THE INSURANCE AND REINSURANCE LAW REVIEW

FIFTH EDITION

Editor
Peter Rogan

THE LAWREVIEWS

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The Insurance and Reinsurance Law Review
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This article was first published in The Insurance and Reinsurance Law Review - Edition 5

(published in April 2017 – editor Peter Rogan)

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-910813-53-9

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ANJIE LAW FIRM

BIRD & BIRD ADVOKATPARTNERSELSKAB

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PREFACE

It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant; it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance play an important role in the world economy. It is an increasingly global industry, with the emerging markets of Brazil, Russia, India and China developing apace.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all of the contributors for their work in compiling this volume.

Looking back on the past year, market estimates suggest that total economic losses from natural and man-made disasters will be at least US$158 billion, significantly higher than the US$94 billion losses in 2015. Insured losses from 2016 will also be higher, at around US$49 billion compared with US$37 billion in the previous year. Earthquakes (in Taiwan, Japan, Ecuador, Italy and New Zealand), hail and thunderstorms and Hurricane Matthew were responsible for the largest insurance losses, with the latter causing devastation across the east Caribbean and south-eastern US. The US, Europe and Asia all experienced heavy flooding, while wildfires sparked the biggest ever loss for Canada's insurance industry. Tragically, approximately 10,000 people lost their lives in disaster events in 2016.

Events such as these test not only insurers and reinsurers but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for the courts and arbitral tribunals to consider. I hope that you find this fifth edition of *The Insurance and Reinsurance Law Review* of use in seeking to understand them and I would like once again to thank all the contributors.

Peter Rogan
Ince & Co
London
April 2017

Chapter 18

ITALY

Alessandro P Giorgetti[1]

I INTRODUCTION

Italy has the world's eighth-largest economy, made up of small and medium-sized companies producing high-technology and high-quality products. The economy has suffered badly because of the financial crisis, the effects of which have been felt in Italy in recent years, but it now shows the first indications of improvement.

According to the European Commission's 2016 winter forecast, all Member States have grown in 2016 (1.8 per cent for the euro area), with a further steady growth predicted for 2017 and 2018 (1.7 per cent and 1.8 per cent). Notwithstanding such a positive projection, the lastest assessments released by the Italian National Statistical Institute[2] for the fourth quarter of the past year pointed out the fact that in 2016, Italian GDP increased by a mere 0.8 per cent in real terms, and is estimated to increase by 0.9 per cent in 2017 thanks to the contribution of improved domestic demand.

This particular situation is reflected by the most recent Fitch Ratings report, according to which the '…outlooks for the Italian insurance market are stable, reflecting expectations that insurers' profitability and capitalisation will be resilient despite strong pricing competition in motor insurance.'[3] Further, the insurance market should benefit from both the Ministry of Justice Decree No. 22 of September 2016[4] setting the minimum requirements for mandatory professional indemnity insurance for lawyers, as well as from the new law on provisions concerning the safety of care and professional liability of healthcare professionals, which on 28 February 2017 revolutionised the entire medical malpractice legal system.

In contrast with the non-life insurance market, Italian life insurers all reported a lower operating profitability in 2016 with deterioration of premium income drop and investment returns both in 2015 and 2016, driven by the decline of interest rates and stock-market volatility. This trend will continue throughout 2017 because interest rates are at the lowest point they have been in decades.

It is evident that, despite the difficulties in relaunching the internal economy, Italy is still a fertile ground for insurance underwriters, and provides interesting opportunities for prudent insurers and reinsurers especially in the newly reformed casualty insurance market.

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1 Alessandro P Giorgetti is the managing partner at Studio Legale Giorgetti.

2 The National Institute of Statistic's (ISTAT) Economic Outlook was published on 21 November 2016. ISTAT is an active member of the European Statistical System, coordinated by Eurostat.

3 Published on 6 December 2016 by Fitch Ratings.

4 Published in the Official Gazette of the Italian Republic on 11 October 2016.

II REGULATION

i The insurance regulator

Decree-Law No. 95 of 6 July 2012[5] dissolved the Italian Private Insurance Regulatory Authority (ISVAP) and replaced it with the Institute of Insurance Supervision (IVASS),[6] now a department of the Bank of Italy. Despite its total integration into the Bank of Italy structure, IVASS maintained a degree of logistical and decision-making autonomy.

On 1 January 2013, IVASS took over all functions previously carried out by ISVAP, including the supervision of intermediaries and the distribution of insurance products for better coordination between the control and regulation of the financial promoters. The register of insurance experts and the Italian Information Centre[7] have been taken away from the insurance regulator's competence and passed on to the Concessionaire for Public Insurance Services.[8]

In accordance with the law, the Bank of Italy's General Manager *pro tempore* is also the President of IVASS.

Other governing organs of the new supervisory body are the Council and the integrated Directorate made up of directors of the Bank of Italy and IVASS advisers. The President promotes and coordinates the activities of the Council, which is responsible for the overall administration of the institute. The Directorate is competent to direct public body activities and adopt strategic decisions. IVASS should establish more focused supervisory controls upon life and non-life insurance companies to bring down insurance costs and, consequently, premiums.

Having implemented a new regulation concerning its organisational structure, IVASS became quite active. In 2013, IVASS issued the very first set of rules for the management of insurance services offered online. These norms implemented the provisions introduced by Article 22, Paragraph 8 of Development Decree No. 179 of 18 October 2012. This regulation lays down rules and minimal requirements to promote more effective management of insurance e-commerce or services offered electronically through insurance portals or the website of insurance and reinsurance companies.

Then, in October 2013 IVASS released Regulations No. 1 and 2 concerning, respectively, the imposition of administrative fines and the application of disciplinary sanctions in respect of insurance and reinsurance intermediaries and the rules of functioning for the Guarantee Committee supervising the sanction proceedings. The regulatory activity of IVASS continued on 2 November with Regulation No. 3, which introduced the obligation for intermediaries

5 Decree-Law No. 95 (the Spending Review Decree) has been subsequently amended and converted into Law No. 135 of 7 August 2012. The government, which originally also considered dissolving the Commission for the Supervision of Pension Funds (COVIP), the regulator for pension funds, at the very last minute introduced an amendment to the Spending Review Decree and chose to keep COVIP, as its dissolution would not have reduced government expenditure.

6 IVASS address: 21 Via del Quirinale, Rome.

7 The Centre is 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) and was caused by circulation of motor vehicles registered and insured in one of the Member States of the European Economic Area. To obtain the necessary information for users, the Italian Information Centre – in accordance with ISVAP Regulation No. 3 of 26 May 2006 – utilises data collected in the insurance coverage database maintained by the Integrated Service for Control of Automobiles run by ANIA.

8 www.consap.it.

to adopt a certified electronic mail address along with the invitation (thus a measure 'not legally binding') to use an advanced electronic signature in all contracts. Furthermore, this Regulation introduced an obligation for intermediaries to facilitate electronic payment, and specified that intermediaries should make the electronic documentation and information package available to customers who have chosen to receive them. In respect of insurers, this regulation established the prohibition of requiring documentation that is already in their possession having been obtained on the conclusion of a previous contract. This ban does not apply if the documentation in question is no longer valid. IVASS on 17 December 2013 by Regulation No. 4 of the Council regulation on receivership of insurance companies.

In 2014, with Regulation No. 5 of 21 July, IVASS intervened to regulate the obligations of adequate due diligence and anti-money laundering registrations on the part of insurance companies and insurance intermediaries. Finally, on 2 December IVASS published Regulations Nos. 6 and 7, on occupational requirements of insurance and reinsurance intermediaries respectively, with the goal of promoting insurance intermediaries' professional requirements, particularly taking into account the increasing spread of insurance relations to be handled electronically and concerning the internal identification of the organisational units responsible for administrative proceedings.

During its first years of existence and until 2015, IVASS pursued the goal of bettering the transparency and clarity of information, and negotiating simplicity for the insured, while at the same time securing effective sanctions in the case of insurance companies' non-compliance with the new market rules.

After 1 January 2016, the date on which Solvency II came into effect, IVASS concentrated its regulatory activity more on the insurers' profitability and capitalisation. Consequently, IVASS first issued Regulations Nos. 25, 26, 27 and 28 of 26 July 2016 and Regulation No. 29 of 6 September 2016 followed by a letter to the market on 10 August 2016 better illustrating how to determine the capital requirement using the standard formula, as well as the look-through approach dictated by Regulation No. 28/2016.

ii Position of non-admitted insurers

In Italy, only admitted insurers are entitled to provide insurance. More precisely, under the Italian legislation, the admitted insurers should meet the existing requirements for authorisation, and have the minimal share capital or guarantee fund fully paid up in cash.

iii Requirements for authorisation

In general, 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 because of their particular historical status and in accordance with the fundamental freedoms of the Treaty on the Functioning of the European Union.

New insurance and reinsurance companies that wish to undertake or start a new business in Italy can do so only after being authorised or licensed by IVASS through an order (if the undertaking has its head office in Italy), or by an acknowledgement of the formal communication made by the company along with confirmation of the supervisory authority of the state where the company has its registered office.

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

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

a a certified copy of the memorandum and articles of association showing the insurance classes that the insurer will underwrite, and stating whether it also intends to offer reinsurance. In Italy, it is forbidden to set up a company whose sole object is the exclusive pursuit of insurance business abroad;

b 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;

c a scheme of operations and a technical report drawn up pursuant to the ISVAP regulations, including the names of the persons charged with administration, management and internal control and corporate governance functions as well as 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;

d 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 Orders Nos. 97/1995 or 98/1995, or both, fully paid up in cash; and

e for foreign companies, proof of the appointment of a general representative who must be domiciled 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, authorisation is usually denied. 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.[9]

Equally, the authorisation or licence is denied if any of persons charged with the administration, management and internal control functions do not meet the prescribed requirements,[10] or if the scheme of operations does not satisfy the financial needs and the technical rules for the correct management of an insurance business.[11]

9 The implementation date of the EU Solvency II Directive has been delayed, pushing its introduction back probably to 2015, or even beyond, and, at the same time, there has been some expectation that Tier I capital would be set at 50 per cent of the solvency capital requirement, making it easier and less onerous for insurers to comply with the Directive.

10 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, to ensure sound and prudent management of the insurance or reinsurance company. Article 36 of Decree-Law No. 201 of 6 December 2011 addressed the issue of 'interlocking directorates', introducing the prohibition for an individual to be member of two or more boards of insurance companies, financial institutions or banks.

11 Italian law provides for statutory and free reserves not corresponding to particular underwriting liabilities or to adjustments of asset items. Currently, 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.

A major role in the authorisation process is played by the laws, regulations and administrative provisions of any 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 six months elapse with no response received by the applicant company, then the authorisation shall be considered refused.

iv Other notable regulated aspects of the industry

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

a for companies intending to pursue life assurance: €5 million;

b 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;

c for companies intending to pursue life assurance, personal accident and sickness insurance simultaneously:
- €5 million for life assurance; and
- €2.5 million for the pursuit of personal accident and sickness insurance; and

d for cooperative companies, the minimum share capital is reduced to half the listed amounts.

On 1 January 2016, Solvency II came into effect and took over from Directives 2002/12/EC and 2002/13/EC on solvency margin requirements for life and non-life insurance. Solvency II is based on three pillars:

a the calculation of minimum financial requirements to cover risks, which outlines the formula that European insurance companies must use to calculate their capital reserves to cover risks;

b governance and risk management, which analyses the requirement that insurance companies must provide for adequate risk management and the potential for good governance; and

c transparency rules, for proper information disclosure to the market and to the relevant authorities, for the purpose of proper protection of consumers and insurers.

Mergers and transfers of insurance portfolios that involve insurance companies operating in Italy are subject to IVASS's prior agreement, but if the merger may result in the company having a position of market dominance, the Italian Antitrust Authority might also have to give its preliminary authorisation. The sole financial 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.

In the case of a merger, the entire operation, the relevant arrangements, and the new memorandum and articles of incorporation must be presented to and reviewed by the insurance regulator, which can make observations to ensure conformity with the law and to guarantee the insured.

There are no restrictions regarding investments in or the acquisition of an insurance or reinsurance company, provided that the funding of the operation does not breach any anti-money laundering provision or public policy. 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's agreement to the operation can only be given after the relevant home supervisory authority has approved the merger.

While reviewing the merger, and the new memorandum and articles of incorporation, IVASS performs a limited background investigation of the officers and directors of the acquirer or of the new company to ensure that they all respect the Civil Code provisions and meet the applicable legal requirements.

Should an insurance or reinsurance company enter into serious financial difficulties, Articles 245 to 265 of the Private Insurance Code provide for the administrative compulsory winding up of insolvent or financially troubled insurance and reinsurance companies.

With respect to reinsurance companies domiciled in Italy, the current regulatory requirements with respect to reinsurance ceded shall be found in Directive 2005/68/EC of 16 November 2005 on reinsurance, which amended Directives 73/239/EEC and 92/49/EEC and 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 implemented 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 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 companies that have a registered office in Italy and authorisation exclusively to conduct reinsurance activities to carry on such activities in other EU Member States under the applicable regulations on freedom of establishment and freedom to provide services.

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. All the same, collateral might become necessary with a retrocessionaire 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 stated on the Italian reinsured company's statutory financial statement.

v The distribution of products

The distribution of insurance products in Italy is usually done through intermediaries, but in rare and limited cases insurance can be acquired directly from the insurer at the registered office agency.

During the distribution, a number of rules to protect consumers and unsophisticated customers must be respected. In particular, Article 182 of the Insurance Code obliges IVASS to ensure compliance with the principles of clarity, recognition, transparency and fairness of

advertising and information on the conformity of the insurance contract with the advertising and in the pre-contract negotiations (with the information notice) and the execution of the insurance contract (policy conditions).[12]

In this respect, the former Italian regulator issued ISVAP Regulation No. 35 of 26 May 2010, providing specifically for the level of information to be provided to the prospective insured, and in information notices to facilitate the understanding of the products and their comparability. Along the same line, on 26 August 2015, IVASS and the Bank of Italy published a joint letter addressed to the insurance market (including banks and financial intermediaries) calling on them to adopt new measures so that customers purchasing insurance policies paired with mortgages and other loans (payment protection insurance) could be better informed and protected.

For some life products such as pension funds and some life policies, the index-linked products are subject to the supervision and control not only of IVASS but also of COVIP.

vi Intermediaries

Among the principal duties of the Italian regulator is the supervision of insurance intermediaries, which to operate legitimately must be listed on the Sole Register of Insurance and Reinsurance Intermediaries (RUI).

The RUI was set up by the Private Insurance Code, implementing Directive 2002/92/EC on insurance mediation, and is mainly governed by ISVAP Regulation No. 5 of 16 October 2006. According to the regulations, any insurance and reinsurance intermediation activity is reserved solely to persons who have passed the ISVAP/IVASS national exam and consequently have been listed on the RUI.

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

a section A for insurance agents;

b section B for brokers;

c section C for direct canvassers of insurance undertakings;

d section D for banks, financial intermediaries as per Article 107 of the Consolidated Banking Law, stock-broking houses and the Italian Post Office's banking division (Bancoposta); and

e section E for the collaborators of the intermediaries registered under sections A, B and D conducting business outside the premises of such intermediaries.

ISVAP attached to the RUI a list of intermediaries having their residence or head office in EU Member States. This special section contains information on natural persons and companies

12 ISVAP, just before its dissolution, issued a number of regulations to protect the consumer, and in particular it is worth mentioning the following:

a ISVAP Regulation No. 40 of 3 May 2012 on mortgages, which defines the minimum requirements for life insurance contracts related to a mortgage or consumer credit as per Article 28, Paragraph 1 of Decree-Law No. 1 of 24 January 2012, amended by Law No. 27 of 24 March 2012; and

b Regulation No. 41 of 15 May 2012, implementing provisions for the organisation and creation of procedures and internal controls aimed at preventing the use of insurance companies and insurance intermediaries for the purpose of money laundering and financing of terrorism, in accordance with Article 7, Paragraph 2 of Legislative Decree No. 231 of 21 November 2007.

licensed as insurance and reinsurance intermediaries in other EU or EEA Member States who have also been authorised by the regulator to pursue insurance mediation in Italy based on the freedom of establishment or freedom of services.

vii Compulsory insurance

Currently, a number of special laws impose compulsory insurance to be undertaken with private insurance companies.[13]

At other times, the private insured must instead take out an insurance contract with a public insurer such as, for example, the National Institute for the Insurance of Accidents at Work,[14] or take out a mutual insurance contract with a private insurer through a public contracting entity.[15]

Finally, an obligation to take out an insurance contract can be found in some National Collective Contracts of Work (CCNL) stipulated between the trade unions, representing the employees, and the Industrial Association, representing all their members who will adopt the negotiated CCNL for the specific industry.[16]

The most recent legislation that introduced compulsory insurance is Decree-Law No. 138 of 13 August 2011, converted into Law No. 148 of 14 September 2011. This provision provided for all professionals to take out a professional indemnity insurance contract by 13 August 2012 with the exception of physicians and lawyers.

For physicians, the duty to undertake errors and omissions (E&O) insurance became effective on 15 August 2014, whereas for lawyers such obligation became effective after the

13 Motor insurance was introduced in Italy with Law No. 990 of 29 April 1969 in OJ 3 January 1970 No. 2. It has subsequently been modified, and the most recent amendment was introduced by Decree-Law No. 179 of 18 October 2012, which provided that compulsory motor insurance contract for motor vehicles and boats cannot be tacitly renewed and cannot be underwritten for a period longer than a year; any eventual policy clauses in contrast with this provision are deemed to be null and void.

14 Domestic accidents compulsory insurance was introduced in Italy with Law No. 493 of 3 December 1999, which imposes from 31 January 2013 the obligation to take out a contract of compulsory insurance with the National Institute for the Insurance of Accidents at Work for persons between 18 and 65 years who work full-time in the family house. The policy costs around €1 per month.

15 Typical examples of this are:

a the Law on Hunting No. 157 of 11 February 1992, according to which hunters must obtain insurance coverage for civil liability arising from the use of firearms for hunting, with a €1 billion limit per claim, with a sub-limit of €750 million per injured person, and €250 million for damage to animals and things; or for personal accidents related to hunting, with a limit of at least €100 million for death or permanent disability. Such insurance is provided through the National Federation of the Hunters; and

b the obligation to pay a small premium to the Italian Gas Committee for the policy it annually draws up against the risks arising from the use or abuse of the gas distributed via networks or pipelines by the different national public utilities companies regardless of whether they are publicly or privately owned.

16 For example, the national collective labour agreement for managers and executives, according to Article 18(7)(a), (b) and (c), obliges the enterprises party to such collective contract to take out, for the benefit of their employees, executive insurance against professional and extra-professional accidents.

decree that the Department of Justice issued reforming the legal profession[17]and a subsequent Department of Justice decree determined the minimum requirements for mandatory professional indemnity insurance for lawyers.[18]

viii Taxation

The taxation of premiums and life policy revenues in Italy is a complex matter that cannot be discussed in detail in this chapter. In brief, premiums are not subject to value added tax but to an insurance tax that varies for each class of insurance in accordance with the fixed percentage set forth by Law No. 1216 of 29 October 1961.[19]

Similar to any capital gain, financial yields resulting from life insurance contracts and capitalisation are subject to the substitutive tax provided for in Article 26 *ter* of Decree No. 600 of 29 September 1973. The tax currently due is up to 20 per cent of the capital gain, but is reduced to 12.5 per cent for the portion of income that relates to the period between the date of subscription or purchase and 31 December 2011.

The Italian State Agency, with Ministerial Circular No. 41/2012, clarified that, according to Article 83 of Decree No. 68 of 29 March 2012, financial yields resulting from life insurance contracts and capitalisation of foreign insurance policies are also subject to the substitutive tax provided for in Article 26 *ter* of Presidential Decree No. 600 of 29 September 1973, even if paid by foreign insurers to persons residing in Italy.

ix Regulation of individuals employed by insurers

In Italy, all employees are subject to a collective contract negotiated at national level between the most representative trade unions and the national association of the employers (in the case of the insurance market, the National Association of Insurance Companies (ANIA)). The national collective contract can then be integrated using a specific collective contract negotiated between the local trade unions and the representative of a specific insurance company or group of insurance agents.

Although the national collective contract for insurance employees expired at the end of June 2013, the binding effects of the contract were extended while the parties were negotiating.

On 22 February 2017, ANIA and the trade unions reached an agreement on the new contract terms and economic conditions for management employees.

The national collective labour contract for the employees of insurance agencies was concluded on 8 July 2014 for the agents of the Generali/Ina Group, and on 20 November 2014 for insurance agents in free management.[20]

17 In the Official Gazette No. 116 of 19 May 2016, the Regulation governing the training period for access to the legal profession in accordance with Article 41, Paragraph 13 of the Law of 31 December 2012, No. 247 (Decree No. 70 of 17 March 2016) was published.

18 The Department of Justice Decree 22 of September 2016, published in the Official Gazette on 11 October 2016.

19 Percentages can vary enormously, from a minimum of 0.05 per cent for insurance stipulated on ships registered in Italy up to a maximum of 21.25 per cent for any insurance other than fire, theft, liability, machinery breakdown, personal accident, cargo and marine insurance (i.e., credit or bond insurance is subject to this rate).

20 CCNL per i dipendenti delle agenzie di assicurazione in gestione libera (20 November 2014).

Furthermore, the national collective labour contract is integrated into all applicable labour laws. Of particular importance are Legislative Decree No. 626/1994 dealing with the safety and health of workers at work, the Jobs Act[21] and the two delegated implementing Decrees approved by Parliament on 20 February 2015 (respectively, redundancies and contracts, and social safety nets). The Jobs Act and the two Decrees came into force on 1 March 2015.

III INSURANCE AND REINSURANCE LAW

i Sources of law

In Italy, the source of insurance and reinsurance law is statutory. Case law precedents are not binding, and the very same issue could receive different treatment from one court to the next.

The principal written statutes to be considered are:

a the Private Insurance Code;[22]

b the Civil Code;[23]

c the special legislation dealing with compulsory insurance;[24] and

d regulations issued until 21 December 2012 by ISVAP and from that date onward by IVASS.

ii Making the contract

The rules providing for insurance contracts and their drafting are all contained in the Civil Code.

The contract is not concluded until the two parties agree on the extension of the risk, and on the premium to be paid for the shifting of the risk from the insured onto the insurer.

The conclusion of the contract is a complex succession of events where the prospective insured will propose a risk, usually by completing a proposal form prepared by the insurer, who will evaluate the risk and quote the premium. In completing the proposal, the prospective insured must answer truthfully and completely to avoid being sanctioned for wilful non-disclosure according to Article 1892 of the Civil Code or negligent non-disclosure according to Article 1893 of the Civil Code.[25] Case law indicates that all information that is

21 Legislative Decree No. 34 of 20 March 2014, converted with amendments into Law No. 78 of 16 May 2014: 'Urgent measures to promote employment and to raise the simplification of formalities for enterprises'.

22 Legislative Decree No. 209 of 7 September 2005, as amended by Legislative Decree No. 130 of 30 July 2012.

23 Royal Decree No. 262 of 16 March 1942 in Official Gazette No. 79 of 4 April 1942.

24 See, *inter alia*, the Motor Insurance Act No. 990 of 29 April 1969 or the Law on Hunting No. 157 of 11 February 1992.

25 Wilful non-disclosure, which can also be committed by omitting to state or represent, according to Article 1892 of the Civil Code, is sanctioned with the loss of the right to recover any indemnity under the policy, whereas in the case of negligent non-disclosure, according to Article 1893 of the Civil Code, the right to recover is reduced in proportion to the premium that would have been charged if the true situation had been known and the premium that was actually charged. See Cass Civil No. 3165 of 4 March 2006; Cass Civil No. 7245 of 29 March 2006; Cass Civil No. 16769 of 21 July 2006; and Cass Civil No. 5849 of 13 March 2007.

requested by the insurer in the proposal form must be deemed essential, and a non-disclosure or false statement in response to a query automatically qualifies the misrepresentation as wilful.[26]

When the risk is of an industrial or technical nature, a survey is sometimes undertaken. This provides better understanding of the risk, but might pose substantial problems should the insured have made a misrepresentation. In fact, case law indicates that any onsite visit and survey might override the false or omitted declarations in the proposal form, as the insurer or its agent (the surveyor) should have checked and realised the differences between the proposed risk and the real risk.

Finally, it is important to mention the IVASS circular letter to the market of 5 November 2013 concerning the long-term property insurance reintroduced by Law No. 99/2009. In this respect, IVASS, as a result of numerous protests received by insurers complaining about companies' refusal to grant them an early termination of insurance contracts of multi-annual duration, invited all insurance companies, by 31 December 2013, to 'specifically and with adequate graphic evidence', indicate in the policy whether the insured benefited from a discount because of its long duration and the fact that, owing to the discount applied, the policyholder cannot exercise the right of early withdrawal from the contract for the first five years of the contract.

iii Interpreting the contract

While the insurance contract may be concluded orally, according to Article 1888 of the Civil Code, there must be written proof of its existence.

Usually this prevents potential controversies on the object of the insurance or the scope and extension of the contract, and clearly excludes from the insurance any contractual terms that are not expressly incorporated into the policy wording. Notwithstanding this, there are some cases where the policies are badly drafted and the wording can pose problems. Should a problem of interpretation arise, the contract shall be interpreted using the general interpretation rules that are provided in the Civil Code for all contracts,[27] which mainly relate to the will of the parties and good faith.

Furthermore, depending on whether the insurance contract has been prepared by the insurer as *pro forma* contracts or whether the policy wording has been duly and totally negotiated between the parties, there will be some substantial differences in the interpretation and enforcement of the contract.

In the first case, whenever the insurer prepares policy wordings or forms designed to uniformly regulate a number of contractual relationships principally with non-professionals, the basic rule is to interpret *contra proferentem* (i.e., the wording shall be interpreted against the party who prepared the policy wording). Furthermore, any added clause or cancellation that modifies the original policy text shall prevail in accordance with Article 1342 of the Civil Code.

In addition, there are terms that are considered legal but onerous for the party against which these are drafted. Such clauses are not binding on a party that has not accepted them and signed twice in accordance with Article 1341 of the Civil Code. This is usually to regulate the contractual terms stipulating a specific and particularly short period to comply with the

26 See Cass Civil No. 3165 of 4 March 2003; Cass Civil No. 4862 of 12 May 1999; and Cass Civil No. 10086 of 12 October 1998.

27 See Articles 1362 to 1371 of the Civil Code.

contract provision, or that modify the court jurisdiction as per the general rules of law or create foreclosure terms. Notwithstanding a listing of clauses, this procedure also has to be followed in cases where the insurance has been underwritten on a claims-made basis, because although this is a legitimate contract, it deviates from the loss-occurrence basis chosen by the Italian legislature as the typical way in which insurance shall operate.[28]

Under Italian law, there are no warranties, but rather conditions precedent or essential conditions. These must be marked and appropriately addressed in the policy so that the insured's attention is directed to the condition.

In setting the terms of an insurance contract, the parties, according to Article 1322 of the Civil Code, are free to negotiate the content of the insurance provided that a risk does exist, and that the terms do not breach internal public policy[29] or have an illicit scope.[30]

Usually there are general conditions providing for all contracts falling within a specific class of business (i.e., professional indemnity), particular conditions for a specific group of insured (i.e., engineer's professional indemnity), and special conditions that should provide only for that particular contract and that are quite often condensed in a summary at the beginning of the policy document.

iv Claims

When an insured-against event occurs, the insured shall notify the loss to all insurers and start salvage to minimise the extent of the loss.

Article 1913 of the Civil Code provides that, unless the insured entity has already had notice of the occurrence of the loss, notice must be given within three days from the loss event. 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 to reflect the prejudice suffered.

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. Should the insured not make a timely notification or not enforce its right to the indemnity within two years from the loss event, any right under the policy will be covered by the statute of limitation.

28 The Joint Sections of the Court of Cassation with judgment No. 9140 of 6 May 2016 superseded the rigid approach set forth by its prior judgement No. 5264 of 23 December 2005, according to which claims-made clauses were deemed to be unfair contract terms and therefore invalid, and affirmed that the validity of claims-made clauses shall have to be assessed on a case-by-case basis, keeping in mind the specificity of the insurance contract scope and the factual element of the case. However, the Supreme Court did not provided clear directions about the criteria that should support a validity test. Consequently, until this aspect will not become clarified by future case law, it would be prudent to have the insured accepting claims-made clauses in writing (by double signature) pursuant to Articles 1341 and 1342 of the Civil Code.

29 In the past, the nullity of kidnap and ransom insurance was grounded on ISVAP Regulation No. 246 of 22 May 2995 on the grounds that this type of insurance was inviting criminals to kidnapping insured persons with the aim of obtaining the indemnity payment. Today, the prohibition is provided by Article 12 of the Private Insurance Code.

30 It is forbidden to insure any crime. For example, a clause insuring a cargo of drugs against the peril of fire or against loss following a police seizure would be null.

A slightly different approach is adopted by Article 1917 of the Civil Code on liability insurance contracts underwritten on a claims-made basis, where the element triggering the insurance guarantee is a third-party claim against the insured made by way of registered letter or service of a writ of summons.

Once notified of such claim, the liability insurer can decide to defend the third-party claim on behalf of the insured. 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. The duty to defend also triggers a sub-limit for defence costs equal 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.

Third parties are not usually privy to the insurance contract, and have no right to make a claim and enforce it in a court of justice. In exceptional and very limited cases, when the policyholder or insured entity remains inactive where there is a risk that the right to indemnity will be time-barred, a third party may through subrogation[31] assume the rights of the insured and claim the insurance coverage. According to Italian law, not even the policyholder can act unless expressly delegated to do so in the policy or by a proxy of the insured.

Further exceptions to the aforementioned rule are found in the special provisions of Law No. 990/69 on compulsory motor accident insurance and Article 149 of the Private Insurance Code (see Constitutional Court judgment No. 180/2009).

No specific sanction is provided for wrongful denial of a claim, but because litigation usually follows, the court might award interests for late payment (provided for by Legislative Decree No. 231 of 9 October 2002) either from the date on which the indemnity was due to the date of final settlement or (in accordance with the newly modified Article 1284 of the Civil Code)[32] from the date of the lawsuit service to the date of final settlement.[33]

Quite often in Italian policy wording there is a provision for the loss adjustment of the claim whereby the parties or their experts should negotiate the amount of the loss and the level of the indemnity. More often than not these clauses not only focus on the pure quantification of the loss, but also authorise experts to resolve any controversy about the warranties or the increment of the risk, or even to determine if a misrepresentation of the risk took place. Whenever this occurs, case law indicates that the loss adjustment process has turned into a real arbitration[34] with all the connected problems of challenging and voiding the outcome of the 'informal arbitration award'.

IV DISPUTE RESOLUTION

i Jurisdiction, choice of law and arbitration clauses

The parties are free to choose the jurisdiction and the applicable substantive law, and to include an arbitration clause to derogate the ordinary court jurisdiction unless such clause would be in conflict with the law.

31 In accordance with the provisions of Article 2900 of the Civil Code.

32 See Article 17, Paragraph 1 of Law No. 162, dated 2 November 2014.

33 While the legal interest rate currently stands at 0.5 per cent, the interest for late payment provided for by Legislative Decree No. 231 of 9 October 2002 currently stands at the European Central Bank annual interest rate plus 7 per cent.

34 *Inter alia*, see Cass Civil No. 1081 of 18 January 2011.

An example, according to which the freedom of the parties is limited, is in their choice of international jurisdiction, which in relation to the insurance shall be made in accordance with the the provisions of Section 3 (Articles 10–16) of Council Regulation (EC) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or territorial jurisdiction within the Italian Republic when the insured is a consumer.[35] A particular situation arising from this Regulation is the concurrent jurisdiction of the state of residence of the victim of a motor accident, which can be traced back to the Court of Justice of the European Union, in judgment No. 6 dated 13 December 2007-C463,[36] interpreting the old Regulation (EC) No. 44/2001 on jurisdiction in civil and commercial matters.

ii Litigation

Litigation proceedings include first instance trial, an appeal and possibly a final appeal to the Court of Cassation for procedural faults or errors in the application of the law in the second instance judgment.

In accordance with Article 2697 of the Civil Code, the burden of proof rests with the party seeking to enforce the right in court, and the defendant must prove his or her case only after the claimant has fully proved the claim.

The insured or claimant must prove that the insured event occurred, the premium had been paid and the insurance contract existed; while the loss occurrence can be proved by witnesses or other means, the insurance and the premium payment shall be proved in writing.[37]

Legislative Decree No. 28 of 4 March 2010,[38] implementing EU Directive No. 52 of 2008, imposes mediation for civil and commercial controversies. The Italian Constitutional Court declared such Decree unconstitutional for its abuse of power;[39] therefore, the government issued Decree-Law No. 69 on 21 June 2013 (converted into Law No. 98 on 9 August 2013), which restored the mediation process as a condition of admissibility but limited it to any proceedings in the areas listed in Article 5, Paragraph 1 of Legislative Decree No. 28/2010. Among the different conflictual issues listed are:

a insurance contracts;

b medical malpractice;

35 In this sense, Cass Civil No. 9922 of 26 April 2010 affirmed that Article 1469 *bis*, Paragraph 3, No. 19 of the Civil Code is procedural in nature and applies in cases started after it entered into force, even if relating to disputes arising from contracts stipulated before, and affirmed that the rule, in disputes between a consumer and a professional, establishes the exclusive jurisdiction of the courts of the place where the consumer has his or her residence or elected domicile.

36 In this binding precedent the Court affirmed that the injured party may sue, with direct action, the foreign motor liability insurer before the judges of the states where he or she resides, provided that direct action is provided for by the national law (and in Italy it is so provided for) and provided the insurer has a domicile within the territory of an EU Member State.

37 According to Article 1888 of the Civil Code, the insurance contract must be proven in writing, whereas Article 2721 of the Civil Code excludes the admissibility of testimonial proof of contracts when their value exceeds the sum of €2.58. However, the judge may allow the testimony beyond the limit above, taking into account the quality of the parties, the nature of the contract and any other relevant circumstance.

38 See Official Gazette of the Italian Republic No. 53 of 5 March 2010.

39 Constitutional Court judgment No. 272/2012 in the Official Gazette of the Italian Republic of 12 December 2012.

c directors and officers' liabilities; and
d banking and financial contracts.

The proper service of the writ of summons imposes a term of 90 days between the date of service and the first hearing. If the defendant wishes to join a third party or to counterclaim, it must make an application 20 days before the scheduled hearing, otherwise the defendant will lose such opportunity, and may only oppose and resist the claim when appearing at the first hearing, which is either scheduled on the writ of summons or postponed *ex officio* by the court to meet the court calendar.

In the first hearing, the judge checks that all the necessary parties are present. Following this, the court may issue default orders against parties who have failed to attend and, if a duly summoned party to proceedings fails to attend, the court might consider some of the factual allegations and the documents produced as uncontested and ground his or her decision on such evidence. After that the discovery phase opens and the parties will have:

a 30 days from the date of the hearing to amend the defences;
b 30 days to present any further evidence that might be necessary to support the case – again, note that in Italy discovery is limited to what the parties consider relevant and the documents affecting the case usually are not produced in court; and
c 20 days to rebut, object to and oppose the opponent's discovery.

The dates of all hearings are set *ex officio* by the judge depending on his or her workload.

When all the defences are lodged in court, these are discussed by the judge who will determine which evidence is relevant for the case, and hence admissible; in the same court order, the judge will decide if independent expertise is necessary. If so, the judge will fix a specific date to swear in the court expert, and to give instructions about the scope and object of the expert testimony. One independent expert is appointed by the court and one by each of the parties, and the court-appointed expert will lodge a written report to which the parties have a right of reply. Should one or both parties disagree with the court-appointed expert, the latter might be called to the hearing to answer questions or to draft a supplement of report; this further report usually closes the discovery phase.

Depending on the number of witnesses and questions, the evidentiary proceedings will be divided into one or more hearings scheduled generally every quarter. Once the evidentiary phase is over, the case enters into the decision phase with a hearing where the court receives the parties' arguments. From that date, two terms start to run: the first of 60 days to lodge the last written defence, and the second of a further 20 days to rebut the final defences of the opponents.

Exceptionally, at the end of the discovery the court might elect to follow a fast-track proceeding pursuant to Article 281 of the Civil Procedure Code. In such a proceeding, 10 days before the hearing for arguments the parties shall lodge a short brief with the court and, at the hearing after having given the arguments, the judge will listen to their oral pleadings and issue a decision, the reasoning for which will be explained in writing at the time of the publication of the judgment.

In general, it is impossible to anticipate the time a court requires to make its decision; usually the decision process takes from three to 14 months, and much will depend on the

complexity of the arguments raised by the parties and the court's workload. Typically, the entire litigation lasts from two to three years in first instance, and a little less at first appeal and before the Court of Cassation.[40]

In Italian litigation, costs follow the event; therefore, the losing party shall bear on top of its own costs the successful party's costs and court costs, including the cost of expertise, the court duties and the register tax on the judgment.[41] This is the general rule, but the courts have the opportunity to expressly apportion the litigation costs between the two parties, and in insurance contract litigation, the most common reason to derogate from the rule is that the policy wording was unclear, and that the insured had good grounds to believe that he or she had a viable and legitimate claim.

The Supreme Court of Cassation, in its leading precedent No. 1183 of 19 January 2007, declared that punitive damages were alien to the Italian legal system and therefore contrary to internal public policy. Thus it is not permissible to insure against punitive or exemplary damages in Italy, even if it is possible to do so legitimately for punitive damages awarded in other jurisdictions.

For the very same reasons, no punitive or exemplary damages can be awarded against an insurer who challenged in court a claim made under one or more of its policies.

A recent piece of legislation[42] impacting the Italian litigation environment, and the fact that, since 1 January 2015, a series of tasks previously carried out on paper and in person must now be done electronically and remotely (the Electronic Civil Process) should, in a short period, speed up the civil proceedings and reduce the backlogs of the Italian courts.

In fact, with the Electronic Civil Process, lawyers throughout Italy can:

a consult case court files online;

b receive telematics communications from judicial offices, and serve defences and judgments directly upon other lawyers;

c execute electronic payment of unified court duties; and

d file defences, writs and pleadings along with the supportive documents packed into a specific 'electronic envelope' that is automatically electronically controlled and recorded by the national software system.

Despite a number of courts experiencing technical problems and interpreting the new rules differently, the technical instrument should guarantee a faster proceeding with less administrative personnel. The overall time between the service of summons and the issuing of judgments decreased from 1,075 days in 2015 to 992 in 2016.

40 Usually an appeal lasts two years, and the Court of Cassation proceeding between one year and 18 months.

41 The register tax is a proportional tax, usually 3 per cent of the court award; in the case of rejection of the claim, a fixed fee is usually charged.

42 Decree Law No. 132/2014, as converted into Law No. 162/2014, provides rules to speed up the proceeding, granting the possibility of moving away from the usual and general burdensome rite to a faster, albeit summary, rite of cognition (new Article 183 *bis* Civil Procedure Code), and introduces measures for the efficiency and simplification of the executive process along with a reduction in the judges', magistrates' and public prosecutors' vacations.

iii Arbitration

In Italy, there are two forms of arbitration: formal arbitration, where the award has the nature of a court judgment; and informal arbitration, whose award has the nature of a contract and therefore can be only challenged for error, illegality, fraud, duress or excess of power in making the award.

The differences in the procedural and evidentiary requirements between the two formats are substantial: whereas the formal arbitration procedure is regulated by the Civil Procedure Code[43] and the decision is rendered in accordance with the strict rule of the law, informal arbitration is not regulated and the parties can decide their own rules in the arbitration clause.

In Italian policy wordings, it is somewhat rare to encounter clauses providing for formal arbitration for a number of reasons, including the risk of lack of independence of one or more of the arbitrators, and the costs of such procedures. Formal arbitration can, however, guarantee a first instance decision in a relatively short time (between six months and one year in the vast majority of the cases), as against the lengthy proceedings in a court of law (between two and 10 years).

Informal arbitrations are, however, quite common in property and business interruption insurance. Here, too, the costs of the procedure are usually high and reflect the work done in the loss-adjustment process.

iv Alternative dispute resolution

Alternative dispute resolution clauses, apart from contractual expertise clauses, do not feature in Italian insurance contracts.

In a contractual expertise clause, the parties provide referral to one or more third parties, chosen for their particular technical competence, the task of formulating a technical appreciation, evaluation or economic appraisal. It follows that, if the parties have referred to experts the determination of a value of the relevant things,[44] the extent of the damage suffered[45] or the indemnification,[46] the adjustment they make shall determine the value not in the abstract, but with reference to the specific loss event.

The expert opinion can be attacked and challenged only through the typical actions for annulment, actions for breach of contracts, or both.

v Mediation and mandatory assisted negotiation

Article 5 of Legislative Decree No. 2 of 4 March 2010 created a list of disputes subject to compulsory mediation. Among other controversies, the law mentions disputes relating to insurance contracts, and to compensation for damage caused by the circulation of vehicles, by medical malpractice, and because of the liability of directors and officers. If the case was litigated without prior recourse to mediation, the judge had to suspend the litigation and grant the parties a term of six months to mediate.

43 See Civil Procedure Code Title VIII: On Arbitration (Articles 806 to 840).

44 A contractual expertise clause is typically included in fire or theft insurance policies to determine the insured item or items lost due to a fire or theft.

45 A contractual expertise clause is typically included in personal accident or medical costs insurance to determine the accident, the disability sustained and the costs of medical care.

46 A contractual expertise clause is typically included in business interruption clauses to evaluate the indemnity consequent to the loss of earnings net of the deductible period.

The Constitutional Court, with ruling No. 272 of 6 December 2012,[47] declared Legislative Decree No. 2 of 4 March 2010 unconstitutional for excess of legislative delegation, insofar as it provided for the compulsory nature of mediation. Following this binding precedent, mediation remained available to resolve insurance disputes, but because it was no longer compulsory it was little used and the rate of successfully mediated disputes, which was already low when the procedure was compulsory, dropped even further after the Constitutional Court judgment.

This situation was reversed by the Decree Law No. 69/2013, which reintroduced compulsory mediation for a number of types of controversies, including claims for medical malpractice, professional E&O, damages for libel and slander, insurance, banking and financial contracts. Two novelties have been introduced by the new legislation: only mediation entities or bodies present within the territory of the judge competent to hear the eventual subsequent litigation can legitimately run a mediation; and the parties shall be assisted by a lawyer during the compulsory mediation sessions.

Decree Law No. 132/2014, as converted into Law No. 162/2014, introduced a new form of alternative dispute resolution as a condition of admissibility of any lawsuit, including payment of debts up to €50,000, but limited to any proceedings that are not listed in Article 5, Paragraph 1 of Legislative Decree No. 28/2010 (mandatory assisted negotiation). With this new alternative dispute resolution, the parties, with the assistance of one or more lawyers acting as facilitator, should try to negotiate a solution to their existing controversy within a period of three months. Should the assisted negotiation fail, the parties can then legitimately act in court to have the judge resolve the dispute.

V OUTLOOK AND CONCLUSIONS

In 2017, it is expected that the Italian economy will benefit from the improvement of the general economic climate.

Along with the improving economic situation, in 2015 and 2016 the government enacted measures to promote the reform of the justice system considered crucial to close the efficiency gap that adversely affects not only the public at large, but also and more importantly business activities, especially the insurance market. Important steps have been taken to improve efficiency in the judicial system through the amalgamation of small courts, the introduction of the Electronic Civil Process and the encouraging of alternative dispute resolution. The next steps will focus on the final approval of pending legislation concerning, among the most important, the statute of limitation and judges' liability.

These reforms are reflected in a Fitch Ratings report, which, with reference to non-life insurance, offers a positive analysis for 2016 despite the softening of premiums in the motor sector and fierce competition in the commercial lines, and gives a positive outlook for 2017.

Regarding the life insurance sector for 2017, Fitch Ratings predicts a decrease in premiums flow and a reduced performance because of very low interest rates. The reduction of guaranteed minimum rates to levels close to zero should reduce sensitivity to changes in interest rates on profits and capital. These positive factors continue to be offset by the higher risks inherent in the investment portfolios of life insurance companies, given the significant

47 Judgment published in the Official Gazette of the Italian Republic of 12 December 2012.

concentration of government bonds and corporate debt, a reflection of the strong relationship between the rating of the insurance sector and the sovereign one. In fact, any change to Italy's credit rating generates a change in the rating of the Italian insurance industry.

Along with the systemic actions, the government made a number of amendments to compulsory motor insurance,[48] according to which insurers:

a shall grant a minimum 7 per cent premium discount if a black box is installed in a vehicle. In the event of an accident, data collected from the black box will provide non-rebuttable and conclusive evidence in court. The offer of a policy connected with a black box is not mandatory for customers;

b shall grant a minimum 7 per cent premium discount if an insured undertakes the obligation to receive medical and rehabilitative treatments chosen and paid for directly by an insurer;

c shall grant a minimum 5 per cent premium discount if an insured undertakes the obligation to repair damage through a trusted repairer directly paid by an insurer;

d can now include a clause in a policy preventing the transfer of the right to claim damages to the repairer, in return for a 4 per cent discount in premium. This provision should prevent fraudulent agreements between parties that can artificially increase repair process costs; and

e shall grant an undetermined discount if an insured consents to let an insurer conduct a survey upon a vehicle prior to the issuing of an insurance certificate.

In an attempt to further limit judicial frauds, Law No. 09/2014 imposes strict rules on the admissibility of witnesses in court for cases of motor accidents with property damages only. To be called as such, a witness shall have to be identified in the accident declaration, the claim form or in a public authority report; no witness subsequently identified shall be admitted to give 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.

In connection with these new legal provisions, which became effective on 21 February 2014, specific obligations have been introduced in an effort to improve transparency, such as the inclusion of disclaimers on insurers' websites, communications to IVASS and the Ministry of Economy and Finance. In addition, policyholders' documents or information that are not timely or exhaustively executed shall be sanctioned with fines of between €1,000 and €10,000 for each breach.

The insurance market and, as a consequence, the reinsurance market, are expected to benefit from all these changes throughout 2017.

48 Law Decree 'Destinazione Italia' of 23 December 2013, No. 145 in the Official Gazette of the Italian Republic of 23 December 2013 – Ordinary Series No. 300 converted with amendments by Law No. 9 of 21 February 2014 (Official Gazette, 21 February 2014, No. 43).

Appendix 1

ABOUT THE AUTHORS

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Studio Legale Giorgetti

Alessandro P Giorgetti is a graduate of Milan State University, where he studied private international law. He both graduated and was admitted to the Milan Bar in 1983. He subsequently studied commercial law at Robinson College, Cambridge University.

He is member of the special Bar for the High Courts in Italy.

Mr Giorgetti practises insurance and reinsurance law, and has acted as principal consultant or litigator in some of the major Italian cases.

He works in English, French and Italian. He is an active member of the International Association of Defense Counsel, of which he has been a past international vice president; the Defence Research Institute, of which he chairs the Italian chapter; and the International Bar Association. Mr Giorgetti also belongs to the Association of Fellows and Legal Scholars of the Center for International Legal Studies in Salzburg, and he has been listed since 2007 in *Who's Who Legal: Product Liability* and since 2008 in *Who's Who Legal: Insurance & Reinsurance*.

He has authored several articles, and the book *Il contenzioso di massa in Italia, in Europa e nel Mondo – Profili di comparazione in tema di Class Action ed Azioni di Gruppo*, ed. Giuffé (2008), comparing mass litigation and collective redress procedures around the world.

He is a regular lecturer in Italy and abroad on insurance, professional liability and personal injury law.

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