

PORTUGAL: An Introduction to Insurance

PORTUGAL: 2018 Insurance Market Overview

Contributors: Helena Vaz Pinto and Carlos Couto



Helena Vaz Pinto



Carlos Couto



In 2018 the Portuguese insurance industry continued the steady process of adapting to the provisions of the new Insurance and Reinsurance Legal Regime, which came into force on January 1st 2016, approved by Law 147/2015 of September 9th (which implemented the Solvency II Directive), and with the consequent need to adapt to the additional and more demanding quantitative and qualitative requirements imposed by the implementation of this new legal framework. These requirements have had a cross-cutting impact on all relevant areas of insurers' activity: financial requirements, governance, information, market conduct, intra-group relations and supervision.

With regard to the production of direct insurance in 2018, the statistic information made available by the Portuguese Insurers Association (APS) highlights a total production of almost EUR13 billion, corresponding to an increase of 12% *vis-à-vis* 2017.

The APS's statistic information also shows that this increase is mainly driven by the life segment, which has risen from EUR7.1 billion to EUR8.1 billion, being responsible for 63% of the production of the sector. Supporting the increase in the life segment, APS highlighted the significant increase in retirement savings which has amounted to EUR3.5 billion, reaching the highest value in the past decade and corresponding to an increase of 55.5% in relation to 2017.

The production of the non-life insurance sector maintained its ascending trend, having increased by 7.5%, corresponding to a total production of EUR4.8 billion. Motor insurance maintained its position as the most representative line of business of the non-life segment (it accounts for 35.6% of the non-life production). It is also worth noting the increase of health insurance, which has increased 7.4% in 2018, with a total turnover of EUR807 million, and is for the third consecutive year the second most relevant business line of the non-life segment.

APS's 2018 statistic information further indicates that market shares remain highly concentrated, with the 5 top insurers being responsible for a combined market share of around 79% of the life segment and 64% of the non-life segment.

Although there has been no significant M&A activity during 2018, there were nonetheless some transactions that confirmed the consolidation trend of the previous years. As anticipated, the sector is more and more controlled by foreign capital (particularly China-based).

It is expected that this trend will be maintained during 2019, as certain important deals are already being prepared and are expected to be launched in the first semester of the year.

As far as the legislative environment is concerned, it is worth noting the following three main areas where new relevant legislation directly affecting the sector has been introduced:

Data Protection

The application of the General Data Protection Regulation (GDPR), from May 25th 2018 onwards, in all EU Member-States, had a particular impact on the insurance industry, not only at an organisational level, but also in what concerns the relationship with the client (i.e. the information obligations applicable to the execution of the insurance agreement) and with distributors.

In fact, the need to comply with GDPR involved various adjustments to the terms in which organisations process personal data, from formalities with data protection authorities (prior notifications or authorisations for data processing no longer being required), to self-accountability mechanisms (such as data breach notifications to authorities and possibly data subjects), internal compliance mechanisms (such as the need to carry out data protection impact assessments, in some circumstances, and to implement organisational, technical and legal measures towards ensuring compliance with GDPR obligations and collecting proof thereof).

Insurance-based Investment Products

The national legislation developing the EU Regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs), was finally published as Annex II to Law No. 35/2018 of July 20th (Law 35/2018) and became directly applicable in the Portuguese legal system as from January 1st 2018.

Among other aspects, Law 35/2018 returned the competency to supervise the production, marketing and provision of consultancy services of insurance-based investment products from the Securities Market Commission to the Portuguese Insurance and Pension Funds Supervisory Authority (ASF).

Moreover, Law 35/2018 forbids the dissemination of any advertising messages related to insurance-based investment products without obtaining the prior approval of ASF, which has a period of 7 (seven) business days to decide, after receiving the request fully instructed.

Law 35/2018 also establishes that distributors need to notify and provide ASF with the key information document prepared under the PRIIPs Regulation at least two (2) business days in advance of the date intended to make the product available to retail investors.

Lastly, Law 35/2018 sets out the sanctioning regime regarding the infractions to the PRIIPs Regulation as complemented by local rules.

Notwithstanding the entry into force of Law 35/2018, it is still lacking the publication by ASF of its regulation concerning insurance-based investment products, that should set the channels and relevant forms that market players shall use to comply with the prior notification obligation established by Law 35/2018 in respect of the key information document and marketing materials.

Insurance Distribution Directive

On January 16th 2019, Law 7/2019 was published approving the new legal regime on insurance and reinsurance distribution (RJDSR), implementing the Directive (EU) 2016/97 of the European Parliament and of the Council of January 20th 2016 on insurance distribution (IDD).

We note that Law 7/2019 reports its effects on October 1st 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 February 23rd 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.

This strict timeline will demand from market players serious adaptation efforts, notably with respect to the professional development of the managers responsible for distribution and to persons directly involved in distribution, remuneration disclosure and requirements, the provision of information on insurance products to customers through the standardised insurance product information document, summarising the main features of the proposed contract, as well as the definition of thorough product oversight and governance.

Source: <https://chambers.com/content/item/3434>