

REGULATION NO. 2 OF 8 OCTOBER 2013

REGULATION CONCERNING THE PROCEDURE FOR THE APPLICATION OF DISCIPLINARY SANCTIONS AGAINST INSURANCE AND REINSURANCE INTERMEDIARIES, AND THE RULES FOR THE FUNCTIONING OF THE GUARANTEE COMMITTEE AS DEFINED UNDER TITLE XVIII (SANCTIONS AND SANCTIONING PROCEEDINGS), CHAPTER VIII (PERSONS SUBJECT TO DISCIPLINARY SANCTIONS AND PROCEDURE) OF LEGISLATIVE DECREE NO. 209 OF 7 SEPTEMBER 2005 - CODE OF PRIVATE INSURANCE

AMENDED AND SUPPLEMENTED BY IVASS ORDER N. 90 OF 5 NOVEMBER 2019. THE AMENDMENTS OR INTEGRATIONS ARE SHOWN IN ITALICS.

THE INSURANCE SUPERVISORY AUTHORITY

HAVING REGARD to law no. 576 of 12 August 1982, on the reform of insurance supervision and the setting up of ISVAP;

HAVING REGARD to legislative decree no. 209 of 7 September 2005, approving the Code of Private Insurance and, in particular, article 331 concerning the procedure for the application of disciplinary sanctions;

HAVING REGARD to Law no. 241 of 7 August 1990 on administrative procedure and the right of access to administrative documents;

HAVING REGARD to Decree Law no. 95 of 6 July 2012, converted with amendments into Law no. 135 of 7 August 2012, concerning urgent provisions for the review of public expenditure with unchanged services to citizens, establishing IVASS and, in particular, article 13, paragraph 20, which provides that the exclusive competence, inter alia, of the adoption of measures of a legislative nature, falls within the province of the Joint Directorate;

HAVING REGARD to the Decree of the President of the Italian Republic of 12 December 2012, published in the Official Journal of the Italian Republic - General series - no. 303 of 31 December 2012, that has approved the Statute of IVASS, which entered into force on 1 January 2013;

HAVING REGARD to Decree-law no. 179 of 18 October 2012, converted into law no. 221 of 17 December 2012, introducing "Further urgent measures for the growth of the Country", and in particular Article 16 on electronic notifications;

HAVING REGARD to ISVAP Regulation no. 5 of 16 October 2006 laying down provisions on insurance and reinsurance mediation as referred to under Title IX and article 183 of the Code of Private Insurance;

HAVING REGARD to ISVAP Regulation no. 6 of 20 October 2006, concerning the procedure for the application of disciplinary sanctions against insurance and reinsurance intermediaries, and the rules for the functioning of the Guarantee Committee as defined under Title XVIII (Sanctions and sanctioning proceedings), Chapter VIII (Persons subject to disciplinary sanctions and procedure) of legislative decree no. 209 of 7 September 2005 - Code of Private Insurance;

HAVING REGARD to IVASS Organisation Regulation and its organisation chart, approved by the IVASS Board of Directors with resolutions no. 46 of 24 April 2013, no. 63 of 5 June 2013, concerning IVASS reorganisation plan, issued pursuant to article 13, paragraph 34, of Decree Law no. 95 of 6 July 2012, converted with amendments by Law no. 135 of 7 August 2012, and pursuant to article 5, paragraph 1, letter a), of the Statute of IVASS;

HAVING CONSIDERED the need to redefine the procedure for the application of disciplinary sanctions governed by ISVAP Regulation no. 6 of 20 October 2006, which therefore is repealed as a result of the establishment of IVASS and of its reorganisation plan;

TAKING INTO ACCOUNT the outcomes of the public consultation;

HAVING REGARD to the Resolution taken by the Joint Directorate of IVASS in the meeting of 8 October 2013 under which this Regulation was approved,

Adopts the following:

REGULATION

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Art. 1 (Definitions)

1. For the purposes of this Regulation:

- a) "Committee" shall mean: the Guarantee Committee on disciplinary proceedings envisaged by article 331 of legislative decree n. 209 of 7 September 2005;

- b) “decree” shall mean: legislative decree n. 209 of 7 September 2005, approving the Code of Private Insurance;
- c) “Joint Directorate” shall mean: the Joint Directorate, as identified in Article 13, paragraph 10, of Law Decree no. 95 of 6 July 2012, as amended and supplemented by Law no. 135 of 7 August 2012;
- d) “appointed official” shall mean: the official of the *Market Conduct Supervision Directorate*¹ identified as referent for the proceeding;
- e) “undertakings”: authorised insurance or reinsurance undertakings referred to in article 1 of legislative decree n. 209 of 7 September 2005;
- f) “intermediaries” shall mean: any natural or legal person, registered in the single electronic register of insurance and reinsurance intermediaries referred to in article 109 of legislative decree n. 209 of 7 September 2005, who pursues insurance or reinsurance mediation for remuneration;
- g) “Section of the Committee” shall mean: one of the subdivisions of the Guarantee Committee on disciplinary proceedings pursuant to article 331 of Legislative Decree No. 209 of 7 September 2005;
- h) “off-site checks” shall mean: documentary checks carried out at the head office of IVASS based on the documentation acquired by other subjects (undertakings, intermediaries, consumers, Police bodies, other Authorities, etc.) also upon request by IVASS.

Art. 2

(Object and General principles)

1. This Regulation governs the sanctioning proceeding relating to the application of sanctions regarding disciplinary violations provided by the decree and by the implementing regulations that are committed by insurance and reinsurance intermediaries as well as the organisation and functioning of the Guarantee Committee on disciplinary proceedings in respect of the principle of a fair proceeding and of the right of defence of the party concerned.

Art. 3

(Disciplinary proceedings)

1. The disciplinary proceeding consists of the following:

- establishment of the infringement;
- notification of the charges;
- any submission, by the party concerned, of complaint against the notification of charges, writings or defences;
- any request for a hearing before the Guarantee Committee;
- management of the procedure in the session of the Committee arranged for the purpose, with assessment of the overall investigation elements acquired and hearing of the party concerned that has made such a request;
- resolution of the Committee containing the reasoned proposal to the Joint Directorate, or to subjects delegated by it;
- adoption by the Joint Directorate, or by the subjects delegated by it, of the final measure consisting either in the application of the disciplinary sanction or in the dismissal of the proceedings;
- notification and publication of the final measure, limited to measures of striking off.

¹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words “Insurance Intermediaries Supervision Directorate”.

2. The competence for the initiation of disciplinary proceedings against insurance and reinsurance intermediaries is assigned to the *Market Conduct Supervision Directorate*².

Art. 4

(Establishment of the infringement and notification of charges)

1. IVASS shall initiate disciplinary proceedings in all cases where it assesses a breach of the regulations for which disciplinary sanctions apply, upon acquisition of the evidence necessary to demonstrate the presence of said breach. The necessary evidence may be also acquired by requesting documents from insurance undertakings and intermediaries, including from the subjects under assessment and any other subjects in possession of relevant information.
2. The disciplinary proceedings are initiated with the notification of charges by IVASS to the subjects deemed as responsible for the assessed breaches. The notification is made by the *Market Conduct Supervision Directorate*³.
3. The notification of charges to the party concerned is made by means of a registered letter with acknowledgement of receipt within one hundred and twenty days, or within one hundred and eighty days for residents abroad, from the date of the establishment of the facts.
4. The term for the notification of charges relative to the disciplinary infringements that have arisen in the context of inspections shall run from the date of signing of the inspection report; this period may be interrupted only once for the request of information and documents pursuant to paragraph 1 and starts again upon receiving complete documentation.
5. The deadline for the notification of charges relating to disciplinary infringements that have emerged during off-site checks starts from the time of the completion of the evaluation of all subjective and objective evidence that compose the case and that may lead to the application of a disciplinary sanction.
6. In the case in which the mediation activity is exerted in corporate form, the notification of charges is made by registered letter with acknowledgement of receipt also to the company, accompanied by the warning of possible consequences in reference to it, in the event that the conditions laid down in article 330, paragraph 2 of the decree are met, and by the invitation to participate in the proceeding, with the same rights of defence recognised pursuant to article 5.
7. The notification of the charges may also be sent out in the cases and in the forms set forth in the applicable provisions, to the certified email address as specifically indicated by the involved parties for sending/receiving communications to/from IVASS.
8. The notification of breach shall contain:
 - a) the reference to the supervisory activities or to the documentation from which the breach was inferred;
 - b) the date when the breach assessment process was completed;
 - c) the description in fact and in law of the charges, with indication of the provisions violated and of the related sanctioning regulations;

² Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".

³ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".

- d) the indication of the rights of defence of the party concerned pursuant to art. 6;
- e) the indication of the *Market Conduct Supervision Directorate*⁴, as the department responsible for the proceeding, as well as of the appointed official, within the aforesaid Directorate, as referent for the proceeding;
- f) the term for the conclusion of the disciplinary proceedings.

Art. 5

(Rights of the party concerned)

1. The party concerned and the company referred to in article 4, paragraph 6, shall have the right to:
 - a) access the documents in the dossier and make copies of them;
 - b) file writings, defences and documentary evidence;
 - c) file a complaint against the notification of the charges and request a hearing before the Committee.
2. The term for exercising these rights is sixty days from the date of notification of the charges, pursuant to article 331 of the decree.
3. Access to the documents in the dossier of the disciplinary proceeding takes place in the manner provided for by ISVAP Orders No. 39 and No. 40 of 1995.

Art. 6

(Composition of the Guarantee Committee)

1. The Committee is set up within IVASS and is made up of the Chairman, a judge acting at least in a capacity as Counsellor to the Court of Cassation or in a similar capacity, even if retired, or of a tenured teacher, and of two experts in insurance matters, appointed pursuant to Article 331, paragraph 3 of the decree.
2. In order to ensure the efficiency and timeliness in the definition of disciplinary proceedings, IVASS may, with its measure, arrange the articulation of the Committee in a maximum of two other Sections, with an increase of up to nine of the total number of its components.
3. The term of office of each component of the Committee or Section shall be four years and may not be renewed more than once.

Art. 7

(Organisation of the Guarantee Committee into Sections)

1. If the Committee is divided into Sections, each of them is composed of a Chairman and two experts in the field of insurance appointed in accordance with the requirements and procedures referred to in article 6, paragraph 1.
2. In the case of multiple Sections, the Chairman of the First Section assumes the role of Chairman of the Committee. In this capacity, he/she convenes and chairs the assembly of the Sections in a joint meeting when resolutions must be issued on matters referred to in articles 8 and 10 and, every six months, in order to define general assessment principles and criteria so as to ensure consistent guidelines for the resolutions issued in the proceedings managed by each Section.

⁴ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".

3. Within the Committee or the Section, the Chairman:
 - a) assigns the conduct of the proceedings to the members of the Committee or Section;
 - b) ensures the consistency of the guidelines adopted for the individual proceedings.
4. Unless otherwise stated, the provisions of this Regulation, referring to the operation of the Committee, are extended to the Sections into which the Committee is structured.

Art. 8
(Assembly of the Sections in a joint meeting)

1. If the Committee is structured in Sections, the Chairman of each Section may propose to the Chairman of the Committee as per Article 7, paragraph 2, to defer the resolutions regarding single proceedings to the assembly of the Sections in a joint meeting. The Chairman of the Committee assesses the deferring proposal and decides, if in agreement, for the convening of the Sections in a joint meeting for the conduct of the proceedings.
2. The Head of the *Market Conduct Supervision Directorate*⁵ or a designated representatives attend, with no voting rights, the assembly of the Sections in a joint meeting.

Art. 9
(Incompatibility and abstention)

1. The member who finds him/herself in one of the situations described in Article 51 of the Code of Civil Procedure, with regard to the specific cases reviewed by the Committee must abstain from participating in the meeting discussing said cases, with advance notification sent to the Chair.

Art. 10
(Chronological list and meeting schedule)

1. The Committee shall establish:
 - a) the chronological list of the meetings in which the proceedings are recorded;
 - b) the recording of the minutes of the meetings.
2. The Committee, or the Sections in a joint meeting, set out, on a quarterly basis, the meeting schedule.
3. Every quarter, the meeting schedule is published in the Bulletin and on IVASS website.
4. The Committee, or Sections in a joint meeting, governs its organisation and lay down the procedures for the drafting and the keeping of registers and minutes concerning the activities carried out.
5. For the carrying out of the activities referred to in these rules, the Secretariat of the Guarantee Committee is established at the *Sanction and Winding up Directorate*⁶.

Art. 11
(Conduct of the proceedings before the Committee)

⁵ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".

⁶ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".

1. The appointed official, having verified that the charges have been notified to the party concerned, requests that the Secretariat of the Committee sets the meeting for the relative discussion. The Secretariat Office establishes the meeting date, based on the schedule under article 10, paragraph 2 taking into account the deadline set out for the exercise of the rights of defence referred to in article 5, paragraph 2 and of a reasonable period of time for the examination of the defensive documents.
2. The date of the meeting shall be communicated to the person subjected to the proceeding by means of a registered letter with acknowledgement of receipt or at the certified electronic mail (CEM) address indicated by the same for the purposes of communications with IVASS.
3. After the expiry of the deadline for the exercise of the rights of defence indicated in article 5, the *Market Conduct Supervision Directorate*⁷ shall transmit the dossier of the proceeding to the Secretariat.
4. The Committee reviews the documentation, including the written defence arguments submitted by the involved subject, and initiates the discussion at the meeting set up pursuant to Article 11, paragraph 1.
5. The Committee is responsible for conducting the requested hearing and the involved subjects may be assisted by a lawyer or other expert. Minutes of the hearing are drawn up and signed by the reporting parties.
6. The Committee may request the *Market Conduct Supervision Directorate*⁸ that the results of the investigations be supplemented; it may also convene a meeting with the subjects who have been informed on the facts of the proceedings, as well as the undertakings and intermediaries with which the recipient of the notification was holding on-going assignments or a collaboration relationship at the time of the occurrence of the facts, in order to provide clarifications on the alleged breach. In both cases the Committee sets a deadline for the completion of the supplemental investigations and the convening of a meeting with the indicated subjects, during which the time limit referred to in article 15 is suspended.
7. The meetings of the Committee shall be attended, without the right to vote, by the appointed official for reporting in order to establish the facts relating to the proceeding.

Art. 12
(Resolution of the Committee)

1. The resolution of the Committee contains the proposal for the adoption of the disciplinary measure or for the dismissal of the proceedings. If the proposed sanction consists in the striking off from the Register, the Committee reports also on the presence of the conditions based on which, pursuant to Article 330, Paragraph 2, of the decree, the company where the involved subject operates must be deleted.
2. The Committee issues its resolutions in a retreat session. If a member is absent or temporarily incapable of attending, each Section may validly function with the presence, as an alternate, of one or more members of another Section experts in the field of insurance. If the absence or the temporary incapacity regards the Chairman of the Section, he/she is replaced by the Chairman of another Section.
3. The resolution is signed by the Chairman and the person responsible for drafting the underlying reasons, is transmitted to the Joint Directorate, or to subjects delegated by it.

Art. 13
(Conclusion of the proceedings)

⁷ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".

⁸ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".

1. The Joint Directorate or the subjects delegated by it, having received the proposal formulated by the Committee or by the Section or, in the case referred to in Article 8, paragraph 1, from the unified Sections in a joint meeting, assumes one of the following decisions: a) decides on the question with its own measure; b) requests the review of the proposal to the Committee or Section or, in the case referred to in article 8, paragraph 1, to the unified Sections in a joint meeting; c) returns the proposal formulated by the Committee or by the Section to the unified Sections in a joint meeting so that they may express their own proposal.

Art. 14

(Notification and publication of the order)

1. The measure adopted by the Joint Directorate, or by the subjects delegated by it, which concludes the disciplinary proceeding indicates the terms and procedures to appeal to the administrative courts, or to the President of the Italian Republic in exceptional circumstances and is notified to the person concerned by registered letter from the *Sanction and Winding up Directorate*⁹.

2. The measure adopted by the Joint Directorate, or by the subjects delegated by it, which applies the disciplinary sanction, is also communicated to the undertakings or to the intermediaries with which the subject undergoing the proceeding has ongoing assignments or collaborations.

3. The measure that concludes the disciplinary proceeding may also be notified, in the cases and in the forms provided for by the provisions in force, to the certified electronic mail (CEM) address indicated by the parties concerned for the purposes of communications with IVASS.

4. The measures imposing the disciplinary sanction of the striking off, the judgements issued at the conclusion of the appeals to the administrative courts and the decrees relating to extraordinary appeals to the President of the Italian Republic shall be published in IVASS Bulletin and on its internet site.

Art. 15

(Final deadline of the proceeding)

1. Without prejudice to the legitimate grounds for suspension as provided for in particular by article 11, paragraph 6, the disciplinary proceeding shall be concluded no later than three hundred and sixty-five days from the start of the proceeding referred to in article 4.

Art. 16

(Scope)

1. The provisions of this Regulation shall apply to disciplinary proceedings started as from the day of its entry into force and to those pending on that date, without prejudice to the acts already adopted.

Art. 17

(Repeals)

1. As from the date of entry into force of this Regulation, ISVAP Regulation no. 6 of 20 October 2006 is repealed.

⁹ Pursuant to IVASS Order no. 90 of 5 November 2019 these words have replaced the words "Insurance Intermediaries Supervision Directorate".



Art. 18
(Publication and entry into force)

1. This Regulation shall be published in the Official Journal of the Italian Republic and in IVASS' Bulletin. It is also published in IVASS website.
2. This Regulation shall enter into force on 31 October 2013.

On behalf of the Joint Directorate
The Governor of the Bank of Italy