

COURTESY TRANSLATION
(only the Italian version is authentic)

IVASS REGULATION NO. 48 OF 13 JULY 2021

IVASS REGULATION LAYING DOWN PROVISIONS ON CAPITAL ADD-ON REFERRED TO UNDER TITLE III, ARTICLE 47-SEXIES AND TITLE XV, ARTICLE 216-SEPTIES OF LEGISLATIVE DECREE NO. 209 OF 7 SEPTEMBER 2005 - PRIVATE INSURANCE CODE.

THE INSURANCE SUPERVISORY AUTHORITY

HAVING REGARD to law no. 576 of 12 August 1982, on the reform of insurance supervision and the subsequent modifications and integrations;

HAVING REGARD to Article 13 of decree law no. 95 of 6 July 2012, converted after amendments 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 the Decree of the President of the Italian Republic of 12 December 2012 that has approved the Statute of IVASS, which entered into force on 1 January 2013;

HAVING REGARD to legislative decree no. 209 of 7 September 2005, introducing the Private Insurance Code, as subsequently amended and, in particular, to articles 47-*sexies* relating to capital add-on and article 216-*septies* relating to the capital add-on to the consolidated group Solvency Capital Requirement;

Having regard to law no. 241 of 7 August 1990, on administrative procedure and the right of access to administrative documents and IVASS Regulation no. 19 of 15 March 2016 on the exercise of the right of access to administrative documents;

HAVING REGARD to the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 and, in particular, to Title I, Chapter X, articles from 276 to 287 concerning capital add-on;

HAVING REGARD to Commission Implementing Regulation (EU) 2015/2012 of 11 November 2015 laying down implementing technical standards with regard to the procedures for decisions to set, calculate and remove capital add-ons in accordance with Directive 2009/138/EC;

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;

HAVING REGARD to IVASS Regulation no. 38 of 3 July 2018 laying down provisions on the system of governance;

HAVING CONSIDERED the need to implement Italian regulations by introducing provisions for the application of capital add-ons;

has adopted the following

REGULATION

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Title I

General Provisions

- Art. 1
(Legislative sources)

1. This Regulation has been adopted in compliance with articles 47-*sexies*, (9) and 216-*septies*, (2), of 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, shall apply. In addition, the following definitions shall be applicable:
 - a) “Delegated acts”: shall mean 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;
 - b) “Code”: shall mean legislative decree no. 209 of 7 September 2005, as amended by legislative decree no. 74 of 12 May 2015;
 - c) “Solvency Capital Requirement”: shall mean the requirement calculated, at individual level, in accordance with the provisions of Title III, Chapter IV-bis, Sections I, II and III and, at group level, in accordance with the provisions of article 216-*ter* et seq. of the Code and related implementation provisions.

Art. 3
(Scope)

1. This Regulation shall apply to:
 - a) insurance and reinsurance undertakings with registered office in the territory of the Italian Republic, except in the case of local insurance undertakings referred to in Title IV of the Code;
 - b) branches in the territory of the Italian Republic of insurance and reinsurance undertakings whose registered offices are in a third State;
 - c) reinsurance undertakings having their registered office in the territory of the Italian Republic;
 - d) ultimate Italian parent undertakings. If these undertakings are, in turn, subsidiaries of an insurance or reinsurance undertaking, an insurance holding or mixed financial holding undertaking with registered office in another member State, the provisions shall apply wherever IVASS applies supervision at the level of the national sub-group, in accordance with article 220-*bis*, (3), of the Code and article 12 of the relevant implementing provisions relating to group supervision.

Art. 4
(Purpose and characteristics of a capital add-on)

1. The purpose of applying a capital add-on is to ensure that a company's Solvency Capital Requirement provides an adequate level of protection for policyholders and those entitled to insurance benefits, as well as equal treatment between companies.
2. Policyholder protection is ensured by a capital requirement that correctly represents the risk profile of the company. In the event of a deviation between the Solvency Capital Requirement calculated by the company and the one identified taking into account the actual risk profile, IVASS shall impose a capital add-on to correct the deviation ascertained.
3. The imposition of a capital add-on is an exceptional measure of last resort, which is adopted against the company in cases where other supervisory measures are ineffective or unsuitable to remedy the shortcomings found within a reasonable period of time. The exceptional nature of the measure is intended not with respect to the market but to the individual company; the market situation may require the imposition of multiple capital add-ons against different companies.
4. A capital add-on is a temporary measure that produces its effects until the company takes the necessary steps to adequately correct the deviations detected between the Solvency Capital Requirement calculated by the company and that identified taking into account the actual risk profile.

Title II

Assessment of a significant deviation and methodologies for calculating capital add-ons

Art. 5

(Assessment of assumptions)

1. On the basis of the information available, at the end of the prudential control process referred to in article 47-*quinquies* of the Code, IVASS shall assess the existence and significance of the conditions for imposing a capital add-on, pursuant to article 47-*sexies* of the Code.
2. For the purposes of assessing significant deviations, IVASS shall take into account all the relevant elements and the provisions of Chapter X, Section I, of the Delegated Acts.

Art. 6

(Significant deviation as regards the SCR)

1. For the purposes of article 47-*sexies*, (1), a) and b), of the Code, in accordance with the provisions of article 279 of the Delegated Acts, IVASS shall take into account all relevant factors, including those provided for in article 276 of the Delegated Acts.

Art. 7

(Significant deviation as regards the governance)

1. IVASS, for the purposes of article 47-*sexies*, (1), c) of the Code, shall verify the existence of a significant deviation from the governance standards established by Title III, Chapter I, Sect. II, articles from 30 to 35-*ter* of the Code and by IVASS Regulation no. 38 of 3 July 2018 and the relevant secondary legislation issued by IVASS regarding the sound and prudent management of the company.
2. For the purposes of applying the capital add-on, IVASS shall, where appropriate, take into account capital add-ons previously imposed for comparable deviations of other companies with similar risk profiles, in accordance with the provisions of article 286 of the Delegated Acts.

Art. 8

(Significant deviation as regards adjustments to the relevant risk-free rate and transitional measures)

1. For the purposes of article 47-*sexies*, (1) d), of the Code, IVASS shall take into account all relevant factors, including those envisaged in article 278 of the Delegated Acts.
2. With regard to the matching adjustment referred to in article 36-*quinquies*, the volatility adjustment referred to in article 36-*septies* and the transitional measures set out in articles 344-*novies* and 344-*decies* of the Code, IVASS may impose a capital add-on only in circumstances where the deviation from the underlying assumptions is of a temporary nature and does not justify revoking the authorisation granted by IVASS for the use of the adjustment or the transitional measure.

Art. 9

(Criteria for the calculation of a capital add-on)

1. IVASS shall calculate the capital add-ons using the methodologies set out in Chapter X, Section 2 of the Delegated Acts.

Art. 10

(Criteria for the calculation of a capital add-on pursuant to article 47-*sexies*, (1), a) and b) of the Code)

1. In the event of deviations detected pursuant to article 47-*sexies*, (1), a) and b) of the Code, IVASS shall calculate the capital add-on in such a way that the requirements for calibrating the Solvency Capital Requirement are consistent with article 45-*ter*, (3) and (4), of the Code. The capital add-on is calculated as the difference between the Solvency Capital Requirement modified to reflect the actual risk profile and the Solvency Capital Requirement calculated by the company.

Art. 11

(Criteria for the calculation of a capital add-on pursuant to article 47-*sexies*, (1), c) of the Code)

1. In the event of deviations recorded pursuant to article 47-*sexies*, (1), c) of the Code, IVASS shall calculate the capital add-on taking into account the factors referred to in article 277 of the Delegated Acts according to the provisions of paragraphs from 2 to 5.
2. Where the financial loss that the company may suffer as a result of a deviation from the governance standards set out in article 7 is directly quantifiable, the capital add-on shall be at least equal to that loss.
3. In the event that it is not possible to quantify the expected financial loss resulting from the deviation from the governance standards set forth in article 7, the capital add-on shall be calculated in accordance with paragraphs 4 and 5.
4. IVASS shall assess the deviation from standards resulting from the inadequate or non-implementation of a requirement inherent in the governance system and:
 - a) shall not apply any capital add-on when all the following conditions are met:
 - i. the governance system is on the whole satisfactory, although it does have certain weaknesses limited to certain areas, which may require the adoption of specific measures in order to preserve the company's equilibrium and its overall performance;
 - ii. specific actions to address identified weaknesses can be taken in a timely manner within one year of the date when the weaknesses are identified;
 - iii. the adverse effects on policyholders and beneficiaries of these weaknesses are unlikely to be significant.
 - b) may apply a capital add-on, increasing the Solvency Capital Requirement by a percentage equal to or higher than 10% and lower than 20%, if one or more of the conditions referred to under a) are not met or the governance system is deemed to be unsatisfactory on the whole and widespread problems or critical issues concerning significant management profiles emerge, such as to require the immediate implementation of corrective measures in order to avoid repercussions on compliance with the reference regulations, on risk levels and on the company's overall equilibrium;
 - c) may apply a capital add-on, increasing the Solvency Capital Requirement by a percentage higher than 20%, if the governance system is overall abnormal or highly abnormal as a result of the presence of one or more of the following elements:
 - i. particularly high levels of risk that are not addressed by effective governance, organisational and managerial controls;
 - ii. organisational and managerial dysfunctions that are particularly significant and that have long-lasting effects;
 - iii. serious and repeated irregularities and/or violations of regulations;
 - iv. widespread and prolonged unreliability of information provided to the Supervisory Authority.
5. The extent of the capital add-on, within the intervals referred to under b) and c) of paragraph 4, shall be determined by IVASS, taking account, where applicable, of the following indices of increasing risk:
 - a) the complexity of the governance system, whether simplified, ordinary or enhanced, that the company is required to adopt pursuant to the IVASS letter to the market of 5 July 2018;

- b) the expected duration of the deviation from the regulatory standards from the date of communication of the measure referred to in article 13;
- c) the likelihood and/or severity of any adverse impact on policyholders and beneficiaries;
- d) the extent to which the deviation from the standards is such that it prevents the company from properly identifying, measuring, monitoring, managing and reporting the risks to which it is or might be exposed;
- e) the degree of unreliability of information provided to the Supervisory Authority.

Title III

Procedure for the adoption, change and revocation of decisions to introduce capital add-ons

Art. 12

(Notice of intention to impose a capital add-on)

1. IVASS shall initiate the procedure for the application of the capital add-on by notifying the company concerned of its intention to adopt the measure and stating the reasons thereof, pursuant to article 1, (1) of Implementing Regulation (EU) 2015/2012.
2. Within sixty days of the receipt of the notice referred to in paragraph 1, the company may send comments and provide information, where requested.

Art. 13

(Decision to set a capital add-on)

1. IVASS, within sixty days of the date of receipt of the company's reply, shall examine the observations and information provided. Pursuant to article 7 of Regulation 7/2014, IVASS may suspend the term for acquiring further information only once.
2. After having carried out its assessments, and in any event no later than the expiry of the term referred to in paragraph 1, IVASS shall adopt the reasoned measure by which it imposes the add-on and shall notify it to the company.
3. In cases where the company is part of a group, the decision referred to in paragraph 2 shall also be communicated to the company referred to in article 3, (1), c).
4. The decision to set a capital add-on shall indicate:
 - a) the reasons for setting the capital add-on;
 - b) the methodology for calculating the capital add-on and the amount of the capital add-on;
 - c) the date from which the capital add-on is applicable;
 - d) where relevant, the deadline by which the undertaking has to remedy the deficiencies that led to setting the capital add-on;

e) where relevant, the content and frequency of any progress report to be provided in accordance with Article 14 of this Regulation.

5. The company shall apply the capital add-on from the date of notification of the measure when reporting annual and quarterly quantitative models, as provided for in article 304, (1), d) of Delegated Regulation (EU) 2015/35.
6. The company shall disclose to third parties the imposition of a capital add-on as part of the publication of the Report on solvency and financial condition, as required by article 47-septies, (5), of the Code.

Art. 14
(Progress report)

1. The undertaking shall inform IVASS on a quarterly basis about the progress it has made in remedying the deficiencies that led to the setting of the capital add-on and what relevant actions it has taken.

Art. 15
(Review of the capital add-on)

1. IVASS shall review the imposed capital add-on if there is a material change in the circumstances that led to the setting of the capital add-on and, at any rate, at least once a year.
2. Following the review of the imposed capital add-on IVASS shall maintain, change or remove the capital add-on. In the event of a change, article 12 of this Regulation shall apply. In the event of a revocation, the decision shall be communicated to the company without delay, stating the effective date.

Title IV

Capital add-on to the consolidated group Solvency Capital Requirement

Art. 16
(Capital add-on to the consolidated group Solvency Capital Requirement)

1. IVASS, on the basis of the information available, also as a result of the prudential control process, shall assess the substantial existence of the conditions for imposing an add-on to the consolidated group Solvency Capital Requirement pursuant to article 216-septies of the Code.
2. The provisions laid down in Title I, II and III of this Regulation shall apply, mutatis mutandis.

Title V - Final provisions

Art. 17

(Publication, entry into force and transitional provisions)

1. This Regulation shall be published in the Official Journal of the Italian Republic, in the Bulletin and on IVASS' website and shall enter into force on the day after its publication in the Italian Official Journal.
2. The provisions of this Regulation shall also apply to the review, revocation and change of previously adopted capital add-on measures.

On behalf of the Joint Directorate
the President

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