

# INFORMATIVE NOTE



## INSURANCE AND PENSION FUNDS

### NEW RULES ON ADVERTISING

In recent years, we have experienced a heightened concern on the part of the legislators and supervisory authorities in protecting the interests of consumers of financial products and services. This concern has been expressed, particularly, with regard to how the advertising for such products and services is made, to which the strong, and in most cases, healthy competition known to exist in this sector has surely contributed.

In parallel with measures that have been adopted in the areas of banking and investment services, the Portuguese Insurance Authority ("ISP") has recently issued Regulatory Rule no. 3/2010-R (the "Rule"), which is designed to establish a new set of principles and rules to be observed by insurance companies, insurance intermediaries and pension funds management companies, in the advertisement of their products and services.

The provisions of the Rule are applicable to all advertising made with respect to products or services that are being offered in Portugal or provided to persons who are resident or established within the Portuguese territory. In particular, with regard to pension funds, the rule explicitly provides for its application to advertising made by foreign management companies that manage Portuguese professional pension plans.

As regards the contents of a, and in addition to general rules related to identification and truthfulness of the messages, which already result from the application of principles contained in the Portuguese Advertising Code, the Rule provides for the obligation to include, as well as for restrictions to the use of, certain expressions.

To that extent, the Rule establishes, inter alia, the obligation to include a reference to the need for potential customers to obtain and analyse required pre-contractual and contractual information, as well as restrictions to the use of certain expressions, such as "without costs", "without charges", "the best in the market", or that other expression, very common in everyday language, "insurance against all risks", which may not be used at all in advertisements.

However, if one may acknowledge that, in what concerns the contents

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"Portuguese Law Firm of the Year"  
*Chambers Europe Excellence 2009, IFLR Awards 2006 & Who's Who legal Awards 2006, 2008, 2009*

"Corporate Law Firm of the Year - Southern Europe"  
*ACQ Finance Magazine, 2009*

"Best Portuguese Law Firm for Client Service"  
*Clients Choice Award - International Law Office, 2008*

"Best Portuguese Tax Firm of the Year"  
*International Tax Review - Tax Awards 2006, 2008*

Mind Leaders Awards™  
*Human Resources Suppliers 2007*

Furthermore, it appears to us that, in what concerns audio and video messages in particular, establishing duties of minimum content, together with the obligation to design advertisements in a way as to allow for an appropriate perception by listeners/viewers, results in the imposition of an excessive burden to insurance companies and other advertisers.

of advertisements, the ISP was sufficiently specific to allow for an interpretation of the Rule that will not raise too many questions, with regard to certain matters of form, the use of undetermined concepts, mostly related with the general requirement that the message be designed in a way to allow for an adequate perception by the recipient, may not have been the most prudent of approaches.

In fact, the use of such broad concepts will raise – at least in the initial period of application of the Rule – the question of what is, specifically, being required when, for example, the Rule provides for the obligation to give to some elements of the advertisement, such as the duration of the contract or the amount of insurance premiums, an appropriate prominence in relation to the balance of its contents. Will it be necessary to give the same prominence to elements such as the duration of the contracts and the risks covered? Or to insurance premiums and to penalties levied in case of redemption? And does appropriate prominence mean the same font size? A similar position in relation to the message body?

Moreover, it will not be easy to construe what is intended with establishing that insurance companies and other relevant entities shall ensure that an audio message is issued for a period of time sufficient to allow for an appropriate hearing thereof. Is voice acceleration allowed? Will it be possible to use footnotes in advertisements or is this contrary to the appropriate prominence principle?

These are just some of the questions that the Rule appears to raise. The future will most certainly lead to a clarification of the Rule by the ISP.

Furthermore, it appears to us that, in what concerns audio and video messages in particular, establishing duties of minimum content, together with the obligation to design advertisements in a way as to allow for an appropriate perception by listeners/viewers, results in the imposition of an excessive burden to insurance companies and other advertisers.

Although we understand the need to include all such information in a brochure or pamphlet, which are designed to be delivered to potential customers, it does not appear to make sense to establish the same degree of information with regard to audio and video messages. In fact, such a requirement appears to lead us to the opposite result, by making the message more confusing, rather than clearer, for the listener/viewer, who is faced with a wide range of information, most of which he will hardly retain.

It should also be noted that the Rule has established the requirement for insurance companies, intermediaries and management companies to keep a copy of all advertising materials and to make it available to the ISP as soon as the ISP so requires, although this procedure is still pending further regulation.

Finally, we note that the Rule shall come into force on 18 June 2010 and will be applicable to all advertisements made after such date.

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