

ENGAGEMENT POLICY AND INVESTMENT STRATEGY OF LIFE INSURANCE AND REINSURANCE COMPANIES REGARDING LISTED COMPANIES FOLLOWING THE PUBLICATION OF RD 288/2021

On 21 April 2021, Royal Decree 288/2021 of 20 April (“RD 288/2021”) amending Royal Decree 1060/2015 of 20 November on the regulation, supervision and solvency of insurance and reinsurance companies (“ROSSEAR”), was published in the Official State Bulletin.

RD 288/2021 aims to partially transpose (a) Directive (EU) 2017/828, amending Directive 2007/36/EC regarding the promotion of long-term shareholder engagement (“Directive 2017/828”); and (b) Directive (EU) 2019/2177¹, concerning the Insurance Sector (“Directive 2019/2177”).

The main amendments of RD 288/2021 to ROSSEAR are as follows:

A. Engagement policy and investment strategy

The main objective of Directive 2017/828 is to emphasise the long-term commitment of insurance companies operating in the life insurance sector, and reinsurance companies covering life insurance obligations as shareholders of listed companies of any EU Member State, with the sustainability of their company as an investment entity.

Life insurance and reinsurance companies are obliged to draft, publish and disclose the application of their engagement policies in their investments in listed companies, under Articles 79 *bis* and *ter* of LOSSEAR², which were introduced by RDL 3/2020³.

RD 288/2021 adds Articles 89 *bis* and *ter*, on the development of the engagement policy, investment strategy and agreements with asset managers, to the ROSSEAR in order to complete the delayed implementation of Directive 2017/828 in the Insurance Sector.

Life insurance and reinsurance companies are specifically required to annually publish their **engagement policy** for the companies in which they invest. This must: (i) explain **how they supervise** the strategy, financial and non-financial performance, risks, capital structure,

¹ Amending Directive 2009/138/EC relating to 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 money laundering or terrorist financing.

² Law 20/2015 of 14 July, on the regulation, supervision and solvency of insurance and reinsurance companies (“LOSSEAR”).

³ Royal Decree-law 3/2020 of 4 February, on urgent measures transposing into Spanish law various European Union directives in the area of public procurement in certain sectors, including private insurance and pension plans and funds (“RDL 3/2020”).

social and environmental impact, and corporate governance of such companies; and (ii) describe **how they engage** with such companies, including how they exercise their voting rights (explaining the most significant votes, the way they vote and whether they have made use of the services of proxy advisors), co-operate and communicate with other shareholders and manage actual and potential conflicts of interest (specifying reasonable steps taken to prevent and control them).

This engagement policy should be available free of charge on the website of the insurance and reinsurance companies concerned, or, where an asset manager is responsible for the implementation of their investment strategy, on the asset manager's website.

Furthermore, in the event of conflicts of interest, the companies must publish any information on the nature or origin of such conflicts, as well as the policies and procedures established to manage them in the event that the previously adopted measures have proved insufficient.

In addition, regarding their **long-term investment strategy**, life insurance and reinsurance companies should also disclose the consistency of the main elements of their strategy with the profile and duration of their long-term liabilities, as well as the contribution of their strategy to the medium and long-term performance of their assets.

Where an **asset manager** is in charge of the investment strategy, it must disclose the duration of the agreement entered into and its suitability for:

- (i) matching the investment strategy to the profile and duration of the insurance and reinsurance companies;
- (ii) making investment decisions based both on the assessment of the medium and long-term financial and non-financial performance of the invested companies and on how to contribute to the improvement of the medium and long-term performance of the companies;
- (iii) remunerating the manager in relation to the assessment of the manager's own performance and the absolute long-term performance of the insurance and reinsurance companies; as well as
- (iv) monitoring the costs incurred by the portfolio turnover.

The information⁴ described above must be updated and published annually on the websites of life insurance and reinsurance companies (or alternatively their groups'

⁴ Insurance and reinsurance companies that have shareholdings in collective investment undertakings or venture capital or other closed-end collective investment undertakings, which invest in a listed company of

websites) or in the report on the financial position and solvency unless there have been no significant changes.

The obligations relating to the publication of the engagement policy and investment strategy of life insurance and reinsurance companies take effect from 22 October 2021. In the event of non-compliance with this obligation, clear and reasoned justification must be provided on the company's website.

B. DGSFP Administrative Register

The nature and class of the breach and the identity of the offender must be provided whenever sanctions committed by (a) insurance and reinsurance undertakings, (b) persons exercising their effective management, and (c) insurance intermediaries, except for private reprimands, are registered in the Administrative Register of the Directorate General of Insurance and Pension Funds (“**DGSFP**”).

C. Cooperation between supervisory authorities: insurance business, internal model and collaborative platforms

Directive 2019/2177 recognises the need to improve harmonisation of the application of EU law because of the increase in cross-border insurance activities. Thus, to improve the exchange of information and cooperation between the supervisory authorities of the Member States and the European Insurance and Occupational Pensions Authority (“**EIOPA**”), ROSSEAR provides for a reporting obligation in the following cases:

- Access to cross-border insurance activity when it has a significant and relevant impact on the host Member State's market; or would lead to a crisis due to the deterioration of the financial conditions of Spanish companies or the undermining of the protection of policyholders by companies domiciled outside Spain.
- Applications for authorisation to use and modify internal models for the calculation of the solvency capital requirement.

It also recognises the power of supervisory authorities to create collaborative platforms to address any negative effects on policyholders and strengthens and promotes the status of the consumer.

a Member State of the European Union, must also publish this information regarding their investment strategy.

D. Review of biometric tables

A new regulatory framework for the application of biometric tables has been created to ensure transparent pricing of insurance and fair and equitable treatment of policyholders and insured parties.

Furthermore, the DGSFP is expected to issue a circular with the quantitative and qualitative components to which the biometric tables must refer for the calculation of accounting technical provisions, where both the estimate (second-order tables) and the surcharges for uncertainty (first-order tables) are better reflected. The DGSFP may also declare biometric tables inadmissible if they no longer meet the requirements.

Finally, to ensure the adequacy of the technical provisions, a technical committee will be set up to analyse the biometric hypotheses in order to monitor the contrast between the published tables and the real evolution of longevity.

This Briefing was prepared by Rafael Fernández and Fátima Eizaguirre, counsel and associate of the Insurance and Reinsurance practice.

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was prepared on 18 May 2021 and Pérez-Llorca makes no commitment to update or revise its contents.

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