

4TH OF MAY 2023

NEW COLLECTIVE UNDERTAKINGS LEGAL FRAMEWORK

DECREE-LAW 27/2023, OF 28TH OF APRIL

The new Asset Management Regime ("RGA") was published on April 28th, 2023, through Decree-Law no. 27/2023, of April 28th, and will come into force on May 29th, 2023.

This new legal framework, regulates all collective investment undertakings ("CIU"), concentrating in a single piece of legislation the matters previously provided for in the Collective Investment Undertakings Legal Framework ("RGOIC") and in the Venture Capital, Social Entrepreneurship and Specialized Investment Legal Framework ("RJGRESIE") - which are revoked by this Decree-Law.

This new legal framework intends to standardize and simplify the rules applicable to CIU and their management companies, making the regime more coherent and proportional, and in harmony with European Union law. Namely the new rules simplify the catalog of types of collective investment undertakings as well as simplify the types of agents that may carry out the activity of collective asset management.

Thus we would like to highlight the following points in the new legal framework.

I. UNDERTAKINGS FOR COLLECTIVE INVESTMENT

Regarding the types of CIU, the new rules maintain the differentiation between Undertakings for Collective Investment in Transferable Securities ("UCITS") and Alternative Investment Undertakings ("AIU") simplifying, however, the types of AIU that are regulated, establishing three specific categories (i) Real Estate AIU's; (ii) Venture Capital AIU's; (iii) Credit AIU's; and a residual open type of AIU - Other AIU's.

(I) REAL ESTATE AIU'S

We highlight on the one hand, the elimination of the rules for minimum and maximum allocation of the real estate AIU portfolio and, on the other hand, the widening of the catalog of real estate assets eligible for investment, including rural and mixed properties, together with the possibility of developing construction and rehabilitation projects of real estate for renting, leasing or resale. It should also be noted that real estate AIU's may acquire holdings in real estate companies, as well as participation units in other real estate AIUs.

(II) VENTURE CAPITAL AIUS

Regarding the duration of these types of funds, it is established a reference period of 12 years, albeit the management rules might define a longer period.

The requirement for a minimum subscription of €50,000.00 in Venture Capital AIF units is eliminated.

Lastly, the RGA requires that when a Venture Capital AIU's invests in securities admitted to a regulated market, it must acquire/hold at least 10% of the shares in the companies, guaranteeing a relevant influence on the management of the company. In this regard, the maximum investment limit of 50% in listed securities is no longer in force, and no other limit is stipulated under the RGA.

(III) CREDIT AIU'S

These types of AIU's can now grant and participate in loans as well as acquire credit.

Any management company – including the small dimension ones - will be able to manage a credit AIU.

It should also be noted that credit AIU's participate in the Central Credit Register.

II. MANAGEMENT COMPANIES

Only two types of management companies are admitted: (i) Management Companies of Collective Investment Undertakings ("SGOIC") and (ii) Venture Capital Companies ("VCC"). Thus, Social Entrepreneurship Companies ("SES") and Venture Capital Fund Management Companies ("SGFCR") are eliminated from this catalog.

- SGOICs continue to be able to manage all types of CIU, both UCITS and AIU's, but cannot exclusively manage Venture Capital AIU's;
- VCCs may only manage AIU's, but must necessarily manage at least one venture capital AIF and cannot manage mainly real estate AIFs.

The management companies may also undertake, on an ancillary basis, a series of support and support activities to the activity of these entities, including the provision of consultancy and assistance services to subsidiaries, the undertaking of studies or prospection services, among

others.

Management Companies are now divided into large or small management companies, namely depending on the volume of assets managed.

Usually, large management companies are the ones that manage assets greater than either €100.000.000,00 (one hundred million euros) leveraged or €500.000.000,00 (five hundred million euros) non-leveraged, while small management companies do not reach either threshold. There are other requirements that may affect that classification.

There are different criteria for the authorization, activity, and supervision of each of the mentioned types - the framework obeys a principle of proportionality considering the size of the Management Company.

III. ISSUANCE OF BONDS BY AIU's

It is now possible for an AIU to issue bonds, so that they may have an alternative source of financing their activity – in these cases the provisions of the Companies Code are applicable, with the relevant adaptations.

The issue of bonds must be immediately communicated to the CMVM and is not subject to a resolution of the unitholders' meeting.

Management companies are prohibited from directly or indirectly subscribing or acquiring bonds issued by the AIU's under their management.

IV. NET ASSET VALUE

The requirement contained in the RGOIC for a minimum Net Asset Value ("NAV") for CIUs has disappeared, and it is now defined that the NAV of each CIU, as well as of the respective autonomous asset compartments, must be positive.

V. TIED AGENTS

The tied agent is introduced as an entity who can commercialize units and act in the name and on behalf of the management companies. Namely it can raise capital from investors by offering or placing units of CIUs with them, either on the initiative of the management company or of the CIU itself. These agents will be regulated by the framework established in the Portuguese Companies Code for tied agents.

VI. TRANSITIONAL PROVISIONS

CIU management entities shall have 180 (one hundred and eighty) days, from the Decree-law entry into force, to accept and adapt their activity to the provisions of the RGA.

The change of the corporate name, when it is limited to the substitution of the current designation by any of the expressions referred to in the RGA, is subject to notification to CMVM within 90 (ninety) days from the date on which this Decree-Law enters into force.

Companies that, at the date of entry into force, do not fulfill any of the criteria to be considered large management companies will automatically be classified as small management companies. Nevertheless, the companies can notify the CMVM, within 90 (ninety) days from the date on which this decree-law comes into force, of their intention to be qualified as large management companies.

PARES | Advogados has extensive experience in the financial area and specifically in the regulatory impact of collective investment undertakings, hence is available to provide specific information on this and other topics in a more concrete and appropriate manner to the reality of each client.

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