



CMS Newsletter Italia

Clarification on W&I Policies from the Italian Authority, IVASS confirms the insurability of the risk

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ISVAP Regulation n. 29/2009 is the Regulation under Italian law which deals with the insurability of certain risks and in relation to which the markets were doubting the insurability of the risk covered by W&I policies.

On the 25th of July the Authority clarified that W&I policies do not fall within the scope of Art. 4, paragraph 2 of the Regulation, which states that “[...] in any case cover may not be provided for the reimbursement of contingent liabilities or losses on assets due to assessments resulting from undertaking’s extraordinary operations”. (“In ogni caso non sono rilasciabili le coperture destinate a garantire il rimborso di sopravvenienze passive o minusvalenze su elementi patrimoniali derivanti da valutazioni conseguenti ad operazioni straordinarie di impresa”).

Nevertheless, IVASS pointed out that W&I policies do not fall under the above restriction if:

- for buyer-side policies, they are based on specific commitments not deriving from valuations, which shall be adequately assessed on an actuarial basis and do not provide cover equal to the extraordinary corporate transaction price.
- for seller-side policies, they cover the risk arising from the seller’s indemnity obligations in relation to a breach of the representations and warranties given by the seller to the buyer in case of an extraordinary corporate transaction.

The Authority confirmed the general application of Art. 4 Paragraph 2 of the Regulation but made it clear that it shall not apply to “policies covering risks connected to non-conformity or breach of representation and warranties in the context of extraordinary corporate transactions (so called W&I Policies)”, if the above two conditions are met.

This is an important statement that is officially confirming the validity of W&I policies in Italy, doubt we gave some comfort on to our clients in the past and that now has been confirmed by the Authority.

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