

## Key points of the recently passed Royal Decree 287/2021 and Royal Decree 288/2021 on insurance matters

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*On 22 April, Royal Decree 287/2021 of 20 April on the formation and submission of statistical-accounting information of insurance and reinsurance distributors and Royal Decree 288/2021 of 20 April transposing several insurance directives, entered into force.*

Last Thursday, 22 April, two long-awaited royal decrees on insurance matters came into force: (i) Royal Decree 287/2021 of 20 April on the formation and submission of statistical-accounting information of insurance and reinsurance distributors; and (ii) Royal Decree 288/2021 of 20 April amending Royal Decree 1060/2015 of 20 November on the regulation, supervision and solvency of insurers and reinsurers; rewording Article 34 of the Private Insurance Organisation and Supervision Regulations, and amending the Combined Agricultural Insurance Regulations.

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In the course of this paper we will summarise the keys points of both pieces of legislation:

## 1. **Royal Decree 287/2021 of 20 April on the formation and submission of statistical-accounting information by insurance and reinsurance distributors.**

Royal Decree 287/2021 is passed in the implementation of the training obligations set out in “Royal Decree Law 3/2020 of 4 February on urgent measures transposing into Spanish law various European Union directives in the field of public procurement in certain sectors; of private insurance; of pension schemes and funds; in the field of taxation and tax litigation”, repealing Royal Decree 764/2010, implementing the Private Insurance and Reinsurance Mediation Act 26/2006, in terms of statistical-accounting and business information and professional competence.

The objective of the new Royal Decree is twofold. On the one hand, it aims to increase the protection of policyholders, insured persons and potential clients by approving a renewed training programme to ensure that insurance and reinsurance distributors, the staff responsible for their management bodies, as well as employees, external collaborators and the staff of the distribution networks of bancassurance operators directly involved in distribution, have the necessary minimum knowledge of the correct conduct of their activity and of the products they sell, thus ensuring that these products are adapted to the needs of clients and that they receive adequate information on the insurance offered. On the other hand, it regulates the accounting and record-keeping obligations to be met by insurance and reinsurance distributors in Spain.

To this end, the Royal Decree regulates a series of aspects of particular practical importance for intermediaries. In particular, it lays down the criteria defining the knowledge and skills that insurance (and reinsurance) distributors and their relevant personnel (a new broad concept that includes the person responsible for the distribution activity, employees and external collaborators, as well as any person involved in the distribution of the entity’s products) must possess, the method of assessment and the form of accreditation of said knowledge and skills by the obligors. Lastly, the final two chapters of the decree are devoted to regulating the accounting and record-keeping obligations that distributors operating in the Spanish market must observe.

### 1.1. *Training requirements*

With regard to the training required to be able to conduct the activity of distribution, the regulation determines the knowledge and skills that insurance distributors must have according to the type of sale they perform, their responsibility, the complexity of the product and the activity they conduct. On this basis, three levels of initial training are set out and distributors are required to ensure annual continuous training:

Obligors	Initial training	Continuous training
<b>Level 1</b> <ul style="list-style-type: none"> <li>Insurance and reinsurance brokers.</li> <li>Those responsible for distribution activities in insurance companies, reinsurance companies, insurance and reinsurance brokers and bancassurance operators.</li> </ul>	300 hours (annual)	25 hours (annual)
<b>Level 2</b> <p><b>When they provide advice (“advised selling”):</b></p> <ul style="list-style-type: none"> <li>Insurance agents.</li> <li>External collaborators.</li> <li>Employees of insurers, reinsurers, insurance and reinsurance intermediaries and external collaborators.</li> <li>Persons responsible for the distribution activity among insurance agents.</li> <li>Persons responsible for the activity of collaboration with distribution among external partners.</li> <li>Distribution network of bancassurance operators.</li> </ul>	200 hours (annual)	25 hours (annual)
<b>Level 3</b> <p><b>When they do NOT provide advice (“informed selling”):</b></p> <ul style="list-style-type: none"> <li>Insurance agents.</li> <li>External collaborators.</li> <li>Employees of insurers, reinsurers, insurance and reinsurance intermediaries and external collaborators.</li> <li>Persons responsible for the distribution activity among insurance agents.</li> <li>Persons responsible for the activity of collaboration with distribution among external partners.</li> <li>Distribution network of bancassurance operators.</li> </ul>	150 hours (annual)	15 hours (annual)

The content of the training programmes must be adapted to that established by decision of the Directorate-General for Insurance and Pension Funds, which is still pending publication, and which will replace the current Decision on the subject of 18 February 2011.

As for the obligation of continuous training, the Royal Decree clarifies that this may be provided by the insurance distributor, by public or private universities or by external training certifiers.

#### 1.2. *Accreditation procedure and adaptation to training obligations*

For the purpose of accrediting the knowledge and skills acquired, the Royal Decree requires insurance and reinsurance distributors to keep records of the knowledge acquired and the continuous training received.

In addition, for the same purposes of accreditation, the Royal Decree provides, in its sole additional and first transitory provisions, a system of approval for distributors who are already carrying out training activities, laying down specific rules that enable the existence of prior knowledge and training to be assessed, in particular, the following:

- a) The possession of the diploma of qualified insurance intermediary for the purposes of the repealed Act 9/1992 of 30 April 1992 shall have the same effect as the passing of the training course required for level 1.
- b) Persons domiciled or resident in Spain who can prove that they hold a group A diploma as provided for in Royal Decree 764/2010 of 11 June 2010 do not have to pass the training course corresponding to level 1.
- c) Persons domiciled or resident in Spain who can prove that they hold the group B qualification provided for in Royal Decree 764/2010 of 11 June 2010 do not have to pass the training course for levels 2 and 3.
- d) Persons domiciled or resident in Spain who can prove that they hold the group C qualification provided for in Royal Decree 764/2010 of 11 June 2010 will not have to pass the training modules taken and matching subjects in the training programme provided for courses at levels 1, 2 and 3. These persons may participate in the distribution of insurance or reinsurance by providing information on insurance or reinsurance products, without carrying out any advisory work, and will have a period of one year from the entry into force of Royal Decree 287/2021 to complete the course provided for level 3.

- e) irrespective of the above statements, compliance with continuous training shall in any case be compulsory for the pursuit of the activity of distribution.
- f) Training courses and aptitude tests for group A that were authorised at the entry into force of Royal Decree 287/2021 may be carried out under the terms of said authorisation in accordance with Act 26/2006 of 17 July, and the certificates issued to those who pass them shall have the same effects as those set out in sections a and b above.
- g) The training courses for access to groups B and C already begun on the entry into force of Royal Decree 287/2021 may continue to be given in accordance with Act 26/2006 of 17 July and the certificates issued to those who pass them will have the same effects as those set out in sections c and d above.

Irrespective of the above statements, compliance with continuous training shall in any case be compulsory to conduct the activity of distribution.

For these purposes, continuing training given to persons included in groups B and C of the repealed legislation shall be computable within the continuing training programme of the relevant year, provided that the report to be drawn up certifies its content, duration and the persons who have received this training.

### 1.3. *Training of mediators from other Member States*

The Royal Decree states that the mere fact of being registered and active as a distributor in their countries of origin is considered equivalent to having passed the courses provided for national distributors.

### 1.4. *Registers and statistical-accounting information to be sent to the Directorate-General for Insurance and Pension Funds*

In pursuance of the provisions of Title I of Book Two of Royal Decree-law 3/2020, the last two chapters thereof are devoted to regulating: 1) the obligations of insurance and reinsurance brokers to keep and maintain registers, and 2) the obligations concerning the statistical and accounting information to be sent to the Directorate-General for Insurance and Pension Funds, obligations applicable to insurance brokers, reinsurance brokers, linked insurance agents and bancassurance operators.

This regulation aims to provide the supervisor with better information on the activity of insurance distributors and to strengthen its actions in the protection of users' rights.

With regard to the keeping and maintenance of registers, it is stipulated that insurance and reinsurance brokers must keep and preserve the registers, correspondence and

supporting documents relating to their business in due order and in the terms established in company legislation. To this end, it is stipulated that they should preferably be kept on computer media, must be kept at the disposal of the Directorate-General for Insurance and Pension Funds and may not be kept with a delay of more than three months.

Insurance brokers shall, in particular, keep and maintain records a) of policies and supplements brokered; b) of premiums collected; c) of claims handled; d) of external collaborators; and e) of other insurance brokers used as a distribution network other than their own. For their part, reinsurance brokers must keep and maintain records a) of contracts and facultative risks brokered by them; b) of external collaborators; and c) of other insurance and reinsurance brokers used as a distribution network other than their own.

With regard to the accounting obligations and the duty to inform the Directorate-General for Insurance and Pension Funds, the annual statistical-accounting information to be sent by insurance and reinsurance brokers must include, in particular, separately and for each registration code: (a) data concerning the general disclosure and conduct of business requirements; (b) the structure of the organisation; (c) the training provided to employees and external collaborators; (d) the insurance or reinsurance contracts brokered; (e) the profit and loss account; and (f) the balance sheet. For their part, linked insurance agents and bancassurance operators shall submit annual business and accounting information which shall include: (a) data concerning the general disclosure and conduct of business requirements; (b) the structure of the organisation; (c) the training provided to employees, persons directly involved in the distribution business and external collaborators; (d) the insurance contracts brokered; and (e) the profit and loss account.

For the purposes of the above, it should be emphasised that data must be sent electronically through the gateway of the Directorate-General for Insurance and Pension Funds.

It should be noted that the implementation of this Royal Decree is still pending as regards the rules on the technical specifications and keeping of the registers. Also pending approval, by ministerial order, are the templates for the submission of statistical-accounting documentation. With regard to the latter, and until they are approved, the templates set out in Articles 7 and 9 of Royal Decree 764/2010 of 11 June shall apply.

**2. Royal Decree 288/2021 of 20 April amending Royal Decree 1060/2015 of 20 November on the regulation, supervision and solvency of insurers and reinsurers; rewording Article 34 of the Private Insurance Organisation and Supervision Regulations, and amending the Combined Agricultural Insurance Regulations.**

Royal Decree 288/2021 aims to strengthen the soundness and solvency of insurance companies. It partially transposes and updates the following directives:

- a) Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, in respect of insurers authorised to conduct life insurance business and reinsurers covering life insurance obligations — making it compulsory for insurers and reinsurers to develop and disclose their policy on shareholder engagement in their investments in listed companies— .
- b) Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing, in respect of the insurance sector — regulating the exchange of information and cooperation between national insurance supervisors and the European supervisor and providing for the creation of platforms for cooperation between them—.

In addition, Royal Decree 288/2021 also introduces changes in the following areas:

- a) The regulation of the biometric tables used in life and funeral insurance, in order to update them with respect to the evolution of longevity. To this end, it establishes the obligation to use updated, reliable and robust biometric tables. This measure aims to achieve greater robustness in the calculation of technical provisions and to promote the solvency of insurers and transparency in insurance pricing.
- b) the combined agricultural insurance's rules, to clarify the participation of the Consorcio de Compensación de Seguros (private-public partnership providing nationwide, state-guaranteed cover for extraordinary risks) in the Board of Agroseguro (agricultural insurance pool manager).