



ISTITUTO PER LA VIGILANZA
SULLE ASSICURAZIONI

I V A S S



CODE OF PRIVATE INSURANCE

(LEGISLATIVE DECREE n. 209 of 7 September 2005)

editor: Supervisory Regulations and Policies Department

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LEGISLATIVE DECREE n. 209 of 7 September 2005
Code of Private Insurance¹.

THE PRESIDENT OF THE REPUBLIC

Having regard to articles 76 and 87 of the Constitution;

Having regard to article 117 (2) of the Constitution, as amended by the constitutional law n. 3 of 18 October 2001, on the principles of unity, continuity and comprehensiveness of the legal order;

Having regard to articles 14 and 16 of law n. 400 of 23 August 1988;

Having regard to article 20 of law n. 59 of 15 March 1997, as replaced by article 1 of law n. 229 of 29 July 2003, on urgent measures to codify, reorganise and improve the quality of the regulatory framework – simplifying law for 2001;

Having regard to law n. 229 of 29 July 2003, on urgent measures to codify, reorganise and improve the quality of the regulatory framework – simplifying law for 2001, and in particular article 4, delegating the Government to reorganise the provisions on private insurance, as amended by article 2 (7) of law n. 186 of 27 July 2004, converting into law, after amendment, the decree-law n. 136 of 28 May 2004;

Having regard to law n. 241 of 7 August 1990, laying down new rules on administrative procedure and the right of access to administrative documents;

Having regard to legislative decree n. 196 of 30 June 2003, introducing the Personal data protection code;

Having regard to royal decree n. 63 of 4 January 1925, on the regulation implementing royal decree-law n. 966 of 29 April 1923, concerning the pursuit of private insurance;

Having regard to the consolidated law on the pursuit of private insurance, referred to in presidential decree n. 449 of 13 February 1959;

Having regard to law n. 990 of 24 December 1969, relating to compulsory insurance against civil liability in respect of the use of motor vehicles and craft;

Having regard to decree-law n. 857 of 23 December 1976, converted, after amendment, by law n. 39 of 26 February 1977, modifying the provisions on compulsory insurance against civil liability in respect of the use of motor vehicles and craft;

¹ Published in the Official Journal n. 239 of 13 October 2005 and amended by decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007, by legislative decree n. 198 of 6 November 2007, by legislative decree n. 56 of 29 February 2008, by decree-law n. 97 of 3 June 2008, converted into law n. 129 of 2 August 2008, by decree-law n. 207 of 30 December 2008, converted into law n. 14 of 27 February 2009, by decree-law n. 78 of 1 July 2009, converted into law n. 102 of 3 August 2009, by decree-law n. 194 of 30 December 2009, converted into law n. 25 of 26 February 2010, by legislative decree n. 21 of 27 January 2010 and by legislative decree n. 39 of 27 January 2010.

Having regard to decree-law n. 576 of 26 September 1978, converted, after amendment, by law n. 738 of 24 November 1978, facilitating the transfer of portfolio and staff of insurance undertakings placed under administrative compulsory winding up;

Having regard to law n. 48 of 7 February 1979, on the setting up and functioning of the National Register of insurance agents;

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

Having regard to law n. 792 of 28 November 1984, on the setting up and functioning of the National Register of insurance brokers;

Having regard to law n. 742 of 22 October 1986, laying down new rules on the pursuit of private life assurance;

Having regard to law n. 772 of 11 November 1986 on Community coinsurance;

Having regard to law n. 242 of 7 August 1990, laying down provisions on compulsory insurance against civil liability in respect of the use on the territory of the Italian Republic of motor vehicles and craft registered in foreign countries;

Having regard to law n. 20 of 9 January 1991, supplementing and modifying law n. 576 of 12 August 1982, and introducing provisions on supervision over participations held in or by insurance undertakings or institutions;

Having regard to legislative decree n. 393 of 26 November 1991, implementing directive 84/641/EEC, directive 87/343/EEC and directive 87/344/EEC on tourist assistance, on credit insurance and suretyship insurance and on legal expenses insurance, in accordance with articles 25, 26 and 27 of law n. 428 of 29 December 1990;

Having regard to legislative decree n. 49 of 15 January 1992, implementing directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC;

Having regard to law n. 166 of 17 February 1992, on the setting up and functioning of the national list of loss adjusters for the assessment and estimate of damage to motor vehicles and craft falling within the scope of law n. 990 of 24 December 1969, resulting from their use, theft and fire;

Having regard to presidential decree of 19 April 1993, published in the Italian Official Journal n. 153 of 2 July 1993, introducing minimum amounts of cover for compulsory insurance against civil liability in respect of the use of motor vehicles and craft;

Having regard to presidential decree n. 385 of 18 April 1994, on the regulation simplifying administrative procedures on private insurance and insurance of public interest falling within the competence of the Minister of Industry, Commerce and Handicrafts;

Having regard to decree-law n. 691 of 19 December 1994, converted, after amendment, by law n. 35 of 16 February 1995, on urgent measures for the reconstruction and recovery of production activities in the areas affected by exceptionally adverse climatic conditions and by flooding in the first ten days of November 1994;

Having regard to legislative decree n. 174 of 17 March 1995, implementing directive 92/96/EEC relating to direct life assurance and amending directive 72/267/EEC and directive 90/619/EEC;

Having regard to legislative decree n. 175 of 17 March 1995, implementing Council directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending directive 73/239/EEC and directive 88/357/EEC;

Having regard to legislative decree n. 173 of 26 May 1997, implementing directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings;

Having regard to legislative decree n. 373 of 13 October 1998, on the rationalisation of the rules relating to Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (the Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest), in accordance with articles 11 (1 b), and 14 of law n. 59 of 15 March 1997;

Having regard to legislative decree n. 343 of 4 August 1999, implementing directive 95/26/EC on the reinforcement of prudential supervision in the insurance sector;

Having regard to decree-law n. 70 of 28 March 2000, converted, after amendment, by law n. 137 of 26 May 2000;

Having regard to law n. 57 of 5 March 2001, laying down provisions on the opening and regulation of markets;

Having regard to legislative decree n. 239 of 17 April 2001, implementing directive 98/78/EC on the supplementary supervision of insurance undertakings in an insurance group;

Having regard to law n. 273 of 12 December 2002, on measures to promote private initiative and competition;

Having regard to legislative decree n. 93 of 9 April 2003, implementing directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings;

Having regard to legislative decree n. 190 of 30 June 2003, implementing directive 2000/26/EC relating to insurance against civil liability in respect of the use of motor vehicles and amending directives 73/239/EEC and 88/357/EEC;

Having regard to legislative decree n. 307 of 3 November 2003, implementing directive 2002/12/EC and directive 2002/13/EC as regards the solvency margin requirements respectively for life assurance undertakings and for non-life insurance undertakings;

Having regard to legislative decree n. 38 of 28 February 2005, on the exercise of the options envisaged in article 5 of the Regulation (EC) No 1606/2002 on international accounting standards;

Having regard to legislative decree n. 142 of 30 May 2005, implementing directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, as well as on prior consultation on insurance matters;

Having regard to decree-law n.95 of 6 July 2012, converted, after amendment, by law n. 135 of 7 August 2012, establishing IVASS, Istituto per la vigilanza sulle assicurazioni, as the successor to all the powers, tasks and competences of ISVAP².

Having regard to directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;

Having regard to the preliminary resolution of the Council of Ministers, adopted in the meeting of 16 July 2004;

Having sought the opinion of the Unified Conference on 25 November 2004;

Having heard the opinion of the Council of State, expressed by the advisory section on legal acts in its meeting of 14 February 2005;

Having sought the opinion of the competent Commissions of the Chamber of Deputies and of the Senate of the Italian Republic;

Having regard to the comments of the Antitrust Authority of 1 June 2005;

Having regard to the resolution of the Council of Ministers, adopted in the meeting of 2 September 2005;

Upon the proposal of the Minister of Production Activities and of the Minister for Community Policies, in agreement with the Minister for Public Administration, the Minister of Economy and Finance and the Minister of Justice;

ISSUES

the following legislative decree:

TITLE I GENERAL PROVISIONS

CHAPTER I GENERAL DEFINITIONS AND CLASSIFICATIONS

Art. 1 (Definitions)

1. For the purposes of this code of private insurance the following terms shall be defined as follows:

- a) non-life insurance: the insurance referred to in article 2 (3);
- b) life assurance: the assurance and operations referred to in article 2 (1);

² Citation inserted by article 3 (1), legislative decree n. 53 of 4 March 2014.

- c) insurance business: the taking up and management of risks by an insurance undertaking;
- d) reinsurance business: the taking up and management of the risks ceded by an insurance undertaking or retroceded by a reinsurance undertaking³ ;
- e) business pursued under the freedom to provide services or risk accepted under the freedom to provide services: the business pursued by an undertaking from an establishment situated in the territory of a member State by accepting commitments with policyholders having their domicile or – if legal persons – their head office in another member State or the risk that an undertaking accepts from an establishment situated in the territory of a member State other than that where the risk is situated;
- f) business pursued under the right of establishment or risk accepted under the right of establishment: the business pursued by an undertaking from an establishment situated in the territory of a member State by accepting commitments with policyholders having their domicile or – if legal persons – their head office in the same State or the risk that an undertaking accepts from an establishment situated in the territory of member State where the risk is situated;
- g) supervisory authority: the national authority charged with supervising over undertakings and intermediaries and other insurance market participants;
- g-bis) ESFS: the European System of Financial Supervision, consisting of the following parts:
- 1) EIOPA: European Insurance and Occupational Pensions Authority, established by Regulation (EU) No 1094/2010;
 - 2) EBA: European Banking Authority, established by Regulation (EU) No 1093/2010;
 - 3) ESMA: European Securities and Markets Authority, established by Regulation (EU) No 1095/2010;
 - 4) Joint Committee: the Joint Committee of the European Supervisory Authorities, envisaged by article 54 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, Regulation (EU) No 1095/2010;
 - 5) ESRB: European Systemic Risk Board, established by Regulation (EU) No 1092/2010;
 - 6) Supervisory authorities of the Member States: the competent or supervisory authorities of the Member States as specified in the Union acts referred to in article 1 (2) of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010⁴;
- h) green card: an international certificate of insurance issued on behalf of a national bureau in accordance with Recommendation No 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe;
- i) road code: legislative decree n. 285 of 30 April 1992 and subsequent modifications;
- l) personal data protection code: legislative decree n. 196 of 30 June 2003;
- m) CONSAP: Concessionaire for Public Insurance Services Ltd;
- n) insurance claim: any amount which is owed by an insurance undertaking to insured persons, policyholders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in article 2(1) and (3), in direct insurance business, including amounts set aside for the aforementioned persons, when some elements of the debt are not yet known. The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such

³ Letter replaced by article 1 (1, a), legislative decree n. 56 of 29 February 2008.

⁴ Letter added by article 5 (1) of legislative decree n. 130 of 30 July 2012.

contracts or operations before the opening of the winding-up proceedings shall also be considered insurance claims;

o) guarantee fund: a body set up by a member State which has at least the task of providing compensation, up to the limits of the insurance obligation, in the event of damage to property or personal injuries caused by an unidentified or an uninsured vehicle;

p) guarantee fund for hunting victims: the fund set up within CONSAP and envisaged by article 303;

q) guarantee fund for victims of road accidents: the fund set up within CONSAP and envisaged by article 285;

r) large risks: by large risks is meant those falling within the classes defined in article 2 (3), and listed below:

1) 4 (railway rolling stock), 5 (aircraft), 6 (ships - sea, lake and river and canal vessels), 7 (goods in transit), 11 (aircraft liability) and 12 (liability for ships - sea, lake and river and canal vessels) except for those envisaged under 3) below;

2) 14 (credit) and 15 (suretyship), if the insured person carries out a professional industrial, commercial or intellectual activity and the risk refers to such activity;

3) 3 (land vehicles, other than railway rolling stock), 8 (fire and natural forces), 9 (other damage to property), 10 (motor vehicle liability), 12 (liability for ships - sea, lake and river and canal vessels) as regards ships subject to compulsory insurance as per article 123, 13 (general liability) and 16 (financial loss), provided that the insured meets at least two of the following three requirements: 1) the total balance sheet assets exceed six million two hundred thousand euros; 2) the amount of the turnover exceeds twelve million one hundred thousand euros; 3) the number of employees employed on average during the year exceeds two hundred fifty units. If the insured person is an undertaking belonging to a group subject to the requirement to draw up consolidated accounts, the above conditions apply to the group's consolidated accounts;

s) undertaking: the authorised insurance or reinsurance undertaking;

t) insurance undertaking: the undertaking authorised according to the provisions laid down in Community directives on direct insurance;

u) insurance undertaking authorised in Italy or Italian insurance undertaking: the undertaking with head office in Italy and the Italian branch of an insurance undertaking with head office in a third State, authorized to pursue insurance business or operations according to article 2;

v) EU insurance undertaking: 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;

z) non-EU insurance undertaking: 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 operations according to article 2;

aa) insurance holding company: a 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, reinsurance undertakings, non-EU insurance or reinsurance undertakings, one at least of such subsidiary undertakings being an insurance or reinsurance undertaking with head office in the territory of

the Italian Republic, provided that it is not a mixed financial holding undertaking pursuant to art. 1,(1, bb-bis)⁵;

bb) mixed-activity insurance holding company: a parent undertaking other than an insurance undertaking, a non-EU insurance undertaking, a reinsurance undertaking, a non-EU reinsurance undertaking, an insurance holding company or a mixed financial holding undertaking pursuant to art. 1, (1, bb-bis), one at least of its subsidiary undertakings being an insurance undertaking or a reinsurance undertaking with head office in the territory of the Italian Republic⁶ ;

bb-bis) mixed financial holding undertaking: the undertaking as referred to in article 1 (1, v) of legislative decree n. 142 of 30 May 2005⁷;

cc) reinsurance undertaking: 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;

cc-bis) captive reinsurance undertaking: a reinsurance subsidiary of a financial undertaking other than an insurance undertaking or a reinsurance undertaking or a group of insurance or reinsurance undertakings to which directive 98/78/EC applies, or of a non financial undertaking the purpose of which is to provide reinsurance cover exclusively to the risks of the undertaking or undertakings to which it belongs or to the group of which the captive reinsurance undertaking makes part⁸ ;

cc-ter) non-EU reinsurance undertaking: the 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 reinsurance business⁹ ;

cc-quater) financial undertaking: an undertaking set up by one of the following subjects:

1) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of article 1 (5) and (23) of directive 2000/12/EC;

2) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of article 1 (1) (t) (aa) and (cc);

3) an investment firm within the meaning of article 4 (2) of Regulation n. 575 of the European Parliament and of the Council of 26 June 2013;

4) a mixed financial holding undertaking within the meaning of article 1 (1, bb-bis)¹⁰;

dd) ISVAP or IVASS: Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo, which was replaced by IVASS, Istituto per la vigilanza sulle assicurazioni, pursuant to art.13 of decree-law n. 95 of 6 July 2012, converted, after amendment, by law n.135 of 7 August 2012¹¹;

ee) bankruptcy law: royal decree n. 267 of 16 March 1942 and subsequent modifications;

ff) localization: the existence of assets, whether movable or immovable, within the territory of a given State. Claims against debtors shall be regarded as situated in the State where they are realizable;

⁵ Letter replaced by article 1 (1, b), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (2, a and b) of legislative decree n. 53 of 4 March 2014. See ISVAP regulation n. 18 of 12 March 2008, in particular article 4.

⁶ Letter replaced by article 1 (1, c), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (2, c and d) of legislative decree n. 53 of 4 March 2014.

⁷ Letter inserted by article 3 (2, e), legislative decree n. 53 of 4 March 2014.

⁸ Letter inserted by article 1 (1, d), legislative decree n. 56 of 29 February 2008.

⁹ Letter inserted by article 1 (1, d), legislative decree n. 56 of 29 February 2008.

¹⁰ Letter inserted by article 1 (1, d), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (2, f, g and h) of legislative decree n. 53 of 4 March 2014.

¹¹ Letter replaced by article 3 (2, i), legislative Decree n. 53 of 4 March 2014.

- gg) available solvency margin: undertaking assets, that are free from any foreseeable commitment and net of the intangible items;
- hh) required solvency margin: the minimum amount of net assets that the undertaking constantly possesses, according to the provisions in Community directives on direct insurance;
- ii) regulated market: a financial market authorized or recognized in accordance with part III, title I, of the consolidated law on financial mediation, as well as the markets in States belonging to the OECD which have been set up, organized and regulated by provisions adopted or approved by the national competent authorities and which satisfy requirements similar to those envisaged for the regulated markets falling within the scope of the consolidated law on financial mediation;
- ll) ship: any watercraft intended for navigation at sea, lake and river and canal vessels and propelled by mechanical means;
- mm) Italian compensation body: the body set up within CONSAP and envisaged by article 296;
- nn) participations: 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;
- oo) (*repealed*)¹²
- pp) Italian direct insurance portfolio: all the contracts concluded by Italian insurance undertakings, except for those concluded by their branches located in third States;
- qq) Italian indirect insurance portfolio: contracts, regardless of where they are concluded, by Italian undertakings or establishments in Italy of undertakings with head office in another State, if the ceding undertaking itself is an Italian undertaking or an establishment in Italy of undertakings with head office in another State. The foreign portfolio also includes the contracts, regardless of where they are concluded, in case the ceding undertaking has its head office in another State¹³;
- rr) international accounting standards: the international accounting standards and the relevant interpretations adopted according to the procedure set out in article 6 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002;
- ss) insurance products: all the contracts issued by insurance undertakings in the pursuit of the activities falling within the life classes or non-life classes as defined in article 2;
- tt) insurance class: a classification by a homogeneous set of risks or operations describing the activities that the undertaking may pursue subject to authorization;
- uu) retrocession: cession of risks accepted by a reinsurer;
- vv) branch: a branch, not having a legal personality, that is part of an insurance or reinsurance undertaking and that directly exercises all or part of the insurance or reinsurance business;
- vv-bis) finite reinsurance: reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following two features:
- 1) explicit and material consideration of the time value of money;
 - 2) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer¹⁴;

¹² Letter repealed by article 4 (1, a) of legislative decree n. 21 of 27 January 2010.

¹³ The sentence "The contracts concluded by Italian undertakings through an establishment set up in another State are included into the foreign portfolio" has been deleted by article 1 (1, e), legislative decree n. 56 of 29 February 2008.

¹⁴ Letter inserted by article 1 (1, f), legislative decree n. 56 of 29 February 2008.

vv-ter) special purpose vehicle: any undertaking, whether incorporated or not, other than an insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers are subordinated to the reinsurance obligations of such a vehicle¹⁵;

zz) establishment: the head office or branch of an insurance or reinsurance undertaking;

aaa) State belonging to the European Economic Area: a State that is a contracting party to the agreement extending the regulations of the European Union on, among other things, the free movement of goods, services and capital to the States of the European Free Trade Association signed in Porto on 2 May 1992 and ratified by law n. 300 of 28 July 1993;

bbb) member State: a Member State of the European Union or a State belonging to the European Economic Area and, as such, treated on a par with the member State of the European Union;

ccc) member State of the commitment: the State under letter bbb) where the policyholder has his/her domicile or – if the policyholder is a legal person – the State under letter bbb) where the legal person referred to in the contract has its head office;

ddd) member State of provision of services: the State under letter bbb) of the commitment or where the risk is situated, when the commitment or risk is accepted by an establishment situated in another State under letter bbb);

eee) member State of establishment: the State under letter bbb) where the establishment from which the undertaking carries on business is situated;

fff) member State where the risk is situated:

1) the State under letter bbb) in which the property is situated, where the insurance relates to buildings or to buildings and their contents, in so far as both are covered by the same insurance contract;

2) the State under letter bbb) of registration, where the insurance relates to vehicles of any type subject to registration, irrespective of whether it is a permanent or a temporary plate¹⁶;

3) the State under letter bbb) where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks;

4) the State under letter bbb) where the policyholder has his/her habitual domicile or, if the policyholder is a legal person, the State where the latter's head office, to which the contract relates, is situated, in all cases not explicitly covered by points 1 to 3;

4-bis) the State under letter bbb) of destination where a vehicle is dispatched from one member State to another immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the member State of destination¹⁷;

4-ter) the State under letter bbb) in which the accident occurred if it is a vehicle without a registration plate or bearing a registration plate which no longer corresponds to the vehicle¹⁸;

ggg) home member State: the member State of the European Union or the State belonging to the European Economic Area in which the head office of the insurance undertaking accepting the commitment or risk is situated or of the reinsurance undertaking¹⁹;

¹⁵ Letter inserted by article 1 (1, f), legislative decree n. 56 of 29 February 2008.

¹⁶ Number amended by article 1 (1), legislative decree n. 198 of 6 November 2007.

¹⁷ Number inserted by article 1 (1), legislative decree n. 198 of 6 November 2007.

¹⁸ Number inserted by article 1 (1), legislative decree n. 198 of 6 November 2007.

¹⁹ Letter amended by article 1 (1, g), legislative decree n. 56 of 29 February 2008.

hhh) third State: a State which is not a member of the European Union or does not belong to the European Economic Area;

iii) close links: a relationship in which two or more natural or legal persons are linked by:

1) control as per article 72;

2) a participation, regardless of whether it is held directly or through subsidiaries, trust companies or third parties, representing at least 10% of the capital or the voting rights, 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. ISVAP, by its own regulation, can further extend the definition of close links²⁰, in order to avoid situations that may hinder the effective exercise of its supervisory functions;

lll) consolidated banking law: legislative decree n. 385 of 1 September 1993 and subsequent modifications;

mmm) consolidated law on financial mediation: legislative decree n. 58 of 24 February 1998 and subsequent modifications;

nnn) consolidated law on insurance against industrial injury and occupational diseases: legislative decree n. 38 of 23 February 2000 and subsequent modifications;

ooo) Ufficio centrale italiano (the national bureau): the body which has been set up by insurance undertakings authorized to conduct the business of motor vehicle insurance against civil liability and has been licensed to perform the functions of national insurers' bureau in the territory of the Italian Republic and the other tasks envisaged by Community and Italian law;

ppp) National insurers' bureau: the professional organization which is constituted in accordance with Recommendation No 5 adopted on 25 January 1949 by the Road Transport Subcommittee of the Inland Transport Committee of the United Nations Economic Commission for Europe and which groups together insurance undertakings which, in a State, are authorized to conduct the business of motor vehicle insurance against civil liability;

qqq) recreational craft: the craft defined in article 1 (3) of legislative decree n. 171 of 18 July 2005 introducing the recreational marine code;

rrr) vehicle: any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled with a tractor.

Art. 2

(Classes of assurance)

1. The classes of assurance for life assurance business are the following:

I. assurance on the length of human life;

II. marriage assurance, birth assurance;

²⁰ At the moment the subject-matter is regulated by ISVAP order n. 1617 G. of 21 July 2000.

III. assurance referred to in classes I and II, whose main benefits are directly linked to the value of units of a UCITS (undertakings for collective investment in transferable securities) or the value of the assets in an internal fund or else to an index or other reference values;

IV. health insurance and insurance against the risk of dependency that are covered by permanent health insurance contracts not subject to cancellation, against the risk of serious disability resulting from accident or sickness or longevity;

V. capital redemption operations;

VI. management of group pension funds that effect payments on death or survival or in the event of discontinuance or curtailment of activity.

2. An undertaking that has obtained the authorization to pursue life assurance classes under I, II or III of paragraph 1, or that under class V of paragraph 1 if it has obtained the authorization to pursue also another life class exposing it to a demographic risk, can - in addition to these classes - underwrite contracts covering personal injury including incapacity for employment, death resulting from an accident, and disability resulting from an accident or sickness. The undertaking that has been authorized to pursue the operations under class VI of paragraph 1, in addition to the relevant contracts may provide benefits in the event of disability and premature death according to the provisions regulating supplementary pension schemes.

3. The classes of risks for non-life insurance business are the following:

1. Accident (including industrial injury and occupational diseases); fixed pecuniary benefits; benefits in the nature of indemnity; combinations of the two; injury to passengers;

2. Sickness: fixed pecuniary benefits; benefits in the nature of indemnity; combinations of the two;

3. Land vehicles (other than railway rolling stock): all damage to or loss of: land motor vehicles; land vehicles other than motor vehicles;

4. Railway rolling stock: all damage to or loss of railway rolling stock;

5. Aircraft: all damage to or loss of aircraft;

6. Ships (sea, lake and river and canal vessels): all damage to or loss of: river and canal vessels; lake vessels; sea vessels;

7. Goods in transit (including merchandise, baggage, and all other goods): all damage to or loss of goods in transit or baggage, irrespective of the form of transport;

8. Fire and natural forces: all damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to: fire; explosion; storm; natural forces other than storm, nuclear energy; land subsidence;

9. Other damage to property: all damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8;

10. Motor vehicle liability: all liability arising out of the use of motor vehicles operating on the land (including carrier's liability);

11. Aircraft liability: all liability arising out of the use of aircraft (including carrier's liability);

12. Liability for ships (sea, lake and river and canal vessels): all liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability);

13. General liability: all liability other than those forms mentioned under numbers 10, 11 and 12;

14. Credit: insolvency (general); export credit; instalment credit; mortgages; agricultural credit;

15. Suretyship: suretyship (direct); suretyship (indirect);

16. Miscellaneous financial loss: employment risks; insufficiency of income (general); bad weather; loss of benefits; continuing general expenses; unforeseen trading expenses; loss of

market value; loss of rent or revenue; indirect trading losses other than those mentioned above; other non-trading financial loss; other forms of financial loss;

17. Legal expenses: legal expenses;

18. Assistance: assistance to persons who get into difficulties.

4. In non-life classes the authorization that simultaneously covers more than one class shall be named:

- a) classes numbers 1 and 2, "Accident and Health Insurance";
- b) classes numbers 1, injury to passengers, 3, 7 and 10, "Motor Insurance";
- c) classes numbers 1, injury to passengers, 4, 6, 7 and 12, "Marine and Transport Insurance";
- d) classes numbers 1, injury to passengers, 5, 7 and 11, "Aviation Insurance";
- e) classes numbers 8 and 9, "Insurance against Fire and other damage to property";
- f) classes numbers 10, 11, 12 and 13, "Liability Insurance";
- g) classes numbers 14 and 15, "Credit and Suretyship Insurance";
- h) all classes, "All non-life classes".

5. In non-life business, an undertaking obtaining an authorization for a principal risk belonging to one class or a group of classes may insure risks included in another class without any further authorization for them if they:

- a) are connected with the principal risk;
- b) concern the object which is covered against the principal risk;
- c) are covered by the contract insuring the principal risk. The risks included in classes 14, 15 and 17 referred to in paragraph 3 may not be regarded as risks ancillary to other classes; nonetheless, where the conditions laid down in a), b) and c) are fulfilled, the risks included in class 17 may be regarded as ancillary risks of class 18 where the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence or concern disputes arising out of, or in connection with, the use of sea-going vessels.

6. ISVAP, by its own regulation²¹, shall adopt the implementing instructions on the classes of risks within each insurance class in compliance with the principle of equivalence of authorization in the EU territory.

Chapter II

SUPERVISION OVER INSURANCE AND REINSURANCE BUSINESS

Art. 3

(Purpose of supervision)

1. The purpose of supervision is the sound and prudent management of insurance and reinsurance undertakings and transparency and fairness in the behaviour of undertakings, intermediaries and the other insurance market participants with regard to stability, efficiency, competitiveness and the smooth operation of the insurance system, to the protection of

²¹ ISVAP regulation n. 29 of 16 March 2009.

policyholders and of those entitled to insurance benefits as well as to consumer information and protection.

Art. 4
(Minister of Production Activities)

1. The Minister of Production Activities shall take the measures envisaged by this code within the sphere of insurance policy lines set by the Government.

Art. 5
(Supervisory Authority)

1. ISVAP shall carry out functions of supervision over the insurance sector by exercising its powers of an enabling, prescriptive, investigative, protective and repressive nature, as set forth in the provisions of this code.

1-bis. In the exercise of its supervisory functions ISVAP shall form part of the ESFS and participate in the activities it performs, taking into account the convergence in the supervisory instruments and practices within the EU²².

1-ter. In cases of financial market crises or tensions ISVAP shall take into account the possible impact of its action on the stability of the financial system of the other member States by also using appropriate exchanges of information with EIOPA, the Joint Committee, the ESRB and the supervisory authorities of the other member States²³.

2. ISVAP shall adopt any regulation necessary for the sound and prudent management of undertakings or for the transparency and fairness in the behaviour of supervised entities, and to this end shall disclose all appropriate recommendations or interpretations.

3. ISVAP shall perform the activities necessary to promote an appropriate degree of consumer protection and to develop the knowledge of the insurance market, including statistical and economic surveys and the gathering of input for the formulation of insurance policy lines.

4. *(repealed)*²⁴

5. ISVAP's organisation is regulated by law n. 576 of 12 August 1982 and subsequent modifications, in compliance with the principles of independence necessary for the impartial exercise of the functions of supervision over the insurance sector.

Art. 6
(Supervised entities)

1. ISVAP carries out supervisory functions over:

²² Paragraph added by article 5 (2, a) of legislative decree n. 130 of 30 July 2012.

²³ Paragraph added by article 5 (2, a) of legislative decree n. 130 of 30 July 2012.

²⁴ Paragraph repealed by article 5 (2, b) of legislative decree n. 130 of 30 July 2012.

- a) undertakings, however named and established, that exercise on the Italian territory insurance or reinsurance activity in any class and in any form, or capital redemption operations and management of group pension funds that effect payments on death or survival or in the event of discontinuance or curtailment of activity;
- b) insurance groups and financial conglomerates, which include insurance and reinsurance undertakings, in compliance with the specific rules applicable to them;
- c) subjects, entities and organisations which in any form perform functions partly included in the operational cycle of insurance or reinsurance undertakings, limited to insurance and reinsurance profiles;
- d) insurance and reinsurance intermediaries, insurance loss adjusters and any other insurance market participant.

Art. 7
(Complaints)

1. Natural and legal persons as well as consumer organisations having a legitimate interest in protecting consumers, may file complaints with ISVAP about non-observance of the rules contained in this code by insurance and reinsurance undertakings and insurance intermediaries and loss-adjusters, in accordance with the procedure envisaged by way of regulation adopted by ISVAP in compliance with the principles of fair proceedings²⁵.

Art. 8
(Relations with the European Union law and integration of the ESFS)²⁶

1. The Ministry of Economic Development and ISVAP shall exercise their powers in line with the provisions of the European Union, comply with the regulations and decisions of the European Union and ensure that the recommendations regarding the subject-matters regulated by this code are implemented.²⁷

Art. 9
(Regulations and other measures)

1. Ministerial regulations shall be adopted in accordance with article 17 (3) of law n. 400 of 23 August 1988.

2. The regulations adopted by ISVAP pursuant to this code shall be issued by ISVAP's president in compliance with the procedure envisaged by article 191 (4 and 5).

3. ISVAP shall establish by way of regulation²⁸, the terms and procedures for the adoption of the deeds and measures falling within its province. In particular, ISVAP shall regulate the procedures pertaining to the detection of infringements and the application of sanctions, in compliance with the principles of possibility to issue a denunciation, of full knowledge of the acts of investigation, of cross-examination, of recording as well as of distinction between

²⁵ ISVAP regulation n. 24 of 19 May 2008.

²⁶ Heading replaced by article 5 (3, a) of legislative Decree n. 130 of 30 July 2012.

²⁷ Paragraph amended by article 5 (3, b) of legislative decree n. 130 of 30 July 2012.

²⁸ ISVAP regulation n. 2 of 09 May 2006.

investigation and decision-making functions²⁹. The principles regarding identification and functions of the person responsible for the procedure, participation in the procedure and access to the administrative documents envisaged by law n. 241 of 7 August 1990 shall apply as far as they are compatible. The cases of need and emergency or the reasons of confidentiality for which the principles laid down in this paragraph shall be laid down by ISVAP.

4. ISVAP may apply the provisions of this code about its granting of authorisation by also granting authorisations pertaining to certain categories of deeds or subjects. The authorisations generally issued by ISVAP shall be made public in accordance with the arrangements envisaged for regulations.

5. Ministerial regulations, regulations and general recommendations adopted by ISVAP shall be published in the Gazzetta Ufficiale (the Italian Official Journal). These deeds and any other relevant measure pertaining to supervised entities shall be published in ISVAP's Bulletin within one month of their adoption and shall also be made immediately available in ISVAP's website.

6. By 31 January each year all regulations and general measures issued in accordance with this code shall be published by the Ministry of Production Activities in one single – also electronic – collection in case during the previous year new regulations and general measures have been issued or the existing ones have been amended.

Art. 10

(Professional secrecy and collaboration between authorities)

1. All news, information and data available to ISVAP on account of its supervisory activity shall be strictly confidential, also with respect to the offices of the public administration. This does not prejudice the cases provided for by the law for investigations of criminal offences.

2. In the performance of their supervisory functions ISVAP's employees are public officials and shall be required to report all irregularities found, including those considered indictable offences, exclusively to the president of ISVAP.

3. ISVAP's employees, consultants and experts shall be bound by the obligation of professional secrecy.

4. ISVAP shall collaborate – also through the exchange of information – with the Bank of Italy, CONSOB (the National Commission for Listed Companies and the Stock Exchange), the Antitrust Authority, the Communications Authority, COVIP (the Supervisory Commission for Pension Funds) and Ufficio italiano dei cambi (the Italian Foreign Exchange Office), and each of said institutions shall collaborate with ISVAP in order to facilitate the exercise of their respective functions. They may not refuse a request from each other on the grounds of confidentiality.

5. Nor may ISVAP use the grounds of confidentiality to refuse to provide information to the Minister of Production Activities and to the two branches of Parliament acquiring data, news and information according to the competence and procedures set forth in their respective regulations.

²⁹ ISVAP regulation n. 1 of 15 March 2006.

6. The offices of the public administration and the public bodies shall provide data, news and documents and any further collaboration requested by ISVAP in compliance with the laws governing their respective organisations.

7. In accordance with the terms and conditions envisaged by the provisions of the European Union ISVAP shall collaborate, also by exchanging information, with EIOPA and the other European supervisory authorities, the Joint Committee, the ESRB, the institutions of European Union and the supervisory authorities of the individual Member States, in order to facilitate the exercise of their respective functions. In respect of such entities ISVAP shall comply with the reporting obligations established by the provisions of the European Union. The information received by ISVAP cannot be forwarded to other Italian authorities and third parties without the prior consent of the authority which furnished it³⁰.

7-bis. In the cases and under the conditions envisaged by the provisions of the European Union ISVAP can conclude with EIOPA and the supervisory authorities of the other member States agreements which can provide even for the delegation of tasks; it can also have recourse to EIOPA for the settlement of disputes with the supervisory authorities of the other Member States in cross-border situations³¹.

8. Within the cooperation agreements and subject to reciprocity and equivalent obligation of confidentiality ISVAP may exchange information with the competent non-EU authorities.

9. ISVAP may exchange information with administrative or judicial authorities in the framework of winding up or bankruptcy proceedings – in Italy or abroad – of the supervised entities. When dealing with third States' authorities information shall be exchanged as laid down in paragraph 7.

TITLE II THE TAKING UP OF THE BUSINESS OF INSURANCE

Chapter I GENERAL PROVISIONS

Art. 11 (Insurance business)

1. The pursuit of life and non-life insurance business as classified under article 2 shall be reserved to insurance undertakings.

2. The insurance undertaking shall limit its objects to the pursuit of the sole life assurance or the sole non-life insurance classes and of the relevant reinsurance.

3. By way of derogation from paragraph 2, the simultaneous pursuit of both life assurance and the sole accident and sickness insurance classes under article 2 (3) shall be allowed. The

³⁰ Paragraph amended by article 5 (4, a) of legislative decree n. 130 of 30 July 2012.

³¹ Paragraph added by article 5 (4, b) of legislative decree n. 130 of 30 July 2012.

undertaking shall manage both activities separately, in accordance with the provisions set out by ISVAP by way of regulation³².

4. The insurance undertaking may also carry out the operations related or instrumental to the pursuit of insurance or reinsurance business. The activities relating to the setting up and management of supplementary private healthcare and pensions shall be also allowed within the limits and subject to the conditions laid down by the law.

Art. 12
(Prohibited operations)

1. Tontines or associations of subscribers set up with a view to jointly capitalising their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased, insurance having the object of transferring the risk of payment of administrative penalties and those regarding the payment of ransom money in case of kidnapping shall be prohibited. In the event of a breach of that prohibition the contract shall be void and article 167 (2) shall apply.

2. The setting up on the territory of the Italian Republic of companies which have as their exclusive object the pursuit of insurance business abroad shall be prohibited.

Chapter II
UNDERTAKINGS WITH HEAD OFFICE IN THE TERRITORY OF THE ITALIAN REPUBLIC

Art. 13
(Authorisation)

1. Under the conditions envisaged in article 14 ISVAP shall authorize, by order to be published in its bulletin, the undertaking proposing to pursue life assurance business or non-life insurance business or pursue simultaneously both life assurance and accident and sickness insurance in accordance with article 2 (3).

2. Authorization shall be granted for one or more life or non-life classes. It shall cover all the activities falling within those classes, unless the undertaking requests that it be limited only to some of these activities.

3. Authorization shall be valid within the territory of the Italian Republic, of the other member States - in compliance with the provisions relating to the conditions for the taking up of insurance business under the right of establishment or the freedom to provide services - as well as of the third States, in compliance with the legislation of these States.

Art. 14
(Requirements and procedure)

³² ISVAP Regulation n. 17 of 11 March 2008.

1. ISVAP shall grant authorization as per article 13 when the following conditions are met:

- a) the undertaking has adopted the form of: società per azioni (company limited by shares), società cooperativa (cooperative company) or società di mutua assicurazione (mutual undertaking) whose units are represented by shares, set up respectively in accordance with articles 2325, 2511 and 2546 of the civil code, or the form of European company according to Regulation (EC) No 2157/2001 on the statute for a European company;
- b) the applicant undertaking has its general direction and administrative offices in the territory of the Italian Republic;
- c) the capital or guarantee fund, fully paid up, may not be less than the minimum amount established in general terms by ISVAP regulation³³, varying between five million euros and one million and five hundred thousand euros, according to the single classes pursued, and is made up exclusively of cash;
- d) the undertaking submits a scheme of operations, together with the memorandum and articles of association, describing the initial activity and the organisational and management structure, accompanied by a technical report signed by a certified actuary, setting out the criteria for drawing up the scheme of operations and making the estimates of costs and revenues;
- e) the holders of qualifying holdings indicated in article 68 meet the good repute requirements established in article 77 and there are sufficient grounds for granting the authorization envisaged in article 68³⁴;
- f) the persons charged with the administration, management and control functions meet the professional, good repute and independence requirements indicated in article 76;
- g) there are no close links between the undertaking or other group entities and other natural or legal persons, which may prevent the effective exercise of supervisory functions;
- h) the undertaking communicates the name and address of the claims representative appointed in each of the other member States, if the risks to be covered fall within classes 10 and 12 of article 2 (3), other than carrier's liability.

2. ISVAP shall deny authorization when from a check of the conditions indicated in paragraph 1 the sound and prudent management does not seem guaranteed, and no account may be taken of the structure and trend of the markets concerned. Any decision to refuse the authorization shall be accompanied by precise and adequate grounds for doing so and notified to the undertaking in question within ninety days of submission of the application for authorisation along with the documents required.

3. The procedure for entering the undertaking in the undertakings' register cannot be started in the absence of the authorization envisaged in article 13.

4. ISVAP, after ascertaining the registration in the registrar of companies, shall enter insurance undertakings authorized in Italy in a special section of the register and promptly inform the undertaking concerned. Undertakings shall indicate their registration in the register in their acts and correspondence.

5. ISVAP shall establish, by regulation³⁵, the procedure for authorization and the forms of publicity of the roll.

³³ ISVAP regulation n. 10 of 02 January 2008, in particular article 5.

³⁴ Letter amended by article 4 (1, b) of legislative decree n. 21 of 27 January 2010.

³⁵ ISVAP regulation n. 10 of 2 January 2008, in particular Title II, Chapter I.

Art. 15
(Extension of activity to other classes)

1. The undertaking already authorised to pursue one or more life or non-life insurance classes and wishing to extend the activity to other classes referred to in article 2 (1 or 3), must first be authorised by ISVAP. Article 14 (2) shall apply.
2. To obtain extension of authorization, the undertaking shall show proof that it possesses all the share capital or minimum guarantee fund required for the pursuit of new classes and that it complies with the provisions on technical provisions, solvency margin and guarantee fund. Should the exercise of the new classes require a higher guarantee fund than before, the undertaking shall be required to show proof that it possesses that minimum.
3. The provisions of this article shall apply also when the undertaking, after obtaining a limited authorization pursuant to article 13 (2), wishes to extend its business to other activities or risks pertaining to the classes for which it has a limited authorization.
4. ISVAP shall set out, by its own regulation³⁶, the procedure for the extension of authorization to other classes and the content of the scheme of operations.
5. The undertaking may not extend its business before the order updating the register is adopted. The undertaking shall be immediately informed of that order.

Art. 16
(Business pursued by way of establishment in another member State)

1. The undertaking that proposes to establish a branch in another member State shall first notify ISVAP.
2. When effecting the notification the undertaking shall provide a scheme of operations setting out, inter alia, the risks and commitments which it is proposing to cover and the structural organisation of the branch.
3. The undertaking shall also provide the documents attesting the appointment of an authorised agent, who must possess a brief expressly including also the powers to represent the undertaking in relations with all the authorities and courts of the member State of establishment, as well as to conclude and underwrite the contracts and the other documents relating to the business pursued in the territory of that State. The authorised agent must be resident at the address of the branch. If the brief is given to a legal person this must appoint in turn a natural person having a brief including the above powers.
4. The authorised agent or the person actually running the branch (if other than the authorised agent) must meet the good repute and professional qualifications requirements during all the duration of his/her appointment, according to the provisions of article 76. The loss of the above requirements shall entail disqualification pursuant to article 76 (2), and the obligation for the

³⁶ ISVAP regulation n. 10 of 2 January 2008, in particular Title II, Chapter II.

undertaking to replace the authorised agent or the person actually running the branch (if other than the authorised agent).

Art. 17

(Conditions for the taking up of business by way of establishment)

1. ISVAP, within sixty days of receiving the application pursuant to article 16 and unless it identifies the impediments envisaged in paragraph 2, shall send the notification to the supervisory authority of the member State where the undertaking intends to open a branch, together with a certificate attesting that the undertaking possesses the required solvency margin for its entire business.

2. ISVAP shall reject the application if it has reason to doubt the adequacy of the administrative structure or the soundness of the undertaking's financial position, taking into account the business plan, or when the authorised agent does not meet the requirements of good repute and professional qualifications or experience.

3. ISVAP shall immediately inform the undertaking of the notification sent pursuant to paragraph 1 or of the reasons of its refusal pursuant to paragraph 2.

4. The undertaking may not set up its branch and start business before it receives the communication from the supervisory authority of the member State where it intends to open the branch or, if no communication is received, within sixty days from the time when such authority received from ISVAP the notification under article 16. ISVAP shall immediately send the undertaking any other communication received from said supervisory authority within the same period, concerning the provisions protecting the general good which the branch must observe.

5. If the undertaking intends to change any of the particulars communicated under article 16 (1), it must inform ISVAP and the supervisory authority of the member State of the branch at least thirty days before making the change. ISVAP, within sixty days of receiving the information, shall assess its impact on the maintenance of the conditions justifying the sending of the notification under paragraph 3 and, where necessary, shall inform the competent authority of the member State concerned. ISVAP shall immediately send the undertaking any communication received from the supervisory authority of the member State of the branch within the same period.

Art. 18

(Business pursued by way of freedom of services in another member State)

1. The undertaking that intends to carry on business for the first time in another member State under the freedom to provide services shall first inform ISVAP.

2. When effecting the notification the undertaking shall provide a scheme of operations setting out the establishments from which it proposes to provide services, the member States in which it proposes to pursue business, the nature of the risks and commitments which it proposes to cover and the other information indicated by ISVAP.

Art. 19

(Procedure for the taking up of business by way of freedom of services)

1. ISVAP, within thirty days of receiving the notification pursuant to article 18, shall send the necessary information to the supervisory authority of the member State where the undertaking intends to pursue business by way of free provision of services, and at the same time shall advise the undertaking concerned that the file has been sent.
2. ISVAP shall reject the application if it has reason to doubt the adequacy of the administrative structure or the soundness of the undertaking's financial position, taking into account the business plan. In this case ISVAP shall adopt an order specifying the reasons for doing so, which will be sent to the undertaking concerned within the deadline set in paragraph 1.
3. The undertaking may begin its activity as soon as it has been notified by ISVAP that the information under paragraph 1 has been sent.
4. If the undertaking intends to change any of the particulars in the notification made, it must follow the procedure specified in article 17 (5).

Art. 20

(Health insurance as an alternative to social security)

1. If the undertaking intends to accept health insurance risks situated in other member States, where contracts covering these risks serve as a partial or complete alternative to health cover provided by the statutory social security system and must be operated on a technical basis similar to that of life insurance according to the provisions of Community law, it shall ask ISVAP the sickness tables and the other relevant statistical data published and transmitted by the supervisory authorities of the States concerned. ISVAP shall immediately transmit this information to the applicant undertaking.

Art. 21

(Business pursued from branches situated in other member States)

1. The undertaking that intends to carry on business under the freedom to provide services in the territory of the Italian Republic from a branch situated in another member State shall first inform ISVAP.
2. The undertaking may begin its activity as soon as it has been notified by ISVAP that the notification under paragraph 1 has been received. The undertaking shall first inform ISVAP of any change to the particulars in the notification made.
3. The pursuit of business as per paragraph 1 is subject to the provisions applicable to undertakings with head office in Italy, as well as to articles 24 (4) and 26.

Art. 22
(Business pursued in a third State)

1. The undertaking that proposes to establish a branch in a third State shall first notify ISVAP.
2. ISVAP shall prevent the undertaking from establishing a branch if it has reason to believe that the undertaking's financial position is not sufficiently sound or that the branch's administrative structure is inadequate, taking into account the scheme of operations.
3. The provisions under paragraphs 1 and 2 apply also to undertakings proposing to pursue business under the freedom to provide services in a third State.

CHAPTER III
UNDERTAKINGS WITH HEAD OFFICE IN ANOTHER MEMBER STATE

Art. 23
(Business under the right of establishment)

1. The taking up of life or non-life business under the right of establishment in the territory of the Italian Republic, by an undertaking with head office in another member State, is subject to the notification to ISVAP, by the supervisory authority of that State, of the information and conditions required under Community provisions. If the undertaking intends to cover risks relating to compulsory insurance against civil liability in respect of the use of motor vehicles and ships, the notification shall include a declaration that it has become a member of the Italian national bureau (Ufficio centrale italiano) and of the national guarantee fund (Fondo di garanzia per le vittime della strada).
2. The authorised agent of the branch must possess a brief expressly including also the powers to represent the undertaking in relations with all the authorities and courts of the Italian Republic, as well as to conclude and underwrite the contracts and the other documents relating to the business pursued in the Italian territory. The authorised agent must be resident at the address of the branch. If the brief is given to a legal person this must have its head office in the territory of the Italian Republic and appoint in turn a natural person resident in Italy and having a brief which includes the above powers.
3. ISVAP, within thirty days of receiving the notification, shall inform the supervisory authority of the home member State of the general good provisions which the undertaking must observe when pursuing business.
4. The undertaking may set up its branch and start business in the territory of the Italian Republic as soon as it receives the notification by ISVAP from the home supervisory authority or, if no notification is received, upon expiry of the deadline set under paragraph 3.
5. If the undertaking intends to change any of the particulars communicated, it shall inform ISVAP at least thirty days before making the change. ISVAP shall assess the impact of the information received on the maintenance of the conditions justifying the sending of the

notification under paragraph 4 and, where necessary, shall inform the competent authority of the member State concerned.

Art. 24

(Business under the freedom of services)

1. The taking up of life or non-life business under the freedom to provide services in the territory of the Italian Republic, by an undertaking with head office in another member State, is subject to the notification to ISVAP, by the supervisory authority of that State, of the information and conditions required under Community provisions. If the undertaking intends to cover risks relating to compulsory insurance against civil liability in respect of the use of motor vehicles and ships, the notification shall include the indication of the name and address of the claims representative and a declaration that it has become a member of the Italian national bureau (Ufficio centrale italiano) and of the national guarantee fund (Fondo di garanzia per le vittime della strada).
2. The undertaking may begin its activity as soon as ISVAP acknowledges receipt of the notification by the home supervisory authority pursuant to paragraph 1.
3. The undertaking shall inform ISVAP, through the supervisory authority of the home member State, of any change it intends to make to the notification for the taking up of business under the freedom of services in the territory of the Italian Republic.
4. As regards the pursuit of business under the freedom to provide services in the territory of the Italian Republic, the undertaking may not use branches, agencies or any other permanent presence on the Italian territory, even if that presence consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking.

Art. 25

(Claims representative)

1. If the undertaking intends to pursue compulsory insurance against civil liability in respect of the use of motor vehicles and ships under the freedom of services in the territory of the Italian Republic, it shall appoint a representative responsible for handling and settling claims. Injured parties entitled to compensation may address their claims to that representative.
2. The claims representative shall be resident in the territory of the Italian Republic³⁷.
3. The representative must possess a brief expressly including the powers to represent the undertaking in relations with the courts and all the authorities competent for claims for damages, and to certify the existence and validity of the contracts concluded by the undertaking on a free provision of services basis.
4. The tasks of the claims representative may also be performed by the fiscal representative.

³⁷ Paragraph amended by article 1 (2), legislative decree n. 198 of 6 November 2007.

5. The name and address of such representative shall be shown in the insurance contract, sticker and certificate.

Art. 26

(List of EU undertakings operating in Italy)

1. ISVAP shall publish, in the appendix to the register of insurance undertakings, the list of undertakings licensed to pursue life and non-life insurance in the territory of the Italian Republic by way of establishment or of free provision of services.

Art. 27

(Compliance with general good provisions)

1. The undertaking may not conclude contracts, nor use forms of advertising that are in conflict with the national rules on the general good, including the rules adopted for the protection of policyholders and those entitled to insurance benefits.

Chapter IV

UNDERTAKINGS WITH HEAD OFFICE IN A THIRD STATE

Art. 28

(Business under the right of establishment)

1. If an undertaking with head office in a third State intends to pursue life and non-life insurance in the territory of the Italian Republic, it shall first be authorized by ISVAP order to be published in the Bulletin.

2. Authorization shall be valid only within the national territory, without prejudice to the provisions on the conditions for the taking up of business abroad under the freedom of services.

3. If an undertaking carries on simultaneously life and non-life insurance in the home State, it may be authorised to pursue solely life classes or non-life classes, unless it seeks authorization for life assurance and accident and sickness insurance.

4. The undertaking under paragraph 1 must set up a branch – within the territory of the Italian Republic – and appoint an authorised agent resident in Italy and possessing the powers envisaged in article 23 (2), as well as the power to effect the transactions necessary to lodge and bind the security provided for in paragraph 5. If the agent is a legal person, the provision in article 23 (2), last sentence, shall apply. The authorised agent or the person actually running the branch (if other than the authorised agent) must meet the good repute and professional qualifications requirements during all the duration of his/her appointment, according to the provisions of article 76.

5. ISVAP shall, by its own regulation³⁸, establish the other conditions required for issuing the initial authorization, including the duty to submit a scheme of operations, and to show proof that the undertaking possesses in the territory of the Italian Republic investments of an amount equal to at least the minimum guarantee fund, and that it has deposited an amount in cash or bonds equal to at least one-half of said minimum amount as security with Cassa depositi e prestiti or the Bank of Italy. Article 14 (2, 3 and 4) shall apply.

6. By the regulation envisaged in paragraph 5 ISVAP shall also establish the procedures and conditions for the extension of business to other classes, the simultaneous pursuit of life assurance and accident and sickness insurance and of refusal of authorization. Article 15 shall apply.

7. Authorization may not be granted when the home State does not respect the principle of equality of treatment or of reciprocity vis-à-vis undertakings with head office in the territory of the Italian Republic which have set up or propose to set up a branch in that State.

Art. 29

(Prohibition to carry on business under the freedom of services)

1. Undertakings with head office in a third State may not, in the territory of the Italian Republic, carry on life or non-life business under the freedom of services.

2. Paragraph 1 shall apply also to branches situated in third States and depending on undertakings whose head office is in another member State.

3. It is prohibited for subjects having their domicile or, if legal persons, their head office in the territory of the Italian Republic, to conclude contracts with undertakings pursuing business in violation of the provisions under paragraphs 1 and 2. Any form of mediation aimed to the conclusion of these contracts is also prohibited.

4. In the event of a breach of that prohibition the contract shall be void and article 167 (2) shall apply.

³⁸ ISVAP Regulation n. 10 of 02 January 2008, in particular Title III.

TITLE III
PURSUIT OF INSURANCE BUSINESS

Chapter I
GENERAL PROVISIONS

Art. 30

(The undertaking's organisational requirements)

1. The insurance undertaking authorised to pursue life assurance or non-life insurance business shall carry on business by means of an appropriate administrative and accounting organisation and an adequate internal control system.
2. The internal control system shall provide for adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all necessary measures are taken to ensure that the systems implemented are consistent, so that risks can be measured and monitored³⁹.
3. The undertaking carrying on assistance insurance shall meet the requirements of professional qualification of staff and the technical specifications of the equipment established by ISVAP's regulation⁴⁰.

Art. 31

(Actuary appointed by the life assurance undertaking)

1. The life assurance undertaking shall appoint an actuary responsible for continuously carrying out the tasks set out in this code and in its implementing provisions, in particular those mentioned under articles 32 (3), 36 (2) and 93 (5).
2. The appointed actuary shall meet the good repute and professional qualifications requirements established by regulation⁴¹ adopted by the Minister of Production Activities upon ISVAP's proposal.
3. The undertaking shall ensure the conditions for enabling the actuary to perform his/her functions in absolute independence, while having free access to the relevant corporate information. The bodies charged with internal control shall avail themselves of the appointed actuary to collect data correctly, in particular those regarding the undertaking's costs and their foreseeable trend, which are used for the assessments in which the actuary is involved.
4. The actuary shall immediately inform the undertaking and ISVAP of the loss of the above requirements or of the existence or emergence of situations of incompatibility involving loss of position.

³⁹ ISVAP regulation n. 20 of 26 March 2008.

⁴⁰ ISVAP regulation n. 12 of 09 January 2008.

⁴¹ Decree by the Minister of Economic Development n. 99 of 28 April 2008.

5. In case of serious non-compliance with the rules of this code or its implementing provisions, as well as with the rules for the application of the actuarial principles recognized by ISVAP, the appointed actuary is revoked by the undertaking directly or at the request of ISVAP. ISVAP shall inform the actuaries' association of such revocation.

6. In case of termination of the actuary's appointment for any reason the undertaking shall appoint a new actuary within forty five days and inform ISVAP of the reasons for the replacement; it shall also furnish ISVAP and the new actuary - within the same term – with a detailed report to be drawn up by the outgoing actuary, containing his/her comments and observations for the last twenty four months. Where, in exceptional circumstances, the actuary is incapable of drawing up the report the undertaking shall do that.

Art. 32

(Determination of life assurance premium rates)

1. The premiums relating to the assurance and the operations indicated under article 2 (1) are calculated, for each new premium rate, on reasonable actuarial assumptions enabling the undertaking – by means of premiums and the relevant income – to meet the costs and obligations towards policyholders and, in particular, to set up the technical provisions necessary for each contract. To that end the undertaking's assets, liabilities and financial position can be taken into account; however resources not deriving from premiums paid may not be used on a systematic and permanent basis.

2. Actuarial assumptions are calculated in compliance with the limits envisaged by article 33, as well as with the application rules of the actuarial principles recognised by ISVAP regulation⁴².

3. The actuary is responsible for the assessment of the assumptions underlying premium calculation, which is the subject of a technical report to be kept with the undertaking. The accounts of the life assurance undertaking shall be sent to ISVAP along with a technical report in which the appointed actuary shall describe in detail the procedures followed and the assessments made, with reference to the technical bases adopted, for the calculation of technical provisions with specific evidence of any implicit assessments and the relevant reasons, shall certify the correctness of the procedures used, report about the checks made on the procedures for the calculation of technical provisions and the correct portfolio analysis and express his/her opinion about the sufficiency of all technical provisions, including any additional reserves shown in the accounts.

4. In case of systematic and permanent use of resources other than premiums and the relevant income ISVAP may prohibit the further marketing of the assurance products which caused the imbalance.

5. The use of natural premium rates shall be allowed, provided that adequate information is furnished before and during the term of the contract and without prejudice to the prohibition to review the technical bases. In the event of a breach of that prohibition the contract shall be void and article 167 (2) shall apply.

⁴² ISVAP Regulation n. 21 of 28 March 2008, in particular Title II.

6. The undertaking shall inform ISVAP of the essential elements of the technical bases used for calculating premiums and technical provisions of each assurance rate.

Art. 33

(Guaranteed rate of interest in life assurance contracts)

1. ISVAP shall determine, by its own regulation⁴³, a maximum interest rate for all contracts providing a guaranteed interest rate which cannot be more than sixty percent of the average rate on bond issues by the State.

2. ISVAP's regulation⁴⁴ may also indicate several maximum rates of interest, diversified according to the currency in which the contract is denominated, provided that they are not more than sixty percent of the average rate on bond issues by the State in whose currency the contract is denominated. In that case ISVAP shall first consult the supervisory authority of the member State concerned.

3. When defining the interest rate within the limits set by paragraphs 1 and 2 the undertaking shall always abide by prudential principles.

4. In its regulation⁴⁵, ISVAP may – notwithstanding the maximum rates of paragraphs 1 and 2 – set different values of the maximum rate of interest for certain categories of contracts. It may also set specific limits for single premium contracts or immediate life annuity contracts with no surrender, for which liabilities are covered by the corresponding assets.

5. Where ISVAP exercises the option under paragraph 4 the undertaking may choose a prudent rate of interest, taking account of the currency in which the contract is denominated and the corresponding assets. Under no circumstances may the rate of interest used be higher than the yield on the representative assets as calculated in accordance with the accounting standards in force, less an appropriate deduction.

6. The maximum rates set through the regulation under paragraph 1 shall be communicated by ISVAP to the European Commission and to the other member States' supervisors, upon request.

Art. 34

(Actuary appointed by the undertaking carrying on motor vehicle liability and liability for ships)

1. The insurance undertaking authorised to carry on compulsory insurance against civil liability in respect of the use of motor vehicles and ships shall appoint an actuary for the prior verification of premium rates and technical provisions pertaining to the insurance classes 10 and 12 under article 2 (3), also with a view to facilitating the exercise of the supervisory powers by ISVAP.

⁴³ ISVAP Regulation n. 21 of 28 March 2008, in particular Title II, Chapter III.

⁴⁴ ISVAP Regulation n. 21 of 28 March 2008, in particular Title II, Chapter III.

⁴⁵ ISVAP Regulation n. 21 of 28 March 2008, in particular Title II, Chapter III.

2. The appointed actuary shall meet the good reputation and professional qualifications requirements established by regulation adopted by the Minister of Production Activities⁴⁶, upon ISVAP's proposal.

3. The appointed actuary is charged with verifying the technical bases, the statistical methods and the technical and financial assumptions used, as well as with evaluating the consistency of premium rates with the reference values adopted. The appointed actuary shall also check the correctness of the procedures and methods used by the undertaking for the calculation of technical provisions.

4. The appointed actuary's functions shall be set by the Minister of Production Activities through the regulation under paragraph 2, without prejudice to the provisions of article 37 (2). The provisions under article 31 (3, 4, 5 and 6) shall apply.

Art. 35

(Calculation of premium rates in motor vehicle liability and liability for ships insurance)

1. When determining premium rates the undertaking shall calculate pure premiums and loadings separately and consistently with its technical bases, which shall be large enough and spanning at least five financial years. Where these bases are unavailable the undertaking may use market statistical data.

2. As to the risks which, because of their characteristics, cannot be included in any of the rates established by the undertaking the latter may use – for an understanding of the statistical elements necessary for the calculation of the pure premium – the information available to one or more bodies set up among the undertakings pursuing compulsory motor liability insurance, which are required to furnish such elements.

3. The provisions under paragraph 2 shall also apply to risks which may be defined – for whatever subjective or objective reason – as peculiar or exceptional vis-à-vis those established by the undertaking.

4. The statistical elements used by the undertaking for calculating the pure premium for the risks under paragraphs 2 and 3 must be communicated to the bodies indicated under paragraph 2 promptly.

Chapter II

TECHNICAL PROVISIONS FOR LIFE AND NON-LIFE CLASSES

Art. 36

(Life assurance provisions)

1. Undertakings pursuing life assurance shall establish, for the contracts in the Italian portfolio, sufficient technical provisions, including mathematical provisions, in respect of the commitments

⁴⁶ Decree by the Minister of Economic Development n. 99 of 28 April 2008.

accepted and future expenses. Provisions shall be calculated, gross of reinsurance cessions, according to the actuarial principles and application rules set up by ISVAP regulation⁴⁷.

2. The assessment on the sufficiency of technical provisions belongs to the appointed actuary, who performs a controlling function on a permanent basis in order to enable the undertaking to take all necessary actions without delay. To this purpose the appointed actuary must immediately inform the administrative and control bodies of the undertaking whenever he or she recognises conditions that might, at that moment, raise doubts about the sufficiency of the technical provisions in light of the principles to be complied with when drawing up the technical report pursuant to article 32 (3). If the undertaking is unable to address the causes of the comment or if it does not agree with the comment, it shall immediately inform ISVAP.

3. Undertakings pursuing life assurance shall – at the end of each financial year - establish a special technical provision equal to the total amounts that would be necessary to honour the payment of accrued capital and annuities, of surrender values and claims outstanding.

4. The provision for bonuses and rebates shall comprise amounts intended for policyholders or contract beneficiaries by way of bonuses and rebates to the extent that such amounts have not been credited to policyholders or have not already been considered in the mathematical provisions.

5. For the establishment of the technical provisions relating to supplementary insurance provided for in article 2 (2), the same rules governing technical provisions for non-life insurance shall apply.

6. Reinsurers' share of technical provisions shall comprise reinsurance amounts and shall be calculated according to contractual reinsurance arrangements, on the basis of the gross amounts of technical provisions.

7. Undertakings pursuing life assurance shall submit ISVAP a comparison between the technical bases, other than the interest rate, used in the calculation of technical provisions and the results of direct experience.

Art. 37

(Technical provisions for non-life insurance)

1. Undertakings pursuing non-life insurance shall establish, for the contracts in the Italian portfolio, technical provisions that must at all times be such that an undertaking can meet any liabilities arising out of insurance contracts as far as can reasonably be foreseen. Provisions shall be calculated, gross of reinsurance cessions, according to the actuarial principles and application rules set up by ISVAP regulation⁴⁸.

2. If the undertaking covers risks relating to compulsory insurance against civil liability in respect of motor vehicles and ships the assessment on the sufficiency of technical provisions belongs to the appointed actuary, who performs a control function on a permanent basis in order to enable the undertaking to take all necessary actions without delay. To this purpose the appointed

⁴⁷ ISVAP regulation n. 21 of 28 March 2008.

⁴⁸ ISVAP regulation n. 16 of 04 March 2008.

actuary must immediately inform the administrative and control bodies of the undertaking whenever he or she recognises conditions that might, at that moment, raise doubts about the sufficiency of the technical provisions in light of the principles to be complied with when drawing up the technical report. If the undertaking is unable to address the causes of the comment or if it does not agree with the comment, it shall immediately inform ISVAP.

3. Undertakings pursuing non-life insurance shall – at the end of each financial year - establish the premium provision, the provision for claims, the provision for claims incurred but not reported at the end of the year, equalisation provisions, the ageing reserve and the provisions for bonuses and rebates.

4. The premium provision shall comprise both the provision for unearned premiums and the provision for unexpired risks. If an undertaking covers risks relating to suretyship, hail and other natural forces as well as damage due to nuclear energy it shall establish a supplementary provision for unearned premiums for these classes, given the particular nature of such risks.

5. The provision for claims shall comprise the total amounts that, according to a prudent valuation based on objective elements, would be necessary to honour the payment of outstanding claims incurred in the current or previous years, as well as the relevant claims settlement costs. The assessment of the provision for claims shall be based on the ultimate cost, and shall take account of all future foreseeable liabilities on the basis of reliable historical and perspective data and anyhow of the undertaking's specific features.

6. The provision for claims incurred but not reported by the balance-sheet date shall be assessed taking account of the nature of the risks to which it refers in order to determine the relevant valuation methods.

7. Equalization provisions shall comprise any amounts set aside - in compliance with legal requirements - to equalize fluctuations in loss ratios in future years or to provide for special risks. The undertaking authorized to pursue credit insurance shall set up an equalization provision, for the purpose of offsetting any retained technical deficit arising in that class at each balance-sheet date. The undertaking authorized to pursue non-life insurance, except credit and suretyship, shall set up an equalization provision for risks arising from natural catastrophes for the purpose of offsetting the trend in claims ratio over time. The conditions and terms for setting up an equalization provision for risks arising from natural catastrophes and for damage or loss due to nuclear energy are established by decree of the Minister of Production Activities, in agreement with the Minister of Economic and Financial Affairs, after hearing ISVAP.

8. In case of multi-year health insurance contracts or annual contracts which however envisage an obligation for the insurer to renew them at the expiry date, and where premiums have been calculated, for the whole life of the contract, according to the age of policyholders when the contract was concluded, the undertaking shall set up an ageing reserve aimed to make up for a risk increase due to the advancing age of policyholders. For these contracts the undertaking may exercise the right of withdrawal, further to a claim, only within the first two years from contract conclusion. In case of long-term care insurance contracts the undertaking shall set up a special provision according to adequate actuarial criteria which take account of the risk trend for the whole life of the contract.

9. The provision for bonuses and rebates shall comprise amounts intended for policyholders or contract beneficiaries by way of bonuses and rebates to the extent that such amounts have not been credited to policyholders.

10. The undertaking authorized to the simultaneous pursuit of life assurance and accident and sickness insurance shall comply with the specific applicable provisions.

11. Reinsurers' share of technical provisions shall comprise reinsurance amounts and shall be calculated according to contractual reinsurance arrangements, on the basis of the gross amounts of technical provisions. The premium provision relating to reinsurance amounts shall be calculated according to the methods referred to in paragraph 4, in line with the choice made by the undertaking for the calculation of the gross premium provision.

Article 37-bis
(Technical provisions for reinsurance)

1. The insurance undertaking that carries on simultaneously insurance and reinsurance business shall establish reinsurance technical provisions at the end of each year, gross of retrocessions, in respect of the commitments undertaken, according to the rules set up by ISVAP regulation⁴⁹. Article 64 (2) shall apply.

2. Until the issuing of the regulations referred to in article 42-bis (1) and 65 (3) undertakings shall establish reinsurance technical provisions at the end of each year, gross of retrocessions, in respect of the commitments undertaken. Technical provisions for reinsurance are generally entered in the financial statements according to the statements submitted by ceding undertakings. Undertakings shall assess the adequacy of reinsurance provisions so as to ensure that they are sufficient in respect of the commitments undertaken and make any necessary adjustment to the financial statements, taking also account of past experience⁵⁰.

Chapter III
ASSETS REPRESENTING TECHNICAL PROVISIONS

Art. 38
(Representation of technical provisions and localisation of assets)

1. The technical provisions for life and non-life insurance as well as the equalisation provisions referred to in article 37 (7) shall be covered by assets belonging to the undertaking. When choosing representative assets the undertaking shall take account of the type of risks and commitments accepted and of the need to secure the safety, yield and marketability of its investments, which it shall ensure are diversified and adequately spread⁵¹.

2. The undertaking can cover technical provisions with any but the categories of assets, including derivative financial instruments, loans granted to subjects other than

⁴⁹ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title I.

⁵⁰ Article inserted by article 2, legislative decree n. 56 of 29 February 2008.

⁵¹ Paragraph amended by article 3 (1, a), legislative decree n. 56 of 29 February 2008.

natural persons and microenterprises as defined by art. 2 (1) of the annex to the Recommendation 2003/361/EC of the European Commission⁵², which are admitted under the regulation⁵³ adopted by ISVAP. In the same regulation ISVAP shall set out the types, terms, limits of use and the relevant maximum percentages in compliance with the provisions set by Community law⁵⁴. In case of loans granted to subjects other than natural persons and microenterprises IVASS shall establish operating conditions and limits, taking the following criteria into account:

- a) the borrowers are identified by a bank or a financial intermediary registered in the register referred to in article 106 of legislative decree n. 385 of 1 September 1993 and subsequent modifications and integrations;
- b) the bank or financial intermediary referred to under a) retains a net economic interest in the operation, of no less than 5% of the loan granted, transferable to another bank or financial intermediary until the maturity date of the operation;
- c) the undertaking's internal control and risk management system is adequate and allows to fully understand the risks, in particular the credit risk, associated with that category of assets;
- d) the undertaking has an adequate capitalisation level; by way of derogation from letters a) and b) the autonomous exercise of the identification of borrowers by the insurer is subject to IVASS' authorisation⁵⁵.

3. If ISVAP has reason to believe that the rules under paragraph 2 have not been observed for one or more assets, it shall inform the undertaking that such assets may not be admitted as cover for all or part of the technical provisions.

4. Without prejudice to the principles under paragraph 1, in exceptional circumstances and at the undertaking's reasoned request, ISVAP may, temporarily, allow the investment in categories of assets as cover for technical provisions other than those envisaged as a general rule.

5. Where the representative assets include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, ISVAP shall, when verifying the correct application of the rules and principles laid down in this article, take into account the assets held by the subsidiary undertaking.

6. In the case of contracts included in the Italian portfolio, the undertaking may localize assets representing technical provisions in one or more member States. At the undertaking's request, ISVAP may authorize the localization of part of the assets in a third State. Notwithstanding the provisions of this paragraph, the localization of claims against reinsurers used as cover for technical provisions is free, subject to Article 47.

Art. 39 (Valuation of assets)

1. Assets covering technical provisions shall be valued net of any debts arising out of their acquisition and of any adjusting entries.

⁵² Period supplemented by article 22 (4, a), decree-law n. 91 of 24 June 2014 coordinated with conversion law n. 116 of 11 August 2014.

⁵³ ISVAP regulation n. 36 of 31 January 2011.

⁵⁴ Paragraph amended by article 3 (1, b), legislative decree n. 56 of 29 February 2008.

⁵⁵ Period added by article 22 (4, b), decree-law n. 91 of 24 June 2014 coordinated with conversion law n. 116 of 11 August 2014.

2. Assets used as cover for technical provisions must be valued on a prudent basis, allowing for the risk of any amounts not being realizable.

3. ISVAP shall, by its own regulation⁵⁶, set out the provisions relating to the valuation criteria for assets.

Art. 40
(Matching rules)

1. Where the insurance cover is expressed in terms of a particular currency, the undertaking's commitments are considered to be payable in that currency.

2. Where the insurance cover is not expressed in terms of any currency, the undertaking's commitments are considered to be payable in the currency of the country in which the risk is situated. In non-life insurance the undertaking may also pay the benefit in the same currency in which the premium was paid if, from the time the contract is entered into, it appears objectively likely that the benefit will be paid in the currency of the premium.

3. The undertaking shall cover its technical provisions in compliance with matching rules. ISVAP shall, by its own regulation⁵⁷, define cases of relaxations and establish the types, terms and limits to the use of assets expressed in another currency or of derivative financial instruments eligible to satisfy the same requirements.

Art. 41
(Index-linked contracts or contracts directly linked to units in UCITS)

1. Where the benefits provided by a contract are directly linked to the value of units in an UCITS or to the value of assets contained in an internal fund held by the insurance undertaking, the technical provisions in respect of those contracts shall be represented as closely as possible by the units in the UCITS or by the units in the internal fund, if it is divided into units, or by the assets contained in such fund.

2. Where the benefits provided by a contract are directly linked to a share index or another reference value other than those referred to in paragraph 1, the technical provisions in respect of those contracts shall be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.

3. Article 38 (1), second sentence, and the provisions on the maximum percentages provided for under paragraph 2 of the same article shall not apply to assets held to match liabilities directly linked to the benefits referred to in paragraphs 1 and 2. The provisions relating to the matching rules shall not apply to liabilities arising out of the contracts provided for under this article.

⁵⁶ ISVAP regulation n. 36 of 31 January 2011.

⁵⁷ ISVAP regulation n. 36 of 31 January 2011.

4. Where the contract benefits referred to in paragraphs 1 and 2 include a guarantee of investment performance or some other guaranteed benefit, the corresponding additional technical provisions shall be subject to article 38.

5. ISVAP shall, by way of regulation⁵⁸, lay down more detailed rules fixing the categories of admissible assets, and of the relevant limits.

Art. 42

(Register of assets representing technical provisions)

1. The undertaking shall keep a special register showing assets representing technical provisions for life and non-life business. The amount of such assets must at any time be at least equal to the amount of technical provisions, taking account of all the movements recorded.

2. The assets representing the technical provisions written in said register are exclusively set aside for the fulfilment of the undertaking's obligations arising out of the contracts to which the provisions are referred. Assets provided for in this paragraph are segregate from the assets held by the undertaking and not written in said register.

3. The undertaking shall inform ISVAP of the state of the assets shown in the register. ISVAP shall, by its own regulation⁵⁹, lay down provisions on the filling in and keeping of the register, with special regard to disclosure of operations effected, as well as to the terms, procedures and standard reports for periodical communications.

Art. 42-bis

(Assets representing technical provisions for reinsurance)

1. Articles 38, 39, 40 and 65-bis shall apply to technical provisions for life and non-life reinsurance as well as to the equalisation provisions referred to in article 37 (7). ISVAP shall issue a regulation establishing the categories of assets, including financial derivatives, accepted as cover for reinsurance technical provisions as well as the types, terms, limits of use and the relevant maximum percentages.

2. Until the issuing of the regulation referred to in paragraph 1 the assets covering reinsurance technical provisions shall take account of the type of business carried out by the undertaking and, in particular, of the nature, amount and duration of the expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments.

3. The undertaking shall ensure that the assets are adequately diversified and spread and allow the undertaking to respond to changing economic circumstances, in particular developments in the financial markets and real estate markets or the impact of catastrophic events⁶⁰.

⁵⁸ ISVAP Regulation n. 32 of 11 June 2009.

⁵⁹ ISVAP Regulations n. 27 of 14 October 2008 and n. 36 of 31 January 2011.

⁶⁰ Article inserted by article 3 (2), legislative decree n. 56 of 29 February 2008.

Article 42-ter

(Assets representing reinsurance technical provisions for insurance undertakings when certain conditions are met)

1. Where one of the conditions referred to in article 46 (3-bis) (a), (b) and (c) is met article 65 shall apply to the assets representing reinsurance technical provisions of the insurance undertaking that carries on simultaneously insurance and reinsurance business.
2. The assets employed by the insurance undertaking to cover the technical provisions corresponding to its reinsurance acceptances shall be managed and organised separately from the direct insurance activities, without any possibility of transfer.
3. Until the date of entry into force of the regulation envisaged under article 65 (3) and not later than 1 July 2008 the provisions of article 42-bis (2) and (3) shall apply to the undertakings referred to in paragraph 1⁶¹.

Art. 43

(Technical provisions relating to the business pursued under the right of establishment in third States)

1. As to the underwriting liabilities assumed by branches in third States, the undertaking shall establish the technical provisions in accordance with the laws applicable in those States.
2. ISVAP shall verify that undertakings' financial statements show assets adequate to cover the provisions provided for under paragraph 1.

Chapter IV SOLVENCY MARGIN

Art. 44

(Solvency margin)

1. The undertaking shall at all times possess an adequate solvency margin in respect of its entire business carried on in the territory of the Italian Republic and abroad. ISVAP shall, by its own regulation, lay down technical rules for calculating the required solvency margin, according to the insurance classes pursued, in compliance with the provisions of this chapter and with the laws and regulations on the supplementary supervision of undertakings belonging to a financial conglomerate.
2. The available solvency margin shall consist of the assets of the insurance undertaking free of any foreseeable liabilities, less any intangible items, including:

⁶¹ Article inserted by article 3 (2), legislative decree n. 56 of 29 February 2008.

- a) the paid-up share capital or, in the case of a mutual insurance undertaking, the paid-up initial fund;
- b) statutory and free reserves neither corresponding to particular underwriting liabilities or to adjustments of asset items nor classified as equalisation provisions⁶²;
- c) the profit for the current financial year and for the previous financial years brought forward after deduction of dividends to be paid;
- d) the loss for the current financial year and for the previous financial years brought forward.

3. The available solvency margin may also consist of:

- a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital. To be included among the constituent elements of the available solvency margin subordinated loan capital must fulfil the conditions laid down in article 45 (1 and 2). Cumulative preferential share capital may be included provided that binding agreements exist under which, in the event of ordinary or compulsory liquidation of the undertaking, said share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time of the liquidation have been settled;
- (b) securities with no specified maturity date and other financial instruments, including cumulative preferential shares other than those mentioned in letter (a), up to 50% of the lesser of the available solvency margin and the required solvency margin, this limit refers to the total of such securities, instruments, cumulative preferential share capital and subordinated loan capital referred to in letter (a) of this paragraph. To be included among the constituent elements of the available solvency margin securities with no specified maturity and other financial instruments, including cumulative preferential share capital, must fulfil the conditions laid down in article 45 (8).

4. At the undertaking's reasoned request, accompanied by supporting evidence, ISVAP may allow that the available solvency margin may also consist of, for periods not exceeding twelve months each, the further asset items listed in the implementing provisions⁶³, as well as that the amounts recoverable from special purpose vehicles may be deducted from the required solvency margin as reinsurance amounts⁶⁴.

5. ISVAP shall, by its own regulation⁶⁵, define the assets which are not taken into account when calculating the undertaking's assets for the purposes of the solvency margin.

Article 44-bis

(Solvency margin of life assurance undertakings also pursuing reinsurance business)

1. The insurance undertaking authorised to pursue life assurance business that carries on simultaneously insurance and reinsurance business, in respect of its reinsurance acceptances, shall apply articles 66-bis, 66-ter, 66-quater and 66-quinquies for the solvency margin calculation and setting up where one of the following conditions is met:

⁶² Letter amended by article 4 (1, a), legislative decree n. 56 of 29 February 2008.

⁶³ ISVAP Regulation n. 19 of 14 March 2008.

⁶⁴ Paragraph amended by article 4 (1, b), legislative decree n. 56 of 29 February 2008.

⁶⁵ ISVAP Regulation n. 19 of 14 March 2008.

- a) the reinsurance premiums collected exceed 10% of its total premiums;
- b) the reinsurance premiums collected exceed fifty million euros;
- c) the technical provisions corresponding to its reinsurance acceptances exceed 10% of its total technical provisions⁶⁶.

Art. 45

(Subordinated loan capital, securities with no specified maturity date and other financial instruments)

1. Subordinated loan capital may be included in the available solvency margin, taking account of only fully paid-up funds, provided that binding agreements exist under which, in the event of ordinary or compulsory liquidation of the undertaking, said loan capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time of the liquidation have been settled.

2. Subordinated loan capital may be included in the available solvency margin, without prejudice to the provisions of paragraph 1, when the documents governing its issue:

- a) expressly provide that any amendments shall be valid only after ISVAP has approved them;
- b) do not include any clause providing that in circumstances other than the winding-up of the undertaking, the loan will become repayable before the agreed repayment dates;
- c) for loans with a fixed maturity, the minimum duration must be at least five years;
- d) loans the maturity of which is not fixed must be repayable only subject to at least five years' notice;
- e) provide for the early repayment of such loans only on the initiative of the issuing undertaking and subject to ISVAP's prior authorisation.

3. For loans with a fixed maturity, no later than one year before the repayment date, the undertaking must submit to ISVAP for its approval a plan showing how and the means by which the undertaking intends to keep the state of solvency at maturity, taking also account of the foreseeable solvency margin requirements at the close of the financial year during which the undertaking intends to pay off the loan. The obligation to submit the plan shall not apply if the undertaking has gradually reduced, during the last five years before the repayment date, the amount of the loan taken into account for the available solvency margin, and has at the same time replaced it with eligible elements.

4. The provisions under paragraphs 2 and 3 shall not preclude the possibility of an early repayment of all or part of loans with a fixed maturity, on the initiative of the bearer and subject to ISVAP's prior authorisation.

5. The early repayment of all or part of the loans the maturity of which is not fixed may be effected only upon application by the undertaking and subject to ISVAP's prior authorisation.

6. In the cases provided for under paragraphs 4 and 5 a reasoned request must be submitted to ISVAP at least six months before the date for the early repayment, accompanied by supporting evidence showing how and the means by which the undertaking intends to keep the state of solvency and attesting that such early repayment will not prejudice the available solvency

⁶⁶ Article inserted by article 4 (2), legislative decree n. 56 of 29 February 2008.

margin taking also account of the foreseeable solvency margin requirements at the close of the financial year during which the undertaking intends to make the early repayment. Such authorisation may also be granted for an amount lower than the amount requested.

7. For loans the maturity of which is not fixed, the serving of notice, to be immediately notified to ISVAP, or the request for early repayment results in the reduction in the utilization of subordinated loan capital from fifty per cent to twenty-five per cent of the lesser of the available solvency margin and the required solvency margin. If such notice is given the provisions under paragraph 3 shall apply.

8. Securities with no specified maturity date and the other financial instruments, including those with a fixed maturity of at least ten years, and cumulative preferential shares mentioned in article 44 (3) b), may be included in the available solvency margin, taking account of only fully paid-up funds, provided they fulfil the following:

a) the documents governing their issue state that they can be modified only subject to ISVAP's prior authorisation;

b) the documents governing their issue exclude the possibility that they can be repaid on the initiative of the bearer or without ISVAP's prior authorisation. Such authorisation may also be granted for an amount lower than the amount requested. For the purpose of early repayment and of the relevant authorisation, a reasoned request must be submitted to ISVAP, at least six months before the date of the early repayment, accompanied by supporting evidence showing how and the means by which the undertaking intends to keep the state of solvency and attesting that such early repayment will not prejudice the available solvency margin taking also account of the foreseeable solvency margin requirements at the close of the financial year during which the undertaking intends to make the early repayment;

c) the documents governing their issue must enable the undertaking to defer the payment of interest on the loan when the undertaking does not possess the required solvency margin. Accrued unpaid interest is not included in the calculation of the available solvency margin;

d) the documents governing their issue set out that the lender's claims on the undertaking must rank entirely after those of all non-subordinated creditors, including insured parties;

e) the documents governing their issue must provide for the definitive or temporary loss-absorption capacity of the debt and of accrued unpaid interest, while enabling the undertaking to continue its regular business. The losses shown in the undertaking's financial statements must have resulted in a reduction of the required solvency margin, without bringing the latter back to the required amount at the same time. The notes on the accounts must adequately indicate the existence and application of the loss-absorption clause.

9. ISVAP shall, by its own regulation⁶⁷, set out the conditions aimed at fully guaranteeing the insurance undertaking's stability, under which securities with no specified maturity date, the other financial instruments – including cumulative preferential shares – and subordinated loan capital may be included among the constituent elements of the available solvency margin.

10. In compliance with the conditions and limits provided for in this article cumulative preferential shares, subordinated loan capital, securities with no specified maturity date and the other financial instruments may be accepted for the calculation of the adjusted solvency of an insurance undertaking and of the solvency of its parent company as per articles 217 and 218.

⁶⁷ ISVAP Regulation n. 19 of 14 March 2008, in particular Title III, Chapter II.

Art. 46
(Guarantee fund)

1. One third of the required solvency margin shall constitute the guarantee fund.
2. The guarantee fund of an undertaking pursuing life business, without prejudice to the limits established for the amount of share capital or of the initial fund, may in no case be less than three million euros⁶⁸.
3. The guarantee fund of an undertaking pursuing non-life business, without prejudice to the limits established for the amount of corporate capital or of the initial fund, may in no case be less than two million euros⁶⁹. In the case where the undertaking is authorised to carry on the insurance classes 10, 11, 12, 13, 14 and 15 provided for in article 2 (3), the guarantee fund may in no case be lower than three million euros⁷⁰. If the authorisation covers several insurance classes, only that class for which the highest amount is required shall be taken into account.
- 3-bis. The insurance undertaking authorised to pursue non-life insurance business that carries on simultaneously insurance and reinsurance business shall possess, in respect of its entire business, a guarantee fund in accordance with article 66-sexies, where one of the following conditions is met:
 - a) the reinsurance premiums collected exceed 10% of its total premiums;
 - b) the reinsurance premiums collected exceed fifty million euros;
 - c) the technical provisions corresponding to its reinsurance acceptances exceed 10% of its total technical provisions⁷¹.
4. The guarantee fund is covered exclusively by the asset items listed in article 44 (2), less any intangible items listed in the regulation mentioned in paragraph 5 of the same article.
5. The amount as laid down in paragraphs 2 and 3 shall be increased annually, by regulation adopted by ISVAP⁷², in line with the increase in the European index of consumer prices as published by Eurostat, unless the increase is less than five per cent.

Art. 47
(Cession of risks accepted by a reinsurer)

1. ISVAP may decide, as regards the representation of technical provisions and the calculation of the solvency margin, not to take account of the cession of reinsurance risks to undertakings with head office in third States which have not appointed a legal representative in the territory of the Italian Republic or in the territory of another member State.
2. The reasons for ISVAP's decision must be based exclusively on assessments concerning the solvency of reinsurance undertakings.

⁶⁸ This amount was as last raised to EUR 3,700,000 by ISVAP order n. 3031 of 19 December 2012.

⁶⁹ This amount was as last raised to EUR 2,500,000 by ISVAP order n. 3031 of 19 December 2012.

⁷⁰ This amount was as last raised to EUR 3,700,000 by ISVAP order n. 3031 of 19 December 2012.

⁷¹ Paragraph inserted by article 4 (3), legislative decree n. 56 of 29 February 2008.

⁷² ISVAP orders n. 2768 of 29 December 2009 and n. 3031 of 19 December 2012.

CHAPTER V
UNDERTAKINGS WITH HEAD OFFICE IN A THIRD STATE

Art. 48

(Organisational requirements for the branch)

1. Branches established in the territory of the Italian Republic by undertakings with head office in a third State shall carry on business by means of an adequate administrative and accounting organization and an adequate internal control system. Article 30 (2 and 3) shall apply.
2. The provisions of articles 31, 32, 33, 34 and 35 shall apply to the branch.

Art. 49

(Technical provisions)

1. As regards insurance business and the operations included in the portfolio of the branch, the undertaking shall comply with the rules relating to technical provisions of undertakings with head office within the territory of the Italian Republic.
2. As regards the localization of assets representing technical provisions the provisions of article 38 (6) shall be applicable. ISVAP may however require that such assets shall be localised in the territory of the Italian Republic, wherever that is deemed necessary to protect the interests of policyholders and of those entitled to insurance benefits.
3. Undertakings authorised to carry on life assurance and accident and sickness insurance simultaneously shall comply with the provisions applicable to undertakings with head office within the territory of the Italian Republic.

Art. 50

(Calculation of the solvency margin and the guarantee fund)

1. The undertaking possesses, for its branch, a solvency margin set up in accordance with the provisions of chapter IV, where applicable, and calculated taking account of the business pursued by the branch in line with the provisions in the regulation⁷³ adopted by ISVAP.
2. One-third of the minimum solvency margin shall constitute the guarantee fund. The fund may not be less than one-half of the amounts required under article 46 for the insurance classes referred to in the authorization.
3. The assets representing the solvency margin must be kept within the territory of the Italian Republic up to the amount of the guarantee fund and the excess within the territory of other member States.

⁷³ ISVAP Regulation n. 19 of 14 March 2008, in particular Title V.

4. The provision under paragraph 1 shall not apply to undertakings authorized to pursue business also in other member States, whose overall solvency is supervised by the supervisory authority of one of those States pursuant to article 51.

Art. 51

(Advantages to undertakings operating in more than one member State)

1. Any undertaking which, when requesting authorisation to pursue business within the territory of the Italian Republic, is already authorized to pursue life or non-life business in one or several member States or has filed an application for authorisation in those States, may ask that:

a) by derogation from the provisions in article 50 (1), the solvency margin shall be calculated in relation to the entire business carried on by its branches established within the territory of the member States;

b) the deposit required under article 28 (5) shall be lodged in only one of those member States;

c) the assets representing the minimum guarantee fund shall be localised in any one of the member States in which it has established a branch. The application shall be made to ISVAP and to the supervisory authorities of the other member States concerned.

2. The undertaking which, after obtaining the authorization to pursue business within the territory of the Italian Republic, establishes a branch also within the territory of another member State may also apply for these advantages.

3. In the application the undertaking shall state the selected authority which is to supervise the solvency of the entire business of the branches established within the member States. Reasons must be given for the application. If the application is accepted the undertaking shall lodge the deposit required under article 28 (5) in the member State whose authority is to supervise the solvency of the entire business carried on within the territory of the European Union.

4. Advantages may be granted only jointly and with the consent of all authorities of the member States concerned. They shall take effect from the time when the authority selected to supervise the solvency of the entire business, after receiving the agreement of all the member States concerned, informs the other authorities that it will supervise the state of solvency. The advantages shall be withdrawn in all member States concerned in case they are withdrawn by just one single supervisory authority.

5. The undertaking to which the advantages have been granted shall calculate the solvency margin in relation to the entire business carried on by all the branches established within the member States.

TITLE IV
PROVISIONS RELATING TO CERTAIN MUTUAL INSURANCE UNDERTAKINGS

Art. 52
(Concept)

1. The rules on the taking up of insurance business under title II (chapter II) shall not apply in case of mutual insurance undertakings set up in accordance with article 2546 of the civil code, which may pursue life or non-life insurance only in the territory of the Italian Republic when the conditions established respectively by paragraph 2 and 3 are fulfilled. The units of such undertakings must be represented by shares.
2. To carry on life business the articles of association of mutual assurance undertakings shall contain provisions for calling up additional contributions, or reducing their benefits and collecting annual contributions not exceeding fivehundredthousand euros.
3. To carry on non-life business the articles of association of mutual insurance undertakings shall contain provisions for calling up additional contributions and collecting annual contributions not exceeding one million euros, at least one half of which from members.
4. If the amounts under paragraphs 2 and 3 are exceeded for three consecutive years the mutual insurance undertaking shall no longer be subject to the provisions under this title with effect from the fourth year, and shall apply for the authorisation under article 13 within 30 days from the approval of the financial statements for the third financial year in which the amounts were exceeded.

Art. 53
(Business which may be carried on)

1. The undertaking under article 52 (2) may only carry on the insurance classes I and II under article 2 (1).
2. The undertaking under article 52 (3) may not pursue the insurance classes 10, 11, 12, 13, 14, 15, 17 and 18 under article 2 (3).
3. The mutual insurance undertaking shall limit its objects to the pursuit of solely life assurance or solely non-life insurance and the related or instrumental operations. Article 12 shall apply.

Art. 54
(Requirements applying to significant owners and key functionaries)

1. The Minister of Production Activities shall lay down, by the regulation provided for under article 76, the good repute and independence requirements of significant owners and key functionaries as well as their professional requirements, which take account of the size and limits of the business pursued by mutual insurance undertakings as per article 52.

Art. 55
(Authorisation)

1. ISVAP or, in case of special statute regions, the relevant regional body, shall authorise - without prejudice to the provisions of article 347 (3) – the mutual insurance undertakings under article 52.
2. The authorised mutual undertakings shall be entered in a special section headed "altre mutue assicuratrici" of the register of insurance undertakings under article 14 (4).
3. ISVAP shall set out, by its own regulation and without prejudice to the powers of the special statute regions, the procedure for granting, extending and refusing authorisation. Article 14 (3) shall apply.

Art. 56
(Other applicable rules)

1. By its own regulation ISVAP shall establish the undertaking's financial and organisational adequacy, the obligation to keep the accounting registers as well as to inform the supervisory Authority, taking account of the size and limits of the business carried on by the mutual insurance undertakings under article 52.
2. When pursuing business the mutual insurance undertakings referred to in article 52 shall be subject to the provisions of titles VIII, XIII, XIV, XVI and XVIII in so far as they are compatible.
3. Articles 2346 (6), 2349 (2), 2519 (2), 2526, 2541, 2543, 2544 (2, 1st sentence), 2545-quater, 2545-quinquies, 2545-octies (2), 2545-undecies (3), 2545-terdecies, 2545-quinquiesdecies, 2545-sexiesdecies, 2545-septiesdecies and 2545-octiesdecies of the civil code shall not apply to the mutual insurance undertakings under this title.

**TITLE V
TAKING UP OF THE BUSINESS OF REINSURANCE**

**Chapter I
GENERAL PROVISIONS**

Art. 57
(Reinsurance business)

1. Reinsurance business consists in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking and shall be reserved to reinsurance undertakings⁷⁴.

⁷⁴ Paragraph amended by article 5 (1, a), legislative decree n. 56 of 29 February 2008.

2. Reinsurance undertakings shall limit their objects to the pursuit of reinsurance business and related or instrumental operations. These operations may include a holding company function and activities with respect to financial sector activities within the meaning of article 1 (1, m) of legislative decree n.142 of 30 May 2005⁷⁵.

3. The setting up on the territory of the Italian Republic of companies which have as their exclusive purpose the pursuit of reinsurance business abroad shall be prohibited.

4. The insurance undertaking that carries on simultaneously insurance and reinsurance business shall be subject to the provisions under title II⁷⁶.

Article 57-bis (Special purpose vehicles)

1. The pursuit of business in the territory of the Italian Republic by special purpose vehicles with head office in the territory of the Italian Republic is subject to ISVAP's prior authorisation.

2. The conditions for the taking-up and pursuit of business by the special purpose vehicles shall be established by regulation adopted in accordance with article 17 (1) of law n. 400 of 23 August 1988 upon a proposal by the Minister of Economic Development. More specifically the regulation lays down provisions regarding:

- a) the scope of the authorisation;
- b) the mandatory conditions for inclusion in the contracts issued;
- c) fit and proper requirements for persons running the special purpose vehicle;
- d) fit and proper requirements for shareholders or holder of a qualifying holding in the special purpose vehicle;
- e) administrative and accounting procedures, internal control and risk management mechanisms;
- f) balance-sheet, accounting, prudential and statistical information requirements;
- g) the solvency requirements of special purpose vehicles⁷⁷.

Chapter II REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN THE TERRITORY OF THE ITALIAN REPUBLIC

Art. 58 (Authorisation)

1. The undertaking having its head office within the territory of the Italian Republic and proposing to pursue reinsurance business exclusively shall be authorized by ISVAP, by order to be published in ISVAP's bulletin, under the conditions envisaged in article 59.

⁷⁵ Sentence inserted by article 5 (1, b), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (3) of legislative decree n. 53 of 4 March 2014.

⁷⁶ Paragraph amended by article 5 (1, c and d), legislative Decree n. 56 of 29 February 2008.

⁷⁷ Article inserted by article 5 (2), legislative decree n. 56 of 29 February 2008.

2. Authorization shall be granted for one or more life or non-life classes or, simultaneously, for one or more life and non-life classes.

3. Authorisation shall be valid within the territory of the Italian Republic, of the other member States – in compliance with the provisions relating to the conditions for the taking up of insurance business under the right of establishment or the freedom to provide services – as well as of the third States, in compliance with the legislation of these States⁷⁸.

Art. 59

(Requirements and procedure)

1. ISVAP shall grant authorization as per article 58 when the following conditions are met:

a) the undertaking has adopted the form of società per azioni set up in accordance with article 2325 of the civil code, or the form of European company according to Regulation (EC) No 2157/2001 on the statute for a European company;

b) the applicant undertaking has its general direction and administrative offices in the territory of the Italian Republic;

c) the fully paid up capital may not be less than the minimum amount established as a general rule by ISVAP regulation⁷⁹, varying between five million and three million euros, according to the insurance classes pursued, and is made up exclusively of cash⁸⁰;

d) the undertaking submits a scheme of operations, together with the memorandum and articles of association, describing the initial activity and the organisational and management structure, accompanied by a technical report signed by a certified actuary, setting out the criteria for drawing up the scheme of operations and for making the estimates of costs and revenues;

e) the holders of qualifying holdings indicated in article 68 meet the good repute requirements established in article 77 and there are sufficient grounds for granting the authorization envisaged in article 68⁸¹;

f) the persons charged with the administration, management and control functions meet the professional, good repute and independence requirements indicated in article 76;

g) there are no close links between the undertaking or other group entities and other natural or legal persons, which may prevent the effective exercise of supervisory functions.

2. ISVAP shall deny authorization when from a check of the conditions indicated in paragraph 1 the sound and prudent management does not seem guaranteed, and no account may be taken of the structure and trend of the markets concerned. The relevant decision shall be accompanied by precise and adequate grounds for doing so and notified to the undertaking in question within ninety days of submission of the application for authorisation along with the documents required.

3. The procedure for entering the undertaking in the undertakings' register cannot be started in the absence of the authorization envisaged in article 58.

4. ISVAP, after ascertaining the registration in the registrar of companies, shall enter reinsurance undertakings authorized in Italy in a special section of the register and promptly

⁷⁸ Paragraph amended by article 6 (1), legislative decree n. 56 of 29 February 2008.

⁷⁹ ISVAP regulation n. 33 of 10 March 2010, in particular article 5.

⁸⁰ Letter amended by article 6 (2), legislative decree n. 56 of 29 February 2008.

⁸¹ Letter amended by article 4 (1, c), legislative decree n. 21 of 27 January 2010.

inform the undertaking concerned. Undertakings shall indicate their registration in the register in their acts and correspondence.

5. ISVAP shall establish, by regulation⁸², the procedure for authorization and the forms of publicity of the roll.

Article 59-bis
(Extension of activity to other classes)

1. The undertaking already authorised to pursue reinsurance business in one or more life or non-life insurance classes and wishing to extend the activity to other classes referred to in article 2 (1 or 3), must first be authorised by ISVAP. Article 59 (2) shall apply.

2. To obtain extension of authorisation, the undertaking shall show proof that it possesses all the minimum share capital required for the pursuit of new classes and that it complies with the provisions on technical provisions, solvency margin and guarantee fund.

3. ISVAP shall set out, by its own regulation⁸³, the procedure for the extension of authorization to other classes and the content of the scheme of operations.

4. The undertaking may not extend its business before the order updating the registrar is adopted. The undertaking shall be immediately informed of that order⁸⁴.

Article 59-ter
(Business pursued by way of establishment in another member State)

1. The reinsurance undertaking that proposes to establish a branch in another member State shall first notify ISVAP thereof. The notification shall show:

- a) the address of the branch;
- b) the name and powers of the authorised agent;
- c) the member States in which it intends to carry on business;
- d) a scheme of operations illustrating the type of business it proposes to pursue.

2. Within thirty days of receiving the notification referred to in paragraph 1, where there are no objections, ISVAP shall inform the competent supervisory Authority of the member State concerned of the undertaking's intention to establish a branch in that State and transmit the information required under Community provisions.

3. ISVAP shall at the same time inform the undertaking of the notification sent pursuant to paragraph 2.

4. If the undertaking intends to change any of the particulars communicated under paragraph 1, it shall first inform ISVAP. ISVAP shall assess the impact of the information received on the

⁸² ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title I, Chapters I and II.

⁸³ ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title I, Chapter III.

⁸⁴ Article inserted by article 6 (3), legislative decree n. 56 of 29 February 2008.

maintenance of the conditions justifying the sending of the notification under paragraph 2 and shall inform the competent authority of the member State concerned as required under Community provisions⁸⁵.

Article 59-quater

(Business pursued by way of freedom of services in another member State)

1. The reinsurance undertaking that intends to carry on business for the first time in another member State under the freedom to provide services shall inform ISVAP. When effecting the notification the undertaking shall provide a scheme of operations setting out the establishments from which it proposes to carry on business, the member States in which it proposes to pursue business and the type of business it proposes to pursue⁸⁶.

Article 59-quinquies

(Business pursued in a third State)

1. The reinsurance undertaking that proposes to establish a branch in a third State shall first notify ISVAP thereof.

2. ISVAP shall prevent the undertaking from establishing a branch if it has reason to believe that the undertaking's financial position is not sufficiently sound or that the branch's administrative structure is inadequate, taking into account the scheme of operations.

3. Article 59-quater shall apply to undertakings proposing to pursue business under the freedom to provide services in a third State⁸⁷.

Chapter III

REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN ANOTHER MEMBER STATE OR IN A THIRD STATE

Art. 60

(Business pursued by way of establishment by undertakings with head office in another member State)

1. The taking up of reinsurance business under the right of establishment in the territory of the Italian Republic, by an undertaking with head office in another member State, is subject to the notification to ISVAP, by the supervisory authority of that State, of the information and conditions required under Community provisions.

2. The authorised agent of the branch must possess a brief expressly including also the powers to represent the undertaking in relations with all the authorities and courts of the Italian Republic, as well as to conclude and underwrite the contracts and the other documents relating to the business pursued in the Italian territory. The authorised agent must be resident at the

⁸⁵ Article inserted by article 6 (3), legislative decree n. 56 of 29 February 2008.

⁸⁶ Article inserted by article 6 (3), legislative decree n. 56 of 29 February 2008.

⁸⁷ Article inserted by article 6 (3), legislative decree n. 56 of 29 February 2008.

address of the branch. If the brief is given to a legal person this must have its head office in the territory of the Italian Republic and appoint in turn a natural person resident in Italy and having a brief which includes the above powers.

3. The undertaking may set up its branch and start business in the territory of the Italian Republic as soon as it is informed by the home supervisory authority that the notification referred to in paragraph 1 has been sent to ISVAP.

4. The competent authority of the home member State shall inform ISVAP, as required under Community provisions, of any change in the notification under paragraph 1⁸⁸.

Article 60-bis

(Business pursued by way of establishment by undertakings with head office in a third State)

1. If an undertaking with head office in a third State intends to pursue reinsurance business under the right of establishment in the territory of the Italian Republic, it shall first be authorized by ISVAP order to be published in the Bulletin.

2. Authorization shall be valid only within the national territory, without prejudice to the provisions on the conditions for the taking up of business abroad under the freedom of services.

3. The undertaking under paragraph 1 must set up a branch – within the territory of the Italian Republic – and appoint an authorised agent resident in Italy and possessing the powers envisaged in article 60 (2), as well as the power to effect the transactions necessary to lodge and bind the security provided for in paragraph 5. The authorised agent or the person actually running the branch (if other than the authorised agent) must meet the good repute and professional qualifications requirements during all the duration of his/her appointment, according to the provisions of article 76.

4. By its own regulation⁸⁹ ISVAP shall, under conditions equivalent to those under article 59 (1), establish the requirements and procedure for issuing the initial authorisation. Article 59 (2 and 3) shall apply.

5. ISVAP, after ascertaining the registration in the registrar of companies, shall enter the undertaking in a special section of the register and promptly inform it. Undertakings shall indicate their registration in the register in their acts and correspondence.

6. By the regulation referred to in paragraph 4⁹⁰ ISVAP shall establish the procedures and conditions for the extension of business to other classes and for refusal of authorisation. Article 59-bis shall apply⁹¹.

Art. 61

(Business under the freedom of services)

⁸⁸ Article amended by article 7 (1), legislative decree n. 56 of 29 February 2008.

⁸⁹ ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title II.

⁹⁰ ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title II.

⁹¹ Article inserted by article 7 (2), legislative decree n. 56 of 29 February 2008.

1. Authorization for the taking up and pursuit of reinsurance business under the freedom to provide services, in the territory of the Italian Republic, by undertakings with head office in another member State or in a third State shall not be required.

1-bis. As regards the pursuit of reinsurance business in the territory of the Italian Republic under the freedom to provide services article 24 (4) shall apply⁹².

TITLE VI PURSUIT OF REINSURANCE BUSINESS

Chapter I

REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN THE TERRITORY OF THE ITALIAN REPUBLIC

Art. 62

(Pursuit of reinsurance business)

1. ISVAP shall, by its own regulation⁹³, lay down rules on the setting up and representation of technical provisions and on the solvency margin for the pursuit of reinsurance business in compliance with the general principles established in articles 63, 64, 65, 66, 66-bis, 66-ter, 66-quater, 66-quinquies, 66-sexies and 66-septies, taking into account the need to ensure the sound and prudent management of the undertaking⁹⁴.

2. The insurance undertaking that carries on simultaneously insurance and reinsurance business shall be subject to the provisions under title III⁹⁵.

Art. 63

(Organisational requirements)

1. The reinsurance undertaking shall carry on business by means of an appropriate administrative and accounting organisation and an adequate internal control system.

2. The internal control system shall provide for adequate procedures to ensure that their risk monitoring systems are well integrated into the undertaking's organisation and that all necessary measures are taken to ensure that the systems implemented are consistent, so that risks can be measured and monitored.

Art. 64

(Technical provisions)

⁹² Paragraph inserted by article 7 (3), legislative decree n. 56 of 29 February 2008.

⁹³ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III.

⁹⁴ Paragraph replaced by article 8 (1, a), legislative decree n. 56 of 29 February 2008.

⁹⁵ Paragraph amended by article 8 (1, b and c), legislative decree n. 56 of 29 February 2008.

1. The reinsurance undertaking shall establish technical provisions at the end of each year, gross of retrocessions, of sufficient amount to meet its underwriting liabilities in respect of its entire business.
2. The amount of technical provisions shall be calculated in compliance with articles 36 and 37 and with the relevant implementing provisions. For this purpose technical provisions are generally entered in the financial statements according to the statements submitted by ceding undertakings.
3. The undertakings authorised to pursue credit reinsurance shall set up an equalisation provision, for the purpose of offsetting any retained technical deficit arising in that class at each balance-sheet date, calculated in accordance with method n.1 under letter D of the annex to directive 73/239/EEC.
4. The undertaking authorised to pursue non-life reinsurance, except credit and suretyship, shall set up an equalisation provision for risks arising from natural catastrophes and for damage or loss due to nuclear energy for the purpose of offsetting the trend in claims ratio over time. The conditions and terms for setting up an equalisation provision for risks arising from natural catastrophes and for damage or loss due to nuclear energy are established by decree of the Minister of Economic Development, in agreement with the Minister of Economic and Financial Affairs, after hearing ISVAP⁹⁶.

Art. 65

(Assets representing technical provisions)

1. The technical provisions and the equalisation provisions referred to in article 64 shall be covered by assets belonging to the undertaking. When choosing representative assets the undertaking shall:
 - a) take account of the type of business carried out and, in particular, of the nature, amount and duration of the expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments;
 - b) ensure that the assets are adequately diversified and spread and allow it to respond to changing economic circumstances, in particular developments in the financial markets and real estate markets or the impact of catastrophic events. The undertaking shall assess the impact of irregular market circumstances on its assets and diversify the assets in such a way as to reduce such impact;
 - c) make sure that investments in assets which are not admitted to trading on a regulated market shall in any event be kept to prudent levels;
 - d) use investment in derivative instruments insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. Derivative instruments shall be valued on a prudent basis, taking into account the underlying assets which are included in the valuation of the undertaking's assets. The undertaking shall avoid excessive risk exposure to a single counterparty of other derivative operations;
 - e) be subject to the requirement to properly diversify its assets in such a way as to avoid excessive reliance on any one particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole. Investments in assets issued by the same

⁹⁶ Article replaced by article 8 (2), legislative decree n. 56 of 29 February 2008.

issuer or by issuers belonging to the same group shall not expose the undertaking to excessive risk concentration.

2. Where the representative assets include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, ISVAP shall, when verifying the correct application of the rules and principles laid down in this article, take into account the assets held by the subsidiary undertaking.

3. ISVAP shall issue a regulation⁹⁷ establishing further detailed provisions in relation to the principles referred to in paragraphs 1 and 2 in compliance with the provisions set by Community law. By the same regulation ISVAP shall lay down the rules setting the conditions for the use by reinsurance undertakings of amounts outstanding from a special purpose vehicle as assets covering technical provisions⁹⁸.

4. If ISVAP has reason to believe that the rules under paragraph 1 have not been observed for one or more assets, it shall inform the undertaking that such assets may not be admitted as cover for all or part of the technical provisions⁹⁹.

Article 65-bis

(Register of assets representing technical provisions)

1. The reinsurance undertaking shall keep a register showing assets representing technical provisions for life and non-life business. The amount of such assets must at any time be at least equal to the amount of technical provisions, taking account of all the movements recorded.

2. The assets representing technical provisions written in said register are exclusively set aside for the fulfilment of the reinsurance undertaking's obligations arising out of the contracts to which the provisions are referred. Assets provided for in this paragraph are segregate from the assets held by the reinsurance undertaking and not written in said register.

3. The reinsurance undertaking shall inform ISVAP of the state of the assets shown in the register. ISVAP shall, by its own regulation¹⁰⁰, lay down provisions on the filling in and keeping of the register, with special regard to disclosure of operations effected, as well as to the terms, procedures and standard reports for periodical communications¹⁰¹.

Art. 66

(Retrocession of risks)

1. ISVAP may decide, as regards the representation of technical provisions and the setting up of the solvency margin for the pursuit of reinsurance business, not to take account of the retrocession of risks to reinsurance undertakings with head office in third States which have not

⁹⁷ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title II.

⁹⁸ Paragraph amended by article 8 (7), legislative decree n. 56 of 29 February 2008.

⁹⁹ Article replaced by article 8 (3), legislative decree n. 56 of 29 February 2008.

¹⁰⁰ ISVAP regulation n. 33 of 10 March 2010, in particular article 134.

¹⁰¹ Article inserted by article 8 (4), legislative decree n. 56 of 29 February 2008.

appointed a legal representative in the territory of the Italian Republic or in the territory of another member State¹⁰².

2. The reasons for ISVAP's decision shall be based exclusively on assessments concerning the solvency of retrocessionaires.

Article 66-bis
(Available solvency margin)

1. The reinsurance undertaking shall at all times possess an adequate solvency margin in respect of its entire business carried on in the territory of the Italian Republic and abroad.

2. ISVAP shall, by its own regulation¹⁰³, lay down the technical rules for calculating the available solvency margin, in compliance with the provisions about reinsurance set by Community law and with the laws and regulations on the supplementary supervision of undertakings belonging to a financial conglomerate.

3. The available solvency margin shall consist of the assets of the insurance undertaking free of any foreseeable liabilities, less any intangible items, including the items envisaged by article 44 (2 and 3).

4. At the undertaking's reasoned request, accompanied by supporting evidence, ISVAP may allow that the available solvency margin may also consist of, for periods not exceeding twelve months each, the further asset items listed in the implementing provisions.

5. ISVAP shall, by its own regulation¹⁰⁴, define the assets which are not taken into account when calculating the undertaking's assets for the purposes of the solvency margin, in compliance with the principles and options envisaged by the changes to the provisions implementing Community regulations on direct insurance introduced by legislative decree n. 142 of 30 May 2005¹⁰⁵.

Article 66-ter
(Subordinated loan capital, securities with no specified maturity date and other financial instruments)

1. Subordinated loan capital, securities with no specified maturity date and other financial instruments may be included among the constituent elements of the available solvency margin in compliance with the conditions referred to in article 45.

2. ISVAP shall, by its own regulation¹⁰⁶, set out the conditions aimed at fully guaranteeing the reinsurance undertaking's stability, under which securities with no specified maturity date, the other financial instruments – including cumulative preferential shares – and subordinated loan capital may be included among the constituent elements of the available solvency margin.

¹⁰² Paragraph amended by article 8 (5), legislative decree n. 56 of 29 February 2008.

¹⁰³ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title III.

¹⁰⁴ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title III.

¹⁰⁵ Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008.

¹⁰⁶ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title III.

3. In compliance with the conditions and limits provided for in this article cumulative preferential shares, subordinated loan capital, securities with no specified maturity date and the other financial instruments may be accepted for the calculation of the adjusted solvency of a reinsurance undertaking and of the solvency of its parent company as per articles 217 and 218¹⁰⁷.

Article 66-quater
(Required solvency margin)

1. ISVAP shall, by its own regulation¹⁰⁸, lay down the technical rules for calculating the required solvency margin, and envisage that the undertakings which pursue reinsurance in the life classes calculate the required solvency margin according to the criteria established for the undertakings which pursue reinsurance in the non-life classes, in compliance with the provisions about reinsurance set by Community law and with the laws and regulations on the supplementary supervision of undertakings belonging to a financial conglomerate. At the undertaking's reasoned request, accompanied by supporting evidence, ISVAP may allow that the amounts recoverable from special purpose vehicles may be deducted from the required solvency margin as retrocession amounts¹⁰⁹.

Article 66-quinquies
(Required solvency margin of undertakings carrying on life and non-life reinsurance business)

1. A reinsurance undertaking carrying on both life and non-life reinsurance business shall set up an available solvency margin to cover the total sum of required solvency margins in respect of both reinsurance activities.

2. If the available solvency margin does not reach the level required in paragraph 1, ISVAP shall apply the measures provided for in title XVI¹¹⁰.

Article 66-sexies
(Amount of the guarantee fund)

1. One third of the required solvency margin shall constitute the guarantee fund.

2. The guarantee fund of a reinsurance undertaking, without prejudice to the limits established for the amount of share capital, may not be less than three million euros¹¹¹.

3. The guarantee fund is covered exclusively by the asset items listed in article 44 (2), less any intangible items listed in the regulation referred to in paragraph 66-bis (5).

¹⁰⁷ Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008.

¹⁰⁸ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title III.

¹⁰⁹ Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008.

¹¹⁰ Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008.

¹¹¹ This amount was as last raised to EUR 3,400,000 by ISVAP order n. 3031 of 19 December 2012.

4. The amount laid down in paragraph 2 shall be increased annually in line with the increase in the European index of consumer prices as published by Eurostat, unless the increase is less than five per cent. The amount of the increase¹¹² shall be communicated by ISVAP's order¹¹³.

Article 66-septies
(Finite reinsurance)

1. ISVAP shall, by its own regulation¹¹⁴, lay down specific provisions for the pursuit of finite reinsurance business with regard to:

- a) the mandatory conditions for inclusion in the contracts issued;
- b) administrative and accounting procedures, internal control and risk management mechanisms;
- c) balance-sheet, accounting, prudential and statistical information requirements;
- d) the setting up of adequate technical provisions;
- e) assets covering technical provisions which take account of the type of business carried on by the reinsurance undertaking, and in particular the nature, amount and duration of the expected claims settlements, in such a way as to secure sufficiency, liquidity, security, profitability and matching of its investments;
- f) rules regarding the available solvency margin, the required solvency margin, and the guarantee fund which the reinsurance undertaking keeps in relation to finite reinsurance operations¹¹⁵.

Chapter II
REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN A THIRD STATE¹¹⁶

Art. 67
(Business under the right of establishment)

1. ISVAP shall, by its own regulation¹¹⁷, lay down rules on the setting up and representation of technical provisions and on the solvency margin of the branch for the pursuit of reinsurance business in the territory of the Italian Republic in compliance with the general principles established in articles 63, 64, 65, 66, 66-bis, 66-ter, 66-quater, 66-quinquies, 66-sexies and 66-septies, taking into account the need to ensure the sound and prudent management of the undertaking¹¹⁸.

¹¹² ISVAP orders n. 2833 of 14 September 2010 and n. 3031 of 19 December 2012.

¹¹³ Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008.

¹¹⁴ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title VI.

¹¹⁵ Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008.

¹¹⁶ Heading replaced by article 9 (1), legislative decree n. 56 of 29 February 2008.

¹¹⁷ ISVAP Regulation n. 33 of 10 March 2010, in particular Part III.

¹¹⁸ Article replaced by article 9 (2), legislative decree n. 56 of 29 February 2008.

TITLE VII
SHAREHOLDINGS AND INSURANCE GROUP

CHAPTER I
HOLDINGS IN INSURANCE AND REINSURANCE UNDERTAKINGS

Art. 68
(Authorisations)

1. ISVAP shall authorise in advance any acquisition, on any basis whatsoever, of participations in an insurance or reinsurance undertaking amounting to a controlling interest or making it possible to exercise a significant influence over the undertaking or conferring a proportion of the voting rights or of the capital at least equal to 10%, after taking the shares already owned into account¹¹⁹.

2. ISVAP shall authorise in advance changes in holdings whenever the proportion of the voting rights or of the capital reaches or exceeds 20, 30 or 50% and, at any rate, whenever such changes convey the control of the insurance or reinsurance undertaking¹²⁰.

2 bis. For the purposes of applying Chapters I and II of this Title account shall also be taken of the acquisitions of holdings by more than one subject proposing to exercise the relevant rights in concert on the basis of agreements, in whatever form they are concluded, when those participations, taken together, can be regarded as participations pursuant to paragraphs 1 and 2¹²¹.

3. The authorisation under paragraph 1 is also necessary for acquiring control of a company which owns the participations under the same paragraph. The authorisations under this article shall also apply to the direct or indirect acquisition of control through a contract with the insurance or reinsurance undertaking or a provision in its memorandum and articles of association.

4. ISVAP shall, by its own regulation, define the subjects required to apply for authorisation when the rights deriving from the participations indicated in paragraphs 1 and 2 arise for or are attributed to a person other than the owner of the holdings¹²².

5. ISVAP shall issue the authorisation when the conditions for the sound and prudent management of the insurance or reinsurance undertaking are met, after looking into the quality of the potential purchaser and the financial soundness of the proposed acquisition, also with regard to the possible impact of the operation on the protection of the policyholders of the undertaking concerned, in accordance with the following principles: the reputation of the potential purchaser, including compliance with the requirements envisaged under article 77; compliance with the requirements envisaged under article 76 by those who, after the acquisition, will be charged with administration, management and control functions in the undertaking; the potential purchaser's financial soundness; the undertaking's ability - after the acquisition - to comply with the provisions regulating the undertaking's activity; the suitability of

¹¹⁹ Paragraph amended by article 4 (1, d) of legislative decree n. 21 of 27 January 2010.

¹²⁰ Paragraph amended by article 4 (1, e) of legislative decree n. 21 of 27 January 2010.

¹²¹ Paragraph inserted by article 4 (1, f) of legislative decree n. 21 of 27 January 2010.

¹²² Paragraph amended by article 4 (1, g) of legislative decree n. 21 of 27 January 2010.

the structure of the potential purchaser's group to allow the effective exercise of supervision; that there are no reasonable grounds for suspecting that the acquisition is connected with activities related to money laundering and the financing of terrorism¹²³.

5 bis. ISVAP shall perform its activity in full consultation with the other competent Authorities, in those cases where the potential purchaser is a bank, an investment firm or a management company as per art. 1-bis (para. 1, point 2 of directive 85/611/EEC) authorised in Italy, or one of the subjects referred to in art. 204 (1, b or c) relating to them. In those cases the provisions under article 204 (2 and 3) shall apply¹²⁴.

6. If subjects from third States not ensuring reciprocity take part in the operations under paragraphs 1 and 3 ISVAP shall inform the Ministry of Production Activities of the application for authorisation, and upon a proposal by the latter the President of the Council of Ministers can prohibit the granting of authorisation within one month from the date of the communication.

7. ISVAP may suspend or withdraw the authorisation in view of the participations acquired or enhanced further to the agreements under article 70 or other events following the authorisation.

8. The measures granting, refusing, withdrawing or suspending the authorisation shall be accompanied by the precise grounds for doing so, shall be immediately communicated to the applicant and to the undertaking concerned and then published in ISVAP's Bulletin.

9. ISVAP shall, by its own regulation, establish the implementing provisions based on the relevant Community provisions, and in particular it shall lay down the calculation criteria of the voting rights which are relevant for the application of the thresholds envisaged under paragraphs 1 and 2, including those cases where the voting rights are not taken into account for the purpose of applying the same paragraphs and the identification criteria for cases of significant influence¹²⁵.

Art. 69 (Obligations to give information)

1. Anyone intending to become holder of a qualifying holding indicated in article 68 in an insurance or reinsurance undertaking shall inform ISVAP thereof. In the other cases the changes in participations shall be communicated whenever the amount of the holder has risen beyond or fallen below the limits set by ISVAP's regulation¹²⁶.

2. Trust companies intending to acquire in their own name participations belonging to third parties shall communicate the particulars of the latter to ISVAP.

3. For the purposes of verifying compliance with the obligations envisaged in this article ISVAP may require that information be provided, records produced and checks be made by all the subjects concerned.

¹²³ Paragraph amended by article 4 (1, h) of legislative decree n. 21 of 27 January 2010.

¹²⁴ Paragraph inserted by article 4 (1, i), legislative decree n. 21 of 27 January 2010.

¹²⁵ Paragraph amended by article 4 (1, l) of legislative decree n. 21 of 27 January 2010.

¹²⁶ Paragraph amended by article 4 (1, m) of legislative decree n. 21 of 27 January 2010.

4. ISVAP shall, by its own regulation, establish the conditions, arrangements, terms and contents of the notifications under paragraphs 1 and 2, having also regard to the cases where the person entitled to vote is not the holder of the participation.

Art. 70

(Communication of voting agreements)

1. Any agreement, in whatever form it is concluded, whose object or effect is the concerted exercise of the voting rights in an insurance or reinsurance undertaking or in the relevant parent company shall be communicated to ISVAP by the parties to such agreement or by the legal representatives of the undertaking to which the agreement refers. ISVAP shall in general establish the terms and procedures of the communication¹²⁷.

2. When the agreement results in a concerted exercise of the voting rights which might undermine the sound and prudent management of the insurance or reinsurance undertaking ISVAP may suspend the voting rights of the parties to such agreement and set a deadline within which the participations which are the object of the agreement must be sold¹²⁸.

3. Article 69 (3 and 4) shall apply to the communications under paragraph 1.

Art. 71

(Request for information)

1. ISVAP may ask insurance and reinsurance undertakings as well as companies and bodies of any nature which own participations in said undertakings to indicate the names of the holders of participations as they are recorded in the share register, the communications received or as they can be inferred from other data.

2. ISVAP may also ask managers and directors of companies and bodies which hold participations in insurance and reinsurance undertakings to indicate the identity of controlling subjects.

3. To verify all financial interrelationships between insurance and reinsurance undertakings and their parent companies, subsidiaries and affiliated companies ISVAP may require that such companies produce information and records and make checks.

4. As to the checks under paragraphs 1, 2 and 3 ISVAP may request information from the subjects, including foreign ones, who hold participations in an insurance or reinsurance undertaking.

5. ISVAP may also ask trust companies, stock brokerage companies and anyone who is aware of it information about the acquisition of participations in insurance and reinsurance undertakings.

¹²⁷ Paragraph amended by article 4 (1, n) of legislative decree n. 21 of 27 January 2010.

¹²⁸ Paragraph amended by article 4 (1, o) of legislative decree n. 21 of 27 January 2010.

6. In case of requests concerning companies whose securities are dealt in on a regulated market ISVAP shall inform CONSOB, and may avail itself of the latter in case of investigations involving those companies.

Art. 72
(Concept of control)

1. For the purposes of this title control exists also with reference to subjects other than companies, in the cases envisaged by article 2359 (1 and 2) of the civil code and in case of contracts or provisions in the memorandum or articles of association whose object or effect is the power to perform management and coordination activities.

2. Control is regarded as existing in the form of dominant influence, unless proved otherwise, where one the following conditions is met:

a) existence of a person who, by way of agreements, has the power to appoint or dismiss the majority of the directors or of the supervisory committee, or holds alone the majority of votes needed to implement the decisions on the subject-matters under articles 2364 and 2364-bis of the civil code;

b) the holding of participations necessary to permit the appointment or dismissal of the majority of members of the administrative body or of the supervisory committee;

c) existence, even between shareholders, of insurance, reinsurance, financial and organisational links capable of producing one of the following effects:

1) profit or loss transfer;

2) coordination between the undertaking's management and that of other undertakings for the pursuit of a common purpose;

3) giving authority going beyond that deriving from the participations owned;

4) giving persons other than those entitled, based on the ownership of participations, authority in the matter of selection of directors or members of the supervisory committee;

d) being under a unified management, based on the composition of the administrative bodies or due to other consistent elements such as, for instance, important and durable reinsurance links.

Art. 73
(Indirect participations)

1. For the purposes of applying chapters I and III of this title account is also taken of the following participations , whether they are acquired or anyhow owned:

a) through subsidiaries, trust companies or third parties;

b) by way of deposit, pledge or usufruct in case the depositary, the pledgee or the usufructuary can exercise the voting rights attaching to them at their discretion;

c) for which repurchase agreements or derivative contracts have been concluded, which are taken into account with regard to the lender and the borrower or to both parties to those

contracts, unless it is proven that the power to influence the undertaking's management and control is attributed exclusively to one party.

Art. 74

(Suspension of the voting right and of the other rights, obligation to sell)

1. The voting rights and the other rights which make it possible to exercise an influence over the undertaking may not be exercised when they pertain to participations for which the authorisations under article 68 have not been obtained, or have been suspended or withdrawn. The voting rights and the other rights which make it possible to exercise an influence over the undertaking may also not be exercised in case of participations for which the communication requirements under articles 69 and 70 have not been met.

2. In case of non compliance with the prohibition, the decision or other measure adopted with the deciding vote or contribution of the participations envisaged in paragraph 1 may be challenged in accordance with the provisions of the civil code. The challenge may be brought by ISVAP too, within six months of the decision or, if this is subject to enrolment in the registrar of companies, within six months of the enrolment or, if it is only subject to a lodging at the office of the registrar of companies, within six months of the lodging. Participations for which no voting right can be exercised shall be taken into account in order to ensure that the general meeting is duly constituted.

3. The participations for which the authorisations under article 68 have not been obtained, or have been withdrawn, shall be transferred within the deadline established by Isvap.

4. The rights arising out of the contracts or of the provisions in the memorandum and articles of association for which the authorisations under article 68 have not been obtained or have been suspended or withdrawn may not be exercised.

Art. 75

(Statements of independence)

1. For the purposes of applying this chapter ISVAP may require the holders of qualifying holdings referred to under article 68 in insurance and reinsurance undertakings other than the undertakings subject to prudential supervision to submit a responsible statement, whose general or specific contents and terms are established by ISVAP, indicating the nature and size of the financial and operational relations, as well as the measures and commitments that the holders of participations intend to enforce to ensure the undertaking's independence¹²⁹.

2. ISVAP may suspend the voting rights of the holders of participations who have refused to submit such declaration or have misrepresented data or have failed to fulfil the commitments undertaken with regard to the endangerment of the sound and prudent management of the insurance or reinsurance undertaking.

¹²⁹ Paragraph amended by article 4 (1, p), legislative Decree n. 21 of 27 January 2010.

CHAPTER II
GOOD REPUTE, PROFESSIONAL AND INDEPENDENCE REQUIREMENTS

Art. 76

(Professional, good repute and independence requirements of directors and managers)

1. The persons charged with administration, management and control functions at insurance and reinsurance undertakings must meet the professional, good repute and independence requirements established with regulation¹³⁰ adopted by the Minister of Production Activities, after hearing the opinion of ISVAP.
2. The absence or loss of the above requirements shall entail disqualification. The disqualification must be declared by the board of directors or the supervisory committee or the management board within thirty days of the appointment or of the date when it has become aware of the loss of requirements. If said boards fail to act the disqualification is declared by ISVAP.
3. In case of loss or absence of the independence requirements set out in the civil code or in the memorandum and articles of association of the insurance or reinsurance undertaking, paragraph 2 shall apply.
4. The regulation under paragraph 1 lays down the grounds for temporary suspension from office and its duration. Suspension must be declared in accordance with the terms set in paragraph 2.

Art. 77

(Requirements for holders of qualifying holdings)

1. The Minister of Production Activities, after hearing the opinion of ISVAP, shall, by its own regulation¹³¹, establish the good repute requirements for holders of qualifying holdings referred to under article 68¹³².
2. *(repealed)*¹³³
3. If such requirements are not fulfilled the voting rights and the other rights, which make it possible to exercise an influence over the insurance or reinsurance undertaking, relating to participations exceeding the thresholds referred to under paragraph 1¹³⁴, may not be exercised. In case of non compliance, the decision or other measure adopted with the deciding vote or contribution of the participations envisaged in paragraph 1 may be challenged in accordance with the provisions of the civil code. The challenge may be brought by ISVAP too, within six months of the decision or, if this is subject to enrolment in the registrar of companies, within six months of the enrolment or, if it is only subject to a lodging at the office of the registrar of companies, within six months of the lodging. Participations for which no voting right can be

¹³⁰ Regulation by the Minister of Economic Development n. 220 of 11 November 2011.

¹³¹ Regulation by the Minister of Economic Development n. 220 of 11 November 2011.

¹³² Paragraph amended by article 4 (1, q) of legislative decree n. 21 of 27 January 2010.

¹³³ Paragraph amended by article 4 (1, r), of legislative decree n. 21 of 27 January 2010;

¹³⁴ Paragraph amended by article 4 (1, s), of legislative decree n. 21 of 27 January 2010.

exercised shall be taken into account in order to ensure that the general meeting is duly constituted.

4. Participations exceeding the thresholds provided for in paragraph 1, held by persons not complying with good repute requirements must be sold within the deadline set by ISVAP.¹³⁵

Art. 78

(Management board, supervisory committee and management supervisory committee)

1. Unless otherwise provided, the provisions of this code referred to the board of directors and its members shall also apply to the management board and its members.

2. Unless otherwise provided, the provisions of this code referred to the board of auditors, the members of the board of auditors and the body performing the control function shall also apply to the supervisory committee and to the management supervisory committee.

Chapter III

PARTICIPATIONS HELD BY INSURANCE AND REINSURANCE UNDERTAKINGS

Art. 79

(Participations acquired by insurance and reinsurance undertakings)

1. Insurance and reinsurance undertakings may, by means of free assets, acquire participations, including controlling interests, in other companies even if the latter pursue activities other than those allowed to the former.

2. When the participation in a subsidiary undertaking, acquired as per paragraph 1, is related or instrumental to the insurance or reinsurance business, ISVAP may require that it be shown in a specific scheme of operations.

3. If the participation conveys the control of a company pursuing activities other than those allowed to insurance and reinsurance undertakings, this operation is subject to ISVAP's prior authorisation. Article 68 (5, 7 and 8) shall apply.

4. The provisions in this chapter shall also apply to any other acquisition of participations by means other than free assets or concerning participations in foreign insurance and reinsurance undertakings. By way of derogation from this chapter, in case of acquisition of qualifying holdings referred to under article 68 in other Italian insurance or reinsurance undertakings, the provisions under chapter I shall apply¹³⁶.

¹³⁵ Paragraph amended by article 4 (1, t) of legislative decree n. 21 of 27 January 2010.

¹³⁶ Paragraph amended by article 4 (1, u) of legislative Decree n. 21 of 27 January 2010.

Art. 80
(Obligations to give information)

1. The insurance or reinsurance undertaking shall immediately inform ISVAP of its intention to acquire a participation in another company, when such participation, by itself or together with another one already held, conveys the control of the related undertaking.
2. Undertakings must also give prior notification of their intention to acquire any other participation when the latter, by itself or together with another one already held, is significant in relation to the net assets or the total investments of the insurance or reinsurance undertaking or to the amount of the voting rights or the importance of the other rights which make it possible to exercise an influence over the related undertaking.
3. ISVAP, taking account of the need to verify the concentration of investments and their influence over the financial structure of the insurance or reinsurance undertaking, shall issue a regulation¹³⁷ establishing the conditions, arrangements and terms of the notifications under paragraphs 1 and 2, having also regard to the cases where the person entitled to vote is not the holder of the participation.

Art. 81
(Prudential supervision)

1. For the purposes of verifying compliance with the obligations envisaged in articles 79 and 80, ISVAP may ask information to any person concerned.
2. When the participation may undermine the undertaking's stability, having regard to the nature and trend of the business pursued by the related undertaking as well as to the size of the investment in relation to the undertaking's free assets, ISVAP shall order that such participation be sold or adequately reduced, even below the control threshold, and for this purpose it shall fix a deadline compatible with the need to perform such operation without prejudice for the stability of the insurance or reinsurance undertaking.
3. If the undertaking does not abide by this order, ISVAP shall appoint a commissioner charged with the tasks envisaged in article 229 or, should the conditions under article 230 be met, a provisional administrator or propose to the Minister of Production Activities the adoption of the extraordinary administration or the withdrawal of the authorization to pursue business.
4. Failure to comply with the order under paragraph 2 shall, in any case, entail the exclusion of the investment from the constituent elements of the solvency margin of the insurance or reinsurance undertaking.

¹³⁷ ISVAP regulation n. 26 of 04 August 2008.

Chapter IV
INSURANCE GROUP

Art. 82
(Insurance group)

1. For supervisory purposes an insurance group is alternatively made up of:

- a) the ultimate parent Italian insurance or reinsurance undertaking and the insurance undertakings, reinsurance undertakings and instrumental companies controlled by the former;
- b) the ultimate parent Italian insurance or reinsurance holding company and the insurance undertakings, reinsurance undertakings and instrumental companies controlled by the former;
- b-bis) by the Italian parent mixed financial holding company as per article 3 (2) of legislative decree n.142 of 30 May 2005, and by the insurance undertakings, reinsurance undertakings and instrumental subsidiaries, provided that there is at least one Italian insurance or reinsurance subsidiary¹³⁸.

2. *(repealed)*¹³⁹

Art. 83
(Ultimate parent undertaking)

1. An ultimate parent company is the Italian insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding undertaking with head office in Italy which directly or indirectly controls the companies belonging to the insurance group and which is not, in its turn, controlled by another Italian insurance or reinsurance undertaking or another insurance or reinsurance holding company or by another mixed financial holding undertaking with head office in Italy, which may be considered as the ultimate parent company¹⁴⁰.

2. ISVAP shall verify that the memorandum and articles of association of the ultimate parent company are not incompatible with the sound and prudent management of the group.

Art. 84
(Ultimate parent holding undertaking)

1. The persons charged with administration, management and control functions at the ultimate parent insurance or reinsurance holding company or the parent mixed financial holding company shall be subject to the provisions on professional, good repute and independence requirements applicable to the persons charged with the same functions at insurance and reinsurance undertakings, without prejudice to the provisions of art. 87-bis¹⁴¹.

¹³⁸ Letter inserted by article 4 (3, d), legislative decree n. 53 of 4 March 2014.

¹³⁹ Paragraph repealed by article 3 (4, b), legislative decree n. 53 of 4 March 2014.

¹⁴⁰ Article amended by article 3 (5, a and b), legislative decree n. 53 of 4 March 2014.

¹⁴¹ Paragraph replaced by article 3 (6, a), legislative decree n. 53 of 04 March 2014.

2. The obligations to give information referred to in article 190 (3, 4 and 5) shall apply to the ultimate parent insurance or reinsurance holding company or to the parent mixed financial holding company¹⁴².

3. The provisions under chapters I and II shall apply to ultimate parent holding companies, without prejudice to the provisions of art. 87-bis¹⁴³.

Art. 85

(Register of ultimate parent undertakings)

1. The ultimate parent undertaking is registered in a special register kept by ISVAP.
2. The ultimate parent undertaking shall inform ISVAP of the existence of the insurance group and of its updated composition.
3. ISVAP may, on its own initiative, verify the existence of an insurance group and its registration in the register and may ask the ultimate parent company for a new determination of the composition of the insurance group.
4. In their acts and correspondence group undertakings shall show proof of their registration in the register of insurance groups.
5. ISVAP shall, by its own regulation, establish the requirements for keeping and updating the register¹⁴⁴.

Art. 86

(Powers of investigation)

1. For the purposes of verifying supervisory information and data referred to in this chapter ISVAP may carry out, itself or through the intermediary of persons whom it appoints for that purpose, on-the-spot inspections at the parent company and at the companies with head office within the territory of the Italian Republic, belonging to the insurance group.
2. On-the-spot verifications at companies other than insurance and reinsurance undertakings shall be limited to checking the exactness of data and information required for the exercise of supervision over the insurance group.
3. The powers attributed to ISVAP by article 71 shall also be exercised over companies belonging to the insurance group and holders of participations in the same companies.

Art. 87

(General or specific provisions)

¹⁴² Paragraph replaced by article 3 (6, b), legislative decree n. 53 of 04 March 2014.

¹⁴³ Paragraph amended by article 3 (6, c), legislative decree n. 53 of 4 March 2014.

¹⁴⁴ ISVAP Regulation n. 15 of 20 February 2008, in particular Title III.

1. With a view to ensuring a stable and efficient management of the group, ISVAP may, by regulation¹⁴⁵ or specific measures, give the ultimate parent company instructions concerning the whole insurance group or its components, intended to guarantee adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

2. The risk management processes shall include:

a) adequate and effective governance of the group and its components, with the development and periodical review of the strategies by the bodies charged with administration, management and control functions within the group undertakings, in particular with respect to all the risks they assume;

b) adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all necessary measures are taken to ensure that the systems implemented by the undertakings envisaged in article 82 are consistent, so that risks can be measured and monitored at the level of the insurance group.

3. The internal control mechanisms shall include sound procedures to identify and measure risks and their matching with the net assets of the single group undertakings. The ultimate parent company shall adopt measures implementing the instructions given by ISVAP and ensure that they are complied with by group undertakings, and shall regularly inform ISVAP thereof.

4. Directors and managers of subsidiaries are required to provide the ultimate parent company with the necessary collaboration to ensure compliance with insurance supervisory provisions.

Article 87-bis

(Provisions applicable to mixed financial holding companies)

1. IVASS may identify the cases in which the parent mixed financial holding company is not required to apply one or more provisions adopted under this chapter.

2. The provisions referred to in articles 83 (2) and 84 (1 and 3) shall apply to the mixed financial holding company if the largest area within the financial conglomerate is the insurance area, determined according to legislative decree n. 142 of 30 May 2005. The orders referred to under article 196 (approval), article 76 (disqualification) and article 68 (authorization) shall be adopted upon agreement with the Bank of Italy.

3. The orders envisaged by title XVI, chapter I, II, IV and VII, in relation to the mixed financial holding company shall be adopted or proposed by IVASS upon agreement with the Bank of Italy¹⁴⁶.

¹⁴⁵ ISVAP regulation n. 15 of 20 February 2008.

¹⁴⁶ Article inserted by article 3 (7), legislative decree n. 53 of 04 March 2014.

TITLE VIII
FINANCIAL STATEMENTS AND ACCOUNTING RECORDS

Chapter I
GENERAL PROVISIONS ABOUT FINANCIAL STATEMENTS

Art. 88
(Applicable provisions)

1. Insurance and reinsurance undertakings with head office in the territory of the Italian Republic shall draw up their financial statements in accordance with chapters I, II and III of this title.
2. The provisions on the financial statements of insurance and reinsurance undertakings shall also apply to branches of undertakings with head office in a third State authorised to pursue life or non-life insurance or reinsurance in the territory of the Italian Republic¹⁴⁷.
3. The provisions pertaining to life assurance shall also apply to insurance undertakings which underwrite only health insurance exclusively or principally according to the technical principles of life assurance.

Art. 89
(Special provisions)

1. The provisions of the civil code and those of legislative decrees n. 127 of 9 April 1991, n. 173 of 26 May 1997¹⁴⁸, and n. 38 of 28 February 2005 shall apply to situations not envisaged by this title and by implementing measures.
2. The keeping of accounts in various currencies is allowed. By way of derogation from the provisions of article 2423 (last paragraph) of the civil code ISVAP may, by its own regulation¹⁴⁹, require or permit that the notes on the accounts be drawn up in thousands euros or require or permit a higher degree of synthesis than thousands, after hearing the opinion of CONSOB for listed companies.

Art. 90
(Layouts)

1. ISVAP shall, by its own regulation¹⁵⁰, set out the layout of accounts, the chart of accounts undertakings must adopt in their management, the statements relating to assets representing technical provisions and the statement relating to the solvency margin.

¹⁴⁷ Paragraph amended by article 10, legislative Decree n. 56 of 29 February 2008.

¹⁴⁸ See also decree-law n. 185 of 29 November 2008, converted into law n. 2 of 28 January 2009, as amended and supplemented, as last implemented through ISVAP regulation n. 43 of 12 July 2012.

¹⁴⁹ Article 4 (5) of ISVAP regulation n. 22 of 4 April 2008.

¹⁵⁰ ISVAP Regulation n. 7 of 13 July 2007, ISVAP Regulation n. 22 of 4 April 2008 and ISVAP Regulation n. 19 of 14 March 2008.

2. ISVAP may, by its own regulation, issue explanatory and application instructions, require additional or more detailed information also as regards the transactions with related parties and off-balance-sheet arrangements referred to in article 2427 (1) (22-bis and 22-ter) of the civil code and article 38 (1) (o-quinquies and o-sexies) of legislative decree n. 127 of 9 April 1991. ISVAP may also establish¹⁵¹ the documents required for the performance of supervision over financial statements and consolidated accounts¹⁵².

3. The accounting system shall be such as to enable confrontation with the budgetary accounts, in line with the provisions set out by ISVAP through its own regulation¹⁵³.

4. The powers of ISVAP are exercised in line with the international accounting standards with regard to the subjects who draw up financial statements or consolidated accounts in compliance with the international accounting standards. To verify that the data shown in the consolidated accounts are correct, ISVAP may request that the companies and entities controlled by insurance and reinsurance undertakings communicate data, news and information, or it may carry out inspections of said entities and companies. In the event that the company or entity is subject to the supervision of another authority ISVAP shall request the collaboration of that authority.

Chapter II

FINANCIAL STATEMENTS

Art. 91 (Drafting principles)

1. Insurance and reinsurance undertakings under article 88 (1) which issue financial instruments admitted to trading on regulated markets of any EU member State and do not draw up consolidated accounts shall draw up their financial statements in compliance with the international accounting standards.

2. Insurance and reinsurance undertakings under article 88 (1) and the branches under article 88 (2) which do not apply the international accounting standards shall draw up their financial statements in compliance with legislative decree n. 173 of 26 May 1997. For each of the assets dedicated to a specific business activity set up in accordance with article 2447-bis (1) (a) of the civil code a separate statement drawn up according to the provisions of article 89 shall be enclosed to the financial statements.

Art. 92 (Business year and time-limit for approval)

1. The business year shall start on 1 January and end on 31 December of each year.

¹⁵¹ ISVAP regulation n. 7 of 13 July 2007.

¹⁵² Paragraph amended by article 4, legislative decree n. 173 of 3 November 2007.

¹⁵³ ISVAP regulation n. 22 of 04 April 2008.

2. Where contemplated by the memorandum and articles of association, the date indicated under article 2364 (2) of the civil code may be extended by the insurance undertaking to 30 June where specific needs so require or where the undertaking is also authorised to pursue reinsurance business and such business plays a significant role in the same undertaking or in case of undertakings required to draw up consolidated accounts.

3. Undertakings which conduct only reinsurance business shall approve their financial statements by 30 June of the year following that to which the financial statements refer. Where contemplated by the memorandum and articles of association, the date indicated may be extended by the reinsurance undertaking to 30 September where specific needs so require.

4. Insurance and reinsurance undertakings making use of the possibility set out in paragraphs 2 and 3 shall indicate it in the notes on the accounts and previously notify ISVAP thereof, specifying the reasons for such extension.

Art. 93
(Filing and publication)

1. Insurance and reinsurance undertakings under article 88 (1) and branches under article 88 (2) shall file and publish their financial statements in line with article 2435 of the civil code.

2. Insurance and reinsurance undertakings shall have their financial statements audited and file the auditing report along with the report of the actuary appointed by auditors.

3. Insurance and reinsurance undertakings shall file, as annex to the financial statements, a statement relating to the assets representing technical provisions at the closing of the financial year.

4. Insurance undertakings carrying on assistance insurance shall file, enclosed to their financial statements, a report illustrating the staff and equipment available to them to meet their commitments.

5. Insurance undertakings shall also file the statement relating to the solvency margin, which must also be underwritten by the appointed actuary for life assurance.

Art. 94
(Annual report)

1. The accounts shall be accompanied by a report by management containing a fair, balanced and comprehensive analysis about the position of the undertaking and about the development and performance achieved on the management side as a whole, together with a description of the principal risks and uncertainties faced by the undertaking. The report shall anyhow disclose the following information¹⁵⁴:

- a) changes in the insurance portfolio;
- b) the claims frequency in the main insurance classes pursued;

¹⁵⁴ As amended by article 1, legislative Decree n. 32 of 2 February 2007.

- c) the most significant reinsurance arrangements used in the main insurance classes pursued;
- d) research and development and the new products placed on the market;
- e) the guidelines regarding investments;
- e-bis) financial risk management objectives and policies and the policy for hedging the major type of transactions for which hedging is used, and the undertaking's exposure to price risk, credit risk, liquidity risk and cash flow risk¹⁵⁵;
- f) information about litigations, in case they are significant;
- g) the number and nominal value of own shares, of the shares of the parent undertaking held in the portfolio, of the shares purchased and of those transferred during the financial year, of the corresponding subscribed capital, of the consideration and the grounds for the purchase and transfer;
- h) the relations with group undertakings, drawing a distinction between parent undertakings, subsidiaries and associated undertakings, and the relations with affiliated undertakings;
- i) the foreseeable development of the management, with special regard to the changes in the insurance portfolio, the claims frequency and any changes in the reinsurance arrangements adopted;
- l) any important events that have occurred since the end of the financial year.

1-bis. The analysis referred to in paragraph 1 shall be consistent with the size and complexity of the undertaking's business and, to the extent necessary for an understanding of the undertaking's position and of the development and performance of its management, shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business of the undertaking, including information relating to environmental and employee matters. The analysis shall, where appropriate, include references to and additional explanations of amounts reported in the undertaking's accounts¹⁵⁶.

2. The provisions under paragraph 1 (g) shall also apply to the shares held, purchased or transferred through trust companies or third parties.

Chapter III

CONSOLIDATED ACCOUNTS

Art. 95 (Obligated undertakings)

1. Insurance and reinsurance undertakings with head office in the territory of the Italian Republic and the branches of foreign undertakings referred to in article 88 (2), which control one or more companies, shall draw up their consolidated accounts according to the international accounting standards.

2. The same requirement shall also apply to insurance holding companies with head office in Italy, which control one or more insurance or reinsurance undertakings wherever they are set up.

¹⁵⁵ Letter inserted by article 1, legislative decree n. 32 of 2 February 2007.

¹⁵⁶ Paragraph inserted by article 1, legislative decree n. 32 of 2 February 2007. See also article 5 of the same decree.

2-bis. The same requirement shall also apply to mixed financial holding undertakings with head office in Italy, which control one or more insurance or reinsurance undertakings wherever they are set up, if the largest area within the financial conglomerate is the insurance area, determined according to legislative decree n. 142 of 30 May 2005¹⁵⁷.

3. Only as concerns the requirement to draw up consolidated accounts undertakings referred to in article 26 of legislative decree n. 127 of 9 April 1991 shall be considered as subsidiary undertakings.

Art. 96
(Unified management)

1. The requirement to draw up consolidated accounts shall also apply when two or more insurance or reinsurance undertakings with head office in the territory of the Italian Republic or insurance holding companies or mixed financial holding undertakings referred to in article 95 (2 or 2-bis), which are not connected as described in article 95 (3), are managed on a unified basis pursuant to a contract or provisions of their memoranda or articles of association, or when their management bodies are mainly made up of the same persons. Unified management between undertakings may also consist of important and durable reinsurance links¹⁵⁸.

2. Undertakings managed on a unified basis by one of the following controlling entities shall also be treated in the same way as undertakings referred to in paragraph 1:

- a) an undertaking or entity, set up in Italy, other than an insurance or reinsurance undertaking or an insurance holding company or a mixed financial holding undertaking referred to in article 95 (2 or 2-bis)¹⁵⁹;
- b) an undertaking or entity set up in another State, except when the conditions for exemption envisaged in article 97 are met;
- c) a natural person.

3. In the cases under paragraphs 1 and 2 the undertaking which, according to the data in the last approved balance sheet, has the higher amount of total assets is required to draw up consolidated accounts.

4. The undertaking subject to compulsory consolidation which is also managed on a unified basis pursuant to paragraphs 1 and 2 is required to draw up consolidated accounts exclusively pursuant to paragraph 3, when the following conditions are met:

- a) the undertaking has not issued securities dealt in on regulated markets;
- b) the drawing up of consolidated accounts is not requested at least six months before the end of the financial year by a number of shareholders representing at least five per cent of the share capital.

5. In case of exemption from the obligation to draw up consolidated accounts pursuant to paragraph 4, the reasons for this exemption shall be shown in the notes on the accounts. The notes on the accounts shall also indicate the name and head office of the undertaking which draws up the consolidated accounts under this article. Copies of the accounts, of the annual

¹⁵⁷ Paragraph inserted by article 3 (8), legislative decree n. 53 of 04 March 2014.

¹⁵⁸ Paragraph replaced by article 3 (9, a), legislative decree n. 53 of 04 March 2014.

¹⁵⁹ Point replaced by article 9 (3, b), legislative Decree n. 53 of 04 March 2014.

report and the report by the supervisory bodies shall be lodged at the office of the registrar of companies of the place where the exempted undertaking has its head office.

6. The provisions relating to undertakings which have issued securities dealt in on regulated markets remain unaffected.

Art. 97

(Exemption from compulsory consolidation)

1. The requirement to draw up consolidated accounts shall not apply to undertakings envisaged in article 95 (1 and 2), which are in turn directly or indirectly controlled by another undertaking subject to this requirement under this title or by an insurance or reinsurance undertaking set up in another member State.

2. The exemption is subject to the following conditions:

- a) the subsidiary undertaking has not issued securities dealt in on regulated markets;
- b) the parent company holds more than ninety-five per cent of the shares of the subsidiary or, in the absence of such condition, the drawing up of consolidated accounts is requested at least six months before the end of the financial year by a number of shareholders representing at least five per cent of the share capital;
- c) the subsidiary and its subsidiary undertakings to be included in the consolidation pursuant to this title are included in the consolidated accounts of the parent company;
- d) the parent company, governed by the law of a member State, draws up and has its consolidated accounts audited in accordance with Community provisions.

3. The reasons for the exemption shall be shown in the notes on the accounts. The notes on the accounts shall also indicate the name and head office of the undertaking which draws up the consolidated accounts under this article. Copies of the accounts of the parent company, the annual report and the report by the supervisory bodies – drawn up in Italian – shall be lodged at the office of the registrar of undertakings of the place where the subsidiary has its head office.

Art. 98

(Compulsory consolidation for the sole purpose of supervision)

1. ISVAP shall, by its own regulation¹⁶⁰, indicate the entities not subject to compulsory consolidation as envisaged in articles 95 and 96, which are required to draw up consolidated accounts for the sole purpose of supervision.

Art. 99

(Reference date)

1. The reference date for consolidated accounts shall be the balance-sheet date of the parent company subject to compulsory consolidation. If the latter is an insurance holding company or a

¹⁶⁰ ISVAP regulation n. 7 of 13 July 2007, in particular article 20.

mixed financial holding undertaking referred to in article 95 (2 or 2-bis) the reference date shall be the balance-sheet date of the subsidiary insurance undertakings¹⁶¹.

Art. 100
(Annual report)

1. The consolidated accounts shall be accompanied by a report by management containing a fair, balanced and comprehensive analysis about the position of the undertakings included in the consolidation taken as a whole and about the development and performance achieved on the management side as a whole and in the various sectors, with special regard to costs, revenues and investments, together with a description of the principal risks and uncertainties faced by the undertakings included in the consolidation. The report shall disclose the following information¹⁶²:

- a) research and development and the new products placed on the market;
- b) the number and nominal value of the shares of the parent undertaking held by the latter or by subsidiaries, including those held through trust companies or third parties, with the indication of the corresponding amount of capital;
- c) the foreseeable development of the management, with special regard to the changes in the insurance portfolio, the claims frequency and any changes – if significant – in the reinsurance arrangements;
- d) any important events that have occurred since the reference date of the consolidated accounts;
- d-bis) financial risk management objectives and policies and the policy for hedging the major type of transactions for which hedging is used, and the exposure of the undertakings included in the consolidation to price risk, credit risk, liquidity risk and cash flow risk¹⁶³.

1-bis. The analysis referred to in paragraph 1 shall be consistent with the size and complexity of the business of the undertakings included in the consolidation taken as a whole and, to the extent necessary for an understanding of the position of the undertakings included in the consolidation taken as a whole and of the development and performance of their management, shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business of the undertakings, including information relating to environmental and employee matters. The analysis shall, where appropriate, include references to and additional explanations of amounts reported in the consolidated accounts¹⁶⁴.

1-ter. The report referred to in paragraph 1 and the report referred to in article 94 may be presented as a single report, giving greater emphasis, where appropriate, to those matters which are significant to the undertakings included in the consolidation taken as a whole¹⁶⁵.

Chapter IV
COMPULSORY BOOKS AND RECORDS

¹⁶¹ Paragraph amended by article 3 (10), legislative decree n. 53 of 4 March 2014.

¹⁶² As amended by legislative decree n. 32 of 2 February 2007.

¹⁶³ Letter added by legislative decree n. 32 of 2 February 2007.

¹⁶⁴ Paragraph inserted by legislative decree n. 32 of 2 February 2007.

¹⁶⁵ Paragraph inserted by legislative decree n. 32 of 2 February 2007.

Art. 101
(Compulsory books and records)

1. Notwithstanding the other provisions established by the law, insurance undertakings having their head office in the territory of the Italian Republic and branches of insurance undertakings from third States shall keep their books and records in accordance with paragraphs 2 and 3.

2. Undertakings authorised to pursue life assurance shall not only keep the register of assets representing technical provisions, but also records of:

- a) contracts issued;
- b) the contracts cancelled in accordance with article 1924 (2) of the civil code, for non-execution or for which the right of withdrawal under article 177 has been exercised;
- c) contracts expired;
- d) the contracts for which the right of surrender under article 1924 (2) of the civil code has been exercised;
- e) contracts converted;
- f) outstanding claims;
- g) claims paid;
- h) complaints received.

3. Undertakings authorised to pursue non-life insurance shall not only keep the register of assets representing technical provisions, but also records of:

- a) contracts issued;
- b) outstanding claims;
- c) claims paid;
- d) claims closed without payment;
- e) claims payable at the close of the financial year;
- f) claims already classified under (c) or (d) for which the settlement procedure has been re-opened;
- g) complaints received.

4. ISVAP shall, by its own regulation¹⁶⁶, lay down provisions on the keeping of the insurance registers envisaged by paragraphs 2 and 3 and establish the information, terms and conditions for their keeping and filling in, in line with the provisions of article 2421 (last paragraph) of the civil code.

5. ISVAP shall, by its own regulation¹⁶⁷, establish the books and records pertaining to the activity carried on by reinsurance undertakings and establish the information, terms and conditions for their keeping and filling in, in line with the provisions of article 2421 (last paragraph) of the civil code.

¹⁶⁶ ISVAP regulation n. 27 of 14 October 2008.

¹⁶⁷ ISVAP Regulation n. 27 of 14 October 2008, in particular Title IV.

Chapter V

STATUTORY AUDITS OF THE ACCOUNTS¹⁶⁸

Art. 102

(Statutory audits of the financial statement)¹⁶⁹

1. The financial statements of insurance and reinsurance undertakings with head office in the territory of the Italian Republic and of the branches of insurance and reinsurance undertakings with head office in a third State shall be accompanied by a report by a statutory auditor or by a statutory auditing firm registered in the relevant register. If the duty of statutory auditing is entrusted to a statutory auditing firm, at least one of its partners is an actuary registered in the professional register envisaged by law n. 194 of 9 February 1942. If the task of statutory auditing is entrusted to a statutory auditor article 103 shall apply¹⁷⁰.
2. The report by the statutory auditor or by the statutory auditing firm shall be accompanied by the report of the actuary, who expresses an opinion on the sufficiency of the undertaking's technical provisions, in accordance with the provisions of this code and taking account of correct actuarial techniques¹⁷¹.
3. The provisions on the statutory auditing of accounts under section VI of chapter II of title III of the consolidated law on financial mediation shall apply to the undertakings under paragraph 1, except for articles 155 (2), 156 (4), 157 (2) and 159 (1)¹⁷².
4. ISVAP may challenge the resolution by the shareholder's meeting in which insurance and reinsurance undertakings' financial statements are passed for failure to comply with the relevant drafting rules within six months of recording such resolution in the registrar of companies.
5. *(repealed)*¹⁷³.

Art. 103

(Actuary appointed by the statutory auditor or by the statutory auditing firm)¹⁷⁴

1. If the duty of statutory auditing is entrusted to a statutory auditor or if among the partners of the statutory auditing firm there are no actuaries registered in the professional register referred to under law n. 194 of 9 February 1942 the auditing report pursuant to art.102 (1) shall be accompanied by a report by an actuary appointed by the statutory auditor or by the statutory auditing firm.

¹⁶⁸ Heading amended by article 41 (1) of legislative decree n. 39 of 27 January 2010.

¹⁶⁹ Heading amended by article 41 (2 a) of legislative Decree n. 39 of 27 January 2010.

¹⁷⁰ Paragraph amended by article 41 (2, b) of legislative decree n. 39 of 27 January 2010.

¹⁷¹ Paragraph amended by article 41 (2, c) of legislative decree n. 39 of 27 January 2010.

¹⁷² Paragraph amended by article 41 (2, d) of legislative Decree n. 39 of 27 January 2010.

¹⁷³ Paragraph repealed by article 41 (2, e) of legislative decree n. 39 of 27 January 2010.

¹⁷⁴ Article amended by article 41 (3) of legislative decree n. 39 of 27 January 2010.

2. The actuary shall be appointed for a nine financial years term, and cannot be renewed or appointed again, even on behalf of another statutory auditing firm, unless at least three financial years have elapsed since date of termination of the previous appointment. Should the statutory auditor or the statutory auditing firm revoke such appointment before the expiry of the period it shall immediately inform ISVAP, specifying the grounds for doing so. The revocation of the appointment shall take effect at the time the appointment of another actuary takes effect.

3. It is not allowed to appoint an actuary who does not comply with the conditions of independence indicated by ISVAP's regulation or who is – with respect to the insurance or reinsurance undertaking or with respect to the actuary who, inside the insurance undertaking, acts as appointed actuary for life assurance or for insurance against civil liability in respect of the use of motor vehicles and craft – in one of the situations of incompatibility indicated by ISVAP's regulation.

4. The actuary and the legal representative of the insurance or reinsurance undertaking within which he/she carries out the task shall send ISVAP, within fifteen days of the appointment, evidence proving compliance with the conditions of independence and stating that there are no causes of incompatibility as those envisaged by paragraph 3, in the manners established by ISVAP's regulation¹⁷⁵.

Art. 104

(Checks of the accounting management)

1. ISVAP may have the undertaking's balance sheet and profit and loss account periodically audited by the statutory auditor or by the statutory auditing firm once ascertained that the accounting events have been correctly shown in the accounts. The statutory auditor or the statutory auditing firm shall use the actuary to make those checks. The costs shall be borne by the undertaking¹⁷⁶.

Art. 105

(Revocation of the appointment of the auditing actuary)

1. Should ISVAP find that an actuary does not comply with the duties under article 102 (1) or with the duties as actuary appointed under article 103 (1), or should it find elements that are useful for the purposes of supervision on the activity of the statutory auditor or of the statutory auditing firm, it shall inform CONSOB thereof¹⁷⁷.

2. Should ISVAP find that the requirements under article 102 (1) are no longer fulfilled, that a situation of incompatibility as that envisaged by article 103 (3) exists or has emerged, that the condition of independence envisaged by article 103 (3) is no longer fulfilled, or that there are serious irregularities in the tasks performed by the actuary under article 103 (1), it may revoke the actuary after hearing him/her¹⁷⁸.

¹⁷⁵ ISVAP regulation n. 22 of 04 April 2008, in particular article 25.

¹⁷⁶ Article amended by article 41 (4) of legislative Decree n. 39 of 27 January 2010.

¹⁷⁷ Paragraph amended by article 41 (5, a and b) of legislative decree n. 39 of 27 January 2010.

¹⁷⁸ Paragraph amended by article 41 (5, c) of legislative decree n. 39 of 27 January 2010.

3. The measure of removal shall be communicated to the actuary, the statutory auditor or the statutory auditing firm and the insurance or reinsurance undertaking. In this case the statutory auditor or the statutory auditing firm shall appoint another actuary within thirty days and at any rate in good time for making the checks necessary for expressing the opinion on the financial statements¹⁷⁹.

4. Should the auditing company fail to appoint another actuary ISVAP shall do so and define the fees to be paid to him/her, based on the fee-scale of the actuaries' association.

5. ISVAP shall inform CONSOB of the measures taken against the actuary under article 102 (1) and the actuaries' association of the measures taken against the actuaries under articles 102 (1) and 103 (1).

6. The actuaries' association shall inform ISVAP of any measure adopted against the actuaries under articles 102 (1) and 103 (1).

TITLE IX INSURANCE AND REINSURANCE INTERMEDIARIES

Chapter I GENERAL PROVISIONS

Art. 106 (Insurance and reinsurance mediation business)

1. Insurance and reinsurance mediation consists in introducing or proposing insurance and reinsurance products or in providing assistance and advice for this purpose and, if the mediation mandate so provides, in the conclusion of contracts or in assisting in the administration or performance of such contracts, in particular in the event of a claim.

Art. 107 (Scope)

1. The provisions under this title lay down the conditions for the taking-up and pursuit of the activities of insurance and reinsurance mediation, for remuneration, within the territory of the Italian Republic and under the right of establishment or the freedom of services in the territory of other member States by natural or legal persons having their residence or head office in the territory of the Italian Republic, as well as the insurance and reinsurance mediation services provided in relation to risks and commitments located outside the European Union, when they are offered by insurance and reinsurance intermediaries registered in Italy.

2. The following activities shall not be considered as insurance and reinsurance mediation pursuant to this title:

¹⁷⁹ Paragraph amended by article 41 (5, d and e) of legislative Decree n. 39 of 27 January 2010.

a) the activities directly undertaken by insurance or reinsurance undertakings and their employees;

b) the mere provision of information on an incidental basis in the context of another professional activity, provided that the purpose of that activity is not to assist the policyholder in concluding or performing an insurance contract;

c) insurance mediation activities if all the following conditions are met:

- 1) the insurance contract only requires knowledge of the insurance cover that is provided;
- 2) except for the case envisaged under 4), the insurance contract is not a life assurance contract or does not cover any liability risks;
- 3) mediation is not the principal professional activity;
- 4) the insurance is complementary to a product or service and covers the risks of loss or breakdown or, in the event of booked travels, covers the loss of or damage to baggage or life assurance or liability risks linked to the travel booked;
- 5) the amount of the annual premium does not exceed five-hundred euros and the total duration of the insurance contract, including any renewals, does not exceed five years.

3. Legal persons referred to in article 109 (2) d), only as regards insurance mediation, shall be subject to ISVAP's supervision, which exerts it on the basis of the powers provided for in article 5 (1), also as concerns compliance with the rules of conduct specified in chapter III, and for this purpose it informs and collaborates with the other authorities concerned.

Chapter II

TAKING UP OF MEDIATION BUSINESS

Art. 108

(Taking up of mediation business)

1. The activities of insurance and reinsurance mediation shall be reserved to the persons recorded in the register referred to in article 109.

2. The activities of insurance and reinsurance mediation may not be exercised by persons not recorded in the register, and in case of violation articles 305 (2) and 308 (2) shall apply.

3. Insurance mediation may also be conducted by insurance and reinsurance intermediaries having their residence or head office in the territory of another member State pursuing business according to the provisions of article 116 (2).

4. Insurance and reinsurance mediation may not be carried out by public bodies, entities or companies controlled by the latter and civil servants under a full-time contract of employment or a part-time contract when the working hours exceed half of the working hours of a full-time contract.

Art. 109
(Register of insurance and reinsurance intermediaries)

1. ISVAP shall, by its own regulation¹⁸⁰, lay down provisions for the formation and updating of the single electronic register of insurance and reinsurance intermediaries having their residence or head office in the territory of the Italian Republic.

2. The register shall be subdivided into separate sections listing:

- a) insurance agents, in their capacity as intermediaries acting in the name or on behalf of one or more insurance or reinsurance undertakings¹⁸¹;
- b) insurance or reinsurance brokers in their capacity as intermediaries acting on behalf of their client without the power to represent insurance or reinsurance undertakings;
- c) direct canvassers who, also as an ancillary activity to the main business, pursue insurance mediation in life assurance and in accident and sickness insurance on behalf of and under the full responsibility of an insurance undertaking and work exclusively for said undertaking without fixed working hours or without obligations as to the result to be achieved;
- d) banks authorized as per article 14 of the Consolidated Banking Law, financial intermediaries included in the special list as defined in article 107 of the Consolidated Banking Law, stock brokerage companies authorized as per article 19 of the Consolidated Finance Law, the company Poste Italiane - Divisione servizi di bancoposta (Italian Mail - BancoPosta services department), authorized as per art. 2 of presidential decree n. 144 of 14 March 2001;
- e) any other persons dealing with mediation, such as employees, collaborators, canvassers and the other subjects charged by the intermediaries registered under the sections referred to in a), b) and d), for mediation outside the premises where the intermediary conducts business.

The same intermediary may not be recorded in more than one section of the register.

3. The register also contains the list of natural persons acting as intermediaries, referred to in paragraphs 2 a) and b), licensed but temporarily not operating, for whom compliance with the requirement of professional indemnity cover as per article 110 (3) is suspended until the starting of the activity, which must immediately be notified to ISVAP, failing which the intermediary is struck off the register.

4. The intermediary referred to in paragraph 2 a), b) and d), which uses employees, collaborators, canvassers and other subjects providing mediation services will, on their behalf, take the necessary steps to register them in the section of the register indicated in e) of the same paragraph. The intermediary referred to in paragraph 2, a), which uses employees, collaborators, canvassers and other subjects providing mediation services is required to promptly inform the principal undertaking of the application for registration of the subjects operating on his/her behalf without prejudice to the provisions in the agency contract. The insurance undertaking which makes use of direct canvassers shall make the necessary notification to ISVAP for their registration in the section of the register indicated in paragraph 2 c).

¹⁸⁰ ISVAP regulation n. 5 of 16 October 2006, in particular Title I, Chapter I.

¹⁸¹ See art. 12 (1-ter) of legislative decree n. 141 of 13 August 2010, as amended by art. 22 (9-bis) of decree-law n. 179 of 18 October 2012 converted, after amendment, by law n. 221 of 17 December 2012.

5. Upon request by the undertaking or intermediary concerned ISVAP shall provide a document attesting that they have been duly registered, without prejudice to the conditions required for verifying and reviewing registrations made.

6. ISVAP shall, by its own regulation¹⁸², establish the duties of notification imposed on undertakings and intermediaries, as well as the forms of publicity which can better ensure public access to the register.

Art. 110

(Registration requirements for natural persons)

1. In order to be registered in the section of the register indicated in article 109 (2), a) or b), natural persons must fulfil the following requirements:

- a) they must enjoy full rights as a citizen;
- b) they must not have been convicted by final judgement or final judgement enforcing the penalty specified in article 444 (2) of the code of criminal procedure, of crimes against the public administration, the administration of justice, public good faith, public economy, industry and trade, property for which the law prescribes imprisonment for a minimum term of one year up to a maximum term of three years, or for any intentional offence for which the law prescribes imprisonment for a minimum term of two years up to a maximum term of five years, or have been convicted by final judgement enforcing the additional penalty of disqualification from holding public office, for life or for more than three years, unless they have been rehabilitated;
- c) they must neither have previously been declared bankrupt, unless they have been rehabilitated, nor have been president, manager with delegated powers, general manager, auditor of companies or bodies which were subject to bankruptcy proceedings, composition to avoid bankruptcy or administrative compulsory winding-up, at least in the three years preceding the adoption of these measures, it being understood that this impediment lasts for five years following the adoption of these measures;
- d) they must not be affected by lapse of entitlement, prohibition or suspension envisaged by article 10 of Law n. 575 of 31 May 1965, and subsequent modifications;
- e) they must not be registered in the register of loss adjusters.

2. To be registered in the section of the register indicated in article 109 (2) a) or b), natural persons shall also possess appropriate professional knowledge and ability, which shall be determined by ISVAP through a qualifying examination, consisting in a test on technical, legal and economic subjects which are essential to the exercise of their activity. ISVAP shall, by its own regulation¹⁸³, set out the arrangements for the holding of the qualifying examination, and oversee its organization and conduct.

3. Notwithstanding the provisions of article 109 (3) and article 112 (3), natural persons, in order to be registered in the section of the register envisaged in article 109 (2), a) or b), must also take out professional indemnity insurance for the activity carried out pursuant to their registration for an amount of cover¹⁸⁴ of at least one million euros applying to each claim and in

¹⁸² ISVAP regulation n. 5 of 16 October 2006.

¹⁸³ ISVAP Regulation n. 5 of 16 October 2006, in particular Part II, Title I, Chapter I, Section II.

¹⁸⁴ The amount of cover is now €1,250,618 for each claim and €1,875,927 per year in aggregate for all claims. See art. 11 of ISVAP Regulation n. 5 of 16 October 2006, as amended and supplemented by IVASS order n. 9 of 22 October 2013.

aggregate one million five hundred euros per year for all claims, covering the whole territory of the European Union, for damage arising from their own professional negligence and misconduct or from the professional negligence, misconduct and infidelity on the part of employees, collaborators or any other persons for whom the intermediary is liable under the law. The above amounts may be raised by ISVAP, by regulation, taking account of changes in the European Index of Consumer Prices.

Art. 111

(Special registration requirements for direct canvassers and intermediaries' collaborators)

1. Direct canvassers too must fulfil the good repute requirements prescribed in article 110 (1), and compliance with these requirements shall be verified by the undertaking on whose behalf they pursue business.
2. Undertakings on whose behalf direct canvassers pursue business shall provide them with adequate training on the products offered and the overall activity carried out.
3. The persons registered in the section of the register envisaged in article 109 (2) e) must fulfil the good repute requirements prescribed in article 110 (1), and compliance with these requirements is verified by the intermediary on whose behalf they pursue business.
4. The persons registered in the section of the register envisaged in article 109 (2) e) shall possess appropriate professional knowledge and ability in line with the activity pursued and the products distributed, verified by a certificate attesting that they have successfully attended professional training courses organised by the undertaking or insurance intermediary.
5. The provisions envisaged in paragraphs 3 and 4 shall also apply to any subject involved in mediation inside the premises where the intermediary conducts business.

Art. 112

(Registration requirements for companies)

1. In order to be registered in the section of the register indicated in article 109 (2) a), b) and e), the company must fulfil the following requirements:
 - a) have its head office in Italy;
 - b) not have been subject to bankruptcy proceedings, composition to avoid bankruptcy, extraordinary administration or administrative compulsory winding-up;
 - c) not to be affected by prohibition or lapse of entitlement envisaged by article 10 (4) of Law n. 575 of 31 May 1965, and subsequent modifications.
2. In order to be registered in the section of the register envisaged in article 109 (2) a), b) and e), the company must have entrusted responsibility for mediation activity to at least one natural person registered in the section of the register in which registration is sought. For companies registered in the section of the register envisaged in article 109 (2) b), the legal representative

and, where appointed, the managing director and the general manager must be registered in the same section of the register.

3. In order to be registered, the company must also take out professional indemnity insurance envisaged in article 110 (3) for the mediation activity pursued by the company itself, by the natural persons under paragraph 2 as well as for damage arising from the professional negligence, misconduct and infidelity on the part of employees, collaborators or any other persons for whom it is liable under the law.

4. If the company pursues reinsurance mediation, it must possess a corporate capital not lower than the amount established by regulation adopted by ISVAP¹⁸⁵. The company that simultaneously carries on insurance and reinsurance mediation must entrust the two activities to distinct natural persons and establish an adequate organization.

5. If the company seeks registration in the section of the register envisaged in article 109 (2) e), the natural persons involved in mediation must also be registered. However a company directly or indirectly operating through another company shall be barred from registration in the section of the register envisaged in article 109 (2) e).

Art. 113 (Removal)

1. ISVAP shall order the removal of the intermediary from the relevant section of the register in case of:

- a) striking off;
- b) renunciation of registration;
- c) failure to carry on business, without good reason, for more than three years;
- d) loss of at least one of the requirements envisaged in articles 110 (1), 111 (1 and 3) and 112;
- e) failure to pay the supervisory fee provided for in article 336, despite the formal notice given by ISVAP;
- f) only as regards intermediaries registered in the sections of the register indicated in article 109 (2) a) and b), loss of effectiveness of the insurance covers envisaged in articles 110 (3) and 112 (3);
- g) only as regards intermediaries registered in the section of the register indicated in article 109 (2) b), failure to pay the contribution to the guarantee fund provided for in article 115.

2. In the cases provided for under paragraph 1, b) and c), the application for the removal of the undertaking's direct canvassers or persons registered in the section of the register indicated in article 109 (2) e), shall be submitted respectively by the undertaking or by the intermediary registered in the section of the register indicated in article 109 (2) a), b) and d). In case of termination of the relationship with the direct canvasser or person registered in the section of the register indicated in article 109 (2) e), the undertaking or the intermediary respectively shall be required to inform ISVAP thereof. The intermediary registered in the section of the register indicated in article 109 (2) a) shall inform the principal undertaking of any change regarding the persons registered as per article 109 (2) e).

¹⁸⁵ ISVAP regulation n. 5 of 16 October 2006, in particular article 14.

3. No removal from the register may be effected, even upon the request of the intermediary or the undertaking, as long as disciplinary proceedings or investigations preliminary to such proceedings are under way.

Art. 114
(Reinstatement)

1. Intermediaries who have been removed from the register further to the striking off, may upon request, be reinstated, provided that at least five years have elapsed from their removal and that the requirements respectively envisaged in articles 110, 111 and 112 are met. In case of removal due to final sentence or bankruptcy, natural persons may be reinstated in the register only after they have been rehabilitated.

2. Intermediaries who have been removed for failure to pay the supervisory fee, may be reinstated in the register provided that they effect the payment of the amounts due until their removal.

3. Intermediaries registered in the section of the register indicated in article 109 (2) b), who have been removed for failure to pay the contribution to the guarantee fund, may be reinstated in the register provided that they effect the payment of the amounts due until their removal may be reinstated in the register provided that they effect the payment of the amounts due until their removal, together with interest for late payment.

4. If intermediaries, after being removed from the register, apply to be reinstated, they may be reinstated after verifying that the requirements envisaged in articles 110, 111 and 112 are met, it being understood that natural persons must have adequate knowledge and ability as per article 110 (2), or professional training as per article 111 (2 and 4).

Art. 115
(Guarantee fund for insurance and reinsurance brokers)

1. An intermediary registered in the section of the register indicated in article 109 (2) b) must become member of the guarantee fund set up within CONSAP to pay compensation for financial damage to policyholders and insurance or reinsurance undertakings arising from the exercise of the activity of insurance or reinsurance broker, or damage which has not been paid by the intermediary or through the policy envisaged, respectively, in article 110 (3) and article 112 (3).

2. The administration of the fund shall be entrusted to a committee appointed by decree of the Minister of Production Activities, made up of a senior manager at the Ministry of Production Activities acting as chairman, a senior manager at the Ministry of Economic and Financial Affairs, an ISVAP officer, a CONSAP officer, two representatives of the intermediaries registered in the corresponding section of the register, and a representative of insurance and reinsurance undertakings.

3. The provisions relating to administration, contribution and intervention thresholds shall be established with regulation of the Minister of Production Activities, after hearing the opinion of

ISVAP¹⁸⁶. The amount of this contribution shall be established each year by decree of the Minister of Production Activities¹⁸⁷, after hearing the opinion of ISVAP and of the management committee, and must not exceed 0.50 per cent of annual commissions, also for the purpose of guaranteeing coverage of operating costs of the committee under paragraph 2.

4. The assets of the fund shall be segregated from the assets held by the entity within which it is set up and from any other funds. No actions, seizure or distraint of the fund may be carried out by creditors of the subject that administers it or by creditors of the single intermediaries, or in the interest of such creditors, other than policyholders or insurance undertakings. The fund may not be included in insolvency proceedings involving the subject that administers it or the single intermediaries which are members of the fund.

5. The fund shall be subrogated to the policyholders and insurance and reinsurance undertakings in their rights up to the amount of the payments made to them.

Art. 116

(Business under the right of establishment and the freedom to provide services)

1. Registration shall allow insurance and reinsurance intermediaries, registered under the sections indicated in article 109 (2) a), b) and d), having their residence or head office within the territory of the Italian Republic, to operate in other member States, under the right of establishment and the freedom to provide services, provided that an appropriate notification has been sent to ISVAP. ISVAP shall inform the supervisory authorities of the other member States of the application for extending business to their territories filed by intermediaries recorded in the Italian register and disclose, by means of an additional note to the registration in the register, the list of the other member States where such intermediaries operate under the right of establishment or the freedom to provide services.

2. Insurance and reinsurance intermediaries having their residence or head office in the territory of another member State may start business, under the right of establishment or the freedom to provide services within the territory of the Italian Republic, thirty days after the date on which ISVAP receives the notification by the supervisory authority of the home member State. ISVAP shall, by its own regulation¹⁸⁸, lay down rules on the disclosure of the notifications received by the supervisory authorities of other member States concerning the activity pursued by the intermediaries from these States within the territory of the Italian Republic by means of a note to the list attached to the register referred to in article 109 (2).

3. ISVAP shall disclose the provisions regulating the exercise of mediation activities which, in the interest of the general good, must be observed when conducting business in the Italian territory.

¹⁸⁶ Regulation by the Minister of Economic Development n. 19 of 30 January 2009.

¹⁸⁷ For the years 2007 and 2008 the contribution was established by the decree of the Minister of Economic Development of 5 May 2008. For the year 2009 the contribution was established by the decree of the Minister of Economic Development of 23 June 2009. For the year 2010 the contribution was established by the decree of the Minister of Economic Development of 09 June 2010. For the year 2011 the contribution was established by the decree of the Minister of Economic Development of 20 May 2011. For the year 2012 the contribution was established by the decree of the Minister of Economic Development of 19 June 2012. For the year 2013 the contribution was established by the decree of the Minister of Economic Development of 19 June 2013.

¹⁸⁸ ISVAP Regulation n. 5 of 16 October 2006, in particular Part II, Title II.

4. ISVAP may adopt measures under which intermediaries not complying with general good provisions shall be suspended from business for a period not exceeding ninety days, or shall be prevented from continuing to pursue business in the Italian territory in the event of an ascertained violation.

Chapter III **RULES OF CONDUCT**

Art. 117 (Segregation of assets)

1. If the premiums paid to the intermediary and the amounts to be used for the payment of claims or due by insurance undertakings are managed through the intermediary they shall be kept in a segregated account whose holder may also be the intermediary expressly as such, and shall represent independent assets from those of the intermediary.

2. No actions, seizure or distraint of the segregated account may be carried out by creditors other than policyholders and insurance undertakings. Actions by their creditors are allowed, up to the limits of the amount owed to the single policyholder or the single insurance undertaking respectively.

3. Statutory and judicial offsetting shall not apply to the segregate account, neither shall contractual offsetting of the claims of the depositary on the intermediary.

3-bis. The intermediaries referred to in article 109 (2 a, b and d) who can permanently prove, by means of a bank guarantee, that their financial capacity is equal to 4% of the premiums collected, with a minimum 15,000 euros, shall be exempted from the obligations envisaged in paragraph 1¹⁸⁹.

Art. 118 (Compliance with financial obligations through insurance intermediaries)

1. The premium payment made in good faith to intermediaries or their collaborators is regarded as made directly to the insurance undertaking. Unless proved otherwise by the undertaking or the intermediary the amounts due to policyholders and to the other beneficiaries are regarded as actually received by the person entitled only upon issue of a written acquittance.

2. The provision under paragraph 1 shall apply to intermediaries recorded under the section of the register as per article 109 (2) b, exclusively if those activities are expressly envisaged in the agreement concluded with the undertaking. To this end the intermediary shall provide specific notice to the customer as part of the pre-contractual information as per article 120.

3. The provision under paragraph 1 shall apply to intermediaries recorded under the section of the register as per article 109 (2) b also in case of policies taken out by way of co-insurance and

¹⁸⁹ Paragraph inserted by paragraph 1351 of article 1, law n. 296 of 27 December 2006 (financial law 2007).

shall have effect with regard to any co-insurer if the activities under paragraph 1 are included in the agreement concluded with the leading insurer.

4. In the cases envisaged under paragraphs 2 and 3 the omission or the untruthful communication shall be punished with the administrative pecuniary sanction provided for by article 324 and with the disciplinary sanction as per article 329.

Art. 119

(Duties and liabilities to policyholders)

1. The insurance undertaking on whose behalf direct canvassers pursue business shall be jointly and severally liable for the losses caused by the latter, also where such losses are the consequence of a criminal offence which has resulted in conviction.

2. The insurance undertaking or an intermediary recorded under the section of the register as per article 109 (2) a) or b) shall be jointly and severally liable for the losses caused by an intermediary recorded under the section of the register as per article 109 (2) d) to whom it has given a mandate, including the losses caused by the subjects recorded under the section of the register as per article 109 (2) e), also where such losses are the consequence of a criminal offence which has resulted in conviction. Unless they are recorded in another section of the register intermediaries under article 109 (2) d) may market exclusively the insurance products containing standard covers or terms that may be freely chosen by the policyholder and cannot be modified by the subject who markets them.

3. Intermediaries registered in the section of the register referred to in article 109 (2) a), b) or d) are responsible for the insurance mediation business carried on by the subjects registered in the section of the register indicated in article 109 (2) e).

Art. 120

(Pre-contractual information and rules of conduct)

1. Insurance intermediaries recorded in the register referred to in article 109 (2) and those under article 116 shall furnish policyholders with the information laid down by ISVAP's regulation¹⁹⁰, before concluding the contract and in case of subsequent significant changes or renewal, in compliance with the provisions of this article.

2. In relation to the contract offered insurance intermediaries shall declare to the policyholder:

- a) whether they give their advice on the basis of a fair analysis – in that case they are obliged to give that advice on the basis of an analysis of a sufficiently large number of contracts available on the market, so that they recommend an adequate product to meet the policyholder's needs;
- b) whether they offer certain products under a contractual obligation with one or more insurance undertakings - in that case they shall provide the names of those undertakings;
- c) whether they offer certain products under no contractual obligation with any insurance undertakings – in that case they shall, at the customer's request, provide the names of the insurance undertakings with which they do or may conduct business, without prejudice to the obligation to inform policyholders of their right to request such information.

¹⁹⁰ ISVAP Regulation n. 5 of 16 October 2006, in particular Part III.

3. In any case prior to the conclusion of the contract the insurance intermediary referred to in paragraph 1 shall offer or recommend a product which is adequate to meet the policyholder's needs, in particular on the basis of information provided by the latter, and shall priorly illustrate the main features of the contract as well as the benefits that the insurance undertaking is obliged to provide.

4. On account of the different policyholders' protection needs, of the different types of risks, as well as of the knowledge and ability of the staff involved in mediation ISVAP shall, by its own regulation¹⁹¹, lay down:

a) the rules on the way intermediaries shall introduce themselves and behave in relation to policyholders, with regard to the information requirements relating to intermediaries themselves and their relations, also of corporate nature, with the insurance undertaking, and to the features of the contract offered in relation to the advice they could possibly give on the basis of a fair analysis or to the existence of an obligation, involving promotion and mediation, with one or more insurance undertakings.

b) the way how information shall be provided to policyholders, and envisage the cases in which it may be provided upon request, it being understood that the need for protection usually calls for the use of the Italian language and the communication on a durable and accessible medium, soon after the contract has been concluded at the latest;

c) how records shall be kept of the business activity;

d) the violations for which the disciplinary sanctions envisaged by article 329 shall apply¹⁹².

5. Insurance intermediaries dealing with large risks and reinsurance intermediaries shall be exempted from information requirements.

Art. 121

(Pre-contractual information in case of distance selling)

1. In case of distance selling the intermediary shall disclose to the policyholder at least the following preliminary information:

a) the name of the intermediary and the purpose of the call;

b) the identity of the person in contact with the policyholder and his/her link with the insurance intermediary;

c) a description of the main features of the service or product offered;

d) the total price, including taxes, to be paid by the policyholder.

2. In any case information shall be provided to the policyholder before concluding the insurance contract. It may be provided orally only where the policyholder so requests, or where immediate cover is necessary. In those cases information shall be provided on a durable medium soon after the contract has been concluded.

¹⁹¹ ISVAP Regulation n. 5 of 16 October 2006, in particular Part III.

¹⁹² ISVAP regulation n. 5 of 05 October 2006, in particular article 62.

3. ISVAP shall, by its own regulation¹⁹³, establish the information about the intermediary and the contract features, which shall be communicated to the policyholder in plain intelligible language, in compliance with the provisions under paragraphs 1 and 2.

TITLE X COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE

Chapter I INSURANCE OBLIGATION¹⁹⁴

Art. 122 (Motor vehicles)

1. Motor vehicles not running on rails, including trolley buses and trailers, may not be used on public roads or on equivalent areas if they are not covered by motor vehicle liability insurance (third party liability) envisaged by article 2054 of the civil code and article 91 (2) of the road code. The regulation, adopted by the Minister of Production Activities¹⁹⁵, upon ISVAP's proposal, shall set out the types of vehicles exempted from the insurance obligation and the areas to be treated as public areas.

2. Insurance shall cover liability for personal injury to passengers, irrespective of the basis on which transport is provided.

3. Insurance shall not have effect in case of use against the will of the owner, usufructuary, the buyer under reservation of title or the leasee of an operating or financial leasing, notwithstanding the provision of article 283 (1) d), starting from the day after the filing of a report to the police authorities. By way of derogation from article 1896 (1), (second sentence) of the civil code, the policyholder is entitled to reimbursement of the part of the premium relating to the remaining period of insurance, net of the taxes paid and of the fee envisaged in article 334.

4. Insurance shall also cover liability for damage caused in the territory of the other member States, under the conditions and within the limits set by the national legislation of each member State, concerning compulsory insurance against civil liability in respect of the use of motor vehicles, without prejudice to any higher guarantees which may be envisaged by the contract or the legislation of the State in which they are normally based.

Art. 123 (Craft)

¹⁹³ ISVAP Regulation n. 5 of 16 October 2006, in particular Part III, Title II, Chapter II. ISVAP regulation n. 34 of 19 March 2010.

¹⁹⁴ Decree by the Minister of Economic Development n. 86 of 1 April 2008, containing the Regulation on compulsory insurance against civil liability in respect of the use of motor vehicles and craft referred to under title X, chapter I, and title XII, chapter II, of legislative decree n. 209 of 7 September 2005 - Code of private insurance.

¹⁹⁵ Decree by the Minister of Economic Development n. 86 of 1 April 2008.

1. Recreational craft, excluding craft not fitted with engines, may not be used for navigation on public waters or equivalent areas if they are not covered by insurance against civil liability referred to in article 2054 of the civil code, including that of the buyer under reservation of title and of the leaseholder in case of leasing, for personal injury. The regulation¹⁹⁶, adopted by the Minister of Production Activities upon ISVAP's proposal, shall set out the types of craft exempted from the insurance obligation and the waters to be treated as public waters.

2. Craft of a gross tonnage not exceeding twenty-five tons fitted with an irremovable engine of more than three fiscal horsepower and used for private purposes, other than recreation, or for the public transport of passengers shall also be subject to the insurance obligation.

3. The insurance obligation shall also apply to removable engines, irrespective of their power, independently of the craft where they are fitted, in such case the craft insured is that fitted with the engine.

4. The provisions relating to compulsory insurance against civil liability in respect of the use of motor vehicles shall also apply, mutatis mutandis, to recreational craft, craft and removable engines.

Art. 124

(Races and sporting competitions)

1. Races and sporting competitions relating to any type of motor vehicles, as well as the relevant trials, may not be authorized, even if in closed circuits, if the organizer has not taken out insurance against civil liability.

2. Insurance shall cover liability of the organizer and of the other persons liable for the damage or injury caused to persons, animals and property, excluding damage or injury to participants and their vehicles.

Art. 125

(Vehicles and craft registered in foreign Countries)

1. Vehicles and craft subject to the insurance obligation and registered in foreign countries as well as removable engines referred to in article 123 (3), with a certificate for foreign use or any other equivalent document issued abroad, temporarily used in the Italian territory or sailing in territorial waters must comply with the insurance obligation during their stay in Italy.

2. The insurance obligation shall be deemed to have been discharged for craft:

- a) when an insurance contract has been underwritten according to the rules established by regulation adopted by the Minister of Production Activities¹⁹⁷, upon ISVAP's proposal, or
- b) when the driver has an international certificate of insurance issued on behalf of the foreign national insurers' bureau and accepted by Ufficio centrale italiano.

¹⁹⁶ Decree by the Minister of Economic Development n. 86 of 1 April 2008.

¹⁹⁷ Decree by the Minister of Economic Development n. 86 of 1 April 2008.

3. In case of motor vehicles bearing a registration plate issued by a third State the insurance obligation shall be:

- a) fulfilled by taking out a «frontier» insurance contract as provided for in the regulation envisaged in article 126 (2) a), concerning civil liability in respect of the use of the motor vehicle in the territory of the Italian Republic and of the other member States, under the terms and up to the maximum amounts established by the legislation in force in each State;
- b) regarded as being fulfilled when the Ufficio centrale italiano has accepted to guarantee the compensation for damage caused by the use of these vehicles in Italy and when by act of the European Union member States are no longer required to check insurance against civil liability in respect of vehicles bearing a registration plate issued by a third State;
- c) regarded as being fulfilled when the driver is in possession of a green card issued by the foreign national insurers' bureau and accepted by the Ufficio centrale italiano.

4. In case of motor vehicles bearing a registration plate issued by a member State other than the Italian Republic, the insurance obligation shall be regarded as being fulfilled when the Ufficio centrale italiano has accepted to guarantee the compensation for damage caused by the use of these vehicles in Italy, on the basis of agreements concluded with the corresponding national insurers' bureaux, and the European Union has recognised these agreements.

5. In the case referred to in paragraph 3 c), the Ufficio centrale italiano shall settle claims, and guarantee payment to those entitled, within the limits of the minimum amounts of cover established by law or, if higher, of those established by the insurance policy to which the green card refers. In the cases referred to in paragraph 3 b), and in those referred to in paragraph 4, the Ufficio centrale italiano shall settle claims occurred in Italy, and guarantee payment to those entitled, within the limits of the minimum amounts of cover established by law or, if higher, of those established by the insurance policy.

5-bis. Within three months of receiving a claim for compensation Ufficio centrale italiano (the national bureau) shall make a reasoned offer of compensation to those entitled or specify the reasons for not making an offer¹⁹⁸.

6. The provisions referred to in paragraphs 3 and 4 shall also apply to vehicles owned by diplomatic and consular agents or international officials, or owned by foreign States or international organizations.

7. The provisions referred to in paragraph 3 b) and 4 shall not apply to insurance against civil liability in respect of loss or injury caused by the use of vehicles bearing a registration plate issued by a foreign State and defined in the regulation adopted by the Minister of Production Activities, upon ISVAP's proposal¹⁹⁹.

Art. 126
(Ufficio centrale italiano)

¹⁹⁸ Paragraph inserted by article 1 (3), legislative decree n. 198 of 06 November 2007.

¹⁹⁹ Decree by the Minister of Economic Development n. 86 of 1 April 2008.

1. Ufficio centrale italiano shall be authorised to perform the functions of national insurers' bureau and the other tasks specified in Community law and this code after the recognition by the Minister of Production Activities, which approves its articles of association by decree²⁰⁰.

2. Ufficio centrale italiano, apart from the tasks envisaged in article 125, shall carry out the following functions:

a) take out and manage frontier insurance, in the name and on behalf of member undertakings, as provided for in the regulation²⁰¹ adopted by the Minister of Production Activities upon ISVAP's proposal, and provides settlement and payment of compensation;

b) in the cases referred to in paragraph 2 b), paragraph 3 b) and c), and paragraph 4 of article 125, for the purposes of paying damages resulting from accidents caused by motor vehicles and craft in Italy, act as person authorized to accept service for the insured party, the party civilly liable and their insurance undertaking;

c) be entitled to appear in court, in the cases referred to in paragraph 2 b), paragraph 3 and paragraph 4 of article 125, in the name and on behalf of member undertakings, in the actions for damages that victims of accidents occurred in Italy and caused by motor vehicles and craft registered abroad may start directly against it in accordance with the provisions of articles 145 (1), 146 and 147. The provisions regulating direct action against the insurance undertaking of the party civilly liable shall also apply to the Ufficio centrale italiano according to article 144.

3. For the purposes of bringing direct action for damages against the Ufficio centrale italiano the time limits set in article 163-bis (1) and 318 (2) of the code of civil procedure shall be doubled, and shall therefore be one hundred eighty days for proceedings brought before the courts and ninety days for proceedings brought before the justice of the peace. The time limits set in article 163-bis, second paragraph, of the code of civil procedure may not however be shorter than sixty days.

4. The Ufficio centrale italiano shall be authorised to issue the green cards required for using abroad motor vehicles registered in Italy, and guarantee the obligations resulting from the issue of these certificates in respect of the corresponding national insurers' bureaux.

5. In case of awards for damages paid to foreign national insurers' bureaux, which according to the agreements concluded with the Italian bureau had to pay damages caused in the territory of their country by uninsured motor vehicles registered in Italy, the Ufficio centrale italiano shall have a right of recourse against the owner or the driver of the vehicle for the amounts paid and the relevant expenses.

6. In case of accident occurred in the territory of the Italian Republic and caused by motor vehicles or craft registered abroad, the Ufficio centrale italiano may ask the competent police bodies information on the accident, the residence and domicile of the parties, the registration plate or any other distinguishing element.

Art. 127

(Insurance certificate and sticker)

²⁰⁰ Decree by the Minister of Economic Development of 31 August 2012.

²⁰¹ Decree by the Minister of Economic Development n. 86 of 1 April 2008.

1. Compliance with the insurance obligation for motor vehicles shall be proved by an ad-hoc certificate issued by the insurance undertaking or the leading insurer in case of coinsurance, indicating the insurance period for which premiums or premium instalments have been paid.
2. The insurance undertaking shall be obliged towards third parties for the period of time indicated in the certificate, except for the provisions in article 1901, second paragraph, of the civil code and article 122 (3), first sentence.
3. When issuing the insurance certificate the undertaking shall also deliver a sticker indicating the number plate of the vehicle and the day, month and year of expiry of the period of validity of the certificate. The insurance sticker shall be shown on the vehicle to which the insurance refers within five days of the payment of the premium or premium instalment.
4. ISVAP shall, by its own regulation²⁰², lay down the terms and conditions for the issue, as well as the characteristics of the insurance certificate, sticker and any other provisionally equivalent documents and the arrangements for issuing duplicates in case of theft, loss or destruction of the document²⁰³.

Art. 128
(Minimum amounts of cover)

1. The obligation to take out insurance against civil liability in respect of the use of motor vehicles and craft shall be regarded as fulfilled when the contract is taken out for amounts not lower than the following:
 - a) in case of personal injury, a minimum amount of cover equal to 5,000,000 euros per claim, regardless of the number of victims;
 - b) in case of material damage, a minimum amount of cover equal to 1,000,000 euros per claim, regardless of the number of victims.
2. Compulsory insurance contracts against civil liability in respect of the use of motor vehicles and craft must be made compliant with the compulsory minimum amounts of cover for personal injury or material damage referred to in paragraph 1 before 11 June 2012.
3. Every five years from the date of 11 June 2012 referred to in paragraph 2 the amounts referred to in paragraph 1 shall be automatically indexed to the percentage shown by the European index of consumer prices (EICP) envisaged by Council Regulation (EC) N. 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices. The increase shall be rounded up to a multiple of 10,000 euros.
4. The adjustment referred to in paragraph 3 shall be established by a measure taken by the Ministry of Economic Development to be published in the Italian Official Journal (Gazzetta Ufficiale della Repubblica Italiana).

²⁰² ISVAP regulation n. 13 of 06 February 2008.

²⁰³ See also the interministerial decree n. 110 of 9 August 2013, issued by the Minister of Economic Development in agreement with the Minister of Infrastructure and Transport, laying down rules for the progressive dematerialisation of stickers relating to contracts covering insurance against third party liability for any loss or damage resulting from the use of motor vehicles on the road, through their replacement by electronic or online systems, referred to under article 31 of decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

5. As at 11 December 2009 the minimum amounts must be equal to at least half of the amounts of cover referred to in paragraph 1²⁰⁴.

Art. 129

(Subjects excluded from insurance cover)

1. Only the driver of the vehicle responsible for the accident shall not be regarded as a third party and shall not be entitled to the benefits deriving from the compulsory insurance contract.

2. Without prejudice to the provisions of article 122 (2), and to the provision of paragraph 1 of this article, the following subjects shall not be regarded as third parties and shall not be entitled to the benefits deriving from compulsory insurance contracts, only as regards damage to property:

- a) the subjects envisaged by article 2054 (3) of the civil code and article 91 (2) of the road code;
- b) the spouse not legally separated, the cohabiting partner, relatives in the ascending line and descendants, whether legitimate, natural or adopted, of the person under paragraph 1 and those under a), as well as affiliates and relatives by blood or by marriage, to the third degree inclusive, of all the afore-mentioned subjects, provided that they live together with them or are their dependants since the insured party normally provides for their maintenance;
- c) if the insured party is a company, members with unlimited liability and persons having with the former one of the relations described under b).

Chapter II

CARRYING ON OF INSURANCE

Art. 130

(Authorised undertakings)

1. Insurance may be taken out with any undertaking authorised to pursue, in the territory of the Italian Republic, insurance against civil liability in respect of the use of motor vehicles and craft, also by way of establishment and of free provision of services.

2. Insurance undertakings with head office in the territory of the Italian Republic and insurance undertakings with head office in a third State authorised to pursue compulsory insurance against civil liability in respect of the use of motor vehicles and craft, excluding carriers' liability, shall appoint a claims representative in the cases referred to in article 151 in each member State.

3. If the insurance undertaking carrying on business under the freedom to provide services has failed to appoint the representative for the handling of claims referred to in article 25, the function shall be assumed by the claims representative appointed according to paragraph 2.

²⁰⁴ Article replaced by article 1 (4), legislative decree n. 198 of 06 November 2007.

Art. 131
(Premium and contract term disclosure)

1. To guarantee disclosure and competition in the supply of insurance services as well as adequate information for those who must comply with the obligation to insure motor vehicles and craft, undertakings shall make available to the public the information note and the contract terms applied in the territory of the Italian Republic at any point of sale and on the internet.

2. Advertising of premiums shall be undertaken by means of customised estimates issued at any point of sale of the insurance undertaking and through internet sites from which it shall be possible to receive the same estimate for the vehicles and craft indicated in the implementation regulation.

2-bis. When offering motor liability contracts intermediaries shall previously inform the consumer about the commissions paid to them by the undertaking, or by each undertaking on behalf of which they carry on business. The information shall be displayed at the premises in which the intermediary conducts business and shall be disclosed in the documents issued to the policyholder²⁰⁵.

2-ter. Estimates and policies shall show, in highlighted characters, the tariff premium, the commission for the intermediary and the total discount for the policyholder²⁰⁶.

3. ISVAP shall, by its own regulation²⁰⁷, establish the duties imposed on undertakings and intermediaries.

Art. 132
(Obligation to insure)

1. Insurance undertakings shall be required, on the basis of the contract terms and insurance rates they must establish in advance for any risk in respect of the use of motor vehicles and craft, to accept the proposals regarding compulsory insurance which are submitted to them, without prejudice to the necessary assessment of correctness of the data shown in the certificate of claims experience, and the identification of the policyholder and the vehicle's owner, if other than the policyholder. Undertakings may require the subjects who submit proposals regarding compulsory insurance to voluntarily have their vehicle inspected before the contract is concluded. In case an assessment is carried out in line with the previous sentence, undertakings shall apply a reduction with respect to the rates established in accordance with the first sentence. In the event that the policyholder consents to the installation of electronic mechanisms that record the activity of the vehicle, called black box or equivalent, or of further devices specified by decree of the Ministry of Infrastructure and Transport in consultation with the Ministry of Economic Development²⁰⁸, the costs of installation, removal, replacement, operation and portability shall be imposed on the companies, which shall also apply a significant reduction compared to the rates established under the first sentence, when the contract is

²⁰⁵ Paragraph inserted by article 8, decree-law n. 223 of 4 July 2006, converted into law n. 248 of 4 August 2006.

²⁰⁶ Paragraph inserted by article 8, decree-law n. 223 of 4 July 2006, converted into law n. 248 of 4 August 2006.

²⁰⁷ ISVAP regulation n. 23 of 09 May 2008.

²⁰⁸ Pursuant to the provisions of this paragraph see the decree of the Ministry of Infrastructure and Transport of 25 January 2013, issued in consultation with the Ministry of Economic Development.

concluded or at the subsequent deadlines, provided that the parameters established by contract are complied with²⁰⁹.

2. Insurance undertakings may request that the authorisation be limited to fleet business for the purposes of compliance with the obligations arising from paragraph 1.

3. To facilitate the preliminary checks regarding compliance with the obligation to insure referred to in paragraph 1 insurance undertakings shall have the right to have online access to the public motoring register (Pubblico Registro Automobilistico) and to the national vehicle file (Archivio Nazionale dei Veicoli) envisaged by the road code according to economic and technical conditions strictly linked to the costs of the service provided on the basis of the need to consult it, also systematically, with a view to preventing and combating frauds in compulsory insurance. The implementing provisions shall be adopted by decree of the Minister of Production Activities in agreement with the Ministry of Infrastructure and Transport.

Art. 133
(Insurance rates)

1. For mopeds, motorcycles, cars and other categories of motor vehicles which can be specified by ISVAP's regulation, insurance contracts shall be underwritten on the basis of policy conditions which envisage, on each annual expiry date, an increase or decrease in the premium applied when the contract is concluded or renewed following the occurrence of accidents during a certain time period, or according to deductible clauses providing for the policyholder's contribution to compensation, or according to a mix of the two approaches. Vehicles shall be classified according to prevention needs. Said decrease of the premium shall apply automatically, without prejudice to the best conditions, and to the extent previously quantified in relation to the bonus class attributed to the policy and explicitly stated in the contract. Non-compliance with the provision referred to under this paragraph shall be punished by ISVAP with a pecuniary administrative sanction varying from EUR 1,000 to EUR 50,000.²¹⁰

2. Insurance undertakings shall have the right to have online access to the national register of the persons entitled to drive which was set up by the road code at the Ministry of the Infrastructure and Transport for the purpose of verifying and updating the information relating to entitlement to drive according to economic and technical conditions strictly related to the costs of the service provided. The implementing provisions shall be adopted by decree of the Minister of Production Activities in agreement with the Ministry of Infrastructure and Transport after hearing the opinion of the Authority for the protection of personal data.

Art. 134
(Certificate of claims experience)

1. ISVAP shall, by its own regulation²¹¹, establish the information to be included in the certificate of claims experience which, on each annual expiry date of compulsory motor insurance contracts, the undertaking must deliver to the policyholder or, if different, to the owner or

²⁰⁹ Sentences added by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²¹⁰ Sentences added by article 34bis of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²¹¹ ISVAP Regulation n. 4 of 9 August 2007, amended and supplemented by ISVAP Order n. 2590 of 8 February 2008.

usufructuary, the buyer under retention of title or the lessee of an operating or financial leasing. The information to be included in the certificate of claims experience shall include the specification of the type of damage paid²¹².

1-bis. The subjects referred to in paragraph 1 shall have the right to require at any time – within fifteen days from the request – the certificate of claims experience relating to the last five years of the compulsory motor insurance contract, in accordance with the arrangements established by ISVAP with the regulation referred to in paragraph 1²¹³.

1-ter. In accordance with paragraphs 1 and 1 bis, as well as with the ISVAP regulation referred to under paragraph 1, the certificate of claims experience shall be delivered by electronic techniques, using the electronic databases referred to under paragraph 2 of this article or under article 135²¹⁴;

2. The regulation envisages²¹⁵ the obligation for insurance undertakings to put the information included in the certificate of claims experience in an electronic database held by public bodies or, if already existing, by private bodies in order to allow adequate supervision in the underwriting of the insurance contracts referred to in article 122 (1). At any rate ISVAP shall have free of charge access to the database containing information on the certificate.

3. The bonus class shown in the certificate of claims experience shall be referred to the vehicle's owner. The regulation shall establish the validity, which may be not less than twelve months, and indicate the starting date and the duration of the observation period. In the event of the cessation of risk or in case of suspension or failure to renew the insurance contract for non-use of the vehicle, the latest certificate of claims experience obtained shall be valid for five years²¹⁶.

4. When a contract is concluded for the same vehicle to which the certificate of claims experience refers, the latter shall be directly acquired by the insurance undertaking by electronic techniques through the databases referred to under paragraph 2 of this article and article 135²¹⁷.

4-bis. Whenever a new contract has been concluded in relation to a further vehicle of the same type, purchased by the natural person who already holds an insurance policy or by a permanently cohabiting family member, the insurance undertaking may not assign to the contract a less favourable bonus class than that shown in the latest certificate of claims experience relating to the vehicle already insured²¹⁸.

4-ter. After an accident has occurred insurance undertakings may not bring any changes to the bonus class until they have ascertained the policyholder's actual liability, to be referred to the person who ultimately caused the accident, according to the damages paid and subject to any different assessment by the court. In case it is not possible to ascertain the ultimate liability or, provisionally and subject to adjustment, in case of partial settlement, the liability shall be

²¹² Sentence added by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²¹³ Paragraph added by article 1 (5), legislative decree n. 198 of 6 November 2007.

²¹⁴ Paragraph added by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²¹⁵ Paragraph amended by article 32, decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²¹⁶ Paragraph amended by article 5 (1-bis), decree-law n. 7 of 31 January 2007, converted into law n.40 of 2 April 2007.

²¹⁷ Paragraph replaced by article 32 (2, d) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²¹⁸ Paragraph inserted by article 5 (2), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

calculated proportionately in relation to the number of drivers involved, with a view to any change in the bonus class due to more than one accident²¹⁹.

4-quater. Insurance undertakings shall anyhow be obliged to immediately inform the policyholder of the negative changes in the bonus class²²⁰.

Art. 135

(Claims data bank and data banks for the register of witnesses and of injured parties)²²¹

1. To enhance prevention and combating of fraudulent behaviours in compulsory insurance for motor vehicles registered in Italy, a database on the claims pertaining to such vehicles and two databases called "register of witnesses" and "register of injured parties" shall be set up at ISVAP.²²²

2. Undertakings shall be required to communicate the data about the accidents in which their policyholders are involved on the basis of the procedures established by regulation²²³ adopted by ISVAP. ISVAP shall request the data on the insurance undertakings pursuing business in the territory of the Italian Republic under the right of establishment or the freedom to provide services from their home supervisory authorities of the member States concerned.

3. The organisation and operating procedures, the terms and conditions of access to the databases referred to in paragraph 1 by public administrations, the judiciary, police, insurance undertakings and third parties, and the obligations for insurance companies to consult the databases when settling claims, shall be established by ISVAP regulation, after hearing the opinion of the Ministry of Economic Development and the Ministry of the Interiors, and, for the profiles regarding protection of privacy, the Authority for the protection of personal data.²²⁴

Art. 136

(Functions of the Ministry of Production Activities)

1. To enable the Ministry of Production Activities to perform its functions ISVAP shall communicate to the Ministry data, information and news on the rates of compulsory insurance against civil liability in respect of the use of motor vehicles and craft.

2. For the purposes specified in paragraph 1, a committee of experts on compulsory insurance against civil liability in respect of the use of motor vehicles and craft shall be set up at the Ministry of Production Activities, whose task shall be the monitoring of the increase in insurance rates applied by insurance undertakings operating in the territory of the Italian Republic by assessing, in particular, the differences in insurance rates applied in the territory of the Italian Republic and also to what extent the behaviour of policyholders who have not reported any accident during the year has been taken into account. The setting up and operation of the committee of experts shall be regulated by decree of the Minister of Production Activities, it

²¹⁹ Paragraph inserted by article 5 (2), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

²²⁰ Paragraph inserted by article 5 (2), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

²²¹ Heading amended by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²²² Paragraph amended by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²²³ ISVAP regulation n. 31 of 1 June 2009.

²²⁴ Paragraph replaced by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

being understood that such experts shall not receive any benefits or emoluments however named.

3. For the purposes of disseminating adequate information for policyholders and realising a system of permanent monitoring of compulsory motor vehicle liability premiums, the National Council of consumers and users shall be authorised to conclude a specific agreement with the National Institute of Statistics and co-finance, according to procedures and criteria established by decree of the Minister of Production Activities, information and orientation programmes for the users of insurance services promoted by consumers and users associations, to be covered by the available funding allocated to the Council by the law establishing the Council.

3-bis. The Ministry of Economic Development shall use the tariff system with all its extensions arranged by ISVAP according to the data furnished by insurance undertakings, to realise an information service, also through its internet site, enabling consumers to compare the tariffs applied by the various insurance undertakings in relation to their own individual profile²²⁵.

Chapter III **COMPENSATION FOR DAMAGE**

Art. 137 (Pecuniary damage)

1. In case of personal injury, when the incidence of temporary incapacity or permanent disability over an occupational income of any kind is to be taken into account when calculating the awards, this income shall be determined, for employees, on the basis of the higher occupational income of the last three years, plus the non-taxable income and gross of the deductions and retentions envisaged by law and, for self-employed workers, on the basis of the higher net income declared by the injured party for personal income tax purposes in the last three years or, in the cases provided for by law, shown in the certification issued by the employer in accordance with legal provisions.

2. This may however be challenged by evidence to the contrary; nonetheless, if such evidence shows that the income is more than one fifth higher than the income shown in the papers indicated under paragraph 1, the court shall inform the competent department at the Agenzia delle entrate accordingly.

3. In all the other cases the income to be taken into account for determining compensation may not be lower than three times the annual amount of the social pension.

Art. 138 (Biological damage for serious injuries)

1. A specific single table valid all over the territory of the Italian Republic shall be drawn up by presidential decree, upon resolution of the Council of Ministers based on the proposal of the

²²⁵ Paragraph inserted by article 5 (3), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

Minister of Health, in agreement with the Minister of Production Activities, the Minister for Labour and Social Policy and the Minister of Justice; and it shall indicate:

- a) impairments to physical and mental integrity ranging between ten and one hundred points;
- b) the pecuniary value of each point of disability, including the coefficients of variation corresponding to the age of the injured party.

2. The national single table shall be drawn up according to the following principles and criteria:

- a) for the purposes of the table biological damage shall mean any temporary or permanent injury to a person's physical and mental integrity which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily living and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income,
- b) the table of economic values shall be based on a system of points varying according to the age and degree of disability;
- c) the economic value of the point shall be an increasing function of the percentage of disability, and the incidence of impairments on the dynamic and interpersonal aspects of the injured party's life shall increase more than proportionally to the percentage increase of sequelae;
- d) the economic value of the point shall be a decreasing function of the person's age, according to the mortality tables drawn up by ISTAT, at a revaluation rate equal to the statutory interest rate;
- e) temporary biological damage of less than hundred per cent shall be calculated according to the percentage of incapacity recognised for each day.

3. If the declared impairment has a significant impact on specific dynamic and interpersonal aspects, the amount of the damage calculated according to the national single table may be increased by the court up to thirty per cent, on the basis of a fair and reasoned assessment of the subjective conditions of the injured party.

4. The amounts shown in the national single table shall be updated each year, by decree of the Minister of Production Activities, in accordance with the changes in the national index of consumer prices for families of clerical and manual workers assessed by ISTAT.

Art. 139

(Biological damage for minor injuries)

1. Compensation in case of biological damage for minor injuries resulting from accidents caused by motor vehicles and craft shall be calculated according to the following criteria and measurements²²⁶:

- a) in respect of permanent biological damage, a compensation which is increased more than proportionally in relation to each percentage point of disability shall be paid for the sequelae of impairments equal to or lower than nine per cent; this amount shall be calculated by applying to each percentage point of disability the relevant coefficient according to the correlation described

²²⁶ According to art. 32, 3 *quater*, of decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012, "The minor personal injuries referred to under article 139 of the code of private insurance referred to under legislative decree n. 209 of 7 September 2005 shall be compensated only after a medico-legal examination in which the existence of the damage is visually or instrumentally proven."

in paragraph 6. The amount thus calculated decreases with the increasing age of the person at the rate of 0.5 per cent for each year of age starting from the age of eleven. The value of the first point is 674.78 euros;

b) in respect of temporary biological damage, a compensation of 39.37 euros shall be paid for each day of absolute incapacity; in case of temporary incapacity of less than 100%, compensation shall be calculated according to the percentage of incapacity recognised for each day.

2. For the purposes described in paragraph 1 biological damage shall mean any temporary or permanent injury to a person's physical and mental integrity which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily living and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income. Anyhow minor injuries that are not susceptible of objective instrumental clinical surveillance may not give rise to compensation for permanent biological damage.²²⁷

3. The amount of the biological damage paid in accordance with paragraph 1 may be increased by the court of not more than one fifth, on the basis of a fair and reasoned assessment of the subjective conditions of the injured party.

4. By presidential decree, upon resolution of the Council of Ministers based on the proposal of the Minister of Health, in agreement with the Minister of Labour and Social Policy, with the Minister of Justice and the Minister of Production Activities, a specific table of impairments to physical and mental integrity ranging between one and nine points of disability shall be drawn up.

5. The amounts shown in paragraph 1 shall be updated each year by decree of the Minister of Production Activities²²⁸, in line with the changes in the national index of consumer prices for families of clerical and manual workers assessed by ISTAT.

6. For the purposes of calculating the amount under paragraph 1 a), a multiplying coefficient of 1.0 shall apply to 1 percentage point of disability, a multiplying coefficient of 1.1 shall apply to 2 percentage points of disability, a multiplying coefficient of 1.2 shall apply to 3 percentage points of disability, a multiplying coefficient of 1.3 shall apply to 4 percentage points of disability, a multiplying coefficient of 1.5 shall apply to 5 percentage points of disability, a multiplying coefficient of 1.7 shall apply to 6 percentage points of disability, a multiplying coefficient of 1.9 shall apply to 7 percentage points of disability, a multiplying coefficient of 2.1 shall apply to 8 percentage points of disability, a multiplying coefficient of 2.3 shall apply to 9 percentage points of disability.

Art. 140

(Cases where there is more than one injured party and the amounts of cover are exceeded)

1. In the cases where there is more than one injured party in the same accident and the awards to be paid by the person liable exceed the insured amounts, the injured parties' rights vis-à-vis

²²⁷ Sentence added by article 34bis of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²²⁸ The decree by the Minister of Economic Development of 20 June 2014 has recently raised the amount referred to in paragraph 1 (a) to EUR 795.91 and the amount referred to in paragraph 1 (b) to EUR 46.43.

the insurance undertaking shall be proportionately reduced within the limits of the insured amounts.

2. When, after thirty days from the accident, the insurance undertaking is not aware of other injured parties, despite the due diligence used for their identification, and has paid to some of them an amount higher than the portion owed to them, it shall be liable to the other injured parties only within the limits of difference between the insured amount and the amount paid.

3. In the case referred to in paragraph 2, the other injured parties whose claim has remained unsatisfied, shall be entitled to claim the amount due to them in accordance with paragraph 1 from those who have received compensation from the insurance undertaking.

4. In the legal proceedings between the insurance undertaking and injured parties compulsory joinder shall be required, in application of article 102 of the code of civil procedure. The insurance undertaking can deposit an amount, within the limit of the maximum amount of cover, which has the effect of releasing it in regard of all persons entitled to compensation, provided that it is an irrevocable blocked deposit in favour of all injured parties.

Art. 141

(Compensation for passengers)

1. Except for accidents caused by unforeseeable circumstances, the loss or injury suffered by passengers shall be paid by the insurance undertaking of the vehicle in which they were being carried at the time of the accident up to the minimum amount of cover established by law, without prejudice to the provisions of article 140, regardless of which driver of the vehicles involved in the accident is liable, notwithstanding the right to claim compensation for any excess damages from the insurance undertaking of the party civilly liable, if the latter's vehicle is insured for an amount higher than the minimum amount of cover.

2. To obtain damages passengers may start the compensation proceedings envisaged in article 148 against the insurance undertaking of the vehicle in which they were being carried at the time of the accident.

3. A direct right of action for damages may be exercised against the insurer of the vehicle in which the injured party was being carried at the time of the accident under the terms of article 145. The insurance undertaking of the party civilly liable may intervene in court proceedings and exclude the insurer of the vehicle, recognising the responsibility of its own insured. The provisions of chapter IV shall apply, *mutatis mutandis*.

4. The insurance undertaking which has paid damages has a right of recourse against the insurance undertaking of the party civilly liable within the limits and under the terms envisaged in article 150.

Art. 142

(Right to subrogation of the social insurer)

1. If the injured party is covered by social insurance, the institution administering social insurance has the right to receive reimbursement of the expenses incurred for the benefits paid to the injured party directly by the insurance undertaking in accordance with the laws and regulations relating to social insurance, provided that no compensation has already been paid to the injured party, in accordance with the procedures and requirements under paragraphs 2 and 3.

2. Before settling the claim, the insurance undertaking is required to request the injured party a declaration stating that he/she has no right to benefits from institutions administering compulsory social insurances. If the injured party states that he/she has right to these benefits, the insurance undertaking is required to inform the competent social insurance institution and settle the claim only after setting aside an amount sufficient to cover the amount owed by the institution for the benefits paid or to be paid.

3. After forty-five days have elapsed from the communication under paragraph 2 without a declaration of the social insurance institution to be subrogated to the rights of the injured party, the insurance undertaking may provide for the definitive settlement in favour of the injured party. The social insurance institution shall be entitled to claim from the injured party the amount corresponding to the expenses incurred if the behaviour of the injured party has prejudiced the action by way of subrogation.

4. In any case the social insurance institution may not start an action by way of subrogation to the detriment of the assisted person's right to compensation for personal injury not otherwise indemnified.

Article 142-bis
(Information on the insurance cover)

1. The injured party shall have the right to obtain from the Information centre referred to in article 154 the information on the insurance cover of the vehicle which caused the accident, the number of the insurance policy and its expiry date²²⁹.

Article 142-ter
(Non-driving road users)

1. Compulsory motor vehicle and craft insurance shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-driving road users who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation, to the extent that there is drivers' liability²³⁰.

Chapter IV
SETTLEMENT PROCEDURES

²²⁹ Article inserted by article 1 (6), legislative decree n. 198 of 06 November 2007.

²³⁰ Article inserted by article 1 (6), legislative decree n. 198 of 06 November 2007.

Art. 143
(Reporting a claim)

1. In case of accident between motor vehicles for which insurance is compulsory the drivers of the vehicles involved or, if different, the respective owners shall be required to report the claim to their insurance undertaking through the form provided by the latter, whose specimen shall be approved by ISVAP²³¹. In case of failure to submit the accident statement form article 1915 of the civil code shall apply for failure to report.
2. If the form has been signed jointly by both drivers involved in the accident it shall be presumed, unless proved otherwise by the insurance undertaking, that the accident occurred in the circumstances, ways and with the consequences as it can be inferred from the form.

Art. 144
(Direct right of action for the injured party)

1. The injured party in an accident caused by a vehicle or craft which is subject to compulsory insurance shall have a direct right of action for damages against the insurance undertaking of the party civilly liable, within the amounts insured.
2. In relation to the insured amounts the insurance undertaking shall neither raise any objections deriving from the contract nor envisage any clauses providing for the policyholder's contribution to damages. Nonetheless the insurance undertaking shall have a right of recourse against the policyholder to the extent to which it would have been entitled, by contract, to refuse or reduce its insurance benefit.
3. The person who caused the damage shall be also involved in the civil action against the insurance undertaking.
4. The direct right of action against the insurance undertaking to which the injured party is entitled shall be subject to the same limitation period applicable to any action against the person who caused the damage.

Art. 145
(Admissibility of action for damages)

1. In case the procedure referred to in article 148 applies, the action for damages caused by motor vehicles and craft for which insurance is compulsory can be started only after sixty days have elapsed (ninety in case of personal injury) from the date when the injured party filed a claim for damages with the insurance undertaking by means of a registered letter with advice of receipt, even in copy, according to the procedures and terms referred to in article 148.
2. In case the procedure referred to in article 149 applies, the action for damages caused by motor vehicles and craft for which insurance is compulsory can be started only after sixty days have elapsed (ninety in case of personal injury) from the date when the injured party filed a claim for damages with his/her own insurance undertaking by means of a registered letter with

²³¹ ISVAP Regulation n. 13 of 6 February 2008.

advice of receipt sent in copy to the insurance undertaking of the other vehicle involved, according to the procedures and terms referred to in articles 149 and 150.

Art. 146
(Right of access to documents)

1. Without prejudice to the provisions on access to single personal data laid down by the personal data protection code, the insurance undertakings which pursue compulsory insurance against civil liability in respect of the use of motor vehicles and craft shall be required to give policyholders and injured parties the right of access to the documents at the conclusion of the ascertainment, valuation and settlement of their damages.
2. The right of access may not be exercised in case of documents pertaining to investigations where evidence of fraudulent behaviours has been detected. On the other hand such right shall be suspended in case of litigation between the undertaking and the applicant, without prejudice to the powers attributed by the law to the judicial authority.
3. If, within sixty days of the date of the written request, policyholders or injured parties are not put in a position to see the documents requested and take copies of them at their expense, they may file a complaint with ISVAP also with a view to having their right guaranteed.
4. The Minister of Production Activities, in agreement with the Minister of Justice and by regulation adopted upon ISVAP's proposal, shall establish the types of documents concerned by and those excluded from the right of access, the undertakings' obligations, the costs to be borne by applicants and the terms and other conditions for the exercise of the right referred to in paragraph 1²³².

Art. 147
(Injured party's need)

1. Those entitled to compensation who, due to the accident, are in need, may in the course of a case at first instance ask that an amount of money, to be charged to the definitive settlement of the claim, be allocated to them.
2. The civil or penal court, after hearing the parties and if a summary assessment shows serious liability of the driver, shall allocate the money referred to in paragraph 1 through an ordinance which shall come into force immediately, for an amount up to four fifths of the amount of damages assumed to be paid under judgement. If the civil case is suspended in accordance with article 75 (3) of the code of criminal procedure the application shall be submitted to the president of the court in which the action is pending.
3. The application may be submitted again in the course of the case.
4. The ordinance shall be irrevocable until a decision on the substance of the case is delivered.

²³² Decree by the Minister of Economic Development of 29 October 2008 (n. 191).

Art. 148
(Compensation proceedings)

1. For accidents with only material damage the claim for compensation shall bear the fiscal code of the persons entitled to compensation as well as the place, days and hours in which the damaged property shall be available, for not less than five working days, for assessment of the damages. Within sixty days of receiving such documents the insurance undertaking shall make an appropriate and reasoned offer of compensation to the injured party or specify the reasons for not making an offer. The sixty-day period shall be reduced to thirty days if the accident statement form has been underwritten by the drivers involved in the accident. The injured party may repair the damaged property only after the expiry of the deadline stated in the previous sentence, within which the insurer must anyhow have ascertained the damage, or after the ascertainment has been completed, if it has been completed before such deadline has expired. If the damaged property has not been made available for inspection according to the terms of this article, or has been repaired before the inspection, for the purposes of making an offer for compensation the undertaking shall make its assessment on the extent of damage only after submission of an invoice stating the repair work performed. And this without prejudice to the insured person's right to compensation even where no reparation is made²³³.

2. The obligation to make an appropriate and reasoned offer of compensation to the injured party or specify the reasons for not making an offer also applies to the accidents which caused personal injuries or death. The claim for compensation shall be presented by the injured party or the persons entitled according to the terms and procedures referred to in paragraph 1. The application shall contain the indication of the fiscal code of the persons entitled to compensation and a description of the circumstances in which the accident occurred, shall be accompanied – for the purposes of the undertaking's assessment and estimate of the damage – by the data pertaining to age, the job of the injured party, his/her income, the extent of injuries, a medical certificate of recovery with or without sequelae as well as by a declaration pursuant to article 142 (2) or the victim's family status in case of death. The insurance undertaking shall comply with that obligation within ninety days of receiving such documents²³⁴.

2 bis. For the sake of preventing and combating fraudulent phenomena, the insurance undertaking shall consult the claims database referred to in article 135, and if the outcome of the consultation, having regard to the fiscal code of the people involved or to the damaged vehicles, shows at least two parameters of significance as defined in article 4 of ISVAP order n. 2827 of 25 August 2010, published in the Italian Official Journal n. 209 of 7 September 2010, the undertaking may decide, within the deadlines of paragraphs 1 and 2 of this article, not to make an offer of compensation, and explain that it needs to conduct further investigations in relation to the accident. The relevant communication shall be sent by the undertaking to the injured person and to ISVAP, to which the documents regarding the analyses on the accident are also sent. Within thirty days of notification of such decision the undertaking shall inform the injured person of its final determinations regarding the claim for compensation. Upon completion of the queries made in compliance with the first sentence the undertaking may not to make an offer of compensation if, within the deadline referred to in the third sentence, it files a complaint, in the situations where this is envisaged, and at the same time informs the insured person of such complaint through the communication regarding the final determinations on the claim for compensation referred to in the third sentence; in that case the deadlines of paragraphs 1 and 2

²³³ Paragraph replaced by article 32 (3, a) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012 and further amended, only as regards the number of days in which the damaged property is available for assessment, by article 21 paragraph 7-bis of decree-law n.179 of 18 October 2012 converted, after amendment, by article 1 of law n. 221 of 17 December 2012.

²³⁴ Paragraph amended by article 1 (7), legislative decree n. 198 of 6 November 2007.

shall be suspended, and the deadline for submission of the complaint referred to under article 124 (1) of the penal code shall commence when the thirty days within which the undertaking informs the injured party of its final determinations have elapsed. The injured person's rights on the admissibility of action for damages under the terms provided for by article 145, and of access to the documents in compliance with article 146 shall remain unaffected, unless a complaint is filed.²³⁵

3. The injured party, pending the terms referred to in paragraphs 1 and 2 and without prejudice to the provisions established in paragraph 5, may not refuse the assessments strictly required for the undertaking's estimate of material damage, within the deadline referred to in paragraph 1, or of personal injuries. If this happens the time-limits for the undertaking to make an offer of compensation or to communicate the reasons for not making an offer shall be suspended.²³⁶

4. The insurance undertaking may ask the competent police bodies for information on the accident, the residence and domicile of the parties, the registration plate or any other distinguishing element – nonetheless it shall have to comply with the terms established under paragraphs 1 and 2 also in case of accident involving material damage or personal injuries or death.

5. If the claim has not been filled out completely the undertaking shall ask for the necessary supplementary information within thirty days of receiving it; in that case the terms referred to in paragraphs 1 and 2 shall commence again from the receipt date of the supplementary data or documents.

6. If the injured party states that he/she will accept the sum offered the undertaking shall pay it within fifteen days of receiving the relevant communication.

7. Within the same period the undertaking shall pay the sum offered to the injured party who communicated that he/she would not accept the offer. The sum paid shall be charged to the ultimate settlement of the claim.

8. When the party concerned has not sent any reply after thirty days from the communication the undertaking shall pay to the injured party the sum offered in accordance with the terms, time and effects referred to in paragraph 7.

9. For the purposes of applying the provisions under this article the insurance undertaking may not raise the objection that the policyholder has failed to comply with the obligation to report an accident referred to in article 1913 of the civil code.

10. In case of judgement in favour of the injured party, when the sum offered in pursuance of paragraphs 1 and 2 is less than half of that settled, net of any revaluation and interests, the court shall lodge the judgement at the registry and at the same time transmit a copy of it to ISVAP, so that the latter can check compliance with the provisions under this chapter.

11. An undertaking paying fees to professionals shall be required to ask for the documentary evidence of the relevant collaboration and show such payment as a separate item among the

²³⁵ Paragraph added by article 32 (3, b) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²³⁶ Paragraph replaced by article 32 (3, c) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

individual loss items of the acquittance. An undertaking which has directly paid the fees to the professional shall inform the injured party thereof and indicate the amount paid.

Art. 149

(Direct compensation proceedings)

1. In case of accident between two identified and insured motor vehicles which involves damage to the vehicles or injury to drivers the injured parties shall present their claim for compensation to the insurance undertaking which concluded the contract covering the vehicle used.

2. Direct compensation proceedings shall concern the damage to the vehicle and the damage to the goods in transit owned by the policyholder or the driver. They shall also apply to personal injuries suffered by the driver not liable if they do not exceed the limit envisaged by article 139. The procedure shall not apply to accidents involving vehicles registered abroad and to compensation for the damage suffered by passengers as envisaged by article 141.

3. Once a claim for direct compensation has been presented the undertaking shall be obliged to settle damages on behalf of the insurance undertaking of the responsible vehicle, without prejudice to the subsequent regulation of relationships between undertakings.

4. If the injured party states that he/she will accept the sum offered the undertaking shall pay it within fifteen days of receiving such communication and the injured party shall be required to issue a formal receipt also valid with respect to the person who caused the accident and his/her insurance undertaking.

5. Within fifteen days the insurance undertaking shall pay the sum offered to the injured party who communicated that he/she would not accept the offer or who has not sent any reply. The sum paid shall be charged to the ultimate settlement, if any, of the claim.

6. In case of communication of the conditions that prevent direct compensation or in case of failure to make an offer or refusal to make an offer within the terms envisaged by article 148 or failure to reach an agreement, the injured party may take direct action as envisaged in article 145 (2) against his/her insurance undertaking only. The insurance undertaking of the responsible vehicle may ask to intervene in court proceedings and exclude the other insurer, recognising the responsibility of its own insured, without prejudice to the subsequent regulation of relationships between undertakings according to the provisions of the direct compensation system.

Art. 150

(Rules on direct compensation)

1. A presidential decree²³⁷, based on the proposal of the Minister of Production Activities, to be issued within ninety days of entry into force of this code, shall establish:

²³⁷ Presidential decree n. 254 of 18 July 2006

- a) the criteria for the determination of the level of responsibility of parties, also as regards the definition of the internal relationships between insurance undertakings;
- b) the contents and the procedure for submitting the accident statement form and the steps required for compensation;
- c) the procedures, conditions and steps which the undertaking shall follow when paying damages;
- d) the limits and conditions of compensation for accessory damage;
- e) the principles for cooperation between insurance undertakings, including the advantages for policyholders deriving from the direct compensation system.

2. The provisions pertaining to the procedure envisaged by article 149 shall not apply to insurance undertakings having their head office in other member States and carrying on business in the territory of the Italian Republic pursuant to articles 23 and 24, unless they have joined the direct compensation system.

3. ISVAP shall supervise over the direct compensation system as well as over the principles adopted by undertakings to guarantee policyholders' protection, the correct performance of settlement operations and undertakings' stability²³⁸.

Art. 150 *bis*
(Certificate of closed investigation)²³⁹

1. Insurance undertakings shall be obliged to pay compensation for damages resulting from fire or theft, irrespective of the application for the certificate of terminated investigation, without prejudice to the provisions of paragraph 2.

2. In legal proceedings where the offence is that referred to under article 642 of the penal code, and limited to the assumption that the insured good is a motor vehicle, damages resulting from theft or fire of the latter shall be paid only after a certificate of closed investigation has been issued.

Chapter V
COMPENSATION FOR DAMAGE RESULTING FROM ACCIDENTS OCCURRING ABROAD

Art. 151
Procedure

1. The objective of this chapter is to lay down special provisions applicable to those entitled to compensation in respect of any loss or injury resulting from accidents occurring in a member State other than their member State of residence, which are caused by the use of vehicles insured and normally based in a member State.

²³⁸ See article 29 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²³⁹ Article inserted by article 34 ter (1), decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

2. Without prejudice to the legislation of third States on civil liability and private international law, the provisions of this chapter shall also apply to persons resident in a member State and entitled to compensation in respect of any loss or injury resulting from accidents occurring in third States whose national insurer's bureaux have joined the green card system whenever such accidents are caused by the use of vehicles insured and normally based in a member State.

3. Articles 152, 296, 297, 298 and 299 shall apply only in case of accidents caused by the use of a vehicle insured through a branch established in a member State other than the member State of residence of the person entitled to compensation and normally based in a member State other than the member State of residence of the person entitled to compensation.

4. Articles 300 and 301 shall also apply to accidents caused by vehicles from third States permitted within the Community territory and are insured in compliance with the provisions of article 125.

5. In the cases referred to in this article the persons entitled to compensation shall enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

Art. 152
(Claims representative)

1. Insurance undertakings shall promptly notify to the information centres of all member States the name and address of the claims representative which they have appointed in each of the member States.

2. The claims representative shall be resident or established in the member State where he is appointed and shall address to the persons entitled to compensation in the official language(s) of their member State of residence.

3. The claims representative, who may work for one or more insurance undertakings, shall collect all information necessary in connection with the settlement of claims and shall take all the measures necessary to negotiate such settlement.

4. The appointment of the claims representative shall not preclude the right of the injured party to present a claim for compensation directly against the person who caused the accident or against the insurance undertaking of the vehicle the use of which caused the accident.

5. Within three months of receiving a claim for compensation the insurance undertaking of the person who caused the accident or its claims representative shall make a reasoned offer of compensation to those entitled or specify the reasons for not making an offer.

Art. 153
(Injured parties resident in the territory of the Italian Republic)

1. The injured parties resident in the territory of the Italian Republic who are victims of road accidents caused by the use of vehicles normally based and insured in the territory of another

member State and occurring in one of the States covered by the green card system, shall have the right to claim compensation not only from the person who caused the accident but also from the insurance undertaking of the vehicle which caused the accident or from its claims representative appointed in the territory of the Italian Republic.

2. If the insurance undertaking of the vehicle which caused the accident has failed to appoint a claims representative and in cases of non compliance with the requirements of article 152 (5), the injured party may apply to the Italian compensation body in accordance with article 298.

Art. 154²⁴⁰
(Italian Information Centre)

1. The Italian Information Centre is set up within ISVAP for the purposes of allowing those entitled to seek compensation for a motor vehicle claim in the cases envisaged by article 151. To this end ISVAP may conclude specific agreements – free of charge – with public or private entities which already hold and manage the information under paragraph 2, for the organization and functioning of the Italian Information Centre.

2. The Italian information centre shall be responsible for keeping a register containing the following information:

- a) the registration plate of motor vehicles normally based in the territory of the Italian Republic;
- b) the numbers and the period of validity of the insurance policies covering civil liability in respect of the use of those vehicles for the risks classified in class 10 of article 2 (3), other than carrier's liability;
- c) insurance undertakings covering civil liability in respect of the use of vehicles for the risks classified in class 10 of article 2 (3), other than carrier's liability, and claims representatives appointed by such insurance undertakings in accordance with article 152.

3. The Italian Information Centre shall assist those entitled to compensation in having access to the information under paragraph 2 a), b) and c).

4. Insurance undertakings covering civil liability in respect of the use of vehicles normally based in the territory of the Italian Republic shall be required to send, on a systematic basis, data on number plates of insured vehicles, policy numbers, termination dates of insurance covers, names of claims representatives appointed in each member State and, upon request, immediately provide the data on the name and address of the owner, usufructuary, buyer under retention of title or of the leasee of an operating or financial leasing.

5. The procedures, times and means for sending data by insurance undertakings, the arrangements for data processing and management of the Italian Information Centre, also in respect of the persons concerned and of those entitled to obtain information, as well as the arrangements for access to information by insurance undertakings and claims representatives, shall be defined by regulation adopted by ISVAP²⁴¹, after hearing the opinion of the Authority for the protection of personal data. The same regulation shall set out the data contained in the

²⁴⁰ Pursuant to art. 13, para. 36 of decree law n. 95 of 6 July 2012, converted into law n. 135 of 7 August 2012, from 1 January 2013 - the date of the takeover by IVASS of the functions of ISVAP - the management of the Italian Information Centre has been transferred to Consap – Concessionaria servizi assicurativi pubblici s.p.a.

²⁴¹ ISVAP regulation n. 3 of 23 May 2006.

claims database envisaged in article 135, which can also be processed by the Italian Information Centre, with the exception of sensitive data.

6. As regards the operating requirements of the Italian Information Centre, ISVAP shall be authorised, in accordance with the personal data protection code, to use the data processed for the purposes of the claims data bank. ISVAP shall, by its own regulation, organize the claims data bank with a view to coordinating the processing of data with the requirements of the Italian Information Centre.

7. The processing and communication of personal data shall be allowed, to the exclusion of sensitive personal data within the meaning of the personal data protection code, within the limits established in this chapter. The information under paragraph 2 shall be preserved for a period of seven years after the termination of the registration of the vehicle or the termination of the insurance contract.

8. The Information Centre shall cooperate with the information centres set up by the other member States in the implementation of the provisions envisaged by Community law.

Art. 155²⁴²

(Access to the Italian Information Centre)

1. Injured parties involved in the accidents envisaged in article 151 shall be entitled for a period of seven years after the accident to obtain from the Italian Information Centre the following information:

- a) the name and address of the insurance undertaking;
- b) the number of the insurance policy and its expiry date;
- c) the name and address of the insurance undertaking's claims representative in the member State of residence of those entitled to compensation, when:
 - 1) they are resident in the territory of the Italian Republic;
 - 2) the vehicle which caused the accident is normally based in the territory of the Italian Republic;
 - 3) the accident occurred in the territory of the Italian Republic.

2. If those entitled to compensation apply to the Italian Information Centre for the name and address of the owner, usufructuary, buyer under retention of title or of the leasee of the vehicle which caused the accident, provided that they have a legitimate interest in obtaining this information, the information centre shall address itself in particular:

- a) to the insurance undertaking;
- b) to the vehicle registration agency.

3. Without prejudice to the powers of the judicial authority, police forces, traffic police bodies indicated in article 12 of the road code and the competent public administrations responsible for preventing and combating fraudulent practices in the compulsory insurance sector shall have free of charge access to the data of the Italian Information Centre. Insurance undertakings, the

²⁴² See footnote n. 215.

Ufficio centrale italiano and the Italian compensation body may ask the Italian Information Centre for the data in which they have a legitimate interest.

4. ISVAP shall have free of charge access to the data on the vehicles and the names of the owners of the vehicles contained in the public registers and to the data in the national vehicle file referred to in articles 225 (1) b), 226 (5) and following, of the road code.

5. The Italian Information Centre shall cooperate with the information centres set up by the other member States in the implementation of the provisions envisaged by Community law.

5-bis. At the request of the interested parties, the data furnished by the Italian Information Centre must be available in electronic form²⁴³.

Chapter VI

PROVISIONS ON THE ACTIVITY OF LOSS ADJUSTERS

Art. 156

(Loss adjusters)

1. The professional activity of loss adjuster, consisting in assessing and estimating material damage resulting from the use, theft and fire of motor vehicles and craft falling within the scope of this title, may not be exercised by persons not enrolled in the list referred to in article 157.

2. Insurance undertakings may directly assess and estimate material damage resulting from the use, theft and fire of motor vehicles and craft.

3. In the performance of their tasks loss adjusters shall behave with diligence, correctness and transparency.

Art. 157

(List of loss adjusters)

1. ISVAP²⁴⁴ is in charge of the setting up and operation of the list and shall, by its own regulation²⁴⁵, establish the duties of notification, the registration and removal procedures as well as the forms of publicity which can better ensure public access to the list.

2. Loss adjusters pursuing this activity as their own business and meeting the requirements envisaged in article 158 shall be registered in the list.

Art. 158

(Registration requirements)

²⁴³ Paragraph inserted by article 1 (8), legislative decree n. 198 of 06 November 2007.

²⁴⁴ Pursuant to art. 13, para. 35 of decree law n. 95 of 6 July 2012, converted into law n. 135 of 7 August 2012, from 1 January 2013 – the date of the takeover by IVASS of the functions of ISVAP – the keeping of the list of loss adjusters referred to under art. 157 and foll. of the Code and any other power in this field have been transferred to Consap – Concessionaria servizi assicurativi pubblici s.p.a.

²⁴⁵ ISVAP regulation n. 11 of 03 January 2008.

1. In order to be registered in the list natural persons must fulfil the following requirements:

- a) they must enjoy full rights as a citizen;
- b) they must not have been convicted by final judgement, or final judgement enforcing the penalty specified in article 444 (2) of the code of criminal procedure, of crimes against the public administration, the administration of justice, public good faith, public economy, industry and trade, as well as property for which the law prescribes imprisonment for a minimum term of one year up to a maximum term of three years, or for any intentional offence for which the law prescribes imprisonment for a minimum term of two years up to a maximum term of five years or for failure to pay compulsory social security contributions, or have been convicted by final judgement enforcing the additional penalty of disqualification from holding public office, for life or for more than three years, unless they have been rehabilitated;
- c) they must neither have previously been declared bankrupt, unless they have been rehabilitated, nor have been president, manager with delegated powers, general manager, auditor of companies or bodies which were subject to bankruptcy proceedings, composition to avoid bankruptcy or administrative compulsory winding-up, at least in the three years preceding the adoption of these measures, it being understood that this impediment lasts for five years following the adoption of these measures;
- d) they must not be affected by lapse of entitlement, prohibition or suspension envisaged by article 10 of Law n. 575 of 31 May 1965, and subsequent modifications;
- e) they must have a certificate of advanced secondary education or a three-year degree;
- f) they must have undergone a two-year training with a licensed loss adjuster;
- g) they must have passed a qualifying examination as provided for in paragraph 3.

2. Without prejudice to the provisions of article 156, repairers of motor vehicles and craft and civil servants under a full-time contract of employment or a part-time contract when the working hours exceed half of the working hours of a full-time contract may neither carry out the activity of loss adjuster nor be registered in the register of insurance and reinsurance intermediaries.

3. To be registered loss adjusters shall also possess appropriate professional knowledge and ability, which shall be determined by ISVAP through a qualifying examination, consisting in a test on technical, legal and economic subjects which are essential to the exercise of their activity. ISVAP shall, by its own regulation²⁴⁶, establish the qualification requirements, set out the arrangements for the holding of the qualifying examination and oversee its organization and conduct²⁴⁷.

Art. 159
(Removal from the register)

1. ISVAP²⁴⁸ shall effect the removal from the register by order specifying the reasons for doing so in case of:

- a) renunciation of registration;
- b) loss of one of the requirements envisaged in article 158 (1), a), b), c) and d);
- c) subsequent incompatibility as per article 158 (2);

²⁴⁶ ISVAP Regulation n. 11 of 3 January 2008, in particular Title II, Chapter II.

²⁴⁷ See art. 13, para. 35 of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP.

²⁴⁸ See footnote 219.

- d) striking off;
- e) failure to pay the supervisory fee provided for in article 337, despite the formal notice given by ISVAP.

2. No removal from the register may be effected, even upon the request of the loss adjuster, as long as disciplinary proceedings or investigations preliminary to such proceedings are under way²⁴⁹.

Art. 160
(Reinstatement)

1. Loss adjusters who have been removed from the register further to the striking off may, upon request, be reinstated, provided that at least five years have elapsed from their removal and that the requirements envisaged in article 158 (1) and (2) are met.

2. In case of removal due to final sentence or bankruptcy, loss adjusters may be reinstated in the register only after they have been rehabilitated.

3. Loss adjusters who have been removed for failure to pay the supervisory fee, may be reinstated in the register provided that they effect the payment of the amounts due until their removal.

4. If loss adjusters, after being removed from the register, apply to be reinstated, they may be reinstated after verifying that the requirements envisaged in article 158 (1) and (2) are met, it being understood that their qualification shall remain valid²⁵⁰.

TITLE XI
PROVISIONS RELATING TO PARTICULAR INSURANCE OPERATIONS

Chapter I
COMMUNITY CO-INSURANCE

Art. 161
(Community co-insurance)

1. Non-life insurance taken out for the purposes of covering risks situated in the territory of the Italian Republic may be shared through community co-insurance, where each insurer participates with a given share, among undertakings having their head office in other member States or in States belonging to the European Economic Area, provided that at least one of the undertakings is established in a member State other than that of the leading insurer and the risks to be covered are those classified under the large risks defined in article 1 (1) r).

²⁴⁹ See art. 13, para. 35 of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP.

²⁵⁰ See art. 13, para. 35 of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP.

Art. 162

(Object of the appointment as leading insurer)

1. Insurance shall be taken out by means of a single contract, underwritten by all the co-insurers, for the same period and at an overall premium.
2. One of the co-insurers shall be appointed as leading insurer and shall be responsible for the management of the contract on behalf and in the interest of all the co-insurers.
3. The leading insurer shall perform all the functions envisaged under the appointment and those belonging to him according to co-insurance practice.
4. The leading insurer shall determine the terms and conditions of insurance and the premium rate to apply to the contract.

Chapter II

LEGAL EXPENSES INSURANCE

Art. 163

(Special requirements)

1. The undertaking pursuing legal expenses insurance shall, in its dealings with insured persons, comply with the provisions of articles 173 and 174 and with the requirements for the management of claims in accordance with article 164.
2. The provisions under this chapter shall not apply to legal expenses insurance in respect of disputes arising out of, or in connection with, the use of sea-going vessels and to the expenses incurred by undertakings covering liability insurance for their defence in proceedings started by injured parties as per article 1917 of the civil code.

Art. 164

(Procedures for the management of claims)

1. The undertaking pursuing legal expenses insurance shall adopt, for the management of legal expenses claims and the legal advice connected with such management, one of the solutions envisaged in paragraph 2, which must be previously notified to ISVAP.
2. The undertaking may:
 - a) directly carry on the activity of claims management and of legal advice;
 - b) entrust it to an undertaking having separate legal personality;
 - c) in the contract, afford the insured person the right to entrust the defence of his interests in case of claim, from the moment that he has the right to claim from his insurer, to a lawyer, or to any other person qualified under the law, of his choice.

3. If the undertaking intends to use the option under paragraph 2 a), all the following conditions must be met:

- a) if the undertaking is a composite one, the members of its staff may not pursue, on its behalf, the activity of management of claims or of legal advice for another class transacted by it;
- b) irrespective of whether the undertaking is a composite or a specialized one, the members of its staff may not carry on, on behalf of another undertaking authorised to pursue non-life business and having financial, commercial or administrative links with the first undertaking, the activity of management of claims or of legal advice in other classes transacted by the undertaking with which such links exist.

4. The undertaking must mention in the contract if it intends to use the option under paragraph 2 b), stating the corporate name of the undertaking to which the management of claims is entrusted. If the undertaking has links with an undertaking which carries on non-life business, members of the staff who are concerned with the management of claims or with legal advice connected with such management may not pursue the same or a similar activity in the other insurance classes pursued by the latter undertaking. The undertaking to which the management of claims is entrusted shall be subject to ISVAP' supervision.

5. The undertaking may adopt a different operating procedure provided that an appropriate notification has been sent to ISVAP and only with effect on the contracts concluded after such notification.

TITLE XII PROVISIONS RELATING TO INSURANCE CONTRACTS

Chapter I GENERAL PROVISIONS

Art. 165
(Link with the provisions of the civil code)

1. Unless otherwise provided by the provisions of this code, insurance, co-insurance and reinsurance contracts shall remain subject to the provisions of the civil code.

Art. 166
(Drafting criteria)

1. The contract and any other document delivered by the undertaking to the policyholder must be drawn up in a clear and exhaustive manner.

2. Clauses laying down forfeitures, voidness, limitations of covers or costs to be borne by the policyholder or insured party shall be shown in highlighted characters.

Art. 167

(Voidness of contracts concluded with unauthorised undertakings)

1. An insurance contract concluded with an unauthorised undertaking or with an undertaking prevented from concluding new business shall be void.
2. Only the policyholder or the insured party may plead the voidness of the contract. The declaration of voidness shall result in the reimbursement of premiums paid. In any case awards for damages and any amounts paid or owed by the undertaking to insured parties and other parties entitled to insurance benefits may not be claimed back.

Art. 168

(Effects of portfolio transfers, mergers and divisions)

1. To supplement the provisions of article 1902 (1) of the civil code, the portfolio transfer authorised in accordance with articles 198 and 200 does not entail the termination of the contracts; however, policyholders having their domicile or – if legal persons – their head office in the territory of the Italian Republic can cancel their contracts within sixty days of publication of the authorization, if the contracts are transferred to an insurance undertaking with head office in a foreign country or to a foreign branch of an undertaking with head office in the territory of the Italian Republic.
2. In the cases envisaged under paragraph 1, if the transfer concerns contracts covering compulsory insurance against civil liability in respect of the use of motor vehicles and craft, those entitled to compensation shall enjoy a direct right of action, within the limits of the insured amounts, against the Italian ceding undertaking until the publication of the authorization issued by ISVAP.
3. To supplement the provisions of article 1902 (1) of the civil code, the transfer of the portfolio of insurance undertakings from other member States, which has been authorised by the supervisory authority of the home member State of the ceding undertaking and has obtained ISVAP's agreement, does not entail the termination of the transferred contracts; however, policyholders having their domicile or – if legal persons – their head office in the territory of the Italian Republic can cancel their contracts within sixty days of publication of the notice referred to in article 199 (6).
4. To supplement the provisions of article 1902 (1) of the civil code, the provisions of this article shall also apply to the portfolio transfers resulting from mergers or divisions.

Art. 169

(Effects of compulsory winding up of insurance undertakings)

1. To supplement the provisions of article 1902 (2) of the civil code, insurance contracts in force at the date of publication of the winding up in the Gazzetta Ufficiale shall continue to cover risks until sixty days after the date of publication.

2. Policyholders may exercise the right of withdrawal, after the publication of the winding up, by means of a registered letter with advice of receipt. The withdrawal shall take effect the day after the receipt of the communication by the liquidator.

3. By way of derogation from paragraph 1, compulsory insurance contracts against civil liability in respect of the use of motor vehicles and craft, in force at the date of publication of the winding up, shall continue to cover risks within the limits of the minimum amounts for which insurance is compulsory, until the expiry date of the contract or of the time period for which the premium has been paid.

Chapter II

COMPULSORY INSURANCE AGAINST CIVIL LIABILITY IN RESPECT OF THE USE OF MOTOR VEHICLES AND CRAFT²⁵¹

Art. 170

(Prohibition of tie-in sales)

1. For the purposes of ensuring compliance with the obligation to insure motor vehicles, undertakings may not subordinate the conclusion of a compulsory insurance contract against civil liability to the conclusion of other insurance, banking or financial contracts.

2. By way of derogation from paragraph 1, in order to guarantee the recovery of the deductible – if any – to be borne by the policyholder, undertakings may envisage adequate guarantees, provided that they do not imply additional costs and that the premium is lower than the one that would otherwise be applied in the absence of a guaranteed recovery of deductibles.

3. By way of derogation from paragraph 1, undertakings may propose the tie-in sale of policies covering compulsory insurance against civil liability in respect of the use of motor vehicles and other insurance, banking or financial contracts, provided that these proposals are not the only offer made by the undertaking and that the provisions of the consolidated banking law and of the consolidated law on financial mediation relating to the offer of contracts are complied with.

4. Contracts concluded pursuant to paragraphs 2 and 3, including banking and financial contracts, may be terminated at the same time by the policyholder in the case provided for in article 172.

Art . 170-bis

(Lifetime of the contract)

1. The compulsory insurance contract against civil liability in respect of the use of motor vehicles and craft shall last one year or, at the request of the insured, one year plus fraction, shall automatically terminate on its natural expiry date and cannot be tacitly renewed, notwithstanding article 1899, first and second paragraph of the Civil Code. The insurance undertaking shall be obliged to notify the policyholder of the expiry of the contract with at least

²⁵¹ Decree by the Minister of Economic Development n. 86 of 1 April 2008, introducing the Regulation on the obligation to take out insurance against civil liability in respect of the use of motor vehicles and craft referred to under Title X, Chapter I, and Title XII, Chapter II of legislative decree n. 209 of 7 September 2005 – Code of Private Insurance.

thirty days notice and to keep the cover provided with the previous insurance contract until no later than the fifteenth day following the expiration of the contract, till the new policy takes effect²⁵².

Art. 171

(Transfer of ownership of the vehicle or craft)

1. The transfer of ownership of the vehicle or craft shall have one of the following effects, at the irrevocable choice of the transferor:

- a) the termination of the contract starting from the date of execution of the transfer of ownership, with a right to reimbursement of the part of the premium relating to the remaining period of insurance, net of the taxes paid and of the compulsory fee envisaged in article 334;
- b) the cession of the insurance contract to the buyer;
- c) the replacement of the insurance contract relating to another vehicle or, respectively, to another craft belonging to the transferor, after any adjustment of the premium.

2. When the transfer of ownership has been executed, the transferor shall immediately inform the insurance undertaking and the buyer of whether the insurance contract is transferred together with the vehicle.

3. The cover shall have effect for the new vehicle or craft starting from the date of issue of the new certificate and, where appropriate, of the new sticker relating to the vehicle or craft according to the terms and conditions envisaged in the regulation²⁵³ adopted by the Minister of Production Activities, upon ISVAP's proposal.

Art. 172²⁵⁴

(Right of withdrawal)

1. In case of tariff changes other than those resulting from the application of transition rules under the bonus/malus tariff system, exceeding the anticipated rate of inflation, the policyholder may withdraw from the insurance contract provided a notification by means of a registered letter with advice of receipt or delivered by hand, or by fax, is made to the undertaking's head office or to the intermediary where the policy was concluded before the expiry date of the contract. In this case the policyholder shall not be entitled to the days of grace provided for by article 1901 (2) of the civil code.

²⁵² Article inserted by article 22 (1) of decree-law n. 179 of 18 October 2012, converted after amendments by article 1 of law n. 221 of 17 December 2012.

See also paragraphs 2 and 3 of the same article 22, according to which:

"2. For automatic renewal clauses as may be provided in contracts concluded before the date of entry into force of this decree, the provisions of paragraph 3 of article 170-bis of legislative decree n. 209 of 7 September 2005 (Code of Private Insurance) will apply from 1 January 2013.

3. In case of contracts valid on the date of entry into force of this decree with automatic renewal clause, insurance undertakings shall be obliged to communicate in writing to the policyholder the loss of effectiveness of automatic renewal clauses in due time compared to the expiry of the period originally agreed in the same clauses for the exercise of the right to terminate the contract".

²⁵³ Decree by the Minister of Economic Development n. 86 of 1 April 2008.

²⁵⁴ The rules on the right of withdrawal are to be understood as impliedly revoked by art. 170 bis, introduced into the Code by art. 22 para. 1 of decree law n. 179 of 18 October 2012, converted, after amendment, by art. 1 of law n. 221 of 17 December 2012.

2. *Without prejudice to the provisions of paragraph 1, a notice of termination of the contract shall be sent by fax or registered letter at least fifteen days before the expiry date indicated in the policy.*

3. *The provisions of this article may only be derogated from in a manner more favourable to the policyholder.*

Chapter III

LEGAL EXPENSES INSURANCE AND ASSISTANCE INSURANCE

Art. 173

(Legal expenses insurance)

1. Legal expenses insurance is a contract by which an insurance undertaking undertakes, against the payment of a premium, to bear the costs of legal proceedings and expert services or to provide other services, needed by the insured person for purposes of the defence of his rights before the court, in any kind of proceedings, or out-of-court, mainly for purposes of securing compensation for the loss, damage or injury suffered by the insured person or for defending himself in respect of any claim made against him, provided that the claim is not filed by the undertaking providing cover for legal expenses.

2. When legal expenses insurance is provided at the same time with other insurance covers, by means of a single contract, the nature of the legal expenses cover, the applicable contractual terms and conditions and the amount of the relevant premium shall be dealt with in a separate section of the contract.

Art. 174

(Insured party's rights in legal expenses insurance)

1. Any contract of legal expenses insurance must expressly recognize, in order to protect the insured party, that when the latter requires the assistance of a professional to defend or represent his interests in any inquiry or proceedings or whenever a conflict of interests arises with the insurance undertaking, he shall have free choice of the professional, provided that the latter is appropriately qualified according to the applicable law.

2. In the event of a disagreement over the management of the claim between the insurance undertaking and its insured, the parties may bring the case to court or apply to an arbitrator for a decision, based on equity, on the attitude to be adopted. The latter option must be expressly envisaged by the contract.

3. Without prejudice to the insured person's right to use the option under paragraph 1, it is not necessary that the contractual terms and conditions expressly envisage the same option when all the following conditions are met:

a) legal expenses insurance is limited to disputes arising out of the use of road vehicles in the territory of the Italian Republic;

- b) the insurance is connected to an insurance contract to provide assistance in the event of an accident or breakdown involving a road vehicle;
- c) neither the legal expenses insurer nor the assistance insurer carries out any class of liability insurance.

4. In the case referred to in paragraph 3, if the same undertaking provides legal expenses insurance for both the parties to a dispute, the latter must be assisted and represented by lawyers, or by other persons appropriately qualified according to the applicable law, independent of the insurance undertaking.

5. Whenever a conflict of interests arises between the insured party and the insurance undertaking or there is disagreement over the management of claims, the undertaking shall, in writing, draw the injured party's attention that he may use the right referred to in this article or that he may have recourse to the arbitration referred to in paragraph 2.

Art. 175
(Assistance insurance)

1. Assistance insurance is a contract by which an insurance undertaking undertakes, against the prior payment of a premium, to make aid immediately available to the insured party, within the limits set out in the contract, where that person is in difficulties following the occurrence of a chance event.

2. The aid may consist in benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of third parties.

Chapter IV
LIFE ASSURANCE

Art. 176
(Withdrawal of the proposal)

1. The proposal relating to an individual life assurance contract falling within classes I, II, III and V of article 2 (1) can be withdrawn.

2. Any amounts paid by the policyholder must be returned by the insurance undertaking within thirty days from the time when it was informed of the withdrawal.

3. The provisions of this article shall not apply to contracts of a duration of six months or less.

Art. 177
(Right of withdrawal)

1. The policyholder may withdraw from an individual life assurance contract within thirty days from the time when he was informed that the contract had been concluded.

2. Insurance undertakings must inform policyholders of their right of withdrawal provided for in paragraph 1. The time limits and procedures for exercising such right must expressly be highlighted in the insurance proposal and contract.

3. Within thirty days from the time when it was informed of the withdrawal, the insurance undertaking shall reimburse the policyholder any premium paid, net of that part of the premium referring to the period during which the contract was in force. The insurance undertaking shall have the right to charge the costs actually sustained for the issue of the contract, on condition that these are identified and quantified in the proposal and in the contract.

4. The provisions of this article shall not apply to contracts of a duration of six months or less.

Art. 178

(Inversion of the burden of proof in proceedings to claim compensation)

1. In the proceedings to claim compensation for damages suffered by the holder of a life assurance contract falling within classes III and V of article 2 (1), the burden of providing proof that it has acted with due diligence rests on the undertaking.

Chapter V

CAPITAL REDEMPTION

Art. 179

(Concept)

1. Capital redemption is the contract with which an insurer undertakes to pay, irrespective of the duration of human life, predefined amounts after the lapse of an agreed period of time as consideration for the payment in cash or in other assets of single or periodic premiums.

2. Whenever contracts establish the periodic drawing of lots for the advance payment of the agreed capital, the same or a higher number of contracts – which may not however exceed five contracts every hundred contracts issued per year – must be drawn in the subsequent drawings of lots. The drawing of lots shall be made at least every six months.

3. The duration of capital redemption contracts may not be less than five years. For contracts with periodic premiums, payments may be expressed as a fixed or variable amount, provided that the latter possibility is expressly stated in the contract.

4. The policyholder may withdraw from the contract in accordance with the time limits and procedures envisaged in article 177. Policyholders may surrender the contract starting from the second year and on condition that they have paid a full annual premium.

Chapter VI

APPLICABLE LAW

Art. 180
(Non-life insurance contracts)

1. Non-life insurance contracts shall be governed by Italian law, without prejudice to the rules of private international law, when the member State where the risk is situated is the Italian Republic.
2. The parties may agree that the contract be subject to the law of another State, except for the limits deriving from the application of mandatory rules.
3. The specific provisions relating to compulsory insurance, as provided by the State imposing the insurance obligation, shall prevail over the law applicable to the contract; when the latter provides a guarantee which may cover risks in more than one State, the specific provisions of the State concerned shall prevail.
4. Non-life insurance contracts covering risks situated in another member State shall be governed by the law of that State.
5. If the risk is situated in a third State, the provisions of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, which came into force by means of law n. 975 of 18 December 1984, shall apply.

Art. 181
(Life assurance contracts)

1. Life assurance contracts shall be governed by Italian law, without prejudice to the rules of private international law, when the member State of the commitment is the Italian Republic.
2. The parties may however agree that the contract be subject to the law of another State, except for the limits deriving from the application of mandatory rules.
3. Life assurance contracts where the member State of the commitment is other than the Italian Republic shall be governed by the law of the member State of the commitment.
4. If the risk is situated in a third State, the provisions of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, which came into force by means of law n. 975 of 18 December 1984, shall apply.

**TITLE XIII
DISCLOSURE OF OPERATIONS AND POLICYHOLDER'S PROTECTION**

**Chapter I
GENERAL PROVISIONS**

Art. 182
(Advertising of insurance products)

1. Advertising of insurance undertakings' products shall be carried out in compliance with the principles of fairness of information and with the content of the information note and contractual terms of the relevant products.
2. These principles shall also be respected when advertising is carried out by intermediaries autonomously.
3. ISVAP may require, on a non-systematic basis, that the various publicity material used by undertakings and intermediaries be sent to it.
4. ISVAP shall suspend advertising, on a precautionary basis and for no more than ninety days, in case there are reasonable grounds for suspecting that the provisions on disclosure and fairness have been violated.
5. ISVAP shall prohibit advertising in the event of an ascertained violation of the provisions on disclosure and fairness.
6. ISVAP shall prohibit the marketing of products in case of failure to comply with the measures under paragraphs 4 and 5 as envisaged by article 184 (2).
7. ISVAP shall, by its own regulation²⁵⁵, lay down the criteria for distinguishability of advertising and clearness and accuracy of information.

Art. 183
(Rules of conduct)

1. Before the conclusion and during the term of the contract undertakings and intermediaries shall:
 - a) behave with diligence, fairness and transparency towards policyholders and insured persons;
 - b) acquire from policyholders the information necessary to evaluate their insurance or pension needs and act in such a manner that they are always appropriately informed;
 - c) make arrangements so as to identify and prevent – where reasonably possible – conflicts of interest and, in case of conflict, make policyholders aware of the possible adverse effects, and anyhow manage conflicts of interest so as to exclude any detrimental consequences for policyholders;
 - d) achieve an independent, sound and prudent financial management and take adequate measures to safeguard the rights of policyholders and of insured persons.
2. ISVAP shall, by its own regulation²⁵⁶, adopt specific provisions on the drawing up of the rules of conduct to be observed in the relations with policyholders, so that the activity is carried out correctly and taking account of each individual's specific needs²⁵⁷.

²⁵⁵ ISVAP regulation n. 35 of 26 May 2010.

3. In its regulation ISVAP shall take account of policyholders' and insured persons' different needs for protection, as well as of the nature of the risks and commitments covered by the undertaking; it shall establish the categories of subjects who do not need, in whole or in part, the protection envisaged for retail customers and shall establish the terms, limits and conditions of application of these provisions before the conclusion and during the term of non-life insurance contracts, taking account of the particular features of the various types of risk.

Art. 184

(Precautionary and prohibitory measures)

1. With regard to the objective of insured parties' protection ISVAP shall suspend marketing of the product, on a precautionary basis and for no more than ninety days, in case there are reasonable grounds for suspecting that the provisions under this title or the relevant implementing rules have been violated.

2. ISVAP shall prohibit the marketing of products in the event of an ascertained violation of the provisions referred to in paragraph 1 and shall provide that the measures adopted are disseminated to the wider public in the most understandable forms at the expense of the undertaking or of the intermediary concerned.

Chapter II

OBLIGATION TO PROVIDE INFORMATION

Art. 185

(Information note)

1. Italian insurance undertakings and foreign insurance undertakings carrying on business in the territory of the Italian Republic under the right of establishment or the freedom of services shall submit to policyholders, prior to the conclusion of the contract and along with the policy conditions, an information note drawn up in compliance with the provisions of this article.

2. The information note shall contain the information, other than advertising, which is necessary, based on the characteristics of the products and of the insurance undertaking, for policyholders and insured persons to come to a reasoned conclusion about contract rights and obligations and, where appropriate, about the undertaking's financial position.

3. ISVAP shall, by its own regulation²⁵⁶, lay down rules on the contents and model of the information note, which shall contain not only information on the undertaking, but also information on the contract, with special regard to guarantees and commitments covered by the

²⁵⁶ ISVAP Regulation n. 34 of 19 March 2010, on the promotion and distance marketing of insurance contracts, and ISVAP Regulation n. 35 of 26 May 2010, on the information obligations and the advertising of insurance products. ISVAP Regulation n. 40 of 3 May 2012 concerning the definition of the minimum contents of the life assurance contract referred to under article 28 (1) of decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

²⁵⁷ ISVAP Regulation n. 5 of 16 October 2006, in particular Title II, Chapter I and ISVAP Regulation n. 24 of 19 May 2008.

²⁵⁸ ISVAP regulation n. 35 of 26 May 2010.

undertaking, voidness, lapses, exclusions and limitations of covers as well as recourse, rights and obligations during the term of the contract and, in case of accident, the applicable law and limitation periods, the procedure to follow in case of complaint and any competent body or authority.

4. As regards the assurance classes I, II, III, IV and V as referred to in article 2 (1) ISVAP shall, by its own regulation²⁵⁹, determine the additional information necessary for the full comprehension of the main features of the contract with special regard to the contract costs and risks and the operations in conflict of interests. During the whole contract term life assurance policyholders shall also be given the information indicated in the regulation adopted by ISVAP, with special regard to the costs, composition and results achieved in the management of the assets in which the premium or capital assured is invested.

Art. 186

(Interpellation about the information note)

1. An undertaking may first send the information note, along with the contract terms, to ISVAP, in order to require the assessment of compliance with the information obligations envisaged by the provisions of this chapter, it being understood that ISVAP's assessment may not be used for promotional purposes in the relationships with policyholders.

2. ISVAP shall inform the undertaking of its assessment within sixty days of receiving exhaustive and comprehensive documents pertaining to the contract. If no negative assessments or assessments with remarks in line with paragraph 3 are made by ISVAP within this deadline the information note shall be considered as compliant with the information obligations. ISVAP may order the withdrawal, once it has notified the undertaking concerned, if the requirements for the assessment are no longer met or if the undertaking abuses the measure requested. ISVAP shall indicate to the undertaking any supplementary information to be included in the information note.

3. During the period necessary for the preliminary enquiry and until ISVAP takes its measure the undertaking shall not market its product.

4. ISVAP shall, by its own regulation, establish the provisions regarding the transmission of the information note and the procedures to be observed, before its publication, to disseminate news or make market surveys or collect contract proposals and to market products.

Art. 187

(Additional information to be included in the information note)

1. Without prejudice to the provisions of this chapter ISVAP may request that the undertaking make changes to its information note whenever it is necessary to furnish further and essential information for policyholders' protection.

²⁵⁹ ISVAP regulation n. 35 of 26 May 2010.

TITLE XIV
SUPERVISION OVER UNDERTAKINGS AND INTERMEDIARIES

Chapter I
GENERAL PROVISIONS

Art. 188
(Powers of intervention)

1. In the exercise of its supervisory functions over the technical, financial, assets/liabilities management of insurance and reinsurance undertakings and on compliance with the laws, regulations and measures of this code, ISVAP may:

- a) convene the members of the administrative and control bodies, the general managers of insurance and reinsurance undertakings, the legal representatives of the auditing firm, the auditing actuary, the appointed actuary for life assurance and the appointed actuary for compulsory insurance against civil liability in respect of the use of motor vehicles and craft;
- b) order the convocation of the shareholders' meeting and the meeting of the administrative and control bodies of insurance and reinsurance undertakings, by specifying the items to be included in the agenda and submitting to their examination the measures required to ensure that management is in accordance with the law;
- c) directly undertake the convocation of the shareholders' meeting and the meeting of the administrative and control bodies of insurance and reinsurance undertakings, when these bodies have not fulfilled the measure referred to in b);
- d) convene the persons who perform functions partly included in the operational cycle of insurance and reinsurance undertakings, within the framework of checks limited exclusively to insurance or reinsurance profiles.

2. In the exercise of its supervisory functions over compliance with the laws and regulations envisaged in this code by insurance market participants, ISVAP may convene the legal representatives of mediation companies and the persons entered in the register of intermediaries and the list of loss adjuster.

3. In order to know the programmes and assess the commitments guaranteeing the management autonomy and independence of insurance and reinsurance undertakings, ISVAP may convene anyone holding a qualifying holding indicated in article 68 in an insurance or reinsurance undertaking²⁶⁰.

Art. 189
(Powers of investigation)

1. ISVAP may request information, order the production of documents and the performance of checks and verifications deemed necessary, making such request to insurance and reinsurance undertakings, to persons who perform functions partly included in the operational cycle of insurance and reinsurance undertakings, within the framework of checks limited exclusively to

²⁶⁰ Paragraph amended by article 4 (1, v) of legislative Decree n. 21 of 27 January 2010.

insurance and reinsurance profiles, to insurance and reinsurance intermediaries, to loss adjusters as well as to persons pursuing reserved business without authorization.

2. ISVAP may conduct inspections at the premises of insurance and reinsurance undertakings, of insurance and reinsurance intermediaries, of persons who perform functions partly included in the operational cycle of these undertakings, limited to this cycle, of loss adjusters as well as of persons pursuing reserved business without authorization.

Art. 190

(Communication obligations)

1. ISVAP may require supervised subjects to send, also on a regular basis, data and information as well as acts and documents in accordance with the terms and procedures established by its own regulation.

2. The powers envisaged in paragraph 1 may also be exercised over the subject responsible for the statutory audit of insurance and reinsurance undertakings, the auditing actuary, the appointed actuary for life assurance and the appointed actuary for compulsory insurance against civil liability in respect of the use of motor vehicles and craft. ISVAP shall, by its own regulation, establish the terms and procedures under which the above-mentioned subjects are required to send the information envisaged in paragraphs 3 and 4²⁶¹.

3. The body performing the control function in an insurance or reinsurance undertaking shall notify ISVAP, without delay, of any acts or facts which may constitute an irregularity in the undertakings' administration or a violation of the provisions regulating the carrying out of insurance or reinsurance business. To this end the memorandum and articles of association of the undertaking, regardless of the administration and control system adopted, shall vest the body performing the control function with the relevant tasks and powers. The same body shall provide ISVAP with any other information or document requested.

4. The persons referred to in paragraph 2 shall notify ISVAP, without delay, of any acts or facts they have found during the performance of their task, which may represent a serious violation of the provisions regulating the carrying out of business by audited undertakings, or which may undermine the continuity of the undertaking's activity, or involve a negative assessment, an assessment with remarks or a declaration of the impossibility to assess the financial statements. The same persons shall provide ISVAP with any other information or document requested.

5. The provisions under paragraph 3 (first sentence) and 4 shall also apply to the persons performing the tasks referred to in the same paragraphs within the companies which control or are controlled by insurance or reinsurance undertakings in accordance with article 72.

5-bis. Insurance and reinsurance undertakings shall immediately inform ISVAP of the following:

- a) appointment or non-appointment of the subject responsible for the statutory audit, along with the causes for the delay in the appointment;
- b) the resignation of the subject responsible for the statutory audit;
- c) the consensual termination of the assignment;

²⁶¹ Paragraph amended by article 41 (6, a), legislative decree n. 39 of 27 January 2010. See ISVAP Regulations n. 16 of 4 March 2008; n. 21 of 28 March 2008; n. 22 of 4 April 2008.

d) the revocation of the appointment regarding the statutory audit, along with the appropriate explanations of the reason for doing so.²⁶²

5-ter. ISVAP shall establish the arrangements and terms for sending the notifications under paragraph 5-bis. In case of non-appointment of the subject responsible for the statutory audits ISVAP shall adopt the precautionary, authoritative and sanctioning measures envisaged by the code²⁶³.

Art. 191
(Regulations)

1. In the exercise of its supervisory functions over the technical, financial, assets/liabilities management of insurance and reinsurance undertakings and on transparency and fairness of behaviours by insurance and reinsurance undertakings and intermediaries, ISVAP shall, by regulations implementing the provisions of this code, adopt general rules relating to:

- a) the fairness of advertising, the rules on the way undertakings and intermediaries shall introduce themselves and behave in relation to the supply of insurance products, taking account of the different needs for policyholders protection²⁶⁴;
- b) information requirements before the conclusion of the contract and during its term, including the requirements relating to the promotion and placement of insurance products, by means of distance communication techniques²⁶⁵;
- c) check on the adequacy of risk management processes, including effective administrative and accounting procedures and suitable internal control mechanisms of insurance and reinsurance undertakings²⁶⁶;
- d) financial adequacy, including the establishment of technical provisions, the representation and valuation of assets, the composition and calculation of the solvency margin of insurance and reinsurance undertakings²⁶⁷;
- e) the setting up and management of assets devoted to a specific business, under the terms envisaged in the civil code, of segregate assets and internal funds of undertakings pursuing life business, including the limits and restrictions on investments and the principles and layouts to be adopted in the assessment of the property in which assets are invested²⁶⁸;
- f) the layout of accounts, the chart of accounts, the forms and arrangements for making a confrontation between the accounting system and the chart of accounts, the layout and content of the statement relating to the solvency margin and of the other supervisory models derived

²⁶² Paragraph inserted by article 41 (6, b) of legislative decree n. 39 of 27 January 2010.

²⁶³ Paragraph inserted by article 41 (6, b) of legislative decree n. 39 of 27 January 2010.

²⁶⁴ ISVAP regulation n. 13 of 06 February 2008. ISVAP Regulation n. 34 of 19 March 2010, on the promotion and distance marketing of insurance contracts. ISVAP Regulation n. 5 of 16 October 2006, with respect to insurance and reinsurance intermediaries. ISVAP Regulation n. 35 of 26 May 2010, on the information obligations and the advertising of insurance products.

²⁶⁵ ISVAP Regulation n. 34 of 19 March 2010, on the promotion and distance marketing of insurance contracts. ISVAP Regulation n. 5 of 16 October 2006, with respect to insurance and reinsurance intermediaries. ISVAP Regulation n. 35 of 26 May 2010, on the information obligations and the advertising of insurance products.

²⁶⁶ ISVAP regulation n. 20 of 26 March 2008, on internal controls, risk management, compliance and the outsourcing of activities of insurance undertakings, ISVAP regulation n. 25 of 27 May 2008, on intra-group transactions and ISVAP regulation n. 39 of 9 June 2011, on the remuneration policies of insurance undertakings.

²⁶⁷ ISVAP regulation n. 16 of 4 March 2008 and ISVAP regulation n. 21 of 28 March 2008 on technical provisions. ISVAP regulation n. 18 of 12 March 2008 and ISVAP regulation n. 19 of 14 March 2008, on the insurance and reinsurance undertakings' solvency margin. ISVAP regulation n. 33 of 10 March 2010, with respect to reinsurance undertakings. ISVAP regulation n. 36 of 31 January 2011, on investments and assets representing technical provisions.

²⁶⁸ ISVAP regulation n. 38 of 3 June 2011, on the segregate assets of undertakings pursuing life business.

from financial statements and consolidated accounts of insurance and reinsurance undertakings²⁶⁹;

g) the indication of the entities not subject to compulsory consolidation which are required to draw up consolidated accounts for the sole purpose of supervision²⁷⁰;

h) supplementary supervision over insurance and reinsurance undertakings, including the verification of the intra-group transactions and the calculation of the adjusted solvency of insurance undertakings and companies controlling insurance undertakings²⁷¹;

i) the procedures relating to the issuing of the measures envisaged for the taking-up of insurance business, compliance with operating conditions, acquisition of holdings, shareholdings, extraordinary operations, safeguards, reorganisation and winding up measures of insurance and reinsurance undertakings²⁷².

2. The regulations envisaged under paragraph 1 shall comply with the principle of proportionality with a view to attaining the goal at the minor cost for the subjects concerned.

3. The regulations shall be consistent with the purposes of supervision referred to in article 3 and shall take account of the need for competitiveness and innovation development in the pursuit of business by supervised entities.

4. Regulations shall be adopted following open and transparent consultation procedures enabling to obtain knowledge of the law in preparation and of the comments received - also through publication on ISVAP's website. When starting the consultation ISVAP shall publish the draft measure and the outcome of the analysis on the impact of the new rules, in accordance with the principles stated in article 12 of law n. 229 of 29 July 2003.

5. At any time during the procedure ISVAP may ask for the opinion of the Council of State and shall make public its views on the comments received following the consultation procedure and on the opinion which it may have asked to the Council of State.

6. ISVAP shall adopt coordinated regulations which will be encompassed in a single collection of supervisory instructions.

Chapter II

SUPERVISION OF THE TECHNICAL, FINANCIAL AND ASSETS/LIABILITY MANAGEMENT OF INSURANCE AND REINSURANCE UNDERTAKINGS

Art. 192

(Italian insurance undertakings)

1. Insurance undertakings with head office in Italy shall be subject to the supervision of ISVAP for both the business carried out in the territory of the Italian Republic and that carried out in the territory of the other member States under the right of establishment or the freedom of services.

²⁶⁹ ISVAP regulation n. 7 of 13 July 2007 and ISVAP regulation n. 22 of 4 April 2008, on insurance and reinsurance undertakings' financial statements and consolidated accounts. ISVAP regulation n. 18 of 12 March 2008 and ISVAP regulation n. 19 of 14 March 2008, on the insurance and reinsurance undertakings' solvency margin.

²⁷⁰ ISVAP regulation n. 7 of 13 July 2007.

²⁷¹ ISVAP Regulation n. 25 of 27 May 2008 and ISVAP Regulation n. 18 of 12 March 2008.

²⁷² ISVAP regulation n. 14 of 18 February 2008. ISVAP regulation n. 33 of 10 March 2010, with respect to reinsurance undertakings.

2. ISVAP shall exercise the functions of prudential supervision through the constant monitoring of the undertaking's technical, financial and assets/liability situation, with special regard to the sufficiency of technical provisions in relation to the activity pursued, the availability of adequate assets for the full representation of technical provisions and the solvency margin owned. In case of undertakings authorised to pursue assistance insurance ISVAP's supervision shall extend to monitoring of staff and the technical resources which the undertaking has at its disposal for the purpose of providing the service.

3. Also upon a report by the supervisory authority of the member State of the branch or of the member State of provision of services ISVAP shall take the appropriate measures to put an end to the irregularities committed in other member States by insurance undertakings with head office in Italy or to the activities carried out in these States which might undermine the financial stability of those undertakings. The supervisory authority of the member State of establishment or of the member State of provision of services shall be informed of the measures taken.

4. ISVAP shall exercise the functions of prudential supervision in order to ensure that insurance undertakings carrying out business under the right of establishment or the freedom to provide services in third States have a sufficient solvency margin, taking also account of this business, and adequate technical provisions in relation to all the commitments undertaken.

Art. 193

(Insurance undertakings from other member States)

1. Insurance undertakings having their head office in other member States shall be subject to prudential supervision by the supervisor of the home member State also as regards the business carried out, under the right of establishment or the freedom of services, in the territory of the Italian Republic.

2. Without prejudice to the provisions of paragraph 1 and in case ISVAP ascertains that the insurance undertaking does not comply with the provisions of the Italian law it is required to observe, ISVAP shall notify such violation and shall order that the undertaking comply with the laws and implementing provisions.

3. If the undertaking does not comply with the laws and implementing provisions ISVAP shall inform the supervisory authority of the home member State thereof and request that the measures necessary to end violations be taken.

4. If the authority of the home State fails to take measures or the measures prove inadequate, if the irregularities may affect the general good, or in urgent cases of protection of the interests of policyholders and of those entitled to insurance benefits, ISVAP may, after informing the supervisory authority of the home member State, take the necessary measures against the insurance undertaking, including the prohibition to commence new business under the right of establishment or the freedom to provide services with the effects referred to in article 167.

5. If the insurance undertaking which committed the breach carries on business via a branch or possesses properties in the territory of the Italian Republic, the administrative sanctions

applicable according to the provisions of the Italian law shall be adopted against the branch or through confiscation of the assets in Italy.

6. Any measure involving sanctions or restrictions on the conduct of business under the right of establishment or the freedom to provide services shall be communicated to the undertaking concerned. In the communications with ISVAP the insurance undertaking shall use the Italian language.

7. ISVAP shall order that the measures taken be published in daily newspapers or otherwise disclosed as established in the measure at the expense of the insurance undertaking and for the period of time deemed necessary. ISVAP shall inform the supervisory authority of the home member State of the measures adopted.

Article 194

(Third country insurance undertakings)

1. Branches of insurance undertakings with head office in third States shall be subject to the supervision of ISVAP for the business carried out in the territory of the Italian Republic.

Article 195

(Italian reinsurance undertakings²⁷³)

1. Reinsurance undertakings with head office in the territory of the Italian Republic shall be subject to the supervision of ISVAP for both the business carried out in the Italy and that carried out under the freedom to provide services in the territory of the other member States or of third States.

2. ISVAP shall exercise the functions of prudential supervision over the undertakings referred to in paragraph 1 through the constant monitoring of the undertaking's technical financial and assets/liability situation, with special regard to the sufficiency of technical provisions in relation to the activity pursued and the availability of adequate assets for the full representation of technical provisions as well as to the solvency margin owned²⁷⁴.

3. The provisions of article 192 (3 and 4) shall apply to the undertakings referred to in paragraph 1²⁷⁵.

Article 195-bis

(Reinsurance undertakings from other member States)

1. Reinsurance undertakings having their head office in other member States shall be subject to prudential supervision by the supervisor of the home member State also as regards the business carried out, under the right of establishment or the freedom of services, in the territory of the Italian Republic.

²⁷³ Heading amended by article 11 (1), legislative decree n. 56 of 29 February 2008.

²⁷⁴ Paragraph amended by article 11 (2, a), legislative decree n. 56 of 29 February 2008.

²⁷⁵ Paragraph replaced by article 11 (2, b), legislative decree n. 56 of 29 February 2008.

2. Without prejudice to the provisions of paragraph 1 and in case ISVAP ascertains that the reinsurance undertaking does not comply with the provisions of the Italian law it is required to observe, ISVAP shall notify such violation to the undertaking and order that it comply with the laws and implementing provisions.

3. If the undertaking does not comply with the laws and implementing provisions ISVAP shall inform the supervisory authority of the home member State thereof and request that the measures necessary to end violations be taken.

4. If the authority of the home State fails to take measures or the measures prove inadequate, if the irregularities may affect the general good, ISVAP may, after informing the supervisory authority of the home member State, take the necessary measures against the reinsurance undertaking, including the prohibition to commence new reinsurance business under the right of establishment or the freedom to provide services.

5. If the reinsurance undertaking which committed the breach carries on business via a branch or possesses properties in the territory of the Italian Republic, the administrative sanctions applicable according to the provisions of the Italian law shall be adopted against the branch or through confiscation of the assets in Italy.

6. Any measure involving sanctions or restrictions on the conduct of business under the right of establishment or the freedom to provide services shall be communicated to the undertaking concerned. In the communications with ISVAP the reinsurance undertaking shall use the Italian language.

7. ISVAP shall order that the measures taken be published in daily newspapers or otherwise disclosed as established in the order at the expense of the reinsurance undertaking and for the period of time deemed necessary. ISVAP shall inform the supervisory authority of the home member State of the measures adopted²⁷⁶.

Article 195-ter

(Third country reinsurance undertakings)

1. Branches of reinsurance undertakings with head office in third States shall be subject to the supervision of ISVAP for the business carried out in the territory of the Italian Republic²⁷⁷.

Art. 196

(Amendments to the articles of association)

1. ISVAP shall approve, in compliance with the procedure established by regulation²⁷⁸, the amendments to the articles of association of insurance and reinsurance undertakings if they are not in contrast with a sound and prudent management.

²⁷⁶ Article inserted by article 11 (3), legislative decree n. 56 of 29 February 2008.

²⁷⁷ Article inserted by article 11 (3), legislative decree n. 56 of 29 February 2008.

²⁷⁸ ISVAP Regulation n.14 of 18 February 2008, in particular Title II, Chapter I. ISVAP regulation n. 33 of 10 March 2010, in particular Part III, Title V, Chapter I.

2. Registration in the registrar of companies may not be effected if the approval referred to in paragraph 1 is not given.

Art. 197

(Supervision over the implementation of the scheme of operations)

1. For the first three financial years the insurance undertaking with head office in the territory of the Italian Republic shall submit to ISVAP a semi-annual report on the implementation of the scheme of operations.

2. Where the report shows serious imbalance in the undertaking's financial situation ISVAP may take the measures necessary to comply with the scheme of operations and restore a sound management.

3. The undertaking shall inform ISVAP of any changes made to the scheme of operations as well as of any changes in the persons charged with administration, management and control functions and the holders of qualifying holdings indicated in article 68 in the insurance undertaking²⁷⁹. Any changes in the scheme of operations shall be subject to ISVAP's approval according to a procedure established by way of regulation²⁸⁰.

4. The provisions of this article shall also apply mutatis mutandis to the branches, established in the territory of the Italian Republic, of insurance undertakings with head office in third States, to reinsurance undertakings with head office in the territory of the Italian Republic and to the branches of reinsurance undertakings of third States²⁸¹.

Chapter III

SUPERVISION OF THE EXTRAORDINARY OPERATIONS OF INSURANCE AND REINSURANCE UNDERTAKINGS

Article 198

(Transfer of the portfolio of Italian insurance undertakings)

1. The transfer of all or part of the portfolio of an insurance undertaking with head office in the territory of the Italian Republic shall be subject to ISVAP's prior authorisation, to be sought by the ceding company, based on a procedure established by way of regulation²⁸², by order to be published in ISVAP's Bulletin.

2. If the portfolio is transferred to an insurance undertaking with head office in the territory of the Italian Republic ISVAP shall check that the accepting undertaking is duly authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the solvency margin required. If the portfolio includes commitments and risks accepted outside the territory of the Italian Republic ISVAP shall also verify that the undertaking meets the conditions

²⁷⁹ Paragraph amended by article 4 (1, z) of legislative decree n. 21 of 27 January 2010.

²⁸⁰ ISVAP regulation n. 14 of 18 February 2008, in particular Title II, Chapter II. ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title V, Chapter II.

²⁸¹ Paragraph amended by article 11 (4), legislative decree n. 56 of 29 February 2008. ISVAP regulation n. 33 of 10 March 2010.

²⁸² ISVAP Regulation n. 14 of 18 February 2008, in particular Title III, Chapter I.

for the taking up of business under the right of establishment or the freedom to provide services in the member State of the ceding undertaking. If the transfer includes the portfolio of branches situated in other member States the favourable opinion of the relevant supervisors must be obtained. If the transfer includes contracts concluded in other member States under the freedom to provide services the favourable opinion of the supervisory authorities of the member States of the commitment and of the member States where the risk is situated must also be obtained²⁸³.

3. If the portfolio is transferred to an insurance undertaking with head office in another member State, including the case where the portfolio is transferred to a branch established in Italy of the same undertaking, it shall be for the supervisory authority of the member State of the accepting undertaking to certify to ISVAP that the latter is authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the solvency margin required. If the portfolio is transferred to a branch situated in another member State ISVAP shall check that the accepting undertaking abides by the provisions on the taking up of business by way of free provision of services for the business carried on in the territory of the Italian Republic further to the transfer²⁸⁴.

4. The absence of any response from the supervisory authorities referred to in paragraphs 2 and 3 within 90 days of receiving ISVAP's request shall be considered equivalent to a favourable opinion.

5. Portfolios may also be transferred to insurance undertakings having their head office in a third State, provided that:

- a) the accepting undertaking be authorised to pursue the activities being transferred under the right of establishment in the territory of the Italian Republic;
- b) the transfer be limited to the contracts concluded by the ceding undertaking under the right of establishment in the territory of the Italian Republic;
- c) the portfolio be assigned to the branch of the accepting undertaking set up in the territory of the Italian Republic;
- d) the branch possesses the required solvency margin, taking account of the transfer²⁸⁵.

That part of the portfolio made of contracts concluded, under the right of establishment or the free provision of services, in the third State where the head office of the accepting undertaking is situated may also be transferred to insurance undertakings having their head office in third States.

Portfolios may not be transferred to branches of insurance undertakings situated in third States.

6. If the portfolio is transferred to an insurance undertaking with head office in the territory of the Italian Republic or to an insurance undertaking with head office in another State, and assigned to a branch situated in the territory of the Italian Republic the provisions of article 2112 of the civil code shall also apply to the existing employment relationships.

²⁸³ Paragraph amended by article 12 (1), legislative decree n. 56 of 29 February 2008.

²⁸⁴ Paragraph amended by article 12 (1), legislative decree n. 56 of 29 February 2008.

²⁸⁵ Letter amended by article 12 (1), legislative decree n. 56 of 29 February 2008.

Art. 199

(Transfer of the portfolio of insurance undertakings from other member States)

1. An insurance undertaking from another member State carrying on business in the territory of the Italian Republic shall inform ISVAP, without delay, that it has submitted to its supervisory authority the application for authorisation to the transfer of the portfolio of contracts concluded in Italy either under the right of establishment or the free provision of services.

2. If the portfolio is transferred to an insurance undertaking with head office in the territory of the Italian Republic ISVAP shall give its consent to the home supervisory authority of the ceding undertaking once it has verified that the accepting undertaking is authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the solvency margin required. The same procedure shall also apply if the portfolio transferred from an insurance undertaking of another member State to an insurance undertaking with head office in the territory of the Italian Republic includes commitments accepted outside the Italian territory²⁸⁶.

3. If the portfolio is transferred to a branch in Italy of an insurance undertaking with head office in the territory of another member State ISVAP shall give its consent to the home supervisory authority of the ceding undertaking once it has verified that:

- a) the accepting undertaking meets the conditions for the pursuit of business by way of establishment in the territory of the Italian Republic;
- b) the supervisory authority of the home member State of the ceding undertaking has verified that, after taking the transfer into account, the accepting undertaking possesses the required solvency margin²⁸⁷.

4. If the portfolio is transferred to an insurance undertaking with head office in another member State or to a branch established in another member State ISVAP shall give its consent to the supervisory authority of the home member State of the ceding undertaking once it has verified that:

- a) the accepting undertaking meets the conditions for the pursuit of business by way of free provision of services in the territory of the Italian Republic;
- b) the supervisory authority of the home member State of the ceding undertaking has verified that, after taking the transfer into account, the accepting undertaking possesses the required solvency margin²⁸⁸.

5. If the portfolio is transferred to a branch in the territory of the Italian Republic of an insurance undertaking with head office in a third State ISVAP shall give its consent to the supervisory authority of the home member State of the ceding undertaking once it has verified that:

- a) the branch is authorised to carry on the activities subject to transfer;
- b) the authority of the ceding undertaking's home member State has verified that, after taking the transfer into account, the accepting undertaking possesses the required solvency margin²⁸⁹.

²⁸⁶ Paragraph amended by article 12 (2), legislative decree n. 56 of 29 February 2008.

²⁸⁷ Letter amended by article 12 (2), legislative decree n. 56 of 29 February 2008.

²⁸⁸ Letter amended by article 12 (2), legislative decree n. 56 of 29 February 2008.

Portfolios may not be transferred to branches, situated in third States, of accepting undertakings.

6. ISVAP shall publish in its Bulletin a notice on the opinions given and the measures taken by the supervisory authorities of the other member States pertaining to the authorised portfolio transfers.

Art. 200

(Transfer of the portfolio of insurance undertakings from third States)

1. The transfer of all or part of the portfolio of the branch in the territory of the Italian Republic of an insurance undertaking from a third State shall be subject to ISVAP's prior authorisation, to be sought by the ceding company, based on a procedure established by way of regulation²⁹⁰, by order to be published in ISVAP's Bulletin.

2. Portfolios may be transferred:

- a) to an undertaking with head office in the territory of the Italian Republic or in another member State, provided the ceded portfolio is not transferred to a branch situated in a third State;
- b) to an undertaking with head office in a third State provided the ceded portfolio is transferred to a branch of the same undertaking situated in the territory of the Italian Republic.

3. In the case referred to in paragraph 2 (a) the accepting undertaking shall meet the conditions envisaged by article 198 (2 and 3 respectively) if the portfolio is transferred to an undertaking with head office in the territory of the Italian Republic or in the territory of other member States.

4. In the case referred to in paragraph 2 (b) ISVAP shall verify that the branch of the accepting undertaking is authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the solvency margin required. If supervision over solvency with regard to business carried on by way of establishment in the territory of the Italian Republic is to the supervisory authority of another member State where the undertaking is also established such verification shall fall under the competence of that authority, which shall issue a document of it to ISVAP²⁹¹.

5. Article 198 (6) shall apply to the portfolio transfers referred to in this article, if the conditions therein envisaged are met.

Art. 201

(Merger and division of insurance undertakings)

1. ISVAP shall, in accordance with the procedure established by way of regulation²⁹², authorise the mergers and divisions in which at least one insurance undertaking with head office in the territory of the Italian Republic is involved, if they are not in contrast with the criteria of sound

²⁸⁹ Letter amended by article 12 (2), legislative decree n. 56 of 29 February 2008.

²⁹⁰ ISVAP Regulation n. 14 of 18 February 2008, in particular Title III, Chapter I.

²⁹¹ Paragraph amended by article 12 (3), legislative decree n. 56 of 29 February 2008.

²⁹² ISVAP Regulation n. 14 of 18 February 2008, in particular Title III, Chapter II.

and prudent management. The proposed merger or division and the resolution by the shareholders' meeting which has made amendments thereto may not be registered in the registrar of companies if they are not authorised by ISVAP.

2. In case of mergers by incorporation the merging insurance undertaking with head office in the territory of the Italian Republic shall show proof that it possesses the solvency margin required, taking account of the merger. If further to the merger a new insurance undertaking with head office in the territory of the Italian Republic is set up such undertaking must be authorised to the pursuit of insurance business and it shall show proof that it possesses the solvency margin required, taking account of the merger²⁹³.

3. The merger shall be authorised by ISVAP's order to be published in ISVAP's Bulletin. The orders granting or refusing the authorisation shall be accompanied by the precise and adequate grounds for doing so, and communicated to the undertakings concerned. If undertakings with head office in other member States are involved in the merger, the authorisation may only be given after their home supervisors have expressed their favourable opinion.

4. In case of mergers resulting in the incorporation of an insurance undertaking with head office in the territory of the Italian Republic into an undertaking with head office in another member State, or in the setting up of a new company with head office in another member State, ISVAP shall give its favourable opinion after it has verified that:

- a) the merging undertaking or the new insurance undertaking meets the conditions for the taking up of business either under the right of establishment or the freedom to provide services;
- b) the merging or the new insurance undertaking possess the solvency margin required, taking account of the merger²⁹⁴.

ISVAP's order shall be published in the Bulletin.

5. Article 198 (6) shall apply to the portfolio transfers resulting from mergers or divisions, if the conditions therein envisaged are met.

6. In so far as the provisions referred to in paragraphs 2, 3 and 4 are applicable they shall also apply to divisions.

Art. 202

(Portfolio transfer, merger and division of reinsurance undertakings)

1. The transfer of portfolio of a reinsurance undertaking with head office in the territory of the Italian Republic and the same operation effected by a branch of an undertaking with head office in a third State, shall be subject to ISVAP's prior authorisation to be published in ISVAP's Bulletin and sought by the ceding company, based on a procedure established by way of regulation²⁹⁵. ISVAP shall check that the accepting undertaking, if established in the territory of

²⁹³ Paragraph amended by article 12 (4), legislative decree n. 56 of 29 February 2008.

²⁹⁴ Letter amended by article 12 (4), legislative decree n. 56 of 29 February 2008.

²⁹⁵ ISVAP Regulation n. 14 of 18 February 2008, in particular article 3 (2). ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title VI.

the Italian Republic, fulfils the conditions for taking up business and anyhow possesses the solvency margin required²⁹⁶.

2. Mergers and split up operations of reinsurance undertakings in which at least one reinsurance undertaking with head office in the territory of the Italian Republic is involved shall be authorised according to the provisions under article 201 (1, 2, 3 and 4) and the corresponding rules on reinsurance undertakings shall apply. Article 198 (6) shall apply if the conditions therein envisaged are met.

Chapter IV

COOPERATION WITH THE SUPERVISORY AUTHORITIES OF THE OTHER MEMBER STATES AND INFORMATION TO THE EUROPEAN COMMISSION

Art. 203

(Authorisation to the pursuit of insurance business)

1. ISVAP shall first consult the competent supervisory authorities of the other member States on the issuing of authorisation for the pursuit of business requested by any insurance or reinsurance undertaking which is either²⁹⁷:

- a) controlled by an insurance or reinsurance undertaking authorised in another member State, or²⁹⁸;
- b) controlled by an undertaking which controls another insurance or reinsurance undertaking authorised in another member State, or²⁹⁹;
- c) controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another member State³⁰⁰.

2. Moreover ISVAP shall first consult the competent authorities of the other member States responsible for the supervision of credit institutions and investment firms on the issuing of authorisation to any insurance or reinsurance undertaking which is either³⁰¹:

- a) controlled by a bank or an investment firm authorised in the European Union, or
- b) controlled by an undertaking which controls a bank or an investment firm authorised in the European Union, or
- c) controlled by the same person, whether natural or legal, who controls a bank or investment firm authorised in the European Union.

3. ISVAP, and the other relevant competent authorities as per the relevant provisions of Community regulations on the supplementary supervision of undertakings belonging to a financial conglomerate, shall provide one another with any useful information for assessing the suitability of the shareholders and the reputation and experience of directors and senior managers involved in the management of another entity of the same group, also for the purposes of verifying the conditions for the taking-up and pursuit of business.

²⁹⁶ Paragraph amended by article 12 (5), legislative decree n. 56 of 29 February 2008.

²⁹⁷ As amended by article 13 (1, a), legislative decree n. 56 of 29 February 2008.

²⁹⁸ Letter amended by article 13 (1, b), legislative decree n. 56 of 29 February 2008.

²⁹⁹ Letter amended by article 13 (1, c), legislative decree n. 56 of 29 February 2008.

³⁰⁰ Letter amended by article 13 (1, d), legislative decree n. 56 of 29 February 2008.

³⁰¹ As amended by article 13 (1, e), legislative decree n. 56 of 29 February 2008.

Art. 204

(Authorisation regarding the acquisition of participations in insurance or reinsurance undertakings)³⁰²

1. In those cases in which the issuing of the authorisation referred to in article 68 is required ISVAP shall perform its activity in full consultation with the competent authorities of the other member States, if the acquisition of holdings or subscription for shares is made by a purchaser who is:

- a) a bank, an insurance undertaking, a reinsurance undertaking, an investment firm or a management company as per art. 1-bis, point 2 of directive 85/611/EEC authorised in another member State;
- b) a parent company, as defined in the relevant provisions of Community regulations on the supplementary supervision of undertakings belonging to a financial conglomerate, of the undertakings referred to in (a);
- c) a natural or legal person controlling one of the undertakings under (a)³⁰³.

1-bis. ISVAP shall timely exchange with the competent authorities all the information essential, or relevant to the assessment. In this regard it shall communicate upon request all the relevant information and, on its own initiative, all the essential information³⁰⁴.

2-bis. In the authorisation ISVAP shall mention any opinions or concerns expressed by the Authority competent for supervision over the potential purchaser³⁰⁵.

Art. 205

(Powers of investigation in collaboration with the authorities of other member States)

1. ISVAP may, directly or through persons appointed for that purpose, make on-site inspections on the premises of the branches of insurance or reinsurance undertakings carrying on business by way of establishment in another member State, aimed at verifying any useful element for the purposes of supervision over the undertaking. Before making the inspection ISVAP shall inform the home supervisory authority of the branch, which has the right to take part in such inspection, if it so requests³⁰⁶.

2. The supervisory authority of the home member State of an insurance or reinsurance undertaking carrying on business in the territory of the Italian Republic by way of establishment may, directly or through persons appointed for that purpose, make on-site inspections on the premises of the branch of such undertaking, aimed at verifying any useful element for the purposes of supervision over the undertaking. Before making the inspection the supervisory

³⁰² Heading already amended by article 13 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 4 (1, aa) of legislative decree n. 21 of 27 January 2010.

³⁰³ Paragraph amended by article 4 (1, bb) of legislative decree n. 21 of 27 January 2010.

³⁰⁴ Paragraph inserted by article 4 (1, cc) of legislative decree n. 21 of 27 January 2010.

³⁰⁵ Paragraph inserted by article 4 (1, cc) of legislative decree n. 21 of 27 January 2010.

³⁰⁶ Paragraph amended by article 13 (4, a), legislative decree n. 56 of 29 February 2008.

authority shall inform ISVAP, which has the right to take part in such inspection, if it so requests³⁰⁷.

Art. 206

(Assistance for the exercise of supplementary supervision)

1. ISVAP may ask the competent authorities of another member State to make inspections or agree upon other arrangements necessary for the exercise of supplementary supervision if it intends to acquire information on an insurance or reinsurance undertaking with head office in another member State which is a subsidiary or a related undertaking of the insurance or reinsurance undertaking subject to supplementary supervision, or information regarding an undertaking which is³⁰⁸:

- a) a subsidiary of the insurance or reinsurance undertaking subject to supplementary supervision with head office in the territory of the Italian Republic³⁰⁹;
- b) a parent undertaking of the insurance or reinsurance undertaking subject to supplementary supervision with head office in the territory of the Italian Republic³¹⁰;
- c) a subsidiary of the parent undertaking of the insurance or reinsurance undertaking subject to supplementary supervision with head office in the territory of the Italian Republic or an undertaking which is anyhow managed on a unified basis with the latter in compliance with article 96³¹¹.

2. The competent supervisory authority of another member State may ask ISVAP to make on-site inspections at undertakings with head office in the territory of the Italian Republic whose supplementary supervision is up to the authority which made the request. ISVAP may directly make the inspection or allow that the inspection be made by the authorities which requested it or by an auditing firm registered in the register established by the consolidated law on financial mediation or by a certified auditor. The authority which made the request may participate in the verification when it does not carry out the verification itself. The verification may concern the following undertakings:

- a) subsidiaries or related insurance or reinsurance undertakings of an insurance undertaking with head office in another member State³¹²;
- b) subsidiaries or parent undertakings of an insurance or reinsurance undertaking with head office in another member State³¹³;
- c) subsidiaries of a parent undertaking of the insurance or reinsurance undertaking with head office in another member State³¹⁴.

3. On-site inspections at undertakings other than insurance and reinsurance undertakings shall be limited to checking the exactness of data and information required for the exercise of supplementary supervision.

³⁰⁷ Paragraph amended by article 13 (4, b), legislative decree n. 56 of 29 February 2008.

³⁰⁸ As amended by article 13 (5, a), legislative decree n. 56 of 29 February 2008.

³⁰⁹ Letter amended by article 13 (5, b), legislative decree n. 56 of 29 February 2008.

³¹⁰ Letter amended by article 13 (5, c), legislative decree n. 56 of 29 February 2008.

³¹¹ Letter amended by article 13 (5, d), legislative decree n. 56 of 29 February 2008.

³¹² Letter amended by article 13 (5, e), legislative decree n. 56 of 29 February 2008.

³¹³ Letter amended by article 13 (5, f), legislative decree n. 56 of 29 February 2008.

³¹⁴ Letter amended by article 5 (13, g), legislative decree n. 56 of 29 February 2008.

4. ISVAP may agree with the competent authorities of third States terms and procedures for the on-site inspection of branches of insurance and reinsurance undertakings situated within their territories.

Art. 207

(Exchanges of information for the exercise of supplementary supervision)

1. If a subsidiary or related undertaking of an insurance or reinsurance undertaking referred to in article 210 (1) has its head office in another member State ISVAP may ask the home supervisory authority for the information necessary in relation to the transfer of the solvency margin constituents³¹⁵.

2. ISVAP shall provide the supervisory authorities of the other member States with the information they need in order to verify that the solvency margin constituents of insurance or reinsurance undertakings subject to ISVAP supervision which are subsidiaries or related undertakings of insurance undertakings subject to supplementary supervision by these authorities may actually become available as elements eligible for the adjusted solvency margin of the latter undertakings³¹⁶.

Art. 208

(Relationships with the European Commission as regards undertakings from third States)

1. ISVAP shall inform the European Commission:

a) of any authorisation to the pursuit of insurance or reinsurance business granted to a newly set-up insurance or reinsurance undertaking directly or indirectly controlled by insurance or reinsurance undertakings with head office in a third State³¹⁷;

b) of any authorisation to the acquisition, by insurance or reinsurance undertakings with head office in a third State, of controlling interests in insurance or reinsurance undertakings with head office in the territory of the Italian Republic³¹⁸.

If the authorisation has been granted to an insurance or reinsurance undertaking which is in the situation referred to in (a) the structure of the control relationships shall be specifically indicated in the communication sent to the European Commission by ISVAP³¹⁹.

2. ISVAP shall inform the European Commission of any difficulties for undertakings with head office in the territory of the Italian Republic in taking up and carrying on business by way of establishment in a third State.

3. Upon a decision by the European Commission ISVAP shall suspend the procedures for issuing authorisations to undertakings which are in the conditions referred to in paragraph 1, for a period of no more than three months. The authorisations shall be denied if by this deadline the decision of the Commission has been extended by the Council of the European Union.

³¹⁵ Paragraph amended by article 13 (6, a), legislative decree n. 56 of 29 February 2008.

³¹⁶ Paragraph amended by article 13 (6, b), legislative decree n. 56 of 29 February 2008.

³¹⁷ Letter replaced by article 7 (13, a), legislative decree n. 56 of 29 February 2008.

³¹⁸ Letter amended by article 13 (7, b), legislative decree n. 56 of 29 February 2008.

³¹⁹ Sentence amended by article 13 (7, c), legislative decree n. 56 of 29 February 2008.

4. The provision under paragraph 3 shall not apply in case insurance or reinsurance undertakings from third States or their subsidiaries authorised by a State of the European Union set up an insurance or reinsurance undertaking and in case they acquire participations in insurance or reinsurance undertakings authorised according to the law of a member State³²⁰.

Art. 209

(Information to the European Commission about compulsory insurances)

1. ISVAP shall inform the European Commission of the insurances which the Italian law has established to be compulsory and shall indicate the laws and implementing provisions in force for each of them while specifying the information to be included in the document that the insurance undertaking shall deliver to the policyholder as a certification that that requirement has been complied with.

TITLE XV SUPPLEMENTARY SUPERVISION OF INSURANCE UNDERTAKINGS

CHAPTER I GENERAL PROVISIONS

Art. 210

(Scope)

1. The provisions referred to in article 217 shall apply to the supplementary supervision of insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are the parent or participating undertakings of at least one insurance or reinsurance undertaking, an insurance or reinsurance undertaking with head office in a third State.

2. The provisions referred to in article 218 shall apply to the supplementary supervision of insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are subsidiaries of an insurance holding company, a mixed financial holding undertaking or an insurance or reinsurance undertaking with head office in a third State³²¹.

3. The provisions referred to in article 218 shall apply to the supplementary supervision of branches set up in the territory of the Italian Republic by insurance or reinsurance undertakings with head office in a third State, unless – for insurance undertakings – they are already subject to the overall solvency supervision exercised by the supervisory authority of another member State³²².

Article 210-bis

(Provisions applicable to mixed financial holding companies)

³²⁰ Paragraph amended by article 13 (7, d), legislative decree n. 56 of 29 February 2008.

³²¹ Paragraph amended by article 3 (11), legislative decree n. 53 of 04 March 2014.

³²² Article replaced by article 14 (1), legislative decree n. 56 of 29 February 2008.

1. IVASS may identify, by general or ad hoc measures, the cases in which one or more provisions adopted under this Title do not apply if the parent company referred to under article 210 (2) is a mixed financial holding company³²³.

Art. 211

(Area of supplementary supervision)

1. The following undertakings shall be included in the area of supplementary supervision over insurance or reinsurance undertakings³²⁴:

a) subsidiaries or related undertakings of the insurance or reinsurance undertaking referred to in article 210³²⁵;

b) parent or participating undertakings of the insurance or reinsurance undertaking referred to in article 210³²⁶;

c) subsidiaries or related undertakings of a parent or participating undertaking of the insurance or reinsurance undertaking referred to in article 210 or the undertakings which are anyhow managed on a unified basis with the latter in compliance with article 96³²⁷.

2. For the purposes of this title a parent undertaking shall be the undertaking exercising control in compliance with article 72 (1 and 2 a and b), and a participating undertaking shall be the company which directly or indirectly holds, in the capital of another company, rights which realise a durable link with the related undertaking or which allow the exercise of a significant influence pursuant to special contractual links. Moreover a participating undertaking shall be an undertaking linked to another undertaking when they are managed on a unified basis or when the administration, management and control bodies are mainly made up of the same persons. At any rate the holding of at least twenty per cent of an undertaking's capital or voting rights shall be considered as a participation. In order to identify the control and participation relationships regarding the undertakings referred to in article 210 (3) reference shall be made to the balance sheet of the branch drawn up in accordance with the provisions of title VIII.

3. ISVAP may, in exceptional cases, decide not to include in the area of supplementary supervision the undertakings referred to in paragraph 1 having their head office in a third State where there are legal impediments to the transfer of the necessary information, with the effects envisaged by the order referred to in article 219.

4. ISVAP may, based on a prudent estimate, decide not to include in the area of supplementary supervision an undertaking referred to in paragraph 1 if such undertaking is of negligible interest with respect to the objectives of supplementary supervision, or if the inclusion of the financial situation of this undertaking would be inappropriate or misleading with respect to the objectives of supplementary supervision.

Chapter II

INTERNAL CONTROL MECHANISMS AND SUPERVISORY POWERS

³²³ Article inserted by article 3 (12), legislative decree n. 53 of 04 March 2014.

³²⁴ As amended by article 14 (2, a), legislative decree n. 56 of 29 February 2008.

³²⁵ Letter amended by article 14 (2, b), legislative decree n. 56 of 29 February 2008.

³²⁶ Letter amended by article 14 (2, c), legislative decree n. 56 of 29 February 2008.

³²⁷ Letter amended by article 14 (2, d), legislative decree n. 56 of 29 February 2008.

Art. 212
(Internal control mechanisms)

1. The undertakings referred to in article 210 shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of supplementary supervision over the insurance or reinsurance undertaking.
2. The undertakings referred to in article 211 (1) shall be required to provide the ultimate parent undertaking with the information required by it for the purposes of supplementary supervision of the insurance or reinsurance undertaking or of the insurance group³²⁸.

Art. 213
(Off-site supervision)

1. The undertakings referred to in article 210 shall transmit ISVAP, according to the terms and procedures established by ISVAP's own regulation³²⁹, the data and information required for the exercise of supplementary supervision of the insurance or reinsurance undertaking or of the insurance group.
2. If the insurance or reinsurance undertakings referred to in article 210 do not furnish ISVAP with the data and information required, ISVAP may directly refer to the undertakings included in the area of supplementary supervision in order to acquire such data and information according to the terms and procedures established in paragraph 1, without prejudice to the cooperation between authorities envisaged by article 10³³⁰.

Art. 214
(On-site inspections)

1. For the purposes of verifying the data and information on the supplementary supervision of the insurance or reinsurance undertaking referred to in article 210 ISVAP may carry out, itself or through the intermediary of persons whom it appoints for that purpose, on-site inspections at the following undertakings with head office in the territory of the Italian Republic:
 - a) subsidiaries of the Italian insurance or reinsurance undertaking;
 - b) parent undertakings of the Italian insurance or reinsurance undertaking;
 - c) subsidiaries of a parent undertaking of the Italian insurance or reinsurance undertaking or the undertakings which are anyhow managed on a unified basis with the latter in compliance with article 96.
2. For the purposes of verifying the data and information on the supplementary supervision of the insurance or reinsurance undertaking referred to in article 210 article 206 shall apply to the undertakings referred to in paragraph 1 (a, b and c) or of the insurance or reinsurance

³²⁸ Article amended by article 15 (1, a and b), legislative decree n. 56 of 29 February 2008.

³²⁹ ISVAP regulation n. 25 of 27 May 2008, in particular Chapter IV, Section II.

³³⁰ Article amended by article 15 (2, a and b), legislative decree n. 56 of 29 February 2008.

subsidiaries or related undertakings of the insurance undertaking referred to in article 210, having their head office in another member State.

3. On-site inspections at undertakings other than insurance and reinsurance undertakings shall be limited to checking the exactness of the data and information required for the exercise of supplementary supervision of the insurance or reinsurance undertaking referred to in article 210³³¹.

Chapter III **SUPERVISION OVER INTRA-GROUP TRANSACTIONS**

Art. 215 (Significant intra-group transactions)

1. Insurance and reinsurance undertakings with head office in the territory of the Italian Republic, branches set up in the territory of the Italian Republic by insurance or reinsurance undertakings with head office in a third State shall be subject to ISVAP's supervision over intra-group transactions effected between such entities and the undertakings referred to in article 211 (1), or which exist with a natural person who holds a controlling interest or a participation in the insurance or reinsurance undertaking or in an undertaking included in the area of supplementary supervision.

2. In particular intra-group transactions subject to supervision shall concern:

- a) loans;
- b) guarantees, commitments and the other off balance-sheet items;
- c) elements eligible for the solvency margin;
- d) investments;
- e) reinsurance and retrocession operations;
- f) agreements to share costs.

3. Insurance and reinsurance undertakings shall have in place adequate risk management processes and internal control mechanisms, including suitable reporting and accounting procedures, in order to identify, measure, monitor and control operations as provided for in paragraphs 1 and 2. ISVAP shall verify the suitability of procedures and establish, by way of regulation³³², the relevant general provisions.

4. ISVAP shall exercise supervision over the operations referred to in paragraphs 1 and 2 in order to check that such operations do not have a negative impact on an insurance or reinsurance undertaking's solvency or can undermine the interests of policyholders and of those entitled to insurance benefits or to the interests of ceding insurance undertakings³³³.

³³¹ Article amended by article 15 (3), legislative decree n. 56 of 29 February 2008.

³³² ISVAP regulation n. 25 of 27 May 2008.

³³³ Article amended by article 16 (1), legislative decree n. 56 of 29 February 2008.

Art. 216

(Information about significant operations)

1. With regard to the type and economic significance of operations ISVAP shall by its own regulation³³⁴, and in compliance with article 215 (4), establish the operations which shall be subject to subsequent reporting at regular intervals, at least every year, and those which shall be subject to prior notification, and also set the terms and procedures relating to these communications.
2. If an operation subject to prior notification may have the negative impact referred to in article 215 (4) or may undermine the interests of policyholders and of those entitled to insurance benefits or the interests of ceding insurance undertakings ISVAP shall, by reasoned order, prevent the undertaking from effecting the operation within twenty days of receiving the notification³³⁵.
3. If the documents furnished in relation to the prior notification are incomplete or insufficient ISVAP shall request the necessary integrative elements. In that case the deadline shall be interrupted and the period shall begin again from the date on which the further documentation is received. Instead the deadline shall be suspended if ISVAP makes comments or asks for further information in relation to the operation, and it shall continue from the date on which the documentation furnished is submitted.
4. Should ISVAP find that the operations subject to subsequent reporting at regular intervals, or those for which there has been no prior notification have or may have negative consequences for the insurance or reinsurance undertaking's solvency, or may undermine the interests of policyholders and of those entitled to insurance benefits, it shall require the insurance or reinsurance undertaking to take the measures necessary to eliminate such negative or detrimental consequences and, to that end, set an appropriate deadline³³⁶.

Chapter IV

VERIFICATION OF THE ADJUSTED SOLVENCY

Art. 217

(Adjusted solvency of insurance undertakings)

1. The insurance or reinsurance undertakings referred to in article 210 (1) shall calculate their adjusted solvency in compliance with the provisions established by ISVAP's regulation³³⁷.
2. For the purposes of calculating the adjusted solvency, and without prejudice to the elimination of the intra-group creation of capital, account shall not be taken of the subsidiaries referred to in article 2359, paragraph 1 (3) of the civil code.

³³⁴ ISVAP regulation n. 25 of 27 May 2008.

³³⁵ Paragraph amended by article 16 (2, a), legislative decree n. 56 of 29 February 2008.

³³⁶ Paragraph replaced by article 16 (2, b), legislative decree n. 56 of 29 February 2008.

³³⁷ ISVAP regulation n. 18 of 12 March 2008. ISVAP regulation n. 33 of 10 March 2010, with respect to reinsurance undertakings. Paragraph amended by article 17 (1, a), legislative decree n. 56 of 29 February 2008.

3. The insurance or reinsurance undertakings referred to in article 210 (1) shall send ISVAP, along with their financial statement, a statement relating to the adjusted solvency situation on the date of the close of the financial year to which the financial statement refers in compliance with the model referred to in article 219 (1 b)³³⁸.

Art. 218
(Parent undertaking solvency test)

1. The insurance or reinsurance undertakings referred to in article 210 (2) shall conduct a parent undertaking solvency test in compliance with the provisions established by ISVAP's regulation³³⁹.

2. If an insurance holding undertaking, a mixed financial holding undertaking or an insurance or reinsurance undertaking with head office in a third State is the subsidiary of one or more insurance holding undertakings, a mixed financial holding undertakings or insurance or reinsurance undertakings with head office in a third State, the parent undertaking solvency test may only be conducted at the level of the ultimate parent undertaking which is an insurance holding undertaking, a mixed financial holding undertaking or an insurance or reinsurance undertaking with head office in a third State³⁴⁰.

3. ISVAP may require that – in exceptional cases – the test referred to in paragraph 1 be conducted at all levels or at certain intermediate levels.

4. The test referred to in paragraph 1 shall include all subsidiaries or related undertakings of the insurance holding undertaking, mixed financial holding undertaking or insurance or reinsurance undertaking with head office in a third State³⁴¹.

5. The insurance or reinsurance undertakings referred to in article 210 (2) shall send ISVAP, along with their financial statement, a statement relating to the solvency situation of their parent undertaking in compliance with the model referred to in article 219 (1 d)³⁴².

Art. 219
(Adjusted solvency calculation)

1. ISVAP shall, by its own regulation, lay down³⁴³:

a) the methods used for the calculation of the adjusted solvency, the valuation criteria for assets and liabilities, the terms and procedures regarding reporting at regular intervals, the cases of exemption from the obligation to calculate the adjusted solvency of subsidiaries or related insurance or reinsurance undertakings;

³³⁸ Paragraph amended by article 17 (1, b), legislative decree n. 56 of 29 February 2008.

³³⁹ ISVAP regulation n. 18 of 12 March 2008. ISVAP regulation n. 33 of 10 March 2010, with respect to reinsurance undertakings. Paragraph amended by article 17 (2, a), legislative decree n. 56 of 29 February 2008.

³⁴⁰ Paragraph replaced by article 17 (2, b), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (13, a, b and c) of legislative decree n. 53 of 4 March 2014.

³⁴¹ Paragraph replaced by article 17 (2, c), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (13, d) of legislative decree n. 53 of 4 March 2014.

³⁴² Paragraph amended by article 17 (2, d), legislative decree n. 56 of 29 February 2008.

³⁴³ ISVAP regulation n. 18 of 12 March 2008.

- b) the model of the statement relating to the adjusted solvency situation, the application criteria of the adjusted solvency calculation, the elimination of double or multiple use of solvency margin constituents, the treatment, transfer and restrictions on the use of the solvency margin constituents and the elimination of the intra-group creation of capital;
- c) the treatment of intermediate insurance holding undertakings, intermediate mixed financial holding undertakings, insurance subsidiaries or related undertakings with head office in a third State and reinsurance subsidiaries or related undertakings with head office in a third State for the purposes of including them in the calculation of the adjusted solvency situation, while, for the same purposes, determining the consequences of the non-availability of the necessary information pertaining to subsidiaries or related undertakings with head office in another State³⁴⁴;
- d) the model of the statement relating to the solvency margin of the parent undertaking of an insurance or reinsurance undertaking, the criteria and procedures for testing the parent undertaking's solvency, the general principles, the calculation methods, the treatment of the parent undertaking in relation to the theoretical solvency margin and the cases of exemption from the obligation to test the parent undertaking's solvency;
- e) the technical procedures for the calculation of the adjusted solvency situation, while ensuring that the calculation methods remain substantially equivalent³⁴⁵.

Art. 220

(Agreements on the granting of exemptions)

1. ISVAP may waive calculation of the adjusted solvency of the insurance or reinsurance undertaking referred to in article 210 (1) if it is a subsidiary of another insurance undertaking or of a reinsurance undertaking or of an insurance holding undertaking with head office in another member State, if the competent authorities of the member States concerned have agreed with ISVAP to grant the exercise of supplementary supervision to the supervisory authority of the other member State.

2. ISVAP may waive testing the solvency of the parent undertaking of an insurance or reinsurance undertaking referred to in article 210 (2) if the latter undertaking and another insurance or reinsurance undertaking with head office in another member State are subsidiaries of the same insurance holding company, the same mixed financial holding undertaking or the same insurance or reinsurance undertaking with head office in a third State, if the competent authorities of the other member States concerned have agreed with ISVAP to grant exercise of the supplementary supervision to the supervisory authority of the other member State³⁴⁶.

TITLE XVI SAFEGUARDS, REORGANISATION AND WINDING UP MEASURES

Chapter I SAFEGUARDS

³⁴⁴ Letter amended by article 3 (14), legislative decree n. 53 of 04 March 2014.

³⁴⁵ Article amended by article 17 (3), legislative decree n. 56 of 29 February 2008.

³⁴⁶ Article amended by article 17 (4), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (15), legislative decree n. 53 of 4 March 2014.

Art. 221

(Breach of regulations on technical provisions or their representative assets)

1. Without prejudice to article 184 and when the insurance or reinsurance undertaking with head office in the territory of the Italian Republic does not comply with the provisions about technical provisions and their representative assets, ISVAP shall notify such breach and order that the undertaking comply with the violated regulations within a deadline which shall be appropriate for fulfilling the requirements but however not detrimental to the protection of the interests of insured persons and of those entitled to insurance benefits³⁴⁷.

2. In the cases referred to in paragraph 1 ISVAP may prohibit the free disposal of the undertaking's assets located within the territory of the Italian Republic and may subsequently allow, based on specific authorisations, restrictions on the disposal of such assets, while giving anyhow prior notification to the host supervisory authorities of the other member States. Furthermore ISVAP may ask the supervisory authorities of the other member States in which the undertaking owns assets to take the same measures and indicate the assets to be included in such measure.

3. If the undertaking does not abide by the order referred to in paragraph 1 within the deadline required, ISVAP may:

a) appoint a commissioner charged with the tasks referred to in article 229 for the elimination of the breaches;

b) prevent the undertaking from commencing new business, for a period up to six months, for the purpose of safeguarding the interests of insured persons as well as of those entitled to insurance benefits or the interests of ceding insurance undertakings, with the effects referred to in article 167³⁴⁸;

c) order, with regard to the seriousness of the breach, that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.

4. The prohibition to commence new business shall be communicated to the host supervisory authorities of the other member States and be published in the Bulletin. The measure shall be withdrawn before the deadline if the undertaking has eliminated or remedied the notified breach in full. The withdrawal shall be communicated to the supervisory authorities of the other member States and the relevant measure be published in the Bulletin.

Art. 222

(Breach of the regulations on the solvency margin or the guarantee fund)

1. In case the insurance or reinsurance undertaking with head office in the territory of the Italian Republic does not possess the necessary solvency margin, ISVAP shall require that a restoration plan be submitted, for its approval, within a deadline which shall be appropriate but

³⁴⁷ Paragraph amended by article 18 (1, a), legislative decree n. 56 of 29 February 2008.

³⁴⁸ Letter amended by article 18 (1, b), legislative decree n. 56 of 29 February 2008.

however not detrimental to the interests of insured persons and of those entitled to insurance benefits³⁴⁹.

2. If the solvency margin falls below the guarantee fund, or if the guarantee fund is no longer set up in compliance with the relevant laws or the implementing measures, ISVAP shall require that a short-term finance scheme indicating the measures which the undertaking proposes to take in order to restore its financial situation be submitted, for its approval, within an appropriate deadline.

3. In the cases referred to in paragraphs 1 and 2 ISVAP may prohibit the disposal of the undertaking's assets located within the territory of the Italian Republic and may allow, based on specific authorisations, restrictions on the free disposal of such assets, while giving anyhow prior notification to the host supervisory authorities of the other member States. Furthermore ISVAP may ask the supervisory authorities of the other member States in which the undertaking owns assets to take the same measures and indicate the assets to be included in such measure.

4. In the cases referred to in paragraph 2 ISVAP may also order that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.

5. If an undertaking is authorised to carry on simultaneously life and non-life insurance and does not have – in one of the two activities – the solvency margin available for the amount required for each activity, ISVAP may authorise the transfer of those explicit items exceeding the solvency margin from one activity to the other with a view to implementing the restoration plans or short-term finance schemes.

6. If the restoration plan or finance scheme concerns a cooperative company and envisage an increase in the company's capital the individual limit of capital subscription shall be increased by up to three times. In that case, to register in the registrar of companies the resolution by the shareholders' meeting on the increase in the corporate capital, the cooperative company shall be required to produce the measure taken by ISVAP.

Art. 223

(Intervention measures for the protection of an insurance undertaking's prospective solvency)

1. Except for the cases referred to in article 222, if the rights of insured persons and of those entitled to insurance benefits are threatened because the financial position of the insurance undertaking is deteriorating, or if the rights of ceding insurance undertakings are threatened because the financial position of the reinsurance undertaking is deteriorating, ISVAP shall require, in order to ensure that the undertaking is able to fulfil the solvency requirements in the near future, that a higher solvency margin than that of the last approved balance sheet be established after taking into account the financial recovery plan prepared by the undertaking and referred to the three subsequent financial years.

³⁴⁹ Paragraph amended by article 18 (2), legislative decree n. 56 of 29 February 2008.

2. ISVAP shall, by its own regulation³⁵⁰, lay down the implementing rules concerning, in particular, the data and information to be shown in the financial recovery plan, which must include, at any rate, a balance sheet and a profit and loss account for each of the financial years considered, the forecasts pertaining to premium income, to claims to be settled and written in the technical provisions and to the operating expenses, a forecast balance sheet, a description of the financial resources intended to cover the solvency margin and technical provisions and a description of the overall reinsurance or retrocession policy as well as the most significant forms of reinsurance cover.

3. Once assessed the situation of the insurance or reinsurance undertaking ISVAP may reduce the value of all the available solvency constituents, and this also where there has been a significant reduction in the market value of these constituents since the end of the last financial year.

4. In case of significant changes to the content or quality of reinsurance or retrocession contracts since the last financial year or in case reinsurance or retrocession contracts do not envisage any risk transfer or envisage a limited transfer ISVAP may decrease the reduction to the required solvency margin.

5. ISVAP shall not issue any solvency certificate for the insurance undertaking from which it has required a financial recovery plan as long as it thinks that the rights of insured persons and of those entitled to insurance benefits are in jeopardy.

5-bis. ISVAP shall not issue any solvency certificate for the reinsurance undertaking from which it has required a financial recovery plan as long as it thinks that the undertaking's obligations arising out of reinsurance contracts are in jeopardy³⁵¹.

Art. 224

(Procedure to freeze assets)

1. Where freeze regards real estate ISVAP shall require that a mortgage on the insurance and reinsurance undertaking's real estate and rights to make use of immovable property situated in the territory of the Italian Republic be recorded in the land register in favour of insurance or reinsurance claims.

2. ISVAP may order that any other asset other than those mentioned under paragraph 1 be frozen, as required by law for each type of property or rights. The authorities and the subjects responsible for implementing such measure shall be required to perform the acts and operations necessary to make the freeze imposed by ISVAP effective and enforceable against third parties.

3. The supervisory authorities of the other member States in which the insurance or reinsurance undertaking carries out business or owns assets shall be informed of the measures taken³⁵².

³⁵⁰ ISVAP Regulation n. 19 of 14 March 2008, in particular Title IV. ISVAP regulation n. 33 of 10 March 2010, with respect to reinsurance undertakings.

³⁵¹ Article amended by article 18 (3), legislative decree n. 56 of 29 February 2008.

³⁵² Article amended by article 18 (4), legislative decree n. 56 of 29 February 2008.

Art. 225

(Safeguards in case of partial withdrawal of authorisation)

1. In case of partial withdrawal of authorisation and for the purpose of safeguarding the interests of insured persons, of those entitled to insurance benefits, of ceding insurance undertakings and of employees, ISVAP may prohibit the disposal of properties by an insurance or reinsurance undertaking with head office in the territory of the Italian Republic in case such measure has not already been taken for breach of the rules on technical provisions, representative assets, the required solvency margin or the guarantee fund³⁵³.
2. ISVAP may also order that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.
3. The supervisory authorities of the other member States in which the undertaking carries out business or owns properties shall be informed of the measures taken in compliance with paragraphs 1 and 2. The same authorities may be requested to take the same measures and cooperate in the adoption of any measure necessary to safeguard the interests of insured persons and of those entitled to insurance benefits.

Art. 226

(Undertakings with head office in other member States and in third States)

1. ISVAP shall prohibit the disposal of assets located within the territory of the Italian Republic belonging to insurance and reinsurance undertakings with head office in other member States which carry on business in the territory of the Italian Republic under the right of establishment or the freedom of services at the request of the supervisory authorities of the respective home member States and upon indication of the assets which must be the object of such measure. At the request by the same authorities ISVAP shall also take the measures regarding the freeze of individual assets representing technical provisions according to the procedures referred to in article 224.
2. ISVAP shall apply the provisions of this chapter to insurance and reinsurance undertakings with head office in third States in case of breach committed by the branch established in the territory of the Italian Republic.
3. If the breach regards the provisions about the solvency margin and is committed by a non-EU insurance or reinsurance undertaking established not only in the territory of the Italian Republic, but also in other member States and supervised by ISVAP also as regards business carried out by the branches situated in the other member States, it shall be for ISVAP to take the measures referred to in article 222. The supervisory authorities of the other member States in which the undertaking carries out business or owns assets shall be informed of the measures taken. The same authorities may be requested to take the same measures and cooperate in the adoption of any measure necessary to safeguard the interests of insured persons and of those entitled to insurance benefits.
4. In the case referred to in paragraph 3, if the state of solvency of the entire business pursued by the branches of the non-EU insurance or reinsurance undertaking is subject to the exclusive

³⁵³ Paragraph amended by article 18 (5), legislative decree n. 56 of 29 February 2008.

supervision of the supervisory authority of another member State the latter authority may avail itself of ISVAP's cooperation for the adoption of the measures referred to in article 224 on the assets owned by the undertaking in the territory of the Italian Republic³⁵⁴.

Art. 227

(Measures in case of negative adjusted solvency situation)

1. When the calculation of the adjusted solvency situation referred to in article 217 shows a negative result ISVAP shall require that the insurance or reinsurance undertaking referred to in article 210 (1) submit, within a deadline which shall be appropriate but however not detrimental to the protection of the interests of insured persons and of those entitled to insurance benefits, an intervention plan illustrating the causes for the inadequacy and the initiatives which the undertaking is committed to take, within a given deadline, to restore the adjusted solvency and guarantee the future solvency³⁵⁵.
2. The undertaking shall take account of any restoration plans or short-term finance schemes submitted by insurance or reinsurance subsidiaries or related undertakings³⁵⁶.
3. ISVAP may indicate, for its approval, the supplementary or corrective measures necessary for the restoration of the adjusted solvency situation.
4. If ISVAP deems that the adjusted solvency situation is extremely negative it shall require that the undertaking referred to in article 210 (1) immediately takes measures aimed to eliminate or reduce the negative adjusted solvency situation.
5. The provisions under article 222 (3 and 4) shall apply in the cases referred to in paragraphs 1 and 4.
6. If there are serious breaches of the laws and administrative provisions on supplementary supervision or, if after the measure requested by ISVAP has been taken, the adjusted solvency situation of the undertaking referred to in paragraph 1 remains extremely negative, the restoration measures referred to in chapter II may be taken.

Art. 228

(Measures after the parent undertaking's solvency test)

1. If after the parent undertaking's solvency test referred to in article 218 ISVAP thinks that the solvency of the insurance or reinsurance undertaking referred to in article 210 (2) is, or may be, jeopardised, it shall request that the insurance or reinsurance undertaking or the insurance holding company or the parent mixed financial holding company submit an intervention programme adequate to ensure the undertaking's solvency also in the future³⁵⁷.

³⁵⁴ Article amended by article 18 (6), legislative decree n. 56 of 29 February 2008.

³⁵⁵ Paragraph amended by article 18 (7, a), legislative decree n. 56 of 29 February 2008.

³⁵⁶ Paragraph amended by article 18 (7, b), legislative decree n. 56 of 29 February 2008.

³⁵⁷ Paragraph amended by article 18 (8, a), legislative decree n. 56 of 29 February 2008, and finally by article 16 (3) of legislative decree n. 53 of 4 March 2014.

2. If the parent undertaking's solvency conditions are not restored or in case of failure to submit or failure to execute the programme referred to in paragraph 1 ISVAP may – without prejudice to the application of the provisions under title VII, chapter III:

- a) require that any operation referred to in article 215 as well as the operations between the subsidiaries of the insurance or reinsurance undertaking referred to in article 210 (2) and the undertakings referred to in article 211 (1, b and c), linked with that undertaking by control relationships, be subject to prior authorisation³⁵⁸;
- b) require that the profit which might be distributed to the parent undertaking be set aside in a specific reserve of the net assets.

Chapter II

REORGANISATION MEASURES

Art. 229

(Commissioner for the fulfilment of individual acts)

1. In the event of serious non-compliance with the provisions of the law or with the relevant implementing measures, ISVAP may arrange for the appointment of a commissioner to enable fulfilment of the individual acts required to ensure that management of the insurance or reinsurance undertaking is in accordance with the law³⁵⁹.
2. Such measure shall, in any event, be preceded by notification of the violations ascertained and may take place after the deadline set to put an end to the facts charged and remove the effects has expired with no avail.
3. Article 232 (1), article 233 (2, 3 and 4), article 236 (1) and article 237 (1, 2 and 3) shall apply mutatis mutandis.

Art. 230

(Provisional administrator)

1. Should the conditions for extraordinary administration under article 231 be met and in case of extreme emergency ISVAP may arrange for one or more commissioners to assume administrative powers in the insurance or reinsurance undertaking. In the meanwhile the administration and control functions shall be suspended. The commissioners are public officials while performing their duties³⁶⁰.
2. The provisional administration may not last more than two months. ISVAP may establish special protections and limitations in the management of the undertaking. Article 232 (1), article 233 (2, 3 and 4), article 234 (3, 4 and 8), article 235 (1 and 2), article 236 (1) and article 237 (1, 2 and 3) shall apply as far as they are compatible.

³⁵⁸ Letter amended by article 18 (8, b), legislative decree n. 56 of 29 February 2008.

³⁵⁹ Paragraph amended by article 19 (1), legislative decree n. 56 of 29 February 2008.

³⁶⁰ Paragraph amended by article 19 (2), legislative decree n. 56 of 29 February 2008.

3. If during the provisional administration the administrative and control bodies are dissolved in compliance with article 231 (1) the administrators shall assume the functions of the extraordinary commissioners until the extraordinary bodies are installed. In that case article 231 (4) shall apply.

4. At the end of the provisional administration the commissioners shall hand over the firm to the subsequent bodies in accordance with the terms set in paragraph 235 (1).

Art. 231
(Extraordinary administration)

1. The Minister of Production Activities, upon ISVAP's proposal, may establish by decree that the administrative and control bodies of the insurance or reinsurance undertaking be dissolved when³⁶¹:

- a) there are serious irregularities in administration or serious violations of rules of law, administrative provisions or articles of association regulating the insurance or reinsurance undertaking's activity³⁶²;
- b) serious financial loss is foreseen.

The dissolution may be requested to ISVAP on the basis of a reasoned application of the administrative bodies or of the insurance or reinsurance undertaking's extraordinary meeting, in compliance with the conditions referred to in letters a) and b) of this article³⁶³.

2. The proposal shall be preceded by ISVAP's notification of charges, in which the undertaking shall be given an appropriate deadline for submitting its justifications or remove said charges.

3. The functions of the shareholders' meetings and of the bodies other than those referred to in paragraph 1 shall be suspended by the extraordinary administration measure, without prejudice to the provisions of article 234 (7).

4. The decree of the Minister of Production Activities and ISVAP's proposal shall be communicated by the extraordinary commissioners to the parties concerned which so request, not before the installation referred to in article 235 (1).

5. Extraordinary administration shall last one year from the date when the decree referred to in paragraph 1 is issued, unless the decree envisages a shorter deadline or ISVAP authorises its earlier closure. The proceedings may be extended by the Minister of Production activities, upon ISVAP's proposal, for a period of no more than twelve months.

Art. 232
(Effectiveness of restoration measures in the Community territory)

³⁶¹ As amended by article 19 (3), legislative decree n. 56 of 29 February 2008.

³⁶² Letter amended by article 19 (3), legislative decree n. 56 of 29 February 2008.

³⁶³ Sentence amended by article 19 (3), legislative decree n. 56 of 29 February 2008.

1. The measures and the procedures regarding the provisional administration and extraordinary administration shall also be effective in relation to branches or any other presence of Italian insurance and reinsurance undertakings in the other member States' territory³⁶⁴.

2. ISVAP shall promptly inform the supervisory authorities of the other member States that it has adopted the measure of provisional administration or extraordinary administration, and mention its possible effects.

3. The restoration measures adopted in relation to insurance undertakings with head office in another member State shall be effective – further to the notification to ISVAP and without further formalities – in relation to the branches of undertakings operating in the territory of the Italian Republic also in relation to third parties, even if Italian regulations do not envisage these restoration measures or make their application conditional on pre-requisites other than those upon which they have been taken by the supervisory authority of the other member State.

Art. 233

(Bodies in the extraordinary administration proceedings)

1. ISVAP shall appoint one or more extraordinary commissioners for the administration of the insurance or reinsurance undertaking and a supervisory committee made up of from three to five members, with the chairman designated in the deed of appointment³⁶⁵.

2. ISVAP may revoke or replace commissioners and members of the supervisory committee in the interests of the best functioning of the proceedings and whenever there is loss of the requirements referred to in paragraph 4.

3. The emoluments payable to commissioners, chairman and members of the supervisory committee shall be established by ISVAP. The relevant costs shall be borne by the undertaking subject to the proceedings.

4. The bodies in the proceedings shall be subject to the provisions on professional and good repute requirements applicable to the persons charged, respectively, with the administration and control functions at the insurance or reinsurance undertaking.

Art. 234

(Powers and functioning of extraordinary bodies)

1. The extraordinary commissioners shall perform the functions and assume the powers for the administration of the undertaking. They shall examine the company's situation, eliminate the irregularities and manage the undertaking in the interest of insured persons and of those entitled to insurance benefits. The conventional provisions or the provisions about the articles of association of the civil code pertaining to the control powers of the holders of qualifying holdings shall not apply to the acts of the commissioners. In case of challenge of the commissioners' decisions shareholders may not request that the court suspend the execution of the

³⁶⁴ Paragraph amended by article 19 (4), legislative decree n. 56 of 29 February 2008.

³⁶⁵ Paragraph amended by article 19 (5), legislative decree n. 56 of 29 February 2008.

commissioners' decisions subject to ISVAP's authorisation or which anyhow implement ISVAP's measures. The commissioners are public officials while performing their duties.

2. The supervisory committee shall perform the control functions and issue opinions to commissioners in the cases envisaged by this chapter or set out by ISVAP by way of regulation.

3. The functions of the extraordinary bodies shall commence with the installation pursuant to article 235 (1 and 2) and terminate with the transfer of the tasks to the subsequent bodies, without prejudice to the steps referred to in article 236.

4. ISVAP, in general by way of regulation or in particular by way of specific instructions given to commissioners and members of the supervisory committee, may establish special protections and limitations in the management of the undertaking. Members of extraordinary bodies shall be personally liable for non-compliance with ISVAP's instructions. At any rate said instructions shall not be enforceable against third parties who did not know of them. The extraordinary commissioners shall first acquire the opinion of the supervisory committee and ISVAP's authorisation for the implementation of restoration plans involving transfers of portfolios, of an enterprise or of lines business or of participations in other companies.

5. It shall be for the extraordinary commissioners, after hearing the opinion of the supervisory committee and subject to ISVAP's prior authorisation, to start actions of liability against members of the dissolved administrative and control bodies as well as against the general manager, the auditing firm and the auditing actuary. The bodies which have replaced the extraordinary administration shall continue the actions of liability and regularly inform ISVAP thereof.

6. After hearing the opinion of the supervisory committee and subject to ISVAP's prior authorisation commissioners may, in the interest of the proceedings, replace the auditing firm and the actuary appointed by the latter as well as the appointed actuary for life assurance and the appointed actuary for compulsory insurance against civil liability in respect of the use of motor vehicles and craft. The latter subjects shall receive only consideration for the remainder of their assignment and, at any rate, for no more than three months. The new assignment may last up to the end of the extraordinary administration.

7. Subject to ISVAP's prior authorisation commissioners may call the shareholders' meetings and the other bodies referred to in article 231 (3), with an agenda which may not be amended by the body which is called.

8. When there is more than one commissioner they shall decide by majority vote and their representative powers shall be validly exercised by two of them with joint signature. Delegating powers, also by categories of operations, to one or more commissioners shall be allowed.

9. The supervisory committee shall decide by majority vote, and in the event of a tie the deciding vote shall be cast by the chairman.

Art. 235
(Initial steps)

1. Extraordinary commissioners shall install themselves after the dissolved administrative bodies have handed over the company along with summary minutes. The commissioners shall acquire the accounts. At least one member of the supervisory committee shall attend such operations.
2. If it is not possible to transfer the tasks for failure by the dissolved administrative bodies or for other reasons, the commissioners shall install themselves in a high-handed manner with the support of a notary public and, if necessary, the assistance from law enforcement authorities.
3. The provisional administrator referred to in article 230 shall assume the administration of the undertaking and perform the tasks to be transferred to the extraordinary commissioners in accordance with the arrangements referred to in paragraphs 1 and 2.
4. If the financial statements pertaining to the financial year ending before the beginning of extraordinary administration has not been approved the commissioners shall file with the office of the registrar of companies a report on the financial and economic situation drawn up on the basis of the available information, instead of the balance sheet. The report shall be accompanied by a report by the supervisory committee. Profit sharing shall anyhow be excluded.

Art. 236
(Final steps)

1. The extraordinary commissioners and the supervisory committee shall, at the end of their tasks, prepare separate reports on the activity they have carried out and send them to ISVAP
2. The close of the financial year under way at the beginning of the extraordinary administration shall be protracted, to all effects of law, until termination of the proceedings. The commissioners shall draw up a draft balance sheet, to be submitted to ISVAP for its approval, within four months of closure of the extraordinary administration and then published according to the law.
3. Before termination of their tasks commissioners shall arrange that the corporate bodies be re-established. The commissioners shall hand the company over to the bodies performing administrative functions in accordance with the terms set out in paragraph 235 (1).

Art. 237
(Publicity measures)

1. The ministerial decree making the commencement and the closure of extraordinary administration shall be published in the Gazzetta Ufficiale and then in ISVAP's Bulletin. The measures regarding appointment, withdrawal or replacement of the bodies of the proceedings shall be published by ISVAP in its Bulletin.
2. A partial text of the extraordinary administration measures shall also be published by ISVAP in the Official Journal of the European Union.

3. Within fifteen days of the notification of their appointment the extraordinary commissioners shall file the deed of appointment for registration in the registrar of companies.

4. Should ISVAP be informed by another member State that a restoration measure has been adopted vis-à-vis an undertaking which has a branch on the territory of the Italian Republic, it may publish the decision in accordance with the procedures it deems appropriate. The authority which issued the measure, the authority to which it is possible to appeal should the measure be challenged, the applicable law and the name of the extraordinary administrator, if any, shall be specified in the publication.

Art. 238

(Exclusivity of restoration proceedings)

1. Title III of the bankruptcy law shall not apply to insurance or reinsurance undertakings.

2. Article 2409 of the civil code shall not apply to insurance or reinsurance undertakings. In case there are reasonable grounds for suspecting that the persons charged with the administration functions have, in violation of their duties, committed serious irregularities in the management which might be detrimental for the undertaking or for one or more subsidiaries, the body having control functions or the shareholders who, according to the civil code, can appeal to court may bring their complaint to ISVAP. ISVAP shall make a decision by reasoned order and in compliance with the principles of fair proceedings.

Art. 239

(Insurance undertakings from third States and foreign reinsurance undertakings)

1. If an insurance undertaking with head office in a third State has set up a branch in the territory of the Italian Republic the restoration measures shall be taken in relation to the Italian office.

2. In relation to the branch the extraordinary commissioners shall perform the functions and assume the powers of administration pertaining to the administrative bodies of the parent undertaking. Likewise the supervisory committee shall perform the control functions.

3. In case the insurance undertaking has set up branches in other member States ISVAP shall coordinate its functions with those of said member States' authorities. Commissioners shall collaborate with the bodies appointed in other States where there are branches subject to similar proceedings.

4. If a reinsurance undertaking with head office in a member State or in a third State has set up a branch in the territory of the Italian Republic the restoration measures shall be taken in relation to the Italian establishment. Paragraph 2 shall apply.

5. The provisions of this chapter shall apply, *mutatis mutandis*.

Chapter III
LAPSE AND WITHDRAWAL OF AUTHORISATION

Art. 240

(Lapse of the authorization issued to an insurance undertaking)

1. The authorization of an insurance undertaking shall lapse when such undertaking:

- a) does not start business within twelve months;
- b) expressly renounces it;
- c) does not carry on business for more than six months;
- d) transfers the whole portfolio to another insurance undertaking;
- e) a reason for the dissolution of the company arises.

If the undertaking has not started business within twelve months or has not carried on business for more than six months, if there are justified reasons and at the request of the undertaking concerned, ISVAP may grant an extension of not more than six months.

2. If the insurance undertaking has not started business, has renounced authorisation or has ceased to carry on business in only some of the insurance classes for which it has been authorised, the authorisation shall lapse exclusively for these classes.

3. By order published in the Bulletin, ISVAP shall ascertain that the authorization has lapsed and, when it concerns all the insurance classes pursued, it shall order that the undertaking be deleted from the register of insurance and reinsurance undertakings. ISVAP shall notify the supervisory authorities of the other member States accordingly.

4. The insurance undertaking shall limit its business to the management of current contracts and shall not commence any new operation starting from the date of publication of the lapse of authorisation. The same provision shall apply in case the lapse of authorisation is limited to one or more insurance classes.

5. Tacit renewal clauses shall lapse after publication of the lapse of authorisation. In case of contracts whose duration is more than one year the policyholder may withdraw from the contract, provided a written notification is made to the undertaking, with effect from the expiry date of the first annual premium following the publication of the lapse of authorisation.

6. If the lapse of authorisation results from the cases referred to in paragraph 1 b), c) and e), ISVAP, when the conditions envisaged in article 245 are met, shall not adopt a measure providing for the lapse of authorisation but shall propose the Minister of Production Activities the withdrawal of authorization and the administrative compulsory winding up of the insurance undertaking.

7. The provisions of this article shall also apply to insurance undertakings with head office in a third State which have been authorised to pursue business in the territory of the Italian Republic through a branch. If the supervisory authority of the third State has adopted a measure providing for the lapse of an insurance undertaking's authorisation, the same measure shall be adopted against its branch.

Art. 241

(Ordinary winding up of an insurance undertaking)

1. The insurance undertaking shall immediately notify ISVAP of any reasons for dissolving the company. After verifying that the conditions for ordinary winding up in the cases referred to in article 240 (1) are met, ISVAP shall approve, with the measure providing for the lapse of authorization or with a subsequent measure, the appointment of the liquidators before registering the acts deciding or declaring the dissolution of the company in the registrar of companies. The acts deciding or declaring the dissolution of the company may not be registered in the registrar of companies if ISVAP has not verified the conditions under this paragraph.

2. Liquidators shall meet the professional and good repute requirements established with regulation adopted by the Minister of Production Activities, in accordance with article 76. In case of loss of the above requirements, liquidators shall fall from office. If the general meeting fails to replace them within thirty days of the date when it has become aware of the loss of requirements, ISVAP shall propose to the Minister of Production Activities the adoption of the measure of administrative compulsory winding up.

3. Winding up shall be effected pursuant to the rules established by the civil code, without prejudice to the provisions on technical provisions and representative assets referred to in title III. Liquidators shall send ISVAP the annual accounts drawn up according to the provisions laid down under title VIII. The undertaking shall remain subject to ISVAP's supervision until it is deleted from the registrar of companies.

4. Without prejudice to the provisions of article 245, if the winding up proceedings is not carried out regularly and expeditiously ISVAP may, by order published in the Bulletin, provide that the liquidators, as well as the members of the control bodies, be replaced. The replacement of these bodies shall not entail any change in the winding up proceedings.

5. The provisions of this article shall also apply to insurance undertakings with head office in a third State which have been authorised to pursue business in the territory of the Italian Republic by way of establishment, notwithstanding that the measures adopted shall only be effective for the branch.

Art. 242

(Withdrawal of the authorization issued to an insurance undertaking)

1. Authorisation shall be withdrawn when the insurance undertaking:

- a) does not, when pursuing business, comply with the restrictions imposed by the authorization or envisaged in the scheme of operations;
- b) no longer fulfils the conditions for taking up insurance business;
- c) fails seriously to comply with the provisions of this code;
- d) has been unable, within the time allowed, to take the measures specified in the restoration plan or finance scheme or has been unable, within the time allowed, to take the measures specified in the intervention plan, if it is subject to supplementary supervision;

e) has been subject to compulsory winding up or has been declared insolvent by the judicial authority.

2. Without prejudice to the provisions of paragraph 1, authorization to the pursuit of insurance against civil liability in respect of the use of motor vehicles and craft shall be withdrawn also in case of repeated or systematic refusal to perform or circumvention of the obligation to insure referred to in article 132 (1), or in case of repeated or systematic violation of the provisions on claim settlement procedures envisaged in articles 148 and 149.

3. Authorisation may be withdrawn for all the insurance classes pursued by the insurance undertaking or only for some of them. The provisions under article 240 (4 and 5) shall apply.

4. Authorisation shall be withdrawn by decree of the Minister of Production Activities, upon ISVAP's proposal. If the authorisation is withdrawn for all the insurance classes pursued, the undertaking immediately goes into compulsory winding up with the same measure and ISVAP shall provide that the undertaking be deleted from the register of insurance undertakings. The Minister of Production Activities, upon ISVAP's proposal, may however allow the undertaking to go into ordinary winding up, within a mandatory time limit, when the withdrawal has been decided for the reasons indicated in paragraph 1, a) and b).

5. The Minister of Production Activities, upon ISVAP's proposal, shall also provide for compulsory winding up if the insurance undertaking, in case of withdrawal limited to some classes, does not comply with the provisions of article 240 (4 and 5), or when the resolution on the dissolution and the appointment of the liquidators are not registered in the registrar of companies within the deadline envisaged in paragraph 4.

6. The decrees of the Minister of Production Activities shall be published in the Italian Official Journal and in the Bulletin and shall be notified by ISVAP to the supervisory authorities of the other member States.

Art. 243

(Withdrawal of the authorization issued to an insurance undertaking from a third State)

1. The authorisation issued to an insurance undertaking with head office in a third State for the business pursued by its branch in the territory of the Italian Republic, shall be withdrawn, in accordance with the provisions of article 264 (1), in the cases, under the terms and with the effects envisaged in article 242.

2. Authorisation shall also be withdrawn when the supervisory authority of a third State has adopted a measure withdrawing the undertaking's authorization to the pursuit of life or non-life business or when the authorities of the member State supervising over the undertaking's solvency for the whole business pursued in the territory of the European Union have adopted the same measure on the grounds of the inadequacy in the solvency margin and in the guarantee fund. In the cases envisaged under this paragraph authorisation shall be withdrawn for all the insurance classes pursued.

3. Authorisation shall also be withdrawn when the supervisory authorities of the State where the undertaking has its head office have violated the principles of reciprocity and equality of

treatment vis-à-vis Italian insurance undertakings operating in their territories, or when these authorities have imposed restrictions on the free disposal of assets owned in Italy by the undertaking or have hindered the transfer of capitals required by the insurance undertaking for the normal conduct of business in the territory of the Italian Republic.

4. ISVAP may however allow the undertaking, within a mandatory time limit, to ordinarily wind up its branch in the territory of the Italian Republic when the authorisation has been withdrawn for the reasons indicated in the above paragraph. The Minister of Production Activities, upon ISVAP's proposal, shall also provide for compulsory winding up of the branch when the appointment of the liquidators is not registered in the registrar of companies within the deadline set.

Art. 244

(Lapse and withdrawal of the authorization issued to a reinsurance undertaking)

1. The authorisation issued to the reinsurance undertaking shall lapse in the cases envisaged in article 240 (1). The provisions of articles 240 (2, 3, 4, 5 and 6), and 241 (1, 2, 3 and 4) shall apply, and the references shall be interpreted as referred to the corresponding regulation on reinsurance undertakings.

2. The authorisation issued to the reinsurance undertaking shall be withdrawn in the cases envisaged in article 242 (1). The provisions of article 242 (3, 4, 5 and 6) shall apply, and the references shall be interpreted as referred to the corresponding regulation on reinsurance undertakings.

3. The provisions of this article shall also apply to reinsurance undertakings with head office in a third State which have been authorised to pursue business in the territory of the Italian Republic by way of establishment, notwithstanding that the measures adopted shall only be effective for the branch. If the supervisory authority of the reinsurance undertaking has provided for the authorisation to reinsurance business to lapse or be withdrawn, the same measure shall be adopted against its branch³⁶⁶.

Chapter IV

ADMINISTRATIVE COMPULSORY WINDING UP

Art. 245

(Administrative compulsory winding up)

1. By its own decree the Minister of Production Activities, upon ISVAP's proposal, may also provide for the withdrawal of authorization to pursue business in all the insurance classes and the administrative compulsory winding up of the undertaking, also when it is undergoing extraordinary administration or ordinary winding up, in cases of serious irregularities in administration or violations of rules of law, administrative provisions or articles of association or of exceptional expected losses.

³⁶⁶ Paragraph amended by article 20 (1), legislative decree n. 56 of 29 February 2008.

2. Compulsory winding up may be proposed by ISVAP, under the same proceedings indicated in paragraph 1, also at the reasoned request of the administrative bodies, the extraordinary meeting, the extraordinary commissioners or the liquidators, when the conditions under paragraph 1 are met.

3. The decree of the Minister of Production Activities and ISVAP's proposal shall be communicated by the liquidators to the parties concerned which so request, not before they have been installed.

4. The functions of the administrative and control bodies, as well as of any other body of the undertaking which is still in office shall cease as from the date of issue of the decree. The functions of the shareholders' meeting shall cease as well, except for the cases provided for in articles 262 (1) and 263 (2).

5. The winding up shall be effected under the supervision of ISVAP which, if the undertaking pursues business through branches established in other member States, shall avail itself of the cooperation of the supervisory authorities of these States. Administrative compulsory winding up proceedings and measures regarding Italian undertakings shall apply and be effective in the other member States.

6. In those cases where it is necessary or appropriate for the purpose of winding up, ISVAP may authorize liquidators to continue to perform specifically identified operations.

7. Insurance and reinsurance undertakings shall not be subject to collective proceedings other than compulsory winding up as provided for by the provisions of this chapter. In the cases not expressly provided for, the provisions of the bankruptcy law shall apply, *mutatis mutandis*³⁶⁷.

Art. 246

(Bodies in the proceedings)

1. ISVAP shall appoint one or more liquidators and a supervisory committee made up of from three to five members, with the chairman designated in the deed of appointment. The liquidators and the supervisory committee shall be appointed for a term of three years, which may be renewed indefinitely taking account of the results and the actions of the bodies in the proceedings.

2. ISVAP may revoke or replace liquidators and members of the supervisory committee.

3. The emoluments payable to the liquidators and members of the supervisory committee shall be established by ISVAP on the basis of the criteria it has set out. The relevant costs shall be borne by the undertaking subject to the proceedings.

4. The bodies in the proceedings shall be subject to the provisions on professional and good repute requirements applicable to the persons charged, respectively, with the administration and control functions at the insurance or reinsurance undertaking.

³⁶⁷ Paragraph amended by article 21 (1), legislative decree n. 56 of 29 February 2008.

Art. 247
(Publicity measures)

1. The measures on administrative compulsory winding up shall be published by ISVAP in the Italian Official Journal; a partial text shall also be published in the Official Journal of the European Union and in the Bulletin.
2. Should ISVAP be informed by the supervisory authority of the home member State of the winding up of an undertaking pursuing business in the territory of the Italian Republic either under the right of establishment or the free provision of services, it may publish the decision in accordance with the procedures it deems appropriate. The competent supervisory authority, the applicable law of the member State and the name of the liquidator shall be specified in the notice published. The notice shall be drawn up in Italian. Winding-up proceedings and measures regarding undertakings from other member States shall be governed by the legislation of their home State and shall be effective, without any further formalities, in the Italian legal system in accordance with that legislation.
3. Within fifteen days of the notification of their appointment the liquidators shall file a copy of the deed of appointment of the bodies in the proceedings for registration in the registrar of companies.

Art. 248
(Declaration of insolvency by the judicial authority)

1. If an undertaking not placed under compulsory winding up is insolvent, the court of the place where such undertaking has its head office, at the request of one or more creditors or at the request of the public prosecutor or on its own motion, issues a declaration of insolvency by a judgement delivered in chambers after hearing the opinion of ISVAP and of the undertaking's legal representatives. If an undertaking is placed under extraordinary administration, the court issues a declaration of insolvency also at the request of the extraordinary commissioners after hearing the opinion of said commissioners, of ISVAP and of the outgoing legal representatives. The provisions of article 195 (1, second sentence, 3, 4, 5 and 6) of the bankruptcy law shall apply.
2. If an undertaking is insolvent when the administrative compulsory winding up measure is adopted and it has not yet been declared insolvent pursuant to paragraph 1, the court of the place where such undertaking has its head office, at the request of the liquidators or at the request of the public prosecutor or on its own motion, shall ascertain its state of insolvency by a judgement delivered in chambers after hearing the opinion of ISVAP, of the undertaking's outgoing legal representatives and of the liquidators, if appointed. The provisions of article 195 (3, 4, 5 and 6) of the bankruptcy law shall apply.
3. An insurance or reinsurance undertaking is deemed to be in state of insolvency not only when it is in one of the situations referred to in article 5 (2) of the bankruptcy law, but also when it is in a situation of serious, evident and permanent insufficiency of the assets required to meet the commitments deriving from insurance or reinsurance claims.

4. The declaration of insolvency by the court shall have the effects described in article 203 of the bankruptcy law.

Art. 249

(Effects on the undertaking, creditors and existing legal relations)

1. No action and no enforcement or protective act may be promoted or brought, on any basis whatsoever, starting from the date of issue of the measure ordering the compulsory winding up of the undertaking. The court of the place where the undertaking has its head office shall have exclusive competence for any form of civil action resulting from the winding up.

2. The provisions of title II, chapter III, sections II and IV, and of article 66 of the bankruptcy law shall take effect starting from the date of the winding up measure.

Art. 250

(Powers and functioning of winding up bodies)

1. The liquidators shall have the legal representation of the undertaking, perform all the actions belonging to the latter and take steps for assessing liabilities and realising assets. The commissioners are public officials while performing their duties.

2. The supervisory committee shall assist the liquidators in the performance of their duties and issue opinions in the cases envisaged by the law or by the provisions set out in ISVAP's regulation³⁶⁸. The supervisory committee shall ensure the regularity of the winding up and, to this purpose, it shall periodically check the adequacy of the administrative proceedings implemented by the liquidators and carry out investigations on the acts relating to the winding up, with special regard to those concerning proprietary relations.

3. ISVAP, in general by way of regulation³⁶⁹ or in particular by way of specific instructions, may issue directives for the implementation of the proceedings and may establish that some categories of acts or operations be subject to the prior opinion of the supervisory committee and to the prior authorization of ISVAP. Members of winding up bodies shall be personally liable for non-compliance with ISVAP's provisions. At any rate said instructions shall not be enforceable against third parties who did not know of them.

4. Every six months the liquidators shall provide ISVAP with a technical report on the undertaking's accounting and financial situation and on the progress of the winding up, along with a report by the supervisory committee. ISVAP shall provide the authorities of the other member States with any information they may request on the developments of the winding up proceedings of an undertaking for which they are the competent authority. Liquidators shall keep creditors regularly informed, in the manners established by ISVAP's regulation³⁷⁰, regarding the progress of the winding up.

³⁶⁸ ISVAP regulation n. 8 of 13 November 2007, in particular Title II, Chapter II.

³⁶⁹ ISVAP regulation n. 8 of 13 November 2007.

³⁷⁰ ISVAP Regulation n. 8 of 13 November 2007, in particular Title III.

5. It shall be for the liquidators, after hearing the supervisory committee and subject to ISVAP's prior authorisation, to start actions of liability and of enforcement for corporate creditors against members of the outgoing administrative and control bodies as well as against the general manager, the auditing firm and the auditing actuary, and to start the enforcement for corporate creditors against the company or entity in charge of its direction and coordination.

6. Article 234 (8 and 9) shall apply to liquidators and the supervisory committee.

7. Subject to ISVAP's authorization and after obtaining the favourable opinion of the supervisory committee, liquidators may be supported by Consap in the performance of operations, subject to an agreement approved by the Minister of Production Activities, or by third parties but under their own responsibility, and the costs shall be charged to the winding up proceedings. In exceptional circumstances and subject to ISVAP's authorization liquidators may delegate the fulfilment of individual acts to third parties.

Art. 251
(Initial steps)

1. Liquidators shall install themselves after the dissolved administrative or winding up bodies have handed over the company along with summary minutes. The liquidators shall acquire the accounts and draw up the inventory. At least one member of the supervisory committee shall attend such operations; a representative from ISVAP may also be present.

2. Article 235 (2 and 4) shall apply.

Art. 252
(Assessment of liabilities)

1. Within sixty days of their appointment liquidators shall inform each creditor, by means of direct delivery, registered letter with advice of receipt or service by electronic techniques, of the amounts which, according to the undertaking's accounts and documents, should be credited to each of them. The communication shall be considered as delivered, subject to objections, if any.

2. The notification shall be effected to the last address as shown in the undertaking's records. The creditor concerned shall be under the obligation to immediately inform liquidators of any variation. The notification to creditors who cannot be found, or for whom there is no evidence of actual receipt at the last address shown in the undertaking's records, shall be effected at the registry of the court where the undertaking has its head office by putting it in the file regarding the statement of liabilities. In that case the notification may be drawn up in one single document.

3. The initial notification to creditors who have their normal place of residence, domicile or head office in a member State other than the Italian Republic, including member States' public authorities, shall be effected in compliance with article 253.

4. ISVAP may establish further forms of publicity for the purposes of making those who have not received the notification under paragraph 1 aware of the time limit for filing an application for lodgement of claims.

5. Within thirty days of receiving the registered letter creditors may submit or send their complaints to liquidators by registered letter with advice of receipt while enclosing the supporting documents. Creditors, including public authorities, who have their normal place of residence, domicile or head office in another member State, shall have the right to lodge their claims according to the same terms and procedures.

6. Within ninety days of publication of the winding up measure in the Official Journal, creditors who have not received the notification referred to in paragraphs 1 and 3 may apply to liquidators, by registered letter with advice of receipt, for recognition of their claims by submitting documentary evidence of the existence, type and scope of their rights. Creditors, including public authorities, who have their normal place of residence, domicile or head office in another member State, shall send liquidators copies of their supporting documents according to the same terms and procedures (unless they are automatically admitted), and shall indicate the nature of the claim, the date on which it arose and its amount. Furthermore creditors other than insured persons and other than those entitled to insurance benefits shall indicate whether they allege preference and what assets are covered by their collateral.

7. After the time limit envisaged under the previous paragraph has elapsed and within the subsequent ninety days liquidators shall provide ISVAP with the list of admitted creditors and of the amounts owed to each of them, indicating their respective rights and ranking, and the list of applicants whose recognition as an interested party has been refused. Creditors, whether natural or legal persons and including public authorities, who have their normal place of residence, domicile or head office in another member State, shall be treated in the same way and accorded the same ranking as the claims of Italian creditors.

8. Once they have informed ISVAP and according to the same terms referred to in paragraph 7 liquidators shall deposit the list of admitted creditors and of the amounts owed to them, and the list of applicants whose recognition as an interested party has been refused, with the registry of the court where the undertaking has its head office, thus making them available to those entitled.

9. Afterwards, according to the same procedures referred to in paragraph 1, liquidators shall immediately inform applicants whose recognition as an interested party had been refused in full or in part, of the decision taken in relation to them. Notice of the filing of the statement of liabilities shall be published in ISVAP's Bulletin.

10. Once the requirements referred to in paragraphs 7 and 8 have been met the statement of liabilities shall be enforceable.

Art. 253

(Initial information to known creditors from other member States)

1. When the winding up proceeding is opened liquidators shall without delay individually inform by registered letter with advice of receipt each known creditor who has its normal place of residence, domicile or head office in another member State.

2. The notice shall deal with the time limits for recognition of claims and preferences (if any), the consequences of failure to comply with said time limits, the subjects empowered to accept the lodgement of claims (if required), the terms and procedures for filing complaints referred to in article 252 (5) and the objections referred to in article 254 (1). The notice shall also indicate that creditors whose claims are preferential or secured in rem shall have to lodge their claims. In the case of insurance claims, the notice shall further indicate the effects of the winding up proceedings on insurance contracts, in particular the date on which insurance contracts will cease to produce effects and the rights and duties of insured persons with regard to the contract.

3. The communications referred to in paragraphs 1 and 2 shall be made in Italian and show a heading in all the official languages of the European Union aimed at clarifying their nature and object.

4. For the subjects mentioned under paragraph 1 the time limits mentioned in articles 252 (5) and 254 (1) shall be doubled. The time limit indicated in article 252 (6) shall begin from the date of publication in the Official Journal of the European Union referred to in article 247 (1).

5. ISVAP shall, by its own regulation³⁷¹, establish the contents, language and the standard form to be used for information to creditors.

Art. 254

(Opposition to the statement of liabilities and action to challenge admitted claims)

1. Within fifteen days of receiving the communication referred to in article 252(9) creditors excluded, or admitted subject to a decision, may file an opposition to the statement of liabilities.

2. The opposition shall be regulated by articles 98, 99 and 100 of the bankruptcy law.

Art. 255

(Appeal)

1. Appeal against the sentence of the court deciding cases of opposition may be brought, also by liquidators, within fifteen days from the date on which the sentence is notified; the provisions of the bankruptcy law and of the code of civil procedure shall apply.

Art. 256

(Delays in the lodgement of claims)

1. After filing the statement of liabilities and until all allocations are executed, creditors and those who have rights in rem over the undertaking's assets, who have not received the notification referred to in article 252 (1) and are not included in the statement of liabilities, may claim their rights in compliance with articles 98, 99 and 100 of the bankruptcy law.

³⁷¹ ISVAP Regulation n. 8 of 13 November 2007 — in particular article 24 — and IVASS Regulation n. 4 of 17 December 2013.

2. These subjects shall bear the costs deriving from the delay in lodging their application, unless the delay is not ascribable to them. Article 260 (5) shall apply.

Art. 257
(Realisation of assets)

1. Liquidators shall have all the powers necessary to realise assets, subject to the limitations established by the authority supervising over the winding up. As to the acts envisaged by article 35 of the bankruptcy law, and notwithstanding the provisions of article 206 (2) of said law, liquidators shall first acquire the opinion of the supervisory committee and then perform them in compliance with the directives established by ISVAP in general by way of regulation³⁷² or in particular by way of specific instructions.

2. Subject to ISVAP's authorisation and after obtaining the favourable opinion of the supervisory committee, liquidators may transfer assets and liabilities, business, lines of business as well as properties and legal relations en bloc. The transfer may take place at any stage of the proceeding, also before the filing of the statement of liabilities. The transferee shall at any rate be liable for the sole liabilities shown in the deed of transfer.

3. Liquidators shall transfer the portfolio, in full or by single insurance classes, and such transfer shall not constitute grounds for terminating the insurance contracts transferred, to another undertaking which has adequate financial resources available within sixty days of publication of the winding up measure, based on an agreement approved by ISVAP and published in the Bulletin. The risks shall be assumed by the accepting undertaking upon expiry of the sixty-day period.

4. Current insurance contracts may not be terminated by the accepting undertaking during the period for which premiums have been paid, and non-observance of that obligation shall render any termination void.

5. Also with a view to any execution of allocations to persons entitled liquidators may contract loans, effect other borrowing transactions and provide business assets as collateral according to the rules and protections laid down by the supervisory committee and subject to ISVAP's prior authorisation.

Art. 258
(Treatment of insurance or reinsurance claims)³⁷³

1. Assets representing technical provisions for life and non-life business which, on the date of the compulsory winding up measure, are recorded in the relevant book shall be used to reimburse as a matter of priority liabilities arising out of the contracts to which they refer.

2. Once the winding up measure has been published, or notified to the insurance or reinsurance undertaking if this happened before, the composition of the assets entered in the book and the

³⁷² ISVAP Regulation n. 8 of 13 November 2007, in particular Title II, Chapter I and IVASS Regulation n. 4 of 17 December 2013.

³⁷³ Heading replaced by article 21 (2), legislative decree n. 56 of 29 February 2008.

book itself may not be changed by liquidators and no alteration other than the correction of purely clerical errors may be made, except with the authorisation of ISVAP. By derogation from the previous sentence, the liquidators shall include in the book the yield on assets and the value of the premiums earned between the opening of the winding up and the payment of the insurance and reinsurance claims or, in case of portfolio transfer, until such transfer is effected. If the product of the realisation of assets is less than its estimated value shown in the book, the liquidators shall be required to justify this to ISVAP³⁷⁴.

3. As regards assets representing technical provisions for life business, the claims of the following creditors shall take precedence over those of other creditors in respect of claims arisen before the winding up proceedings (though they are preferential claims or claims backed by a mortgage):

- a) those entitled to capitals or payments for expired policies or policies under which a claim has arisen within sixty days after the date of publication of the winding up measure and those entitled to annuities payable within the same time limit;
- b) the holders of claims deriving from capital redemption operations;
- c) persons entitled to surrender;
- d) the holders of current contracts on the date referred to in a), in proportion to the amount of mathematical provisions;
- e) the holders of contracts which do not envisage the setting up of mathematical provisions, in proportion to that part of premium corresponding to the risk not run. If assets representing life technical provisions are not sufficient to pay said claims, those under a), b), c) and d) shall take precedence over those under e).

4. As regards assets representing technical provisions for non-life business, the claims of the following creditors shall take precedence over those of other creditors in respect of claims arisen before the winding up proceedings (though they are preferential claims or claims backed by a mortgage):

- a) those entitled to capitals or payments for claims arisen within sixty days after the date of publication of the winding up measure;
- b) the holders of current contracts on the date referred to in a), in proportion to that part of premium corresponding to the risk not run. If assets representing non-life technical provisions are not sufficient to pay all said claims, those under a) shall take precedence over those under b).

5. If assets representing technical provisions pertaining to compulsory insurance against civil liability in respect of the use of motor vehicles and craft are not sufficient to pay all claims under paragraph 4 the provisions referred to in title XVII, chapter I shall apply.

6. The payment of the claims under paragraphs 3 and 4 shall be effected after that of the expenses referred to in article 111 (1, 1) of the bankruptcy law. The same expenses shall be borne, in proportion, by any assets, though they are preferential or backed by a mortgage.

³⁷⁴ Paragraph amended by article 21 (3, a), legislative decree n. 56 of 29 February 2008.

6-bis. In the event of a reinsurance undertaking's being wound up, the commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other reinsurance contracts³⁷⁵.

Art. 259

(Further provisions for the treatment of reinsurance claims)³⁷⁶

1. Article 1930 of the civil code shall apply in case of administrative compulsory winding up of the reinsured.
2. Article 1931 of the civil code shall apply in case of administrative compulsory winding up of the reinsurer's or of the reinsured's undertaking.

Art. 260

(Allocation of assets)

1. Liquidators shall allocate the realised assets according to the order of precedence laid down in article 111 of the bankruptcy law. The emoluments and reimbursements payable to the bodies in the extraordinary administration proceeding and to the provisional administrators which have preceded the administrative compulsory winding up shall be treated as the expenses referred to in article 111 (1, 1) of the bankruptcy law.
2. After hearing the opinion of the supervisory committee and subject to ISVAP's prior authorisation liquidators may make partial payments or execute partial allocations either to all persons entitled or only some categories of them, even before all assets are realised and all liabilities established.
3. When executing allocations, and if there are claims from creditors or from other subjects concerned for whom admission to the statement of liabilities has not yet been defined, liquidators shall set aside the sums corresponding to the allocations not executed for the benefit of each of those subjects, so that they can be allocated to them in case their rights are recognised or, if not, they can be released to the other persons entitled.
4. Subject to ISVAP's authorization and after obtaining the favourable opinion of the supervisory committee, in the cases referred to in paragraph 3 liquidators may acquire adequate collateral instead of setting aside said sums.
5. If the complaints and applications referred to in article 252 (5 and 6) are submitted after the time limit it shall be possible to apply only for the subsequent allocations, if any, in so far as they are accepted by liquidators or, after the statement of liabilities has been filed, by the court if there is opposition.
6. In case of delay in the lodgement of a claim as per article 256, it shall be possible to apply only for the allocations executed after the appeal has been submitted.

³⁷⁵ Paragraph added by article 21 (3, b), legislative decree n. 56 of 29 February 2008.

³⁷⁶ Heading replaced by article 21 (4), legislative decree n. 56 of 29 February 2008.

Art. 261
(Final steps)

1. After assets have been realised and before executing the last allocation to creditors liquidators shall submit ISVAP the final winding up balance-sheet, the financial statement and the allocation plan along with a report drawn up by them and a report by the supervisory committee, and ISVAP shall authorise that it be filed with the registry of the court.
2. Notice of the filing shall be published in ISVAP's Bulletin. ISVAP may establish supplementary forms of publicity.
3. Appeals against the above acts may be brought before the court within twenty days of publication in ISVAP's Bulletin. The provisions of article 254 (1 and 2) shall apply.
4. If the time limit has elapsed and no appeal has been brought, or if appeals have been defined by a judgment which has the force of res judicata, liquidators shall execute the final allocation in compliance with article 260.
5. The amounts which cannot be allocated shall be deposited according to the terms established by ISVAP, so that they can subsequently be paid to those entitled, without prejudice to the power envisaged by article 260 (4).
6. The provisions of the civil code on the winding up of companies pertaining to the removal of the company and the filing of the corporate books shall apply.
7. Appeals and proceedings which may be pending, including that regarding the insolvency recognition, shall not affect the execution of the final steps envisaged under the paragraphs 1-6 and the closure of the administrative compulsory winding up proceeding. Such closure shall be subject to the execution of allocations or acquisition of collateral in compliance with article 260 (3 and 4).
8. After closure of the compulsory winding up proceeding liquidators shall continue to participate in the subsequent stages and levels of the pending legal proceedings. Article 233 (2 and 3), article 234 (8) and article 250 (1, 3 and 7) shall apply to liquidators in the performance of the activities connected to legal proceedings.
9. In the cases of transfers pursuant to article 257 (2 and 3) liquidators shall be excluded – upon their request – from the legal proceedings pertaining to the relations subject to transfer which have been transferred to the transferee.

Art. 262
(Composition)

1. At any stage of the compulsory winding up proceeding liquidators, after hearing the opinion of the supervisory committee, or the undertaking pursuant to article 152 (2) of the bankruptcy law, after hearing the bodies in the winding up, may propose a composition to the court of the place

where the undertaking has its head office. The proposal for composition shall be authorised by ISVAP.

2. The proposal for composition shall indicate the percentage offered to unsecured creditors, the schedule of payments and the collateral, if any.

3. The proposal for composition and the opinion of the bodies in the winding up shall be deposited with the registry of the court. ISVAP may establish other forms of publicity.

4. Within thirty days of the filing the persons concerned may deposit with the registry of the court a statement opposing the proposal for composition, and the liquidators shall be informed thereof. If there is no opposition the composition shall come into force.

5. In case of opposition the court shall make a decision about the proposal for composition by a judgement delivered in chambers, after hearing the opinion of ISVAP. The decision shall be published by lodging it at the registry and in the other forms established by the court. Liquidators and opposing parties shall be informed by registrar's notification. Article 254 shall apply.

6. During the composition procedure liquidators may allocate part of the assets as per article 260.

7. CONSAP shall be empowered to submit the proposal for the composition and act as the accepting party in the composition, subject to authorisation by the Minister of Production Activities.

Art. 263

(Execution of the composition and closure of the proceeding)

1. Liquidators, with the assistance of the supervisory committee, shall monitor the execution of the composition in compliance with the directives established by ISVAP in general by way of regulation³⁷⁷ or in particular by way of specific instructions.

2. Once the composition has been executed liquidators shall call the shareholders' meeting, so that a resolution be passed on the change of the objects in relation to the withdrawal of authorisation to the pursuit of insurance or reinsurance business. If the objects are not changed liquidators shall start the procedure for removal of the company and the filing of corporate books envisaged by the civil code in relation to the dissolution and winding up of companies.

3. Article 215 of the bankruptcy law shall apply.

Art. 264

(Insurance undertakings from third States and foreign reinsurance undertakings)

³⁷⁷ ISVAP Regulation n. 8 of 13 November 2007, in particular Title IV, I and IVASS Regulation n. 4 of 17 December 2013.

1. If an insurance undertaking with head office in a third State has set up a branch in the territory of the Italian Republic the compulsory winding up measure shall be taken against the Italian office. Article 240 (3) shall apply.
2. If a reinsurance undertaking with head office in a third State has set up a branch in the territory of the Italian Republic the compulsory winding up measure shall be taken against the Italian office. Article 240 (3) shall apply³⁷⁸.
3. The provisions of this chapter shall apply, mutatis mutandis.

Art. 265

(Compulsory winding up of unauthorised undertakings)

1. The Minister of Production Activities, upon ISVAP's proposal, shall provide for the compulsory winding up of the undertaking carrying on insurance or reinsurance business without authorisation.
2. In case there are no assets to be realised ISVAP shall appoint the liquidators only after creditors or other subjects concerned have submitted a reasoned request within a mandatory period of not more than sixty days of the date of publication of the winding up measure. In that case liquidators, after filing the statement of liabilities, may ask ISVAP for the authorisation to close the winding up without any further formalities.
3. The provisions of article 213 (2 and 3) of the bankruptcy law shall apply.

Chapter V

STATE LIABILITY FOR ADMINISTRATIVE OFFENCE CONSEQUENT TO A CRIME

Art. 266

(Liability for administrative offence consequent to a crime)

1. The public prosecutor who, pursuant to article 55 of legislative decree n. 231 of 8 June 2001, enters in the register of suspected offences an administrative offence committed by an insurance or reinsurance undertaking shall inform ISVAP thereof. During the proceedings, when the public prosecutor so requests, ISVAP may be heard and may present written reports.
2. At any stage of the proceedings before each court, before the judgement, the court shall, also on its own motion, provide that ISVAP furnish up-to-date information on the undertaking's situation, with special regard to its organisation and control structure.
3. The final judgement imposing on an insurance or reinsurance undertaking the prohibitive sanctions envisaged by article 9 (2, a and b) of legislative decree n. 231 of 8 June 2001, after the expiry of the period for converting such sanctions, shall be notified for enforcement by the judicial authority to ISVAP. To this end ISVAP may propose or adopt the measures envisaged in chapters II, III and IV, keeping in mind the characteristics of the sanction imposed and the main

³⁷⁸ Paragraph amended by article 21 (5), legislative decree n. 56 of 29 February 2008.

purpose of safeguarding stability and protecting policyholders and those entitled to insurance benefits.

4. The prohibitive sanctions envisaged by article 9 (2, a and b) of legislative decree n. 231 of 8 June 2001 may not be applied on a precautionary basis to insurance or reinsurance undertakings. Article 15 too of legislative decree n. 231 of 8 June 2001 shall not apply to the afore-mentioned undertakings.

5. This article shall also apply mutatis mutandis to the Italian branches of undertakings of other member States or third States.

Chapter VI

EFFECTS OF THE REORGANISATION MEASURES AND WINDING UP PROCEEDINGS RELATING TO AN INSURANCE UNDERTAKING ADOPTED BY OTHER MEMBER STATES

Art. 267

(Employment relationships, contracts relating to immovable property ships and aircraft, financial instruments)

1. In case another member State adopts a reorganisation measure or winding-up proceedings vis-à-vis an insurance undertaking with head office in that State, the Italian law shall continue to be applicable to:

- a) employment relationships with the insurance undertaking entered into in Italy;
- b) contracts concluded with the insurance undertaking conferring the right to make use or acquire immovable property situated in the territory of the Italian Republic;
- c) the insurance undertaking's rights on immovable property, ships or aircraft subject to registration in an Italian public register.

2. Acts for a consideration concluded after the adoption of a reorganisation measure or the opening of a winding-up proceedings under which the insurance undertaking disposes of an immovable asset, a ship or aircraft subject to registration in a public register or of financial instruments whose existence or transfer presupposes entry in a public register or central deposit system, shall be governed by the Italian law respectively if the immovable asset is situated in the territory of the Italian Republic, the public registers of the ship or aircraft or the register or central deposit system of financial instruments are governed by the Italian law.

Art. 268

(Third parties' rights in rem over assets situated in the territory of the Italian Republic)

1. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State shall not affect the rights in rem of third parties in respect of movable or immovable assets - both specific assets and collections of indefinite assets as a whole - belonging to the insurance undertaking which are situated within the territory of the Italian Republic.

2. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

3. The provision under paragraph 1 shall not preclude any action for voidness, voidability or unenforceability of legal acts detrimental to all the creditors envisaged by the legislation of the member State of the undertaking for which the reorganisation measure or winding-up proceedings has been opened.

Art. 269

(Seller's rights based on a reservation of title of the asset situated within the territory of the Italian Republic)

1. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State which has signed a preliminary purchase contract or a purchase contract under reservation of title, shall not affect the seller's rights based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of the Italian Republic.

2. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State which has concluded a contract referred to in paragraph 1 and delivered before the opening of such measures or proceedings, shall not constitute grounds for terminating the contract and shall not prevent the purchaser from acquiring title in return for a consideration or the fulfilment of agreed obligations, where at the time of the opening of such measures or proceedings this asset is situated within the territory of the Italian Republic.

3. The provisions laid down in the preceding paragraphs shall not preclude any action for voidness, voidability or unenforceability of legal acts detrimental to all the creditors envisaged by the legislation of the member State of the undertaking for which the reorganisation measure or winding-up proceedings has been opened.

Art. 270

(Set-off in the relationships with the insurance undertaking)

1. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State shall not affect the right of the creditor to demand the set-off in the relationships with the insurance undertaking in compliance with the provisions of article 56 of the bankruptcy law.

2. The provision under paragraph 1 shall not preclude any action for voidness, voidability or unenforceability of legal acts detrimental to all the creditors envisaged by the legislation of the member State of the undertaking for which the reorganisation measure or winding-up proceedings has been opened.

Art. 271

(Operations dealt with in Italian regulated markets)

1. Without prejudice to the provisions of article 268, in case of opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State, the rights and obligations vis-à-vis the insurance undertaking arising from novation and netting agreements, repurchase agreements, as well as any other operation in financial instruments authorized in Italy dealt with in regulated markets in accordance with the consolidated law on financial mediation, shall remain subject to the Italian law, including the possibility to start any action for voidness, voidability or unenforceability of payments or transactions detrimental to all the creditors.

Art. 272

(Requirements as to the admissibility of actions relating to detrimental legal acts)

1. Actions for voidness, voidability, or unenforceability, based on provisions envisaged by the legislation of the home member State of the undertaking against which reorganisation measures or winding-up proceedings have been opened, are not admissible or enforceable against those who, having benefited from the legal act detrimental to all the creditors, provide proof that this act is subject to the law of a member State other than that where the undertaking has its head office and that the law applicable in the relevant case does not allow any means of challenging that act.

Art. 273

(Pending lawsuits concerning the divestment of the insurance undertaking's assets)

1. The effects of a reorganisation measure or winding-up proceedings, adopted by another member State against an insurance undertaking with head office in that State, on a lawsuit pending in Italy concerning an asset, or a right on that asset, of which the insurance undertaking has been divested, shall be governed by the Italian law.

Art. 274

(Recognition and powers of commissioners and liquidators)

1. The commissioners or liquidators, appointed by the authority of the home member State of the insurance undertaking against which reorganisation measures or winding-up proceedings have been opened, who wish to act within the territory of the Italian Republic, in the performance of their tasks shall show proof of their appointment by submitting a certified copy of the original decision of the authority appointing them or by any other certificate issued by the competent authority of that State. A translation into Italian of the documents provided for in this paragraph may be required from the commissioners or liquidators.

2. Persons to assist or, where appropriate, represent commissioners or liquidators in the performance of their tasks resulting from the reorganisation measure or winding-up proceedings may be appointed, according to the legislation of the insurance undertaking's home member

State, in the territory of the Italian Republic, specifically as concerns relations with Italian creditors.

3. Without prejudice to the provisions of paragraph 4, commissioners and liquidators shall exercise within the territory of the Italian Republic all the powers which they are entitled to exercise within the territory of the undertaking's home member State, but they may not carry out tasks reserved to the law enforcement authorities or to the judiciary authorities.

4. The commissioners or liquidators, appointed by the authority of the undertaking's home member State shall, in the performance of their tasks within the territory of the Italian Republic, comply with the Italian law, in particular with regard to procedures for the realisation of assets, rules on employment relationships and the provision of information to employees. The commissioners or liquidators, appointed by the authority of the undertaking's home member State, as well as any other person authorized by the same authority, may request, without prejudice to any specific publicity requirements envisaged by the Italian law, that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the registrar of companies and any other Italian public register.

Chapter VII

PROVISIONS ON REORGANISATION AND WINDING UP IN AN INSURANCE GROUP

Art. 275

(Extraordinary administration of the ultimate insurance parent undertaking)

1. Without prejudice to the provisions of this article, the provisions of chapter II of this title shall apply to the ultimate parent undertaking of an insurance group.

2. The ultimate parent undertaking may be placed under extraordinary administration, in addition to the cases provided for in article 231, when:

- a) there are serious failures in the performance of management and coordination activities for the implementation of the supervisory instructions given by ISVAP;
- b) one of the undertakings of the insurance group has been subject to bankruptcy proceedings, composition to avoid bankruptcy, administrative compulsory winding up, extraordinary administration or any other similar proceedings envisaged by special laws or by the legislation of other member States, or when an administrator has been appointed by the court according to the provisions of the civil code on the reporting to the court of serious irregularities in the management, and the group's financial or management stability may be seriously undermined.

3. The extraordinary administration of the holding company shall last one year from the date when the decree of the Minister of Production Activities is issued, unless the decree envisages a shorter deadline or its earlier closure. In exceptional cases the proceedings may be extended for a period of no more than one year.

4. The extraordinary commissioners, after hearing the supervisory committee and subject to ISVAP's prior authorisation, may dismiss or replace all or part of the directors of the group companies in order to make the necessary changes to management policies. The new directors

shall not continue in office beyond the end of the extraordinary administration of the ultimate parent undertaking. The dismissed directors shall be exclusively entitled to a consideration corresponding to their ordinary remuneration for the remainder of their assignment and, at any rate, for no more than six months.

5. The extraordinary commissioners may, subject to ISVAP's prior authorisation and after hearing the outgoing company's directors, apply to the court for a declaration of insolvency of the group companies.

6. The extraordinary commissioners may ask the group companies for data, information and any other useful element to carry out their tasks.

Art. 276

(Administrative compulsory winding up of the ultimate insurance parent undertaking)

1. Without prejudice to the provisions of this article, the provisions of chapter IV of this title shall apply to the ultimate parent undertaking of an insurance group.

2. In addition to the cases provided for in article 245, the ultimate parent undertaking may be placed under administrative compulsory winding up when the failures in the performance of management and coordination activities for the implementation of the supervisory instructions given by ISVAP are exceptionally serious.

3. Every year the liquidators shall file a report on the accounting situation and on the progress of the winding up for registration in the registrar of companies, along with information on the developments of the proceedings to which other group companies may be subject as well as on any measure adopted to safeguard the interests of insured persons and of those entitled to insurance benefits. The report shall be accompanied by a report by the supervisory committee. ISVAP may require that special publicity measures be adopted to make known that the report has been deposited.

4. The provisions of article 275 (5 and 6) shall apply.

5. When the court has issued a declaration of insolvency, it shall be for the liquidators to start the action for revocation against the other group companies, envisaged by article 67 of the bankruptcy law. The action may be brought against the acts indicated under article 67 (1) 1), 2) and 3) of the bankruptcy law, which have been committed in the five years preceding the compulsory winding up, and against the acts indicated under article 67 (1) 4) and (2), which have been committed in the three previous years.

Art. 277

(Extraordinary administration of the insurance group companies)

1. Without prejudice to the provisions of this article, when the ultimate parent undertaking is placed under extraordinary administration or administrative compulsory winding up, the provisions of chapter II of this title shall apply to the group companies, when the relevant

conditions are met. Extraordinary commissioners and liquidators of the ultimate parent undertaking too may apply to ISVAP for extraordinary administration.

2. When a receiver has been appointed for the group companies according to the provisions of the civil code on the reporting to the court of serious irregularities in the management, the proceeding shall be converted into extraordinary administration. The competent court, also on its own motion, shall make declaration by a judgement delivered in chambers that the company has been placed under extraordinary administration and shall order the transmission of the documents to ISVAP. The bodies of the former proceeding and those of the extraordinary administration shall immediately hand over their responsibilities and take the relevant publicity measures required by ISVAP. The effects of acts legally carried out shall remain unaffected.

3. When the group companies to be placed under extraordinary administration are subject to supervision, the relevant measure shall be adopted after hearing the opinion of the competent supervisory authority which, in cases of urgency, will be given a time limit to express its opinion.

4. The duration of the extraordinary administration of the group companies shall be independent of the duration of the proceedings under which the ultimate parent undertaking has been placed.

Art. 278

(Administrative compulsory winding up of the insurance group companies)

1. Without prejudice to the provisions of this article, when the holding company is placed under extraordinary administration or administrative compulsory winding up, the provisions of chapter IV of this title shall apply to the group companies, when they have been declared insolvent by the court. The provisions of chapter IV shall at any rate remain applicable to insurance and reinsurance undertakings. Extraordinary commissioners and liquidators of the holding company too may apply to ISVAP for compulsory winding up.

2. When the group companies have been placed under bankruptcy proceedings, compulsory winding up or other collective proceedings, these are converted into compulsory winding up as regulated by this article. Without prejudice to the state of insolvency already declared, the competent court, also on its own motion, shall make declaration by a judgement delivered in chambers that the company has been placed under winding up proceedings as provided for in this article and shall order the transmission of the documents to ISVAP. The bodies of the former proceeding and those of the winding up shall immediately hand over their responsibilities and take the relevant publicity measures required by ISVAP. The effects of acts legally carried out shall remain unaffected.

3. Liquidators shall be vested with the powers envisaged by article 276 (5).

Art. 279

(Proceedings applicable to each individual company of the insurance group)

1. When the ultimate parent undertaking has not been placed under extraordinary administration or administrative compulsory winding up, the group companies shall be subject to

the proceedings envisaged by the laws applicable to them. ISVAP shall be informed of any such measure by the judicial or administrative authority who has issued it. The judicial or administrative authorities supervising over these proceedings shall inform ISVAP of any fact found out during the proceedings, which may be of relevance for the supervision over the insurance group.

2. By way of derogation from paragraph 1, a group company shall not be subject to the proceedings which would otherwise be applicable to it and, should such proceedings be started, it shall be converted into extraordinary administration or compulsory winding up, if it performs essential instrumental functions on behalf of the insurance or reinsurance holding company. Articles 277 and 278 shall apply, *mutatis mutandis*.

Art. 280

(Provisions common to the bodies in the proceedings)

1. Without prejudice to the provisions of articles 233 and 246, the same persons may be appointed members of the bodies administering the extraordinary administration and the administrative compulsory winding up of companies belonging to the same group, when this is deemed useful to facilitate the smooth running of the proceedings.

2. The commissioner or liquidator who, in a given operation, has an interest which conflicts with that of the company, in his capacity as commissioner or liquidator of another group company shall notify this to the other commissioners or liquidators, if any, as well as to the supervisory committee and ISVAP. In case of failure, such notification must be made by the members of the supervisory committee who are aware of this situation of conflict. The supervisory committee may lay down special protective measures and issue instructions on the operation, and the commissioners or liquidators shall be held personally liable for any non-compliance. Without prejudice to the power to revoke or replace the members of the bodies administering the proceedings, ISVAP may give directives or, where appropriate, provide for the appointment of a commissioner for the fulfilment of specific acts.

3. The emoluments payable to the commissioners or liquidators and members of the supervisory committee shall be established by ISVAP on the basis of the criteria it has set out and shall be borne by the companies. The emoluments shall be established on the basis of an overall assessment of the services provided in relation to any other post which they may hold in other group proceedings.

Art. 281

(Common rules on jurisdiction)

1. When the ultimate parent undertaking has been placed under extraordinary administration or administrative compulsory winding up, the court within whose jurisdiction the ultimate parent undertaking has its head office shall be competent for the action for revocation envisaged in article 276 (5), as well as for all the disputes between group companies.

2. When the ultimate parent undertaking has been placed under extraordinary administration or administrative compulsory winding up, the Tribunale amministrativo regionale del Lazio

(regional administrative court in Latium) based in Rome shall be competent for appeals filed against the administrative measures concerning or anyhow related to extraordinary administration and administrative compulsory winding up of the ultimate parent undertaking and of the group companies.

Art. 282
(Unregistered groups and companies)

1. The provisions of the articles under this chapter shall apply also to the groups and companies which, although unregistered, meet the conditions for being registered in the register of insurance groups.

**TITLE XVII
COMPENSATION SCHEMES**

**Chapter I
GENERAL PROVISIONS ON THE COMPENSATION SCHEME FOR DAMAGE RESULTING FROM THE USE OF
MOTOR VEHICLES AND CRAFT**

Art. 283
(Accidents occurred in the territory of the Italian Republic)

1. The Fondo di garanzia per le vittime della strada (National guarantee fund for road accident victims), set up within CONSAP, shall pay compensation for damages caused by motor vehicles and craft for which insurance is compulsory, when:

- a) the accident has been caused by an unidentified vehicle or craft;
- b) the vehicle or craft is not insured;
- c) the vehicle or craft is insured with an undertaking pursuing business in the territory of the Italian Republic by way of establishment or of free provision of services, which has been placed under compulsory winding up at the time of the accident or afterwards;
- d) the vehicle has been used against the will of the owner, usufructuary, buyer under reservation of title or leasee of an operating or financial leasing;
- d-bis) the vehicle has been dispatched to the territory of the Italian Republic from a State referred to in article 1 (1, bbb) and in the period referred to in article 1 (1, fff, 4-bis) it is involved in an accident while being uninsured³⁷⁹;
- d-ter) the accident has been caused by a foreign vehicle bearing a registration plate which does not correspond or no longer corresponds to the vehicle³⁸⁰.

2. In the case referred to in paragraph 1 a), compensation shall be due only for personal injury. In case of very serious injuries compensation shall also be due for material damage amounting to more than 500 euros, for the part exceeding that amount. In the cases referred to in

³⁷⁹ Letter inserted by article 9 (1, d), legislative decree n. 198 of 06 November 2007.

³⁸⁰ Letter inserted by article 9 (1, d), legislative decree n. 198 of 06 November 2007.

paragraph 1 b), d-bis) and d-ter) compensation shall be due for personal injury and for material damage. In the case referred to in paragraph 1 c), compensation shall be due for personal injury and for material damage. In the case referred to in paragraph 1 d), compensation shall be due for personal injury and for material damage, limited to third parties other than passengers and passengers against their will or who are not aware of the illegal use of the vehicle³⁸¹.

3. In the case referred to in paragraph 1 a), damages shall be paid up to the minimum amounts of cover established, per each victim and claim, by the regulation referred to in article 128 relating to cars used for private purposes. The percentage of permanent incapacity, the status of cohabiting dependant and the percentage of the victim's income to be taken into account for each of the cohabiting dependants shall be determined according to the rules of the consolidated law on compulsory workmen's compensation and occupational diseases insurance.

4. In the cases referred to in paragraph 1 b), c) d), d-bis) and d-ter), damages shall be paid up to the insured minimum amounts of cover established by the regulation referred to in article 128 for the vehicles or craft of the category to which the vehicle causing the damage belongs³⁸².

5. The Fondo di garanzia per le vittime della strada shall be subrogated, for the amount paid, to the policyholder and the injured party in their rights against the undertaking placed under compulsory winding up, and shall benefit of the same treatment envisaged for the insurance claims indicated in article 258 (4) a). In accordance with article 150 the insurance undertaking which has paid damages shall have a right of redress against the Fondo di garanzia per le vittime della strada in case of compulsory winding up of the insurance undertaking of the responsible vehicle.

Art. 284

(Accidents occurred in another member State)

1. The Fondo di garanzia per le vittime della strada shall also be required to pay compensation for accidents caused within the territory of another member State by vehicles registered there and insured with an undertaking having its head office in Italy and pursuing business in that State by way of establishment or of free provision of services which is placed under compulsory liquidation at the time of the accident or afterwards. Article 283 (5) shall apply.

2. By decree to be published in the Italian Official Journal the Minister of Production Activities shall authorize CONSAP to underwrite agreements with the guarantee funds of the other member States concerning compensation for damages resulting from the claims under paragraph 1.

Art. 285

(National guarantee fund)

1. The Fondo di garanzia per le vittime della strada shall be managed by CONSAP under the supervision of the Ministry of Production Activities with the assistance of an ad-hoc committee.

³⁸¹ Paragraph amended by article 1 (9, b), legislative decree n. 198 of 06 November 2007.

³⁸² Paragraph amended by article 1 (9, c), legislative decree n. 198 of 06 November 2007.

2. The Minister of Production Activities shall, by regulation³⁸³, establish the conditions and arrangements for the administration, intervention and reporting of the Fondo di garanzia per le vittime della strada, as well as the composition of the committee under paragraph 1.

3. Undertakings authorized to pursue insurance against civil liability in respect of the use of motor vehicles and craft shall be required to pay CONSAP, autonomous management of the Fondo di garanzia per le vittime della strada, an annual contribution proportional to the premium earned for each contract concluded in compliance with the insurance obligation³⁸⁴.

4. The regulation under paragraph 2 shall establish the amount of the contribution, up to a maximum of four per cent of the taxable premium, taking account of the results of the settlement of claims as determined in the annual report drawn up by the fund management committee.

Chapter II

SETTLEMENT OF CLAIMS BY THE APPOINTED UNDERTAKING

Art. 286

(Settlement of claims by the appointed undertaking)

1. The settlement of the claims referred to in article 283 (1) a), b), c), d), d-bis) and d-ter) shall be arranged by an undertaking appointed by ISVAP³⁸⁵ in accordance with the provisions of the regulation³⁸⁶ adopted by the Minister of Production Activities. The undertaking shall also arrange for the settlement of the claims occurred after the period assigned has expired and until the date of the measure appointing another undertaking³⁸⁷.

2. The amounts advanced by the appointed undertakings, including expenses and net of the amounts recovered pursuant to article 292, shall be reimbursed by CONSAP - Fondo di garanzia per le vittime della strada, on the basis of the agreements concluded between the undertakings and the Fondo di garanzia per le vittime della strada, which are subject to the approval by the Minister of Production Activities upon ISVAP's proposal.

3. As regards the activities which are the subject of the agreements, the appointed undertakings shall have to comply with the general or specific directives issued by CONSAP on the smooth running of claims settlement procedures.

Art. 287

(Action for damages)

³⁸³ Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular Chapter II.

³⁸⁴ Decree by the Minister of Economic Development of 18 December 2009 (year 2010); Decree by the Minister of Economic Development of 30 November 2010 (year 2011); Decree by the Minister of Economic Development of 5 December 2011 (year 2012); Decree by the Minister of Economic Development of 12 December 2012 (year 2013); Decree by the Minister of Economic Development of 4 December 2013 (year 2014).

³⁸⁵ ISVAP order n. 2496 of 28 December 2006 (2007-2009 period).

³⁸⁶ Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular Chapter II.

³⁸⁷ Paragraph amended by article 1 (10), legislative decree n. 198 of 6 November 2007.

1. In the cases provided for in article 283 (1) a), b), d), d-bis) and d-ter), the action for damages caused by motor vehicles and craft for which insurance is compulsory can be started only after sixty days have elapsed from the date when the injured party filed a claim for damages, by means of a registered letter, with the appointed undertaking and CONSAP – Fondo di garanzia per le vittime della strada. In the case provided for in article 283 (1) c), the action for damages can be started only after six months have elapsed from the date when the injured party filed a claim for damages³⁸⁸.

2. The injured party who, in the case provided for in article 283 (1) a), has filed a claim for damages with the appointed undertaking and CONSAP - Fondo di garanzia per le vittime della strada, shall not be required to renew his claim if the insurance undertaking of the responsible party is later on identified.

3. The action for damages may only be brought against the appointed undertaking. CONSAP – Fondo di garanzia per le vittime della strada may however intervene in proceedings, also on appeal.

4. In the cases provided for in article 283 (1) b), d-bis) and d-ter) the person who caused the damage shall also be summoned as defendant in the proceedings³⁸⁹.

5. The insurance undertaking's liquidator too shall be summoned as defendant in the proceedings brought under article 283 (1) c).

Art. 288

(Policyholders' rights with respect to the National guarantee fund)

1. Policyholders insured with undertakings carrying on motor liability insurance which have been placed under compulsory winding up may, within the limits of the amounts indicated in article 283 (4), claim their rights deriving from the contract against CONSAP - Fondo di garanzia per le vittime della strada by acting against the undertaking appointed for the territory where the accident has occurred.

Art. 289

(Effects of compulsory winding up on judgements having the force of res judicata and on pending proceedings)

1. The judgements obtained by the injured party against the insurance undertaking shall be enforceable, if they have become res judicata before the publication of the compulsory winding up decree, against the undertaking appointed for paying damages within the limits established by article 283 (4).

2. If the compulsory winding up decree is adopted before the sentence has become res judicata, the proceedings against the liquidator and the appointed undertaking shall continue after six months have elapsed from the publication of the compulsory winding up decree. In any

³⁸⁸ Paragraph amended by article 1 (11, a), legislative decree n. 198 of 06 November 2007.

³⁸⁹ Paragraph replaced by article 1 (11, b), legislative decree n. 198 of 06 November 2007.

case the judgements shall be enforceable against the appointed undertaking within the limits of compensation established by article 283 (4).

3. The provision under paragraph 1 shall also apply to ordinances obtained by injured parties who are in need.

Art. 290

(Limitation period for the direct right of action)

1. In the cases provided for in article 283 (1) a), b), d), d-bis) and d-ter) the direct right of action against the appointed undertaking to which the injured party is entitled shall be subject to the same limitation period applicable to any action against the person who caused the damage³⁹⁰.

2. In the case provided for in article 283 (1) c), the direct right of action against the appointed undertaking to which the injured party is entitled may be brought only within the limitation period applicable to the action against the undertaking under compulsory winding up.

Art. 291

(Cases where there is more than one injured party and the amounts of cover are exceeded)

1. In the cases where there is more than one injured party in the same accident and the compensation to be paid by the person liable exceed the insured amounts, the injured parties' rights vis-à-vis the appointed undertaking shall be proportionately reduced within the limits of compensation indicated in the paragraph 3 or 4 respectively of article 283.

2. When, after thirty days from the accident, the appointed undertaking is not aware of other injured parties, despite the due diligence used for their identification, and has paid to some of them an amount higher than the portion owed to them, it shall be liable to the other injured parties only within the limits of the difference between the insured amount and the amount paid.

3. In the case referred to in paragraph 2, the other injured parties whose claim has remained unsatisfied, shall be entitled to claim the amount due to them in accordance with paragraph 1 from those who have received compensation from the insurance undertaking.

4. In the legal proceedings between the appointed insurance undertaking and injured parties compulsory joinder shall be required, in application of article 102 of the code of civil procedure. The appointed insurance undertaking may deposit an amount, within the limit of the minimum amount of cover, which has the effect of releasing it in regard of all persons entitled to compensation, provided that it is an irrevocable blocked deposit in favour of all injured parties.

Art. 292

(Right of redress and subrogation of the appointed undertaking)

1. The appointed undertaking which, also through an out of court composition, has paid damages in the cases provided for in article 283 (1) a), b), d), d-bis) and d-ter), shall have a

³⁹⁰ Paragraph amended by article 1 (12), legislative decree n. 198 of 6 November 2007.

right of redress against the persons who caused the damage in order to recover the damages paid as well as interest and costs³⁹¹.

2. In the case provided for in article 283 (1) c), the appointed undertaking which has paid damages, also on an out of court basis, shall be subrogated, for the amount paid, to the policyholder and the injured party in their rights against the undertaking placed under compulsory winding up and shall have the same rank granted to them by the law.

Chapter III

CLAIMS SETTLEMENT BY THE LIQUIDATOR OF THE UNDERTAKING IN COMPULSORY WINDING UP

Art. 293

(Claims settlement by the liquidator of the undertaking in compulsory winding up)

1. In the decree ordering the compulsory winding up the liquidator of the undertaking subject to winding up may be authorised, also on behalf of the Fondo di garanzia per le vittime della strada and by way of derogation from article 286 (1), to settle the damages caused by motor vehicles and craft occurred before the date of publication of the winding up decree of the undertaking and those occurred after such date but before the expiry date of the existing insurance contracts or of the period for which the premium has been paid.

2. The Guarantee Fund for the Victims of Road Accidents (CONSAP-Fondo di Garanzia per le vittime della strada) shall advance to the liquidator the sums needed for the costs of the claims settlement procedure within the limits of the regulation referred to in article 285 (2). In case of insufficiency of assets the sums allocated shall be definitively debited to CONSAP - Fondo di garanzia per le vittime della strada.

3. To carry out the task referred to in paragraph 1 the liquidator shall take on again the former staff of the undertaking subject to compulsory winding up. Staff shall be paid the minimum wage envisaged by the relevant collective agreements in relation to the duties performed.

Art. 294

(Action for damages)

1. The persons entitled to compensation shall file their claim for compensation with the liquidator by means of a registered letter, even if a copy has already been sent to the undertaking placed under compulsory winding up.

2. No action for damages can be started against the proceedings before six months have elapsed from the date when the claim for damages has been filed. The decisions and other measures regarding compensation are enforceable against the Fondo di garanzia delle vittime della strada. CONSAP - Fondo di garanzia delle vittime della strada may intervene in proceedings, also on appeal.

³⁹¹ Paragraph amended by article 1 (13), legislative decree n. 198 of 6 November 2007.

3. If the decree ordering the compulsory winding up is published before the final judgement has been pronounced article 289 (1) shall apply.

Art. 295

(Policyholders' rights with respect to the National guarantee fund)

1. The persons insured with undertakings carrying on insurance against civil liability in respect of the use of motor vehicles and craft which are placed under compulsory winding up may, within the limits of the amounts indicated in 283 (4), claim their rights deriving from the contract against CONSAP - Fondo di garanzia per le vittime della strada by acting against the liquidator.

Chapter IV

CLAIMS SETTLEMENT BY THE ITALIAN COMPENSATION BODY

Art. 296

(Italian compensation body)

1. CONSAP, in its capacity as administrator of the Fondo di garanzia per le vittime della strada, shall act as Italian compensation body.

2. In the performance of its tasks the Italian compensation body may be assisted by Ufficio centrale italiano (the national bureau) on the basis of the terms and conditions established in a specific agreement.

Art. 297

(Scope of the Italian compensation body)

1. The Italian compensation body shall be responsible for providing compensation to persons resident in the territory of the Italian Republic in respect of any loss or injury resulting from accidents occurring in another member State and caused by the use of:

- a) a vehicle insured through an establishment in another member State and based in another member State;
- b) a vehicle which is impossible to identify;
- c) a vehicle in relation to which, within two months following the accident, it is impossible to identify the insurance undertaking.

2. In the case under paragraph 1 (a) the Italian compensation body shall take action also in case the accident occurred in a third State whose national bureau has joined the green card system.

Art. 298

(Accidents caused by regularly insured vehicles)

1. In the cases referred to in article 297 (1, a and 2) those entitled to compensation may present a claim for compensation to the Italian compensation body:

(a) if, within three months of the date when the persons entitled presented their claim for compensation to the insurance undertaking of the vehicle the use of which caused the accident or to its claims representative, the insurance undertaking or its claims representative in the territory of the Italian Republic has not provided a reasoned reply to the points made in the claim;

b) if the insurance undertaking has failed to appoint a claims representative in the territory of the Italian Republic; in this case, the persons entitled to compensation may not present a claim to the Italian compensation body if they have presented a claim for compensation directly to the insurance undertaking of the vehicle the use of which caused the accident and if they have received a reasoned reply within three months of presenting the claim.

2. The Italian compensation body shall refrain from or terminate taking action in favour of the persons entitled to compensation who have taken or are going to take legal action directly against the insurance undertaking or the person who caused the accident.

3. The compensation by the Italian compensation body shall be regarded as subsidiary to the claim against the person or the persons who caused the accident or the insurance undertaking or its claims representative. The Italian compensation body may not make the payment of compensation conditional on establishing that the person liable is unable or refuses to pay.

4. The persons entitled to compensation shall submit their claim with the Italian compensation body according to the rules established by the regulation³⁹², adopted by the Minister of Production Activities, implementing this title.

5. The Italian compensation body shall intervene within two months of the date when the persons entitled present a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim, on condition that such reply is sent within two months of presenting the claim to the compensation body.

6. The Italian compensation body shall immediately inform the following subjects that it has received a claim from the persons entitled to compensation and that it will intervene within two months of the presentation of that claim:

a) the insurance undertaking of the vehicle the use of which caused the accident or its claims representative;

b) the compensation body of the member State of the insurance undertaking's establishment which issued the policy;

c) if known, the person who caused the accident;

d) the national bureau of the State where the accident occurred, if the accident was caused by a vehicle based in a State other than that where the accident occurred.

7. For the determination of the liability and the damage assessment the Italian compensation body to which the claim was submitted shall have to comply with the legislative provisions applicable in the State where the accident occurred.

³⁹² Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular article 24.

Art. 299

(Reimbursements between compensation bodies)

1. If the Italian compensation body has compensated the persons entitled to compensation pursuant to article 298 it shall be entitled to claim reimbursement of the sum paid by way of compensation from the compensation body in the member State of the insurance undertaking's establishment which issued the policy for the vehicle which caused the accident, in relation to the advances made as compensation and in relation to the direct and indirect expenses pertaining to the claims settlement, to the extent and in the manner established by the agreement between compensation bodies and between compensation bodies and guarantee funds.

2. In case of accidents occurred in a member State other than the member State of residence of those entitled to compensation, or in case of accidents occurred in a third State which has joined the green card system and caused by motor vehicles insured with undertakings established in the territory of the Italian Republic, the Italian compensation body shall be required to reimburse the amount paid, if any, by the compensation body of the State of residence of those entitled to compensation for the loss or injury suffered by the latter.

3. The Italian compensation body shall be subrogated to those entitled to compensation in their rights against the person who caused the accident or his insurance undertaking in so far as the compensation body in the member State of residence of the persons entitled to compensation has provided compensation for the loss or injury suffered. Within thirty days the undertaking shall be required to reimburse the Italian compensation body of the sum paid by way of compensation and of the direct and indirect expenses referred to in paragraph 1, upon a request to which the proof of payment shall be enclosed. The undertaking may make objections to the amount to be reimbursed exclusively when the foreign compensation body has failed to inform the Italian insurance undertaking that it has received a claim from the persons entitled to compensation.

Art. 300

(Accidents caused by unidentified or uninsured vehicles)

1. In the cases referred to in article 297 (1, b and c), the Italian compensation body, after it has received the claim for compensation, shall immediately inform:

- a) the guarantee fund of the member State where the vehicle which caused the accident is normally based, in case it is an uninsured vehicle, and the guarantee fund of the member State where the accident occurred if other than that where the vehicle is normally based;
- b) the guarantee fund of the member State in which the accident occurred, in case it was caused by an unidentified vehicle or by an uninsured vehicle from a third State.

2. For the determination of liability and the damage assessment the Italian compensation body – once it has received the claim – shall have to comply with the current legislative provisions of the State where the accident occurred.

3. If the Italian compensation body has compensated the persons entitled to compensation pursuant to paragraph 1 it shall be entitled to claim reimbursement of the sum paid by way of compensation, and of the direct and indirect expenses, to the extent and in the manner established by the agreement between compensation bodies and between compensation bodies and guarantee funds:

- a) from the guarantee fund in the member State where the vehicle is normally based, in the case where the insurance undertaking cannot be identified;
- b) from the guarantee fund of the member State in which the accident occurred, in the case of an unidentified vehicle;
- c) from the guarantee fund of the member State in which the accident occurred, in the case of uninsured vehicles from a third State.

Art. 301

(Reimbursements to be borne by the Guarantee Fund for Victims of Road Accidents)

1. The Fondo di garanzia per le vittime della strada shall reimburse the compensation body of the member State where those entitled to compensation are resident the sum paid to said persons entitled as well as the direct and indirect expenses referred to in article 300 (3) in the following cases:

- a) accidents occurred in a member State other than the member State of residence of those entitled to compensation and caused by a vehicle normally based in the territory of the Italian Republic for which it is impossible to identify the insurance undertaking;
- b) accidents occurred in the territory of the Italian Republic and caused by an unidentified vehicle or by an uninsured vehicle from a third State.

2. Once the Fondo di garanzia per le vittime della strada has reimbursed the compensation body it may exercise the right of redress envisaged by article 292.

Chapter V

COMPENSATION SCHEME FOR DAMAGES CAUSED BY THE PRACTICE OF HUNTING

Art. 302

(Scope)

1. The Fondo di garanzia per le vittime della caccia (National guarantee fund for hunting victims), set up within CONSAP, shall pay compensation for damages caused by the practice of hunting for which insurance is compulsory, when:

- a) the hunter is unidentified;
- b) the hunter liable for damage is not covered by compulsory insurance against civil liability;
- c) the hunter is insured with an undertaking pursuing business in the territory of the Italian Republic by way of establishment or of free provision of services, which has been placed under compulsory liquidation at the time of the accident or afterwards.

2. In the case referred to in a) compensation shall be due only for personal injury resulting in death or permanent disability higher than twenty per cent. In the case referred to in b), compensation shall be due for personal injury and for material damage exceeding the amount established in the regulation³⁹³ implementing this chapter. In the case referred to in c), compensation shall be due for personal injury and for material damage amounting to more than five hundred euros. The percentage of permanent incapacity, the status of cohabiting dependant and the percentage of the victim's income to be taken into account for each of the cohabiting dependants shall be determined according to the rules of the consolidated law on compulsory workmen's compensation and occupational diseases insurance.

3. In all the cases referred to in paragraph 1, damages shall be paid up to the minimum amounts of cover established by the hunting law.

Art. 303

(Fondo di garanzia per le vittime della caccia – Guarantee fund for hunting victims)

1. The Fondo di garanzia per le vittime della caccia shall be managed by CONSAP under the supervision of the Ministry of Production Activities with the assistance of an ad-hoc committee.

2. The Minister of Production Activities shall, by regulation³⁹⁴, establish the conditions and arrangements for the administration, intervention and reporting of the Fondo di garanzia per le vittime della caccia, as well as the composition of the committee under paragraph 1.

3. Undertakings authorized to pursue hunting liability insurance shall be required to pay CONSAP, independent management of the Fondo di garanzia per le vittime della caccia, an annual contribution proportional to the premium earned for each contract concluded in compliance with the insurance obligation.

4. The regulation under paragraph 2 shall establish the amount of the contribution, up to a maximum of five per cent of the taxable premium, taking account of the results of the settlement of claims as determined in the annual report drawn up by the fund management committee³⁹⁵.

Art. 304

(Right of redress and subrogation)

1. The Fondo di garanzia per le vittime della caccia which, also through an out of court composition, has paid damages in the cases provided for in article 302 (1, a and b), shall have a right of redress against the person who caused the damage in order to recover the damages paid as well as interest and costs.

2. In the case referred to in article 302 (1, c) the Fondo di garanzia per le vittime della caccia which has paid damages shall be subrogated, for the amount paid, to the policyholder and the

³⁹³ Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular article 35.

³⁹⁴ Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular Chapter III.

³⁹⁵ Decree by the Minister of Economic Development of 30 November 2010 (year 2011); Decree by the Minister of Economic Development of 5 December 2011 (year 2012); Decree by the Minister of Economic Development of 12 December 2012 (year 2013); Decree by the Minister of Economic Development of 4 December 2013 (year 2014).

injured party in their rights against the undertaking placed under compulsory winding up, and shall benefit of the same treatment envisaged for the insurance claims indicated in article 258 (4, a).

TITLE XVIII
SANCTIONS AND SANCTIONING PROCEDURES

Chapter I
UNAUTHORISED PURSUIT OF INSURANCE BUSINESS

Art. 305
(Business pursued without authorisation)

1. Anyone pursuing insurance or reinsurance business without authorization shall be punished with imprisonment from two to four years and with a financial penalty varying from twenty thousand to two hundred thousand euros.
2. Anyone pursuing the activity of insurance or reinsurance mediation without being registered in the register under article 109 shall be punished with imprisonment from six months to two years and with a financial penalty varying from ten thousand to one hundred thousand euros.
3. In case there are reasonable grounds for suspecting that a company pursues insurance or reinsurance business in breach of paragraph 1 or the activity of insurance or reinsurance mediation in breach of paragraph 2, ISVAP shall apply to the court for the adoption of the measures envisaged in article 2409 of the civil code or, for the same purpose, shall report this to the public prosecutor.
4. Insurance or reinsurance undertakings using intermediaries not registered in the sections of the register envisaged in article 109 (2), shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros.
5. The pursuit of the activity of loss adjuster without being registered in the list under article 156 shall be punished under article 348 of the penal code.

Art. 306
(Impediments to the exercise of supervisory functions)

1. Except where provided for in article 2638 of the civil code, anyone hindering supervision by denying access to the premises or by refusing to obey the order to produce the documents concerning insurance or reinsurance business or the activity of insurance or reinsurance mediation, given by ISVAP's officials charged with ascertaining the facts which may constitute a breach of article 305, shall be punished with imprisonment up to two years and with a financial penalty varying from ten thousand to one hundred thousand euros.
2. Except where provided for in paragraph 1 and in article 2638 of the civil code, anyone not complying with ISVAP's instructions within the deadline set or delaying the exercise of ISVAP's

functions shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros.

Art. 307

(Collaboration with the Guardia di finanza)

1. In the performance of its supervisory functions ISVAP may be assisted by the Guardia di finanza, which carries out the requested checks and inspections by making use of the powers of investigation available to it for the assessment of value added tax and income tax.
2. All the news, information and data acquired by Guardia di finanza in the performance of the tasks envisaged in paragraph 1 shall be notified to ISVAP.

Art. 308

(Unauthorised use of insurance name)

1. The use, in the corporate name or in any other act of communication to the public, of the words *assicurazione* (insurance), *riassicurazione* (reinsurance), *compagnia di assicurazione* (insurance company), *compagnia di riassicurazione* (reinsurance company), *mutua assicuratrice* (mutual insurance undertaking), or any other words or phrases, including those in a foreign language, which may be misleading as to the legitimacy to exercise insurance or reinsurance business shall be prohibited to anyone other than the subjects authorized, respectively, to the pursuit of insurance or reinsurance business.
2. The use, in the corporate name or in any other act of communication to the public, of the words *intermediario di assicurazione* (insurance intermediary), *intermediario di riassicurazione* (reinsurance intermediary), *produttore di assicurazione* (insurance canvasser), *agente di assicurazione* (insurance agent), *broker*, *mediatore di assicurazione* (insurance broker), *mediatore di riassicurazione* (reinsurance broker), *produttore diretto di assicurazione* (direct insurance canvasser), *perito di assicurazione* (loss adjuster), or any other words or phrases, including those in a foreign language, which may be misleading as to legitimacy to exercise insurance or reinsurance mediation or the activity of loss adjuster shall be prohibited to anyone other than the subjects registered in the register of insurance and reinsurance intermediaries referred to in article 109 or in the list of loss adjusters referred to in article 156.
3. ISVAP shall, by its own regulation³⁹⁶, establish the cases when, in light of administrative controls or of other factual elements, the words or phrases indicated in paragraphs 1 and 2 may be used by subjects other than undertakings or intermediaries.
4. Anyone breaching the provision of paragraph 1 or 2 shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

Chapter II

INSURANCE AND REINSURANCE UNDERTAKINGS

³⁹⁶ ISVAP regulation n. 9 of 14 November 2007.

Art. 309
(Activity beyond the permitted limits)

1. Undertakings having their head office in the territory of the Italian Republic or in third States and pursuing insurance business beyond the limits of the authorisation in breach of articles 11, 12, 13, 15, 16, 18, 21, 22, 28 and 29 shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros. Undertakings having their head office in the territory of the Italian Republic or in third States and pursuing reinsurance business beyond the limits of the authorisation in breach of articles 57, 57-bis, 58, 59-bis, 59-ter, 59-quater, 59-quinquies and 60-bis shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros³⁹⁷.

2. Mutual insurance undertakings referred to in article 52 pursuing insurance business beyond the limits of the authorization in breach of articles 53 and 55 shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros.

3. The pecuniary administrative sanction varying from five thousand to fifty thousand euros shall be applicable to intermediaries who, on their own or through collaborators or other auxiliary staff, carry on business on behalf or for the benefit of the undertakings referred to in paragraphs 1 and 2.

Art. 310
(Conditions for exercise of business)

1. Non compliance with the provisions of articles 30, 31 (1, 3 and 6), 32, 33, 34 (1, 3 and 4), 36, 37, 37-bis, 38, 39, 40, 41, 42, 42-bis, 42-ter, 43, 48, 49, 56, 57-bis, 62, 63, 64, 65, 65-bis, 66-septies, 67, 87, 119 (2, last sentence), 189 (1), 190 (1 and 5-bis), 191, 196 (2), 197, 211, 212, 213, 217, 218, 219, 348 and 349 (1), or with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros³⁹⁸.

2. Non compliance with the provisions of articles 88, 89, 90, 92, 93, 94, 95, 96, 98, 99, 100 and 101 or with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

Art. 311
(Ownership structure)

1. Failure to provide the information required in articles 69, 71 and 80 or to comply with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros.

³⁹⁷ Paragraph replaced by article 22 (1), legislative decree n. 56 of 29 February 2008.

³⁹⁸ Article amended by article 22 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 41 (7), legislative decree n. 39 of 27 January 2010.

2. The supply of incomplete or erroneous information shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros.

3. The sanction under paragraph 1 shall be applicable to any breach of the obligation to give information envisaged in article 70 (1), and any breach of the provisions of articles 74 (1), 75 (1), and 77 (1 and 3).

4. If the obligation to give information is placed on a natural person, in case of breach the sanction shall be imposed on such person.

Art. 312
(Supplementary supervision)

1. Failure to provide the information required in article 213 or to comply with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros. The supply of incomplete or erroneous information shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

2. Failure to provide the prior notification referred to in article 216 (1) or to comply with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros. When the failure to provide information concerns an operation which could undermine the interests of policyholders the pecuniary administrative sanction varying from five thousand to fifty thousand euros shall apply. Incomplete or erroneous prior notifications shall be punished with a pecuniary administrative sanction varying from one thousand to ten thousand euros.

3. Failure to provide the subsequent periodic notification referred to in article 216 (1) or to comply with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from one thousand five hundred to fifteen thousand euros. Incomplete or erroneous subsequent periodic notifications shall be punished with a pecuniary administrative sanction varying from five hundred to five thousand euros.

Chapter III
COMPULSORY INSURANCE FOR MOTOR VEHICLES AND CRAFT

Art. 313
(Premium and contract term disclosure)

1. Non compliance with the obligations set forth in article 131 shall be punished with a pecuniary administrative sanction varying from one thousand to ten thousand euros.

Art. 314
(Refusal to perform and circumvention of the obligation to insure and prohibition against tie-in sales)

1. The refusal to perform or circumvention of the obligation to insure set forth in article 132 (1), shall be punished with a pecuniary administrative sanction varying from one thousand five hundred to four thousand five hundred euros.

2. The breach or circumvention of the obligation to insure set forth in article 132 (1), which has been committed with respect to certain territorial areas or single categories of policyholders, shall be punished with a pecuniary administrative sanction varying from one million to five million euros.

3. The breach of the prohibition against tie-in sales under article 170 shall be punished with a pecuniary administrative sanction varying from one thousand to three thousand euros.

Art. 315
(Settlement procedures)

1. In the cases provided for in articles 148, 149 and 150 or in the implementing provisions the offer made or the amount paid within one hundred twenty days after the expiry of the prescribed time limit or the failure to notify the refusal to make an offer within the same deadline shall be punished:

a) in case of delays of no more than thirty days, with the sanction varying from three hundred to nine hundred euros;

b) in case of delays of no more than sixty days, with the sanction varying from nine hundred to two thousand seven hundred euros;

c) in case of delays of no more than ninety days, with the sanction varying from two thousand seven hundred to five thousand four hundred euros;

d) in case of delays of no more than one hundred twenty days, with the sanction varying from five thousand four hundred to ten thousand eight hundred euros;

2. When, after one hundred twenty days have passed from the expiry of the prescribed time limit, the offer has not been made, the reasons for not making an offer have not been disclosed or the amount has not been paid, the failure to comply with the obligations set forth in articles 148, 149 and 150 or with the implementing provisions shall be punished with a sanction varying from ten thousand eight hundred to thirty thousand euros for material damage and with the sanction varying from twenty thousand to six thousand euros for personal injury or death.

3. When the undertaking makes the offer after the prescribed time limit has elapsed and at the same time pays the amount, the failure to comply with the obligations set forth in articles 148, 149 and 150 or with the implementing provisions shall be punished with the sanctions envisaged respectively in paragraphs 1 and 2, reduced by thirty per cent.

Art. 316
(Obligations to give information)

1. Failure to provide the periodic information referred to in articles 135 (2) and 154 (4 and 5) shall be punished with a pecuniary administrative sanction varying from one thousand to ten thousand euros.

2. Incomplete or erroneous information under paragraph 1 shall be punished with a pecuniary administrative sanction varying from five hundred to five thousand euros, provided that no blame can be attached to the injured party.

Art. 317
(Other breaches)

1. Non compliance with the provisions of articles 133, 134 (2 and 3), 146 and 148 (11), or with the implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand five hundred to seven thousand five hundred euros.

2. Non compliance with the obligation to deliver the insurance certificate or sticker or the certificate of claims experience shall be punished with a pecuniary administrative sanction varying from one thousand five hundred to four thousand five hundred euros.

3. Non compliance with the provisions of articles 125 (5-bis) and 152 (5) shall be punished with a pecuniary administrative sanction varying from 2,000 to 6,000 euros³⁹⁹.

Chapter IV
DISCLOSURE OF OPERATIONS AND POLICYHOLDER'S PROTECTION

Art. 318
(Advertising of insurance products)

1. Non compliance with the provisions of article 182 (1 and 3) or with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

2. Advertising which is in breach of the protective and prohibitive measures adopted under article 182 (4 and 5) shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros, applicable to anyone making advertisements in breach of the prohibitive measures adopted under article 182 (4 and 5).

Art. 319
(Rules of conduct)

1. Non compliance with the provisions of article 183 or with the relevant implementing provisions when the products marketed are those under article 2 (1), except for class VI, or article 2 (3), shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

³⁹⁹ Paragraph replaced by article 1 (14), legislative decree n. 198 of 6 November 2007.

2. The breach of the protective and prohibitive measures adopted under articles 182 (6) and 184 (1), shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros.

Art. 320
(Information note)

1. Anyone failing to deliver the information note referred to in article 185 before the conclusion of the contract shall be punished with a pecuniary administrative sanction varying from two thousand five hundred to twenty five thousand euros.

Chapter V
DUTIES TOWARDS THE SUPERVISORY AUTHORITY

Art. 321
(Duties of the control bodies)

1. The members of the control bodies of an insurance or reinsurance undertaking, who fail to provide the information required in article 190 (1 and 3), shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros.

2. The same sanction shall be applicable to the members of the corresponding bodies of the companies which control or are controlled by an insurance or reinsurance undertaking, who fail to provide the information required in article 190 (1 and 3).

3. ISVAP shall inform the Ministry of Economic and Financial Affairs and CONSOB of any sanction adopted against the statutory auditors and the statutory auditing firms. The Ministry of Economic and Financial Affairs and CONSOB shall inform ISVAP of any measure adopted⁴⁰⁰.

4. *(repealed)*⁴⁰¹

Art. 322
(Duties of the statutory auditor and of the statutory auditing firm)⁴⁰²

1. ISVAP shall report to CONSOB on the statutory auditor and the legal representatives of the statutory auditing firm of an insurance or reinsurance undertaking, who fail to provide the notifications required in article 190 (1, 2 and 4), for the purposes of adopting the measures envisaged in article 163 of the consolidated law on financial mediation⁴⁰³.

2. ISVAP shall also report to CONSOB on the statutory auditor and the legal representatives of the statutory auditing firm appointed by the companies which control or are controlled by an

⁴⁰⁰ Paragraph amended by article 41 (8, a), legislative decree n. 39 of 27 January 2010.

⁴⁰¹ Paragraph repealed by article 41 (8, b), legislative decree n. 39 of 27 January 2010.

⁴⁰² Heading amended by article 41 (9), legislative decree n. 39 of 27 January 2010.

⁴⁰³ Paragraph amended by article 41 (10), legislative decree n. 39 of 27 January 2010.

insurance or reinsurance undertaking, who fail to provide the notifications required in article 190 (1, 2, 4 and 5)⁴⁰⁴.

3. CONSOB shall inform ISVAP of any measure adopted.

Art. 323

(Duties of the auditing actuary and of the appointed actuary)

1. The actuary appointed by the auditing firm of an insurance or reinsurance undertaking, who fails to provide the notifications required in article 190 (1, 2 and 4), shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros. The actuary appointed by the statutory auditor or by the statutory auditing firm of an insurance or reinsurance undertaking who violates article 103 (3), shall be punished with a pecuniary administrative sanction varying from one hundred thousand to five hundred thousand euros. The criminal sanctions for the offence of corruption involving the auditor also apply⁴⁰⁵.

2. The actuary appointed by an insurance undertaking, who fails to provide the information required in article 31 or in article 34, shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

3. The Actuaries' Association shall inform ISVAP of the measures taken following the notification of the sanction imposed in accordance with paragraphs 1 and 2.

4. When the cases provided for in paragraphs 1 and 2 are extremely serious ISVAP may revoke the actuary.

Chapter VI

INSURANCE INTERMEDIARIES

Art. 324

(Pecuniary administrative sanctions applicable to intermediaries)

1. Non compliance with the provisions of articles 109 (4 and 6), 117 (1), 119 (2, last sentence), 120, 121, 131, 170, 182 (2 and 3), 183, 185 (1) and 191, or with the relevant implementing provisions by intermediaries recorded in the register envisaged in article 109, shall be punished with a pecuniary administrative sanction varying from one thousand to ten thousand euros, even when such non compliance is a result of an act on the part of their employees or other auxiliary staff.

2. In extremely serious cases or in the case of a repetition of the infringement the minimum and maximum amounts of the sanction under paragraph 1 shall be doubled.

Chapter VII

⁴⁰⁴ Paragraph amended by article 41 (11), legislative Decree n. 39 of 27 January 2010.

⁴⁰⁵ Paragraph amended by article 41 (12, a and b), legislative decree n. 39 of 27 January 2010.

Art. 325

(Persons subject to pecuniary administrative sanctions)

1. Except for the sanctions envisaged under chapter V, imposed against the natural persons liable for the infringement, pecuniary sanctions shall be applied against the undertakings and intermediaries liable for the infringement.
2. When the subjects referred to in paragraph 1 prove that the breach has been committed by their employees or collaborators, by abusing official duties and to derive personal benefit, the sanction shall be imposed against the employee or collaborator to whose actions or failure to act the infringement may be attributed. The undertaking and the intermediary shall be held civilly liable, without prejudice to their right of recourse.
3. The undertakings shall be jointly and severally liable with the infringer if the infringement has been committed by persons who perform functions partly included in the operational cycle of insurance and reinsurance undertakings.

Art. 326

(Procedure for the application of pecuniary administrative sanctions)

1. ISVAP shall notify the charges against the persons allegedly liable for the infringement within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, except in cases where the timely exercise of the supervisory functions or the interests of policyholders and of those entitled to insurance benefits are in no way adversely affected. Limited to the infringements referred to in articles 148 and 149 [*and without prejudice to the provisions of paragraphs 2 and 3*], the procedure may be suspended by ISVAP for a period up to ninety days in case the undertaking shows that checks are being carried out based on the reasonable ground that a fraud has taken place. [*If the suspension period has elapsed and the undertaking has not submitted any complaint the period referred to in paragraphs 2 and 3 shall begin again.*] The filing of a complaint shall suspend the procedure. The judgement or any other adjudication of the court in criminal proceedings shall extinguish the infringement.
- [2. Except for the cases referred to in article 328 (1) the parties in the procedure may pay the most favourable amount between one third of the maximum and the double of the minimum sanction available in law. The payment shall extinguish the infringement.*
- 3. If parties do not pay the reduced amount or in those cases where such option is not envisaged they may, within the deadline referred to in paragraph 2, file an appeal against the*

⁴⁰⁶ The rules on the procedures for the application of sanctions have been impliedly revoked or amended by articles 24 and 26 of law n. 262 of 28 December 2005 "Provisions on the protection of savings and provisions governing the financial markets" as amended by legislative decree n. 303 of 29 December 2006 "Coordination of the consolidated banking law and of the consolidated law on financial mediation with law n. 262 of 28 December 2005". The procedure for the application of sanctions is regulated by IVASS Regulation n. 1 of 8 October 2013, which replaced ISVAP Regulation n. 1 of 15 March 2006. The provisions of this Chapter which must be considered repealed are in italics and square brackets.

charges notified and ask for a hearing before the Advisory commission on sanctioning procedures.

4. *The Advisory commission, appointed by the Minister of Production Activities, is made up of one judge, even if retired, acting at least in a capacity as Counsellor to the Court of Cassation or in a similar capacity or of a tenured teacher, even if retired, who holds the chair, as well as of one manager of the Ministry of Production Activities and one manager of ISVAP. The term of office shall last for a period of four years and may be renewed only once. The rules on the procedure before the Advisory commission and the situations of incompatibility of its members shall be established with regulation of the Minister of Production Activities in compliance with the principles of fair proceedings. The Advisory commission shall perform its activity at ISVAP, and the latter shall bear its operational costs and pay the consideration for its members.*

5. *If an appeal has been filed in accordance with paragraph 3 the Advisory commission shall acquire the results of the investigations, examine the defences and arrange for the hearing, where the parties may be assisted by independent lawyers and experts. If, in its opinion, no breach can be proven, the Advisory commission may decide to terminate the procedure or ask that the results of the investigations be supplemented. On the contrary, if in its opinion the breach is proven, it shall submit to the Minister of Production Activities a reasoned proposal for establishing the pecuniary disciplinary sanction, also with regard to any mitigation or elimination of the harmful effects and to the adoption of appropriate measures to prevent that the infringement be repeated.] Furthermore, articles 8, 8-bis and 11 of law n. 689 of 24 November 1981 shall apply.*

[6. *Based on the outcome of the proposal by the Advisory commission, or at the request of ISVAP if no complaint is filed, the Ministry of Production Activities shall decide the sanction with a ministerial directive, which shall be then communicated by ISVAP to the parties in the procedure.]*

7. The judicial protection before the administrative judge is governed by the code of the administrative procedure. Appeals shall be notified also to ISVAP, which shall provide defence in court with their lawyers⁴⁰⁷.

8. *[The ministerial decrees,]⁴⁰⁸ imposing the pecuniary sanctions and the judgements on appeals issued by the administrative courts shall be published in ISVAP's Bulletin. [At the request of ISVAP and on account of the infringement as well as of the interests involved, the Ministry of Production Activities may establish further forms of publicity of the measure, and order the infringer to bear the relevant costs.]*

Art. 327

(Cases where there is more than one breach and corrective measures)

1. In the case of a repeated breach of the same provision of this code, or of its implementing provisions, which is punished with pecuniary administrative sanctions and which has been committed by means of a number of actions or omissions resulting from the same malfunction

⁴⁰⁷ Paragraph amended by article 3 of annex 4 to legislative decree n. 104 of 2 July 2010 ("Code of the administrative process")

⁴⁰⁸ Now shall read "IVASS Orders".

within the undertaking's or the intermediary's organisation, ISVAP shall notify the charges in accordance with article 326 (1, first sentence) and, in the same measure, shall establish a mandatory time limit of not more than one hundred eighty days within which the party concerned must take the necessary steps to remove the malfunction found, if it intends to make use of this option.

2. If the party intends to take the steps indicated in paragraph 1 it shall inform ISVAP accordingly, within sixty days of the issue of the measure notifying the charges, by specifying the terms, characteristics and expected effects. [*This notification shall preclude the exercise of the option to pay the reduced amount as per article 326 (2), where this is allowed under article 328.*]

3. If the party communicates that it does not intend to take the required steps, or if it makes no comment within sixty days of the issue of the measure notifying the charges, [*the time for paying the reduced amount as per article 326 (2), where this is allowed, or to file a complaint as per article 326 (3), shall start running*], it being understood that the application of the alternative sanction to the violations ascertained [*shall*] remain precluded. The procedure shall continue according to the provisions of article 326 [*5 and 6.*]

4. In the event that the party has made use of the option envisaged under paragraph 2, within thirty days from the expiry of the period assigned to remove the malfunction found, ISVAP shall verify that the corrective measures have been adopted and shall inform the party in the procedure of the relevant outcome. If the corrective measures are adopted according to the terms and characteristics indicated in the notification to ISVAP one single pecuniary administrative sanction shall be applicable, alternative to those applicable in case of breach of the same provision, which shall be not lower than fifty thousand euros and not higher than five hundred thousand euros. Any remarks raised by ISVAP shall not preclude the application of the alternative sanction, but shall be taken into account when determining such sanction.

5. Within sixty days of notification of the outcome of ISVAP's verifications the party may submit its comments on the remarks made by ISVAP, if any, on the corrective measures adopted. [*In all cases ISVAP shall send the Advisory commission on sanctioning procedures a report on the implementation of the measures taken for the purposes of establishing the alternative sanction.*]

Art. 328

(Rules on the payment of pecuniary administrative sanctions)

[1. *The option to pay the reduced amount shall not apply to the pecuniary sanctions envisaged by articles 305 (4), 308 (4), 309, 310, 311, 312 and 319.*

2. *In those cases where the infringement can be extinguished through the payment of the reduced amount and the party expressly waives all claims before the relevant meeting of the Advisory commission is fixed the procedure shall be extinguished by the payment of a sanction equal to the amount of the oblatio increased by ten per cent.*]

3. By its own regulation the Minister of Production Activities⁴⁰⁹, in agreement with the Minister of Economy and Finance, shall prescribe the time limits for payment and the procedures for the enforced recovery of the pecuniary sanctions envisaged by this code.

4. The sanctions imposed in application of the articles under chapter III shall be paid to Consap S.p.A. – autonomous management of the Fondo di garanzia delle vittime della strada⁴¹⁰.

Chapter VIII

PERSONS SUBJECT TO DISCIPLINARY SANCTIONS AND PROCEDURE

Art. 329

(Insurance intermediaries and loss adjusters)

1. Insurance or reinsurance intermediaries, including direct canvassers, collaborators and other auxiliary staff of the insurance or reinsurance intermediary, and loss adjusters who, when performing their activity, including the cases punished under article 324, breach the rules of this code or the relevant implementing provisions, shall be punished with one of the following sanctions, depending on the seriousness of the breach and on any previous convictions:

- a) reproach;
- b) censure;
- c) striking off.

2. The reproach, consisting in a reasoned written reprimand, shall be adopted for instances of minor failures. Censure shall be adopted in serious cases. The striking off shall be adopted in extremely serious cases and shall imply the immediate termination of the mediation relationship.

3. The disciplinary measures shall be notified to the party concerned by means of a registered letter and the undertakings with which such party has current assignments shall be informed accordingly.

Art. 330

(Persons subject to disciplinary sanctions)

1. The disciplinary sanctions shall be applied against the natural persons liable for the infringement who are registered in the register of intermediaries, including collaborators and other auxiliary staff of the insurance or reinsurance intermediary, or in the list of loss adjusters.

2. In case of pursuit of business as legal entity the striking off shall also imply the removal of the company in extremely serious cases or in the event of systematic repetition of the disciplinary infringement.

⁴⁰⁹ See the decree of the Minister of Economic Development n. 124 of 19 June 2009, published in the Italian Official Journal n. 193 of 21 August 2009.

⁴¹⁰ Paragraph corrected by Notice published in the Italian Official Journal n. 152 of 2 July 2010.

Art. 331
(Procedure for the application of disciplinary sanctions)

1. For the purposes of imposing disciplinary sanctions ISVAP, within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, shall notify the charges against the persons allegedly liable for the infringement and shall submit the relevant documents to the Disciplinary Guarantee Committee.
2. The persons subject to disciplinary sanctions may, within sixty days, file an appeal against the charges notified and ask for a hearing before the Disciplinary Guarantee Committee.
3. The Guarantee Committee is set up within ISVAP and is made up of one judge acting at least in a capacity as Counsellor to the Court of Cassation or in a similar capacity, even if retired, who holds the chair or of a tenured teacher, and of two experts in insurance matters, which are appointed after hearing the most representative associations. The term of office shall last for a period of four years and may be renewed only once. The Guarantee Committee may be made up of more than one section, with a consequent increase in the number of its members, whenever ISVAP deems it necessary to guarantee efficiency and timeliness in the determination of disciplinary proceedings⁴¹¹. ISVAP shall appoint the Guarantee Committee⁴¹², lay down rules on the proceedings before the Committee in compliance with the principles of fair proceedings and establish the situations of incompatibility and the consideration for the members, which shall be borne by ISVAP⁴¹³.
4. If an appeal has been filed in accordance with paragraph 2 or the relevant deadline has expired without any appeal being filed, the Guarantee Committee shall acquire the results of the investigations, examine the defences and arrange for the hearing, where the parties may be assisted by independent lawyers and experts. If, in its opinion, no breach can be proven, the Guarantee Committee may decide to terminate proceedings or ask that the results of the investigations be supplemented. On the contrary, if in its opinion the breach is proven, it shall submit to ISVAP's President a reasoned proposal for establishing the disciplinary sanction.
5. Once it has received the proposal made by the Guarantee Committee, ISVAP's President shall, by its own decree, decide the disciplinary sanction, which is then notified to the parties in the proceeding.
6. Disputes concerning appeals against the measures applying the disciplinary sanction shall be referred to the exclusive jurisdiction of the administrative courts. ISVAP shall be represented by its own lawyers in legal proceedings.
7. The measures imposing the striking off, the judgements on appeals issued by the administrative courts and the decrees relating to extraordinary petitions to the President of the Italian Republic shall be published in ISVAP's Bulletin.

⁴¹¹ Second section set up by ISVAP order n. 2613 of 3 July 2008.

⁴¹² ISVAP order n. 2498 of 16 January 2007, ISVAP order n. 2612 of 3 July 2008, ISVAP order n. 2613 of 3 July 2008 and ISVAP order n. 2993 of 18 July 2012.

⁴¹³ IVASS Regulation n. 2 of 8 October 2013, which replaced ISVAP Regulation n. 6 of 20 October 2006.

TITLE XIX
PROVISIONS ON TAXES, TRANSITIONAL AND FINAL PROVISIONS

Chapter I
TAX PROVISIONS

Art. 332

(Supplementary fund covering the solvency margin of insurance undertakings)

1. The supplementary fund, set up before 1 January 2004 in compliance with article 27 (4, 5 and 6) of legislative decree n. 174 of 17 March 1995 and article 28 of legislative decree n. 175 of 17 March 1995, shall be taken into account for the purposes of calculating the company's taxable income in the financial year and in so far as it is attributed to members/shareholders also by capital reduction.
2. The revaluation reserve, envisaged in the balance sheet of insurance undertakings' financial statements shall also include the supplementary fund referred to in paragraph 1 already written in the financial statement of the financial year ending 31 December 2003.

Art. 333

(Taxes and levies on entries and on the registration of the assets freeze)

1. The registration of mortgages and freeze of assets envisaged by article 224 (1), to be effected in relation to immovable property situated in the territory of the Italian Republic, shall be subject to flat-rate mortgage taxes.
2. The relevant costs shall be borne by the undertaking.

Art. 334

(Fee on premiums of motor vehicles and craft insurance)

1. A fee shall apply to motor liability insurance premiums, in substitution for the actions within the competence of the Regions and the other bodies which provide benefits provided by the National Health Service against the insurance undertaking, the person who caused the accident or the appointed undertaking, for the reimbursement of the benefits provided to the victims of accidents caused by motor vehicles and craft.
2. A fee⁴¹⁴ of 10.5% shall apply to premiums earned, and shall be shown separately in the policy and in the receipts. The insurance undertaking shall have a right of recourse against the policyholder for the amount of the fee.
3. Law n. 1216 of 29 October 1961 and subsequent modifications shall apply to the identification and notification of the premiums subject to the fee as well as to its collection and the relevant sanctions.

⁴¹⁴ For the assignment of the fee see art. 2 para. 110 of law n. 191 of 23 December 2009 and art. 4 para. 76 of law n. 92 of 28 June 2012.

Chapter II **SUPERVISORY FEES**

Art. 335

(Insurance and reinsurance undertakings)

1. The following subjects shall be required to pay ISVAP an annual contribution, called supervisory fee on insurance and reinsurance business, for an amount equal to that referred to in paragraph 2:

- a) insurance undertakings with head office in the territory of the Italian Republic and registered under section I of the register referred to in article 14 (4);
- b) branches of non-EU insurance undertakings established in the territory of the Italian Republic and registered under section II of the register referred to in articles 14 (4) and 28 (5, last sentence);
- c) other mutual undertakings with head office in the territory of the Italian Republic and registered under section III of the register referred to in articles 14 (4) and 55 (2);
- d) reinsurance undertakings with head office in the territory of the Italian Republic and registered under section IV of the register referred to in article 59 (4);
- e) branches of non-EU reinsurance undertakings established in the territory of the Italian Republic and registered under section V of the register referred to in article 60 (3).

2. The supervisory fee shall not exceed two per thousand of the premiums earned for each financial year, excluding taxes and levies and net of a percentage for operating expenses specifically calculated by ISVAP on the basis of the data shown in the financial statements of the previous financial year⁴¹⁵.

3. The supervisory fee due from the other mutual undertakings shall be one per thousand of the premiums earned for each financial year, excluding levies and taxes.

4. The supervisory fee shall be established by 30 May by decree⁴¹⁶ of the Minister of Economy and Finance, after hearing ISVAP, so as to ensure the financial cover of the costs for supervising over undertakings. The decree shall be published in the Official Journal and in ISVAP's Bulletin by 30 June.

5. The fee shall be paid directly to ISVAP by 31 July of each year and shall be included as a specific item in the budget. Any surplus shall be included among the operating surplus and shall be taken into account to calculate the contribution for the following financial year.

6. The enforced recovery shall be effected on a tax-roll basis and in accordance with the arrangements in article 67 (2) of presidential decree n. 43 of 28 January 1988.

Art. 336

(Insurance and reinsurance intermediaries)

⁴¹⁵ ISVAP order n. 3025 of 30 November 2012 (for the premiums of 2013); IVASS order n. 11 of 31 October 2013 (for the premiums of 2014).

⁴¹⁶ Decree of the Minister of Economic and Financial Affairs of 28 June 2013.

1. The subjects registered in the register of insurance intermediaries shall be required to pay ISVAP an annual contribution, called supervisory fee on insurance and reinsurance intermediaries, for the maximum amount of: one hundred euros for the natural persons registered in the register referred to in article 109 (2), a); five hundred euros for the legal persons registered in the register referred to in article 109 (2, a); one hundred euros for the natural persons registered in the register referred to in article 109 (2, b); five hundred euros for the legal persons registered in the register referred to in article 109 (2, b); fifty euros for the natural persons registered in the register referred to in article 109 (2, c), and ten thousand euros for the legal persons registered in the register referred to in article 109 (2, d). The fee may not be deducted from the intermediary's income.

2. The supervisory fee shall be established by 30 May by decree of the Minister of Economy and Finance⁴¹⁷, after hearing ISVAP, so as to ensure the financial cover of the costs for supervising over intermediaries recorded in the register. The decree shall be published in the Official Journal and in ISVAP's Bulletin by 30 June.

3. Article 335 (5 and 6) shall apply. The proof of payment shall be communicated to ISVAP in the proper form and within the time limit prescribed by the decree referred to in paragraph 2.

Art. 337 (Loss adjusters)

1. The subjects registered in the list of loss adjusters⁴¹⁸ shall be required to pay ISVAP an annual fee, called supervisory fee on loss adjusters, for a maximum amount of one hundred euros.

2. The supervisory fee shall be established by 30 May by decree of the Minister of Economy and Finance⁴¹⁹, after hearing ISVAP, so as to ensure the financial cover of the costs for supervising over the loss adjusters recorded in the list. The decree shall be published in the Official Journal and in ISVAP's Bulletin by 30 June.

3. The fees referred to in this article shall be paid to a specific unit in the Italian State budget revenue, and then re-allocated, by decree of the Minister of Economy and Finance, to the budget of the Ministry of Production Activities, which shall subsequently allocate them to ISVAP.

4. The proof of payment shall be communicated to ISVAP in the proper form and within the time limit prescribed by the decree referred to in paragraph 2. In the event of non-payment the provision of article 335 (6) shall apply.

Chapter III **TRANSITIONAL PROVISIONS**

⁴¹⁷ Decree of the Minister of Economic and Financial Affairs of 10 July 2013.

⁴¹⁸ See art. 13, para. 35 of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP.

⁴¹⁹ Decree of the Minister of Economic and Financial Affairs of 14 January 2014.

Art. 338

(Authorised insurance and reinsurance undertakings)

1. The insurance undertakings which, at the date of entry into force of this code, will be authorised pursuant to article 7 of legislative decree n. 174 of 17 March 1995, or to article 9 of legislative decree n. 175 of 17 March 1995, or which at the date of entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section I of the register referred to in article 14 (4).

2. The branches of non-EU insurance undertakings which, at the date of entry into force of this code, will be authorised pursuant to article 81 of legislative decree n. 174 of 17 March 1995, or to article 93 of legislative decree n. 175 of 17 March 1995, or which at the date of entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section II of the register referred to in articles 14 (4) and 28 (5, last sentence).

3. The mutual insurance undertakings not subject to the legislative decrees n. 174 of 17 March 1995 and n. 175 of 17 March 1995 which, at the date of entry into force of this code, will be authorised pursuant to presidential decree n. 449 of 13 February 1959, shall automatically be registered under section III of the register referred to in articles 14 (4) and 55 (2).

4. The reinsurance undertakings which, at the date of entry into force of this code, will be authorised pursuant to presidential decree n. 449 of 13 February 1959, or which at the date of entry into force of said decree will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section IV of the register referred to in articles 14 (4) and 59 (5).

5. The branches of reinsurance undertakings from third countries which, at the date of entry into force of this code, will be authorised pursuant to presidential decree n. 449 of 13 February 1959, or which at the date of entry into force of said decree will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section IV of the register referred to in articles 14 (4) and 60 (3).

6. The undertakings with head office in other member States which, at the date of entry into force of this code, will carry on business in the territory of the Italian Republic pursuant to article 69 of legislative decree n. 174 of 17 March 1995, or to article 80 of legislative decree n. 175 of 17 March 1995, or which at date of the entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered in the list of undertakings carrying on business by way of establishment referred to in article 26.

7. The undertakings with head office in other member States which, at the date of entry into force of this code, will carry on business in the territory of the Italian Republic pursuant to article 70 of legislative decree n. 174 of 17 March 1995, or to article 81 of legislative decree n. 175 of 17 March 1995, or which at the date of entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, and the branches of Italian undertakings established in other member States which, at the date of entry into force of this code, will carry on business in the territory of the Italian Republic pursuant to article 49 of legislative decree n. 174 of 17 March 1995, or to article 60 of legislative decree n. 175 of 17

March 1995, shall automatically be registered in the list of undertakings carrying on business by way of provision of services referred to in article 26.

Art. 339

(Calculation and coverage of technical provisions for life business)

1. As regards the contracts concluded before 19 May 1995, insurance undertakings having their head office in the territory of the Italian Republic and branches of non-EU insurance undertakings shall continue to use the calculation principles envisaged by the provisions in force on that date.

2. The undertakings referred to in paragraph 1, which were formerly required to transfer a percentage of the risks to Istituto nazionale delle assicurazioni, shall represent, also by way of derogation from current regulations, their technical provisions limited to the amount obtained by deducting from technical provisions calculated pursuant to paragraph 1 an amount equal to the legal transfers effected before said requirement ceased to have effect. The effects of the agreements concluded between said undertakings and CONSAP, regulating the relationships deriving from legal transfers, shall remain unchanged.

Art. 340

(Available solvency margin for life business)

1. Until 31 December 2009, at the reasoned request of the undertaking pursuing life business, ISVAP may allow that the available solvency margin may also consist of, for periods not exceeding twelve months each, a percentage of the undertaking's future profits, within the limits and subject to the conditions laid down in the regulation referred to in article 44 (4)⁴²⁰.

2. For the purposes of the request referred to in paragraph 1 the undertaking shall submit a report, drawn up and underwritten by the appointed actuary, confirming the plausibility that such profits be obtained in the future, and a plan illustrating how the limits can be respected further on, also on account of the fact that it will no longer be possible to use future profits after the transitional period has elapsed.

Art. 341

(Undertakings in compulsory winding up)

1. The provisions under article 252 shall apply to undertakings placed under compulsory winding up after the entry into force of legislative decree n. 174 of 17 March 1995 and legislative decree n. 175 of 17 March 1995. Compulsory winding ups commenced before the entry into force of said decrees shall continue to be governed by the law that was applicable to them at the time of publishing of the relevant measure in the Official Journal. Articles 246 (1, 2 and 3), 250, 252 (2), 261, 262 and 263 shall apply to all proceedings underway as of the date of entry into force of this code.

⁴²⁰ ISVAP Regulation n. 19 of 14 March 2008.

2. The decree by the Minister of Labour and Social Policy, issued in agreement with the Minister of Production Activities, laying down rules to facilitate, without costs to be borne by the State budget, migration of workers from insurance undertakings pursuing compulsory motor liability insurance that are placed under administrative compulsory winding up, who have been re-employed by the liquidator in the context of the measures for the pursuit of active policies for income and employment support referred to in article 2 (28) of law n. 662 of 23 December 1996, shall remain into force.

Art. 342

(Formerly authorised participations)

1. The qualifying holdings or controlling interests formerly authorised in application of article 10 of law n. 20 of 9 January 1991 shall remain authorised, except for any withdrawal.

Art. 343

(Intermediaries who are already registered or pursuing business)

1. The subjects who, at the date of entry into force of this code, will be registered in the Register of insurance agents or in the National register of insurance and reinsurance brokers shall automatically be registered in the corresponding section of the register envisaged by article 109 (2) after showing evidence that they have complied with the obligation to take out the professional indemnity insurance referred to in articles 110 (3) and 112 (3), subject to the provisions of article 109 (3), within twelve months of the date of entry into force of this code.

2. The subjects who have been removed from the Register of insurance agents or the National register of insurance and reinsurance brokers can, within, respectively, five years or two years of the date of entry into force of this code, be registered again, provided that the application is submitted within twelve months of the entry into force of this code and the removal was not ordered on the basis of a definitive disciplinary measure. Subject to the provisions of article 109 (3), registration shall be subject to the fulfilment of the obligation to take out the professional indemnity insurance policy referred to in article 110 (3).

3. The natural persons who, if law n. 48 of 7 February 1979 and law n. 792 of 28 November 1984 had remained in force, would have reached the requirements for automatic registration in the register of insurance agents or in the register of insurance and reinsurance brokers respectively, shall be entitled to registration in the corresponding section of the register envisaged by article 109, provided that the period required is completed within twelve months of the date of entry into force of this code. During the period laid down for registration they may continue to carry on the activity previously pursued.

4. The subjects referred to in article 109 (2 c, d and e) who, at the date of entry into force of this code, carry on the activity of insurance or reinsurance broker may be registered, subject to the provisions of article 109 (4), in the corresponding section of the register within the subsequent twelve months. During the period laid down for registration they may continue to carry on the activity previously pursued.

5. The fund referred to in article 115 shall succeed to all the rights and obligations of the Guarantee fund for the activity of insurance and reinsurance brokers referred to in article 4 (1, f) of law n. 792 of 28 November 1984, and shall continue to intervene in the cases envisaged by the decree of the Minister of Industry, Commerce and Handicrafts of 30 April 1985, published in the Official Journal n. 110 of 11 May 1985.

6. The natural persons referred to in this article and those registered in the register of insurance and reinsurance intermediaries shall not be subject to the obligations envisaged for commercial agents as regards supplementary pensions.

Art. 344

(Formerly registered loss adjusters)

1. Loss adjusters carrying on the activity of assessing and estimating material damage resulting from the use, theft and fire of motor vehicles and craft and who, at the date of entry into force of this code, will be registered in the list referred to in article 2 of law n. 166 of 17 February 1992, shall automatically be registered in the list envisaged by article 156.

Chapter IV

FINAL PROVISIONS

Art. 345

(Institutions and bodies excluded)

1. The following institutions and bodies shall be excluded from the scope of this code:

a) public administrations, social security institutions administered by law by the Ministry of Economy and Finance, institutions, bodies and funds – however named - which manage provident and mutual-benefit schemes included in a statutory social security system for the benefit of workers or of specific professional categories;

b) the Cassa di previdenza per l'assicurazione degli sportivi, recognised by royal decree n. 2047 of 16 October 1934, and subsequent modifications;

c) SACE Servizi assicurativi per il commercio estero S.p.a., envisaged by law n. 227 of 24 May 1977, and subsequent modifications, limited to those activities benefiting from the support of the State and without prejudice to paragraph 2;

d) the Fondo di solidarietà nazionale per la riassicurazione dei rischi agricoli set up within ISMEA under article 127 of law n. 388 of 23 December 2000, and governed by articles 2 and 4 of decree-law n. 200 of 13 September 2002, converted, after amendment, by law n. 256 of 13 November 2002;

e) organisations which undertake to provide benefits solely in the event of death, where the benefits are provided in kind or where the amount of such benefits does not exceed the average

funeral costs established in article 15 (1) d) of the consolidated law on income tax, envisaged by presidential decree n. 917 of 22 December 1986, and subsequent modifications;

f) società di mutuo soccorso set up under law n. 3818 of 15 April 1886 which directly pay capitals or annuities of any amount to their members, without prejudice to paragraph 3;

g) farmers' mutual associations, set up under law n. 526 of 7 July 1907, and royal decree-law n. 1759 of 2 September 1919, as amended by royal decree-law n. 2479 of 21 October 1923, both converted into law n. 473 of 17 April 1925, as amended by article 9 of royal decree-law n. 1290 of 12 July 1934, converted into law n. 303 of 12 February 1935.

2. By way of derogation from paragraph 1, SACE S.p.a. shall be subject to the provisions of chapters I, II and III of title VIII of this code as concerns the activities benefiting from the support of the State. The activities of SACE S.p.a. not benefiting from the support from the State shall remain fully subject to the provisions of this code.

3. Mutual societies referred to in paragraph 1 f), which undertake to pay to their members capitals or annuities of an overall amount higher than one hundred thousand euros for each financial year, shall be subject to the provisions of title IV, *mutatis mutandis*. When these societies conclude insurance contracts on behalf of their members, the latter shall be provided with the information referred to in titles IX, chapter III, and XII, *mutatis mutandis*.

4. Self-managed healthcare funds shall be subject to the provisions of title IV, *mutatis mutandis*.

Art. 346

(Assistance provided by non insurance institutions and undertakings)

1. The following activities shall not constitute exercise of assistance insurance:

a) servicing, maintenance, after-sales service and the mere indication or provision of aid as an intermediary;

b) assistance operations carried out by a person resident or having its head office in the territory of the Italian Republic on the occasion of an accident or breakdown involving a vehicle which occurs in the same territory, on condition that such activity be limited to the following assistance operations:

1) an on-the-spot breakdown service, provided by using mainly own staff and equipment;

2) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means.

2. The provision under paragraph 1 b) shall also apply when the accident or breakdown have happened abroad and the breakdown service or conveyance of the vehicle is provided by a body, similar to another body in Italy, of which the beneficiary of the assistance is a member, which provides the assistance on the basis of a reciprocal agreement with the Italian body, simply on presentation of a membership card, without any additional premium being paid.

3. When the assistance described in paragraph 1 b) is provided by an insurance undertaking, it shall constitute exercise of insurance business in the assistance class and, without prejudice to the provisions of article 2 (5), it may only be provided by undertakings authorized for class 18.

4. ISVAP shall, by its own regulation, lay down the conditions governing the taking up and pursuit of business, also by way of exemptions from the provisions of titles II, III and VIII, relating to insurance undertakings pursuing only assistance activity, when this activity consists only of benefits in kind, is carried out exclusively on a local basis and the total annual income collected does not exceed two hundred thousand euros.

Art. 347

(Regions with legislative power)

1. The State shall exercise its legislative powers on insurance matters in compliance with article 117 (2) e) and l) of the Constitution.

2. Special statute regions which, in accordance with the provisions implementing their statutes, are vested with powers on matters regulated by this code, shall issue implementing rules in compliance with the mandatory general provisions contained in this code.

3. In accordance with the provisions set forth in this code the Minister of Production Activities and ISVAP shall have exclusive competence to adopt the measures concerning insurance and reinsurance undertakings admitted to mutual recognition, EU undertakings pursuing business in the territory of the Italian Republic under the right of establishment or the freedom to provide services, branches of third-country insurance and reinsurance undertakings, insurance and reinsurance intermediaries and loss adjusters.

4. Whenever regional rules provide for the adoption of measures against mutual insurance undertakings referred to in title IV, in particular as regards the granting and withdrawal of the authorization to pursue business, the approval of the amendments to the articles of association and the approval of portfolio transfers, transformation and mergers or divisions, ISVAP shall provide a binding opinion for supervisory purposes. Supervisory assessments shall be the sole responsibility of ISVAP.

5. The provisions set forth in paragraphs 3 and 4 may not be derogated from and shall prevail over any contrary provisions already issued.

Art. 348

(Simultaneous pursuit of life and non life insurance)

1. By way of derogation from the requirement to limit their objects to the pursuit of life or non life insurance, of reinsurance and related operations, as provided for in article 11 (2), the simultaneous pursuit of life and non life insurance shall be allowed to undertakings authorized to such business as at 15 March 1979.

2. An undertaking simultaneously pursuing life and non life insurance in accordance with paragraph 1 shall be required to maintain a separate management for each of the two activities.

ISVAP shall, by its own regulation⁴²¹, fix the criteria and methods for representing the separate management, by imposing the requirement:

- a) to indicate in the memorandum and articles of association what part of the capital, or of the initial fund in case of mutual undertakings, and of capital provisions shall be allocated to each management;
- b) to draw up the accounts in such a manner as to show the results and the availability of the solvency margin required for each of the two activities;
- c) to apportion the items constituting the solvency margin, specific for each activity, to the solvency margin of the corresponding management.

3. Subject to ISVAP's authorisation, the undertaking which has fulfilled the obligations laid down in paragraph 2 may use items making up the net assets included in the available solvency margin for one or other activity.

4. Insurance undertakings with head office in other member States which, at the date of entry into force of this code, carry on business by way of establishment or by way of free provision of services and are authorized in their respective countries to the simultaneous pursuit of one or more life and non life classes, may continue to pursue such classes in the territory of the Italian Republic either by way of establishment or by way of free provision of services.

5. The provisions of this article shall also apply to undertakings which have been authorised to the simultaneous pursuit of life assurance and accident and sickness insurance after the date indicated in paragraph 1, without prejudice to the obligation to comply with the provisions of paragraph 2 b) starting from the accounts current at the date of issue of the authorization.

Art. 349

(Insurance undertakings with head office in the Swiss Confederation)

1. Insurance undertakings having their head office in the Swiss Confederation and proposing to pursue non life business in the territory of the Italian Republic shall not be subject to the provisions under chapter IV of title II and to those under chapter V of title III which shall be indicated by ISVAP's regulation⁴²².

2. The undertakings under paragraph 1 must enclose with their application for authorisation a certificate issued by the competent authority attesting that they possess the solvency margin calculated in accordance with the provisions of chapter IV of title III.

3. For the purposes of chapter IV of title VII, the undertakings under paragraph 1 may delegate to the branch established in the territory of the Italian Republic the functions of managing and coordinating the group companies with head office in Italy. In this case the ultimate parent undertaking shall be registered in the register referred to in article 85 together with its branch in the territory of the Italian Republic.

⁴²¹ ISVAP Regulation n. 17 of 11 March 2008.

⁴²² ISVAP regulation n. 10 of 02 January 2008, in particular Title II, Chapter II. ISVAP regulation n. 16 of 4 March 2008 and n. 19 of 14 March 2008.

Art. 350

(Right to apply to the courts in cases concerning the register of intermediaries and the list of loss adjusters)

1. The measures adopted by ISVAP in accordance with chapter II of title IX concerning the refusal of registration and the removal from the register of insurance and reinsurance intermediaries shall be subject to the right to apply to the administrative court, within sixty days of the relevant notification.
2. The measures adopted by ISVAP in accordance with chapter VI of title X concerning the refusal of registration and the removal from the list of loss adjusters shall be subject to the right to apply to the administrative court, within sixty days of the relevant notification.

Art. 351

(Amendments to other insurance regulations)

1. Article 4 of law n. 576 of 12 August 1982 shall be replaced by:
«Article 4 (Functions of ISVAP). - 1. ISVAP, in keeping with European Union regulations on insurance and within the sphere of insurance policy lines set by the Government, shall carry out functions of supervision as set forth in the code of private insurance. 2. ISVAP shall provide consultation and send comments to Parliament and the Government for matters within its competence for the regulation and supervision of the insurance sector. 3. By 31 May of each year ISVAP presents a report on its activity to the President of the Council of Ministers for transmission to Parliament. 4. ISVAP's budget and financial statements shall be subject to the control of the Court of Auditors.».
2. In article 14 (1, d) of law n. 576 of 12 August 1982 the sentence: «of the fee established in accordance with article 25» shall be replaced by: «of the total revenues from supervisory fees».
3. In article 23 (1, first sentence) of law n. 576 of 12 August 1982 the sentence:
«in article 67 (1) of the consolidation act on the exercise of private insurance, approved by presidential decree n. 449 of 13 February 1959, and subsequent modifications» shall be replaced by: «in articles 335, 336 and 337 of the code of private insurance».
4. In article 29 (1) of law n. 576 of 12 August 1982 the sentence: «of the supervisory fee paid yearly by the entities and undertakings described in article 4 (1) of this law, in accordance with article 67 (1) of the consolidation act on the exercise of private insurance, approved by presidential decree n. 449 of 13 February 1959, and subsequent modifications» shall be replaced by: «resulting on the whole from the supervisory fees envisaged in articles 335, 336 and 337 of the code of private insurance». In the second paragraph the words: «of the Treasury» shall be replaced by: «of Economy and Finance».
5. The following article shall be placed after article 1 of legislative decree n. 173 of 26 May 1997:
«Art. 1-bis (Link with the code of private insurance). - 1. The formal references to items, letters, Arabic and Roman numerals contained in the provisions of articles 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 38, 41, 55 and 56 shall be deemed to refer to the corresponding

classifications used in the layout of accounts adopted with the regulation envisaged in article 90 (1) of the code of private insurance.».

6. In legislative decree n. 173 of 26 May 1997 the words: «securities quoted on a stock exchange» shall be replaced by: «securities dealt in on regulated markets» wherever used.

7. In article 16 (5) of legislative decree n. 173 of 26 May 1997 the sentence: «in articles 7 and 8 of this decree» shall be replaced by: «in article 89 (1) of the code of private insurance».

8. In article 24 (1) of legislative decree n. 173 of 26 May 1997 the sentence: «in article 30 (1 and 2) of legislative decree n. 174 of 17 March 1995» shall be replaced by: «in article 41 (1 and 2) of the code of private insurance».

9. Article 20 (5) of legislative decree n. 173 of 26 May 1997 shall be replaced by: «5. In exceptional cases the transfer of investments from item D to item C of assets may be allowed, according to their current value at the time of the transfer, when the value of the assets is higher than the corresponding technical provisions, as a result of the removal of the restriction on the use of some assets exclusively for the representation of technical provisions, in those cases indicated by ISVAP's regulation⁴²³. The notes on the accounts must indicate the reasons for the transfer and specify the amount and the type of the investment.».

10. In article 31 (2) of legislative decree n. 173 of 26 May 1997 the sentence: «in articles 32, 33, 35, 36 and 37 (1 and 2) of this decree, as well as those referred to in articles 23 (2), 24, 25, 26 of legislative decree n. 175 of 17 March 1995, as amended by article 80 of this decree» shall be replaced by: «in article 36 of the code of private insurance».

11. In article 31 (3) of legislative decree n. 173 of 26 May 1997 the sentence: «in articles 24 and 25 of legislative decree n. 174 of 17 March 1995, as amended by article 79 of this decree, as well as that referred to in articles 34 of this decree» shall be replaced by: «in article 37 of the code of private insurance».

12. In article 44 (1) of legislative decree n. 173 of 26 May 1997 the sentence: «falling within the scope of legislative decree n. 175 of 17 March 1995» shall be replaced by: «referred to in article 2 (3) of the code of private insurance» and the sentence: «falling within the scope of legislative decree n. 174 of 17 March 1995» shall be replaced by: «in article 2 (1) of the code of private insurance».

13. In article 45 (4) of legislative decree n. 173 of 26 May 1997 the sentence: «in article 6 (1) c) of this decree» shall be replaced by: «in article 90 (1) of the code of private insurance».

14. In article 46 (2) of legislative decree n. 173 of 26 May 1997 the sentence: «in article 6 (1) c) of this decree» shall be replaced by: «in article 90 (1) of the code of private insurance».

Art. 352

(Formal coordination with other legal provisions)

⁴²³ ISVAP Regulation n. 20 of 04 April 2008, in particular Title III.

1. In paragraph 3 of article 120 of the personal data protection code the sentence: «of article 2 (5-quater) of decree-law n. 70 of 28 March 2000, converted, after amendment, by law n. 137 of 26 May 2000 and subsequent modifications» shall be replaced by: «by article 135 of the code of private insurance».

2. In article 2 (1, d) of legislative decree n. 38 of 28 February 2005 the sentence: «of legislative decree n. 173 of 26 May 1997» shall be replaced by: «of article 88 (1 and 2) and those referred to in article 95 (2) of the code of private insurance». In article 1 (1, e) of legislative decree n. 142 of 30 May 2005 the sentence: «of legislative decrees n. 174 and 175 of 17 March 1995» shall be replaced by: «by article 1 (1, t) of the code of private insurance».

3. In article 1 (1, i) of legislative decree n. 142 of 30 May 2005 the sentence: «e) of legislative decree n. 239 of 17 April 2001» shall be replaced by: «of article 1 (1, cc) of the code of private insurance».

4. In article 1 (1, l) of legislative decree n. 142 of 30 May 2005 the sentence: «insurance regulations and the relevant implementing provisions» shall be replaced by: «the code of private insurance».

5. In article 1 (1, q) of legislative decree n. 142 of 30 May 2005 the sentence: «and of article 10 (2) of law n. 20 of 9 January 1991» shall be replaced by: «and of article 72 (2) of the code of private insurance».

6. In article 1 (1, r) of legislative decree n. 142 of 30 May 2005 the sentence: «and of article 10 (2) of law n. 20 of 9 January 1991» shall be replaced by: «and of article 72 (2) of the code of private insurance».

7. In article 13 (1, c) of legislative decree n. 142 of 30 May 2005 the sentence: «by the laws and regulations on private insurance, including the provisions under law n. 576 of 12 August 1982» shall be replaced by: «by title VII, chapter III, and by title XVI, chapters I, II, III and IV of the code of private insurance».

8. The above shall in no way compromise the powers reserved to the Supervisory Commission for Pension Funds (COVIP) by law n. 243 of 23 August 2004.

Art. 353

(Supplements to the provisions about the tax on private insurance premiums)

1. The following article shall be placed after article 1 of law n. 1216 of 29 October 1961:

«Article 1-bis (premium tax on compulsory motor liability insurance). –

1. Compulsory insurance against civil liability in respect of the use of motor vehicles and craft shall be subject to the tax on premiums at a rate of 12.5%. Such percentage shall remain unchanged also in case other risks pertaining to the vehicle or craft, or to the damage caused by the use of motor vehicles and craft, are insured under the same contract along with the risk of civil liability.

2. The provisions referred to in article 16 shall apply to the receipts pertaining to the payment of the insurance contracts referred to in the previous paragraph, issued to the insurance undertaking by the policyholders or the injured party or those claiming under them, even if they

result from a formal act or have out-of-court effects and even if they include not only the compensation, but also expenses and legal fees and other subsidiary fees envisaged by the policy.

3. All the operations and acts required for the compensation paid by the Guarantee Fund for Victims of Road Accidents, and those regarding the relations between CONSAP – Concessionaire for Public Insurance Services, autonomous management of the Guarantee fund, and insurance undertakings, shall be exempted from any indirect levy and tax on business as well as from the formalities of registration.».

2. The following item shall be placed under the tariff in annex A to law n. 1216 of 29 October 1961: «assistance insurance», and a 10% rate shall be envisaged.

3. The following article shall be placed after article 2 of law n. 1216 of 29 October 1961: «Article 2-bis (Replacement of the undertaking in co-insurance). - 1. In case an insurer replaces another one in a co-insurance relationship the tax relating to the premium ceded to the subsequent insurer shall not be due again.».

4. The following article shall be placed after article 4 of law n. 1216 of 29 October 1961: «Article 4-bis (Premium tax due on contracts concluded by undertakings carrying on business by way of free provision of services). - 1. The undertakings proposing to carry on business under the freedom to provide services in the territory of the Italian Republic shall appoint a fiscal representative for the payment of the tax envisaged by law n. 1216 of 29 October 1961, and subsequent modifications, due on the premiums relating to the contracts concluded.

2. The representative shall be resident in the territory of the State and its appointment shall be notified to the competent office of Agenzia delle Entrate of Rome and to ISVAP.

3. If the undertakings referred to in paragraph 1 have an establishment in the territory of the Italian Republic the role of fiscal representative may be played by that establishment.

4. The fiscal representative shall keep a register, in which the contracts concluded by the undertaking under the right of establishment and the freedom to provide services are listed separately, with the indication, for each of them, of the policyholder's particulars, the contract number, the commencement and expiry date, the nature of the risk insured, the amount of the premium or of the collected premium instalments, the rate of tax and its amount. The register shall be kept in chronological order with regard to the date on which the premium, or the premium instalment, is collected, and the contracts shall be included in the register within one month of said date. The representative shall also keep a copy of each contract.

5. Each month the representative shall submit to the competent office of Agenzia delle Entrate of Rome the notification of the premiums collected in the previous month, distinguishing premiums according to the applicable rate of tax. The representative shall at the same time submit the notification and pay the tax due.

6. The provisions of articles 12, 24 and 28 shall apply to the fiscal representative».

6-bis. The provisions of this article shall not apply to insurance undertakings with head office in the States of the European Union or in the States of the European Economic Area ensuring an appropriate exchange of information.»⁴²⁴

5. The following article shall be placed after article 6 of law n. 1216 of 29 October 1961:

⁴²⁴ Paragraph inserted by decree-law n. 135 of 25 September 2009, converted into law n. 166 of 20 November 2009, on: "Urgent measures for the implementation of Community obligations and the enforcement of judgements by the Court of Justice of the European Communities", published in the Official Journal n. 274 of 24 November 2009 - Supplemento Ordinario n. 215.

«Article 6-bis (Premium tax due on contracts concluded by way of Community co-insurance). -

1. If the undertaking acting as leading insurer is established in the territory of the Italian Republic it shall be required to pay the tax referred to in this law in relation to the whole amount of the premium and of the policy charges applied to the contract concluded in the form and under the conditions established for Community co-insurance, without prejudice to the right to recover its share from the other co-insurers.

2. If the undertaking acting as leading insurer is not established in the territory of the Italian Republic it shall be required to appoint a fiscal representative for the payment of the tax referred to in paragraph 1.».

Chapter V

REPEALS

Art. 354

(Explicitly repealed regulations)

1. Without prejudice to the provisions of article 20 (3, b) of law n. 59 of 15 March 1997, in the text replaced by article 1 of law n. 229 of law 29 July 2003 the following regulations are or remain repealed:

royal decree n. 387 of 23 March 1922;

royal decree n. 63 of 04 January 1925;

presidential decree n. 449 of 13 February 1959;

law n. 990 of 24 December 1969;

decree-law n. 857 of 23 December 1976 converted, after amendment, by law n. 39 of 26 February 1977;

decree-law n. 576 of 26 September 1978 converted, after amendment, by law n. 738 of 24 November 1978;

law n. 48 of 07 February 1979;

articles 5 (1, 2 and 3), 5-bis, 6, 6-bis, 7, 7-bis, 10 (5 and 6) and 25 of law n. 576 of 12 August 1982;

law n. 792 of 28 November 1984;

law n. 742 of 22 October 1986;

law n. 772 of 11 November 1986;

law n. 242 of 07 August 1990;

law n. 20 of 09 January 1991;

legislative decree n. 393 of 26 November 1991;

article 25 of law n. 157 of 11 February 1992;

law n. 166 of 17 February 1992;

articles 26, 30 and 33 of law n. 142 of 19 February 1992;

presidential decree of 19 April 1993, published in the Official Journal n. 153 of 2 July 1993;

presidential decree n. 385 of 18 April 1994;

article 12 of decree-law n. 691 of 19 December 1994 converted, after amendment, by law n. 35 of 16 February 1995;

legislative decree n. 174 of 17 March 1995;

legislative decree n. 175 of 17 March 1995;

legislative decree n. 173 of 26 May 1997, except for articles 2, 4, 5, 14, 15, 16 (1-16), 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31 (2, 3 and 4), 38, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56;
article 38 of law n. 449 of 27 December 1997;
legislative decree n. 373 of 13 October 1998;
article 45 (11) of law n. 448 of 23 December 1998;
legislative decree n. 343 of 04 August 1999;
article 27 (13) of law n. 488 of 23 December 1999;
decree-law n. 70 of 28 March 2000 converted, after amendment, by law n. 137 of 26 May 2000;
article 89 of law n. 388 of 23 December 2000;
articles 1, 2, 3, 4, 5 and 6 of law n. 57 of 5 March 2001;
legislative decree n. 239 of 17 April 2001;
articles 19, 20, 21, 22, 23, 25 and 26 of law n. 273 of 12 December 2002;
article 81 (1) of law n. 289 of 27 December 2002;
legislative decree n. 93 of 09 April 2003;
legislative decree n. 190 of 30 June 2003;
legislative decree n. 307 of 03 November 2003;
article 9 (2) of legislative decree n. 38 of 28 February 2005.

2. The regulations issued by ISVAP pursuant to this code shall also comply with the principles and options introduced by the previous provisions implementing Community regulations.

3. Any other provision incompatible with this code shall hereby be repealed. Any reference to the repealed provisions made by laws, regulations or other rules shall be deemed to refer to the corresponding provisions of this code and of the orders therein envisaged.

4. The provisions referred to in paragraph 1 and those issued in application of the repealed or replaced regulations shall continue to apply, *mutatis mutandis*, until the date of entry into force of the orders issued in pursuance of this code in the corresponding matters, and anyhow not later than thirty months after the time limit envisaged under article 355 (2). The articles under chapters II, III, IV and V of title XVIII shall apply, in relation to the matters respectively regulated, in case of infringement and based on the sanctioning procedure laid down by article 326⁴²⁵.

5. By way of derogation from paragraph 4 the following decrees shall remain in force and replace the corresponding orders envisaged by this code:

a) the decrees of the Minister of Industry, Commerce and Handicrafts of 26 May 1971, published in the Official Journal n. 141 of 4 June 1971, and of 12 October 1972, published in the Official Journal n. 280 of 26 October 1972, adopted under article 6 of law n. 990 of 24 December 1969;

b) the ministerial decree of 3 July 2003 of the Minister of Health, in agreement with the Minister for Labour and Social Policy and the Minister of Production Activities, published in the Official Journal n. 211 of 11 September 2003, adopted in compliance with article 5 of law n. 57 of 5 March 2001, as amended by article 23 (3) of law 273 of 12 December 2002.

⁴²⁵ Paragraph amended by article 9 (3) of legislative decree n. 194 of 30 December 2009, converted into law n. 25 of 26 February 2010. The paragraph had been previously amended by article 4 (8) of legislative decree n. 97 of 3 June 2008, converted into law n. 129 of 2 August 2008, by article 16 (1) of legislative decree n. 207 of 30 December 2008, converted into law n. 14 of 27 February 2009 and by article 23 (12) of decree-law n. 78 of 1 July 2009, converted into law n. 102 of 3 August 2009.

6. For the purposes of achieving the objective of simplification referred to in law n. 229 of 23 July 2003 ISVAP shall adopt, in line with its competences, the provisions envisaged by this code by way of one single regulation for each title, and fully repeal its own previous general order.

7. The contracts already concluded at the date of entry into force of this code shall continue to be governed by the previous regulations.

Art. 355
(Entry into force)

1. This code shall entry into force on 1 January 2006.

2. During its initial application the implementing provisions shall be issued within twentyfour months of the date referred to in paragraph 1.