

(only the Italian version is authentic)

IVASS REGULATION NO. 42 OF 2 AUGUST 2018

IVASS REGULATION LAYING DOWN PROVISIONS ON THE EXTERNAL AUDIT OF PUBLIC DISCLOSURE PURSUANT TO ARTICLES 47-SEPTIES, PARAGRAPH 7, AND 191, PARAGRAPH 1, LETTER B), POINTS 2 AND 3, OF LEGISLATIVE DECREE NO. 209 OF 7 SEPTEMBER 2005 – CODE OF PRIVATE INSURANCE.

THE INSURANCE SUPERVISORY AUTHORITY

HAVING REGARD to law no. 576 of 12 August 1982 as subsequently amended and supplemented, on the reform of insurance supervision;

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 IVASS;

HAVING REGARD to Presidential decree no. 303 of 12 December 2012, published in the Italian Official Journal – General Series of 31 December 2012, approving the Statute of IVASS, which entered into force on 1 January 2013;

HAVING REGARD to IVASS Organisation Regulation and the relevant organisational chart, approved by the Board of Directors of IVASS with resolutions no. 46 of 24 April 2013, no. 63 of 5 June 2013 and no. 68 of 10 June 2013 concerning IVASS reorganisation plan, issued in accordance with 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 with article 5, paragraph 1, a), of the Statute of IVASS;

HAVING REGARD to legislative decree no. 209 of 7 September 2005, introducing the Code of private insurance, and subsequent modifications and integrations and, in particular, articles 47-*septies*, paragraph 7, and 191, paragraph 1, letter b), points 2) and 3);

HAVING REGARD to legislative decree no. 39 of 27 January 2010, as amended by legislative decree no. 135 of 17 July 2016, on statutory audits of annual accounts and consolidated accounts;

HAVING REGARD to Regulation (EU) no. 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities;

HAVING REGARD to the Commission delegated regulation (EU) 2015/35 of 10 October 2014 supplementing directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance and, in particular, articles from 290 to 303, from 359 to 371 and annex XX;

HAVING REGARD to Commission Implementing Regulation (EU) 2015/2452 of 2 December 2015 laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council;

HAVING REGARD to IVASS Regulation no. 33 of 6 December 2016 concerning public disclosure and reporting to IVASS;

HAVING REGARD to IVASS Regulation no. 3 of 5 November 2013 implementing article 23 of law no. 262 of 28 December 2005 on the procedures for the adoption of IVASS' regulatory and general acts;

adopts the following:

REGULATION

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CHAPTER I – GENERAL PROVISIONS

Art. 1 (Legislative sources)

1. This Regulation has been adopted in compliance with articles 191, paragraph 1, letter b), points 2) and 3) and 47-*septies*, paragraph 7, relating to the solvency and financial condition report as per legislative decree no. 209 of 7 September 2005, and subsequent modifications and integrations.

Art. 2 (Definitions)

1. For the purpose of this Regulation the definitions laid down in legislative decree no. 209 of 7 September 2005 and subsequent modifications and integrations and in the Commission Delegated Regulation 35/2015, shall apply. In addition, the following definitions have been developed:
 - a) “Delegated acts” shall mean: the Commission Delegated Regulation 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance;
 - b) “Code” shall mean: legislative decree no. 209 of 7 September 2005 and subsequent modifications and integrations.
 - c) “Legislative decree no. 39 of 2010” shall mean: legislative decree no. 39 of 27 January 2010, as amended by legislative decree no. 135 of 17 July 2016, implementing directive 2006/43/CE, on statutory audits of annual accounts and consolidated accounts;
 - d) “undertaking” shall mean: the undertakings and companies referred to in article 3 of the Regulation;
 - e) “Internal Model” shall mean: the internal model of the individual undertaking or of a group envisaged, respectively, in articles 46-*bis*, 207-*octies* and 216-*ter* of the Code;
 - f) “Administrative body” shall mean: the board of directors or, unless otherwise specified, the management board in undertakings which have adopted the system pursuant to article 2409-*octies* of the Italian Civil Code, or the general representative for branch offices;
 - g) “Control body” shall mean: the statutory board of auditors, or, in undertakings which have adopted a different system from the one referred to in article 2380 (1) of the Civil Code, the supervisory committee or the management supervisory committee;
 - h) “Undertaking specific parameters” (USP) shall mean: the parameters referred to in article 45-*sexies*, paragraph 7 of the Code;
 - i) “Group specific parameters” (GSP) shall mean: those envisaged in article 338 of the Delegated Acts;
 - l) “Regulation (EU) no. 537/2014” shall mean: Regulation of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC;
 - m) “Implementing Regulation (EU) 2015/2452” shall mean: Commission Implementing Regulation (EU) 2015/2452 of 2 December 2015 laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council;
 - n) “Solvency and financial condition report” shall mean: the report referred to in articles 47-*septies* and 216-*novies* of the Code;
 - o) “statutory auditor” shall mean: the statutory auditor and the audit firm indicated respectively in letters n) and q) of article 1, paragraph 1 of legislative decree no. 39 of 2010;
 - p) “External audit” shall mean: the audit conducted by the statutory auditor or the audit firm pursuant to articles 191, paragraph 1, letter b), points 2) and 3) and 47-*septies*, paragraph 7 of the Code according to the provisions of this Regulation;

- q) “full external audit” shall mean: the formulation of an opinion on the fact that all information was drawn up in compliance with the directly applicable provisions of the European Union and with the national legislation regulating the sector (so-called reasonable assurance opinion);
- r) “limited external audit” shall mean: the performance of audit activities providing evidence that, based on the procedures and the findings, no issues have been identified by the statutory auditor indicating that the information was not drawn up, in its most significant aspects, in compliance with the directly applicable EU provisions and of the national legislation applicable to the sector (so-called limited assurance opinion);
- s) “statutory audit of the accounts” shall mean: the statutory audits of annual accounts and consolidated accounts carried out in accordance with the provisions of the Civil Code and of legislative decree no. 39 of 2010.

Art. 3
(Scope)

- 1. This Regulation shall apply to:
 - a) the insurance and reinsurance undertakings having their head office in the territory of the Italian Republic;
 - b) the reinsurance undertakings having their head office in the territory of the Italian Republic;
 - c) the ultimate Italian parent company, as set forth in article 210, paragraph 2 of the Code, without prejudice to any decisions taken by IVASS pursuant to articles 220-*bis* and 220-*quater* of the Code and with the relevant implementing rules. The provisions of this Regulation shall not apply to the ultimate Italian parent undertaking which is a subsidiary of another insurance or reinsurance undertaking or of an insurance holding or mixed financial holding undertaking with head office in another member State when IVASS does not have responsibility for supervision on all the tools for group supervision referred to in Title XV, Chapter III of the Code at the level of the national sub-group, in accordance with Chapter IV (National sub-groups) of IVASS Regulation no. 22 of 1 June 2016, implementing the provisions relating to group supervision under Title XV of the Code.

CHAPTER II – EXTERNAL AUDIT

Art. 4
(External audit at the level of the individual undertaking)

- 1. The undertakings under article 3, paragraph 1, letters a) and b) shall ensure that the following items of the solvency and financial condition report referred to in article 47-*septies* of the Code are subject to an external auditing:
 - a) Balance sheet and related Solvency II valuations, included in the template “S.02.01.02 Balance sheet” envisaged in Implementing Regulation (EU) 2015/2452 and in the information in Section “D. Valuation for Solvency Purposes” of the layout of the solvency and financial condition report set forth in annex XX of the Delegated Acts;
 - b) Eligible own funds covering the solvency capital requirements, included in the template “S.23.01.01 Own funds” envisaged in Implementing Regulation (EU) 2015/2452 and in the information in Section “E.1. Own funds” of the layout of the solvency and financial condition report set forth in annex XX of the Delegated Acts;
 - c) Solvency Capital Requirement and Minimum Capital Requirement, included in the templates “S.25.01.21 Solvency Capital Requirement for insurance undertakings on Standard Formula”, “S.25.02.21 Solvency Capital Requirement for undertakings using the standard formula and partial internal model”, “S.25.03.21 Solvency Capital Requirement calculated using a full internal model” and “S.28.02.01 Minimum Capital Requirement” envisaged in Implementing Regulation (EU) 2015/2452 and in the information in Section “E.2 Solvency

Capital Requirement and Minimum Capital Requirement” of the layout of the solvency and financial condition report set forth in annex XX of the Delegated Acts.

2. The insurance and reinsurance undertakings having their head office in the territory of the Italian Republic referred to in article 6, paragraphs 1 and 2, of IVASS Regulation no. 33 of 6 December 2016 shall ensure that the information relating to the group solvency calculation contained in their own solvency and financial condition Report, is subject to an external auditing according to the group specific provisions per articles 5 and 14 of this Regulation.

Art. 5

(External audit at the level of the group)

1. The undertakings under article 3, paragraph 1, letter c) shall ensure that the following items of the solvency and financial condition report at the level of the group, referred to in article 216-*novies* of the Code are subject to an external auditing:
 - a) Group balance sheet and related Solvency II valuations, included in the template “S.02.01.02 Balance sheet” envisaged in Implementing Regulation (EU) 2015/2452 and in the information in Section “D. Valuation for Solvency Purposes” of the layout of the solvency and financial condition report set forth in annex XX of the Delegated Acts;
 - b) Eligible own funds covering the group solvency capital requirements, included in the template “S.23.01.22 Own funds” envisaged in Implementing Regulation (EU) 2015/2452 and in the information in Section “E.1. Own funds” of the layout of the solvency and financial condition report set forth in annex XX of the Delegated Acts;
 - c) Solvency Capital Requirement and consolidated group Minimum Capital Requirement, included in the templates “S.25.01.22 Solvency Capital Requirement for groups on Standard Formula”, “S.25.02.22 Solvency Capital Requirement for groups using the standard formula and partial internal model”, “S.25.03.22 Solvency Capital Requirement calculated using a full internal model” and in the information in Section “E.2 Solvency Capital Requirement and Minimum Capital Requirement” of the layout of the solvency and financial condition report set forth in annex XX of the Delegated Acts.
2. If the ultimate Italian parent undertaking under article 210, paragraph 2, of the Code, has received a favourable opinion concerning the publication of a single solvency and financial condition report, pursuant to articles 216-*novies*, paragraph 2, of the Code and related implementation provisions, as an alternative to the separate publication of each external audit report, the reports related to the group and to each Italian subsidiary involved, issued at the conclusion of the single external audit activities, may be attached to the single solvency and financial condition report of the group.

CHAPTER III – PERFORMANCE OF EXTERNAL AUDIT

Art. 6

(Assignment to perform external audit)

1. The administrative body of the undertaking, upon obtaining the favourable opinion from the control body:
 - a) assigns the performance of external audit activities to one of the following subjects:
 - i. the same statutory auditor who carries out the statutory audit of accounts under legislative decree no. 39 of 2010 and Regulation (EU) 537/2014;
 - ii. a statutory auditor other than the auditor who carries out the statutory audit of accounts pursuant to point i.;
 - b) determines the fee to be paid for the entire duration of the assignment and any criteria applicable to an adjustment of this fee during the assignment.

2. When the assignment is conferred to the statutory auditor under paragraph 1, letter a), ii.:
 - a) the undertaking prepares a report, to submit to IVASS upon its request, which describes in detail the assessment and weighting principles adopted for the designation of the statutory auditors, the reasons underlying the choice made by the administrative body and the determination of the fee;
 - b) the statutory auditor in charge of the external audit:
 - i. meets at least the requirements of professional expertise, ethics and independence in compliance with the international codes adopted by the professional bodies and associations, and provides appropriate support documentation;
 - ii. communicates to the control body any situation that may reasonably affect the fulfilment of the independence requirement, and all related safeguard measures.
3. The external audit assignment has three-year duration, is renewable no more than twice and may not be conferred again, after the allowed renewals, unless at least three years have passed from the end date of the previous assignment.
4. In the case envisaged in paragraph 1, letter a) i., the duration may be reduced to one year only if this makes it possible to align the expiry dates of the external audit assignment with those of the statutory audit.

Art. 7

(Performance of external audit)

1. The external audit includes at least:
 - a) a full external audit of all items included in the solvency and financial condition report, as identified in articles 4, paragraph 1, letters a) and b) and 5, paragraph 1, letters a) and b), as well as the reasonable assurance opinion pursuant to article 2, paragraph 1, letter q); this opinion shall be provided in a specific report addressed to the administrative body of the undertaking;
 - b) a limited external audit of all items included in the solvency and financial condition report, as identified in articles 4, paragraph 1, letter c) and 5, paragraph 1, letter c), as well as the limited assurance opinion pursuant to article 2, paragraph 1, letter r); this opinion shall be provided in a specific report addressed to the administrative body of the undertaking.
2. External audit activities, whether full or limited, shall be carried out in compliance with the international auditing standards in use and with the sector's regulations.
3. The statutory auditor appointed for the external audit shall keep the documents and information relating to the activities carried out for a period of at least five years following the issue of the external audit reports referred to in article 11.

Art. 8

(Dismissal, resignation and contract termination)

1. The administrative body, after consulting with the control body, may revoke the external audit assignment for a just cause, while concurrently assigning it to another statutory auditor according to the methods set forth in article 6.
2. In the event of resignation or consensual termination of the contract, the external audit activities may continue to be carried out by the same statutory auditor until the administrative body has conferred the new assignment, and in all cases, not beyond six months from the resignation date or the date of termination of the contract.

Art. 9
(Control body)

1. The control body of the undertaking, in addition to expressing its opinion under article 6, paragraph 1, shall:
 - a) monitor the performance of the external audit activities;
 - b) verify, over time, the independence of the statutory auditor in charge of the external audit.

Art. 10
(Information to the statutory auditor)

1. The undertaking shall provide the statutory auditor with all the information that is useful for performing the external audit.
2. The solvency and financial condition report, approved by the administrative body of the undertaking, shall be made available to the statutory auditor at least fifteen days before its publication date, as set forth in the reference regulations.

Art. 11
(External audit reports: contents, methods and terms of publication)

1. The external audit reports under respectively article 7, paragraph 1, letters a) and b) must be compliant with the template contained in Annex 1.
2. The undertaking shall publish the external audit reports together with the solvency and financial condition report, in compliance with the same methods and terms set forth for the latter; also according to the same terms and methods, these reports shall be forwarded to IVASS.

Art. 12
(Communications to the control body and to IVASS)

1. Without prejudice to the communication obligations under article 190, paragraph 4 of the Code, the statutory auditor entrusted with the external audit shall communicate to the control body and to IVASS, according to the same terms set forth in article 11, paragraph 2:
 - a) any technical-operational difficulties encountered in the course of the statutory audit;
 - b) any aspects deserving attention, in relation to the internal control and risk management systems.

CHAPTER IV – Specific provisions

Art. 13
(Items not included in the external audit)

1. The decisions made by IVASS in the exercise of its supervisory functions, concerning the issues identified in articles 4 and 5, including those related to the solvency capital requirement calculated by using undertaking- or group-specific parameters or through a partial or full internal model, shall not be subject to a reasonable or limited assurance opinion, respectively under article 2, paragraph 1, letters q) and r).

Art. 14
(Specific group provisions)

1. As regards the information included in the items under article 5, concerning non-regulated entities or entities belonging to another financial sector or with a head office in a third country, included in the scope of the group, the external audit activities shall be limited to verify that they are included in the calculation of the group solvency, based on the figures formulated pursuant to the provisions of the Code, to the related implementation provisions and to the directly applicable provisions of the European Union. The audit activities shall not be extended to assessing compliance of this information for solvency purposes at the level of the individual undertaking.

CHAPTER V – Final provisions

Art. 15
(Publication)

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

Art. 16
(Entry into force)

1. This Regulation shall enter into force on the day following its publication in the Official Journal of the Italian Republic.
2. In the initial period of application, undertakings shall ensure compliance with the provisions of this Regulation starting from the solvency and financial condition report for the year 2018.