

POG AND ADDITIONAL REQUIREMENTS FOR IBIP DISTRIBUTION – NEW IVASS PROVISIONS

On 4th August, IVASS issued:

- Regulation No. 45/2020 ("**Regulation 45**"), containing provisions on the governance and oversight governance arrangements (POG) of insurance based investment products (IBIP), and
- Provision No. 97/2020 ("**Provision 97**"), which supplements and amends certain existing IVASS Regulations, including Regulations No. 40 and No. 41 of 2 August 2018.

1. Regulation 45

The regulatory changes – also in line with those simultaneously carried out by Consob within its competences – complete the POG framework for insurance companies and distributors of insurance products set forth by Delegated Regulation (EU) 2017/2358 and the Private Insurance Code.

In line with this regulatory framework, Regulation 45 consists of 17 articles and, in general, is aimed at:

- regulating the approval process for insurance products and the distribution activity of insurance products, grading and identifying, in application of the proportionality principle, precise obligations for the manufacturer and intermediaries involved in the distribution activity;
- providing specific provisions for the approval and distribution processes of IBIPs.

In particular, the aforementioned Regulation:

- (a) identifies **the tasks** and **responsibilities** of the **corporate bodies** involved in the approval and distribution process of insurance products (with particular regard to the administrative body) and the **compliance function**.

In this context:

- ❖ ultimate responsibility for compliance with the rules on the insurance product approval process, as well as the approval of a specific policy for the governance and control of insurance products (containing at least the elements listed in Annex 1 to the Regulation), is centralised in the administrative body of the manufacturer insurance company;
- ❖ the "*de facto*" manufacturer intermediary is required to apply the policy of governance and control of the insurance products of the manufacturer insurance company;
- ❖ the compliance function of the manufacturer insurance company is entrusted with the task of (i) monitoring the development and periodic review of procedures and measures for the governance of insurance products, in order to identify the risks of non-

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compliance with the obligations provided for by current legislation; and (ii) providing information, as part of its report, on the checks and analyses carried out with reference to the correct definition and effectiveness of the approval and review processes for each product, highlighting any critical issues regarding compliance;

- (b) defines the rules and elements to be taken into account for the purposes of identifying the **'target market'** and the **'negative target market'**, providing that any distribution to clients who do not belong to the identified target market is made on condition that the client does not belong to the negative target market and the product meets his insurance needs and requirements and, except for the sale of non-complex IBIPs (class I insurance with guaranteed return of capital), on the basis of advice given before the conclusion of the contract, is adequate;
- (c) regulates the **monitoring process** of insurance products;
- (d) defines the **information flows** between manufacturer insurance companies and distributors, providing for an **agreement to be signed and subject to periodic review**:
 - ❖ the manufacturing companies and distributors identify the direction, content, periodicity and methods of exchanging information relating to the performance of their respective activities and necessary to fulfil their respective obligations;
 - ❖ distributors acquire from manufacturers the information necessary to understand and know adequately the products they intend to distribute and to define the actual reference market.
- (e) regulates the articulation of the aforementioned obligations in the presence of **horizontal collaboration relationships**.

Subject to certain specific transitional provisions, Regulation 45 is scheduled to enter into force on 31 March 2021.

2. Provision 97

Provision 97 is aimed at completing the regulations on the distribution of IBIP carried out by distributors falling within IVASS competences and also includes integrations and amendments to IVASS Regulations No. 23/2008, 24/2008, 38/2018, 40/2018 and 41/2018.

With regard to Regulation no. 40/2018, the Provision at issue:

- (a) with regard to **horizontal collaborations**:
 - ❖ better defines the contents of the agreement between the intermediaries in order to ensure proper compliance with the information obligations concerning the costs and charges related to the distribution activity and POG;
 - ❖ **provides for the communication to the mandating companies of the agreements concluded by the intermediaries**;
- (b) on pre-contractual information:
 - ❖ as indicated in the accompanying report to Provision 97, the aspects of pre-contractual information (and the changes to attached forms) have been reconsidered

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with regard to the approach to pre-contractual information adopted as regards to distribution in the banking sector (where most pre-contractual information is provided when upon execution of the framework consulting agreement);

- ❖ to this end, Annexes 3 and 4 have been revised and Annexes 4-bis "*Information on the insurance investment product*" and 4-ter "*List of the distributor's rules of conduct*" have been added. Furthermore, the relevant delivery methods of said annexes have also been revised and, in certain circumstances, simplified;

(c) in relation to the evaluation of the policyholder's demands and needs:

- ❖ the delivery of a specific declaration(not requiring subscription) in which the distributor certifies that the insurance product meets the policyholder's demands and needs is provided;

(d) with regard to the sale of insurance products combined with an ancillary products/services other than insurance ones, the provision of additional information concerning the appropriate description of the different components of the agreement or package and separate evidence of the costs and charges of each component, as well as the way in which its composition changes the risks or the insurance cover;

(e) in the context of professional training and update courses, it is provided, among other things, that persons in charge of insurance distribution operating inside or outside the premises of intermediaries registered in sections A, B, D or F of the Register and employees of insurance companies, as well as direct canvassers, must have a qualification equal to not less than an upper secondary education diploma, similar to that already provided for first level intermediaries. In this specific regard, a transitional discipline is also set forth, which is any case without prejudice to the requirement of professionalism accrued by those who already carry out the activity on the date of entry into force of the Regulation;

(f) with reference to the rules of conduct for the distribution of IBIP:

- ❖ specific disclosure requirements are laid down with regard to the nature, risks, costs and charges related to the purchase of IBIP with particular regard to their characteristics and functioning, the specific risks related to the insurer's insolvency, the volatility of the price of the underlying financial instruments, the exercise of the right of reduction and surrender, the existence of any guarantees or mechanisms to protect the premiums paid. In particular, there is an obligation to provide information on costs related to the periodic assessment of adequacy;
- ❖ additional obligations are set forth with regard to the requirements of the information provided on the product (those concerning the modalities of a possible comparison between different investment products or those concerning the indication of past and/or future performance of the instruments/indices used as underlying);
- ❖ **in relation to inducements:**
 - (i) the general conditions under which intermediaries and companies may pay or receive inducements are identified, including the presence of a purpose to increase the quality of the insurance distribution activity;
 - (ii) the conditions of eligibility of the inducements are established, providing for the respect of eligibility conditions similar to those provided for in Article 11(2) of Delegated Directive (EU) 2017/593;

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- (iii) operators are expected to fully comply with this provision by 31 March 2022;
- (iv) with specific regard to the provision of incentives in the case of the provision by intermediaries of advice on an independent basis, **it is provided that the intermediary (i) may not receive monetary incentives and may only accept minor non-monetary benefits (reasonable and proportionate and must not affect the intermediary's behavior without being detrimental to the interests of the client);** and (ii) must return to the policyholder, as soon as reasonably practicable after receipt thereof, any compensation, commission or monetary benefit paid or provided by a third party, or a person acting on their behalf, in connection with the activities and services provided to the policyholder.

In addition to the above, with reference to Regulation No. 41/2018, Provision 97:

- modifies article 25 concerning the annual statement of accounts for IBIPs, extending what is already provided for unit-linked contracts, for which the company provides policyholders with an analytical report on costs and expenses, including distribution costs, on an annual basis, and providing for an illustration showing the cumulative effect of costs on the profitability of the product;
- updates the content of the additional PID for IBIPs in order to take into account the allocation of IVASS/Consob competencies, as well as the additional pre-contractual information document for car liability insurance.

As for Regulation 45, subject to certain specific transitional provisions, the entry into force of Provision 97 is scheduled for 31 March 2021.

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The *Financial Intermediaries Regulations* Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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