

LEGAL ALERT

REGULATION OF THE LEGAL FRAMEWORK FOR INSURANCE AND REINSURANCE DISTRIBUTION

REGULATORY RULE 13/2020-R, OF 30 DECEMBER

[Regulatory Rule 13/2020-R](#) of 30 December, issued by the Portuguese Insurance and Pension Funds Supervisory Authority (ASF), was published today in *the Official Portuguese Gazette* and shall enter into force 30 days after its publication date.

This legislation governs the legal framework for insurance and reinsurance distribution, approved by [Law 7/2019](#) of 16 January (“**RJDS**”) and it repeals [Regulatory Rules 17/2006-R](#) of 29 December, [18/2007-R](#) of 31 December and [15/2009-R](#) of 30 December. In addition to some changes in portfolio dispersion applicable to insurance brokers, the following innovations introduced by this legislation should especially be taken into account:

- a) **Intermediaries' processing policy and complaints management policy (applicable from 1 July 2021)**
 - i) Definition of **the minimum content of the processing policy** regarding policyholders, the insured, beneficiaries or injured third parties, including rules on providing information and explanations, adequacy of product marketing, personal data processing, prevention and management of conflicts of interest and management of claims and complaints;
 - ii) Definition of **the general principles and minimum content of the complaints management policy**, including the organisational model, minimum requirements for the procedure and submission of complaints, contact and follow-up details regarding the process, applicable deadlines, information registration systems and obligations to cooperate with out-of-court dispute settlement mechanisms they may have adhered

to. This policy must be defined in writing, approved, adequately implemented and monitored and, with regard to certain aspects, disclosed;

- iii)* Definition of **the elements that must be included in a complaint** and the situations in which a complaint may not be accepted, as well as defining a maximum reply period of 20 days;
- iv)* Establishment of **a duty to prepare an annual report on complaint management** by the end of February, referring to the preceding financial year. If the insurance intermediary or the ancillary insurance intermediary receives annual remuneration equal to or greater than EUR 500,000, the report must be sent via the ASF portal (these alone are also subject to the obligation to establish the specific position of complaints manager).

b) Implementation of the main reporting obligations to ASF

- i)* **By 31 January** each year, insurance or reinsurance intermediaries shall send **a list of the persons directly involved in the distribution of insurance** associated to them, reported to 31 December of the preceding year, via the ASF portal, in accordance with Annex VIII to this new legislation;
- ii)* **By 15 April** each year, insurance intermediaries shall send information on **insurance intermediaries or ancillary insurance intermediaries** and on the persons referred to in article 2(2) of the RJDS **that they use for insurance distribution**, via the ASF portal, in accordance with Annex IX to this new legislation;
- iii)* **By 15 April** each year, insurance intermediaries and reinsurance intermediaries shall send information on **their financial reporting**, via the ASF portal, in accordance with Annex VII to this new legislation.

c) Development of the framework for the new category of ancillary insurance intermediaries and minimum contents of mediation contracts

- i)* Due to the abolition of the tied insurance intermediary and the similarities between **ancillary insurance intermediaries** and insurance agents, their registration processes follow the same procedures and the applicable criteria with regard to access to insurance and reinsurance distribution activities are similar (although, for example, the ancillary insurance intermediary is not required to have an establishment open to the public);

- ii)* **Mediation contracts** (concluded or substantially amended after the entry into force of this law) are now required to provide *(i)* the terms on which the powers conferred by insurance undertakings may be sub-delegated, in cases of collaboration with other insurance intermediaries and *(ii)* the means and procedures according to which the insurer ensures that the data, information and explanations essential to the performance of the intermediary's activity and the efficient management of their portfolio, including information regarding the termination of insurance contracts brokered by this party, are transmitted in a timely manner.

d) Review of the good repute assessment procedures

- i)* Procedures are established for the assessment of the good repute of applicants to insurance, reinsurance and ancillary insurance intermediary, **equivalent to those already applicable to members of the management bodies and other relevant persons working for insurance and reinsurance undertakings;**
- ii)* In order to verify whether this requirement is met, applicants are required to reply to **a questionnaire**, similar to that set forth in [Regulatory Rule 3/2017-R](#) of 18 May, applicable to insurance and reinsurance undertakings.

e) Policy on the design, approval and distribution of insurance products, framework applicable to the compulsory civil liability insurance of insurance intermediaries and up-to-date information on qualification

- i)* With regard to **the policy for the design, approval and distribution of insurance products**, the new rule only refers to that set out in Commission [Delegated Regulation \(EU\) 2017/2358](#) of 21 September 2017;
- ii)* With regard to the **compulsory civil liability insurance of insurance intermediaries**, this legislation consolidates the scope of coverage (listing what can be excluded from the scope of coverage) and the deductible, right of recourse and expiry frameworks;
- iii)* **With regard to qualification**, insurance or reinsurance intermediaries who are natural persons and members of the management bodies responsible for the insurance or reinsurance mediation activities who performed their activity pursuant to [Decree-Law 144/2006](#) of 31 July **are now required to update the information**

submitted to ASF in order to prove their qualification for such within 90 days
after the entry into force of this Regulatory Rule.

For further information on Regulatory Rule 13/2020-R of 30 December, we would suggest consulting the information provided by ASF available [here](#), as well as [the video](#) of the public session presenting the respective public consultation.

[Helena Tapp Barroso \[+info\]](#)
[Margarida Torres Gama \[+info\]](#)
[Nuno Sobreira \[+info\]](#)
[Mariana Carreto de Araújo \[+info\]](#)

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