THE INSURANCE AND REINSURANCE LAW REVIEW

SEVENTH EDITION

Editor
Peter Rogan

THE LAWREVIEWS

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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 emerging markets in Asia and Latin America 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.

Insured losses in 2018 have been estimated at between US$79 billion and US$90 billion, a 40 per cent reduction from the disastrous 2017, but still above the 10-year average. While no single event stands out, the aggregation of losses from hurricanes Michael and Florence in the United States, and typhoons Jebi, Trami and Mangkhut in the Asia-Pacific region, along with earthquake losses and the California fires has been significant. Also noteworthy in 2018 were the number and scale of cyber events, including the huge data breaches of Facebook and Marriott International, which may be a portent of things to come. 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.

Looking ahead, 2019 is likely to see new developments and new legal issues. In particular, the impact of insurtech on the way in which insurance is underwritten, serviced and distributed will present challenges around the world. To reflect this, we have added a new chapter on artificial intelligence.

I hope that you find this seventh edition of *The Insurance and Reinsurance Law Review* of use in seeking to understand today's legal challenges, and I would like once again to thank all the contributors.

Peter Rogan
Ince Gordon Dadds LLP
London
April 2019

Chapter 22

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 slowed over the first half of 2018 as exports and industrial production weakened in association with the government's economic politics that created conditions for higher interest rates. However a drop in energy prices helped to contain inflation, more than in the rest of the eurozone, which should support Italian exports despite Brexit.

According to the European Commission's 2018 autumn forecast, the economy was set to grow by approximately 2.1 per cent in 2018 before moderating to 1.9 per cent in 2019, even if a recovery of exports and higher public spending are expected to lift real GDP to 1.2 per cent. Those positive expectations have been confirmed by the latest assessments released by the Italian National Institute of Statistics[2] for the third quarter of 2018, which indicated that GDP decreased by 0.1 per cent compared to the previous quarter but increased by 0.7 per cent compared to the third quarter of 2017, maintaining the moderate employment rate increase. The unemployment rate fell to 10.5 per cent in 2018, and is expected to drop to 10.2 per cent in 2019.

The insurance market should benefit from both the expected national increase in exports and the challenges posed by the European General Data Protection Regulation (GDPR) implementation in May 2018, which introduced a stringent requirement to prevent and handle data breaches, imposing large fines for unprevented data breaches. However, due to the nature of the administrative and punitive sanctions, those fines could not be legitimately insured in Italy.

In contrast with the non-life insurance market, Italian life insurers are steadily recovering from the downturn recorded in the past two years and recorded premium income growth in all classes, particularly Classes I and III (unit and index-linked policies).

It is evident that, despite the difficulties in relaunching the national economy, Italy remains a fertile ground for insurance underwriters, and provides interesting opportunities for prudent insurers and reinsurers especially in the newly developing cyber and data protection insurance markets.

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 2018. ISTAT is an active member of the European Statistical System, coordinated by Eurostat.

II REGULATION

i The insurance regulator

Decree-Law No. 95 of 6 July 2012[3] dissolved the Italian Private Insurance Regulatory Authority (ISVAP) and replaced it with the Institute of Insurance Supervision (IVASS),[4] 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[5] have been taken away from the insurance regulator's competence and passed on to the Concessionaire for Public Insurance Services.[6]

In accordance with the law, the *pro tempore* senior deputy governor of the Bank of Italy is also the president of IVASS.

Other governing organs of the 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 on 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, it 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.

IVASS then provided for imposed 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.[7] The regulatory activity of IVASS continued, introducing the obligation for intermediaries 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.[8] 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

3 Decree-Law No. 95 (the Spending Review Decree) was 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.

4 IVASS address: 21 Via del Quirinale, Rome.

7 Regulations Nos. 1 and 2.

8 Regulation No. 3.

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 then regulated the receivership of insurance companies.[9]

In 2014, IVASS intervened to regulate the obligations of adequate due diligence and anti-money laundering registrations on the part of insurance companies and insurance intermediaries,[10] as well as regulating 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.[11]

After 2016, the year in which the EU Solvency II Directive (Solvency II) came into effect, IVASS concentrated its regulatory activity more on insurers' profitability and capitalisation, 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.

This trend continued throughout 2017, with Regulation No. 34/2017 on the corporate governance provisions relating to the valuation of assets and liabilities other than technical reserves and their assessment criteria, and Regulation No. 35/2017 concerning the adjustment required for the loss-absorbing capacity of technical reserves and deferred taxes in the determination of the companies' Solvency Capital Requirement.

In 2018, IVASS concentrated its regulatory efforts on companies' internal compliance and the distribution of insurance products. The following are particularly relevant to insurance companies: Regulation No. 38 laying down provisions on the system of governance of 3 July 2018 and Regulation No. 42 laying down provisions on the external audit of public disclosure related to the Solvency and Financial Condition Report of 2 August 2018. IVASS also issued two regulations regarding the implementation of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (the Insurance Distribution Directive): Regulation No. 40/2018 laying down provisions on insurance and reinsurance distribution, with particular attention to the areas of training and professional education as well as the promotion and placement of insurance contracts by means of distance communication techniques; and Regulation No. 41/2018 on the pre-contract information duties of the insurance distributors, which shall apply to all insurance contracts, except tailor-made products that do not need any pre-contract information.

ii Position of non-admitted insurers

Only admitted insurers are entitled to provide insurance. More precisely, according to 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 European or foreign companies, can apply to IVASS for an authorisation. Lloyd's

9 Regulation No. 4.

10 Regulation No. 5.

11 Regulations Nos. 6 and 7.

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 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. 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[12] 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.

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.

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

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,[13] or if the scheme of operations does not satisfy the financial needs and the technical rules for the correct management of an insurance business.[14]

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 of 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 will be considered refused.

iv Other notable regulated aspects of the industry

In accordance with the Private Insurance Code,[15] 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:

13 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.

14 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.

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

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.

With the introduction of Solvency II, and IVASS Regulation No. 24/2016 in June of the same year, insurers are now free to choose the most appropriate investment instruments, subject to the precondition that their immediately available capital is adequate to cover the risk underlying the investment.

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.

If an insurance or reinsurance company enters 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 Private 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. However, 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 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 Private 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). The old secondary legislation providing for all those topics has been substituted by an organic and organised set of rules contained in IVASS Regulations Nos. 40 and 41 of 2 August 2018 (see Section II.i).

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 the Commission for the Supervision of Pension Funds.

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 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

A number of special laws impose compulsory insurance to be undertaken with private insurance companies.[16]

At other times, the private insured must instead take out an insurance contract with a public insurer, such as the National Institute for the Insurance of Accidents at Work,[17] or take out a mutual insurance contract with a private insurer through a public contracting entity.[18]

Finally, an obligation to take out an insurance contract can be found in some national collective labour contracts stipulated between the trade unions, representing the employees, and the Industrial Association, representing all their members who will adopt the negotiated national collective labour contracts for the specific industry.[19]

Decree-Law No. 138 of 13 August 2011, converted into Law No. 148 of 14 September 2011, introduced compulsory insurance. According to the Law, all professionals had to take out a professional indemnity insurance contract by 13 August 2012, with the exception of physicians and lawyers.

16 Motor insurance was introduced in Italy by Law No. 990 of 29 April 1969 in Official Gazette No. 2 of 3 January 1970. It was subsequently modified, and the most recent amendment was introduced by Decree-Law No. 179 of 18 October 2012, which provided that a 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.

17 Domestic accidents compulsory insurance was introduced in Italy by Law No. 493 of 3 December 1999, which imposes, as of 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.

18 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. This insurance is provided through the National Federation of the Hunters.

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.

19 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 a collective contract to take out, for the benefit of their employees, executive insurance against professional and extra-professional accidents.

For physicians, the duty to undertake errors and omissions insurance became effective on 15 August 2014, whereas for lawyers the obligation became effective after the Department of Justice issued a decree reforming the legal profession[20] and a subsequent decree determining the minimum requirements for mandatory professional indemnity insurance for lawyers.[21]

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.[22]

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 due is up to 20 per cent of the capital gain, but was reduced to 12.5 per cent for the portion of income that related to the period between the date of subscription or purchase and 31 December 2011.

The Italian State Agency, through 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

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). 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, the National Association of Insurance Companies and the trade unions reached an agreement on the new contract terms and economic conditions for management employees.

20 In 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.

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

22 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).

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.[23]

Furthermore, a national collective labour contract (see subsection vii) 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[24] 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;

b the Civil Code;

c the special legislation dealing with compulsory insurance;[25] 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.[26] Case law indicates that all information that is

23 National collective labour contract for employees of insurance agencies under free management (20 November 2014).

24 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'.

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

26 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.[27]

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 on-site 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. IVASS, as a result of numerous protests made 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 the policy's 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.

As mentioned in Section II.i, in accordance with IVASS Regulation No. 41/2018, as of 1 January 2019, all negotiations for standard contracts shall be accompanied by a pre-contract information package, except tailor-made insurance that only requires the completion of the proposal form.

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 regarding 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. If a problem of interpretation arises, the contract will be interpreted using the general interpretation rules that are provided in the Civil Code for all contracts,[28] 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 a *pro forma* contract 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 wording 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.

27 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.

28 See Articles 1362 to 1371 of the Civil Code.

In addition, there are terms that are considered legal but onerous for the party against which these are drafted. These 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 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 was judicially extended to insurance underwritten on a claims-made basis, because although a legitimate contract, it deviates from the loss-occurrence basis chosen by the legislature as the typical way in which insurance shall operate.[29] This decision created the key question of whether claims-made clauses are legitimate or not. The United Sections of the Court of Cassation, with Judgment No. 22437 of 24 September 2018, decided that claims-made clauses delimit the object of the contract but do not limit the liability, and in view of their non-vexatious nature, do not require double approval in accordance with Article 1341 of the Civil Code. The Court also affirmed that the contractual model based on the claims made is part of the historical background of civil liability insurance and while it represents a derogation from the 'loss occurrence' scheme provided for in Article 1917(1) of the Civil Code, it is nonetheless permitted pursuant to Article 1932 of the Civil Code. The legitimacy of the clause is also confirmed by legislation through the reform of the National Health Service implemented by the Gelli-Bianco Law. The Court also recalled its Judgment No. 9140 of 6 May 2016 and affirmed that the claims-made clauses are legitimate as they safeguard the interests of both the insured and insurer, hence the judge, case by case, will ensure that there is no asymmetry between the parties, or mechanisms that determine 'temporal gaps in the insurance coverage'.

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[30] or have an illicit scope.[31]

Usually there are general conditions providing for all contracts falling within a specific class of business (professional indemnity), particular conditions for a specific group of insured (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.

29 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 judgment 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 case by case, keeping in mind the specificity of the insurance contract scope and the factual elements of the case. However, the Supreme Court did not provide clear directions about the criteria that should support a validity test. Consequently, until this aspect is 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.

30 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, Article 12 of the Private Insurance Code provides the same prohibition.

31 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.

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

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 a registered letter or service of a writ of summons.

Once notified of the 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 it 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,[32] assume the rights of the insured and claim the insurance coverage. 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)[33] from the date of the lawsuit service to the date of final settlement.[34]

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

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

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

34 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.

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[35] 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 the clause would be in conflict with the law.

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 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 Italy when the insured is a consumer.[36] 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,[37] 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.[38]

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

36 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.

37 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.

38 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.

Legislative Decree No. 28 of 4 March 2010,[39] implementing EU Directive No. 52 of 2008, imposes mediation for civil and commercial controversies. The Italian Constitutional Court declared the Decree unconstitutional for its abuse of power;[40] 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 conflicting issues listed are:

a insurance contracts;
b medical malpractice;
c directors' and officers' liability; 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 the 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 that 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, 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, they 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, and if it is, he or she 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. If one or both parties disagrees with the court-appointed expert, the latter might be called to the hearing to answer questions or to draft a supplement to the report.

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 discovery 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: 60 days to lodge the last written defence, and a further 20 days to rebut the final defences of the opponents.

39 See Official Gazette No. 53 of 5 March 2010.

40 Constitutional Court judgment No. 272/2012 in the Official Gazette of 12 December 2012.

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 this proceeding, the parties shall lodge a short brief with the court 10 days before the hearing for arguments 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, the decision process of a court takes from three to 14 months; however, 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.[41]

In 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.[42] 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.

Since 1 January 2015,[43] a series of tasks previously carried out on paper and in person must be done electronically and remotely (the Electronic Civil Process).

In fact, with the Electronic Civil Process, lawyers 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 840 in 2017, with a minor decrease to 817 days in 2018.

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

42 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.

43 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

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. While the formal arbitration procedure is regulated by the Civil Procedure Code[44] 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.

It is somewhat rare to encounter clauses in Italian policy wording that provide 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,[45] the extent of the damage suffered[46] or the indemnification,[47] 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 includes 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.

44 See Civil Procedure Code Title VIII: On Arbitration (Articles 806–840).

45 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.

46 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.

47 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,[48] 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 errors and omissions, 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 three months. If the assisted negotiation fails, the parties can then legitimately act in court to have the judge resolve the dispute.

V YEAR IN REVIEW

The year 2018 was not characterised by many legal changes but Legislative Decree No. 68 of 21 May 2018 implemented the Insurance Distribution Directive. On the regulatory side, a number of notable changes have been introduced by:

a IVASS Regulation No. 37/2018 concerning the criteria and terms to be followed by undertakings for compulsory discounts in motor vehicle liability insurance;

b IVASS Regulation No. 38/2018 laying down provisions on the system of governance;

c IVASS Regulation No. 39/2018 concerning the procedure for applying administrative sanctions and implementing provisions;

d IVASS Regulation No. 40/2018 laying down provisions on insurance and reinsurance distribution;

e IVASS Regulation No. 41/2018 laying down provisions on transparency, disclosure and design of insurance products;

f IVASS Regulation No. 42/2018 laying down provisions on the external audit of public disclosure related to the Solvency and Financial Condition Report;

g IVASS Measure No. 76/2018 amending the IVASS Regulations Nos. 9/2017, 23/2008 and 24/2008 to adapt them to the implementation in Italy of the Insurance Distribution Directive; and

48 Judgment published in the Official Gazette of 12 December 2012.

b Letter of 3 October 2018 to the insurers and reinsurers having the head office in the United Kingdom pursuing business in Italy under the right of establishment or the freedom to provide services, asking them to:

- send adequate information on an individual basis about the impact of Brexit to their Italian policyholders and beneficiaries, according to the guidelines contained in an Opinion of the European Insurance and Occupational Pensions Authority of May 2018;[49]
- publish similar information on their internet site; and
- give appropriate instructions to their distribution networks about the information to provide to their current and potential customers.

VI OUTLOOK AND CONCLUSIONS

In 2019, the Italian economy will continue to grow but less than expected owing to the general economic climate, and the increasing political uncertainties that will characterise Italian politics until the next European elections in May 2019.

The 2017 systemic actions,[50] with reference to compulsory motor insurance, in an attempt of further limiting judicial fraud, along with the enhanced efficiency of the judicial system through the amalgamation of small courts and the introduction of the Electronic Civil Process, and the slow but steady development of alternative dispute resolution methods, should continue to benefit the insurance market throughout 2019.

Domotics (home automation) and new health insurance are currently rarely sold, but those products are expected to take off in the next few years to counter new risks posed by the internet of things at home and the constant reduction of resources available to the National Health Service.

The trend of a reduction in premiums for medium- to long-term insurance policies continues to slow down even if the average price for motor insurance on an annual basis decreased (by less than 0.3 per cent). Interestingly this last trend seems unrelated to the black box discounts as only 20.6 per cent of the stipulated contracts contains clauses for reducing the premium owing to the presence of the black box. No significant changes are expected in relation to black box installation in 2019.

As mentioned in Section I, life insurers were starting to recover from the past two years and were looking towards 2019 for record premium income growth in all classes, but

49 Opinion on the solvency position of insurance and reinsurance undertakings in light of the withdrawal of the United Kingdom from the European Union at https://eiopa.europa.eu/Publications/Opinions/EIOPA-BoS-18-2018_opinion_on_solvency_and_Brexit.pdf.

50 Law 124/2017 introduced changes concerning motor liability insurance, including:

a The obligation to contract the granting of significant discounts if a driver has installed a black box in his or her car. This includes details of the interoperability and portability of the black boxes.

b The introduction of specific information obligations for insurance companies.

c Discounts in favour of the consumer who accepts certain conditions.

d Compensation for temporary disability damage that now, regardless of the extent of permanent disability, shall be determined by way of the daily amount for the absolute temporary disability foreseen for minor injuries.

e Prohibition of tacit renewal, at the request of the insured, with regard to contracts stipulated for accessory risks (e.g., fire and theft), if the accessory policy was stipulated in conjunction with the motor insurance.

particularly for Classes I and III (unit and index-linked policies). Life insurance penetration in Italy is 6.1 per cent (premiums/GDP) compared with the European average of 2.6 per cent. However, despite this positive development, the economy's performance in the last quarter of 2018 and the prospects for 2019 threaten to hamper this progress.

In connection with the implementation of the GDPR in May 2018, IVASS became active in supervising insurance market awareness about the new legislation requirements, and especially the processes put in place to prevent data breaches and the eventual subsequent notifications and remedial action. In particular, aside from the more traditional interventions upon insurance and reinsurance companies, IVASS continued to monitor the risks involved in the use of new technologies by the Italian and EU intermediaries based in Italy and circulated to the market the 16 February 2018 letter in which the Regulator, after having reviewed the current measures and processes adopted by insurers and intermediaries for the acquisition and storage of data, recommended that the insurance market adopt a number of recommended measures, including the review and reform of their existing insurance policies in order to cover cyber risk and associated remedial costs.

On 1 October 2018, the Insurance Distribution Directive became fully applicable, imposing on intermediaries and all subjects that are part of the insurance distribution chain better oversight and governance of the insurance products by way of more transparent and complete pre-contractual information about the specific insurance product to be distributed, more transparent checks of conflicts of interests, and a continuous education of the persons involved in the insurance distribution.

In conclusion, the insurance market and, as a consequence, the reinsurance market, are expected to benefit from all these changes throughout 2019.

Appendix 1

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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 a 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; 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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