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# Banking, Finance and Capital Markets

Legal Flash | Portugal

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- > **Regulation of the legal framework of insurance and reinsurance distribution – Regulatory Standard 13/2020-R**



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## I. Regulation of the legal framework of insurance and reinsurance distribution – Regulatory Standard 13/2020-R

Regulatory Standard 13/2020-R of the Insurance and Pensions Funds Supervision Authority ("**Regulatory Standard 13/2020**") was published in the Official Journal on January 26, 2020. This Regulatory Standard aims to regulate the legal framework of insurance and reinsurance distribution, approved by Law 7/2019, of January 16, 2020 ("**RJDS**").

Regulatory Standard 13/2020 will enter into force on February 25, 2021 and is the result of the Draft of Regulatory Standard that the Insurance and Pension Funds Supervisory Authority ("**ASF**") submitted for public consultation between October 28, 2020 and November 25, 2020.

We highlight the following amendments introduced by Regulatory Standard 13/2020:

- Policies on the treatment of policyholders, insured persons, beneficiaries and injured third parties setting out and guaranteeing their fair, diligent and transparent treatment;
- Insurance intermediaries and ancillary insurance intermediaries must impartially, promptly and efficiently set up (i) mechanisms to manage complaints filed by policyholders, insured persons, beneficiaries or injured third parties (ii) and, in some cases, a complaints management function. Regulatory Standard 13/2020 also establishes the duty for these intermediaries to file with ASF an annual report on the complaints management;
- Regulation of the ancillary insurance intermediaries' legal framework, in particular, instructions on the registration procedure with ASF by establishing several conditions of access to be analyzed by ASF when submitting the application for registry. Notably, these include the minimum capital covered by professional civil liability insurance and technical, commercial, administrative and accounting requirements, e.g., information technology resources, in-house archive and the presence of a properly qualified individual in establishments open to the public to provide information;
- A fit and proper framework for candidates to insurance and reinsurance intermediaries and ancillary insurance intermediaries, requiring a complete questionnaire and several documents;
- A system for control of qualifying holdings, requiring prior notice to ASF of the project on the proposed acquisition or increase of qualifying holdings. This notice must provide information on the purchaser, the transaction and the financing and business plan. Regulatory Standard 13/2020 also establishes a waiver for submitting such information when the proposed purchaser and the members of its management body are duly registered with a Portuguese supervisory authority of the financial sector or with the competent authority in their home Member State that sets out proper control requirements;



- Requirements on the economic and financial structure of candidates for insurance intermediaries, ancillary insurance intermediaries, insurance and reinsurance brokers and intermediaries. Legal persons must comply with minimum share capital rules and minimum indicators of financial autonomy, solvency and liquidity, while individuals are subject to the ASF's analysis of their assets, income and indebtedness;
- New requirements on the minimum provisions of the insurance intermediation agreement between the insurance company and the insurance intermediaries or ancillary insurance intermediaries, applicable to new agreements and amendments to existing ones, including:
  - (i) contractual regulation of the powers of the intermediary and the possibility of subcontracting such powers;
  - (ii) authorization or refusal for two or more intermediaries to act jointly under the same insurance agreement; and
  - (iii) setting up procedures to ensure that information is efficiently provided.
- Amendment to the portfolio diversification requirements, simplifying the cumulative requirements for insurance brokers' portfolios;
- Strengthening reporting duties to ASF by establishing the annual obligation to report information on the individuals and companies directly connected to the insurance distribution activity, including identification, qualification and establishment where they operate. Insurance intermediaries must now communicate to ASF information on the individuals and companies contracted to carry out activities under the exception regime of RJDS for the distribution of non-compulsory insurance products;
- Duty of disclosure on the statutory annual accounts for all insurance, reinsurance and ancillary insurance intermediaries;
- This Regulatory Standard also establishes a reference regime to the Commission Delegated Regulation (EU) 2017/2358 of September 21, 2017 on the duties on product oversight and governance policy for insurance intermediaries and ancillary insurance intermediaries (when applicable). Thus, ASF clarifies the applicable legal framework and prevents duplicate duties.



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