertaking's assets.

Article 5
(ISVAP's supervision and powers)

1. ISVAP shall exercise powers of prudential supervision over the acquisition and holding of participations by the undertakings referred to in article 3 having particular regard to the nature and performance of the business pursued by the related undertaking, the influence of such participations over the undertaking's financial structure, regardless of whether they are effected by using free assets or assets other than free assets, the size of the investment in relation to the undertaking's free assets and the relevant risks for the undertaking's stability, as well as over compliance with the provisions on the verification of solvency and capital adequacy referred to in article 4 (3).
2. When the holding of the participation may undermine the stability of the undertaking referred to in article 3, ISVAP shall order that such participation be sold or adequately reduced, even below the control threshold and, to that end, set an appropriate deadline.
3. In case of failure to comply with the provisions of paragraph 2, the provisions referred to in article 81 (3 and 4) of the decree shall apply.

Article 6
(Separation between ownership and voting right)

1. In case of separation between ownership of the participations and exercise of the relevant rights, undertakings shall be required to comply with the obligations laid down in this Regulation both when they are holders of the voting right and when they are holders of the participations.

Article 7
(Significant participations)

1. For the purposes of this Regulation, participations shall be regarded as significant when, by themselves or together with others already held, directly or indirectly, by the participating undertaking, they represent at least five per cent of the related undertaking's capital or five per cent of the participating undertaking's net assets, as shown in the last approved balance sheet. When the participation is held through a subsidiary undertaking, the value of the participation to be measured against the participating undertaking's net assets shall be weighted by the total holdings held by the indirect participating undertaking into the direct participating undertaking; while in case of participating undertakings drawing up consolidated accounts, the value of the participation shall be measured against the net assets belonging to the group, as shown in the last approved balance sheet.
2. In any case the participations which make it possible to exercise a significant influence over the related undertaking shall be regarded as significant participations.

TITLE II

Provisions applicable to Italian insurance and reinsurance undertakings

Chapter I

Provisions relating to authorisations

Article 8

(Cases subject to authorisation)

1. The undertakings referred to in article 3 (1) a) which intend to acquire the control of other companies shall be required to seek prior authorisation from ISVAP, without prejudice to the provisions of paragraph 5.
2. In case the controlling interest referred to in paragraph 1 is acquired through a subsidiary which is subject to the same obligations referred to in this Regulation, one single application for prior authorisation may be sent to ISVAP, in accordance with the terms and procedures of article 9.
3. Authorisation shall also be required before making a firm purchase commitment for the control of other companies, including participation in auctions, the promotion of takeover bids or public exchange offers, or when the threshold for making a takeover bid is exceeded.
4. Authorisation shall also be required before acquiring the control of a company through a subscription for shares linked to the conversion of bonds or through the exercise of the rights to acquire shares. Authorisation requirements shall not concern the subscription for or acquisition of convertible securities or other securities which give right to the acquisition of shares in the capital of other undertakings.
5. Authorisation requirements shall not concern the acquisition of controlling interests in Italian insurance and reinsurance undertakings to which the provisions under Title VII, Chapter I of the decree and the relevant implementing provisions apply.

Article 9

(Application for authorisation)

1. The application for authorisation to the acquisition of controlling interests shall be sent to ISVAP once the competent company bodies have taken the relevant decision and before the operation is completed. Any contracts or acts envisaging the acquisition of a controlling interest or a commitment to such acquisition shall lay down that their effectiveness be subject to the granting of ISVAP's authorisation.
2. The application for authorisation referred to in paragraph 1 shall be preceded by summary information in writing about the essential elements and objectives of the operation, to be sent to ISVAP immediately after the competent company bodies have taken the relevant decision.
3. The application for authorisation referred to in paragraph 1 shall contain the information and documents listed in Annex 1.
4. The undertakings referred to in article 3 (1) a) intending to acquire a controlling interest shall, when applying for authorisation, verify that they fulfil the conditions envisaged by the decree and its relevant implementing provisions for qualifying as head of an insurance group. These verifications shall be effected for the purposes of article 82 and following of the decree.

Article 10
(Criteria for authorisation)

1. ISVAP shall issue the authorisation when the conditions ensuring the sound and prudent management of the applicant undertaking are met, having regard to the possible impact of the operation on the stability, efficiency and protection of policyholders.
2. When granting the authorisation ISVAP shall:
 - a) take account of the nature of the business pursued by the related undertaking and of its management, of the influence of the operation over the financial structure of the participating undertaking and over the investment concentration risk, with regard to the impact of the operation on the undertaking's free assets and on assets other than free assets;
 - b) take account of any links, including family and association relationships, between the participating undertaking and the companies in which said undertaking intends to acquire a controlling interest and other subjects, including non-members, and assess any other element which might have an impact on the sound and prudent management of the undertaking referred to in article 3 (1) a), as well as on the exercise of effective supervision;
 - c) take account of voting arrangements, if any, or of agreements between members, even if still under process, which allow the undertaking to control the majority of the voting rights or confer the power to appoint or dismiss the majority of the undertaking's directors or whose effect is the concerted exercise of the voting rights in the company in which the undertaking intends to acquire a controlling interest. Account shall also be taken of the voting arrangements concerning shares of companies which are at any level of the participation chain of control of the undertaking concerned.

Article 11
(Inquiry)

1. ISVAP, after having received the application for authorisation referred to in article 9 and verified its completeness and regularity, shall inform the applicant undertaking, immediately and no later than the period prescribed under ISVAP Regulation n. 2 of 9 May 2006, that the procedure has been started.
2. If the application for authorisation is incomplete for lack of one or more documents or pieces of information indicated in Annex 1, or is irregular, ISVAP shall inform the undertaking immediately and no later than the period prescribed under ISVAP Regulation n. 2 of 9 May 2006, indicating the causes for incompleteness or irregularity. In those cases the period of the procedure shall begin again from the date on which the application is completed or regularised.
3. For carrying out the inquiry ISVAP may require that the applicant undertaking provides information and clarification supplementing the documents envisaged by this Regulation, and that it undertakes further or more specific commitments, taking also account of particular cases which might affect the sound and prudent management of the acquiring undertaking. In those cases the period for concluding the procedure shall be suspended until the information and documents requested are received. ISVAP shall inform the undertaking of the suspension.
4. When, in the cases referred to in article 204 of the decree, ISVAP first consults the competent supervisory authorities of the other member States, the period for concluding the procedure shall be suspended until the date on which the opinion of the consulted authorities is received.

5. For carrying out the inquiry ISVAP may require that national or foreign authorities provide information, documents, valuations or opinions, in particular whenever the authorisation procedure includes checks on the subjects supervised by these authorities. The period for concluding the procedure shall be suspended until the elements requested are received.
6. In the cases provided for in paragraphs 4 and 5 ISVAP shall inform the undertaking of the suspension and of the re-opening of the period.

Article 12 (Conclusion of the procedure)

1. If the inquiry is completed successfully ISVAP shall issue the authorisation within sixty days of receiving the application, without prejudice to the cases of interruption and suspension referred to in article 11, and shall send the authorisation to the applicant undertaking. In the case provided for in article 8 (3), this period shall be reduced to thirty days.
2. In case the conditions referred to in article 10 are not fulfilled ISVAP shall, before formally adopting the relevant order, notify the undertaking concerned of the reasons preventing the application from being accepted, and urge it to provide any data or documents necessary to avoid that it is rejected.
3. Within the period indicated by ISVAP, which shall anyhow be not less than ten days of receipt of the notification, the undertaking concerned may submit written observations accompanied by supporting evidence, if any.
4. The notification referred to in paragraph 2 shall interrupt the period for concluding the procedure, which shall start running again from the date when the written observations are submitted.
5. If the period referred to in paragraph 3 has expired without any observations being submitted, or in case the conditions for rejecting the authorisation remain in place, ISVAP shall issue the order definitively rejecting the application and shall send it to the applicant undertaking, accompanied by the relevant reasons.
6. Without prejudice to the cases of interruption referred to in article 11 (2), the procedure shall be concluded within one-hundred twenty days of receiving the application accompanied by all the documents.

Article 13 (Requirements for information to ISVAP)

1. If the authorised operation is not realised within the period indicated in the application, the undertaking shall immediately inform ISVAP of the reasons for not realising the operation and of the intention to effect it, if any. ISVAP shall take account of this information when deciding whether to exercise its powers to withdraw or suspend the authorisation referred to in article 68 (7) of the decree and its relevant implementing provisions.
2. Any act or fact modifying the information provided when applying for authorisation as well as any further significant circumstance concerning the participation acquired shall be immediately notified to ISVAP. To that end undertakings shall be subject to the notification requirements referred to in article 17 (2).

Chapter II

Requirements regarding prior notification

Article 14 (Cases subject to prior notification)

1. The undertakings referred to in article 3 (1, a) proposing to acquire significant participations in other undertakings shall send ISVAP information in written form about the essential elements and objectives of the operation once the competent company bodies have taken the relevant decision and before the operation is completed.
2. In case the significant participation is acquired through a subsidiary which is subject to the same requirements referred to in this Regulation one single notification may be sent to ISVAP.
3. The requirements regarding prior notification shall not concern the acquisition of significant participations in Italian insurance and reinsurance undertakings for which the requirements for the application of the provisions under Title VII, Chapter I of the decree and the relevant implementing provisions are met.

Article 15 (Contents of the notification)

1. The notification referred to in article 14 shall contain the information and documents listed in Annex 2.

Article 16 (Requirements for information to ISVAP)

1. If the operation priorly notified in compliance with article 14 is not realised within the period indicated in the notification, the undertaking shall immediately inform ISVAP of the reasons for not realising the operation and of the intention to effect it, if any.
2. Any act or fact modifying the information given in the notification as well as any further relevant circumstance concerning the significant participation acquired shall be immediately notified to ISVAP. To that end the undertakings referred to in article 3 (1, a) shall be subject to the requirements for notification referred to in article 17 (2).

Chapter III

Requirements regarding subsequent notification

Article 17 (Subsequent notifications)

1. Every three months the undertakings referred to in article 3 (1, a) shall send ISVAP a list of their controlling interests and significant participations, with the part allocated as assets representing technical provisions and that held by means of free assets to be shown separately.
2. In case of a decrease in free assets such as not to allow the holding of controlling interests or significant participations, the undertakings referred to in article 3 (1, a) shall immediately inform ISVAP thereof as well as of what they are going to do to restore compliance with the provisions of this Regulation.

Article 18
(Arrangements and terms for sending the subsequent notifications)

1. The notifications referred to in article 17 (1) shall be effected within the month following the closure of each solar quarter, making use of the template referred to in Annex 3.

TITLE III

Provisions applicable to insurance holding companies and heads of insurance-led financial conglomerates

Chapter I

Requirements regarding prior notification

Article 19
(Cases subject to prior notification)

1. The undertakings referred to in article 3 (1, b) proposing to acquire controlling interests or significant participations in other undertakings shall send ISVAP information in written form about the essential elements and objectives of the operation once the competent company bodies have taken the relevant decision and before the operation is completed.
2. The undertakings referred to in article 3 (1, b) shall not be subject to the notification referred to in paragraph 1 in case of acquisition of a participation already subject to the requirements referred to in Title II, Chapters I or II.
3. The requirements regarding prior notification shall not concern the acquisition of controlling interests or significant participations in Italian insurance and reinsurance undertakings for which the requirements for the application of the provisions under Title VII, Chapter I of the decree and the relevant implementing provisions are met.

Article 20
(Contents of the notification)

1. The notification referred to in article 19 shall contain the information and documents listed in Annex 4.

Article 21
(Requirements for information to ISVAP)

1. If the operation priorly notified in compliance with article 19 is not realised within the period indicated in the notification, the undertaking shall immediately inform ISVAP of the reasons for not realising the operation and of the intention to effect it, if any.
2. Any act or fact modifying the information given in the notification as well as any further relevant circumstance concerning the controlling interests or significant participation acquired shall be immediately notified to ISVAP.

Chapter II
Requirements regarding subsequent notification

Article 22
(Subsequent notifications)

1. Every three months the undertakings referred to in article 3 (2) shall send ISVAP a list of their controlling interests and significant participations.

Article 23
(Arrangements and terms for sending the subsequent notifications)

1. The notifications referred to in article 22 shall be effected within the month following the closure of each solar quarter, making use of the template referred to in Annex 5.

TITLE IV
Final provisions

Article 24
(Repeals)

1. From the date of entry into force of this regulation, the following shall be repealed:
 - ISVAP circular n. 150 of 21 February 1991;
 - ISVAP circular n. 250 of 20 June 1995.

Article 25
(Publication)

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

Article 26
(Entry into force)

1. This Regulation shall enter into force on 1 January 2009.

Rome, 04.08.08

the President
(Giancarlo Giannini)