



Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo

(only the Italian version is authentic)

REGULATION 32 OF 11 JUNE 2009

REGULATION LAYING DOWN PROVISIONS GOVERNING POLICIES WHOSE BENEFITS ARE DIRECTLY LINKED TO A SHARE INDEX OR ANOTHER REFERENCE VALUE REFERRED TO UNDER ARTICLE 41 (2) OF LEGISLATIVE DECREE N. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE.

AMENDED BY ISVAP REGULATION 35 OF 26 MAY 2010 AND ISVAP ORDER 2957 OF 18 JANUARY 2012. THE AMENDMENTS ARE IN *ITALICS*.

ISVAP

(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;

HAVING REGARD to legislative decree n. 58 of 24 February 1998 as subsequently amended and supplemented, introducing the consolidated law on financial mediation

adopts the following

REGULATION

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Title I

General provisions

Article 1 (Legislative sources)

1. This Regulation has been adopted in accordance with article 5 (2) and article 41 (5) of Legislative Decree 209 of 7 September 2005.

Article 2 (Definitions)

1. For the purposes of this Regulation, the following definitions shall apply:
 - a) "index-linked contract": the life insurance contract referred under to article 41 (2) of Legislative Decree n. 209 of 7 September 2005 whose benefits are directly linked to a share index or other reference value;
 - b) "decree": legislative decree n. 209 of 7 September 2005, introducing the Code of Private Insurance;
 - c) "undertakings" or "insurance undertakings": insurance undertakings having their head office in Italy or the branches in Italy of insurance undertakings having their head offices in a Third State;
 - d) "ISVAP": the Supervisory authority for private insurance undertakings and insurance undertakings of public interest;
 - e) "regulated market": a financial market authorised or recognized in accordance with Part III, Title I of the Consolidated Law on Financial Mediation, as well as the markets of OECD States which have been set up, organized and regulated by provisions adopted or approved by the competent national authorities and which satisfy requirements similar to those envisaged for the regulated markets falling within the scope of the consolidated law on financial mediation;
 - f) "administrative body": 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;
 - g) "performance risk": one of the profiles which is part of the investment risk, as defined by ISVAP Regulation n. 19 of 14 March 2008, 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 provisions is not sufficient to allow the protection or revaluation of the capital up to the minimum guaranteed amount;
 - h) "base risk": one of the profiles which is part of the investment risk, as defined by ISVAP Regulation n. 19 of 14 March 2008, arising from the issue to the policyholder of a guarantee to adjust the capital 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 the share index or different reference value, and therefore to meet the insured benefits that are variable on the basis of this performance;
 - i) "counterparty risk": one of the profiles which is part of the investment risk, as defined by ISVAP Regulation n. 19 of 14 March 2008, linked to the quality of the issuing body or counterparty of the financial instruments, including derivatives, intended to coverage of the technical provisions of the contracts referred to: the risk that the issuing body or counterparty does not fulfil its own contractual obligations.

Art. 3
(Scope)

1. This Regulation shall apply to insurance undertakings having their head office in the territory of the Italian Republic and to the branches in Italy of insurance undertakings whose head offices are in a third State.
2. This Regulation does not apply to contracts with benefits linked to the cost of living underwritten on the basis of premium rates approved before the entry into force of legislative decree n. 174 of 17 March 1995.
3. Insurance undertakings with head office in a Member State licensed to carry on business in the territory of the Italian Republic are required to comply with the provisions referred to under Title II and Title VI.

Title II
Eligible indices and indexation mechanism

Article 4
(Eligible share indexes)

1. The share indexes to which benefits or surrender values relating to index-linked contracts may be linked satisfy all the following conditions:
 - a) they are based on shares, traded on deep and liquid regulated markets of a State belonging to the OECD;
 - b) they are public, commonly used by the financial community and replicable;
 - c) they are adequately diversified, in terms of relative number and composition of the underlying shares;
 - d) they are calculated on a daily basis by third parties, independent of the insurance undertakings and of the issuers of the shares on which they are based;
 - e) they are calculated according to objective and predefined calculation criteria, made available to the parties concerned, which also regulate the means of replacing or eliminating some of the shares on which they are based;
 - f) they are published on a daily basis in daily newspapers with nation-wide circulation.
2. For the purposes of para. 1, letter c), an index is considered adequately diversified when it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index.

Article 5
(Other eligible reference values)

1. The other reference values to which benefits or surrender values relating to index-linked contracts may be linked in case of index linked contracts are exclusively represented by:
 - a) bond indices;
 - b) inflation indices.
2. The bond indices referred to under paragraph 1, a) shall satisfy all the following conditions:
 - a) they are based on bonds traded on deep and liquid regulated markets and fulfil the conditions referred to in article 7, 2) except for b);
 - b) they are public, commonly used by the financial community and replicable;

- c) they are adequately diversified, in terms of number and composition of the underlying bonds;
 - d) they are calculated on a daily basis by third parties, independent of the insurance undertakings and of the issuers of the bonds on which they are based;
 - e) they are calculated according to objective and predefined calculation criteria, made available to the parties concerned, which also regulate the means of replacing or eliminating some of the bonds on which they are based;
 - f) they are published on a daily basis in daily newspapers with nation-wide circulation.
3. For the purposes of para. 2, c), an index is adequately diversified when it is composed in such a way that price movements or trading activities regarding one component of the index do not unduly influence the performance of the whole index.
 4. The inflation indices referred to under paragraph 1, b) shall satisfy all the following conditions:
 - a) they are commonly used by the financial community;
 - b) they are periodically calculated by national and supra-national public statistical bodies;
 - c) the policy conditions clearly define the structure of the index;
 - d) the related technical provisions are covered by assets having indexation, duration, financial flows, liquidity and characteristics in line with the corresponding contract commitments. These assets are subject to the provisions of the creditworthiness of the issuer as envisaged in article 7.
 5. Benefits and surrender values may in no way be linked - either directly or indirectly - to indices or other reference values relating to goods, climate variables, securitisation operations, including synthetic securitisation, or credit derivatives.

Article 6 (Indexation mechanism)

1. The indexation mechanism to the share indexes and the other reference values referred to in articles 4 and 5 must be simple and satisfy the requirement of being easily understandable for the policyholder.
2. The risk profile assumed by the indexation mechanism must be such as to be replicable by the undertaking through a financial management using exclusively long positions in investments other than derivatives.
3. Under no circumstances may the indexation mechanism involve a risk for policyholders higher than the risk that can be assumed by the undertaking according to the provisions regulating the representation of provisions.

Title III **Security and marketability of assets covering technical provisions**

Article 7 (Assets covering technical provisions)

1. The assets covering technical provisions relating to index-linked contracts shall be represented as closely as possible either by the units deemed to represent the share index or the other reference value referred to under articles 4 and 5, or by assets of

appropriate security and marketability which correspond as closely as possible with those on which the share index or the other reference value is based.

2. Where technical provisions are covered through structured securities, all the following conditions shall be met:
 - a) they are issued or guaranteed by OECD States, by European Economic Area States' local authorities or public entities or by international organizations of which one or more of the above said States are members, or by subjects residents in OECD States which shall be subject to prudential supervision on a solo basis for stability purposes, in line with national regulations in force or with the equivalent regulations of the foreign State;
 - b) the States, authorities or entities referred to in letter a) shall be rated, when issuing the contract and for all its lifetime, at least "A-" or equivalent by at least two major credit rating agencies according to the classification scale of medium-long term investments; the condition shall be considered met also in the event that they have been rated by one major credit rating agency only if no other major credit rating agency has assigned a lower rating;
 - c) they are traded on regulated markets that are deep and liquid;
 - d) they do not contain subordination clauses that rank assets after the claims of other creditors.
3. When technical provisions are covered through the combination of bonds and derivative financial instruments, the requirements set out in para. 2 shall apply to the bond, except the case, with reference to letter a), when the issuer is subject to prudential supervision and the provision referred in ISVAP order n. 297 of 19 July 1996 and subsequent modifications and integrations shall apply to derivative financial instruments. *The minimum rating requirement referred in para. 2 (b) shall not apply, without prejudice to the principle of appropriate safety and marketability as laid down in para 1, when bonds are issued by entities residents in States belonging to the European Economic Area subject to prudential supervision on a solo basis for stability purposes, provided that collaboration agreements for the exchange of information between ISVAP and the Supervisory Authority are envisaged, and when bonds are issued by States belonging to the European Economic Area¹.*
4. The conditions referred in para. 2 (c), may be derogated when the performance risk is borne by the undertaking. In those cases, undertakings can conclude agreements with the issuer or with any other subject which fulfils the same requirements as those envisaged in para. 2 (a) and (b) in such a way that the undertakings can have sufficient cash to cover the commitments taken towards policyholders, even during the term of the contract without using their own funds. A copy of the agreements shall be lodged at the undertaking's office.
5. The conditions referred in para. 2, 3 and 4 shall not apply in case the undertakings carry on a direct replication policy of the commitments undertaken through the acquisition of units representing the share indexes or the other reference values to which benefits or surrender values of the contracts are linked. The provisions laid down by ISVAP under article 38, para. 2 of the decree shall remain unchanged.

¹ The period was amended by ISVAP Order n 2957 of 18 January 2012. The previous version laid down: "*The minimum rating requirement set out in paragraph 2, letter b) shall not apply in case bonds are issued by subjects resident in the European Economic Area subject to prudential supervision on a solo basis for stability purposes, provided that cooperation agreements for the exchange of information between ISVAP and the competent supervisory authority are envisaged*".

Article 8
(Concentration risk)

1. The exposure limit, for single issuer, over the total investment representing technical provisions for index-linked contracts may not exceed 10% of the total technical provisions in respect of those contracts; the maximum exposure per group, including the group to which the insurance undertaking belongs, may not exceed 20%.
2. The provisions as per para. 1 shall not apply to the proportion of the portfolio relating to contracts for which undertakings carry on a direct replication policy of the commitments undertaken through the acquisition of units representing the share indexes or other reference values to which benefits or surrender values of the contracts are linked.
3. The investments in securities issued or guaranteed by OECD countries, local authorities or public entities of States belonging to the European Economic Area or by international organisations to which one or more of these member States belong, do not fall within the exposure limits referred to in paragraph 1.
4. The administrative body may provide, for limited periods of time, in view of the undertaking's business and the progressive development of the portfolio, concentration limits greater than those stated in paragraph 1. The reasons and the period of time within which the undertaking intends to bring the exposure within the limits set out in paragraph 1 shall be identified in a specific resolution, to be submitted to ISVAP within 15 days of its adoption.

Title IV
Demographic risk and required solvency margin

Article 9
(Demographic risk)

1. The characteristic of the contracts of class III, referred to under art 2 (1) of the decree, is that there is an actual commitment by the undertaking to pay insurance benefits the value of which shall be dependent on the assessment of the demographic risk.
2. In determining insurance coverage in case of death, the undertakings shall, in order to comply with the principle set out in para.1, take into account the amount of the premium paid by the policyholder.

Article 10
(Solvency margin)

1. In case undertakings carry on a direct replication policy of the commitments undertaken through the acquisition of units representing the share indexes or the other reference values to which benefits or surrender values of the contracts are linked, and provided that the undertaking has set up a risk measurement and control system adequate to the technique for calculating the coverage of the commitments undertaken and able to minimize the basic risk, the solvency margin shall be calculated as reduced as envisaged in article 4, para. 1, letter e, points 2, 3 and 4 of ISVAP Regulation n.19 of 14 March 2008.
2. When, as result of the commitments undertaken, undertakings directly bear the counterparty risk and the investment exposure for single issuer or group does not exceed

3% over the total technical provisions relating to index-linked contracts, except for technical provisions of contracts for which the undertaking carries on a direct replication policy of the commitments undertaken, the solvency margin shall be calculated as reduced as envisaged in article 4, para. 1, letter e, points 2,3 and 4 of ISVAP Regulation n.19 od 14 March 2008; the calculation base upon which the required solvency margin is proportionate must be represented by the proportion of technical provisions corresponding to the assets that satisfy this condition.

Title V **Amendments to regulations**

Article 11

(Amendments to article 54 of ISVAP Regulation 21 of 28 March 2008)

1. In Article 54 (3) of ISVAP Regulation 21 of 28 March 2008 the following fourth and fifth paragraphs are added:
 - "4. In any case, when determining the technical provisions the undertaking must take into account any risk factor that can affect the level of safety and marketability of the assets and sets up a provision to cover the credit risk the and liquidity risk.
 5. For the purpose of paragraph 4, the interest rate to be used in the calculation must be reduced to take into account a prudential margin representing the compensation for the covering asset's credit risk and liquidity compared to a similar risk-free asset."

Article 12 (repealed)²

Article 13

(Amendments to article 2 (1n) of ISVAP Regulation 19 of 14 March 2008)

1. In Article 2 (1 n) of ISVAP Regulation 19 of 14 March 2008 the words "include at least" are replaced by the words "includes at least one of."

Title VI **Provisions for unit-linked contracts**

Article 14

(Unit-linked contracts linked to index-linked UCITS)

1. Undertakings may not link the contract benefits referred to under article 41, 1) of the decree to index-linked UCITS calculated on the basis of algorithms which are not compliant with the conditions and the requirements laid down in this Regulation for index linked contracts.

² Article repealed by article 54, letter i) of ISVAP Regulation 35 of 26 May 2010. Article 12 provided "*1. In Article 12 of the ISVAP Circular 551/D of 1 March 2005, after the second paragraph, the following is added:*
"2.bis As to index linked contracts issued after the entry into force of ISVAP Regulation n. 32 of 11 June 2009 on index linked contracts undertakings shall have the surrender values calculated on the basis of a notional insured capital of 100 euro published daily in at least one daily newspaper with nation-wide circulation and on their internet sites. The values shall be updated at intervals consistent with the value quantification envisaged in the policy, and at least weekly."

Title VII
Final Provisions

Article 15
(Repeals)

1. In accordance with the terms referred to in article 17, the following are repealed:
 - a) ISVAP Circular 451 of 24 July 2001;
 - b) ISVAP Circular 332 of 25 May 1998;
 - c) Articles 25 and 31 of ISVAP Circular 551 of 1 March 2005;
 - d) ISVAP Circular 507 of 10 June 2003.

Article 16
(Publication)

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

Article 17
(Entry into force)

1. Without prejudice to the provisions of para. 2, this Regulation shall enter into force on 1 November 2009.
2. The provisions on concentration limits as per article 8 shall enter into force starting from 1 January 2010. The assets covering index-linked contracts underwritten before the entry into force of this Regulation shall not be considered when calculating the concentration limits, until the undertaking issues new contracts within the meaning and for the purposes of this Regulation.

Rome, 11 June 2009

The President
(Giancarlo Giannini)