

(only the Italian version is authentic)

**DECREE BY THE MINISTER OF ECONOMIC
DEVELOPMENT**

no. 220 of 11 November 2011¹

Regulation on the definition of professional, good repute and independence requirements of corporate officers as well as the good repute requirements of holders of holdings, pursuant to articles 76 and 77 of the Code of private insurance referred to in Legislative Decree n. 209 of 7 September 2005.

THE MINISTER OF ECONOMIC DEVELOPMENT

HAVING REGARD to article 17, paragraph 3 of Law no. 400 of 23 August 1988;

HAVING REGARD to Legislative Decree no. 209 of 7 September 2005, introducing the Code of Private Insurance;

HAVING REGARD, in particular, to article 76 of the aforementioned Code, which provides, for subjects that perform administrative, management and control functions at the insurance and reinsurance undertakings, the possession of professional, good repute and independence requirements established with regulation adopted by the Minister of Productive Activities, after hearing the opinion of ISVAP, and provides that the same regulation also establishes the causes that bring to the temporary suspension of the appointment and its duration;

HAVING REGARD also to article 77, paragraph 1 of the same Code that provides, for holders of holdings in insurance and reinsurance undertakings, the definition of the good repute requirements with regulation adopted by the Minister of Productive Activities, after hearing the opinion of ISVAP, and taking into account article 4 of Legislative Decree no. 21 of 27 January 2010, which modified the Code of Private Insurance in implementation of Directive 2007/44/EC of the European Parliament and the Council of 5 September 2007, that modifies Directive 92/49/EEC of the Council and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC with regard to the procedural regulations and prudential evaluation criteria of acquisitions and increases of holdings in the financial sector;

HAVING REGARD to Law Decree no. 18 of 18 May 2006, converted with amendments by Law no. 233 of 17 July 2006, which among other things, established the Ministry of Economic Development, replaced in the aforementioned competence the Ministry of Productive Activities, and article 1, paragraphs 376 and 377, of Law no. 244 of 24 December 2007, as well as Law-Decree no. 85 of 16 May 2008, converted with amendments in Law no. 121 of 14 July 2008, that have further intervened on the structure of the Ministries;

HAVING HEARD the Institute for the Supervision of Insurance Undertakings (ISVAP);

HAVING HEARD the opinion of the Council of State, expressed by the advisory section on legal acts in its meeting of 27 September 2011;

¹ Published in the Official Journal no. 6 of 9 January 2012.

HAVING REGARD to the communication to the President of the Council of Ministers, pursuant to article 17, paragraph 3 of Law no. 400 of 23 August 1988 with note of 12 October 2011, protocol no. 20190;

ADOPTS

the following Regulation:

Art. 1 (Definitions)

1. For the purposes of this Regulation the following definitions shall apply:

- a) "Code": Legislative Decree n. 209 of 7 September 2005, as subsequently amended and supplemented, introducing the Code of Private Insurance;
- b) "ISVAP" : Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest);

Art. 2 (Scope)

1. The provisions of this regulation apply to subjects who perform administrative, management and control functions at the insurance and reinsurance undertakings with head offices in Italy. The application remains, to insurance and reinsurance undertakings with legal head offices in Italy, having securities listed on regulated markets in Italy or other countries of the European Union having such characteristics, of the additional guideline provided for these types of companies.

2. The provisions of this regulation, with exclusion of those provided by article 6, shall also apply, pursuant to article 16, paragraph 4 of the Code, to the General Representative or, if different, to the person responsible for the actual management of the branch office of the Italian undertaking established at in another European Union country, as well as to the General Representative or, if different, to the person responsible for the actual management of the branch located in Italy of undertakings with head offices in a Third country, pursuant to article 28, paragraph 4 of the Code.

3. The provisions of article 5 also apply to subjects that hold, directly or indirectly, holdings in an insurance and reinsurance undertaking, referred to in article 68 of the Code. In the case in which these subjects are legal persons, the provisions of article 5 apply to those that perform administrative, management and control functions internally.

Art. 3 (Professional requirements of corporate officers)

1. The directors and statutory auditors of an insurance and reinsurance undertaking shall be chosen in accordance with professional and competence criteria among people who have acquired an overall experience of at least three years by performing one or more of the following activities:

- a) administration, management or control in companies and entities of the insurance, banking or financial sector;

- b) administration, management or control in public bodies or public administrations connected with the insurance, banking or financial sector, or also with other sectors if the functions carried out involved the management or control of the management of economic and financial resources;
- c) administration, management or control in public and private undertakings whose size is adequate to that of the insurance or reinsurance undertaking in which the role must be held;
- d) professional activities in fields related to the insurance, banking or financial sector, or tenured teaching in law, economics or actuarial subjects having relevance for the insurance sector.

2. The president of the board of directors, the members of the executive committees, the managing directors and at least one third of the regular and alternate statutory auditors shall be chosen in accordance with professional and competence criteria among people who acquired an overall experience of at least five years in accordance exclusively with the provisions provided for in paragraph 1, letters a), c) and d).

3. As to the role of Director General or for that involving the exercise of an equivalent function a specific professional competence shall be required in insurance, banking or financial matters through work experiences carried out as executive staff with adequate responsibilities for a period of not less than five years.

4. Apart from meeting the requirements referred to in paragraph 1 statutory auditors must also be enrolled in the auditors' register.

Art. 4 (Adverse situations)

1. Those who in the three years preceding the adoption of the relevant measures have been directors, directors general, statutory auditors or liquidators of undertakings under extraordinary administration, bankruptcy or administrative compulsory winding up procedures (or equivalent procedures) cannot hold the office of director, director general, statutory auditor or liquidator of insurance and reinsurance undertakings, or roles involving the exercise of equivalent functions. The prohibition is for the period of three years from the date of adoption of such measures. The period shall be reduced to one year in cases where the measure to initiate the procedure was adopted at the request of the entrepreneur, the administrative bodies of the undertaking or as a result of a notice by the person concerned.

2. Those who have been removed from the national single register of foreign-exchange dealers provided for by article 201, paragraph 15 of Legislative decree n. 58 of 24 February 1998 and the foreign-exchange dealers who are excluded from negotiations on a regulated market also cannot hold the roles referred to under paragraph 1. The prohibition is for the period of three years from the date of adoption of such measures. The period shall be reduced to one year if the measure was adopted at the request of the foreign-exchange dealer.

3. The prohibition referred to in paragraph 1 does not apply if the competent corporate body assesses, on the basis of sufficient information and according to a criterion of reasonableness and proportionality, that the person concerned has no connection with the facts that led to the crisis of the undertaking. To this end they detect, among other things, features to be considered as evidence shall be the duration of the period of performance of the functions carried out by the person

concerned at the undertaking itself, and the absence of related sanctions, convictions with (even) provisionally enforceable judgement to the payment of damages as a result of the exercise of action under the Civil Code, of resolutions of replacement by the competent body and of other related measures.

4. If the conditions referred to under paragraphs 1 and 2 are met, the persons concerned shall inform the undertaking where they perform administrative, management or control functions and possibly point out, by means of appropriate elements and for the assessment referred to under paragraph 3, that they have no connection with the facts that led to the crisis of the undertaking.

5. The competent body shall take its determinations on the existence of the impediments under this article not later than thirty days after notification of the evidence by the person concerned, giving notice to it and IVASS of its reasoned decision. The assessment shall be repeated if new facts occur or measures are adopted which can be relevant for this purpose; the person concerned must communicate such facts or measures as soon as possible.

Art. 5 (Good repute requirements)

1. For the purposes of this decree, the good repute requirement does not apply if the persons concerned:

- a) are deprived of the exercise of civil and political rights, or under temporary disqualification from the offices of legal persons and companies and, anyway, are in all the situations covered by article 2382 of the civil code;
- b) are submitted to preventive measures taken by the judicial authorities pursuant to Law no. 1423 of 27 December 1956, or of Law no. 575 of 31 May 1965, as well as of Law no. 646 of 13 September 1982, and subsequent modifications and integrations, except in the event of rehabilitation;
- c) conviction by final judgement, except in the event of rehabilitation:
 - 1) a prison sentence for one of the offences specified in the special regulation governing the insurance, financial, credit, transferable securities and securities markets sectors as well as by legislative decree n. 231 of 21 November 2007, and subsequent modifications and integrations;
 - 2) to imprisonment for one of the crimes described under Section XI of Book V of the Civil Code and in Royal Decree no. 267 of 16 March 1942;
 - 3) to imprisonment for a term not less than one year for a crime against public administration, public trust, property, public order, public economy or for a crime relating to tax issues;
 - 4) to imprisonment for a term not less than two years for any crime committed without criminal intent.

2. The roles (under whatever name) of director, director general or statutory auditors of insurance and reinsurance undertakings cannot be held by those who one of the penalties in paragraph 1, letter c has been applied upon a request of the parties, except in the case of extinguishment of offence. In case the penalties provided for by paragraph 1, letter c, numbers 1 and 2 were applied upon a request of the parties, they do not apply if they are less than one year.

3. For the cases all or partly regulated by foreign law, the verification that the conditions provided for by paragraphs 1 and 2 are met shall be based on a substantial equivalence assessment by ISVAP.

Art. 6
(Independence requirements)

1. The administrative, management or control function of an insurance or reinsurance undertaking is not compatible with the performance of a similar function, with the existence of contracts of employment, quasi-freelance agreements or remunerated agreements for the supply of services or other relationships of financial nature at other insurance or reinsurance undertakings, subsidiary or parent companies, which may compromise their independence.

2. For the purposes of the compatibility assessment for the existence of the independence requirement referred to paragraph 1, the different levels of importance of the functions and roles performed by the concerned subjects is taken into account. In any case, the roles and relationships with undertakings belonging to the same insurance group are not considered such to compromise their independence.

3. The subjects referred to in article 2, paragraph 1, shall inform the competent corporate bodies of the roles and relationships referred to in this article, declaring whether they may negatively impact on their independence in the terms specified in this article. The aforementioned competent corporate bodies evaluate these declarations, as well as possible reports or information, autonomously and legitimately acquired on the subject, taking the above indicated criteria into account.

Art. 7
(Disqualification, suspension and possible dismissal (o withdrawal?))

1. Failure to meet the requirements referred to in articles 3, 4, 5 and 6 for the subjects referred to in article 2, paragraph 1, shall entail disqualification from office. The disqualification is declared by the methods referred to in article 76, paragraph 2 of the Code.

2. The following situations constitute cause for suspension from the functions performed by subjects referred to in article 2, paragraph 1:

- a) conviction with non-definitive sentence for one of the offences referred to by art. 5, paragraph 1, letter c;
- b) application, on request of the parties, of one of the penalties referred to in article 5, paragraph 2, with non-definitive sentence;
- c) provisional application of one of the measures provided by article 10, paragraph 3 of Law no. 575 of 31 May 1965, with latest substitution by article 3 of Law no. 55 of 19 March 1990 and subsequent modifications and integrations;
- d) application of a personal precautionary measure.

3. The suspension is declared by the methods referred to in article 76, paragraph 2 of the Code.

4. The Board of Directors registers any removal from office of the subjects who have declared the suspension among the material to discuss in the first meeting

following confirmation of one of the reasons for suspension indicated in paragraph 2. The suspension of the Director General appointed by the Board, except in cases referred to in paragraph 2, letters c) and d), for which the suspension is applied for the full duration of the measures provided therein, may not last more than 45 days from the declaration of suspension, after which, the Board of Directors shall be removed from office or reinstate the suspended Director General. The non-removed subject is reintegrated to full function. In the hypotheses provided by paragraph 2, letters c) and d), the suspension is applied in each case for the entire duration of the measures provided therein.

Art. 8

(Management board, supervisory committee and management supervisory committee)

1. The provisions of this regulation which refer to the board of directors and its members shall also apply to the management board and its members.
2. The provisions of this regulation which refer to the statutory auditors are also applied to the members of the supervisory committee and to the management supervisory committee.

Art. 9

(Requirements of directors and managers of mutual insurance undertakings referred to in article 52 of the Code)

1. The requirements and the relative provisions referred to in articles from 4 to 7 of this regulation also apply to the directors and managers of mutual insurance undertakings referred to in article 52 of the Code. The professional requirements referred to in article 3 are applied to the directors and managers of mutual insurance undertakings with the reduction from three to one year of the minimum duration of the experience, as required by paragraphs 1 and 2, and with the reduction from five to three years of the minimum duration of the experience required by paragraph 3 of the same article.

Art. 10

(Repeals and temporary and final rules)

1. Articles 1, 2 and 3 of the Decree of the Minister for Industry, Commerce and Crafts no. 186 of 24 April 1997 are, or remain repealed.
2. The evaluation of the requirements provided by this regulation is carried out by the competent corporate bodies. The evaluations assumed by these same bodies, pursuant to this regulation, duly substantiated, are transmitted then to ISVAP.
3. For the subjects referred to in article 2, paragraph 1, in charge on the date of entrance into force of this regulation, the failure to meet the requirements introduced with this Decree, and not provided by the previous regulations, is not valid for the residual mandate, except in the case in which the cancellation of these requirements occurs following the date of entrance into force of this regulation in relation to proceedings begun after that date.