

# Legal Alert

17 October 2018

## In this issue:

### **New rules governing the financial insurance sector**

On October 1<sup>st</sup>, 2018 the Law no. 236/2018 on insurance distribution entered into force. The law transposes the provisions of Directive (EU) 2016/97 and repeals Law no. 32/2000 on the activity and supervision of intermediaries in insurance and reinsurance.

The regulations issued by the Financial Supervisory Authority (FSA) prior to October 1<sup>st</sup>, 2018 will continue to apply until the new regulations will be enacted, except for contradictory provisions, where Law no. 126/2018 shall prevail. The FSA is expected to issue in the near future implementation rules for the application of the Law no. 236/2018.

We summarized below some of the key aspects provided by Law no. 236/2018.



## New rules governing the financial insurance sector

### Scope

The new law applies to the following individuals and legal entities:

- established or which intend to establish in Romania in order to take up and pursue insurance distribution activity;
- carrying out or which intend to carry out the insurance distribution activity in Romania;
- with the registered office or the residence in Romania and which intend to be established or to take-up and pursue the insurance distribution activity in another Member States.

The law regulates several aspects in relation to:

- the distribution of insurance and reinsurance products;
- the organization and functioning conditions for the insurance and/or reinsurance distributors;
- the supervision of the insurance distribution activity and other related activities;
- the registration of the intermediaries, including their authorization and licensing by the FSA.

The law provides several exemptions from its application in relation to ancillary insurance intermediaries carrying out insurance distribution activities in certain conditions, as well as in relation to the insurance or reinsurance distribution activities carried out in third countries.

### Key aspects:

- **Changes in terminology:** The new law classifies the insurance market players in the following categories:
  - “insurance distributors”, respectively: (i) insurance undertakings, (ii) insurance intermediaries (primary and secondary), (iii) ancillary insurance intermediaries; and
  - “reinsurance distributors”, respectively: (i) reinsurance undertakings and (ii) reinsurance intermediaries (primary and secondary).

The notions of “insurance agent”, “insurance broker”, “assistant in brokerage” or “subordinated insurance assistant” are no longer provided in the new law.

- **Stricter organisational and reporting requirements:** insurers shall approve, implement and regularly review their internal policies and procedures regarding the compliance by their employees with the professional competence requirements and with the moral probity requirements by the persons within the management structure, and shall create an internal function to ensure the proper implementation of the endorsed policies and procedures.
- **The insurance distributors cannot:**
  - be remunerated or remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their clients;
  - make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a client when the insurance

distributor could offer a different insurance product which would better meet the client's needs;

- accept or receipt fees, commissions or other monetary or non-monetary benefits paid or provided by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products.
- **Within the pre-contractual stage, the insurance distributor shall provide its clients with extended information on:**
  - **conflict of interests** referring, *inter alia*, to: (i) the qualifying holdings of the insurance intermediaries in a given insurance undertaking and *vice-versa*, (ii) the nature and type of remuneration received in connection with the insurance contract, (iii) the nature of advice, (iv) the names of the insurance undertakings with which it does (or may) conduct business.
  - **advice** referring, *inter alia*, to: (i) the performance of the suitability tests of the recommended products on the basis of the information obtained from the clients and (ii) the provision of objective information about the insurance product by using an insurance product information document (PID) drawn up by the manufacturer of the insurance product on the basis of the information and characteristics provided by the new law.
  - **the selling of a package of products (i.e. when an insurance product is offered together with an ancillary product or service which is not insurance)**, which includes: (i) an adequate description of the different components of the package, as well as separate evidence of the costs and charges of each component (in case there is the possibility to buy the different components separately), and (ii) an adequate description of the different components of the package and the way in which their interaction modifies the risk or the insurance coverage (where the risk or the insurance coverage resulting from such a package offered to a client is different from that associated with the components taken separately).
- **Means of providing information:** there are imposed specific conditions regarding the provision of pre-contractual information: (i) by using a durable medium (other than paper), (ii) by using a website and (iii) in the case of telephone selling.
- **Product governance requirements:** before marketing and distributing the insurance products to clients, the insurance undertakings and the primary intermediaries that manufactures insurance products shall maintain, operate and review a process for the approval of each insurance product (e.g. identification of the target markets, assessing all relevant risks to such identified target markets etc.).
- **Specific requirements regarding the insurance-based investment products:** the new law imposed, *inter alia*, additional requirements in connection with the identification of conflict of interests between insurance distributors and their clients, pre-contractual information provided to the clients, performance of the suitability tests of the products, disclosing to clients all the costs related to the recommended products.
- **Sanctions:** the new law imposes stricter sanctions and administrative measures for non-compliance with its provisions. In case of insurance undertakings and primary intermediaries, the pecuniary fines may amount up to RON 5,000,000.

- **Transitional provisions:**

- Within a maximum of 120 days from the date of October 1<sup>st</sup>, 2018, the credit institutions and the investment firms carrying out the activity of banc-assurance, or respectively acting in the capacity of assistants in brokerage, have the possibility to carry out insurance distribution activity in accordance with the new provisions as primary intermediaries and shall notify the FSA in this respect. After the elapse of this legal deadline, the credit institutions and the investment firms that have not submitted such notification may carry out insurance distribution activity only as secondary intermediaries.
- The professional competence requirements under art. 10 para. (1) in the new law will apply starting with February 23<sup>rd</sup>, 2019.

For further questions regarding the aspects mentioned in this alert, please contact us.



**Andrei Burz-Pinzaru**  
Partner, Reff & Associates,  
Member of Deloitte Legal  
+40 728 328 928  
[aburzpinzaru@reff-associates.ro](mailto:aburzpinzaru@reff-associates.ro)



**Andreea Serban**  
Managing Associate, Reff &  
Associates, Member of Deloitte Legal  
+40 726 310 463  
[andserban@reff-associates.ro](mailto:andserban@reff-associates.ro)

## Reff | Associates

Reff & Associates SCA is a law firm member of Bucharest Bar, independent in accordance with the Bar rules and represents Deloitte Legal in Romania. Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms or their affiliates that provide legal services. Visit the global Deloitte Legal website <http://www.deloitte.com/deloittelegal> to see which services Deloitte Legal offers in a particular country.

This alert is offered as guidance and must not be considered a consultancy service. Before taking any action based on this document, you should ask for professional fiscal/legal advisory.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2018. For information, contact Reff & Associates SCA