



FOCUS: LOANS TO ENTERPRISES BY INSURANCE COMPANIES

AMENDMENTS TO REGULATION 36/2011 APPROVED BY IVASS

Law Decree no. 91 of 2014 added the following provision to paragraph 2 of article 114 of Legislative Decree no. 385 of 1 September 1993 (Consolidated Law on Banking or TUB): “2-bis. *Italian insurance companies and Sace shall not carry out any kind of financing activity with the public, other than the granting of guarantees and only to subjects that are not physical persons or microenterprises, as defined in art. 2, paragraph 1 of the Annex to Recommendation 2003/361/EC of the European Commission of 6 May 2003, within the limits set by Legislative Decree no. 209 of 7 September 2005 as amended by this Law, and related implementation provisions issued by IVASS*”.

On 21 October 2014 IVASS approved the amendments to Regulation no. 36/2011 dealing with investments to cover technical reserves, providing in fact that insurance companies can provide loans to enterprises within the limits and under the principal terms (some of which were anticipated in one of our previous ‘focus’ issues) summarised below:

- the amount of each loan must not exceed, as regards the share of the insurance company:
 - 20% of the amount of net equity shown in the last financial statements of the borrowing company;
 - 1% of the technical reserves of the insurance company;

- 4 different categories of loans are envisaged:

A2. 2a) direct loans selected by a bank or a financial intermediary and that possess all the characteristics on the quality of the borrowers and the relationship with the intermediary (admissible within the max. limit of 5% of technical reserves to be covered):

- (a) the bank withholds a percentage of at least 50% of the loan and is entitled to the same rights as those of the insurance company (as regards interest and repayment of principal);
- (b) the borrowers have a high degree of creditworthiness;
- (c) the financial statements of the borrower are audited.

A2. 2b) direct loans selected by a bank or a financial intermediary but that do not possess all the characteristics on the quality of the borrowers (admissible within the max. limit of 2.5% of technical reserves to be covered):

These are loans where: (a) the bank withholds a percentage of at least 50% of the loan and is entitled to the same rights as those of the insurance company (as regards interest and repayment of principal) but where one or both of the conditions provided in letter (b) and (c) above do not apply;

A2. 2c) direct loans selected by a bank or a financial intermediary that does not possess the characteristics relating to borrowers and the relationship with the intermediary (allowed within the max. limit of 1% of technical reserves to be covered):

These are loans where none of the conditions provided in letters (a) through (c) above apply.

A2. 2d) direct loans not selected by a bank or a financial intermediary (allowed based on a specific authorization by IVASS).

IVASS in fact, can authorise the autonomous carrying out of the activity entailing the identification of potential borrowers of direct loans following the evaluation of the activity plan, taking account (inter alia) of:

- a Solvency Capital Requirement in excess of the Minimum Capital Requirement;
- measurements of capital absorption for direct loans that are the subject of evaluation to be made with a view to the future supervisory regime defined by Directive 2009/138/EU (*Solvency II*).

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