

New Italian Insurance Code

September 2005

Speed read

On 2 September 2005, the Italian Government has approved a new Insurance Code (Codice delle Assicurazioni Private - the Code), which is aimed at replacing and unifying most of the existing legislation regulating insurance and re-insurance companies, intermediaries and contracts.

The Code includes completely new regulation on reinsurance business, insurance mediation (implementing Directive 2002/92/EC) and indemnification of insured under motor insurance policies. It also contains new provisions with respect to access into the Italian market, insurance groups, investments, bancassurance, disclosure obligations and protection of policyholders.

The role of the ISVAP (the Italian insurance regulatory authority) results significantly strengthened by the Insurance Code.

The Code will be published soon in the Official Gazette of the Italian Republic and will come into force on 1 January 2006.

Background

Italian current insurance legislation includes some one thousand laws, supplemented by a huge number of regulations and guidelines issued by the ISVAP, the Italian insurance regulatory authority.

Upon delegation of the Italian Parliament, the Italian Government first approved a draft Insurance Code on 16 July 2004, which was then submitted to the competent Parliamentary committees and relevant interested parties for comments.

The Insurance Code unifies almost all the current insurance legislation and entrusts the ISVAP to issue new organized regulations to implement specific technical provisions within two years from 1 January 2006.

Authorisations to conduct insurance business

The Code tries to increase competition in the Italian market reducing the timing for obtaining authorisation to operate insurance business:

- from 6 to 3 months for companies based in Italy;
- from 60 to 30 days for branches of EU and EEA companies.

Reduction in procedure timing is also provided for Italian insurance companies going to establish a branch in another EU/EEA country (from 90 to 60 days for the transmission of the relevant company's application to the competent foreign authority).

Corporate governance

The Code contains various provisions necessary to make insurance regulations compliant with the recently enforced Italian company law reform¹, as well as some other new requirements regarding corporate governance of insurance companies. In particular the Code provides:

- a revised notion of "control", which takes into account the new instruments by which a subject may have interests in and control a company (shares with limited or special rights, tracking shares, instruments different from shares giving right to receive a portion of the profits and to appoint directors, etc.);
- a new requirement of independence for directors and auditors of insurance companies;
- the possibility for insurance companies to adopt the new one-tier and two-tier alternative models of corporate governance.

The Code also confirms the obligation to disclose to the ISVAP any shareholders' agreement regarding either direct or indirect voting rights in an insurance company. This requirement supplements the similar obligation introduced in the Italian Civil Code by the company law reform.

Insurance groups

The Code contains special provisions applicable to insurance groups, which include not only operating insurance companies but also, to some extent, their holding companies, even if they do not carry out any insurance business. Consequently, holding companies of an insurance group are submitted to ISVAP supervision.

New provisions in respect of insurance groups include:

- the creation of a register of insurance groups;
- delegation to the ISVAP to determine the threshold over which the acquisition of an interest in an insurance company must be notified to and/or authorised by the ISVAP;

- requirements of independence for directors and managers of the holding company;
- provisions on the governance, internal audit and risk management procedures;
- delegation to the ISVAP to determine a new list of intra-group transactions which shall be subject to supervision; and
- a special regime for the extraordinary administration and compulsory administrative liquidation of the holding company of an insurance group.

Financial accounts

The Code confirms that the holding of an insurance group shall prepare its consolidated financial accounts in compliance with International Accounting Standards. The same obligation applies to insurance companies issuing financial instruments negotiated in any EU regulated financial market.

ISVAP is delegated to produce the schemes on the basis of which any insurance company shall prepare its financial statements

Investments and asset management

The Code allows insurance companies to acquire interests (with no limit of size) in companies not conducting insurance business, provided that such acquisitions are founded with assets in excess of solvency requirements. If such acquisitions may prejudice the solvency of the insurance company, the ISVAP may order to dispose of or reduce the relevant interests.

The Code also authorises, in principle, the use of derivatives as assets covering technical reserves. However, it is up to the ISVAP to determine which assets are actually permitted with respect to the various lines of insurance.

¹ Reference is made to Italian Legislative Decree No. 6 of 17 January 2003, as amended, which became effective on 1 January 2004 and amended most of the provisions of the Italian Civil Code regarding Italian joint stock companies, limited liability companies and mutual companies.

Reinsurance

The Code introduces in Italy, for the first time ever, a complete regulation of reinsurance business (although this may change in the near future, when the new Directive - approved by the EU Parliament in June 2005 - will be issued).

An ad hoc ISVAP authorisation is required for any new Italian company or branch of EU or non-EU companies willing to operate in Italy. No prior authorisation is required for EU or non-EU companies willing to operate under the free provision of services regime. However, the ISVAP may count, in order to assess compliance of regulated insurance and reinsurance companies with solvency requirements, risks transferred to reinsurance companies which do not have a branch in the EU.

Special organisational and solvency requirements (to be specified by the ISVAP) are provided. In addition, most of the provisions regarding insurance companies also apply to reinsurance companies.

Insurance mediation

The Code leads to a completely new regulation on insurance mediation, implementing restrictively Directive 2002/92/EC. Any kind of activity consisting in promoting, marketing, presenting or offering insurance products is considered "mediation" and exceptions are very limited.

A unified register will be created, on which any corporation or individual carrying out insurance or reinsurance mediation shall be registered. Insurance agents, brokers, banks, certain financial institutions and their employees and collaborators exercising mediation activity out of the premises of their employer must be enrolled in the unified register. Consequently, banks willing to distribute insurance products will need to be registered with the ISVAP and be submitted to its supervision.

Foreign insurance intermediaries willing to operate in Italy with or without permanent establishment will benefit of the "European passport" regime.

Other important innovations include:

- a new regulation of tied-agents;
- the obligation for all intermediaries to be covered by professional negligence insurance;

- extended training obligations for employees and collaborators of insurance companies and intermediaries;
- reinforced obligations and requirements to protect policyholders in their relationship with insurance intermediaries, including severe disclosure obligations and segregation of customer accounts from the assets of intermediaries.

Protection of policyholders

The Insurance Code contains new provisions, aimed at protecting policyholders, regarding advertising and contents of insurance contracts and the information to be provided to policyholders before the execution of the contract.

Each insurance company may submit the information memorandum (Nota informativa) of any new product to the ISVAP for review prior to distributing the product. The ISVAP may request at any time that the information memorandum be supplemented with additional information.

Please note that some provisions applicable to insurance contracts remain unchanged in the Italian Civil Code.

Insolvency

The Code reorganises significantly the matter of insolvency, judicial administration and winding-up of insurance companies. This matter, however, may need to be reviewed once the reform of general insolvency law which is being prepared by the Italian Government will be finally approved.

Motor insurance

A system of "direct damages recovery" has been introduced in the event of accidents involving motor vehicles. The damaged party will be entitled to claim indemnification (up to a given limit) from its own insurer, in lieu of claiming against the damaging party's insurer.

Protection of policyholders is also strengthened in case they suffer a theft of their vehicles.

Key contacts

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