



Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo  
*(only the Italian version is authentic)*

## **REGULATION N. 24 OF 19 MAY 2008**

**REGULATION CONCERNING THE PROCEDURE FOR SUBMITTING COMPLAINTS TO ISVAP, AS LAID DOWN IN ARTICLE 7 OF LEGISLATIVE DECREE N. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE AND THE PROCEDURE FOR MANAGING COMPLAINTS BY INSURANCE UNDERTAKINGS.**

### **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;

HAVING REGARD to law n. 262 of 28 December 2005, laying down provisions on the protection of savings and provisions governing financial markets;

HAVING REGARD to legislative decree n. 206 of 6 September 2005, introducing the Consumer Code and, in particular, Part III, Title III, Chapter I, Section IV-bis concerning the distance marketing of consumer financial services;

adopts the following

## **REGULATION**

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## **CHAPTER I**

### **Provisions of a general nature**

#### Article 1 (Legislative sources)

1. This Regulation has been adopted in compliance with articles 5 (2), 7, 183 (2) and 190 (1) of legislative decree n. 209 of 7 September 2005.

#### Article 2 (Definitions)

1. For the purposes of this Regulation:
  - a) "senior management" shall mean: the managing director, the director general as well as the senior management which carries out management supervision duties;
  - b) "consumers and users associations" shall mean: the associations registered in the list referred to in article 137 of legislative decree n. 206 of 6 September 2005 introducing the Consumer Code;
  - c) "business pursued under the freedom to provide services" shall mean: the business referred to in article 1, e), of legislative decree n. 209 of 7 September 2005;
  - d) "business pursued under the right of establishment" shall mean: the business referred to in article 1, f), of legislative decree n. 209 of 7 September 2005;
  - e) "CONSOB" shall mean: the National Commission for Listed Companies and the Stock Exchange;
  - f) "COVIP" shall mean: the Supervisory Commission for Pension Funds;
  - g) "decree" shall mean: legislative decree n. 209 of 7 September 2005, introducing the Code of Private Insurance;
  - h) "FIN-NET" shall mean: the network for the out-of-court settlement of cross-border disputes regarding financial services in the European Economic Area, set up under Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;
  - i) "supplementary pension schemes subject to the supervision of COVIP" shall mean: the pension schemes referred to in article 1 (3), a) and b) of legislative decree n. 252 of 5 December 2005 laying down rules on supplementary pension schemes;
  - j) "insurance undertakings" shall mean: the insurance undertakings authorized in Italy and the EU insurance undertakings pursuing business in Italy either under the right of establishment or the freedom to provide services;
  - k) "insurance undertakings authorized in Italy" shall mean: the undertakings referred to in article 1, u), of legislative decree n. 209 of 7 September 2005;
  - l) "EU insurance undertakings" shall mean: the undertakings referred to in article 1, v), of legislative decree n. 209 of 7 September 2005;
  - m) "reinsurance undertakings" shall mean: the undertakings referred to in article 1, cc), of legislative decree n. 209 of 7 September 2005;
  - n) "intermediaries" shall mean: the natural or legal persons registered in the single electronic register of insurance and reinsurance intermediaries referred to in article 109 of legislative decree n. 209 of 7 September 2005;
  - o) "ISVAP or Authority" shall mean: Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest);
  - p) "cross-border dispute" shall mean: a dispute between a policyholder of a Member State and an insurance undertaking with head office in another Member State;

- q) "administrative body" shall mean: the board of directors, or the management board in undertakings which have adopted the system pursuant to article 2409 octies of the Civil Code;
- r) "supervisory body" shall mean: the statutory board of auditors, or, in undertakings which have adopted a different system from the one referred to in article 2380 (1) of the Civil Code, the supervisory committee or the management supervisory committee;
- s) "loss adjusters" shall mean: the persons registered in the list referred to in article 157 of legislative decree n. 209 of 7 September 2005;
- t) "financial products issued by insurance undertakings" shall mean: the products referred to in article 1 (1) *w-bis*, of legislative decree n. 58 of 24 February 1998, introducing the "Consolidated law on financial mediation";
- u) "competent system" shall mean: the body competent for the settlement of cross-border disputes in the State where the insurance undertaking has its head office;
- v) "licensed persons" shall mean: the persons licensed to pursue insurance mediation referred to in article 83 of CONSOB Regulation n. 16190 of 29 October 2007;
- w) "Consolidated law on financial mediation" shall mean: legislative decree n. 58 of 24 February 1998 as subsequently amended and supplemented.

### Article 3 (Scope)

1. This Regulation lays down rules on:
  - a) the submission and management of complaints filed with ISVAP by natural and legal persons, by consumers and users associations and, in general, by anyone representing collective interests, against insurance and reinsurance undertakings, intermediaries and loss adjusters;
  - b) the procedure for the management of complaints by insurance undertakings.

## **CHAPTER II** **Complaints submitted to ISVAP**

### Article 4 (Submission of complaints)

1. The persons referred to in article 3 (1) (a) may file with ISVAP:
  - a) complaints about verification of compliance with the provisions of the decree and of the relevant implementing rules, as well as of the provisions of Part III, Title III, Chapter I, Section IV-*bis* of legislative decree n. 206 of 6 September 2005 relating to the distance marketing of consumer financial services by insurance and reinsurance undertakings, intermediaries and loss adjusters;
  - b) complaints already filed directly with insurance undertakings pursuant to article 8, which have not received any reply within 45 days of receiving the complaint by undertakings, or which have received an unsatisfactory reply;
  - c) complaints about the settlement of cross-border disputes as provided for in article 7.
2. In accordance with this Regulation the following complaints do not fall within ISVAP's province:
  - a) complaints for which an action has already been brought before the courts;
  - b) complaints concerning verification of compliance with the provisions of the Consolidated law on financial mediation and of the relevant implementing rules on solicitation to the public for financial products issued by insurance undertakings, as well as the behaviour of licensed persons and insurance undertakings involved in the direct sale, when underwriting and placing financial products issued by insurance undertakings;

- c) complaints concerning verification of compliance with the provisions of legislative decree n. 252 of 5 December 2005 and of the relevant implementing rules on disclosure and on the arrangements for the offer of supplementary pension schemes to the public.
3. If the complaints received fall within the scope of para. 2, a), ISVAP shall inform the complainant that they fall outside its competence.
4. If the complaints received fall within the scope of para. 2, b) and c), ISVAP shall immediately forward them to CONSOB or COVIP respectively, and at the same time shall inform the complainant.
5. When the complaint concerns the management of the contractual relation, and in particular the assignment of liability, the provision of the benefit, the quantification and payment of the amounts due to the person entitled, the complainant shall directly send it to the undertaking, without prejudice to the possibility to apply to ISVAP in the cases referred to under para.1, b).
6. In the case of complaints concerning the subjects referred to under para. 5 submitted directly to ISVAP, the latter shall forward the complaint to the insurance undertaking within 90 days of receipt and, at the same time, shall inform the person concerned. Undertakings shall send their reply directly to complainants within 45 days of receiving the complaint.

#### Article 5 (Content of complaints)

1. The complaints filed with ISVAP shall contain:
  - a) first name, surname and address of the complainant, and possibly a telephone number;
  - b) identification of the person or persons whose behaviour is the subject of the complaint;
  - c) brief description of the reason for the complaint;
  - d) copy of the complaint filed with the insurance undertaking and the reply of the latter - if any - in the cases envisaged in article 4 (1) b);
  - e) any document useful for a more complete description of the relevant circumstances.
2. In the absence of any of the information required under para.1, a), b) and c), ISVAP, before starting any preliminary inquiry and within 90 days of receiving the complaint, shall ask the complainant - where identifiable on the basis of the data referred to under para.1, a) - to provide the missing elements.

#### Article 6 (Management of complaints)

1. After receiving the complaint envisaged in article 4 (1), ISVAP shall start its preliminary inquiry without delay. ISVAP shall inform the complainant of the starting of the preliminary inquiry within 90 days of receiving the complaint.
2. During the preliminary inquiry ISVAP may, in compliance with article 189 of the decree, ask for data, information or documents not only to the complainant but also to supervised entities, which shall reply within 30 days of receiving such request.
3. ISVAP may request to the insurance undertaking to provide clarification on the complaint directly to the complainant. In this case, the undertaking shall send a copy of its reply to ISVAP. Should the latter believe that such reply is not satisfactory, it shall inform the complainant within 120 days of receiving such reply.

4. In cases other than that referred to in para. 3, ISVAP shall inform the complainant about the outcome of the preliminary inquiry within 120 days of receiving the complaint, except for the cases of suspension due to requests for information or acquisition of data.
5. In case of complaints against EU insurance undertakings, ISVAP, within 90 days of receiving them, shall apply to the supervisory authority of the home Member State and inform the complainant of the outcome as soon as it receives a reply by that authority, and anyhow within 120 days of receiving that reply.
6. ISVAP shall make available on its internet site detailed information on the procedure for submitting complaints, the addresses to which complaints may be submitted, the dedicated telephone line and the reception office, to which complainants may apply for information on progress in relation to their complaints.

Article 7  
(Complaints handled through FIN-NET)

1. For the settlement of the cross-border dispute in which he/she is involved, the complainant having his/her residence in Italy may file the complaint either with ISVAP or directly with the competent foreign system<sup>1</sup> and ask for the activation of the FIN-NET procedure.
2. On receiving the complaint and after verifying the existence of a competent foreign system, ISVAP shall immediately forward the complaint to such system, and at the same time shall inform the complainant. When this procedure entails costs for the complainant, ISVAP shall obtain the prior consent of the latter. ISVAP shall immediately send the complainant the reply furnished by the competent system.
3. When ISVAP has been involved in the settlement of a cross-border dispute, it shall follow the procedure described in article 6.

**Chapter III**  
**Complaints submitted to insurance undertakings**

Article 8  
(Complaints handled by insurance undertakings)

1. Insurance undertakings authorized in Italy shall receive and manage complaints referring to them, also when they concern subjects involved in the undertaking's operational cycle, and reply to the complainant within 45 days of receiving them.
2. For the handling of the complaints received, including the relevant replies to complainants, the undertakings referred to under para. 1 shall set up a specific business function and guarantee its independence of judgement by adequately placing it within the organization and by envisaging appropriate procedures aimed to avoid conflicts of interest with the structures or subjects whose behaviour is the object of the complaint.
3. The business function referred to in para. 2 shall manage the complaints databank envisaged in article 9.

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<sup>1</sup> The competent system can be found on the website: <http://www.ec.europa.eu/fin-net>.

4. Within 10 working days of its setting up, undertakings shall notify ISVAP of the business function established pursuant to para. 2 and of the name of the person responsible for it, together with the relevant contact details, as well as of any subsequent change.
5. The undertakings referred to under para. 1 shall make available on their internet site any useful information for submitting complaints.
6. The provisions under para.1, 2 and 4 shall also apply to EU insurance undertakings licensed to pursue business in Italy under the right of establishment.
7. The provisions under para.1 shall also apply to EU insurance undertakings licensed to pursue business in Italy under the freedom of services.

Article 9  
(Classification of complaints and duty to inform ISVAP)

1. The insurance undertakings authorised in Italy shall register all the complaints received in an electronic databank, and take note, upon receiving the complaint, of the data referred to in annex 1 taken from the complaint, and supplement them with other information on their handling.
2. At the end of each quarter, the data referred to in para.1 shall be reported in the statistical table envisaged in annex 2. For each calendar year, the tables for the quarters following the first one shall include the data of the previous quarter. The complaints that, at the end of the fourth quarter, are still under examination shall be reported in the table envisaged in annex 3.
3. When monitoring the effectiveness and efficiency of the internal control system, the person responsible for the internal auditing shall verify the correctness of the procedures for the management of complaints described in para. 1 and shall keep in touch with ISVAP should any problem arise in the management of complaints; once he/she receives the tables envisaged under para. 2 he/she shall forward them, together with a report, to the senior management and the administrative and control bodies.
4. The report envisaged in para. 3 shall highlight the sectors within the undertaking's organisation, the insurance products and the services which are the main or most frequent subject of complaints, and shall describe any shortcomings in the organization or procedures and propose adequate corrective measures. The administrative and the control bodies, within their respective competences, shall make their comments about the report.
5. The tables, the report and the assessments referred to under para. 2, 3 and 4 shall be sent to ISVAP within 90 days of the end of the relevant quarter, according to the terms and procedures illustrated in the technical document published on ISVAP's internet site. The table in annex 3 shall be sent to ISVAP together with that relating to the first quarter of the following year.
6. The undertakings referred to under para.1 shall keep documentary evidence of complaints and of their handling for the five years following their receipt.

Article 10  
(Information on the procedure for filing complaints)

1. In the precontractual information note insurance undertakings shall show, among the information on the management of complaints, instructions on how to file complaints with undertakings, and shall specify the business function responsible for examining complaints and the relevant contact numbers and addresses. They shall also provide information on how to file

complaints with ISVAP, or with the other supervisory authorities of the home Member State, when the undertaking has its head office in another Member State, according to the provisions of this Regulation.

#### **CHAPTER IV Final provisions**

##### **Article 11 (Repeals)**

1. In accordance with the terms referred to in article 13 (2 and 3), the following are repealed:
  - a) ISVAP circular n. 518/D of 21 November 2003;
  - b) ISVAP circular n. 542/S of 25 November 2004.

##### **Article 12 (Publication)**

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

##### **Article 13 (Entry into force)**

1. This Regulation shall enter into force on the 30<sup>th</sup> day following its publication in the Italian Official Journal.
2. Undertakings shall comply with the provisions contained in articles 8 and 9 by 1 January 2009.
3. Undertakings shall adjust their information notes to the provisions of article 10 at the time of the first update, following the deadline set in para. 2, as envisaged by the regulations in force.
4. In the initial period of application, undertakings shall comply with the notification requirements referred to in article 8 (4) by 15 January 2009.

Rome, 19 May 2008

the President  
(Giancarlo Giannini)