Italy

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Regulation

1 Regulatory agencies

Identify the regulatory agencies responsible for regulating insurance and reinsurance companies.

The Decree Law of 6 July 2012, No. 95, as amended and converted into Law No. 135 of 7 August 2012, dissolved the Italian Private Insurance Supervisory Agency and replaced it with the Insurance Supervisory Agency (IVASS), a department of the Bank of Italy.

From 1 January 2013, IVASS took over all functions carried out by ISVAP including the power of authorisation, direction, inspection, enforcement of precautionary measures and sanctions; as well as the adoption of any regulation necessary for the sound and prudent management of undertakings or for disclosure and fairness of behaviour by supervised entities, including the control of intermediaries, the financial promoters and agents listed in the Register of Insurance and Reinsurance Intermediaries (RUI). In contrast, the Register of Insurance and Reinsurance Loss Adjusters (RUP) and the Italian Information Centre, responsible for providing information to parties entitled to compensation following an accident that has occurred in an EU member state (other than the country of residence of the party) and caused by motor vehicles registered and insured in one of the states of the European Economic Area, have been taken away from the insurance regulator's competences and passed to the Public Insurance Services Agency (CONSAP).

The general manager of the Bank of Italy is also the president of the new Italian supervisory agency and he or she promotes and coordinates the activities of the council, which is responsible for the overall administration of the agency.

Other governing organs of IVASS are the council and the integrated directorate made up of some members of the board of directors of the Bank of Italy and the IVASS advisors. The directorate has competence in integrating and directing the public body activities and strategic decisions.

The new Italian regulator adopted an internal organisational Regulation providing for a full integration into the Bank of Italy structure, although it does preserve some sort of logistical autonomy.

Following its logistical and administrative reforms, the new Italian regulator became somewhat active in reshaping a stiff and clogged insurance market, enhancing the transparency and clarity of information but preserving the negotiating simplicity for the insured, and securing, at the same time, effective sanctions against insurance companies that are non-compliant with the new market rules.

First of all IVASS on 16 July 2013 regulated the insurance services offered via the internet, by way of implementing the provisions, introduced by article 22, paragraph 8, of Development Decree No. 179 of 18 October 2012. This new regulation lays down rules setting out the minimum requirements any (re)insurance company's website shall have in order to legitimately promote insurance business or services offered electronically through insurance portals. The rules entered into effect on 1 September 2013 and (re)insurance companies had 60 days from that date to comply with the new provisions.

A second significant intervention on the market took place on 8 October 2013 when IVASS released regulations No. 1 and 2. The first set of rules provided for the administrative fines and the application of disciplinary sanctions in respect of (re)insurance intermediaries, whereas the second regulation set out the responsibilities of the guarantee committee referred to in Legislative Decree of 7 September 2005, No. 209 (also known as Private Insurance Code) at Title XVIII (sanctions and sanction proceedings) of Chapter VIII (recipients of disciplinary sanctions and procedure).

A third extremely important general intervention on the market is the 'Circular Letter to the Market' of 5 November 2013, concerning the long-term property insurance reintroduced by the Law No. 99/2009. Due to a multitude of protests made by insureds complaining about companies' refusal to grant them an early termination of multi-year insurance contracts, IVASS invited all insurance companies by 31 December 2013 to '…specifically and with adequate graphic evidence…', indicate in the insurance wording whether the insured benefited from a discount because of the long duration of the contract and the fact that due to the discount applied, the policyholder cannot not exercise the right of early withdrawal from the contract for the first five years of contract.

Within its first year of activity IVASS issued some other measures but with less dramatic impact upon the Italian insurance market.

2 Formation and licensing

What are the requirements for formation and licensing of new insurance and reinsurance companies?

According to Italian insurance law, only public companies, cooperatives and mutual insurance companies or equivalent foreign companies can apply to IVASS for an authorisation.

Lloyd's syndicates are the sole exception and they have been specially authorised by way of the Industry Ministry Decree of 2 July 1986 because of their particular historical status and in accordance with the Treaty on the Functioning of the European Union (formerly the EC Treaty).

Insurance and reinsurance companies must be incorporated in Italy, in a member state of the European Union or elsewhere in the world. Different requirements and conditions apply for the formation and licensing of a company depending on where it is incorporated.

In Italy it is forbidden to set up a company whose sole object is the exclusive pursuit of insurance business abroad.

3 Other licences, authorisations and qualifications

What licences, authorisations or qualifications are required for insurance and reinsurance companies to conduct business?

New insurance and reinsurance companies that want to undertake or start a new business in Italy can do so only once they have been

authorised or licensed by IVASS through an order (if the undertaker has its head office within the territory of Italy) or by an acknowledgement of the formal communication made by the company, which has to be backed up by a confirmation of the supervisory authority of the state where the undertaker has its head office.

Both the order or the acknowledgement of the formal communication must be published in the Official Journal and the newly authorised or licensed insurance and reinsurance company may start underwriting insurance or reinsurance only after such publication.

An insurance and reinsurance company that applies to IVASS for an authorisation shall submit a number of documents. The most important are:

- a certified copy of the memorandum and articles of association, showing the insurance classes that the insurer will underwrite and if it also intends to offer reinsurance;
- evidence that the memorandum and articles of association have been deposited with the registrar of companies and that the incorporation has taken place in accordance with the Civil Code provisions or the applicable local laws;
- a scheme of operations and a technical report drawn up according to the IVASS regulations, including the names of the persons charged with administration, management and internal control and corporate governance functions, and the names of the natural or legal persons who directly or indirectly have controlling interests or qualifying holdings in the company with an indication of the amount of each holding;
- proof that the company has a share capital or guarantee fund fully paid-up in cash sufficient to meet the liabilities of the intended business plan, and proof that the company possesses the minimum organisation fund required by ISVAP Order No. 97/1995 or 98/1995, or both, fully paid-up in cash; and
- for foreign companies, proof of the appointment of a general representative, who must be domiciled for the appointment at the address of the branch. If a company is appointed as general representative then the registered office must be within the territory of Italy.

If the application is incomplete or IVASS's requests for further information are not met, the authorisation is usually not granted. It is also refused if no proof is given that the share capital or guarantee fund has been fully paid-up or that the organisation fund is actually and immediately available to the company. Equally the authorisation or licence is denied if any persons charged with the administration, management and internal control functions do not meet the prescribed requirements or if the scheme of operations does not satisfy the financial needs and the technical rules for the correct management of an insurance business.

A major role in the authorisation process is played by the laws, regulations and administrative provisions of any EU or non-EU state to which the company or one or more of its shareholders is subject, and any difficulties in meeting such requirements may delay the application or even entail a final refusal.

An IVASS order refusing the authorisation is notified to the company by means of a registered letter with advice of receipt within six months from the date of the complete application with all documents required by law or with the additional documents and information requested by the authority. If the six months elapse with no response received by the applicant company, then the authorisation shall be considered refused.

4 Officers and directors

What are the minimum qualification requirements for officers and directors of insurance and reinsurance companies?

The directors, officers, statutory auditors and general directors must all meet the prescribed requirements of probity, independence and trustworthiness according to the relevant Civil Code provisions, article 4 of Ministerial Decree No. 186/1997 and Ministerial Decree No. 162/2000, thereby being able to ensure sound and prudent management. The sensitive question of the 'interlocking directorates' has been addresses and deal by article 36 of Decree-Law No. 201 of 6 December 2011, introducing the prohibition for an individual to be member of two or more boards of insurance companies, financial institutions or banks if these are in competition amongst themselves.

5 Capital and surplus requirement

What are the capital and surplus requirements for insurance and reinsurance companies?

In Italy, an insurance company's minimum share capital or guarantee fund fully paid-up in cash must not be less than:

- for companies intending to pursue life insurance: €5 million;
- for companies intending to pursue non-life insurance:
  - €5 million for insurance classes 10, 11, 12, 13, 14 and 15;
  - €2.5 million for insurance classes 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18; and
  - €1.5 million for insurance classes 9 and 17;
- for companies intending to pursue life insurance, personal accident and sickness insurance simultaneously:
  - €5 million for life insurance; and
  - €2.5 million for the pursuit of personal accident and sickness insurance; and
- for cooperative companies the minimum share capital is reduced to half the listed amounts.

EU Directives 2002/12/EC and 2002/13/EC on solvency margin requirements for life and non-life insurance undertakings were implemented in Italy in 2003; ISVAP Regulations Nos. 2322/2004 and 2415/2006 were subsequently issued on the same subject for domestic insurers and branch offices of non-EU insurers.

The aim of the new Regulation, which almost entirely repeats the provisions of the two previous regulations, is to improve policyholder protection and strengthen the measures for preventing insolvency.

The implementation date of the EU Solvency II has been further postponed pushing its introduction back probably to 2015, or even beyond and probably tier-1 capital will also be set at 50 per cent of the solvency capital requirement, making it easier for insurers to comply with the Directive.

6 Reserves

What are the requirements with respect to reserves maintained by insurance and reinsurance companies?

Italian law provides for statutory and free reserves not corresponding to particular underwriting liabilities or to adjustments of asset items. At present, the reserves are considered and regulated by the Private Insurance Code.

Foreign insurance companies operating in Italy under the freedom-of-establishment system shall comply with the provisions on technical reserves that apply to companies with a registered office in Italy.

The adequacy level of the reserves is a source of major concern for the Italian regulator which has effected a certain number of investigations/controls to guarantee the adequate reservation level of the (re)insurers subject to the controls.

7 Product regulation

What are the regulatory requirements with respect to insurance products offered for sale? Are some products regulated by multiple agencies?

The proposing company attaches specimens of their wording to the business plan and technical operation scheme that have been drafted

in accordance with the local laws. Unless there are clear and large-scale violations of the internal public order, IVASS does not exercise any other form of supervision over the wording of insurance provisions.

On the contrary, the IVASS along with the Italian Competition Authority will assess and potentially investigate whether two or more insurers for one or more class of business are creating cartels in breach of the freedom of competition and to the detriment of consumers. In these cases 'supervision' of the insurance companies will turn into a full investigation with administrative sanctions and orders to do or not to do something.

For some other products such as pension funds and some life policies, the united index-linked products can be subject to the control of multiple agencies. This is typical with pension products, which are subject to the supervision and control not only of IVASS but also of the Supervisory Commission for Pension Funds (COVIP).

The COVIP was set up by Legislative Decree No. 124 of 21 April 1993 but actually started to operate with its current configuration, functions and scope after Legislative Decree No. 252 of 5 December 2005, in tandem with the introduction in Italy of social security. This act attributes some specific functions to the COVIP such as authorising and supervising pension funds; approval of their memorandum, articles of association and regulations for complementary or voluntary social security; supervising and inspecting the technical management, financial institution, assets and book-keeping of the pension funds; and reviewing the adequacy of their organisational structure, including the duty to ensure respect for the principles of transparency in the relationships between the pension products, funds and clientele.

8 Change of control

What are the regulatory requirements on a change of control of insurance and reinsurance companies? Are officers and directors of the acquirer subject to background investigations?

All mergers that involve insurance companies operating in Italy are subject to IVASS's prior agreement, but if the merger could end up in a position of market dominance the Italian Antitrust Authority may also have to give its preliminary authorisation to the operation.

The relevant arrangements and the new memorandum and articles of incorporation are subject to IVASS control.

In the event of a merger resulting in the setting up of a new company with its head office in Italy, the new company must be authorised before it can legitimately underwrite insurance, whereas if one of the parties in the merger has its head office in another EU member state, IVASS agreement to the operation can only be given after the relevant home supervisory authority has expressed its positive opinion.

In the process of reviewing the merger's relevant arrangements, the new memorandum and articles of incorporation, IVASS carries out a limited background investigation on the officers and directors of the acquirer or of the new company to ensure that they all respect the Civil Code provisions or meet the applicable legal requirements.

9 Financing of an acquisition

What are the requirements and restrictions regarding financing of the acquisition of an insurance or reinsurance company?

The sole requirement is that the incorporating company or the new company resulting from the merger has the necessary solvency margin, taking into account the merger and the consolidated liabilities.

10 Foreign investment

What are the requirements and restrictions concerning the investment in an insurance or reinsurance company by foreign citizens, companies or governments?

There are no restrictions regarding investments in or the acquisition of an insurance or reinsurance company, subject to the fact that the funding of the operation does not breach any anti-money laundering provision or public policy.

11 Reinsurance agreements

What are the regulatory requirements with respect to reinsurance agreements between insurance and reinsurance companies domiciled in your jurisdiction?

At present, the regulatory requirements with respect to agreements for reinsurance ceded and assumed by insurance and reinsurance companies domiciled in Italy are found in EU Directive 2005/68/CE of 16 November 2005 on reinsurance, which modified EU Directives 73/239/EEC and 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC, although the relevant provision at law has not yet been formally enforced in Italy.

On 10 March 2010, ISVAP published Regulation No. 33 on Reinsurance, which aims to implement the provisions of the Insurance Code as modified by the adoption of the EU Reinsurance Directive (2005/68/EC). The regulatory framework is complex with its 143 articles detailing and providing in particular for:

- the exclusive conduct of reinsurance activities by companies with a registered office in Italy or Italian branches of companies with registered offices abroad (or both);
- the procedures for authorising such activities; and
- licensing for companies that have a registered office in Italy and authorisation to conduct reinsurance activities and to carry on such activities in other EU member states under the applicable regulations on freedom of establishment and freedom to provide services.

This regulation is obligatory for all reinsurers operating within the Italian territory since 1 September 2010.

12 Ceded reinsurance and retention of risk

What requirements and restrictions govern the amount of ceded reinsurance and retention of risk by insurers?

There are no requirements and restrictions governing the amount of ceded reinsurance; this depends on the reinsured company's capacity, its margin of solvency and other contingent business decisions.

Typically, Italian fronting companies retain at least a minimum percentage of risk between 1 per cent and 5 per cent of the overall risk, but it is not uncommon to have policies reinsured 100 per cent.

13 Collateral

What are the collateral requirements for reinsurers in a reinsurance transaction?

In Italy only licensed or accredited reinsurers can provide reinsurance. Therefore, there is no need for collateral to allow a deduction from the liabilities stated on the reinsured company's statutory financial statement. However, collateral might become necessary with a retrocessionaire (reinsurer of a reinsurer) of the reinsurer that is neither licensed nor accredited. In this case the retrocessionaire must provide some form of collateral to allow a deduction from the liabilities carried on the reinsured company's statutory financial statement.

14 Insolvent and financially troubled companies

What laws govern insolvent or financially troubled insurance and reinsurance companies?

Chapter IV (articles 245 to 265) of the Private Insurance Code provides for the administrative compulsory winding-up of insolvent or financially troubled insurance and reinsurance companies.

15 Intermediaries

What are the licensing requirements for intermediaries representing insurance and reinsurance companies?

The RUI was set up by the Private Insurance Code, implementing Directive 2002/92/EC on Insurance Mediation, and is governed by ISVAP regulation No. 5 of 16 October 2006. According to such regulations for the protection of consumers, any insurance and reinsurance intermediation activity has been reserved solely to the persons listed in the Register.

Based on the Private Insurance Code, the Register is divided into five sections, as follows, and no intermediary may be recorded in more than one section:

- section A for insurance agents;
- section B for brokers;
- section C for direct canvassers of insurance undertakings;
- section D for banks, financial intermediaries as per article 107 of the Consolidated Banking Law, stockbroking houses and the banking division of the Italian Post Office; and
- section E for the collaborators with the intermediaries registered under sections A, B and D conducting business outside the premises of such intermediaries.

Recently, just before its dissolution, ISVAP sent the RUI a list of intermediaries having their residence or head office in EU states. This special section contains information on natural persons and companies duly licensed as insurance and reinsurance intermediaries in other EU or EEA states who have also been licensed to pursue insurance mediation in Italy either on freedom of establishment or freedom of services.

It should be mentioned that article 182 of the Insurance Code, assigns to IVASS the duty to ensure that insurance intermediaries comply with the principles of clarity, recognition, transparency and fairness of advertising and information on the conformity of the insurance contract in advertising and in the pre-contract negotiations (the informative note) and in the execution of the insurance contract (policy conditions). In this respect the former Italian Regulator issued Regulation No. 35 of 26 May 2010 providing specifically for the level of information to be provided to the prospective insured and produced a simplified, standardised, information note in order to facilitate the understanding of the products and their comparability.

Insurance claims and coverage

16 Third-party actions

Can a third party bring a direct action against an insurer for coverage?

No third party has any privity to the insurance contract in cases of liability insurance; thus third parties have no right of action.

Only in exceptional and very limited cases, when the policyholder or insured entity remains inactive with the risk of having the right to indemnity time-barred, may a third party subrogate itself, according to article 2900 of the Civil Code, into the policyholder or insured rights and claim the insurance coverage.

Further exception to the mentioned rule are the special provisions of Law of No. 990/69 on Compulsory Motor Accident Insurance and of article 149 of the Private Insurance Code (see Constitutional Court judgment No. 180/2009).

17 Late notice of claim

Can an insurer deny coverage based on late notice of claim without demonstrating prejudice?

Article 1913 of the Civil Code provides that notice must be given within three days of the loss or from the day on which the insured entity received notice of the loss.

A lack of notice or late notice does not permit the insurer to deny liability unless prejudice has been suffered and in this case the denial shall be proportional so as to reflect the prejudice suffered. The onus of proving the prejudice rests with the insurer.

18 Wrongful denial of claim

Is an insurer subject to extra-contractual exposure for wrongful denial of a claim?

No specific sanction is provided for wrongful denial of a claim, but because litigation usually follows, the court might then be entitled to award not only the judiciary interests from the date of the judgment but from the date in which the indemnity was due to the date of the judgment or to the date of final settlement. In some cases of property insurance, the courts considered it legitimate to award the interests provided for by Legislative Decree No. 231 of 9 October 2002, which, at present, stands at the European Central Bank annual interest rate plus 8 per cent (since 1 January 2014 the interest rate has been 8.25 per cent).

19 Defence of claim

What triggers a liability insurer's duty to defend a claim?

Article 1917 of the Civil Code on liability insurance contracts provides that a claim made by a third party by way of registered letter or service of a writ of summons that is notified to the liability insurer triggers the latter's duty to defend the claim.

The duty remains until the liability insurer has exhausted the policy limits, in which case the liability insurer shall be obliged to defend until the end of the proceeding degree. The duty to defend also triggers a sub-limit for defence costs, equal at least to one-quarter of the policy limit. If the judgment or arbitration award exceeds the policy limit, the defence costs are apportioned between the insurer and the insured according to their respective interests.

20 Indemnity policies

For indemnity policies, what triggers the insurer's indemnity obligations?

For all non-liability insurance, the insured event or the loss occurrence triggers the insurer's indemnity obligations if the insured knew of the event or occurrence or the insured should have known of the event or occurrence.

21 Incontestability period

Is there an incontestability period beyond which a life insurer cannot contest coverage based on misrepresentation in the application?

No, an insured entity can always deny liability on misrepresentation in the application or proposal form if it has discovered the non-disclosure after the occurrence of loss.

On the contrary, if the insurer discovers the misrepresentation before any loss occurs then it has three months to rescind the contract; if the contract is not challenged in time for a declaration of nullity then any insurer has no right based upon the misrepresentation or non-disclosure in the application or proposal form.

22 Punitive damages

Are punitive damages insurable?

The Supreme Court of Cassation, in its leading precedent No. 1183 of 19 January 2007 – recently restated in judgment No. 1781 of

8 February 2012 – declared punitive damages alien to the Italian system and therefore contrary to public policy.

Therefore, no insurance can insure punitive or exemplary damages awarded in Italy; however, it is possible to insure in Italy against punitive damages awarded legitimately in other jurisdictions.

23 Excess insurer obligations

What is the obligation of an excess insurer to 'drop down and defend', and pay a claim, if the primary insurer is insolvent or its coverage is otherwise unavailable without full exhaustion of primary limits?

In Italy the excess insurer usually includes a 'drop-down clause' providing for this specific case. It is notable that should this provision not be included, the primary limits will be assimilated into an excess and the excess insurer obligation will guarantee only the proportion of the claim exceeding the primary layer limit.

24 Self-insurance default

What is an insurer's obligation if the policy provides that the insured has a self-insured retention or deductible and is insolvent and unable to pay it?

When the insured has a self-insured retention or deductible and is insolvent and unable to pay it, the insurer's obligation is to indemnify the loss in accordance with the policy terms and conditions for the amount in excess of the self-insured retention or deductible, unless a drop-down clause providing for this specific case has been expressly negotiated.

25 Claim priority

What is the order of priority for payment when there are multiple claims under the same policy?

The existence of multiple claims under the same policy can have different effects depending on whether the claimant is the same person or there is a more than one claimant.

In the first case the guarantee will indemnify the oldest claim first, up to the most recent claim, until the policy limit is exhausted.

Whenever there is a more than one claimant, all of them are covered by the indemnity policy, which is divided in proportion to the level of each respective claim.

26 Allocation of payment

How are payments allocated among multiple policies triggered by the same claim?

In a situation technically defined as indirect co-insurance, each and every insurer will concur on the indemnity in proportion of its policy limit (that is, its share of interest in the risk). In this situation there is no joint and several liability; therefore, the insured should recover the respective indemnity from each of the insurers, but it might also be able to get all the indemnity from one insurer who then will have the right of recourse against the other insurers for their quota shares. If one of the insurers should become insolvent, its quota share shall be divided among all the remaining insurers in proportion to their policy limits.

Reinsurance

27 Reinsurance disputes

Are formal reinsurance disputes common, or do insurers and reinsurers tend to prefer business solutions for their disputes without formal proceedings?

In Italy it was traditional to resolve the eventual disputes arising from reinsurance agreement interpretation, execution or breach by negotiation or with the services of a mediator, but this traditional approach has been abandoned in the past years as arbitration and especially litigation in court are becoming more and more frequent.

28 Common dispute issues

What are the most common issues that arise in reinsurance disputes?

The most commonly disputed issues are the execution of the reinsurance agreement and the method of calculating damages. Good faith issues in 'follow-the-fortune' contracts as well as misrepresentation of the reinsurance risk have been litigated recently along with statute of limitation and scope of the reinsurance contract disputes.

29 Arbitration awards

Do reinsurance arbitration awards typically include the reasoning for the decision?

Yes they do. According to article 823 No. 5 of the Civil Procedure Code, the reason for the decision, even if summarily exposed, is a necessary element of the arbitration award, the omission of which renders the award voidable.

30 Power of arbitrators

What powers do reinsurance arbitrators have over non-parties to the arbitration agreement?

Because arbitration is a private form of justice, arbitrators do not have any powers over non-parties to the arbitration agreement. It should be noted that they have the power, granted to them by article 816-ter of the Civil Procedure Code, to lodge a request with the chairman of the competent court to obtain a subpoena to oblige reluctant witnesses to appear in front of the arbitrators and render evidence.

31 Appeal of arbitration awards

Can parties to reinsurance arbitrations seek to vacate, modify or confirm arbitration awards through the judicial system? What level of deference does the judiciary give to arbitral awards?

Yes, the losing party can appeal a negative arbitration award according to articles 828 and 829 of the Civil Procedure Code. The appeal is divided into two phases; the first, seeking to vacate the arbitration award, is necessary. The second, on the merit of the controversy, is not and it takes place only if the arbitration award has been voided.

Judicial confirmation of the arbitration award is necessary only if the arbitration was informal, in fact, the award in this case has an efficacy equivalent to a contract and the party that does not comply with the arbitration award can be sued for breach of contract and damages.

However, no judicial confirmation of the arbitration award is necessary if the arbitration was formal; according to article 824-bis of the Civil Procedure Code, the award has the same efficacy as a court judgment.

Reinsurance principles and practices

32 Obligation to follow cedent

Does a reinsurer have an obligation to follow its cedent's underwriting fortunes and claims payments or settlements in the absence of an express contractual provision? Where such an obligation exists, what is the scope of the obligation, and what defences are available to a reinsurer?

Under general provisions at law, reinsurer's obligations are determined by the scope and extension of the reinsurance agreement. Therefore, in the absence of an express contractual provision to that effect, a reinsurer has no obligation to follow its cedent's underwriting fortunes and claims payments or settlements.

Update and trends

After the passage of Decree-Law No. 179 of 18 October 2012, the Italian government, enacted some other measures to reform the Italian insurance market and protect consumers, in particular with Law No. 9 of 21 February 2014, wherein the government, introduced a number of amendments to the rules on compulsory motor insurance. This new legislation aims to improve consumer protection and to reduce fraud, with the ultimate aim of lowering motor premiums. This goal has been pursued by introducing a number of measures aimed at reducing motor insurance premiums by way of predetermined discounts if: a black box is installed in the vehicle; the insured undertakes to receive medical and rehabilitative treatments chosen and paid for directly by the insurer; or if the insured permits the insurer to survey the vehicle prior to the issuing of the insurance certificate.

Furthermore this piece of legislation contains a number of provisions aimed to reduce the number of frauds as in the event of an accident, the data collected from the black box is non-rebuttable and conclusive evidence in court. Further, the Law provides the possibility for insurers to include a clause in the policy stopping the transfer of the right to claim damages from the repairer so as to prevent fraudulent agreements between parties, which can artificially increase repair costs even in the case of genuine accidents.

In an attempt to reduce the incidence of fraud, the new legislation has set strict rules on the admissibility of witnesses in court: to be called at the bar a witness shall have to be either identified in the amicable accident declaration signed by the drivers, the claim form or in a public authority report; no witness subsequently identified shall be admitted to render testimony. The same Law states that a judge presiding over any court proceedings shall inform the Public Prosecutor's Office if an individual has been a witness in three different motor liability cases within a period of three years to investigate the respectability of the witness.

Law No. 09/2014 provided a deadline of 21 February 2014 for insurers to implement these new law provisions.

In connection with these novelties, specific disclosure obligations, have been imposed on the insurers, such as the inclusion of disclaimers on insurers' websites, communications to IVASS and the Ministry of Economics and more exhaustive and transparent policy documents. Failure to meet these requirements is punishable by fines.

IVASS, at the end of 2013, launched a public consultation on the adequate due diligence on the part of clients, in accordance with Legislative Decree No. 231/2007 on money laundering, which will affect, among the others: insurance agents and brokers operating in life and nonlife business which will likely be completed within 2014. It is interesting to note that the current proposed draft of the Regulation has many points of contact with the Bank of Italy Measure issued on 3 April 2013, also in relation to anti-money laundering purposes, which became effective on 1 January 2014.

From a non-regulatory perspective it is to be mentioned that Presidential Decree No. 137 of 7 August 2012 partially reformed the Decree-Law No. 138 of 2011 imposing an obligation on professionals to undertake liability insurance. Accordingly 15 August 2013 became the deadline for all professionals (accountants, architects, engineers, notaries public, etc), except for physicians and lawyers, to take out a professional indemnity insurance.

For physicians the duty to take out errors and omissions insurance will become effective on 15 August 2014 whereas for lawyers the deadline has not yet been set, pending a decree from the Department of Justice regarding the implementation of reforms to the legal profession.

The reforms to automobile insurance and the need for insurance for categories traditionally not insured for errors and omissions have served to open interesting avenues of business in Italy for casualty insurers.

In practice this is not the case and it is customary for a reinsurer to follow its cedent's underwriting fortunes despite an express contractual provision to that effect in the reinsurance agreement.

The reinsurer has the right to avoid its obligations under a follow-the-fortunes clause in very limited cases, notably:

- when the indemnified or settled claim falls outside the scope and limits of the underlying insurance policy;
- when the cedent company did not oppose legitimate and valid defences to the insured, wilfully assuming liability for a claim that was excluded by the underlying policy; and
- in the event of breach of the claim control clause or in very limited cases of breaching the claim control or cooperation clause.

33 Good faith

Is a duty of utmost good faith implied in reinsurance agreements? If so, please describe that duty in comparison to the duty of good faith applicable to other commercial agreements.

A duty of utmost good faith is implied in reinsurance agreements as in insurance agreements and it is stricter than the one provided for contracts in general. In particular, non-disclosure during the negotiation phase has substantial consequences for the validity of the insurance and reinsurance and during the execution of the contract the duty of utmost good faith continues to have effect, requiring the parties to meet timely terms and comply with warranties and conditions.

34 Facultative reinsurance and treaty reinsurance

Is there a different set of laws for facultative reinsurance and treaty reinsurance?

No, both are subject to the same set of laws, namely, the Civil Code and the Private Insurance Code.

From the regulatory perspective, the reinsurance companies undertaking facultative and treaty reinsurance are subject to Title VI (articles 62 to 67) of the Private Insurance Code and the ISVAP Regulation No. 33 on 10 March 2010, which integrated the provisions of the Private Insurance Code as modified by the adoption of the EU Reinsurance Directive (2005/68/EC).

The Regulation No. 33 framework set forth in article 143 details and provides for all aspects of the reinsurance practice from the conduct of reinsurance activities by companies with a registered office in Italy or abroad, to the procedures for authorising such activities and the financial securities that have to be demonstrated and maintained during the conduct of reinsurance activities in Italy or other EU member states, under both freedom of establishment or freedom to provide services.

35 Third-party action

Can a policyholder or non-signatory to a reinsurance agreement bring a direct action against a reinsurer for coverage?

No policyholder or non-signatory to a reinsurance agreement has any privity to the reinsurance contract, and hence has no consequential right of action.

The sole exception to this general rule at law is the existence of a 'cut-through clause' in the reinsurance agreement providing a party not in privity with the reinsurer to have rights against the reinsurer under the reinsurance agreement.

36 Insolvent insurer

What is the obligation of a reinsurer to pay a policyholder's claim where the insurer is insolvent and cannot pay?

A reinsurer has no duty to pay a policyholder's claim directly unless this is expressly requested by the liquidator or the trustee of the insolvent company or a 'cut-through' or 'pass-through' clause exists in the reinsurance agreement. Under Italian law the contractual obligation arising from a reinsurance remains between the reinsurer and

the cedent company, even if the later becomes insolvent and subject to the compulsory winding-up procedure.

37 Notice and information

What type of notice and information must a cedent typically provide its reinsurer with respect to an underlying claim? If the cedent fails to provide timely or sufficient notice, what remedies are available to a reinsurer and how does the language of a reinsurance contract affect the availability of such remedies?

The type of notice and information a cedent has to provide with respect to an underlying claim depends on whether the reinsurance is a treaty or a facultative reinsurance.

In treaty reinsurance, information is typically limited to the date of loss and the consequent liabilities and attached administrative and adjustment costs all summarised in the bordereaux.

In facultative reinsurance, information depends on whether there is either a claim control clause or a cooperation clause or not, and the duty to notify and provide information or data depends on the clause extension.

Within this perspective the language of a reinsurance contract not only determines the extent of the cedent's obligations but also affects the availability of remedies to the reinsurer.

In general, delaying relevant information might affect the right to recover under the reinsurance agreement, but the delay should constitute a relevant breach of the contract.

38 Allocation of underlying claim payments or settlements

Where an underlying loss or claim triggers multiple reinsured policies, how does the reinsured allocate its claims or settlement payments among those policies? Do the reinsured's allocations to the underlying policies have to be mirrored in its allocations to the applicable reinsurance agreements?

According to article 1910 of the Civil Code, where there is an underlying loss or claim that triggers multiple policies, with the sole condition that each of the triggered policies is insuring the very same interest, each insurance contributes to the indemnification in proportion to the respective policy limit. In this case the cedent company cannot allocate the claim or the majority of the loss to just one policy, sparing all the others; all triggered insurances have to contribute in proportion. In this situation each triggered policy will then activate the facultative applicable reinsurance.

In contrast, in treaty reinsurance it is common to have a 'batch clause' providing that only one excess (or retention) and only one limit applies per loss event, regardless of the number of claims resulting from that underlying loss or claim.

39 Review

What type of review does the governing law afford reinsurers with respect to a cedent's claims handling, and settlement and allocation decisions?

Italian law does not provide for a general right of review with respect to a cedent's claims handling, and settlement and allocation decisions; this is why more often than not Italian reinsurance agreements have an express contractual provision providing for a right of review and audit.

40 Reimbursing of commutation payments

What type of obligation does a reinsurer have to reimburse a cedent for commutation payments? Must a reinsurer indemnify its cedent for 'incurred but not reported' claims?

Commutations are freely determined and therefore the liabilities related to these are voluntary obligations that fall outside the scope of reinsurance. Thus, the obligation of a reinsurer to reimburse a cedent for commutation payments is limited to the reinsurer's willingness to support the cedent, and there are no strict obligations by law.

However when the commutation is made between the reinsurer and the cedent, often as a negotiated way to prevent a dispute; the commutation's terms and conditions are obligatory for the reinsurer and their breaches are a source of damages.

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