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# Governance system of insurance and reinsurance companies

**ASF Regulatory Standard 4/2022-R of April 26 was published in Series II of the Official Gazette of the Republic of Portugal of May 31**

Legal flash - Banking, Finance and Capital Markets

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## Key aspects

- Improves the supervisory model for the governance system of insurance and reinsurance companies
- Establishes the general requirements and principles of the governance system of insurance and reinsurance companies for matters such as risk and solvency self-assessment, prevention, disclosure and settlement of conflicts of interest, the policy of preventing, detecting and reporting fraud in insurance and remuneration, and the internal reporting of irregularities



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## **Governance system of insurance and reinsurance companies - ASF Regulatory Standard 4/2022-R of April 26**

Approved on April 26, 2022, following the public consultation process, Regulatory Standard 4/2022-R of the Portuguese Insurance and Pension Funds Supervisory Authority (“ASF”) regulates the governance system of insurance and reinsurance companies.

This regulatory standard is arranged into 12 chapters, and the matters addressed in these chapters are considered essential to ensure the sound and prudent management of insurance and reinsurance companies.

The key objectives of this standard are to ensure the sound and prudent management of insurance and reinsurance companies and to boost the efficient exercise of the powers legally entrusted to the ASF for supervising the governance system.

### **Scope of application**

The regulatory standard applies to:

- > insurance and reinsurance companies with their head office in Portugal;
- > branch offices of foreign insurance and reinsurance companies operating in Portugal;
- > insurance and reinsurance groups, when the ASF is the group supervisor;
- > sub-groups, when the head parent company, head insurance holding company or head domestic mixed financial company is subject to group supervision by the ASF under article 256 of the Legal Regime for Access to and Exercise of the Insurance and Reinsurance Business (“LRAIR”), approved by Law 147/2015 of September 9, 2015.

### **Main changes**

The provisions of this regulatory standard should be interpreted and applied considering the Portuguese and European regulatory framework in force for the governance of insurance and reinsurance companies; namely, the provisions of the LRAIR; Commission Delegated Regulation (EU) 2015/35 of October 10, 2014 (“Delegated Regulation”); and the European Insurance and Occupational Pensions Authority (“EIOPA”) Guidelines of September 14, 2015, on the governance system and own risk and solvency assessment.



The new standard develops the general requirements of the previous **governance system** regime, especially those relating to the organization, functioning and strategic planning of insurance companies.

With regard to the **responsibilities of the management body**, particular importance is attributed to the duties of implementing a code of conduct and to promoting an organizational culture and, because of its innovative nature, to the duty to approve a succession plan for members of the management and supervisory body, senior managers, those responsible for key functions, and the chief actuary. The management body of insurance and reinsurance companies should also ensure that they identify the significant risks to be addressed in the contingency and business continuity plans.

Concerning the **internal selection and assessment policy**, the criteria for assessing fitness and qualification requirements are established. According to these requirements, the management body must have suitable qualifications, experience and knowledge of the insurance market, business strategies, the governance system, financial and actuarial analysis, and the legal and regulatory framework.

As a novelty, the standard also regulates the duty of insurance and reinsurance companies to have rules for preventing, reporting and remedying **conflicts of interest**.

The general requirements for the **risk management system** are updated from those established in the previous Regulatory Standard 14/2005-R of November 29, which is revoked. The minimum content of the policy—in general terms and by area—and the responsibilities of the risk management function are also defined.

The minimum content of the **policy on the prevention, detection and reporting of insurance fraud** is also defined, as well as the terms of the duty to send the ASF a report on the arrangements and procedures specifically adopted as part of this policy and their certification by a statutory auditor.

The requirements for the **risk and solvency self-assessment** to be carried out by insurance and reinsurance companies on an individual basis are also established.

The applicable general requirements for the **internal control system** and the aspects the system should cover are established, as are the responsibilities of the compliance-checking function.



The responsibilities and characteristics of the **internal audit function** are established and require it to be impartial and independent. The terms of the internal audit policy, plan and report are also established.

Based on the EIOPA Guidelines, the new standard regulates the responsibilities of the **actuarial function** and the **regime for outsourcing** insurance or reinsurance functions or activities, with a focus on core or important operational functions and activities and key functions (and the implementation of an obligation to register those arrangements).

As to **remuneration**, the main topics of the new standard are:

- > updating the general principles and rules applicable to the approval, definition and minimum content of the remuneration policy, based on the regime established in LRAIR, the Delegated Regulation, and the EIOPA Guidelines on the governance system, as well as, occasionally, Regulation (EU) No 2019/2088 of the European Parliament and of the Council of November 27, 2019, on sustainability-related disclosures in the financial services sector;
- > expanding the criteria for the attribution and deferment of variable pay and severance pay;
- > updating the rules on the creation, duties and functioning of the remuneration committee, with an emphasis on the compulsory creation of this committee in insurance and reinsurance companies with at least 50 employees;
- > updating the rules on the disclosure of information relating to the remuneration policy of insurance or reinsurance companies and pension fund management companies and the rules applicable to remuneration policy assessment, including the obligation to have the report containing the results of this assessment appraised by a statutory auditor and sent to the ASF, which may legally order changes to be made to the remuneration policy depending on the company's risk profile; and
- > updating the template for the information to be disclosed by insurance and reinsurance companies relating to the remuneration policy, as well as the declaration of compliance, which must now appear on the insurance or reinsurance company's website.

As regards the **internal reporting of irregularities**, innovative methods are established for receiving, processing and closing reports made to insurance and reinsurance companies about serious irregularities related to their governance system, management or the way their accounts are organized.



The requirements and principles applicable to the **governance systems to be implemented at group level** are also established, without overlooking the responsibilities of each group entity.

Finally, Regulatory Standard 8/2016-R of August 16 has been amended to include the range of information to be provided to the ASF:

- > The Report on the results of the risk and solvency self-assessment or the single risk and solvency self-assessment document
- > The Report containing the results of the internal assessment of the remuneration policy and the statutory auditor's certification and opinion on its content
- > The Report on the receipt, treatment and storage of reports about serious irregularities
- > The prior notification of the intention to outsource key or important functions or activities

## Entry into force

This regulatory standard was published in Series II of the Official Gazette of the Republic of Portugal of May 31, and it enters into force on June 30, 2022; however, some provisions will not take effect until January 1, 2023.

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