

NEW ASSET MANAGEMENT REGIME

Introduction

On 28 April, Decree-Law no. 27/2023 was published, approving the asset management regime (“**RGA**”, in the Portuguese acronym), revoking the Legal Framework on Collective Investment Undertakings and the Legal Framework on Venture Capital, focusing on a single diploma the regime applicable to asset management.

The RGA materialises the legislator's intention to adopt a more harmonised, coherent and uniform regulatory policy approach, promoting the effectiveness of supervision and the competitiveness of the sector.

This is a purpose shared with the local fund regulator, the Portuguese Securities Market Commission (“**CMVM**”), which has long proposed the approval of a “collective investment code”. The “code” is finally here.

In the RGA the distinction between Collective Investment Undertakings (“**CIU**”) and Alternative Investment Undertakings (“**AIF**”) is maintained. As regards the latter, the RGA simplifies the types of AIFs, distinguishing according to their main object of investment and a residual and open typology: (i) real estate AIFs, (ii) venture capital AIFs, (iii) credit AIFs, and (iv) other currently existing AIFs - which are no longer autonomous typologies and, therefore, are now covered by the open typology.

New categorisation of managing entities according to two criteria – object and size

Regarding their object, the managing entities may be divided into:

- ▶ Management Companies of Undertakings for Collective Investment (a SGOIC or “**Management Company**”), which may manage UCITS and AIFs, except venture capital AIFs; and
- ▶ Venture Capital Firms (an SCR or “**VC Firm**”), which may manage AIFs provided that at least one of the undertakings qualifies as a venture capital AIF and the majority of the undertakings under management are not real estate AIFs.

Management Companies and VC Firms are now divided into small or large fund managers (“**FM**”).

FMs will qualify as large or small depending on whether assets under management exceed EUR 100,000,000 or EUR 500,000,000, respectively with or without the use of leverage (the so-called “**AIFMD threshold**”). Companies that are below the AIFMD threshold are qualified as small FMs.

Unless they notify the CMVM of their intention to be qualified as large FM within 90 days as of the date on which the RGA enters into force, the managing entities of CIUs and self-managed AIFs which are authorised under the previous regime shall thereafter be qualified as small FMs under the RGA.

Procedures for the establishment and other requirements applicable to FMs

Any FM will require the prior authorisation of the CMVM to start operating. In this regard, the RGA provides for a different regime depending on the size of the company.

This division is designed to adapt the proportion of regulation according to risk, and to streamline some regulatory procedures and requirements.

- ▶ Small FMs:
 - ▶ Possibility of holding their own portfolio;
 - ▶ Simplified start-up procedure – CMVM decision within 30 days;
 - ▶ New minimum share capital of EUR 75,000;
 - ▶ Possibility of waiving the need for a depositary if the company is aimed exclusively at professional investors; and
 - ▶ The rules on the remuneration of employees may be waived.
- ▶ Large FMs:
 - ▶ The regime applicable under the previous legislation has been maintained, but the term for authorisation to begin activity – i.e. to obtain the CMVM prior approval - has been reduced to 90 days, as opposed to 180 days under the previous regime.

Innovations in the regime for AIFs: What we know and what we still don't know

As mentioned, the new regime intends to promote the competitiveness of the collective investment sector, which it aims to achieve through the innovation of some rules but also through the simplification of requirements.

Admitting that some aspects still lack or may still lack regulation by the CMVM, there are some news concerning the following topics that are worth highlighting:

- ▶ AIFs constituted by private subscription, which correspond to the majority of the structures present in our market, are no longer subject to prior authorisation and their registration is now only subject to prior notification to the CMVM, within a period of 30 days;
- ▶ All types of AIFs are now explicitly allowed to issue bonds – broadening the range of funding sources – through immediate communication to the CMVM and publication in its information disclosure system;
- ▶ The minimum requirements for net asset value and the limits on leverage are eliminated, without prejudice to the possibility of the CMVM imposing restrictions in its own regulations; and
- ▶ The duty to rotate auditors and independent appraisers is no longer regulated by law, but this matter is also expected to be further addressed by the CMVM in its own regulations.

Brief notes on some types of AIFs

Real estate AIFs

- ▶ Whether open or close-ended, they may invest in rural and mixed properties and develop construction and rehabilitation projects, intended for rental, other types of use or resale.
- ▶ Provided certain requirements are met, they are allowed to:
 - (i) acquire shareholdings in real estate companies;
 - (ii) acquire shareholdings in real estate companies which have no shares admitted for trading;
 - (iii) acquire shareholdings in other real estate AIFs

Venture capital AIFs

- ▶ Retain their autonomy and essential purpose.
- ▶ May invest in:
 - (i) Equity, quasi-equity or hybrid instruments;
 - (ii) Other venture capital AIFs;
 - (iii) CIUs with the same object, up to 33% of their assets;

(iv) Companies, group of companies, companies in a control or group relationship, up to 33% of the available investment amount.

- ▶ Any investment in securities admitted to trading must reach a minimum of 10% in shares issued by each of the entities in which it participates.
- ▶ The minimum limit of the capital of a venture capital fund subscribed and the minimum limit of each subscription by each investor, which were EUR 1,000,000 and EUR 50,000 respectively, are eliminated.

Credit AIFs

- ▶ Maintain their object but may still not grant credit to natural persons and to a group of entities.
- ▶ May be addressed to non-professional investors.
- ▶ May be managed by any FM, including small FMs.
- ▶ May grant and acquire credits, as well as participate in lending, with the exception of some prohibited activities.

Entry into force and other details

The RGA will enter into force on 28 May 2023.

Managing entities and CIUs have 180 days, namely until 24 November 2023, to adapt to the RGA.

Requests for authorisation or registration to commence activity and to set up CIUs which are pending when the RGA enters into force shall be subject to its provisions, will be converted into the corresponding procedures and the new decision deadlines shall begin to run.

With regard to the CMVM regulations adopted under previous acts, they shall remain in force until further legislation is enacted, to the extent that they are compatible with the provisions of the RGA. It is expected that the CMVM will publish these new regulations in the very near future.

The Capital Markets and Financial Services team at RRP remains available for any questions or further clarification.

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