

REGULATION NO. 38 OF 3 JUNE 2011

REGULATION CONCERNING THE ESTABLISHMENT AND ADMINISTRATION OF SEPARATELY MANAGED ACCOUNTS OF UNDERTAKINGS THAT PURSUE LIFE ASSURANCE UNDER ARTICLE 191 (1), L)¹ OF LEGISLATIVE DECREE 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE.

AMENDED AND SUPPLEMENTED BY IVASS ORDER NO. 68 OF 14 FEBRUARY 2018. THE AMENDMENTS OR INTEGRATIONS ARE SHOWN IN ITALICS.

ISVAP

Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (Institute for the Supervision of Insurance)

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 no. 209 of 7 September 2005 as subsequently amended and supplemented, introducing the Code of Private Insurance;

HAVING REGARD to legislative decree n. 252 of 5 December 2005, laying down rules on supplementary pension schemes;

adopts the following:

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Title I General Provisions

Art. 1 (Legislative sources)²

1. This Regulation is adopted in accordance with Article 5, paragraph 2, and Article 191, *paragraph 1, letter l)* of Legislative Decree no. 209 of 7 September 2005.

Art. 2 (Definitions)³

1. For the purpose of this Regulation, the following definitions shall apply:
 - a) “increasing benefits contract” shall mean: the insurance contract on the length of human life or the capital redemption contract whose benefits increase in relation to the return of a separately managed account;
 - b) “decree” shall mean: legislative decree no. 209 of 7 September 2005, introducing the Code of private insurance;
 - c) “separately managed account” shall mean: an investment portfolio, managed separately from the other assets held by the insurance undertaking and where the benefits of contracts linked to it are increased on the basis of its return;
 - c-bis) “profit fund” shall mean: a fund established by setting aside the net realised gains obtained from the sale of assets belonging to the separately managed account;*
 - d) “average balance” shall mean: the average of the accounting balances of the assets invested in the separately managed account in the observation period expressed in actual days;
 - e) “undertaking” or “insurance undertaking” shall mean: any insurance company having its head office authorised in Italy, or the Italian branch of an insurance company having its head office in a Third State;
 - f) “ISVAP” or “IVASS” shall mean: Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo, *which was replaced by IVASS, Istituto per la vigilanza sulle assicurazioni, pursuant to art.13 of decree-law no. 95 of 6 July 2012, converted, after amendment, by law no.135 of 7 August 2012;*
 - g) “administrative body” shall mean: the board of directors or, in undertakings that have adopted the system as per Article 2409-octies of the Civil Code, the management board, as well as the general representative of undertakings with head office in a Third State licensed to carry on insurance business in Italy by way of establishment;
 - h) “individual insurance pension plans”: life assurance contracts intended to implement the individual insurance pension plans as per Article 13, paragraph 1, letter b) of Legislative Decree 252 dated 5 December 2005;
 - i) “third State” shall mean: a State which is not member of the European Union or does not belong to the European Economic Area;

² Article amended by article 2 of IVASS Order no. 68 of 14 February 2018.

³ Article amended by article 3 of IVASS Order no. 68 of 14 February 2018.

- i-bis) “net realised gains” shall mean: *the positive balance between capital gains and losses realised in the observation period envisaged for the determination of the average rate of return of the separately managed account further to the sale of assets belonging to the separately managed account;*
- j) “derivative financial instruments” shall mean: *the financial instruments referred to in Annex I, section C, points 4 to 10, as well as the financial instruments provided for in article 1 (1-bis), c), of legislative decree no. 58 of 24 February 1998, and subsequent modifications and integrations.*

Art. 3
(Scope)

1. This Regulation applies to insurance undertakings having their head office in Italy and to branches in Italy of insurance undertakings with their head office in a Third State.

Art. 4
(General principles)

1. In the administration of the separately managed account, the undertaking ensures equal treatment for all insured persons, avoiding disparities that are not justified by the need to safeguard the interests of the all insured persons, and the balance and stability of the separately managed account. To this end, the undertaking pursues management and investment policies to ensure an equitable participation of policyholders in the financial results of the separately managed account.

Art. 4-bis
(Characteristics of the separately managed account)⁴

1. *The separately managed account may envisage two different rules for determining the average rate of return for the increasing benefits of the contracts linked to it, depending on whether a profit fund has been set up or not.*
2. *Within the same separately managed account, the undertaking may contemplate the co-existence of contracts to which the two rules under paragraph 1 apply, ensuring full compliance with the principles set forth in Article 4.*

Title II
Establishment of the separately managed account

Art. 5
(Requirements for the establishment of the separately managed account)⁵

1. The administrative body approves the establishment of each separately managed account and approves the related regulation and subsequent amendments.
2. *In the resolution for the establishment as per paragraph 1, the administrative body, in order to ensure compliance with the general principles set out in Article 4,*

⁴ Article introduced by Article 4 of IVASS Order no. 68 of 14 February 2018.

⁵ Article amended by Article 5 of IVASS Order no. 68 of 14 February 2018.

- a) *identifies the maximum amounts that can be moved in and out, with respect to the size of the separately managed account and over a defined period, via with-profit contracts by a single policyholder or multiple policyholders linked to the same subject through investment relationships. The incoming and outgoing transactions, performed by a single policyholder or multiple policyholders in connection to the same subject, also through shareholding, over the period defined in the resolution, are considered as referring to the same transaction. For transactions that exceed the maximum incoming and outgoing amount, the resolution establishes appropriate safeguards to be taken at the managerial and contractual level as well as the periods for minimum duration in the separately managed account and the exit conditions;*
 - b) *establishes whether the net realised gains are set aside in the profit fund and, if so, defines the allocation criteria for the determination of the average rate of return of the separately managed account, in accordance with the provisions of Articles 7-bis and 7-ter;*
 - c) *establishes whether to use the option envisaged in Article 4-bis, paragraph 2, and, if so, subject to the provisions under letter b), identifies appropriate safeguards allowing the monitoring of the share of net realised gains to be allocated to the profit fund.*
3. The minutes of the resolution of the administrative body referenced in paragraph 1 and the regulation of the separately managed account referenced in Article 6, and any amendments thereto, shall be forwarded to ISVAP within fifteen days of the adoption of the relevant resolution.
 4. The undertaking notifies ISVAP of the details of the separately managed account within fifteen days of the adoption of the relevant resolution for its establishment. In the event of any subsequent change in the details or in the event of termination of the separately managed account, the undertaking notifies ISVAP within fifteen days.
 5. The detailed information referenced in paragraph 4 shall be sent in accordance with the IT instructions set out by ISVAP.
 6. Except as provided in Article 23, paragraph 3, of Legislative Decree 252 dated 5 December 2005, the resources of individual insurance pension plans and those of other life assurance contracts cannot be merged together in the same separately managed account.

Art. 6
(Regulation of the separately managed account)⁶

1. The regulation of the separately managed account contains at least the following items:
 - a) the name, defined so as to make the separately managed account uniquely identifiable compared to other accounts present on the market;
 - b) the currency of denomination;
 - c) the observation period for the determination of the average rate of return;

⁶ Article amended by Article 6 of IVASS Order no. 68 of 14 February 2018.

- d) the objectives and investment strategies. In particular, it states:
 - i. the types, the qualitative and quantitative limits of the assets in which the resources are intended to be invested in line with the provisions set out by the regulations implementing the decree;
 - ii. the investment limits in relation to the relationships with the counterparties as per Article 5 of *IVASS Regulation no. 30 of 26 October 2016*, to ensure the protection of policyholders from potential conflicts of interest;
 - iii. the possible use of financial derivatives, subject to the terms of use provided by law on the matter of assets representing technical provisions;
 - e) the types of policies and customer segments to which the separately managed account is dedicated – if any;
 - f) an indication that the value of the assets in the separately managed account cannot be less than the mathematical provisions set up for with-profit contracts based on the returns achieved by the same account;
 - g) the possibility of making amendments to the regulations arising from the adjustments of the same to the primary and secondary legislation in force or from changes in the management criteria with the exclusion, in the latter case, of those less favourable to the insured person;
 - h) that only the expenses related to the audit activity performed by the independent auditors and those actually incurred in the purchase and sale of the assets in the separately managed account can be passed on to the separately managed account, with no other forms of withdrawal in whatsoever manner allowed;
 - i) a statement that the return of the separately managed account benefits from any earnings from the retrocession of commissions or other income received by the undertaking by virtue of agreements with third parties and attributable to the separately managed account's assets;
 - j) the rules for determining the average rate of return of the separately managed account for the observation period; *in the cases under Article 4-bis, paragraph 2, the regulation of separately managed accounts expressly provides for two different rules for determining the average rate of return, each rule applicable to the single contract based on the provisions set in the insurance conditions;*
 - k) a statement that the separately managed account is subject to audit by an independent auditing company entered in the special register provided for by law;
 - l) a statement that the regulation is an integral part of the insurance conditions.
2. The provisions of paragraph 1 shall also apply to the regulations of the separately managed accounts of individual insurance pension plans, except as provided by the legislation on supplementary pensions.

Title III

Administration and Management

Chapter I

Determination of the average rate of return of the separately managed account⁷

⁷ Chapter inserted by Article 7 of IVASS Order no. 68 of 14 February 2018.

Art. 7

(Rules for determining the average rate of return of the separately managed account)

1. The average rate of return of the separately managed account with respect to the observation period specified in the regulation is calculated by dividing the financial results of the separately managed account by the average balance of the assets of the same account.
2. The financial result of the separately managed account consists of the finance income earned by the same account, including the trading margin and trading therein, the profits realised and the losses incurred in the observation period. The profits also include those coming from the retrocession of commissions or other income received by the undertaking by virtue of agreements with third parties and linked to the assets of the separately managed account. Capital gains and losses are taken into account in the calculation of financial results only if actually realised in the observation period. The financial result is calculated net of expenses actually incurred for the purchase and sale of the assets and for the auditing activity and gross of withholding tax. Gains and losses on disposals are determined by referencing the value recorded for the corresponding assets in the ledger of the separately managed account as per Article 12. The value entered in the ledger of a newly acquired asset is the purchase price.
3. The average balance of the assets of the separately managed account equals the sum in the observation period of the average balance of deposits in cash, investments and any other assets of the separately managed account. The average balance in the observation period of investments and other assets is determined based on the value of the entry in the ledger of the separately managed account.
4. The assessment criteria used for the purposes of calculating the average balance cannot be modified except in exceptional cases. In such cases, a summary report of the separately managed account as per Article 13 shall be accompanied by an explanatory note containing the reasons for the changes in assessment criteria and their economic impact on the average rate of return of the separately managed account.

Art. 7-bis (Profit fund)⁸

1. *Undertakings shall set up a profit fund for each separately managed account referred to in Article 5, paragraph 2, letters b) and c), where the net gains realised in the observation period can be set aside.*
2. *The profit fund has the nature of a mathematical provision and is included among the resources of the separately managed account.*
3. *The profit fund fully contributes to determining the average rate of return of the separately managed account, according to the methods set forth in Article 7-ter, within a maximum period of eight years from the date when the net realised capital gains are set aside.*
4. *For the separately managed accounts under Article 5, paragraph 2, letter c), the profit fund includes only the share of the net capital gains that were realised in the observation period related to the contracts impacted by the profit fund.*

⁸ Article introduced by Article 8 of IVASS Order no. 68 of 14 February 2018.

5. *The share under paragraph 4 is calculated as a ratio between the mathematical provisions of the contracts impacted by the profit fund, including also the profit fund, and the total mathematical provisions of all the contracts linked to the separately managed account, including also the profit fund, as resulting from the ledger under Article 12 at the most recent available date.*
6. *For the purpose of calculating the share under paragraph 4, in the presence of significant changes in the mathematical provision occurring in the observation period of the separately managed account, the undertaking may refer to the values of the mathematical provision, other than those recorded in the ledger, that keep account of such changes in order to ensure the correct determination of net realised capital gains to be allocated to the profit fund.*

Art. 7-ter

(Determination of the average rate of return of the separately managed account with allocation of the profit fund)⁹

1. *Without prejudice to the provisions of Article 7:*
 - a) *for the separately managed accounts under Article 5, paragraph 2, letter b), the financial results are decreased by the full amount of net realised capital gains and increased by the share of the profit fund that the undertaking chooses to allocate to the financial results of the separately managed account in the observation period;*
 - b) *for the separately managed accounts under Article 5, paragraph 2, letter c), for the purpose of calculating the average rate of return of the contracts impacted by the profit fund, the financial results and average deposits held are repropportioned based on the criteria indicated in Article 7-bis, paragraphs 5 and 6. The financial results so obtained are decreased by the corresponding net realised capital gains and increased by the share of the profit fund that the undertaking decides to allocate in the observation period. For the purpose of calculating the average rate of return of the contracts not impacted by the profit fund, only Article 7 shall apply.*
2. *The undertaking determines the share of the profit fund to be allocated to the financial results under paragraph 1, based at least on the following elements:*
 - a) *the general principles referred to in Article 4;*
 - b) *the criteria set forth in Article 7-bis, paragraph 3;*
 - c) *the best interest of policyholders;*
 - d) *the impact on the current and prospective return of the separately managed account considering, on the whole, the commitments undertaken as regards all contracts linked to the same separately managed account.*
3. *Without prejudice to the provisions of IVASS Regulation no. 24 of 6 June 2016 on investment policies, the share of the profit fund to be allocated to the financial results of the separately managed account in the observation period is subject to assessment by the administrative body.*

Chapter II

⁹ Article introduced by Article 8 of IVASS Order no. 68 of 14 February 2018.

Treatment of derivative financial instruments for hedging strategies¹⁰

Article 7-quater

(Derogation from the rules for determining the average rate of return of the separately managed account)¹¹

1. *By way of derogation from Article 7, paragraph 2, and without prejudice to the provisions on the use of derivative financial instruments, if the undertaking applies risk hedging strategies to securities included in the separately managed account, through derivative instruments available in regulated markets or in multilater allowed to postpone the allocation of gains or losses associated with the periodical closure of the derivative instrument up to the closure of the overall hedging operation.*
2. *The administrative body, within the scope of its policy regarding the use of derivative instruments under IVASS Regulation no. 24 of 6 June 2016, decides whether to make use of the derogation under paragraph 1 and ensures that the accounting method adopted is consistently applied over time.*
3. *For each hedging strategy for which the undertaking intends to make use of the derogation under paragraph 1, the administrative body considers, in advance, at least the following:*
 - a) *the aims of the strategy within the scope of the separately managed account;*
 - b) *the characteristics of the derivative instrument available in the regulated markets or in the multilateral trading facilities, the maturities of which are such as to require a periodical closure for the duration of the strategy, justifying the possibility of making use of the derogation;*
 - c) *the characteristics of the securities of the separately managed account to which the strategy refers;*
 - d) *the availability, within the scope of the separately managed account, of the securities admitted for the settlement of the derivative instrument (so-called deliverable security);*
 - e) *the duration of the strategy;*
 - f) *the circumstances that require the suspension of the periodic trading of the derivative before the maturity set forth for the strategy;*
 - g) *the safeguards for monitoring the operation within the scope of the separately managed account and for identifying the actions to be undertaken if the strategy no longer achieves the aims set forth in letter a).*
4. *Without prejudice to the provisions of the applicable laws regarding the recognition in the financial statement of trading in derivatives, the gains and losses associated with the periodical closure of the position in derivatives, which is part of the hedging strategy approved by the administrative body, are recognised, for the purpose of calculating the average rate of return of the separately managed account under Article 7, as follows:*

¹⁰ Chapter inserted by Article 8 of IVASS Order no. 68 of 14 February 2018.

¹¹ Article introduced by Article 8 of IVASS Order no. 68 of 14 February 2018.

- a) *the share of gain or loss attributable to the derivative instrument, corresponding to the change in value of the securities subject to the strategy, is recognised under an adjusting entry for the financial results of the period, determined pursuant to Article 7, paragraph 2, separately from the management activities;*
 - b) *the remaining gain or loss, if any, on the derivative instrument contributes to determining the return of the separately managed account in the observation period;*
 - c) *the overall gains and losses on the derivative instrument, recognised under the adjusting entry from the start of the strategy, are allocated to the calculation of the return of the separately managed account in the observation period when the strategy is closed. To this end, the strategy is considered to be closed if: (i) the securities underlying the hedging strategy exit from the separately managed account after reaching maturity or upon realisation; (ii) the replacement of the derivative instrument is suspended before the maturity date set for the strategy.*
5. *The undertaking prepares detailed documentation about the accounting of each hedging strategy in place according to the methods under this Article, highlighting the elements indicated in paragraph 3. The undertaking also records, in a special section of the ledger under Article 12, paragraph 1–bis, the gains and losses from each single trading of the derivative instruments recognised under the adjusting entry.*

Chapter III

Assets of the separately managed account¹²

Art. 8

(Determining the minimum amount of assets representing the separately managed account)

1. The total value of the assets in the separately managed account cannot be less than the amount of mathematical provisions referenced in Article 30 of ISVAP Regulation 21 dated 28 March 2008, set up for increasing benefits contracts linked to the return of the same separately managed account. The assessment of mathematical provisions can also be done through the use of reasonable approximations or generalisations, in accordance with the provisions of Article 26 of ISVAP Regulation 21 dated 28 March 2008.
2. For the purposes of paragraph 1, the value of the assets is that with which they are entered in the last approved budget, or, failing that, the carrying value in the general accounts of the undertaking.
3. In the case of entering capital losses in the financial statements in excess of any value adjustments written in the financial statements related to assets of the separately managed account, the undertaking integrates the separately managed account with other assets, up to the amount of the mathematical provisions. These assets comply with the provisions concerning investments as per Article 9.
4. For the purposes of applying the provisions as per paragraph 3, the undertaking can identify specific assets, up to a maximum of 4% of the total mathematical provisions in the separately managed account that are not included among the assets of the separately managed account and do not contribute to the determination of the average rate of return referenced in Article 7. These assets comply with the provisions on

¹² Chapter inserted by Article 9 of IVASS Order no. 68 of 14 February 2018.

investments of Article 9; they are valued at current value and are written in a special section of the ledger as per Article 12, paragraph 2.

5. In the event of a transfer in reinsurance of part of the technical commitments, the amount of mathematical provisions as per paragraph 1 shall be reduced by the amount of credits in the corresponding mathematical provisions on deposit with the reinsurer, valued net of any total liability entries with respect to the same reinsurers, provided that the reinsurance contracts include the commitment of the reinsurer to pay, on the provisions on deposit, the same rate of return that will be paid by the ceding undertaking to insured persons.

Art. 9

(Provisions concerning investments)

1. The resources of the separately managed account are invested exclusively in the categories of assets allowed to cover the technical provisions as per Article 38 of the Decree and its implementing regulations.
2. However, the following may not constitute assets in a separately managed account:
 - a) loans not bearing interest, except those against the policyholders and intermediaries for premiums to be collected, to the extent that they are in fact due for less than three months;
 - b) property used in the undertaking's business;
 - c) debts owed by reinsurers, except as provided in Article 8, paragraph 5;
 - d) tangible fixed assets;
 - e) deferred acquisition costs.
3. The removal of the assets from the separately managed account can only occur by realisation.

Art. 10

(Transfers of assets)

1. The transfer of assets is not allowed from the undertaking's equity to the separately managed account, except in the cases referenced in paragraph 2.
2. The transfer of the undertaking's equity to the assets of the separately managed account is allowed in the case provided for in Article 8, paragraph 3, and in exceptional cases.
3. In the cases referenced in paragraph 2, the value entered in the ledger as per Article 12 is equal to the current value shown on the date of the entry of the assets into the separately managed account.
4. In relation to the transactions as per paragraph 2, the undertaking shall notify the reasons to ISVAP, with a detailed analysis of the assets transferred and the possible exceptional nature of the transfer, within five working days of the transaction.

Title IV

Accounting audits

Art. 11
(Accounting audits on the separately managed account)¹³

1. The summary report of the separately managed account and the statement of the composition of the separately managed account as per Article 13, paragraphs 1 and 2, are subject to audit by an independent auditing company registered in the special registry under the current law.
2. The auditing firm declares, in a special report, to have verified:
 - a) the value of the assets assigned to the separately managed account in the observation period and the availability, type and compliance of the assets recognised in the prospectus of the composition of the separately managed account as per Article 13, paragraph 2, with the requirements of Article 9 and the rules for the separately managed account;
 - b) the conformity of the assessment criteria of the assets allocated to the separately managed account in the observation period with the provisions of Articles 7 and 10;
 - c) the correctness, pursuant to Article 7, of the financial result and the resulting average rate of return for the observation period, *taking account of the possible application of the derogation under Article 7-quater*. If the regulation provides for the determination of more than one rate of return within the observation period, the verification shall be extended to each rate of return. The extension of the verification is also carried out in cases where the regulation provides for the determination of returns relating to periods that do not coincide with the observation period;
 - c-bis) *the correctness, pursuant to Articles 7-bis and 7-ter, of the establishment of the profit fund and of its allocation to the return of the separately managed account in the observation period;*
 - d) the adequacy, pursuant to Article 8, of the amount of assets allocated to the separately managed account at the end of the observation period compared to the amount of the corresponding mathematical provisions determined by the undertaking on the same date;
 - e) the conformity of the summary report of the separately managed account and of the prospectus of the composition of the separately managed account with the provisions of Article 13.
3. The audit company expresses its view on the results of the audits carried out pursuant to paragraph 2.

Title V
Documents required

Art. 12
(Ledger)¹⁴

¹³ Article amended by Article 10 of IVASS Order no. 68 of 14 February 2018.

¹⁴ Article amended by Article 11 of IVASS Order no. 68 of 14 February 2018.

1. The undertaking keeps a ledger of the separately managed account in accordance with the requirements of Article 4, paragraph 1, of ISVAP Regulation 27 dated 14 October 2008, which reports:
 - a) the daily transactions of the incoming and outgoing assets, with analytical evidence of the related recording values as set out in Articles 7 and 10, the financial income earned, the profits realised, the losses incurred and related expenses; *for the separately managed accounts that include the profit fund, the undertaking provides separate evidence of net realised gains.*
 - b) *at the end of each month, the amount of assets that constitute the separately managed account and the amount of the corresponding mathematical provisions, with a separate evidence of the profit fund for the separately managed accounts in which it was set up. For the separately managed accounts under Article 5, paragraph 2, letter c), the undertaking provides separate evidence regarding the mathematical provisions related to the contracts impacted by the profit fund. The amount of assets, including those referenced in paragraph 2, must be at least equal to that of the corresponding mathematical provisions.*
- 1-bis. For the derivative instruments recognised according to the methods set forth in Article 7-quater, paragraph 4, the undertaking shall note, in a special section of the ledger, the amounts of the profits realised and the losses incurred recognised under the adjusting entry and the relevant transactions.*
2. For the assets referenced in Article 8, paragraph 4, the undertaking notes the daily incoming and outgoing movements in a special section of the ledger. At the end of each month the company states the amount of assets valued at current value.
3. The notation in the ledger is made within seven working days from the date of the transaction.
4. The ledger is maintained according to the requirements of Article 5 of ISVAP Regulation 27 dated 14 October 2008.

Art. 13

(Summary report and prospectus of the composition of the separately managed account)¹⁵

1. Within sixty days of the end of the observation period on the separately managed account, the undertaking prepares the summary report of the separately managed account on the basis of the values reported in the ledger referenced in Article 12, with an indication of the average rate of return realised and any average rates of return referenced in Article 11, paragraph 2, letter c). The undertaking uses the report format presented in Annex A, dated and signed by the legal representative of the undertaking.
- 1-bis. For the separately managed accounts that include the profit fund, the undertaking indicates the average rate of return, determined pursuant to Article 7, and the average rate of return calculated taking into account the share of the profit fund allocated as set forth in Articles 7-bis and 7-ter. The undertaking also provides analytical evidence of the net capital gains realised and allocated to the profit fund, of the amount of the profit fund allocated to the return and of the remaining amount of the profit fund according to the methods described in the cash flow statement report format of Annex A bis, dated and signed by the legal representative of the undertaking. The summary report shall be accompanied by an explanatory note on the criteria adopted for the determination of*

¹⁵ Article amended by Article 12 of IVASS Order no. 68 of 14 February 2018.

the share of the profit fund used for calculating the average rate of return, signed by the head of the actuarial function. In the cases under Article 7-bis, paragraph 6, the explanatory note highlights the development over time of the mathematical provision, the amount of the provision used to determine the share of capital gains to be allocated to the profit fund and the calculation criterion used, and explains in detail the reasons that justify the decision made.

2. Within the same time limit referenced in paragraph 1, the undertaking shall prepare the prospectus of the composition of the separately managed account compared with that of the previous period on the basis of the criteria set forth in Article 8, paragraph 2. The undertaking shall use the prospectus format presented in Annex B, *or B bis for the separately managed accounts that include the profit fund*, dated and signed by the legal representative of the undertaking.
3. *Within the same time limit established in paragraph 1, the undertaking shall prepare the supervisory statement according to the format in Annex C, or C-bis for the separately managed accounts that include the profit fund, dated and signed by the legal representative of the undertaking.*
- 3-bis. *For the separately managed accounts that include the profit fund, the undertaking forwards to IVASS a table detailing the movements in the profit fund, in compliance with the instructions provided by IVASS.*
4. The statements as per paragraphs 2 and 3 show, according to the significance threshold set out in Annexes B and C *or B-bis and C-bis for the separately managed accounts that include the profit fund*, the amount of the mathematical provisions of the contracts with counterparties referenced in Article 5 of *IVASS Regulation no. 30 of 26 October 2016*, and the amount of the incoming and outgoing sums handled for these contracts.
5. For the separately managed account with an annual observation period, the undertaking must prepare, within thirty days from the end of the first half of each observation period, the six-monthly prospectus of the composition of the separately managed account compared to that of the previous period. The undertaking uses the prospectus format shown in Annex D.
6. The summary report of the separately managed account, the statement of the composition of the separately managed account and the six-monthly statement on the composition of the separately managed account as per paragraphs 1, *1-bis*, 2 and 5 shall be published in accordance with the provisions of Article 12 of ISVAP Regulation no. 35 of 26 May 2010.

Title VI

Communications

Art. 14

(Communications to ISVAP)¹⁶

1. Within sixty days of the end of the observation period on the separately managed account, the undertaking sends ISVAP:

¹⁶ Article amended by Article 13 of IVASS Order no. 68 of 14 February 2018.

- a) the summary report of the separately managed account as per Article 13, paragraphs 1 and 1-bis, including the *explanatory note referred to in Article 13 (1-bis)*, and the explanatory note, if any, referenced in Article 7, paragraph 4;
 - b) the statements of the composition of the separately managed account as per Article 13, paragraphs 2 and 3;
 - c) the report of the auditors as per Article 11.
2. Within the same period referenced in paragraph 1, the undertaking shall send, in accordance with the IT instructions set out by ISVAP, the information contained in the summary report of the separately managed account and in the statements of the composition of the separately managed account referenced in paragraph 1, letters a) and b), together with an analytical list of the assets that make up the separately managed account.
 3. The undertaking shall promptly notify ISVAP about any situation that might lead, even prospectively, to non-compliance with the principle of sufficiency of assets in the separately managed account with respect to the corresponding mathematical provisions, as provided in Article 8. The notice is accompanied by information about the amount of the insufficiency, even potential, and how to restore equilibrium to the situation.

Title VII

Transitional and final provisions

Art. 14-bis

(Amendments to regulations on pre-existing separately managed accounts)¹⁷

1. *Starting from the effective date of Order no. 68 of 14 February 2018, the undertakings are allowed to make use of the option under Article 4-bis, paragraph 2, also as regards the pre-existing separately managed accounts.*
2. *For the purposes referred to in paragraph 1, undertakings shall:*
 - a) *adopt a specific resolution by the administrative body, which shall define the criteria referred to in Article 5, paragraph 2, letter c);*
 - b) *adapt the regulations on separately managed accounts to the provisions of Article 6, paragraph 1, letter j);*
 - c) *adapt the ledger to the provisions of Article 12.*
3. *Within the scope of separately managed accounts under paragraph 1, the calculation rule set in Articles 7-bis and 7-ter is applicable exclusively to the contracts concluded after the resolution under paragraph 2, letter a).*
4. *Undertakings shall send IVASS the minutes of the resolution of the administrative body adopted pursuant to paragraph 2, letter a), within fifteen days of adopting it, together with the amended regulation of separately managed accounts.*

Article 14-ter

(Information for policyholders)¹⁸

¹⁷ Article introduced by Article 14 of IVASS Order no. 68 of 14 February 2018.

¹⁸ Article introduced by Article 14 of IVASS Order no. 68 of 14 February 2018.

1. *In case of an amendment to the regulation of the separately managed account, in compliance with Article 14-bis, the undertakings, in the communication under Article 13 of ISVAP Regulation no. 35 of 26 May 2010, shall inform the holders of life policies purchased before the adoption of the afore-mentioned amendments, about the contents of the changes made, specifying that:*
 - a) *the amendments do not produce any effect on the methods for determining the average rate of return set out in the regulation attached to the undersigned contracts since they refer exclusively to the contracts providing benefits which are revalued based on an average rate of return determined with reference to the establishment of the profit fund;*
 - b) *the average rate of return applicable to the revaluation of the benefits envisaged in the pre-existing contracts, is identified in the summary report under the item "average rate of return pursuant to Article 7".*
2. *In the case under Article 14-bis, the information for policyholders available in the restricted areas of the websites of the undertakings pursuant to Article 38-bis, paragraph 4, of ISVAP Regulation no. 35 of 26 May 2010, is promptly updated with the amendments made to the regulation of the separately managed account.*

Article 14-quater

(Obligations of the undertakings if using the derogation related to hedging derivatives)¹⁹

1. *As regards the separately managed accounts established on a date prior to the entry into effect of IVASS Order no. 68 of 14 February 2018, for which the administrative body resolves to make use of the derogation under Article 7-quater, the undertaking shall promptly align:*
 - a) *the regulations applicable to the separately managed accounts providing an indication, among the information under Article 6, paragraph 1, letter j), of the decision to make use of the derogation under Article 7-quater;*
 - b) *the ledger to the provisions of Article 12, paragraph 1-bis;*
 - c) *the supervisory statement pursuant to Article 13, paragraph 3.*
2. *In the case referred to in paragraph 1, concerning the contracts in effect at the date of adoption of the resolution, the undertaking, prior to the effective date, informs the policyholders, in writing and in a clear and comprehensible language, of the amendments made to the regulation of the separately managed account as regards the changes in the accounting criteria of the derivatives under Article 7-quater, informing them of the option to exercise, at no cost, their right of surrender or transfer to another separately managed account established at the undertaking, within sixty days from receipt of the communication.*
3. *The undertaking shall pay to the policyholder who exercises his/her right of surrender pursuant to paragraph 2, an amount equal to the mathematical provision set aside related to the contract, calculated according to the same technical bases adopted for the calculation of pure premiums, net of any commissions paid in advance and not yet recovered through the payment of the related premiums. In the event of a transfer of the contract to another separately managed account, the undertaking provides the policyholder with all the necessary information for an evaluation of the characteristics*

¹⁹ Article introduced by Article 14 of IVASS Order no. 68 of 14 February 2018.

of the separately managed account with which the benefits of the contract will be associated.

*Art. 14-quinquies
(Method for the transmission of information to IVASS)²⁰*

- 1. For separately managed accounts that include the profit fund from the effective date of IVASS Order no. 68 of 14 February 2018 and up to 31 December 2018, the undertaking shall inform IVASS about their details referred to in Article 5, paragraph 4, starting on 1 January 2019 and until 15 January 2019, in accordance with the provisions of Article 5, paragraph 5.*
- 2. For these separately managed accounts, the undertaking shall send the documents referred to in Article 13, paragraphs 1, 1-bis, 2 and 3, according to the methods set forth in Article 14, paragraph 2, starting on 1 January 2019. Starting from the same date and until 15 January 2019, the undertaking shall provide the same information also for the observation periods of the separately managed accounts that were closed between the effective date of IVASS Order no. 68 of 14 February 2018 and 1 January 2019.*
- 3. The undertaking shall forward the statement under Article 13, paragraph 3-bis, starting from the date indicated in the transmission instructions published by IVASS.*

*Art. 15
(Repeals)*

1. Under the terms of Article 18, the following shall be repealed:
 - a) ISVAP Circular 71 dated 26 March 1987;
 - b) ISVAP Circular 191 dated 17 December 1992;
 - c) ISVAP Circular 336/S dated 17 June 1998;
 - d) ISVAP Circular 348/s dated 27 November 1998;
 - e) ISVAP Circular 471 dated 12 February 2002;
 - f) Article 3, paragraph 1, of ISVAP Order 2254 dated 4 March 2004.

*Art. 16
(Amendments to ISVAP Regulation no. 35 of 26 May 2010)*

1. Article 12 of ISVAP Regulation 35 dated 26 May 2010, is amended as follows:
 - a) a) paragraph 1 is replaced by the following:
 - “ 1. With regard to increasing benefits contracts, the undertakings publish the summary report of the separately managed account, the prospectus of the composition of the separately managed account and the six-monthly prospectus of the composition of the separately managed account in at least two national newspapers and on its website. The publication of the summary report on the separately managed account

²⁰ Article introduced by Article 14 of IVASS Order no. 68 of 14 February 2018.

and the prospectus of the composition of the separately managed account occurs within sixty days of the end of the observation period. The publication of the six-monthly prospectus of the composition of the separately managed account occurs within thirty days after the end of the first half of each observation period".

b) after paragraph 1 shall be inserted:

"2. The prospectus of the composition of the separately managed account and the six-monthly prospectus of the composition of the separately managed account must remain posted on the website of the undertaking for at least six months. The summary report of the separately managed account must remain posted on the undertaking's website at least until the publication of the report relating to the subsequent observation period".

Art. 17
(Publication)

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

Art. 18
(Entry into force)

1. This Regulation shall enter into force on the day following that of its publication in the Official Gazette of the Italian Republic.
2. For separately managed accounts established before the date this Regulation enters into force, and open to new contracts, the undertaking by 31 December 2011:
 - a) adapts the regulations to the provisions of Article 6. For the regulations of the separately managed accounts providing the possibility to pass on management expenses other than those referenced in Article 6, paragraph 1, letter h), the corresponding adjustment shall be made by allocating the costs to the revaluation clause;
 - b) adopts the resolution referenced in Article 5;
 - c) adapts the ledger to the provisions of Article 12.

The minutes of the resolution of the administrative body and the regulation adapted to the separately managed account are transmitted to ISVAP in accordance with Article 5, paragraph 3.

3. For contracts concluded before the date of the adjustment as per paragraph 2 relating to separately managed accounts established before the date this Regulation enters into force, and open to new contracts, the undertaking ensures compliance with the general principles set out in Article 4 introducing appropriate safeguards at the managerial level. For these contracts the undertaking, upon the first transmittal of the annual statement of the account of the insurance position subsequent to the adjustment, or by the end of the first observation period subsequent to the adjustment, and howsoever no later than 31 January 2012, sends to the policyholders a copy of the new regulation of the separately managed account, and of any amendments to the contract with effects more favourable for policyholders. Information concerning this circumstance and the reasons for the regulation and contractual amendments is provided to policyholders at the same time as the transmittal of the new regulation and the contractual changes.

4. For separately managed accounts established before the date this Regulation enters into force, and closed to new contracts, the undertaking ensures compliance with the general principles set out in Article 4 by introducing appropriate safeguards at the managerial level.
5. For separately managed accounts established before the date this Regulation enters into force, open or closed to new contracts, the undertaking shall inform ISVAP about their details starting on 1 December 2011 and before 31 December 2011, in accordance with what is referenced in Article 5, paragraph 5.
6. For separately managed accounts established from the date this Regulation enters into force and up to 31 December 2011, the undertaking shall inform ISVAP about their details starting on 1 January 2012 and until 15 January 2012, in accordance with the provisions of Article 5, paragraph 5.
7. The assets of the separately managed account that, on the date this Regulation enters into force do not comply with Article 9, can remain in the separately managed accounts until they are realised.
8. The undertaking shall prepare the documents as per Article 13 to be transmitted according to the procedures referenced in Article 14, paragraph 2, starting from the observation periods of the separately managed accounts that close after 31 December 2011.

Rome

The President
(Giancarlo Giannini)