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## LEGAL FRAMEWORK ON INSURANCE AND REINSURANCE DISTRIBUTION

It was published on 16 January 2019 the new legal framework on insurance and reinsurance distribution, as annex to Law 7/2019 of 16 January (“**RJDSR**”) and “**Law 7/2019**”), implementing the Directive (EU) 2016/97 of the European Parliament and of The Council of 20 January 2016 on insurance distribution (“**IDD**”).\*

Oddly, we note that Law 7/2019 reports its effects on 1 October 2018, the deadline foreseen for the IDD implementation. However, several transitional provisions are established, addressing the following matters:

- i. Protection of the acquired rights of intermediaries based in Portugal or acting here under the freedom to provide services or freedom of establishment;
- ii. Non-application of Law 7/2019 to pending applications, without prejudice to the 30 days term as from the date of effect of this law, to complete the application previously submitted to the competent authorities;
- iii. **Automatic conversion of tied insurance intermediaries** under Article 8(a)(i) or (ii) of the previous regime, respectively, into **insurance agent or into ancillary insurance intermediary**, and of **credit institutions or investment firms into insurance agents**, with 120 days from the effective date of Law 7/2019 to comply with the requirements of the new category or to register in a different category;
- iv. Possibility of the insurance distributors complying with the adequate qualification regime under RJDSR until 23 February 2019; and
- v. Immediate application of the infringements regime established in RJDSR, in case no proceedings have been initiated under the previous regime, otherwise the new law will apply to this situation as well as to the pending cases at the date of entry into force of Law 7/2019.

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\* The RJDSR is supplemented by the Commission Implementing Regulation (EU) 2017/1469 of 11 August 2017 laying down a standardised presentation format for the insurance product information document (“**Implementing Regulation**”), (ii) the Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 with regard to product oversight and governance requirements for insurance undertakings and insurance distributors and (iii) the Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products, as well as the regulations to be published by the Autoridade de Supervisão de Seguros e Fundos de Pensões pursuant to article 13 of Law 7/2019.

In the table below, we outline the main changes implemented by RJDSR, which envisages to increase the level of protection of consumers of insurance products, raising the regulatory standard in line with other areas of the financial sector.

## CHANGES IMPLEMENTED BY RJDSR

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**Application of the insurance distribution regime to direct distribution** - carried out by insurers - and indirect distribution.

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**Restructuring of categories of insurance distributors** in: (i) ancillary insurance intermediary; (ii) insurance intermediaries (insurance agents and insurance brokers); and (iii) insurance companies.

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**Extension of the concept of insurance distribution** to cover new situations. In particular, the express application of RJDSR to the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

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**Enhancement of the requirements for access** to the insurance and reinsurance distribution activity.

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**Extension of the conditions to exercise** of the insurance and reinsurance distribution activity, in particular, as regards:

- (i) The requirements for continuing professional development and training;
  - (ii) The policies for creation and distribution of insurance products;
  - (iii) The remuneration;
  - (iv) The sale of bundled package;
  - (v) The advertising; and
  - (vi) The policy for the treatment of policyholders, insured persons, beneficiaries and injured third parties, including the handling of complaints.
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**Densification of the information duties prior** to the conclusion of any initial insurance contract, in particular:

- (i) Disclosure of the nature and form of the remuneration received by the insurance distributor;
  - (ii) The need for clarification of the client as to the quality of the insurance intermediary, whether or not it provides advice, and the technical nature of the latter, as well as the possible existence of an exclusive relationship;
  - (iii) The definition of the requirements applicable to each type of advice provided by the distributor to the client;
  - (iv) The establishment of a minimum standard of information that should specify the requirements, needs and reasons that guided the information or advice given in respect of a product;
  - (v) The obligation of delivery to the non-life insurance customer of the document drawn up in accordance with the format established by Implementing Regulation.
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***Deepening of the specific duties of the insurance broker***, such as, regarding the need to base its activity on the analysis of a sufficiently high and diversified number of insurance, as to the distributor and type available in the market, and the obligation, when giving advice to the client, to do it on the basis of an impartial and personal analysis.

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***Additional requirements for the activity and conduct of business rules applicable to the distribution of insurance-based investment products***, among which:

- (i) The obligation of the distributor to comply with more rigorous information and monitoring duties towards the client, in accordance with a standard that is closer to that provided for in the legislation of financial instruments and markets;
  - (ii) A specific regime for the sale of this type of products with advice and without advice aiming at, in any case, evaluating the suitability of the product to the customer's profile;
  - (iii) Stricter rules on conflicts of interest; and
  - (iv) Rules regarding payment or receipt of inducements.
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***Establishment of a new proceeding for the transfer of an insurance portfolio*** in favour of an insurance intermediary or ancillary insurance intermediary.

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