



CORPORATE

NEW LEGAL REGIME FOR THE DISTRIBUTION OF INSURANCE AND REINSURANCE

With the broadening of the concept of «insurance distribution» insurance companies that sell insurance products directly are also covered by the new legal regime and the category of tied insurance intermediary ceases to exist.

Law 7/2019 was published on 16 January 2019 to implement Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on the distribution of insurance (the Insurance Distribution Directive or «IDD»).

The main objective of the IDD is to harmonise national rules on insurance distribution in order to protect consumers. Insurance products are distributed out throughout the European Union and by various types of people or entities, such as agents, brokers, 'bancassurance' operators, insurance companies, travel agencies and car rental companies.

The implementation of the IDD by Law 7/2019 has meant a series of changes to the Portuguese rules and we would highlight the following:

AMENDMENT TO THE CATEGORIES OF INSURANCE INTERMEDIARIES

The concept of «insurance distribution» is now broader than the concept of «insurance mediation». This is because it covers all activities that consist in providing advice, proposing or carrying out preparatory acts to the conclusion of insurance contracts, in concluding these contracts, or in supporting their management and implementation (in particular, in the event of a claim). This also includes the provision of information about one or more insurance contracts, the comparison of prices and products, or a discount on the price of an insurance contract, when the customer is able to take out the insurance contract, directly or indirectly, using a website or other means.

With the broadening of the concept of «insurance distribution» insurance companies that sell insurance products directly are also covered by the new legal regime and the category of tied insurance intermediary ceases to exist.

Therefore, there are now three categories of insurance distributors: (i) insurance intermediary - and this category is subdivided into insurance agents and insurance brokers, (ii) ancillary insurance intermediary and (iii) insurance companies.

On the date the new law on distribution of insurance and reinsurance (approved in an annex to Law no. 7/2019) came into force, individuals or companies that were included in the now defunct category of tied insurance intermediary under Decree-Law no. 144/2006 of 31 July are considered, depending on the circumstances and with effect from 21 January 2019¹, automatically registered in one of the categories established in the new law (anyone wishing to register in a category different to the one automatically attributed by the new law must apply for registration within 120 days of the date the new law takes effect).

¹ In accordance with to the notice issued by the ASF (the Portuguese supervisory authority for insurance and pension funds), available [here](#).

In this transition, individuals and companies must also ensure, within 120 days² of the date the new law takes effect, they comply with the specific conditions of access to each category provided in the new law, in particular, (i) regarding the organisation appropriate to carrying on the activity and (ii) the professional civil liability insurance.

INCREASED DUTIES OF INFORMATION AND CONDUCT

Various rules are introduced to prevent cases of mis-selling. These include (i) checking the suitability of the insurance conditions to the characteristics, needs and profile of the policyholder or insured, (ii) providing advice and, (iii) in certain cases, issuing a personalised recommendation concerning to the insurance products that are a better solution to transfer the customer's risk. It is also necessary to provide a standardised insurance product information document in the case of distribution of nonlife insurance products.

In this respect, new rules are also introduced to ensure honest and professional conduct on the part of insurance distributors and also to avoid situations of conflict of interest. For this purpose, remuneration based on sales targets should not provide an incentive to recommend a particular product to the customer. There is also a duty of information on insurance distributors in relation to the nature (and amount, if the customer requests that information) of the remuneration.

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Criteria for access to insurance distribution activity are also established in relation to the duties of conduct, integrity and competence. These include (i) the duty to analyse the criminal record of the insurance distributor in relation to certain offences, (ii) the ability to comply with their obligations punctually, and (iii) the appropriate qualifications of the people directly involved in the work of insurance distribution. In particular, the deadline of 23 February 2019 is established to comply with the provisions on appropriate qualifications.

The legal rules governing the distribution of insurance and reinsurance products (approved in an annex to Law 7/2019) introduce additional requirements. Among others, these requirements concern the duties of pre-contractual information, evaluation and suitability. They also concern conflicts of interest with the activity of distributing of investment products based on insurance.

CROSS-SELLING

Additional information duties are imposed with respect to cross-selling. When the insurance product is offered in conjunction with an ancillary product or a service that is not an insurance product, as part of a package or the same agreement, the customer should be informed about the possibility of acquiring the different components separately. If that possibility exists, an adequate description of the different components of the agreement or package must be provided. Separate documentation on the costs and charges associated with each of the components must also be provided.

CROSS-BORDER ACTIVITIES

Under the new law on distribution of insurance and reinsurance, the powers of the supervisory authority of the host Member State are clarified and consolidated in respect of cross-border activities undertaken within its territory if the entity of the home Member State does not take the appropriate measures or where the measures taken are insufficient.

Article 16 of Law 7/2019 provides that the new legal rules have retroactive effect to 1 October 2018.

Finally, the provisions of the regulations already issued by the ASF, in everything that does not conflict with the legal rules approved by Law 7/2019, remain in force until they are replaced.

² For the purposes of proving compliance with the requirements for access to each category referred to in the new law, in accordance with the statement of ASF, the insurance agents and ancillary insurance intermediaries must submit a request to alter their details on the website of the ASF by 20 February 2019. In certain cases, it may be necessary to request access to the ASF website.

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