



Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo

(only the Italian version is authentic)

REGULATION N. 14 OF 18 FEBRUARY 2008

REGULATION CONCERNING THE DEFINITION OF THE PROCEDURES FOR THE APPROVAL OF CHANGES TO THE ARTICLES OF ASSOCIATION AND TO THE SCHEME OF OPERATIONS, FOR THE AUTHORISATION OF THE PORTFOLIO TRANSFERS AND MERGERS AND DIVISIONS REFERRED TO IN TITLE XIV OF LEGISLATIVE DECREE N. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE

AMENDED BY ISVAP REGULATION N. 33 OF 10 MARCH 2010, BY ISVAP REGULATION N. 35 OF 26 MAY 2010 AND BY IVASS ORDER N. 5 OF 4 JUNE 2013. THE AMENDMENTS ARE IN *ITALICS*.

ISVAP

(Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo)

HAVING REGARD to law n. 576 of 12 August 1982 as subsequently amended and supplemented, on the reform of insurance supervision;

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

adopts the following:

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TITLE I - General provisions

Art. 1 (Legislative sources)

1. This Regulation has been adopted in compliance with articles 5 (2), 191 (1) e) and i), 196 (1), 197 (3 and 4), 198 (1), 200 (1) and 201 (1) of Legislative Decree n. 209 of 7 September 2005.

Art. 2 (Definitions)

1. For the purposes of this Regulation:

- a) "decree" shall mean: legislative decree n. 209 of 7 September 2005, introducing the Code of Private Insurance;
- b) "internal fund" shall mean: the investment portfolio, managed separately from the other assets held by the insurance undertaking and denominated in units;
- c) "separately managed account" shall mean: the investment portfolio, managed separately from the other assets held by the insurance undertaking and where the benefits of contracts linked to it are increased on the basis of its return;
- d) "ISVAP" shall mean: Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest);
- e) "administrative body" shall mean: the board of directors or the management board, for undertakings which have adopted the system referred to in article 2409 octies of the civil code; for undertakings with head office in third States, the corresponding body of the company;
- f) "portfolio" shall mean: all the insurance contracts, including claims and debts linked to those contracts, showing a common distinctive element such as classification under the same or more than one insurance class, distribution channel used for collecting contracts, type of policyholder, territorial area and any common element which makes it possible to identify all the rights and obligations ceded; the portfolio cannot be made up merely of claims;
- g) "Member State" shall mean: 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;
- h) "third State" shall mean: a State which is not member of the European Union or does not belong to the European Economic Area.

Art. 3 (Scope)

1. This Regulation shall apply to the following procedures:

- a) approval of changes to the articles of association of insurance undertakings with head office in the territory of the Italian Republic;
- b) approval of changes to the scheme of operations of insurance undertakings with head office in the territory of the Italian Republic and of branches of insurance undertakings with head office in a third State;
- c) authorisation to the portfolio transfers, mergers and divisions referred to in Title XIV, Chapter III of the decree.

2.¹

TITLE II – Supervision over management

Chapter I - Changes to the articles of association

Art. 4

(Changes to the articles of association)

1. The insurance undertaking with head office in the territory of the Italian Republic shall, within fifteen days of adopting the resolution changing the articles of association, transmit the relevant minutes along with the enclosures, if any, to ISVAP for approval, as envisaged by article 196 of the decree.

2. For the purposes of issuing the approval ISVAP shall verify that the changes are not in contrast with a sound and prudent management, and in particular whether there are elements which would militate against the proper conduct of business management.

Art. 5

(Approval procedure)

1. ISVAP shall issue the approval within thirty days of receiving the documents and inform the undertaking thereof.

2. ISVAP may ask the undertaking for further information or documents. In those cases the period for concluding the procedure shall be suspended until the information and documents requested are received.

3. After lodging the articles of association at the registrar of companies the undertaking shall, within thirty days of lodging, send ISVAP the amended articles of association along with the evidence that the registration has been made.

Art. 6

(Refusal of approval)

1. In case the changes to the articles of association do not fulfil the conditions referred to in article 4 (2) ISVAP shall, before formally issuing a notice of refusal, notify the undertaking of the reasons preventing the approval of the proposed changes.

2. Within the period indicated by ISVAP, which shall anyhow be not less than ten days of receipt of the notification, the undertaking may submit the new proposal to change the articles of association or its observations accompanied by supporting evidence, if any.

3. The notification referred to under paragraph 1 shall interrupt the period for concluding the procedure, which shall start running again from the date when the new proposal or

¹ Paragraph amended by article 2 (1) of IVASS Order n. 5 of 4 June 2013. Paragraph 3 laid down: *"The notification referred to under paragraph 1 shall suspend the period for concluding the procedure, which shall start running again from the date when the new proposal or observations are submitted"*.

observations are submitted².

4. If the period referred to in paragraph 2 has expired without any new proposal or observations being submitted, or in case the conditions for refusing the approval remain in place, ISVAP shall issue the order definitively refusing the approval and notify it to the undertaking.

Chapter II - Changes to the scheme of operations

Art. 7

(Semi-annual report about the implementation of the scheme of operations)

1. For the first three financial years after the issuing of authorisation to pursue or extend insurance business the undertaking with head office in the territory of the Italian Republic and the branch of an insurance undertaking with head office in a third State shall submit to ISVAP a semi-annual report about the implementation of the scheme of operations submitted in accordance with article 14 or 15 of the decree.

2. The semi-annual report shall describe the development of the technical, economic and financial management against the assumptions made in the scheme of operations and illustrate the variations in the amount of financial resources to cover the expenses of installing the central and peripheral, administrative and technical services, with a view to assessing the adequacy of those resources.

3. The basis for the report shall be the period from 1 January to 30 June and from 1 July to 31 December, and it shall be sent within forty five days from the closing of each six-month period. The first report shall refer to the period elapsing between the receipt of the authorisation to pursue or extend insurance business and the first semi-annual closing.

Art. 8

(Changes to the scheme of operations)

1. During the first three years of activity the undertaking with head office in the territory of the Italian Republic and the branch of the insurance undertaking with head office in a third State shall give advance notice to, and get approval from, ISVAP before making any changes to the scheme of operations submitted in compliance with article 14 or 15 of the decree and specify the reasons and the effects of such changes.

2. The undertaking may not change the scheme of operations without ISVAP's approval.

3. For the purposes of granting the approval ISVAP shall verify that the changes are not in contrast with articles 14 and 15 of the decree and with the relevant implementing provisions.

² Paragraph amended by article 2 (1) of IVASS Order n. 5 of 4 June 2013. Paragraph 3 laid down: *"The notification referred to under paragraph 1 shall suspend the period for concluding the procedure, which shall start running again from the date when the new proposal or observations are submitted"*.

Art. 9
(Approval procedure)

1. ISVAP shall approve the changes to the scheme of operations within sixty days of receiving the application and notify the undertaking thereof.
2. ISVAP may ask the undertaking for further information or documents. In those cases the period for concluding the procedure shall be suspended until the information and documents requested are received.

Art. 10
(Refusal of approval)

1. In case the changes to the scheme of operations do not fulfil the conditions referred to in article 8 (3) ISVAP shall, before formally issuing a notice of refusal, notify the undertaking of the reasons preventing the approval of the proposed changes.
2. Within the period indicated by ISVAP, which shall anyhow be not less than ten days of receipt of the notification, the undertaking may submit the new proposal to change the scheme of operations or its observations.
3. The notification referred to under paragraph 1 shall interrupt the period for concluding the procedure, which shall start running again from the date when the new proposal or observations are submitted³.
4. If the period referred to in paragraph 2 has expired without any new proposal or observations being submitted, or in case the conditions for refusing the approval remain in place, ISVAP shall issue the order definitively refusing the approval and notify it to the undertaking.

TITLE III - Supervision of extraordinary operations

Chapter I – Portfolio transfers

Art. 11
(Terms and procedures for transferring the portfolio)

1. The portfolio transfer may be effected by means of a contract of transfer or of a non-cash capital contribution with correspondent increase in the capital of the accepting undertaking.

Art. 12
(Transfer of the portfolio of Italian insurance undertakings)

1. The transfer of all or part of the portfolio from an insurance undertaking with head office

³ Paragraph amended by article 2 (2) of IVASS Order n. 5 of 4 June 2013. Paragraph 3 laid down: *"The notification referred to under paragraph 1 shall suspend the period for concluding the procedure, which shall start running again from the date when the new proposal or observations are submitted"*.

in the territory of the Italian Republic to another insurance undertaking with head office in Italy or in a member State or to the Italian branch of an insurance undertaking with head office in a third State shall be subject to ISVAP's authorisation.

2. The application for authorisation shall be submitted to ISVAP, jointly or individually, by the ceding and by the accepting undertaking, along with the documents referred to in article 14.

3. When the portfolio to be transferred includes risks underwritten under the right of establishment or the freedom to provide services outside the territory of the Italian Republic the application for authorisation shall contain, for each State in which the undertaking pursues business, the indication of the number of contracts to be transferred and the amount of premiums, claims and the relevant technical provisions.

Art. 13

(Transfer of the portfolio of insurance undertakings from third States)

1. The transfer of all or part of the portfolio of the Italian branch of an insurance undertaking with head office in a third State to another insurance undertaking with head office in Italy or in a member State or to an Italian branch of an insurance undertaking with head office in a third State shall be subject to ISVAP's authorisation.

2. The application for authorisation shall be submitted to ISVAP, jointly or individually, by the ceding and by the accepting undertaking, along with the documents referred to in article 14.

Art. 14

(Documents to be enclosed to the application for authorisation)

1. The following documents shall be enclosed to the application for authorisation referred to in articles 12 and 13:

- a) a copy of the resolution about the transfer passed by the corporate bodies of the ceding and of the accepting undertaking according to the competences envisaged by the articles of association;
- b) a report containing the description of the portfolio to be transferred, information on the contracts and the asset and liability items to be transferred and of the objectives to be achieved through the operation;
- c) the statement relating to the solvency margin:
 - 1) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation; if the accepting undertaking is required to calculate the adjusted solvency in compliance with art. 217 of the decree, the statement relating to the adjusted solvency margin at the same date;
 - 2) of the accepting undertaking after the transfer, drawn up as at the date of portfolio valuation and as at 31 December of the year when the transfer becomes effective, with the indication of the assumptions adopted for the estimate of the elements eligible for the available margin and on the amount of the margin required; if the accepting undertaking is required to calculate the adjusted solvency in compliance with art. 217 of the decree, the statement relating to the adjusted solvency margin at the same dates;
- d) the statement of assets representing technical provisions:
 - 1) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation;

- 2) of the accepting undertaking after the transfer, drawn up as at the date of portfolio valuation;
- e) the financial positions:
 - 1) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation; if the accepting undertaking is required to draw up consolidated accounts, the consolidated financial position as at the same date;
 - 2) of the accepting undertaking after the transfer, drawn up as at the date of portfolio valuation and as at 31 December of the year when the transfer becomes effective; if the accepting undertaking is required to draw up consolidated accounts, the consolidated financial position as at the same dates;
- f) the profit and loss account:
 - 1) of the ceding and of the accepting undertaking before the transfer, drawn up as at the date of portfolio valuation; if the accepting undertaking is required to draw up consolidated accounts, the consolidated profit and loss account as at the same date;
 - 2) of the accepting undertaking after the transfer, drawn up as at the date of valuation of the portfolio transfer and as at 31 December of the year when the portfolio transfer becomes effective; if the accepting undertaking is required to draw up consolidated accounts, the consolidated profit and loss account as at the same date;
- g) a certified estimate of the technical provisions to be transferred. Please note that failing a certified estimate if the reference date of portfolio valuation does not coincide with the closing date of the financial year the ceding undertaking shall enclose a report by the auditing actuary certifying that the technical provisions ceded are adequate; if the reference date is later than the application date, the report shall describe all the assumptions and methods used and shall certify their consistency for the assessment of the technical provisions to be transferred;
- h) a report on the effects of the transfer on the organisational management and peripheral structure of the accepting undertaking. When the portfolio to be transferred concerns class 10 - Motor vehicle liability, the report shall indicate any changes to the claims representatives in member States;
- i) a report on the changes made to the internal control and risk management systems and to anti money laundering procedures;
- j) an IT systems integration plan in which the following elements are specified:
 - 1) environments, functions, procedures, applications and data bases involved in the integration process;
 - 2) the timescales associated with each integration phase, with particular attention to the migration of data bases and to the dates on which the integration of portfolios (premiums, claims etc.) will be completed;
 - 3) the units and organisational centres which will be assigned the controls and monitoring of the entire integration process;
- k) a copy of the communication that the accepting undertaking proposes to send to the policyholders being transferred providing information on the corporate name and head office of the accepting undertaking and on the intermediary to which the contract has been assigned;
- l) information on the use of the distinguishing signs of the ceding undertaking after the transfer has been effected.

2. When the portfolio transfer is effected by means of an increase in the capital of the accepting undertaking a copy of the resolution by the corporate bodies of the accepting undertaking regarding the capital increase and the sworn report of the expert appointed by the Court certifying adequacy of the transfer shall be enclosed to the application in

addition to the provisions of paragraph 1.

3. When the portfolio transfer is effected by means of a contract of transfer, a copy of the contract, for which ISVAP has granted an authorisation subject to a suspensive condition, containing information about the contracts and the asset and liability items to be transferred as well as the estimate, if any, drawn up by a third party expert or, failing such estimate, the description of the criteria for determining the price shall be enclosed to the application in addition to the provisions of paragraph 1.

4. The documents enclosed to the applications referred to in articles 12 and 13 shall be drawn up according to the standard forms envisaged by the regulations in force and, in case of a ceding undertaking with head office in a third State, the documents, if drawn up in a foreign language, shall be accompanied by the translation into Italian.

5. In the event that the accepting undertaking has its head office in another member State the relevant documents referred to in this article shall be replaced by the attestation by the supervisory Authority of the accepting undertaking pursuant to article 16.

Art. 15

(Portfolio transfers entailing the partial transfer of assets from an internal fund or segregate fund to another internal fund or segregate fund)

1. In the event of a portfolio transfer between insurance undertakings entailing the partial transfer of assets from an internal fund or segregate fund to another internal fund or segregate fund the provisions referred to in articles 34 and 35 shall apply.

Art. 16

(Conditions for authorising the transfer of portfolio of Italian insurance undertakings)

1. ISVAP shall authorise the portfolio transfer from an undertaking with head office in the territory of the Italian Republic to an undertaking with head office in the territory of the Italian Republic provided that:

- a) the accepting undertaking is authorised to carry on the insurance classes relating to the business to be transferred and possesses assets representing technical provisions and the solvency margin required, after taking the transfer into account;
- b) the accepting undertaking meets the conditions envisaged by Chapter II, Title II of the decree for the taking up of business under the right of establishment or the freedom to provide services, if the portfolio includes commitments or risks underwritten in the territory of the Italian Republic; the conditions must be met with reference to the States and insurance classes concerned by the portfolio to be transferred;
- c) if the portfolio includes commitments or risks underwritten in a member State under the freedom to provide services, the favourable opinion of the supervisory Authority of the member State of the commitment or of the risk has been obtained;
- d) if the transfer includes the portfolio of a branch situated in another member State, the favourable opinion of the supervisory Authority of the member State of the branch of the accepting undertaking with head office in the territory of the Italian Republic, from which the commitments or risks have been underwritten, has been obtained;
- e) the portfolio is not transferred to the branch of an undertaking with head office in the territory of the Italian Republic set up in a third State.

2. ISVAP shall authorise the portfolio transfer from an undertaking with head office in the territory of the Italian Republic to an undertaking with head office in the territory of another member State provided that:

- a) the supervisory Authority of the member State certifies that the accepting undertaking is authorised to carry on the insurance classes relating to the business transferred and possesses assets representing technical provisions and the solvency margin required, after taking the transfer into account;
- b) the accepting undertaking meets the conditions envisaged by Chapter III, Title II of the decree for the taking up of business under the right of establishment or the freedom to provide services, if the portfolio includes commitments or risks underwritten in the territory of the Italian Republic;
- c) the portfolio is not transferred to the branch of an undertaking with head office in the territory of a member State set up in a third State.

3. ISVAP shall authorise the portfolio transfer from an undertaking with head office in the territory of the Italian Republic to an undertaking with head office in the territory of a third State provided that:

- a) the portfolio is transferred to the branch of the accepting undertaking set up in the territory of the Italian Republic;
- b) the accepting undertaking meets the conditions envisaged by Chapter IV, Title II of the decree for the taking up of business under the right of establishment in the territory of the Italian Republic;
- c) the portfolio includes commitments or risks underwritten in the territory of the Italian Republic or in the territory of the accepting undertaking's home third State;
- d) the accepting undertaking possesses assets representing technical provisions and the solvency margin after taking the transfer into account.

Art. 17

(Conditions for authorising the transfer of portfolio of third States' insurance undertakings)

1. ISVAP shall authorise the portfolio transfer from the Italian branch of an undertaking with head office in a third State provided that:

- a) if the portfolio is transferred to an undertaking with head office in the territory of the Italian Republic, the conditions referred to in article 16 (1) are met;
- b) if the portfolio is transferred to an undertaking with head office in a member State, the conditions referred to in article 16 (2) are met;
- c) if the portfolio is transferred to the Italian branch of an undertaking with head office in a third State, the conditions referred to in article 16 (3) are met.

Art. 18

(Inquiry)

1. For the granting of the authorisation ISVAP shall verify that the conditions referred to in articles 198 and 200 of the decree and under this Chapter are fulfilled.

2. ISVAP shall inform the undertakings immediately and anyhow no later than the period prescribed in ISVAP Regulation n. 2 of 9 May 2006, that the procedure has been started.

3. If the application for authorisation is incomplete for lack of one or more documents or pieces of information indicated under article 14, or is irregular, ISVAP shall immediately inform the undertakings in writing, anyhow no later than twenty days of receiving the application, indicating the causes for its incompleteness or irregularity. In those cases the period of the procedure shall begin again from the date on which the application is completed or regularised.

4. For carrying out the inquiry ISVAP may require that the undertakings provide information and clarification supplementing the documents envisaged by this Regulation. In those cases the period for concluding the procedure shall be suspended until the information and documents requested are received. ISVAP shall inform the undertakings of the suspension of the period.

5. After ninety days have elapsed and no supplementary documents have been submitted by the undertakings in compliance with paragraphs 3 and 4, the procedure is closed without any further action for lack of an interest in bringing it.

6. For carrying out the inquiry ISVAP may require that national or foreign Authorities provide information, documents, valuations or opinions. In that case the period for concluding the procedure shall be suspended until the receipt date of the elements requested. ISVAP shall inform the undertakings of the suspension and of the re-opening of the period.

7. In the cases when, in accordance with article 198 (2 and 3) of the decree and articles 16 and 17 of this Regulation, the opinion of a supervisory Authority of another member State is required, the period for concluding the procedure shall be suspended until the opinion is received. The absence of any response within the period of ninety days of receiving the request shall be considered equivalent to a favourable opinion. ISVAP shall inform the undertakings of the suspension and of the re-opening of the period. The undertakings shall meet any possible requirement set by the other member States' Authorities and give ISVAP proof thereof.

Art. 19 (Authorisation)

1. If the inquiry is completed successfully ISVAP shall issue the authorisation order within one hundred twenty days of the filing of the application, without prejudice to the cases of suspension and interruption referred to under article 18.

2. The order shall be sent to the undertakings and published in ISVAP's Bulletin and website.

3. The undertakings shall notify ISVAP that the portfolio transfer has been effected within thirty days from the conclusion of the operation, or else that it has not been effected.

Art. 20 (Refusal of authorisation)

1. In case the conditions referred to under articles 198 or 200 of the decree and under this Chapter are not fulfilled ISVAP shall, before formally adopting the relevant order, notify the undertakings of the reasons preventing the application from being accepted,

and urge them to provide any data or documents necessary to avoid that it is rejected.

2. Within the period indicated by ISVAP, which shall anyhow be not less than ten days of receipt of the notification, the undertakings may submit written observations accompanied by supporting evidence, if any.

3. The notification referred to under paragraph 1 shall interrupt the period for concluding the procedure, which shall start running again from the date when the observations are submitted⁴.

4. If the deadline referred to in paragraph 2 has expired without any observations being submitted, or in case the conditions for rejecting the authorisation are maintained, ISVAP shall issue the order definitively rejecting the application accompanied by the relevant reasons.

5. ISVAP shall inform the applicant undertaking of the rejection of the authorisation.

Art. 21

(Lapse of authorisation to the pursuit of insurance business)

1. The authorisation to the pursuit of insurance business of the undertaking which transfers the whole portfolio shall lapse in compliance with article 240 (1) d) of the decree. If there are claims outstanding, the undertaking shall submit ISVAP a closing balance sheet as at the date of the lapse of authorisation.

2. The lapse of authorisation shall be declared by ISVAP through the same order authorising the portfolio transfer. This measure ordering the lapse shall be notified to the supervisory Authorities of the member States and of the third States concerned.

3. The undertaking whose authorisation to the pursuit of insurance business has lapsed shall be deleted from the register of insurance undertakings.

Art. 22

(Transfer of a line of business)

1. The provisions of this Chapter shall also apply to the transfer of all or part of a line of business involving a portfolio transfer.

2. In the event that the operation involves the partial portfolio transfer, the following documents shall be enclosed to the application for authorisation, besides the documents referred to in article 14:

- a) a statement relating to the solvency margin of the accepting company after the transfer, drawn up as of the date of valuation of the portfolio and as at 31st December of the year when the transfer is effected; if the ceding undertaking is required to calculate the adjusted solvency in compliance with art. 217 of the decree, the statement relating to the adjusted solvency margin drawn up as at the same date;

⁴ Paragraph amended by article 2 (3) of IVASS Order n. 5 of 4 June 2013. Paragraph 3 laid down "The notification referred to in paragraph 1 shall suspend the period for concluding the procedure, which shall start running again from the date when the observations are submitted".

- b) the statement of assets representing technical provisions of the ceding company after the transfer, drawn up as at the date of portfolio valuation;
- c) financial position and profit and loss account of the ceding undertaking *after* the transfer, drawn up as at the date of portfolio valuation and as at 31 December of the year when the transfer becomes effective; if the ceding undertaking is required to draw up consolidated accounts, the consolidated financial position as at the same date.

Chapter II – Mergers and divisions

Art. 23

(Mergers and divisions subject to ISVAP's authorisation)

1. Mergers and divisions in which at least one insurance undertaking with head office in the territory of the Italian Republic is concerned and which result in the creation of one of more undertakings with head office in the territory of the Italian Republic shall be authorised by ISVAP, without prejudice to the provisions of article 201 (4) of the decree.
2. Any changes to the articles of association that the merger or division may entail shall be subject to ISVAP's prior authorisation.
3. In case of mergers and divisions between insurance undertakings resulting in the merger or division of segregate funds or internal funds the provisions of articles 34 and 35 shall apply.

Art. 24

(Application for authorisation to the merger)

1. The application for authorisation to the merger shall be filed with ISVAP, jointly or individually, by the undertakings concerned before lodging the proposed merger for registration in the registrar of companies, in accordance with article 2501 ter of the civil code.

Art. 25

(Documents to be enclosed to the application for authorisation to the merger)

1. The following documents shall be enclosed to the application referred to in article 24:
 - a) the proposed merger;
 - b) a report, other than that referred to in article 2501 *quinquies* of the civil code, drawn up by the administrative body, illustrating the proposed merger and providing adequate information on the objectives that the undertakings concerned propose to achieve through the operation and the relevant costs and benefits, as well as, with regard to the merging company or the new company resulting from the merger, information on the impact of such operation on the technical situation, on the organisational management and peripheral structure, on accounting procedures and personnel. When the portfolio to be transferred further to the merger concerns class 10 - Motor vehicle liability, the report shall indicate any changes to the claims representatives in member States;

- c) the changes to be made to the articles of association of the merging undertaking or the articles of association of the new undertaking resulting from the merger;
- d) a report on the changes made to the internal control and risk management systems and to anti money laundering procedures;
- e) an IT systems integration plan in which the following elements are specified:
 - 1) environments, functions, procedures and data bases involved in the integration process;
 - 2) the timescales associated with each integration phase with particular attention to the migration of data bases and to the dates on which the integration of portfolios (premiums, claims etc.) will be completed;
 - 3) the units and organisational centres which will be assigned the controls and monitoring of the entire integration process;
- f) a certified estimate drawn up by an independent expert attesting the adequacy of the net assets of the merging undertaking or of the undertaking resulting from the merger, at the accounting effective date of the merger;
- g) the statement relating to the solvency margin:
 - 1) of the undertakings involved in the merger, drawn up as at the date before the accounting effective date of the merger; if the merging undertaking is required to calculate the adjusted solvency as per art. 217 of the decree, the statement relating to the adjusted solvency margin at the same date;
 - 2) of the merging undertaking or the new undertaking resulting from the merger, drawn up as at the accounting effective date of the merger, indicating the assumptions adopted for the estimate of the elements eligible for the required and the available solvency margin and as at the following 31 December; if such undertaking is required to calculate the adjusted solvency as per art. 217 of the decree, the statement relating to the solvency margin at the same dates;
- h) the statement of assets representing technical provisions:
 - 1) of the undertakings involved in the merger, drawn up as at the date before the accounting effective date of the merger;
 - 2) of the merging undertaking or the new undertaking resulting from the merger, drawn up as at a date following the accounting effective date of the merger;
- i) the financial position:
 - 1) of the undertakings involved in the merger, drawn up as at the date before the accounting effective date of the merger; if the merging undertaking is required to draw up consolidated accounts, the consolidated financial position at the same date;
 - 2) of the merging undertaking or the new undertaking resulting from the merger, drawn up as at the accounting effective date of the merger and as at the following 31 December; if such undertaking is required to draw up consolidated accounts, the consolidated financial position at the same dates;
- j) the profit and loss account:
 - 1) of the undertakings involved in the merger, drawn up as at the date before the accounting effective date of the merger; if the merging undertaking is required to draw up consolidated accounts, the consolidated profit and loss account at the same date;
 - 2) the provisional profit and loss account of the merging undertaking or the undertaking resulting from the merger, drawn up as at the accounting date of the merger and as at the following 31 December; if such undertaking is required to draw up consolidated accounts, the consolidated profit and loss account at the same dates;
- k) a certified estimate of the technical provisions to be merged. Failing a certified estimate, if the reference date of valuation of the technical provisions does not coincide with the closing date of the financial year, the undertaking shall enclose a report by the auditing actuary certifying the adequacy of the technical provisions to

be merged; if the reference date is later than the application date, the report shall describe all the assumptions and methods used and shall certify their consistency for the assessment of the technical provisions to be merged;

- l) information on the use of distinguishing signs of the undertaking to be merged; in particular, when the operation concerns undertakings pursuing class 10, a facsimile of the insurance sticker that the merging company or the new company resulting from the merger intends to adopt;
- m) a copy of the communication that the merging undertaking or the new undertaking resulting from the merger proposes to send to the policyholders concerned by the operation, providing information on the corporate name and head office of the merging company or the new company resulting from the merger and on the intermediary to which the contract has been assigned.

2. The documents enclosed to the application referred to in article 24 shall be drawn up according to the standard forms envisaged by the regulations in force and, in case of undertakings with head office in another State, the documents, if drawn up in a foreign language, shall be accompanied by the translation into Italian.

Art. 26

(Application for authorisation to the division)

1. The application for authorisation to the division shall be filed with ISVAP, jointly or individually, by the insurance undertakings concerned before lodging the proposed division for registration in the registrar of companies in accordance with art. 2506 bis of the civil code.

Art. 27

(Documents to be enclosed to the application for authorisation to the division)

1. The companies involved in the division, apart from the equivalent documents required under article 25 (1) a), b), c), d), e), k), l) and m) shall enclose the following documents to the application for authorisation:

a) the statement of the solvency margin:

- 1) of the undertakings involved in the division, drawn up as at the date before the accounting date of the division; if the beneficiary undertaking is required to calculate the adjusted solvency as per art. 217 of the decree, the statement relating to the adjusted solvency margin at the same date;
- 2) of the beneficiary undertaking or the new undertaking resulting from the division, drawn up as at the accounting effective date of the division, indicating the assumptions adopted for the estimate of the elements eligible for the required and the available solvency margin and as at the following 31 December; if such undertaking is required to calculate the adjusted solvency as per art. 217 of the decree, the statement relating to the adjusted solvency margin at the same dates;

b) the statement of assets representing technical provisions:

- 1) of the undertakings involved in the division, drawn up as at the date before the accounting date of the division;
- 2) of the beneficiary undertaking or the new undertaking resulting from the division, drawn up as at the accounting effective date of the division;

c) the financial position:

- 1) of the undertakings involved in the division, drawn up as at the date before the

- accounting date of the division; if the beneficiary undertaking is required to draw up consolidated accounts, the consolidated financial position at the same date;
- 2) of the beneficiary undertaking or the undertaking resulting from the division, drawn up as at the accounting date of the division and as at the following 31 December; if such undertaking is required to draw up consolidated accounts, the consolidated financial position at the same dates;
 - d) a certified estimate drawn up by an independent expert attesting the adequacy of the net assets of the beneficiary company at the accounting effective date of the division;
 - e) the profit and loss account:
 - 1) of the companies involved in the division, drawn up as at the date before the accounting date of the division; if the beneficiary undertaking is required to draw up consolidated accounts, the consolidated profit and loss account at the same date;
 - 2) the provisional profit and loss account of the beneficiary company or the company resulting from the division, drawn up as at the accounting date of the division and as at the following 31 December; if such company is required to draw up consolidated accounts, the consolidated profit and loss account at the same dates;
 - f) a certified estimate of the technical provisions to be divided. Failing a certified estimate, if the reference date of valuation of the portfolio does not coincide with the closing date of the financial year, the undertaking shall enclose a report by the auditing actuary certifying the adequacy of the technical provisions to be divided; if the reference date is later than the application date, the report shall describe all the assumptions and methods used and shall certify their consistency for the assessment of the technical provisions to be divided.

2. The documents enclosed to the application referred to in article 26 shall be drawn up according to the standard forms envisaged by the regulations in force and, in case of undertakings with head office in another State, the documents, if drawn up in a foreign language, shall be accompanied by the translation into Italian.

Art. 28

(Conditions for authorising mergers and divisions)

1. ISVAP shall verify that:

- a) the merger or division is not in contrast with the criteria of sound and prudent management of the undertakings involved;
- b) in case of merger by incorporation or total division, the merging or the beneficiary undertaking possesses assets representing technical provisions and the solvency margin required, after taking the operation into account;
- c) in case of merger or division resulting in the creation of one or more new undertakings, the undertaking resulting from the operation fulfils the conditions for authorisation to the pursuit of insurance business in the classes concerned, and possesses assets representing technical provisions and the required solvency margin, after taking the operation into account.

2. If undertakings with head office in the territory of a member State are involved in the operation, the favourable opinion of the supervisory Authority of the home member State shall be a pre-requisite for authorisation.

3. In case the operation entails changes to the articles of association of the undertakings

concerned, the conditions for approval referred to in art. 4 must be met.

Art. 29
(Inquiry)

1. For the granting of the authorisation ISVAP shall conduct an inquiry aimed to verify, on the basis of the documents submitted by the undertaking, that the conditions referred to under article 201 (1 and 2) of the decree and under this Chapter are fulfilled.

2. ISVAP shall inform the undertakings immediately and anyhow no later than the period prescribed in ISVAP Regulation n. 2 of 9 May 2006, that the procedure has been started.

3. If the application for authorisation is incomplete for lack of one or more documents or pieces of information indicated under art. 25 or 27, or is irregular, ISVAP shall immediately inform the undertakings in writing, anyhow no later than twenty days of receiving the application, indicating the causes for its incompleteness or irregularity. In those cases the period of the procedure shall begin again from the date on which the application is completed or regularised. ISVAP shall inform the undertakings of the suspension of the period.

4. For carrying out the inquiry ISVAP may require that the applicant undertakings provide information and clarification supplementing the documents envisaged by this Regulation. In those cases the period for concluding the procedure shall be suspended until the information and documents requested are received. ISVAP shall inform the undertakings of the suspension of the period.

5. After ninety days have elapsed and no supplementary documents have been submitted by the undertakings in compliance with paragraphs 3 and 4, the procedure is closed without any further action for lack of an interest in bringing it.

6. For carrying out the inquiry ISVAP may require that national or foreign Authorities provide information, documents, valuations or opinions. In that case the period for concluding the procedure shall be suspended until the receipt date of the elements requested. ISVAP shall inform the undertakings of the suspension and of the re-opening of the period.

7. In the cases when, in accordance with article 201 (3) of the decree and article 28 (2) of this Regulation, the opinion of the supervisory Authority of another member State is required, the period for concluding the procedure shall be suspended until the opinion is received. The absence of any response within the period of ninety days of receiving the request shall be considered equivalent to a favourable opinion. ISVAP shall inform the undertakings of the suspension and of the re-opening of the period. The undertakings shall meet any possible requirement set by the other member States' Authorities and give ISVAP proof thereof.

Art. 30
(Authorisation)

1. If the inquiry is completed successfully ISVAP shall issue the authorisation order within one hundred twenty days of the filing of the application, without prejudice to the cases of suspension and interruption referred to under article 29. The order shall also authorise any changes to the articles of association that the operation may entail.

2. The order shall be sent to the applicant undertakings and published in ISVAP's Bulletin and website.

3. The undertakings shall inform ISVAP, within thirty days of lodging, that the operation has been entered in the registrar of companies or that they have decided not to proceed with such operation. In case the operation entails changes to the articles of association of the undertakings concerned, article 5 (3) shall apply.

Art. 31

(Effects of the merger on the authorisations to the pursuit of insurance business)

1. In case of merger resulting in the setting up of a new undertaking with head office in the territory of the Italian Republic the latter must immediately be authorised to pursue insurance business in compliance with article 13 of the decree and the relevant implementing provisions.

2. The authorisation to the pursuit of insurance business of the merged undertaking and of the undertakings to be merged in case of setting up of a new undertaking shall lapse.

3. The lapse of authorisation shall be declared by ISVAP through the order authorising the operations referred to under this Chapter. This measure ordering the lapse shall be notified to the supervisory Authorities of the member States and of the third States concerned.

4. The undertaking whose authorisation to the pursuit of insurance business has lapsed shall be deleted from the register of insurance undertakings.

Art. 32

(Effects of the division on the authorisations to the pursuit of insurance business)

1. In case of total or partial division resulting in the setting up of a new undertaking with head office in the territory of the Italian Republic the latter must immediately be authorised to pursue insurance business in compliance with article 13 of the decree and the relevant implementing provisions.

2. In case of total division the authorisation to the pursuit of insurance business of the undertaking being divided shall lapse. If there are claims outstanding, the undertaking shall submit ISVAP a closing balance sheet as at the date of the lapse of authorisation.

3. In case of partial division the authorisation to the pursuit of insurance business of the undertaking being divided shall lapse in the classes totally transferred.

4. The lapse of authorisation shall be declared by ISVAP through the order authorising the operations referred to under this Chapter. This measure ordering the lapse shall be notified to the supervisory Authorities of the member States and of the third States concerned.

5. When all the authorisations to the pursuit of insurance business have lapsed the undertaking shall be deleted from the register of insurance undertakings.

Art. 33
(Refusal of authorisation)

1. In case the conditions referred to under article 201 of the decree and article 28 of this Regulation are not fulfilled ISVAP shall, before formally adopting the relevant order, notify the applicant undertakings of the reasons preventing the application from being accepted, and urge them to provide any data or documents necessary to avoid that it is rejected.
2. Within the period indicated by ISVAP, which shall anyhow be not less than ten days of receipt of the notification, the undertakings may submit written observations accompanied by supporting evidence, if any.
3. The notification referred to under paragraph 1 shall interrupt the period for concluding the procedure, which shall start running again from the date when the observations are submitted⁵.
4. If the deadline referred to under paragraph 2 has expired without any observations being submitted, or in case the conditions for rejecting the authorisation are maintained, ISVAP shall issue the order definitively rejecting the application accompanied by the relevant reasons.
5. ISVAP shall inform the applicant undertaking of the rejection of the authorisation.

Chapter III - Internal funds and segregate funds

Art. 34
(Communication of merger or division of internal funds or segregate funds)

1. The undertaking may merge or divide segregate funds or internal funds only when this is intended to achieve the policyholders' interest, that is to say, inter alia, when the merger is aimed at giving the internal or segregate fund a suitable scale or a more efficient management, especially in terms of reduced costs for policyholders.
2. The undertaking shall give prior notice to ISVAP of its intention to merge or divide segregate funds and internal funds.
3. The merger or division may be effected when all the following conditions are met:
 - a) the merger of internal and segregate funds pursues the interest of the policyholders affected by the operation;
 - b) the regulation for the segregate funds and the internal funds envisages the case of merger or division, without prejudice to the provisions of art. 35 (4);
 - c) the segregate funds and the internal funds to be merged have similar characteristics;
 - d) the investment strategies of the segregate funds and internal funds are consistent;
 - e) the transfer from the preceding segregate fund or internal fund to the new segregate fund or internal fund does not entail costs and charges for

⁵ Paragraph amended by article 2 (4) of IVASS Order n. 5 of 4 June 2013. Paragraph 3 laid down "The notification referred to in paragraph 1 shall suspend the period for concluding the procedure, which shall start running again from the date when the observations are submitted".

- policyholders;
- f) the management of the internal funds or segregate funds will not be interrupted.

4. The communication referred to in paragraph 2 shall be accompanied by a report by the administrative body stating:

- a) the objectives to be attained through the operation, with special reference to policyholders' interests;
- b) the indication of any differences between the characteristics and investment strategies of the segregate funds or internal funds involved in the operation;
- c) any possible repercussions on the costs to be borne by the internal fund or segregate fund;
- d) the various phases of the operation, with an indication of the timescale necessary and the scheduled effective date;
- e) the draft communication and the arrangements for sending it to each policyholder. The communication shall state the reasons and the consequences of the operation, including the related costs, a summary description of the composition of the segregate funds or internal funds involved in the operation and its effective date;
- f) for internal funds:
 - 1) a detailed breakdown of the assets in the funds involved in the merger at the latest monthly closing, highlighting the characteristics of each fund, the geographic reference market, currency and rating;
 - 2) the criteria followed for attributing the units of the new fund to policyholders;
 - 3) the criteria for determining the value of the exchange;
- g) for segregate funds:
 - 1) the hidden gains and losses of the funds involved in the merger at the latest monthly closing;
 - 2) the expected returns of the segregate funds involved in the operation and the expected returns for the fund resulting from the merger with reference to a period of not less than twenty four months;
 - 3) the detailed breakdown of the assets in the funds concerned referred to the latest monthly closing;
 - 4) the amount of the technical provisions of the contracts included in the segregate funds, broken down according to the respective minimum guaranteed interest rate.

5. The undertaking shall enclose to the communication referred to in paragraph 2 the regulation of the segregate funds or internal funds involved in the operation and a copy of the new regulation, if the operation requires it to be redrafted.

Art. 35

(Conditions for implementing the merger or division of internal funds or segregate funds)

1. On the basis of the documents referred to in art. 34, ISVAP shall verify that the proposed merger or division of internal funds or segregate funds pursues the interests of policyholders, that the changes to the regulations are compliant with the provisions in force and the conditions laid down in art. 34 (1 and 3) and that the information referred to in art. 34 (4) e) is clear and exhaustive and the communication arrangements chosen are appropriate.

2. The merger or division may be effected after sixty days have elapsed from the

communication referred to in article 34 (2), without prejudice to the deadline set in paragraph 3.

3. For carrying out the inquiry ISVAP may require that the applicant undertaking provides information and clarification supplementing the documents envisaged by this Regulation. In those cases the period for concluding the procedure shall be suspended until the information and documents requested are received. ISVAP shall inform the undertaking of the suspension of the period.

4. In the absence of the provision envisaged in article 34 (3) b), the undertaking shall inform policyholders, through the communication referred to in article 34 (4) e), that they may exercise, within thirty days of receiving the foregoing communication, their right to surrender the contract or transfer their investments to another segregate fund or internal fund of the same undertaking without incurring any costs. The merger operation may take place sixty days after the policyholder has received the communication.

TITLE V - Final provisions

Art. 36 (*deleted*)⁶

Art. 37
(Provisions governing procedures)

1. For cases not covered by this Regulation the provisions of ISVAP Regulation n. 2 of 9 May 2006 shall apply.

Art. 38 (Repeals)

1. The following are repealed as at the date this Regulation enters into force:

- a) article 4 (2 and 3) of circular n. 533 of 4 June 2004;
- b) art. 33 of circular n. 551 of 1 March 2005.

Art. 39
(Publication)

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

⁶ Paragraph deleted by art. 54 (1) h) of ISVAP Order n. 35 of 26 May 2010. Article 36 laid down "1. *The undertaking shall inform policyholders of any change, resulting from a change to the articles of association, to the corporate name and head office within ten days from the effective date of the change. This information shall be published in the home page of the undertaking's website.* 2. *In case of transfer of portfolio, merger or division, undertakings shall inform policyholders of the effected operation and of the name and address of the intermediary to which the contract has been assigned; the ceding, merged or divided undertaking shall publish a notice of the operation in the home page of its website, for at least six months, and insert a link to the site of the accepting, merging or beneficiary undertaking or of the company resulting from the merger.*"

Art. 40
(Entry into force)

1. This Regulation shall enter into force fifteen days after its publication in the Official Journal of the Italian Republic.

Rome, 18 February 2008

The President
(Giancarlo Giannini)