

(only the Italian version is authentic)

IVASS REGULATION N. 13 OF 22 DECEMBER 2015

REGULATION CONCERNING THE ANCILLARY OWN-FUND ITEMS REFERRED TO IN TITLE III (PURSUIT OF INSURANCE BUSINESS), CHAPTER IV (OWN-FUNDS), SECTION I (DETERMINATION OF OWN-FUNDS), ARTICLE 44-QUINQUIES, OF LEGISLATIVE DECREE NO. 209 OF 7 SEPTEMBER 2005 - CODE OF PRIVATE INSURANCE, CONSEQUENT TO THE NATIONAL IMPLEMENTATION OF THE EIOPA GUIDELINES ON THE FINANCIAL REQUIREMENTS OF THE SOLVENCY II REGIME (PILLAR I REQUIREMENTS).

INSTITUTE FOR THE SUPERVISION OF INSURANCE

HAVING REGARD to Law no. 576 of 12 August 1982, on the reform of insurance supervision and the establishment of ISVAP;

HAVING REGARD to article 13 of Decree Law no. 95 of 6 July 2012, converted into Law no. 135 of 7 August 2012, concerning urgent measures for the review of public spending with unchanged services for citizens and establishing the institution of IVASS;

HAVING REGARD to Legislative Decree no. 209 of 7 September 2005, containing the Code of Private Insurance, as amended and supplemented by Legislative Decree no. 74 of 12 May 2015, implementing Directive no. 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance and, in particular, articles 44-ter, 44-quinquies, 44-septies, 44-octies, 44-novies, 66-bis, 216-ter and 216-sexies;

HAVING REGARD to the Delegated Regulation (EU) 2015/35 of the Commission of 10 October 2014 supplementing Directive no. 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance, and in particular articles 62, 63, 64, 65, 66, 67, 74, 75, 78 and 79;

HAVING REGARD to the Implementing Regulation (EU) 2015/499 of 24 March 2015 of the Commission laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items in accordance with Directive 2009/138/EC of the European Parliament and of the Council;

HAVING REGARD to the Guidelines issued by EIOPA on ancillary own-funds;

HAVING REGARD to IVASS Regulation no. 3 of 5 November 2013 on the implementation of the provisions referred to in article 23 of Law no. 262 of 28 December 2005, in relation to proceedings for the adoption of regulations and general acts of IVASS;

adopts the following

REGULATION

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Title I General Provisions

Art. 1 (Legislative sources)

1. This Regulation is adopted pursuant to articles 44-ter, paragraph 1, 191, paragraph 1, letter b), number 2 and letter s), and 216-ter, paragraph 1 of Legislative Decree no. 209 of 7 September 2005 as amended by Legislative Decree no. 74 of 12 May 2015.

Art. 2 (Definitions)

1. For the purposes of this Regulation the definitions laid down by Legislative Decree no. 209 of 7 September 2005 as amended by Legislative Decree no. 74 of 12 May 2015, and by Delegated Regulation (EU) 2015/35 of the Commission shall apply. In addition, the following definitions shall apply:
 - a) "Delegated Acts", Delegated Regulation (EU) 2015/35 of the Commission;
 - b) "Code", Legislative Decree no. 209 of 7 September 2005 as amended by Legislative Decree no. 74 of 12 May 2015;

- c) "Item not on the lists", an own-fund item not included on the lists of the own-fund items referred to in articles 69, 72 and 76 of the Delegated Acts, that, to be considered as an own-fund item must be authorised by IVASS pursuant to article 79 of the Delegated Acts;
- d) "EU Regulation 2015/499," the Implementing Regulation (EU) 2015/499 of the Commission;
- e) "Ultimate Italian parent undertaking", the ultimate Italian parent undertaking referred to in article 210, paragraph 2, of the Code.

Art. 3
(Scope)

1. This Regulation shall apply to the insurance and reinsurance undertakings with head office in the territory of the Italian Republic and to the branches of insurance and reinsurance undertakings having their head office in a third State, as well as the ultimate Italian parent undertakings and insurance holding undertakings and the intermediate mixed financial holding undertakings.

Title II
Authorisation of ancillary own-fund items

Art. 4
(Authorisation procedure of ancillary own-fund items)

1. The authorisation referred to in article 44-quinquies, paragraph 5, of the Code is governed by articles from 62 to 67 of the Delegated Acts and by EU Regulation 2015/499.

Art. 5
(Classification of ancillary own-fund items by the undertaking)

1. For the purposes of the application for authorisation referred to in article 4, the undertaking:
 - a) classifies each ancillary own-fund item by assessing its characteristics;
 - b) determines the level of classification that the item referred to in letter a) assumes if it is called.

Art. 6
(Classification of ancillary own-fund items by IVASS)

1. Within the authorisation procedure referred to in article 4, IVASS assesses:
 - a) the economic substance of the item and the extent to which it meets the characteristics and requirements provided for in articles 44-septies, 44-octies and 44-novies of the Code and in articles 74, 75 and 78 of the Delegated Acts;
 - b) the characteristics and level of classification that it would assume if it were called.
2. In the event that the authorisation referred to in paragraph 1 is required with respect to future claims that mutual insurance companies may have against their members by way of a call for supplementary contributions, IVASS also assesses whether there are impediments to the timely recovery of these claims and their use for the coverage of losses.

Art. 7
(Callability on demand)

1. The ancillary own-fund items referred to in article 74, paragraph 1, letters a), b), c), d), f) and i) of the Delegated Acts, are considered to be callable on demand when the call is not:
 - a) conditioned by the occurrence of an event or criteria being met;
 - b) subject to agreement of the counterparty or another subject;
 - c) subject to agreements, provisions or incentives that prevent or make it unlikely that the undertaking calls the item; or
 - e) subject to any other provision, or combination of provisions, which produces the effects referred to in points a), b) and c).

Art. 8
(Authorisation conditional upon the subsequent conclusion of the contract)

1. In cases of authorisation conditional upon the subsequent conclusion of the contract relative to the ancillary own-fund item in accordance with article 6, paragraph 3, of EU Regulation 2015/499, the undertaking concludes the contract relative to the ancillary own-fund item within 15 working days from the date of authorisation by IVASS.
2. In exceptional cases, adequately motivated by the undertaking within the authorisation procedure, the terms referred to in paragraph 1 may be modified by IVASS and indicated in the authorisation order.

Art. 9
(Authorisation of ancillary own-fund items that, if called, generate items not on the lists)

1. When it concerns an ancillary own-fund item that, when called by the undertaking, constitutes an item not on the lists, the undertaking, in a single application, requests the authorisation referred to in article 44-quinquies, paragraph 5 of the Code, and the authorisation referred to in article 44-octies, paragraph 7 of the Code relative to the classification of the relative item not on the lists.
2. IVASS adopts a single order of conclusion of the procedure with which it gives its reply on the authorisation of the classification of the item not on the lists and the use of the item as an ancillary own-fund, within the period provided for in article 5 of EU Regulation 2015/499 in the presence of exceptional circumstances.

Title III
Fulfilment of the criteria on a continuous basis

Art. 10
(Compliance with the requirements on a continuous basis)

1. The undertaking continuously verifies the existence of the loss-absorbing capacity of each ancillary own-fund item on which the authorisation is based and shall promptly notify IVASS of imminent or probable significant changes in those characteristics.

2. IVASS assesses whether each ancillary own-fund item continues to reflect the loss-absorbing capacity that was attributed at the time of authorisation, using the information obtained in the application of article 62, paragraph 1, letter d) of the Delegated Acts, or other information, including those acquired as part of the supervisory activity.

Title IV
Ancillary own-fund items of holding companies

Art. 11
(Authorisation of ancillary own-fund items of holding companies)

1. The ultimate Italian parent undertaking presents to IVASS the application for authorisation of each ancillary own-fund item of insurance holding undertakings or mixed financial holding undertakings, including intermediate.
2. In the cases referred to in paragraph 1, the provisions of articles from 4 to 10 apply, subject to the requirements defined in article 330 of the Delegated Acts.

Title V
Final provisions

Art. 12
(Publication and entry into force)

1. This Regulation shall be published in the Official Journal of the Italian Republic and in IVASS Bulletin and website.
2. This Regulation shall enter into force on 1 January 2016.

On behalf of the Joint Directorate
The Director
(as per art. 9, paragraph 2 of the IVASS Statute)