
Banking, Finance and Capital Markets

Legal Flash | Portugal

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- > **Requirements for civil liability insurance contracts covering trust services for electronic transactions - Ordinance 62/2021**



I. Requirements for civil liability insurance contracts covering trust services for electronic transactions – Ordinance 62/2021

Ordinance 62/2021 was published in the Portuguese Official Gazette on March 17, 2021, establishing the requirements applicable to civil liability insurance contracts that cover trust services for electronic transactions (“Ordinance 62/2021”).

The Ordinance 62/2021 follows the publication of Decree Law 12/2021, of February 9, 2021, regarding electronic identification and trust services for electronic transactions in the internal market, aimed at executing in Portugal Regulation (EU) No. 910/2014, of the European Parliament and of the Council, of July 23 (“Regulation (EU) No. 910/2014”), as well as regulating the activity of trust service providers established in Portugal.

The Regulation (EU) No. 910/2014 was approved to ensure the proper functioning of the internal market while also aiming for an adequate level of security of electronic identification and trust services. It introduces the concept of qualified trust service providers and establishes conditions that ensure a high level of security in all qualified trust products and services that are used, provided, or both. Although Regulation (EU) No. 910/2014 is mandatory and directly applicable in Portugal, its execution must be ensured.

Accordingly, under Decree Law 12/2021, the qualified status of trust service providers must be granted by the competent supervisory body once it has been verified that the trust service provider has met a set of requirements, including being covered by an adequate third party civil liability insurance contract.

Ordinance 62/2021 establishes the main terms and conditions applicable to civil liability insurance contracts that cover trust service providers, by:

- defining the scope of the insurance contract, while imposing the obligation to indemnify third parties for actions or omissions of the trusted service providers;
- establishing the time limits applicable to the cover the insurance contract provides, as well as defining the period in which claims may be filed relating to the contract;
- establishing the minimum amount per claim guaranteed by the insurance contract;
- allowing the establishment of deductibles, while defining their maximum amount and establishing that they cannot be enforced against injured third parties or their heirs;
- establishing the exclusions that are admissible to ensure the purpose envisaged with the establishment of a compulsory insurance is not distorted; and



- establishing the cases where insurance companies are entitled to enforce a right of return against the policyholder/insured.

Ordinance 62/2021 entered into force on March 18, 2021, imposing on insurance companies that intend to underwrite insurance contracts in Portugal the obligation to disclose to the Portuguese Insurance and Pension Funds Supervisory Authority (ASF) the general and special terms and conditions of their insurance policies, under the terms and for the purposes of article 39 of the Portuguese Legal Framework on Insurance and Reinsurance Activity, approved by Law 147/2015, of September 9, 2015. Once it has been confirmed that those policies comply with the legal framework, they will be disclosed on the ASF website.



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