



LAW NO. 7/2019 OF 16 JANUARY (TRANSPOSITION OF DIRECTIVE ON INSURANCE DISTRIBUTION) (“INSURANCE DISTRIBUTION LAW”)

The Insurance Distribution Law was published in the Official Journal of 16 January (available [here](#)) and (i) approves the legal framework on insurance and reinsurance distribution, transposing Directive (EU) 2016/97, known as the Insurance Distribution Directive, (ii) repeals Decree-Law no. 144/2016, of 31 July (legal framework on the access to and exercise of the insurance or reinsurance mediation activity), (iii) amends Law no. 147/2015 of 9 September (legal framework on the access to and exercise of the insurance or reinsurance activity), (iv) as well as the procedural system applicable to special crimes in the insurance and pension funds sector and to the administrative offences which will be processed by *Autoridade de Supervisão de Seguros e Fundos de Pensões* (“Supervisory Authority for Insurance and Pension Funds in Portugal - ASF”).

The **Insurance Distribution Law** produces effects as of 1 October 2018, except for the provisions enabling ASF to issue specific regulations which will be effective when the referred law comes into force¹.

The most significant aspects of this new legal framework, to be laid down in specific regulations to be issued by ASF, in accordance with the powers conferred on it, are the following:

1. New definitions of “insurance distribution” and “insurance distributors”

Introduces the definition of the concept of insurance distribution (enshrining a broader concept covering a large number of activities, from pre-contractual relations to the execution of contracts and administration and performance of the same) and of the entities qualifying as insurance distributors.

Establishes a uniform legislative framework applicable to the different participants, insurance intermediaries, ancillary or otherwise, and insurance undertakings, directly involved in the distribution activity, regardless of the channel used.

2. Change in the categories of insurance intermediaries

Insurance intermediaries are now qualified under the following categories: insurance agent, insurance broker and ancillary insurance intermediary.

² In accordance with the general rules, the law will enter into force on the 5th day after publication.

This change does not affect the vested rights of the former “tied insurance intermediaries”, i.e., those who operated and were registered in accordance with the previous legal framework, since these are converted automatically and registered into the new categories, that is, as ancillary insurance intermediaries or insurance agents, according to the greater or lesser proximity or degree of dependence or ties with the insurance undertakings.

This automatic conversion process, to be carried out by ASF, does not prevent those concerned from deciding to register themselves under a different category, if it is considered more appropriate for their business model.

3. Strengthening of the rules and procedures

The lawmaker has strengthened the organisational rules and procedures, as well as the rules on the appropriate qualification and fit and proper assessment for carrying out the activity, without prejudice to a transitional regime, until 23 February 2019, as regards the appropriate qualification, and to assumptions of compliance with the requirements set forth in the **Insurance Distribution Law**.

4. Vocational training and insurance courses

Establishes new vocational training rules and the minimum requirements and content of insurance courses and sets out continuous professional development requirements.

5. New remuneration rules

Establishes new rules on remuneration, with the purpose of preventing conflicts of interest and ensure that insurance distributors are not remunerated, or do not remunerate or assess the performance of their employees in a way that conflicts with the best interests of customers.

In particular, insurance distributors cannot have mechanisms qualifying as incentives, notably based on sales targets, to the recommendation of a particular product to a customer that would exclude the possibility of offering a different insurance product which would better meet the customer’s needs.

6. Policies for design and approval of insurance products

The lawmaker broadened the obligations in respect of the policies for design and approval of insurance products, which must include identification of the profile of the relevant policyholders or insured persons which are the target market and ensure that all relevant risks to such persons are assessed and that the distribution strategy is consistent with the identified target market.

7. Strengthening of pre-contractual information duties

The lawmaker also strengthened the pre-contractual information duties, including the special duty of the insurance distributor to assess whether the insurance product is appropriate for the customer.

Therefore, prior to concluding a non-life insurance contract, customers must be provided with an Information Document on the insurance product².

There are stricter rules as regards insurance-based investment products, taking into account the nature of the products and subject to compliance with the obligations under Regulation (EU) no. 1286/2014 (legal framework of packaged retail and insurance-based investment products - PRIIPs) and Law no. 35/2018 of 20 July.

² This is a standardized document drawn up by the producer of the insurance product, consistent with the format laid down in the Commission Implementing Regulation (EU) 2017/1469, of 11 August 2017

In addition to the obligation to provide the customer or potential customer prior information on the risks, costs, and charges of the insurance-based investment products, periodic reports on the service provided must also be made available.

When marketing these products, and depending on whether it is a non-advised sale or an advised sale, intermediaries must fulfil specific duties.

Therefore, in non-advised sales, customers or potential customers must be requested information on their level of knowledge and experience in the investment field relevant to the specific type of product or service offered or requested, in order to assess whether such insurance service or product is appropriate.

In advised sales, the intermediary must ensure that the recommended insurance-based investment product is the most appropriate taking into account the preferences, goals, level of risk tolerance and the ability of the customer or potential customer to bear losses and, to that end, obtain and assess the information on his/her:

- a. knowledge and experience in the investment field relevant to the specific type of product or service;
- b. financial situation including his/her ability to bear losses;
- c. investment objectives, including his/her risk tolerance.

8. Cross-selling

There are new rules for cross-selling, strengthening the duties of information. For instance, when an insurance product is ancillary to a product or service which is not insurance, as part of a package or the same agreement, the insurance intermediary must give the customer the possibility to purchase the good or service separately. Conversely, if the insurance product is offered with an ancillary product or service which is not insurance, the intermediary shall inform the customer whether it is possible to purchase each of the products separately and, if so, shall provide an adequate description and deliver documentation on the costs and charges of each such product.

9. Increase in sanctions

The changes to the procedural regime applicable to the special crimes in the insurance and pension funds sector and to the administrative offences to be imposed by the *Autoridade de Supervisão de Seguros e Fundos de Pensões* have led to an increase in the maximum and minimum sanctions applicable.

Abreu Advogados has specialised lawyers who can provide legal advice on all these changes and assist undertakings and distributors in their insurance or reinsurance distribution activities and in all the steps to be taken in order to comply with the new rules.

www.abreudadvogados.com

For more information contact apdfin@abreudadvogados.com

Lisbon
Av. Infante D. Henrique, 26
1149-096 Lisbon
☎ (+351) 217 231 800
☎ (+351) 217 231 899
✉ lisboa@abreudadvogados.com

Porto
Rua S. João de Brito, 605 E - 4º
4100-455 Porto
☎ (+351) 226 056 400
☎ (+351) 226 001 816
✉ porto@abreudadvogados.com

Madeira
Rua Dr. Brito da Câmara, 20
9000-039 Funchal
☎ (+351) 291 209 900
☎ (+351) 291 209 920
✉ madeira@abreudadvogados.com

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