Italy

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Regulation of insurance and reinsurance

1 Identify the government agencies responsible for regulating insurance and reinsurance companies.

ISVAP (Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo), the Italian supervisory agency for private insurance, was set up by Law No. 576 of 12 August 1982.

The authority's organs are: the president, the director general, and the board of directors, made of seven members including the chairman, who manage and lead some 350 employees.

ISVAP's supervisory functions are exerted over the insurance sector by means of the powers of authorisation, direction, inspection, enforcement of precautionary measures and sanctions as well as through the adoption of any regulation necessary for the sound and prudent management of undertakings or for disclosure and fairness of behaviour by supervised entities.

Many supervisory instructions, regulations and provisions issued by ISVAP in the past have now been unified into Legislative Decree No. 209 of 7 September 2005 (the Private Insurance Code), which entered into force on 1 January 2006.

ISVAP is also the supervisory body for the Brokers and the Loss Adjusters, for which professional bodies the agency keeps the Register of Insurance and Reinsurance Intermediaries (Registro Unico degli Intermediari assicurativi e riassicurativi, RUI) and the Register of Insurance and Reinsurance Loss Adjusters (Registro Unico dei Periti assicurativi e riassicurativi, RUP).

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

According to Italian insurance law, only *società per azioni* (public companies), *società cooperativa* (cooperatives) and *società di mutua assicurazione* (mutual insurance companies) or equivalent foreign companies can apply to ISVAP 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 EC Treaty.

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

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

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

New insurance and reinsurance companies that want to undertake or start a new business in Italy can do so only after either having been authorised or licensed by ISVAP through an order (if the undertaker has its head office within the territory of Italy) or by an acknowledgement of the formal communication made by the company, which has to be backed up by a confirmation of the supervisory authority of the state where the undertaker has its head office.

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

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

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

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

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

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

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

The proposing company attaches specimens of their wording to the business plan and technical operation scheme that have been drafted in accordance to the local laws. Unless there are clear and large-scale violations of the internal public order, ISVAP does not exercise any other form of supervision over insurance policies.

For some other products such as pension funds and some life policies, the United Index-Linked products can be subject to the control of multiple agencies. This is typical with pension products, which are subject to the supervision and control not only of ISVAP but also of the Supervisory Commission for Pension Funds (Commissione di Vigilanza sui Fondi Pensione, COVIP).

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

5 What are the regulatory requirements with respect to agreements for reinsurance ceded and assumed by insurance and reinsurance companies domiciled in your jurisdiction?

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

Because EU Directive 2005/68/EC of 16 November 2005 contains terms and deadlines for its implementation and because the term set in article 64 of the directive (December 2007) expired without Italy implementing this piece of European legislation, the Directive shall be considered as self-enforcing and valid and effective upon the entire Italian territory.

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

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

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

In case 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 underwriting insurance, whereas if one of the parties in the merger has its head office in another EU member state, ISVAP agreement to the operation can only be given after the relevant home supervisory authority has expressed its positive opinion.

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

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

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

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

The directors, officers, statutory auditors and general directors must all meet the prescribed requirements of probity, independency and trustfulness according to the relevant Civil Code provisions and to article 4 of Ministerial Decree No. 186/1997, therefore being able to ensure a sound and prudent management.

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

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

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

There are no special provisions and restrictions concerning investment in an Italian insurance or reinsurance company by foreign governments, subject to the funding of the operation not breaching any anti-money laundering provision or any other internal public order law.

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

In Italy, the insurance company minimal share capital or guarantee fund fully paid-up in cash must equal not less than:

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

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

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

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

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

13 What are the collateral requirements for assuming reinsurance companies?

In Italy only licensed or accredited reinsurers can provide reinsurance. Therefore there is no need for collaterals to allow a deduction from the liabilities carried on the reinsured company's statutory financial statement. However, collaterals 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 carried on the reinsured company's statutory financial statement.

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

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

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

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

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

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

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

- section A for the insurance agents;
- section B for brokers;
- section C for direct canvassers of insurance undertakings;
- section D for banks, financial intermediaries as per article 107 of the Consolidated Banking Law, stock broking houses and Poste Italiane – Divisione servizi di bancoposta; and
- section E for the collaborators of the intermediaries registered under sections A, B and D conducting business outside the premises of such intermediaries.

Reinsurance disputes

17 Are formal reinsurance disputes common or do insurers almost always reach business solutions for their disputes without formal proceedings?

In Italy it was traditional to resolve the eventual disputes arising from reinsurance agreement interpretation, execution or breach by negotiations; this traditional approach has been abandoned in the last five years as arbitrations and litigation in court are becoming more and more frequent.

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

The most common issues disputed are the execution of the reinsurance agreement and the method of calculating damages. In any event in the recent period good faith issues in follow the fortune contracts as well as misrepresentation of the reinsurance risk have been litigated along with statute of limitation and scope of the reinsurance contract disputes.

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

Yes, the losing party can appeal a negative arbitration award according to articles 828 and 829 of the Civil Procedural Code. The appeal is divided into two phases; the first, seeking to vacate the arbitration award, is necessary. The second phase, on the merit of the controversy, is merely eventual and it takes place only if the arbitration award has been voided.

Judicial confirmation of the arbitration award is necessary only if the arbitration was informal, in fact the award in this case has an efficacy equivalent to a contract and the party that does not comply with the arbitration can be sued for breach of contract and damages. However, no judicial confirmation of the arbitration award is necessary if the arbitration was formal as in this case, according to article 824bis of the Civil Procedure Code, the award has the same efficacy as a court judgment.

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

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

21 What powers (if any) do reinsurance arbitrators have over non-parties to the arbitration agreement?

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

Reinsurance principles and practices

22 Does a reinsurer have an obligation to follow its cedent's underwriting fortunes and claims payments or settlements in the absence of an express contractual provision to that effect? Where such an obligation exists (whether or not expressly provided by contract), what is the scope of the obligation, and what defences are available to a reinsurer?

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

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

The reinsurer has the right to avoid its obligations under a follow the fortune clause in very limited cases, and notably when the indemnified or settled claim falls outside the scope and limits of the underlying insurance policy, when the cedent company did not oppose legitimate and valid defences to the insured wilfully assuming liability for a claim that was excluded by the underlying policy and in case of breach of the claim control clause or in very limited cases of breaching the claim cooperation clause.

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

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

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

No, both are subject to the same set of laws: both are subject to articles of the Civil Codes. From the regulatory perspective, the reinsurance companies undertaking facultative and treaty reinsurance are subject to title VI of the Private Insurance Code.

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

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

26 What is the obligation of a reinsurer (if any) to pay a policyholder's claim where the insurer is insolvent and cannot pay?

A reinsurer has no duty to pay a policyholder's claim directly unless this is expressly requested by the liquidator or the trustee of the insolvent company. Under Italian law the contractual obligation arising from a reinsurance remains between the reinsurer and the cedent company even if the later becomes insolvent and subject to the compulsory winding-up procedure.

27 What type of notice and information must a cedent typically provide its reinsurer with respect to an underlying claim? If the cedent fails to provide timely or sufficient notice, what remedies are available to a reinsurer?

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

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

In facultative reinsurance, information depends on whether there is a claim control clause or not, and if it does exists depends on its extension.

Clearly delaying relevant information might impact upon the right to recover under the reinsurance agreement.

28 In the case of multi-year occurrences, such as pollution, how are underlying claim payments or settlements allocated among policy years covered by multiple reinsurance agreements?

Whenever risk of multi-year occurrences or claims in series exists, the reinsurance contract usually contains a clause according to which all subsequent events are considered as having occurred on the same day as the first loss occurrence.

If the reinsurance does not contain a clause to this extent, each loss will be imputed to the competent year of coverage.

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

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

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

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

Update and trends

In Italy in the past five years the insurance law has been substantially modified and the major change has been Legislative Decree No. 209 of 7 September 2005 (the Private Insurance Code). This act better coordinated the regulatory set of laws and has created the Register of Insurance and Reinsurance Intermediaries, in force as of 16 October 2006, and the Register of Insurance and Reinsurance Loss Adjusters, which came into force on 4 January 2008 .

This Register contains the data of the persons licensed to pursue – on their own account – the professional activity of assessing, estimating and adjusting material damages on condition that they have passed a qualifying examination and fulfil the registration requirements envisaged in article 158 of the Private Insurance Code.

Another recent evolution connected to the adjustment and settlement of claims is the new constitution of the Italian section of the FIN-NET system (http://ec.europa.eu/internal_market/finservices-retail/finnet/index_en.htm). This is a network between national organs for resolution of controversies in the field of the financial services instituted within the European Commission. The FIN-NET members are the ombudsman, the authority of vigilance (ISVAP, COSVIP or CONSOB) or in general any private organisation, whose scope is the resolution of controversies (ADR), each of them within the limits of their own powers and competences. In case of a disagreement with an European insurer who is not represented in Italy, an entity insured in Italy can now try to resolve the dispute using FIN-NET before going to court.

Another relevant novelty has been introduced by article 8 of the Decree Law 223/2006, known as the Bersani Decree. This aims at promoting competition in a variety of sectors, including the distribution of car insurance policies, and provides that agreements between insurance companies and agents may no longer contain an exclusive distribution rights requirement or obligations to provide minimum prices or maximum discounts. Insurance agents, therefore, will no longer be able to offer car insurance policies from a single insurer or fix prices or discounts in accordance with guidelines set by the insurer. They will, however, be able to offer a variety of products from different insurers bettering the competition and allegedly reducing the premiums. In this respect, Law 248/2006 has been amended, by adding two sections to article 131 of the Private Insurance Code, requiring agents to inform customers of the level of commission that they have agreed with the insurer. Such information must be displayed on the agents' premises and also clearly shown in any premium quotation.

In addition, new provisions on claims handling procedures in relation to traffic accidents came into force on 1 February 2007 pursuant to article 150 of the Private Insurance Code. According to these, an insured person who is injured as a result of a motor vehicle accident will now be reimbursed directly by his or her insurer without having to claim compensation from the party liable for the accident and his or her insurer. The provision also aims at expediting indemnification for damage and sets short claims settlement terms of 90 days in cases of personal injury; 60 days in cases of damage to property; and 30 days in cases of damage to property where both parties sign the claim notification form.

By way of ISVAP Regulation No. 7 of 13 July 2007, (published in the Official Journal, No. 175, 30 July 2007) the outlines for the budget of the insurance and reinsurance companies that are held to adopt the international bookkeeping principles have been set out, according to title VIII (bookkeeping budget and writings), head I (general dispositions on the budget), head II (balance sheet), head III (consolidated financial statement) and head V (auditing of accounts) of the Private Insurance Code. The main aim of the bookkeeping regulation is to consolidate the existing provisions and provide clarifications. It sets out a complete list of books for life and non-life insurance activity respectively. It also provides clarification on where and for how long insurance documents must be stored. In line with previous regulations, specific provisions apply to firms providing motor insurance and reinsurance services.

With reference to the novelties with insurance contracts, following the Italian Supreme Court of Cassation's leading case no. 5624/2005, 'claims-made' insurance policies, widely used in Anglo-Saxon countries and adopted in Italy for insuring certain types of risk, are still lawful but to be effective and opposable they must be expressly included within the terms and conditions, which need the double express approval and signature according to article 1341 of the Civil Code.

In conclusion, all of the above reveals an emerging trend toward consumerism and a stronger balance of interest between the industry and the insured. This is reflected in the greater transparency of the insurance contract and a more regulated insurance market.

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

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

Insurance claims and coverage

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

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

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

Article 1913 of the Civil Code provides that, unless the insured entity has already had notice of the loss occurrence, 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 a prejudice has been suffered and in this case the denial shall be proportional as to reflect the prejudice suffered.

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

No specific sanction is provided for wrongful denial of a claim, but because litigation usually follows, the court might then be entitled to award not only the judiciary interests from the date of the judgment but from the date in which the indemnity was due to the date of the judgment or to the date of final settlement; also the interests provided for by Legislative Decree No. 231 of 9 October 2002, which currently stands at the European Central Bank annual interest rate plus 7 per cent (until 31 December 2007 the interest rate was 11.04 per cent per year).

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

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

The duty remains until the liability insurer has exhausted the policy limits, in which case the liability insurer shall be obliged to defend until the end of the proceeding degree. The duty to defend also triggers a sub-limit for defence costs, equal 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.

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

For all non-liability insurance, the insured event or the loss occurrence triggers the insurer's indemnity obligations.

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

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

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

37 Are punitive damages insurable?

The Supreme Court of Cassation, in its leading precedent No. 1183 on 19 January 2007, declared punitive damages alien to the Italian system and therefore contrary to internal public order.

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

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

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

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

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

In the first case the guarantee will indemnify first the oldest claim and so on to the most recent until the policy limit is exhausted.

Whenever there is a plurality of claimants, all of them concur in proportion to their claims to the policy indemnity, which is divided in proportion to the respective claims.

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

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

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