Client Alert

Milan Office

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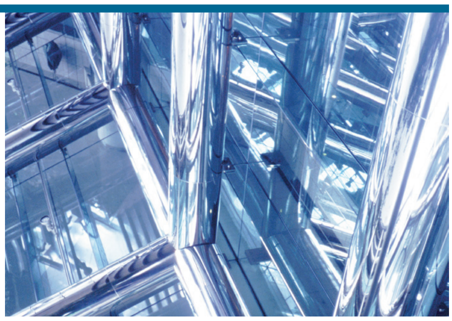

Italian insurance companies now permitted to invest (directly and indirectly) in corporate bonds, securitizations with corporate bonds as underlying assets and investment funds per first regulations implemented under the recently enacted *Destinazione Italia* Decree[1] (the "Decree")[2]

IVASS[3] broadens the list of investments and assets eligible to cover technical reserves

One of the primary innovations of the Decree was to permit insurance companies to invest (both directly and indirectly) in corporate bonds. On 23 January, 2014, IVASS published a letter describing the amendments it will make to the current technical reserves regime[4] (the **"IVASS Letter"**)[5]:

- add a new investment class of corporate bonds (the **"New Corporate Bonds"**), which may be unlisted and/or issued by companies not having their financial statements certified by a duly authorized auditing firm in the last three (3) years (the **"Certified Financial Statements Requirement"**), as previously required;
- add a new investment class of securitizations, which may be unlisted and/or unrated, having as their underlying asset corporate bonds, including any New Corporate Bonds (the **"New Securitizations"**);
- increase the percentage of direct investments allowed in the existing classes of investment funds[6] primarily investing in corporate bonds and securitizations from 1% to 3%; and
- clarify (i) which asset classes permitted to be used to cover technical reserves any investments will be classified under and (ii) the requirements for allowing investments in such funds, to the extent falling within the regime of insurance products linked to internal funds or UCITS[7] (*i.e.*, they are marketed in Italy, and have complied with all authorization and notification procedures required under the AIFM Directive[8]).

IVASS is expected to amend Regulation 36 and they have indicated that such amendments will apply to any investments made by insurance companies during the 1st quarter of 2014[9]. However, it is not certain when such amendments will formally take effect.

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Detailed Discussion of IVASS Letter

Amendments allowing investments in New Corporate Bonds

IVASS will now include, under the "Investment" category of assets eligible to cover technical reserves[10], the New Corporate Bonds[11], including corporate bonds with subordination and participation clauses, even if they (i) are not listed on a regulated market and (ii) do not comply with the further requirements applicable to bonds (*i.e.*, Certified Financial Statement Requirement and residual maturity of less than one year)[12].

Investments in this new class are allowed up to a maximum amount equal to 3% of the technical reserves that are being covered.

Amendments allowing investments in a newly eligible class of securitizations, having corporate bonds as underlying asset

IVASS will now include, under the "Investment" category of assets eligible to cover technical reserves[13], the new investment class[14] of New Securitizations, which may be unlisted and/or unrated. Such New Securitizations may have corporate bonds, including any New Corporate Bonds, as their underlying asset[15].

Investments in this new asset class are allowed up to a maximum amount equal to 3% of the technical reserves that are being covered.

Increase in the percentage of direct[16] investments allowed in the existing classes of investment funds primarily investing in New Corporate Bonds and New Securitizations

IVASS will introduce an increase in the percentage of the technical reserves that may be covered for the exposure limit in a single fund (from 1%[17] to 3%), for funds primarily investing in New Corporate Bonds and New Securitizations.

Clarifications on investments allowed in alternative investment funds

Although regulations implementing the AIFM Directive have not yet been adopted, IVASS has clarified which asset classes permitted to be used to cover technical reserves any investments will be classified under[18].

The changes introduced by the AIFM Directive and the expected amendments, *inter alia*, to the Italian Financial Services Act[19], will require further amendments to the current regime of alternative investment fund management and to the regulations governing insurance products linked to internal funds or UCITS[20].

IVASS further clarified that investments in alternative investment funds, which are covered by the regulations governing insurance products linked to internal funds or UCITS, will be permitted if such funds (i) are marketed in Italy, (ii) have complied with the authorization procedure in their home country and (iii) have given the required notification to the proper Italian regulatory authorities, pursuant to the AIFM Directive[21].

The primary purpose of the new regulations is to encourage insurance companies to invest directly or indirectly (through multiple borrower structures) in corporate bonds, which we expect will benefit the Italian debt capital markets by increasing the demand for Italian corporate bonds and broadening and deepening the liquidity of the Italian corporate bond market.

Endnotes

1 Law Decree 145/2013, which entered into force on December 24, 2013 and required, *inter alia*, IVASS to issue implementing regulations within 30 days of such date.

2 This memo is a follow up to our Client Alert dated December 16, 2013. Further regulations implementing the Decree pertaining to bank secured bonds will be adopted by the Ministry of Economy and Finance and Bank of Italy.

3 Istituto per la Vigilanza sulle Assicurazioni **("IVASS")**, the Italian insurance regulatory authority.

4 See IVASS Regulation 36/2011 **("Regulation 36")**.

5 The amendments have not been subject to public consultation, due to the strict implementation terms imposed by the decree and reflect the text thereof as published in the Official Gazette of the Republic of Italy. If such provisions are amended upon conversion of the decree into law, the new provisions adopted by IVASS will be amended accordingly.

6 These "alternative investment" classes include investments in shares or units of (i) open-end non-harmonised UCITS (as defined below), (ii) closed-end movable funds, which are not traded in a regulated market and (iii) reserved and speculative funds.

7 Undertakings for Collective Investments in Transferable Securities.

8 Directive 2011/61/EU dated 8 June 2011 on the Alternative Investment Fund Managers.

9 These amendments in Regulation 36 will be implemented together with other amendments required to implement EIOPA (European Insurance and Occupation Pensions Authority)'s guidelines, which are currently subject to public consultation until 28 February, 2014.

10 See Art. 17 and 23 of Regulation 36, respectively, for life and non-life management.

11 Class A1.2d.

12 The current regime only allows the following assets to cover technical reserves: (i) bonds and other similar securities that are listed on a regulated market (Class A1.2a), (ii) bonds and other similar securities that are not listed on a regulated market, but are issued by companies complying with the Certified Financial Statements Requirement (Class A1.2b) and (iii) bonds, other than the bonds mentioned in points (i) and (ii), with a residual maturity of less than one year (Class A1.3).

Investment in project bonds issued under article 157, comma 1, of legislative decree no. 163/2006 (the **"Codice degli Appalti"**) are also allowed, provided that such project bonds are issued by companies complying with the Certified Financial Statements Requirement and are guaranteed in accordance with article 157, comma 3, of the *Codice degli Appalti.*

13 See Art. 17 and 23 of Regulation 36, respectively, for life and non-life management.

14 Class A1.9.

15 Under the current regime, only securitizations having the highest ranking priority and an investment grade rating (Class A1.2) may be included as an asset eligible to cover technical reserves. Furthermore, as a general requirement applicable to the macro-class "Debt instruments and similar securities", the securities must provide for capital reimbursement at maturity.

16 Indirect investments are already permitted by Regulation 36 (namely, in class A 1.4 "Harmonised UCITS unites" and A5 "Alternative Investments" – see Art. 17 and 23 of Regulation 36, for life and non-life management respectively).

17 With reference to class A5) "Alternative Investments".

18 Class A5) (see Art. 17 and 23 of Regulation 36, respectively, for life and non-life management) and Section 3, Paragraph 1.2 of ISVAP Circular no. 474/D.

19 Legislative Decree 58/1998 as subsequently amended.

20 See ISVAP Circular no. 474/D.

21 References to the authorisation procedure with the Bank of Italy for the marketing of European alternative funds in Italy are therefore superseded, because such procedure is no longer necessary for the admissibility of investments in European alternative funds, in light of the new European provisions. However, the authorisation is still required for funds established in Non-EU Countries.