



Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo

(only the Italian version is authentic)

REGULATION N. 25 of 27 MAY 2008

REGULATION CONCERNING THE SUPERVISION OF INTRA-GROUP TRANSACTIONS AS REFERRED TO IN TITLE XV, CHAPTER III OF LEGISLATIVE DECREE N. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE.

AMENDED AND SUPPLEMENTED BY ISVAP REGULATION N. 33 OF 10 MARCH 2010. 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 legislative decree n. 209 of 7 September 2005 as subsequently amended and supplemented, introducing the Code of Private Insurance;

adopts the following:

REGULATION

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CHAPTER I

General Provisions

Art. 1 (Legislative sources)

1. This Regulation is adopted pursuant to articles 5 (2), 190 (1), 191 (1) letters c) and h), 213 (1), 215 (3) and 216 (1) of Legislative Decree n. 209 of 7 September 2005.

Art. 2 (Definitions)

1. For the purposes of this Regulation:
 - a) "decree": Legislative Decree n. 209 of 7 September 2005, as amended and supplemented, regarding the Code of Private Insurance;
 - b) "insurance group": the group of companies as referred to in article 82 of the legislative decree no. 209 of 7 September 2005 and the relative provisions for its implementation;
 - c) "parent undertaking": the undertaking which exercises control pursuant to article 72 (1) and (2) letters a) and b) of the decree;
 - d) "insurance undertaking": an undertaking authorised according to the provisions laid down in EC directives on direct insurance;
 - e) "participating undertaking": an undertaking which directly or indirectly holds, in the capital of another company, rights which realise a durable link with the participated undertaking or which allow the exercise of a significant influence pursuant to special contractual links. Moreover a participating undertaking shall be an undertaking linked to another undertaking when they are managed on a unified basis or when the administration, management and control bodies are mainly made up of the same persons. A participation exists in any case when an entity is the holder of at least 20 % of the voting rights or share capital in an undertaking;
 - f) "ISVAP" or "Authority": Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest);
 - g) "intra-group transactions": all the transactions in which the fulfilment of a contractual obligation or an obligation of another nature in favour of undertakings, in return for payment of a fee or free of charge, depends directly or indirectly on the counterparties referred to in article 5;
 - h) "administrative body": the board of directors, or the management board in undertakings which have adopted the system pursuant to article 2409 octies of the Italian Civil Code, or the general representative for branch offices;
 - i) "qualifying holding": holding pursuant to articles 1 (1) letter oo), and 68 (1) of the decree;
 - j) "related parties": entities described as such by the international accounting standard as regards disclosure of transactions with related parties, adopted in accordance with the procedure pursuant to article 6 of the (CE) Regulation n. 1606/2002;
 - k) "branch office": a place of business, not having a legal personality, that is part of an insurance or reinsurance undertaking and that directly exercises all or part of the insurance or reinsurance business

Art. 3
(Scope)

1. This Regulation shall apply to intra-group transactions performed by:
 - a) insurance and reinsurance undertakings whose head offices are located in Italy;
 - b) branch offices established in the territory of Italy by an insurance undertaking whose head offices are in a third country;
 - c) branch offices established in the territory of Italy by a reinsurance undertaking whose head offices are in a third country.

Art. 4
(Types of intra-group transactions)

1. The intra-group transactions concern, amongst others:
 - a) loans;
 - b) guarantees, commitments and other off-balance-sheet transactions ;
 - c) elements eligible for the solvency margin pursuant to articles 44 and 45 of the decree;
 - d) investments;
 - e) reinsurance and *retrocession*¹ operations;
 - f) agreements for the sharing of costs;
 - g) agreements for the centralised management of liquid assets;
 - h) agreements for the centralised management of investments.
2. In addition to the provisions of paragraph 1, the undertakings referred to in article 3 can, within the scope of the resolution referred to in article 6 (4), determine further types of intra-group transactions that may be performed.

Art. 5
(Counterparties in intra-group transactions)

1. Intra-group transactions, which undertakings referred to in article 3 perform together with the following counterparties, are subject to the provisions of this Regulation:
 - a) undertakings that are directly or indirectly controlled by the undertakings referred to in article 3;
 - b) undertakings in which the undertakings referred to in article 3 have a direct or indirect participation;
 - c) undertakings that directly or indirectly control the undertakings referred to in article 3;
 - d) undertakings which have a direct or indirect participation in the undertakings referred to in article 3;
 - e) undertakings that together with the undertakings referred to in article 3 are subject to unified management pursuant to article 96 of the decree;
 - f) undertakings that are controlled by an undertaking that controls the undertakings referred to in article 3;

¹ Words added by article 139 of ISVAP Regulation n. 33 of 10 March 2010.

- g) undertakings that are controlled by an undertaking that has a participation in the undertakings referred to in article 3;
 - h) undertakings that are controlled by an undertaking that is subject to unified management together with an undertaking referred to in article 3;
 - i) undertakings, in which an undertaking, that controls undertakings referred to in article 3, has shareholdings;
 - j) a natural person who controls or has a participation in the undertakings referred to in article 3 or in one of the undertakings referred to in the above points.
2. Intra-group transactions are subject to the provisions of this Regulation (except for those in Chapter II, Chapter III and Chapter IV, Section I) when they are performed by undertakings referred to in article 3 together with:
 - a) undertakings, in which an undertaking, that has a participation in the undertakings referred to in article 3, has a participation;
 - b) undertakings, in which an undertaking, that is subject to unified management together with an undertaking referred to in article 3, has a participation.
 3. Intra-group transactions are subject to the provisions of this Regulation (except for those referred to in article 12), when they are performed by undertakings referred to in article 3 together with undertakings or natural persons:
 - a) which have a qualifying holding in an undertaking referred to in article 3 and which are not included in paragraphs 1 and 2;
 - b) which qualify for the definition of related party and which are not included in paragraphs 1, 2 and 3 letter a). The provisions of Chapter IV, Section II do not apply to natural persons included in this letter.

CHAPTER II

Activity of the undertaking

Art. 6 (General principles)

1. The undertakings referred to in article 3 perform intra-group transactions in line with the principles of sound and prudent management and avoid carrying out transactions, which might produce negative effects on their solvency or which can undermine the interests of the policyholder and of those entitled to insurance benefits.
2. Intra-group transactions are performed in line with market conditions. The performance of intra-group transactions at non-market conditions is allowed in exceptional circumstances and is subject to the application of provisions regarding prior notification as referred to in Chapter III.
3. For the purposes referred to in paragraph 1, undertakings referred to in article 3 have full and constant knowledge of the counterparties referred to in article 5. For this purpose they can also make use of the information produced for supplementary supervision purposes pursuant to articles 212 and 213 of the decree and the related provisions for its implementation, in compliance with the obligations referred to in Chapter IV, Section II.
4. For the aims referred to in paragraph 1, the administrative body of undertakings referred to in article 3 passes a resolution by the end of February which defines the guidelines governing the conduct of intra-group transactions and the activity that it intends to use.

The resolution also identifies the types of intra-group transactions which characterise the undertaking in addition to those indicated in article 4.

5. The resolution referred to in paragraph 4 and any subsequent amendments are sent to ISVAP within ten days of their relative approval.
6. The guidelines contained in the resolution referred to in paragraph 4:
 - a) are defined in various ways in line with the various types of intra-group transactions, in respect of the characteristics of the transactions themselves, also taking into account the actual activity of the undertakings referred to in article 3. As regards reinsurance and *retrocession*² transactions, the guidelines are consistent with those established pursuant to ISVAP Circular n. 574/D of 23 December 2005;
 - b) are defined, taking into account the various kinds of risks related to intra-group transactions, also with regard to the different kinds of counterparties. For this purpose, among other things, it mentions whether or not the counterparties are entities subject to prudential supervision, as well as the relationship between the counter-parties and the undertaking referred to in article 3. In particular, in the overall assessment of risks arising from an intra-group transaction:
 - i) special attention is paid to the possibility of a contagion risk if the counterparty belongs to the same insurance group;
 - ii) special attention is paid to the possibility of a conflict of interests, if the counterparty does not belong to the same insurance group or is linked to the undertakings referred to in article 3 by shareholding relationships and not by control relationships;
 - c) contain appropriate limits in activity in line with the characteristics of the various types of transactions and the counterparties involved in the transactions themselves. When intra-group transactions give rise to financial exposures, these limits are established with reference to the average and maximum exposures arising from the transactions themselves;
 - d) contain the criteria for assessing the adequacy of the price of various types of intra-group transactions to be carried out;
 - e) indicate the procedures used for a thorough and open disclosure to the public of the intra-group transactions, that are finished or in progress. For this purpose, it provides in particular an adequate description in the notes to the financial statement of companies referred to in article 3.
7. The intra-group activity, illustrated in the resolution referred to in paragraph 4 are defined:
 - a) with reference to the various types of intra-group transactions, including those identified by an undertaking pursuant to paragraph 4. As regards reinsurance and *retrocession*³ operations, the description is consistent with the plan of assignments pursuant to ISVAP Circular n. 574/D of 23 December 2005;
 - b) by distinguishing the counterparties belonging to the insurance group of which the undertaking may be a part;
 - c) in line with the intra-group activity as established by the parent company and the other insurance undertakings belonging to the insurance group of which the undertaking may be a part;

² Words added by article 139 of ISVAP Regulation n. 33 of 10 March 2010.

³ Words added by article 139 of ISVAP Regulation n. 33 of 10 March 2010.

- d) in line with the guidelines, also taking into account the activity limits as referred to in paragraph 6 letter c);
- e) with reference to a time period of a year. It is nevertheless possible to use a time period other than a year as the reference point, by explaining the reasons for this in the resolution referred to in paragraph 4.

Art. 7

(Particular provisions relating to the issue of fidejussions and guarantees outside the scope of the suretyship class)

1. On the understanding that the provisions in Chapters III and IV remain firm, undertakings referred to in article 3, which, in compliance with the provisions referred to in Title VII of the ISVAP Regulations n. 19 of 14 March 2008, intend to issue fidejussions or guarantees outside the scope of the suretyship class as referred to in article 2 (3) of the decree in the interests of an undertaking that is directly or indirectly controlled, shall comply with the following obligations:
 - a) the issue of the fidejussion or guarantee must be recorded in the minutes of a meeting of the administrative body, which illustrates the points supporting the foundations of the assessment and highlights, in particular, the reasons underlying the transaction and, in the case of a transaction carried out in the interests of a company included within the insurance group, the consistency of the transaction itself with the needs linked to the particular business activities of the insurance group;
 - b) the risk assumed following a transaction must be identified and adequately quantified, taking into account the possible existence of counter-guarantees issued by companies that are different from the controlling companies, controlled companies or companies controlled by the same company controlling the undertaking as referred to in article 3.
 - c) undertakings must make available for ISVAP inspections all the documentation that proves the result and the methods used for quantifying the risk referred to in letter b), as well as the illustrative documentation about any acquired counter-guarantees, which contains information about guarantors or the assets referred to in the counter-guarantees.
 - d) undertakings must evaluate the incidence of the transaction (net of any counter-guaranteed amounts) on the excess amount of the available solvency margin both at an individual and group level. For transactions carried out in the interest of companies controlled outside the insurance group, this incidence is equal to the nominal exposure assumed with the transaction.

Art. 8

(Internal control procedures and mechanisms for risk management)

1. Undertakings referred to in article 3 set up adequate risk management and internal control mechanisms, including appropriate accounting and reporting procedures, to allow the assessment, quantification, monitoring and control of intra-group transactions as well as the compliance with the guidelines and limits established by the administrative body in accordance with the provisions of article 6.
2. The mechanisms and procedures referred to in paragraph 1 are consistent with the mechanisms and procedures pursuant to ISVAP Regulation n. 20 of 26 March 2008.

Chapter III

Requirements regarding prior notification to ISVAP

Art. 9

(Intra-group transactions subject to prior notification)

1. Undertakings referred to in article 3 provide ISVAP with prior notification about intra-group transactions which are economically significant pursuant to article 10 and which concern loans, guarantees, control participations, real estate, bond securities and non-control participations that are not negotiated on regulated markets and are deep and liquid.
2. In addition, all intra-group transactions carried out with conditions that are different from the market are subject to the prior notification requirement.
3. The following are not subject to the advance notification requirement:
 - a) reinsurance and *retrocession*⁴ operations;
 - b) transactions concerning securities traded on regulated markets that are deep and liquid, except for transactions relating to control participations.
4. If the intra-group transactions subject to the prior notification requirement, pursuant to paragraphs 1 and 2 above, are performed between two companies referred to in article 3, each of these is obliged to send prior notification, in compliance with the threshold significance as referred to in article 10.
5. If the transactions which must be notified in advance pursuant to paragraphs 1 and 2 above, are subject to ISVAP authorisation pursuant to the additional provisions of the decree and its related regulations for implementation, the regulations that govern the authorisation procedure shall be applied. In this case:
 - a) the request for authorisation provides exemption from the notification requirements referred to in this article;
 - b) the undertaking also sends ISVAP the documentation as stipulated in article 11 together with the request for authorisation;
 - c) for the purposes of issuing the authorisation, ISVAP also takes into account the existence of the conditions as provided for in article 12 (2).
6. If the transactions which must be notified in advance pursuant to paragraphs 1 and 2 above, are subject to prior notification to ISVAP pursuant to the additional provisions of the decree and its related regulations for implementation, the procedures and deadlines as stipulated by these provisions shall be applied or, if the aforesaid provisions do not stipulate any deadlines, then article 12 shall be applied. In this case:
 - a) the undertaking sends just one notification, which contains the documentation as stipulated in the other provisions together with the documentation as stipulated in article 11;
 - b) ISVAP assesses the existence of the conditions as stipulated in the other provisions as well as those stipulated in article 12 (2).

Art. 10

(Significance of transactions subject to prior notification)

⁴ Words added by article 139 of ISVAP Regulation n. 33 of 10 March 2010.

1. Intra-group transactions are considered economically significant when their value exceeds the thresholds indicated in Annex 1.
2. For the purposes of determining economic significance, the thresholds referred to in paragraph 1 are also regarded as exceeded when more than one transaction of the same type are linked to each other in terms of time, function and planning, even if each individual value is below the threshold. In assessing these links, ISVAP also takes into account the continuous or periodic relationship of the transactions and the connections of a functional and causal nature existing between the transactions.

Art. 11

(Methods and content of the notification)

1. Undertakings subject to prior notification requirement of intra-group transactions send ISVAP an illustrative note drawn up in compliance with Annex 2 together with the documentation referred to therein.

Art. 12

(Rules governing prior notifications)

1. Intra-group transactions subject to prior notification requirement can be completed after a period of twenty days following the receipt of the said notification by ISVAP, provided that the Authority has not in the meantime sent the undertakings a notice prohibiting them.
2. ISVAP adopts the prohibition notice referred to in paragraph 1 when it assesses that the transactions are in contrast with the principles of sound and prudent management or produce negative effects on the undertaking's solvency or can undermine the interests of the policyholder and of those entitled to insurance benefits.
3. The deadline as referred to in paragraph 1 is interrupted, if ISVAP requests further explanatory information, having ascertained that the documentation produced together with the advance notification is either incomplete or insufficient. In this case, the twenty-day period shall begin again from the date ISVAP receives the requested documentation.
4. The twenty-day period as referred to in paragraph 1 is suspended, if ISVAP raises objections or requests further information and clarification regarding the intra-group transaction subject to prior notification. In this case, the twenty-day period shall continue from the date ISVAP receives a reply to its objections or requests.
5. Undertakings that make significant amendments, during the period referred to in paragraph 1, to one or more of the conditions relating to the notified intra-group transaction, are obliged to send a new notification. To all intents and purposes of this article, such notification is regarded as a notification of a new transaction.
6. If ISVAP ascertains that one of the transactions referred to in article 9 has been carried out by the undertakings referred to in article 3, without having received the relative prior notification, and that it is in contrast with the principles of sound and prudent management or produces or runs the risk of producing negative effects on the undertaking's solvency, or can undermine the interests of the policyholder and of those entitled to insurance benefits, it shall require the undertakings to take the measures necessary to eliminate such negative or detrimental consequences and, to that end, set an appropriate deadline.

Art. 13

(Execution of intra-group transactions)

1. Undertakings notify ISVAP of the execution of the intra-group transaction within ten days of its actual completion or of their decision not to go ahead with the transaction.
2. Undertakings which intend to carry out an intra-group transaction, after the period referred to in article 12 (1), with conditions that are different from those shown in the prior notification, are obliged to send ISVAP a new notification.

CHAPTER IV

Requirements regarding subsequent notification to ISVAP

Section I – Notification of intra-group transactions

Art. 14

(Intra-group transactions subject to subsequent notification)

1. Undertakings referred to in article 3 notify ISVAP on an annual basis of the intra-group transactions (except for reinsurance and *retrocession*⁵ operations) that are in progress or were concluded during the reference year, which are significant in terms of paragraph 2.
2. For the purposes of paragraph 1, transactions are significant, when their value exceeds one per cent of the required solvency margin of an undertaking, as referred to in article 3, on an individual basis. For undertakings referred to in article 3 which do not calculate their solvency margin, all intra-group transactions are regarded as significant.

Art. 15

(Exemption from the requirement to send notification)

1. If the undertakings referred to in article 3 are controlled by an insurance undertaking whose registered offices are in Italy and which is subject to the notification requirements as stipulated in article 14, the notification as referred to in article 14 needs only be sent by the controlling insurance undertaking.
2. On the first available expiry date for notifications after this Regulation have come into force, the undertakings referred to in article 3 notify ISVAP that the circumstances referred to in paragraph 1 have occurred, and, subsequently, they send prompt notification whenever there are changes to these circumstances.
3. The exemption referred to in paragraph 1 does not apply, if the notifications sent by the controlling undertaking instead of the undertaking which is subject to the notification requirement pursuant to article 14, do not include the complete list of intra-group transactions carried out by the undertaking subject to the requirement.

Art. 16

(Methods and terms for sending the notification)

1. As regards the notification referred to in article 14, undertakings referred to in article 3 send the template included in Annex 3 together with their annual financial statement.
2. If the conditions referred to in article 15 (1) exist, the controlling undertakings send the template included in Annex 4 together with their annual financial statement.

Art. 17

⁵ Words added by article 139 of ISVAP Regulation n. 33 of 10 March 2010.

(Rules governing subsequent notifications)

1. If ISVAP ascertains that one of the transactions, subject to subsequent notification pursuant to article 14, has been carried out by the undertakings referred to in article 3 and is in contrast with the principles of sound and prudent management or produces or runs the risk of producing negative effects on the undertaking's solvency, or can undermine the interests of the policyholder and of those entitled to insurance benefits, it shall require the undertakings to take the measures necessary to eliminate such negative or detrimental consequences and, to that end, set an appropriate deadline.
2. As regards the ascertainment referred to in paragraph 1, ISVAP can request clarification from the undertakings as well as documentation or details in addition to those required by article 14.

Section II – Notification of the list of counterparties

Art. 18

(Requirement to send notification of the list of counterparties)

1. Undertakings referred to in article 3 send ISVAP notification of the complete list of counter-parties as referred to in article 5 indicating the shareholding that they hold directly and/or indirectly in them.

Art. 19

(Exemption from the requirement to send notification)

1. If the undertakings referred to in article 3 are controlled by an insurance undertaking whose head offices are in Italy and which is subject to the notification requirements as stipulated in article 18, the notification as referred to in article 18 is only sent by the controlling insurance undertaking.
2. If there are participations in the undertakings referred to in article 3 held by another insurance undertaking whose head offices are in Italy, the notification as referred to in article 18 is only sent by the latter insurance undertaking, unless it is subject to the exemption provided for in paragraph 1.
3. On the first available expiry date for notifications after this Regulation have come into force, the undertakings referred to in article 3 notify ISVAP that the circumstances referred to in paragraphs 1 and 2 have occurred, and, subsequently, they send prompt notification whenever there are changes to these circumstances.
4. The exemptions referred to in paragraphs 1 and 2 do not apply, if, subsequent to various shareholding relationships, the notifications sent by the controlling or shareholding undertaking instead of the undertaking, subject to the notification requirement pursuant to article 18, do not include the complete list of the counterparties of the undertaking subject to the requirement.

Art. 20

(Methods and terms for sending the notification)

1. As regards the notification referred to in article 18, the undertakings referred to in article 3 follow the IT instructions provided by ISVAP in a specific Provision.
2. The notification to ISVAP of data and information as referred to in article 18 is sent within thirty days of the end of each quarter, indicating the changes that have occurred since

the previous quarter. The notification is sent in full even if no changes have occurred in the list of counterparties.

Chapter V

Final provisions

Art. 21 **(Repeals)**

1. In accordance with the terms referred to in article 23, the following are repealed:
 - ISVAP circular n. 214 of 03 February 1994;
 - ISVAP circular n. 456 of 6 November 2001;
 - ISVAP circular n. 459 of 6 December 2001.

Art. 22 **(Publication)**

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

Art. 23 **(Entry into force)**

1. This Regulation shall enter into force on the day after its publication in the Italian Official Journal , except for the provisions in Chapters II and III, which will enter into force on 1 January 2009.
2. Undertakings shall comply with the provisions referred to in:
 - a) Chapter IV, Section I starting from the notification relating to the 2008 financial statement;
 - b) Chapter IV, Section I starting from the notification relating to 31 December 2008.

Rome, 27 May 2008

the President
(Giancarlo Giannini)