



Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo

*(only the Italian version is authentic)*

## **REGULATION N. 19 OF 14 March 2008**

**REGULATION CONCERNING THE SOLVENCY MARGIN OF INSURANCE UNDERTAKINGS AS REFERRED TO IN TITLE III (CONDITIONS GOVERNING THE BUSINESS), CHAPTER IV (SOLVENCY MARGIN) AND IN ARTICLE 223 (INTERVENTION MEASURES FOR THE PROTECTION OF INSURANCE UNDERTAKINGS' PROSPECTIVE SOLVENCY) OF LEGISLATIVE DECREE N. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE.**

Amended by ISVAP Regulation n. 32 of 11 June 2009, by ISVAP order n. 2746 of 3 November 2009 and by ISVAP order n. 2768 of 29 December 2009. THE AMENDMENTS ARE IN *ITALICS*.

### **ISVAP**

Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest)

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

HAVING REGARD to the Legislative Decree n. 142 of 30 May 2005, implementing Directive n. 2002/87/EC 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 the Legislative Decree n. 209 of 7 September 2005, as amended and supplemented, regarding 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 44 (1), (4) and (5), 45 (9), 50 (1), 223 (2) and 349 (1) of Legislative Decree n. 209 of 7 September 2009.

#### **Art. 2** **(Definitions)**

1. For the purposes of this Regulation:

- a) "supplementary insurances" means: the insurances as referred to in article 2 (2) of the Legislative Decree no. 209 of 7 September 2005;
- b) "non-life insurance" means: the insurances as referred to in article 2 (3) of the Legislative Decree no. 209 of 7 September 2005;
- c) "life assurance" means: the insurances and operations as referred to in article 2 (1) of the Legislative Decree no. 209 of 7 September 2005;
- d) "capital at risk" means: the capital that equals the sums that must be paid to beneficiaries in the case of death of the assured, less the mathematical provision of the main risk;
- e) "decree" means: legislative decree n. 209 of 7 September 2005, establishing the Code of Private Insurance;
- f) "insurance undertaking" means: an undertaking authorised in accordance with the provisions included in Community Directives relating to direct insurance;
- g) "undertakings in the financial sector" means: credit institutions and financial institutions as referred to in article 4, paragraphs 1 and 5 of the Directive 2006/48/EC or investment firms and financial institutions as referred to in article 4, point 1, of the Directive 2004/39/EC and article 2, paragraphs 4 and 7 of the Directive 93/6/EEC;
- h) "available solvency margin" means: undertaking assets, that are free from any foreseeable commitment and net of the intangible items;
- i) "required solvency margin" means: the minimum amount of the assets which the undertaking constantly need to have at its disposal, in accordance with the provisions of the decree and the conditions of this Regulation-;
- l) "participations" means: the rights over the share capital in other undertakings, represented by securities or otherwise, which, by creating a long-term relationship with them, are intended to develop the shareholder's business. A participation exists, however, when an entity is the holder of at least 20 per cent of the voting rights or share capital in the undertaking, directly or via a relationship of control.
- m) "International Accounting Standards" means: the international accounting standards and the relative interpretations adopted in accordance with article 6 of the EC Regulation n. 1606/2002 of the European Parliament and Council of 19 July 2002;

n) “investment risk” means: the risk run by the undertaking, subsequent to the stipulation of contracts included in the class III as referred to in article 2 (1) of the decree, which includes at least *one of the following risk profiles*<sup>1</sup>:

1) “performance” risk, arising from the issue to the contracting party of a minimum guarantee for the protection of the capital or interest: the risk here is that the value of the assets intended to cover the technical reserves is not sufficient to allow the protection or revaluation of the capital up to the minimum guaranteed amount;

2) “base risk”, arising from the issue to the policyholder of a guarantee to adjust the capital on the basis of the value of the shares or assets of a fund or on the basis of a share-index trend or some other reference value: the risk here is that the covering assets, though managed in accordance with the legal and regulatory provisions, do not allow to replicate the trend in the value of shares or assets, or of the share index or different reference value, and therefore to meet the insured services that are variable on the basis of this trend;

3) “counterparty” risk, linked to the quality of the issuing body or counterparty of the financial instruments, including derivatives, intended as coverage of the technical provisions of the contracts referred to: the risk the issuing body or counterparty does not fulfil its own contractual obligations.

### Art. 3 (Scope)

1. This Regulation applies to insurance undertakings whose head offices are in the territory of the Republic of Italy and to those branches in Italy of insurance undertakings whose head offices are in third countries.

## TITLE II Provisions for the calculation of the required solvency margin

### CHAPTER I Technical regulations applicable to undertakings which pursue life assurance

#### Art. 4 (Determining the required solvency margin)

1. The required solvency margin is calculated, on the basis of the classes of insurance the undertaking pursues, in accordance with the following rules:
  - a) for the insurances included in classes I and II of article 2 (1) of the decree, the solvency margin equals the sum of the following results:
    - 1) 4 per cent of the mathematical provisions, relating to direct business and reinsurance acceptances, gross of reinsurance cessions, multiplied by the ratio for the last year between the amount of mathematical provisions, net of the reinsurance

<sup>1</sup> As amended by article 13 of ISVAP Regulation n. 32 of 11 June 2009. The previous version laid down: “n) “investment risk” means: the risk run by the undertaking, subsequent to the stipulation of contracts included in the class III as referred to in article 2 (1) of the decree, which includes at least the following risk profiles.”.

cessions, and the gross amount of the reserves themselves. If this ratio is less than 85 per cent, it is taken to be equal to 85 per cent for the purposes of this calculation;  
 2) 0.3 per cent of the amount of non-negative capital at risk, multiplied by the ratio in the last year between the amount of capital at risk net of the cessions and retrocessions in reinsurance and the amount of capital at risk gross of reinsurance. If this ratio is less than 50 per cent, it is taken to be equal to 50 per cent for the purposes of this calculation. For temporary assurance on death of a maximum term of three years the above fraction shall be 0.1 %; For such assurance of a term of more than three years but not more than five years the above fraction shall be 0.15%;

- b) for supplementary insurances as referred to in article 2 (2) of the decree, the solvency margin is calculated on the basis of the provisions applied to undertakings dealing in the non-life sector, with the exception of the provisions included in article 46 (3) of the decree;
- c) for health insurance and risks of dependency as referred to in class IV of article 2 (1) of the decree, the solvency margin equals the sum of the following results:
  - 1) 4 per cent of the mathematical provisions, calculated in accordance with paragraph 1, letter a), number 1).
  - 2) the solvency margin calculated in accordance with articles 7, 8, 9 and 10.
 The condition referred to in article 10, concerning the constitution of a senescence reserve, may be replaced by the condition that it is a group insurance.
- d) for capital redemptions operations as referred to in class V of article 2 (1) of the decree, the solvency margin is calculated in accordance with paragraph 1, letter a, number 1;
- e) for insurances included in class III of article 2 (1) of the decree, and for operations as referred to in class VI of the same paragraph, the solvency margin equals the sum of the following results:
  - 1) 4 per cent of the technical provisions, calculated in accordance with paragraph 1, letter a), number 1), if the undertaking assumes investment risks. The provisions taken as the reference point for the application of the aforesaid rate are the technical provisions, constituted against the contract services, including the additional provisions, constituted pursuant to article 41 (4) of the decree. If the financial guarantee is limited to the single component of death or the service has an amount that is not more than the purchase loading charges found in the tariff, the only provision taken as the reference point for the application of the aforesaid rate is the additional provision constituted pursuant to article 41 (4) of the decree. On the remaining part of the provision the margin is calculated, according to each case, as indicated in 2) and 3) below;
  - 2) 1 per cent of the technical provisions, calculated in accordance with paragraph 1, letter a), number 1), if the undertaking does not assume investment risks and the contract determines the management cost amount for a period of more than five years;
  - 3) 25 per cent of the net value of the "other administrative expenses" and the "collection commission" in the last year, if the undertaking does not assume investment risks and the contract determines the management cost amount for a period of not more than five years;

4) if the undertaking assumes a mortality risk, an amount equalling 0.3 per cent of the non-negative capital at risk, which may be reduced in accordance with paragraph 1, letter a), number 2).

#### Art. 5

(Mechanism for indexation)

1. The amount in euros of the minimum value of the guarantee quota as established by article 46 (2) of the decree is reviewed annually by the European Commission, on the basis of the increases in the European consumer price-index as published by Eurostat.
2. ISVAP issues a measure publishing the adjustment rate, without prejudice of the provisions contained in article 46 (5) of the decree.
3. The amounts are adjusted by increasing the base amount in euros by the percentage increase of the index, rounding it up to the multiple of 100,000 euros. The base amount to be increased is the one referring to the last year of adjustment.

### Chapter II

#### Technical regulations applicable to undertakings which provide non-life insurance

#### Art. 6

(Determining the required solvency margin)

1. The solvency margin is determined in line with the annual amount of premiums or contributions or in line with the average costs for claims in the past three years.
2. If the undertaking deals exclusively or mainly in insurance relating to one or more of the credit, storm, hail and frost risks, then the past seven years is taken as the reference period for average costs for claims.
3. Without exception to the provisions in article 10, in relation to sickness insurance, the margin is at least the same as the highest result obtained using the two determining criteria indicated in paragraph 1.

#### Art. 7

(Calculating the solvency margin in relation to the annual total of premiums or contributions)

1. The solvency margin in relation to the annual total of premiums or contributions is calculated in the following manner:
  - a) either the gross premiums recorded in the accounts in the last year, as defined in article 45 of the Legislative Decree n. 173 of 26 May 1997, or the contributions written under the appropriate item in the Losses and profit Statement from the last year, are added together. As regards the accumulated total as referred to in this paragraph, the gross recorded premiums or contributions relating to classes 11, 12 and 13, as referred to in article 2 (3) of the decree, are increased by 50 per cent;

- b) the total amount obtained in this fashion is divided into two parts: the first up to an amount of *fifty-seven million, five hundred thousand euros*<sup>2</sup> and the second that includes the excess amount over and above such amount;
- c) the margin is calculated by applying a rate of 18 per cent on the first amount and 16 per cent on the second and then adding together the two totals obtained in this way. The overall amount is then multiplied by the existing ratio, for the sum of the past three years, between the amount of claims paid out and outstanding, which remain with the undertaking after deduction of claims borne by reinsurers, and the overall gross sum of the claims themselves. If this ratio is less than 50 per cent, it is taken to be equal to 50 per cent for the purposes of this calculation.

#### Art. 8

(Calculating the solvency margin in relation to the average costs for claims)

1. The solvency margin in relation to the average costs of claims is calculated in the following manner:
  - a) the claims paid out for direct insurances during the past three years, inclusive of the quotas to be paid by the reinsurers, are added together and to this you add the amount of claims paid out during the same years for reinsurance accepted risks, inclusive of the quotas to be paid by the retrocessionaries and you add the amount of the gross claims outstanding as constituted at the end of the last year, for direct insurances and for risks accepted in reinsurance;
  - b) from this amount you deduct the sum of recovered payments made in the past three years and the total of gross outstanding claims as constituted at the beginning of the second year prior to the last year taken into consideration, both for direct insurances and the acceptances in reinsurance. If the period of reference for average costs of claims pursuant to article 6 (2), is seven years, then you deduct the gross amount for claims outstanding as constituted at the beginning of the sixth year prior to the last year taken into consideration;

as regards the accumulated total as referred to in letters a) and b) the total of paid claims, recovered payments and outstanding claims relating to classes 11, 12 and 13, as referred to in article 2 (3) of the decree, are increased by 50 per cent.
2. The third or seventh part of the total amount, according to the period of reference as indicated in article 6, obtained on the basis of paragraph 1 is divided into two parts: the first up to *forty million, three hundred thousand euros*<sup>3</sup> and the second that includes the excess amount over and above such amount.
3. The solvency margin is calculated by applying a rate of 26 per cent on the first amount and 23 per cent on the second and then adding together the totals obtained in this way. The overall amount arising from this is then multiplied by the existing ratio, for the sum of the past three years, between the amount of claims net of the quotas to be paid by the reinsurers and the overall amount for claims inclusive of reinsurance. If this ratio is less than 50 per cent, it is taken to be equal to 50 per cent for the purposes of this calculation.

<sup>2</sup> Amount raised by ISVAP order n. 2768 of 29 December 2009. The previous amount was fifty-three million, one hundred thousand euros.

<sup>3</sup> Amount raised by ISVAP order n. 2768 of 29 December 2009. The previous amount was thirty-seven million, two hundred thousand euros.

4. For undertakings authorised to issue policies in class 18 as referred to in article 2 (3) of the decree, the sum of paid claims also includes the fees paid to third parties for assistance services.

#### Art. 9

(Comparison with the required solvency margin from the last financial year)

1. If the required solvency margin for the year, as determined in accordance with article 6 (3), is lower than that of the last year, the required margin for the year is equal at least to the solvency margin of the last year multiplied by the ratio between the amount of claims outstanding at the end of the year and that of claims outstanding at the end of the last year. For the purposes of this ratio, which cannot be more than one, the claims outstanding provisions are calculated net of reinsurance. In any case the required solvency margin cannot be less than the measure effectively determined in the year in accordance with article 6 (3).

#### Art. 10

(Special provisions for the calculation of the solvency margin in sickness insurance)

1. The percentages to be applied, in accordance with articles 7 and 8, for the calculation of the solvency margin based on the annual amount of premiums or contributions and the average costs on claims, are reduced by a third for sickness insurance managed using technical criteria similar to those used for managing life assurance, when:
  - a) the premium tariffs are drawn up on the basis of morbidity tables using actuarial criteria;
  - b) the establishment of a senescence provision is planned;
  - c) a premium supplement must be paid aimed at the creation of an adequate safety margin;
  - d) the insurer is excluded from the right of withdrawal from the contract after the third year of insurance;
  - e) the policy includes the possibility of increasing the premium or reducing the cover, even while the contract is in course.
2. When sickness insurance is managed by the same undertaking together with other classes of insurance, the solvency margin is determined by making a separate calculation for sickness insurance and for the overall amount of the other classes of insurance and adding the totals together.

#### Art. 11

(Mechanism for indexation)

1. The amounts in euros established in accordance with article 7 (1) letter b) and article 8 (2) and that of the minimum value of the guarantee quota established under article 46 (3)

of the decree are reviewed annually by the European Commission on the basis of the increase in the European consumer price index published by Eurostat.

2. ISVAP issues a measure publishing the adjustment rate, without prejudice of the provisions contained in article 46 (5) of the decree.
3. The amounts must be adjusted by increasing the base amount in euros by the percentage increase of the index, rounding it up to the multiple of 100,000 euros. The base amount to be increased is the one referring to the last year of adjustment.

### **TITLE III**

#### **Provisions for the determination of the elements to be included in the available solvency margin**

##### **Chapter I**

##### **Elements of the available margin**

###### **Art. 12**

###### **(Available solvency margin)**

1. Undertakings are constantly in possession, throughout each year, of the elements of the available margin in a measure that is not less than the required margin as determined on the basis of the last year.
2. The solvency margin for insurance undertakings dealing in life assurance is made up of the assets free from any foreseeable liabilities as indicated in article 44 (2) of the decree, net of any intangible items as shown in the macro-class B, points 2, 3, 4 and 5 of the balance sheet relating to the management of life assurance and of the amount relating to every other intangible item. As regards the assets in point 1 of the same macro-class B, the undertaking does not take into account any amount exceeding the maximum amount allowed, in accordance with article 23 (1) (b).
3. The solvency margin for insurance undertakings dealing in non-life insurance is made up of the assets free from any foreseeable liabilities as indicated in article 44 (2) of the decree, without taking into account the intangible items as shown in the macro-class B, points 3, 4 and 5 of the balance sheet relating to the management of non-life insurance, the amount relating to every other intangible item, as well as 40 per cent of the acquisition fees and the other acquisition expenses as referred to in points 1 and 2 of the same macro-class B.
4. The elements referred to in article 44 (3) of the decree can also be included in the available margin, in accordance with the provisions included in Chapter II of this Title. The elements referred to in the aforesaid article 44 (4) are included in the available margin, on a temporary basis and subject to the authorisation of ISVAP in accordance with the provisions included in Chapter III of this Title.

5. In any case, the value of any treasury shares and shares of the controlling undertaking, as well as any profits that have been or are to be distributed to the shareholders are deducted from the available margin.
6. When calculating the available margin, insurance undertakings which have participations in undertakings in the financial sector which:
  - a) are not subject to the supplementary supervision over insurance undertakings, pursuant to Title XV, Chapter IV of the decree and of the relative provisions for its implementation, since they are not controlling undertakings or participating undertakings in at least one insurance undertaking, in an insurance undertaking in a third country or in a reinsurance undertaking;
  - b) or have not been identified as the parent undertaking of a financial conglomerate under Legislative Decree no. 142 of 30 May 2005;
 take into account the participations and other instruments as referred to in articles 9, 10 and 64, paragraph 3 of the 2006/48/EC Directive (capital, cumulative preferential shares and subordinated loans), which are held in the aforesaid undertakings in the financial sector.
7. ISVAP can decide that the undertaking deducts from the available margin constituents further assets in addition to those referred to in (2) and (3), if they highlight a trend likely to compromise the solvency of the undertaking, even in the future.

#### Art. 13 (Disclosure of the solvency margin)

1. The undertakings include in their half-yearly report their estimate of the required solvency margin at the end of the year and of the elements that make up the available margin, taking life assurance and non-life insurance separately, and calculated on the basis of economic trends during the reference six-month period and of any other information which the undertaking might have.

### **Chapter II** **Elements that can be used with limitations in the available solvency margin**

#### Art. 14 (Subordinated liabilities)

1. Subordinated liabilities, represented by subordinated loans, securities with no specified maturity and other financial instruments, issued by the insurance undertaking, can be included in the available solvency margin but only for the effectively paid sums, in compliance with the provisions of articles 44 and 45 of the decree and of the provisions included in this Chapter.

Art. 15  
(Subordinated fixed - maturity loans)

1. Pursuant to article 45 of the decree, loans for which an expiry date has been contractually established can be included in the available solvency margin up to the overall amount of 25 per cent of the lower value between the undertaking's available margin and the required solvency margin, as long as they meet the conditions stipulated in article 45 (2) of the decree. The cumulative preferential shares with a set duration included in the available margin are included in the aforesaid limit.
2. At least one year before the date the loan expires, the undertaking informs ISVAP of its repayment plan as referred to in article 45 (3), indicating the elements in the available margin replacing the loan, also taking into account the foreseeable needs of the required solvency margin at the end of the year in which the loan is expected to be extinguished and the procedures by which it intends to guarantee the coverage of the technical provisions, also with reference to the foreseeable commitments relating to the extinction of the loan itself. ISVAP approves the plan within 60 days of receiving the documentation referred to in this paragraph. The provisions included in ISVAP Regulations n. 2 of 9 May 2006 are applied to the relative procedure;
3. The obligation to submit the plan referred to in paragraph 2 does not arise if the undertaking has gradually reduced the amount of the loan, used in the calculation of the available solvency margin, at a rate of at least one fifth per year during the course of the five years preceding the date of expiry, at the same time replacing it with suitable elements, or it has produced a different amortization plan which produces similar effects. In any case, the undertaking informs ISVAP in advance of the amortization plan it intends to adopt.
4. Early repayment of loans is subject to prior authorisation from ISVAP in accordance with article 45 (4) of the decree. At least six months before the established date for the repayment, the undertaking sends a reasoned application to ISVAP, attaching the documentation that certifies the existence of the conditions as laid down in article 15 (2). Within 60 days of receiving the documentation, ISVAP authorises the early repayment . The provisions included in ISVAP Regulations n. 2 of 9 May 2006 are applied to the relative procedure;

Art. 16  
(Subordinated loans with no specified maturity date)

1. Pursuant to article 45 of the decree, loans, for which an expiry date has not been contractually established, are considered together with the cumulative preferential shares and other subordinate liabilities for the purposes of coverage of the solvency margin up to the amount of 50 per cent of the lower value between the undertaking's available margin and the required solvency margin, as long as they meet the conditions stipulated in article 45 (2) of the decree.
2. Should the issuing undertaking give notice of repayment of the loan, the plan which the undertaking sends to ISVAP, pursuant to article 45 (3) and (7) of the decree, includes the minimum information as referred to in article 15 (2) and is subject to approval by ISVAP in accordance with the same provision. If the obligation to present the plan does not exist, pursuant to article 45 (3) of the decree, the undertakings adhere to the provisions of

article 15 (3). The repayment of the loan may take place five years after notice was given pursuant to article 45 (2) letter d) of the decree.

3. Early repayment of loans in accordance with article 45 (5) of the decree, is subject to prior authorisation from ISVAP. At least six months before the established date for the repayment, the undertaking sends a reasoned application to ISVAP, attaching the documentation that certifies the existence of the conditions as laid down in article 15 (2). Within 60 days of receiving the documentation, ISVAP authorises the early repayment. The provisions included in ISVAP Regulations n. 2 of 9 May 2006 are applied to the relative procedure;
4. If notice is given or if a request is made for early repayment, the loan, as regards the part to which the repayment refers, is classified among the subordinated loans with a fixed expiry date, that are admissible as coverage of the solvency margin up to a limit of 25 per cent of the lower figure between the margin held by the undertaking and the required solvency margin. On the date the notice is given or when the request for early repayment is made, the undertaking, as a result of the reduction in the percentage of use of the subordinated loan, proceeds with meeting the needs of the solvency margin arising from this reduction, with appropriate elements from the shareholders' equity.

#### Art. 17

(Securities with no specified maturity date and other financial instruments)

1. The securities with no specified maturity date and other financial instruments as referred to in article 44 (3) (b) of the decree can be included among the elements making up the available solvency margin up to a maximum limit of 50 per cent of the lower figure between the available solvency margin and the required solvency margin. The limit referred to in this paragraph is to be used for the overall amount of these securities, financial instruments, cumulative preferential shares and subordinated loans as referred to in articles 15 and 16, solely in relation to sums that have actually been paid up.
2. For the purposes of being calculated among the elements making up the solvency margin, the securities and financial instruments referred to in paragraph 1, meet the conditions referred to in article 45 (8) of the decree. As regards the aforesaid conditions, undertakings comply with the following provisions:
  - a) in relation to the conditions referred to in article 45 (8) (b) of the decree, any hypothesis of total or partial repayment, even on the expiry date, of securities with no specified maturity date and other financial instruments with or without an expiry date requires prior authorisation from ISVAP. This condition is included in a specific contractual clause and, when referring to an issue in the form of bonds or similar securities, on the certificates representing the loan. The request for authorisation is presented to ISVAP at least six months before the date of repayment and is accompanied by appropriate documentation proving the requirements pursuant to article 15 (2). The provisions included in ISVAP Regulations n. 2 of 9 May 2006 are applied to the relative procedure;
  - b) in relation to the conditions referred to in article 45 (8), letter c) of the decree, the document that governs the issue must expressly include the possibility of deferring interest payment if the undertaking does not have at its disposal the required solvency margin in line with the law. This clause is made explicit when referring to

an issue in the form of bonds or similar securities, also on the certificates representing the loan. In any case, the deferred payment of interest does not modify the creditor's right to remuneration of the security. The unpaid accrued interest owed by the undertaking cannot be considered in the calculation of the loan amount used in the computation to cover the available solvency margin. The notes to the financial statement shall appropriately illustrate any delay in interest payment, until it has actually been paid;

- c) in relation to the conditions referred to in article 45 (8), letter e) of the decree, the document that governs the issue of the loan includes the clause concerning loss absorption. This clause stipulates that any losses recorded by the undertaking are absorbed definitively or temporarily by the debt owed to the lenders, together with the unpaid accrued interest. This clause is made explicit when referring to an issue in the form of bonds or similar securities, also on the certificates representing the loan. The clause is operative when it emerges from the undertaking's balance sheet that there is, even taking into account the brought forward profits and losses from previous years, an overall loss, which causes a reduction in the available solvency margin compared to the amount required by law, even taking into consideration any equity reserves. The shareholders, nevertheless, still have the right to proceed with the integral absorption of the loss by intervening with the share capital at least to reach the figure needed for the required solvency margin. In the notes to the financial statement, the issuing undertaking appropriately illustrates the loss absorption operation and indicates in detail the pre-conditions and definitive nature of the absorption itself in accordance with the conditions in the document which governs the loan issue. When the absorption is temporary, the undertaking also indicates in the notes to the financial statement for each year that the subordinated liabilities can be reconstituted into their original amount, since the appropriate conditions exist.

#### Art. 18

(Loan operations or issuing guarantees to the underwriter or purchaser of securities representing their own subordinated liabilities)

1. If an issuing insurance undertaking performs loan operations, even through controlled undertakings in accordance with articles 72 and 73 of the decree, or issues guarantees to the underwriter or purchaser of their own subordinated liabilities, and these operations, due to their effective characteristics are regarded as coordinated acts, in relation to the contractual profile, implementation procedures and period of the operations, the subordinated liabilities, for the purposes of being included in the solvency margin, are included net of the disbursed loans or issued guarantees.

#### Art. 19

(Mutual underwriting of subordinated liabilities)

1. Subordinated loans, securities with no specified maturity date and other financial instruments as well as cumulative preferential shares, that are underwritten and paid mutually together with another undertaking which need not be an insurance undertaking, are included among the elements of the available solvency margin net of the mutually paid sums.

Art. 20  
(Repurchasing of own subordinated liabilities)

1. An issuing insurance undertaking may proceed with the repurchase of shares in its own subordinated loans, securities with no specified maturity date and other financial instruments as well as cumulative preferential shares up to the limit of one tenth of the original value of each issue.
2. If the repurchase exceeds the limit referred to in paragraph 1, the provisions that govern early repayment, contained in article 45 of the decree and in articles 15 and 16 are applied.
3. Shares in one's own liabilities as referred to in paragraph 1, which are included, even transitorily, in the securities portfolio of the issuing undertaking cannot in any case be taken into account in the calculation of elements in the available solvency margin.

Art. 21  
(Clauses for automatic revision of interest rates)

1. The documents that govern the issue of subordinated loans, securities with no specified maturity date and other financial instruments may include clauses for the automatic revision of interest rates (so called "step-up") provided that they cannot be exercised before the end of the first five years since issue and that the step-up amount is less than 100 base points. As regards variable interest rate loans, the amount of the step up refers to the spread as originally stipulated in the loan conditions.

Art. 22  
(Communication obligations)

1. The issue of subordinated loans, securities with no specified maturity date and other financial instruments is communicated to ISVAP in advance, attaching a copy of the documentation that governs the issue itself. The undertaking sends ISVAP any subsequent amendments to the documentation already sent.
2. The documentation sent to ISVAP must include all the information needed to allow ISVAP to assess the effective extent of the commitments that the insurance undertaking intends to undertake and the existence of the requirements for their inclusion in the subordinated liabilities in the available margin. ISVAP may exclude or limit the acceptability of the subordinated liabilities in the calculation of the available margin on the basis of assessments regarding the financial sustainability of the operation by the issuing undertaking and the onerousness of the operation, also taking into account its duration.
3. The procedure is concluded within sixty days from the date it was started; within that period, ISVAP issues its decision regarding the existence of the conditions for allowing the subordinated liabilities to be included in the available margin. The sixty-day period is suspended if ISVAP raises some objections, or asks for some further information on the operation or amendments to the documentation regarding the issue, and resumes on the date that the requested documentation is received.

4. Within thirty days of the issue, the undertakings send ISVAP the final documentation relating to the issued liabilities.
5. The undertaking sends prior notification to ISVAP regarding any variation it intends to make to the documentation relating to the issue concerning which ISVAP gave its decision pursuant to paragraph 3. ISVAP issues a order, authorising the amendment to the documentation within 60 days of receiving the notification. The provisions included in ISVAP Regulations n. 2 of 9 May 2006 are applied to the relative procedure;

### **Chapter III**

#### **Usable elements in the available margin subject to authorisation from ISVAP**

##### **Art. 23**

(Patrimonial elements to be included upon authorisation)

1. Pursuant to article 44 (4) of the decree, on receiving a reasoned application from the undertaking, accompanied by supporting documentation, and provided that the solvency of the undertaking is not jeopardised, ISVAP may authorise the transitory inclusion in the available solvency margin of additional elements a), b), c), and d) below for life assurance undertakings, and the additional elements c) and d) below for non-life insurance undertakings:
  - a) until 31 December 2009, an amount equal to 50 per cent of the undertaking's future profits but not more than 25 per cent of the lesser of the available solvency margin and the required solvency margin. The amount of future profits, net of the part which comes from capital gains net of the elements referred to in letter c), is obtained by multiplying the estimated annual profit by the factor which represents the average residual duration of the contracts. This factor can be a maximum of six. The estimated annual profit cannot be greater than the arithmetical average of the profits registered during the past five years of business in classes I, II, III and IV as referred to in article 2 (1) of the decree. Pursuant to article 340 (2) of the decree, the undertaking sends its application together with a report drawn up by the actuary assigned to do so in accordance with article 31 of the decree, which validates the plausibility of achieving such profits in the future and a plan which illustrates how the limits may be observed in the future, also with regard to the impossibility of using these future profits after the expiry date of the transitory period.
  - b) the difference between the mathematical provision as calculated on the basis of the pure premiums, reduced by the amount of the said provision relating to cessations -of risks, and the corresponding difference between the mathematical provision relating to assumed and ceded business, calculated on the basis of the pure premiums increased by the amortisation instalment of the purchase cost contained in the tariff premiums; this difference cannot exceed 3.5 per cent of the sum of the differences between "life" capital and the mathematical provisions for all the contracts for which premium payments have not been stopped; it is reduced by any amount recorded among assets for acquisition commissions to be amortised. The undertaking presents a report drawn up by an actuary appointed in accordance with article 31 of the decree, certifying the criteria and methods of calculation of the amount it intends to use.

- c) unrealised gains net of any capital losses and foreseeable commitments towards the assured, which emerge from the assessment of all the undertaking's investments, provided that these capital gains are not of an exceptional nature; latent capital gains may be included up to a maximum of 10 per cent of the available solvency margin for life assurance undertakings and 20 per cent for non-life insurance undertakings, or of the required solvency margin, if it is lower, in compliance with the provisions of article 24.
  - d) half of the underwritten quota of share capital, which has not been paid up, or of the underwritten initial fund, provided that at least 50 per cent has been paid up, and up to a limit of 50 per cent of the available solvency margin or, if lower, of the required solvency margin.
2. The undertaking sends ISVAP a reasoned application together with the prescribed documentation. The procedure is concluded within sixty days from the date it was started; within that period, ISVAP issues its decision regarding the existence of the conditions for allowing the subordinated liabilities to be included in the available margin.

#### Art. 24 (Unrealised gains)

1. Subject to authorisation from ISVAP, an undertaking may assign to the available solvency margin its net unrealised gains relating to all investments, in accordance with the limits referred to in article 23, provided that such unrealised gains are not of an exceptional nature. Net unrealised gains on financial instruments that are not listed on the regulated markets are allowed up to a limit of 30 per cent of their overall amount, except for those from financial instruments issued by undertakings subject to prudential supervision for stability purposes whose head offices are in an EU State.
2. For the purposes of inclusion as indicated in paragraph 1, capital gains are calculated net of the foreseeable effects of deferred taxation, comparing the book value with the current value of the investments themselves.
3. The current value of investments in financial instruments listed on the regulated markets is calculated on the basis of the arithmetical average of the prices recorded in the past six months.
4. The current value of financial instruments not listed in the regulated markets is calculated in accordance with the provisions included in article 17 of the Legislative Decree n. 173 of 26 May 1997.
5. The current value of real assets is calculated in accordance with the provisions included in article 16 of the Legislative Decree n. 173 of 26 May 1997 and the relative provisions for its implementation.
6. Net unrealised gains can be included in the available solvency margin, provided that on the date the draft balance sheet or six-monthly report is approved, there have not been any significant reductions in the current value of the investments.

7. The undertaking sends ISVAP a reasoned application for the authorisation to include net unrealised gains, accompanied by detailed analysis of the unrealised gains and capital losses which have been taken into consideration and calculated on the basis of the model referred to in article 30 of this Regulation.
8. Undertakings that pursue life assurance also indicate in the application referred to in paragraph 7, all the foreseeable commitments to the assured, attaching a note from the actuary, appointed in accordance with article 31 of the decree, which certifies the procedures used for calculating the foreseeable commitments which were taken into account when calculating the net unrealised gains.

#### **TITLE IV** **Financial recovery of the undertaking**

##### Art. 25 (Contents of the financial recovery plan)

1. ISVAP requires the presentation of a financial plan by the insurance undertaking, should the conditions referred to in article 223 (1) of the decree exist.
2. With reference to the three subsequent financial years, the plan shall contain:
  - a) the provisional Profit and Loss for each of the three years;
  - b) the forecasts regarding the collection of premiums, management costs, costs relating to claims, technical reserves and the effects of reinsurance referred to each class pursued, and the classes as a whole, highlighting the criteria used in formulating the forecasts;
  - c) the provisional balance sheet for each of the three years;
  - d) the foreseeable treasury situation for each of the three years, which explains in detail the individual categories of revenues and costs for direct operations, for inward and outward reinsurance operations;
  - e) the foreseeable financial resources to be used in covering the solvency margin and technical provisions;
  - f) the overall policy regarding reinsurance and the most significant forms of reinsurance overage that are expected to be adopted in the classes pursued by the undertaking.
3. The undertaking attaches to the financial recovery plan a detailed explanatory report, regarding the actions that will be taken to resolve the deteriorating financial situation as approved by the administrative body.
4. The forecasts relating to technical commitments in the life assurance classes and third party motor insurance class, illustrated in the financial recovery plan, shall contain the assessment provided by the appointed actuary. The actuary describes in analytical

fashion the technical hypotheses adopted by the undertaking in formulating its plan and expresses his own opinion about them.

5. Should it need further specific information, ISVAP may require the undertaking to provide additional information over and above the minimum contents of the financial recovery plan as described in paragraph 1.

## **TITLE V**

### **Provisions applicable to insurance undertakings whose head offices are in a third country**

#### **Art. 26**

(Solvency margin for branches of insurance undertakings whose head offices are in a third country)

1. Due to their compatibility, the provisions included in Title III, Chapter IV of the decree as well as the provisions in this Regulation are applied to branches of insurance undertakings whose head offices are in a third country, having regard to the business carried out by the branch within the territory of the Republic.
2. The available margin consists of the assets of the branch as shown in its financial statements and free from any foreseeable commitment.
3. The assets corresponding to the available margin are located inside the territory of the Republic of Italy up to the guarantee fund; the assets over and above this amount can be located in the territory of other member States.

#### **Art. 27**

(Provisions applicable to branches of insurance undertakings whose head offices are in Switzerland)

1. The provisions of article 50 of the decree do not apply to the branches of insurance undertakings whose head offices are in Switzerland, which pursue non-life insurance within the territory of the Republic of Italy.

## **TITLE VI**

### **Provisions relating to templates**

#### **Art. 28**

(Statement of the solvency margin)

1. Insurance undertakings which pursue life assurance as referred to in article 2 (1) of the decree, and whose head offices are in the territory of the Republic of Italy, shall attach to their financial statements, pursuant to article 93 (5) of the decree, the statement on the solvency margin situation as on the closing date of the financial year to which the financial statements refer. This statement shall be drawn up in accordance with the

model in Annex I to this Regulation. The undertakings referred to in article 12 (6) shall use Annex 4 to Annex I.

2. Insurance undertakings which pursue life assurance as referred to in article 2 (3) of the decree, and whose head offices are in the territory of the Italian Republic, shall attach to their financial statements, pursuant to article 93 (5) of the decree, the statement on the solvency margin situation as on the closing date of the financial year to which the financial statement refers. This statement shall be drawn up in accordance with the model in Annex II to this Regulation. The undertakings referred to in article 12 (6) shall use Annex 3 to Annex II.
3. In order to fulfil the obligations pursuant to article 93 (1) of the decree, the branches of undertakings whose head offices are in a third country shall use the model in Annex I or II on the basis of the activity they pursue within the territory of the Italian Republic.

#### Art. 29

(Additional statement on the solvency margin)

1. Insurance undertakings which pursue both life assurance and non-life insurance as referred to in article 348 of the decree, and whose head offices are in the territory of the Italian Republic, shall attach to their financial statements, the additional statement on the solvency margin, which shall comply with the model in Annex III to this Regulation.
2. The branches of insurance undertakings whose head offices are in a third country and which pursue both life assurance and non-life insurance in Italy, shall attach to their financial statement, the additional statement referred to in paragraph 1.

#### Art. 30

(Statement on unrealised gains)

1. For the purposes of requesting authorisation from ISVAP as referred to in article 24 (7), undertakings shall fill in the form shown in Annex IV to this Regulation.

### **TITLE VII – Provisions relating to the issue of fidejussions and guarantees**

#### Art. 31

(Issue of fidejussions or guarantees by insurance undertakings)

1. Insurance undertakings cannot issue fidejussions or guarantees, under whatever name, except for those allowed within the scope of the suretyship class referred to in article 2 (3) of the decree.
2. Pursuant to article 11 of the decree, the issue of fidejussions and guarantees is only allowed provided that it does not become a normal part of the undertaking's business activities and that it is provided in the interest of an undertaking that is controlled directly or indirectly by the insurance undertaking.

3. As regards fidejussions or guarantees issued in the interest of undertakings controlled by the insurance undertaking and belonging to an insurance group as defined in the provisions implementing Title VII, Chapter IV of the decree, the insurance undertakings shall, at the time the fidejussion or guarantee is issued and constantly until it expires, assess the risk of its enforcement, bearing in mind, amongst other things, the nature of the guaranteed undertaking's business, the relationship of control that exists with it and any adequate counter-guarantees. The extent of the commitment, as calculated in this way, must be limited to an amount that is not above the estimated excess of the available solvency margin taking into account any absorption arising from other commitments in accordance with ISVAP's provisions.
4. The overall nominal exposure, adopted with fidejussions or guarantees issued in the interest of undertakings controlled by the insurance undertaking and not belonging to an insurance group as defined in the provisions implementing Title VII, Chapter IV of the decree, net of any amounts that are adequately counter-guaranteed, must be limited to an amount that is not above the estimated excess of the available solvency margin, taking into account any absorption already arising from other commitments in accordance with ISVAP's provisions.
5. Amounts assisted by counter-guarantees are only deemed as adequately counter-guaranteed when the counter-guarantees are issued by undertakings other than those that control or are controlled by the insurance undertaking or are controlled by the same undertaking that controls the undertaking itself.
6. Insurance undertakings periodically evaluate the need to create or increase a risk fund against issued guarantees, should a risk of enforcement of the guarantee exist for the undertaking.
7. The provisions regarding the supervision of intra-group operations, implementing Title XV, Chapter III of the decree, are applied when fidejussions and guarantees, as referred to in paragraph 2, are issued.
8. Undertakings send ISVAP on an annual basis the form in Annex V to this Regulation, together with the statement on the solvency margin.
9. The issue of guarantees against the issue of commercial papers, as referred to in Law no. 43 dated 13 January 1994, is still governed by ISVAP Provision n. 761 dated 29 December 1997. The relative commitment is shown in the form referred to in paragraph 8.

## TITLE VIII

### Transitional and final provisions

#### Art. 32 (Transitional provisions)

1. Insurance undertakings that adopt the international accounting standards in drawing up their financial statements, determine the basis on which they calculate the required solvency margin and the available solvency margin elements in compliance with the

financial statements drawn up, for supervision purposes, on the basis of Legislative Decree n. 173 of 26 May 1997 and its relative provisions for implementation. For this purpose, the references to the financial statements indicated in articles 17 (2) letter c), 24 (2) and 26 (2) are deemed as referring to the financial statements drawn up for supervision purposes.

2. The undertakings referred to in paragraph 1 shall illustrate, in their notes to the financial statements, pursuant to article 8 (3) of ISVAP Regulation n. 7 of 13 July 2007, the main differences, in terms of amounts and criteria, between the available solvency margin elements and the elements of the shareholders' equity recorded in the financial statements as drawn up in accordance with the international accounting standards.

#### Art. 33 (Repeals)

1. When these Regulations come into effect, the following shall be repealed:
  - ISVAP Provision n. 2322 of 06 December 2004;
  - ISVAP Provision n. 2415 of 30 March 2006;
  - the paragraph "Constituting the solvency margin for contracts in class III" in ISVAP Circular no. 451 of 24 July 2001;
  - points 1, 2, 3, 4, 5, 6, 7.3. and 8 in ISVAP Circular n. 110 of 27 February 1989.

#### Art. 34 (Publication)

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

#### Art. 35 (Entry into force)

1. This Regulation shall enter into force on the day following its publication in the Official Journal of the Republic of Italy.
2. The provisions contained in this Regulation- relating to the calculation of the solvency margin are applicable starting from the calculations relating to financial year 2007.
3. When first applied, insurance undertakings which find themselves in the condition of not being able to adhere to the provisions in Title VII for the financial year 2007 must immediately inform ISVAP, submitting a plan for its approval, indicating timescales and methods for reaching compliance with the provisions.

Rome, 14 March 2008

the President  
(Giancarlo Giannini)