



INSURANCE | DECREE-LAW N.º 2/2009 OF 5 JANUARY: RULES APPLICABLE TO REINSURANCE AND MARKET PRACTICE WITHIN THE INSURANCE ACTIVITY

Decree-Law n. 2/2009 (“**DL 2/2009**”) which was published yesterday and enters into force today, transposes Directive n. 2005/68/EC of the European Parliament and of the Council of 16 November, on reinsurance, and introduces principals regarding the insurance market practice (“**Directive**”) as well as adjustments within the governing system and better regulation principles applicable to insurance undertakings.

Reinsurance Undertakings vs. Insurance Undertakings

Concerning the new regime applicable to reinsurance undertakings, among the main differences between the general regime applicable to such undertakings and that applicable to direct insurance undertakings, we would stress the following:

- (i) the reinsurance undertakings’ object includes the business of reinsurance and related operations, along with holding company function and activities with respect to financial sector activities resulting from reinsurance activities;
- (ii) authorizations are conceded to non-life reinsurance activities, life reinsurance activities or other types of reinsurance activities;
- (iii) the due formalities for the freedom to provide services are condensed to a single notification to the Portuguese Insurance and Pension Funds Supervisory Authority (*Instituto de Seguros de Portugal*) by the reinsurance undertaking with head office in Portugal which intends to carry out business under the freedom to provide services in other Member States;
- (iv) the assets due to cover the technical provisions are defined so as to adopt a less prescriptive regime as that set forth for insurance undertakings, being based upon a prudent person approach and not upon detailed rules;
- (v) the required solvency margin for reinsurance undertakings, even when life insurance is concerned, is determined in accordance with the provisions laid down for non-life reinsurance; the home Member State should however be allowed to apply the rules provided for in Directive for the establishment of the required solvency margin in respect of life reinsurance activities which are linked to investment funds, capital redemption operations or participating contracts.

Subsidiaries and Branches of Reinsurance Undertakings of Third Countries

DL 2/2009 further allows the incorporation in Portugal of subsidiaries and branches of reinsurance undertakings with head office in third countries in similar terms as those set forth for the incorporation of subsidiaries and branches of direct insurance undertakings, as well as the possibility of the reinsurance business being carried out in Portugal by insurance or reinsurance undertakings with head office in countries outside of the EU which, although not settled in Portugal, are, in their



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respective country of origin, authorized to carry out reinsurance activities. In this cases the reinsurance undertakings at stake may be called upon to grant guarantees covering the respective debts.

Qualified Holdings and the Solvency Margin

DL 2/2009 also mirrors the transposition into Portuguese Law of the amendments made to the directives concerning direct insurance, namely in what concerns the following aspects:

- (i) the new rule according to which a reinsurance agreement entered into between a reinsurance undertaking in Portugal and an insurance or reinsurance undertaking authorised within the EU shall not be refused on grounds directly related to the financial soundness of that reinsurance or insurance undertaking.
- (ii) the determination of the required solvency margin set forth for reinsurance companies shall be equally applicable to life insurance undertakings and non-life insurance undertakings within the minimum amount of the guarantee fund of reinsurance undertakings, whenever the reinsurance business represents a key percentage of such undertakings' activities.

Market Practice, Managing Systems and Better Regulation

In what concerns market practice and managing systems regarding the insurance activity in general and better regulation principles the following requirements and rules set forth in DL 2/2009 should be stressed:

- (i) corporate bodies' members with good reputation and appropriate professional qualifications or experience;
- (ii) drafting and monitoring of an ethical code of conduct;
- (iii) creating a position responsible for the management of clients' complaints and a definition of a prevention policy, detecting and reporting insurance fraudulent situations; and
- (iv) creating the position of a "client Ombudsman" who will assess client claims towards the insurance company;
- (v) Creation of rules regarding the accumulation of positions by the members of the corporate bodies of insurance undertakings.