



LEGAL ALERT

15 May 2023

New Asset Management Regime

Decree-Law No. 27/2023, of April 28, ("Decree-Law") approved the Asset Management Regime (hereinafter, "AMR"), which aims to regulate the activity of asset management, in the form of collective investment undertakings (hereinafter, "CIUs").

This Decree-Law revokes the General Regime of Collective Investment Undertakings ("RGOIC") (approved by Law no. 16/2015, of February 24th) and the Legal Regime of Venture Capital, Social Entrepreneurship and Specialized Investment ("RJGRESIE") (approved as an annex to Law no. 18/2015, of March 4).

From a regulatory and supervisory perspective, **the AMR has the following main objectives:**

- ✓ Simplify, clarify, update and provide proportionality to the regulation of the asset management industry.
- ✓ Fostering competitiveness and market development.
- ✓ Adopt solutions more in line with European legislation.
- ✓ Privilege ex-post supervision over ex-ante supervision and accountability of market operators.
- ✓ Harmonize the different regulatory frameworks

A new common regulatory framework, reorganization of types of CIU

The following are excluded from AMR scope of application: (i) regional development companies

("RDC"), which may no longer manage venture capital funds, and (ii) the figure of venture capital investors, which is eliminated.

The AMR adopts a common regulatory framework for CIUs, regulating in a single instrument matters that were scattered throughout the RGOIC and RJGRESIE.

The AMR maintains the two types of CIU:

- Undertakings for collective investment in transferable securities (hereinafter, "UCITS");
- Alternative investment funds (hereinafter "AIFs").

AIFs are simplified and are now distinguished according to their investment portfolios into real estate AIF, venture capital AIF, credit AIF and other AIF (i.e., a residual type of AIF that enables the investment in securities or other financial or non-financial assets, including assets allowed for other types of AIF).

It should also be noted that the global net asset value ("NAV") of each CIU and of each of the autonomous asset compartments must be positive, eliminating the requirement for a minimum NAV, as provided for in the previous regime.

Management Companies

On the other hand, the AMR simplifies the catalogue of types of management company, providing for only two types according to the respective activity:

- The management companies of collective investment undertakings (hereinafter, "SGOIC"); and
- The venture capital companies (hereinafter, "VCC").

The universe of SGOICs and VCCs is now subdivided into large or small management companies, depending on the value of the assets under management, the latter being subject to a simplified authorization procedure.

The main new features of the AMR include:

- ✓ Reorganization of the activities allowed to management companies depending on their type and size.
- ✓ Simplification of procedures and reduction of CMVM's decision deadlines.
- ✓ Introduction of Tied Agents, applying the regime of the Securities Code (with the necessary adaptations) and thus broadening the distribution channels of management companies, allowing them to act in the name and on behalf of management companies.
- ✓ Harmonization with European Union law on the documentation and information necessary for management company authorizations, with the creation of large management companies and small management companies and the definition of a legal regime that is appropriate and proportional to the size of the company in question, taking into account the managed assets.
- ✓ Possibility for AIFs to issue bonds to finance their activity, applying the provisions of the Portuguese Companies Code, with the adaptations provided for in the AMR, highlighting the fact that no resolution of the General Assembly of the AIF is required for the purpose of issuing bonds, and that the bond issue must be immediately communicated to the CMVM, as well as the prohibition on management companies subscribing or acquiring bonds issued by the AIFs they manage.

- ✓ As provided in the RGOIC, the integration of sustainability risks by management companies, throughout the AMR, stands out.

According to AMR there are two types of management company:

- The management companies of collective investment undertakings;
- The venture capital companies.

In each type of management company, the AMR provides for two categories (i) large scale management companies (ii) small scale management companies.

Main transitional rules:

Management companies and CIUs covered by RGOIC and RJCRESE have **a period of 180 days** after the date of entry into force of the Decree-Law to adapt to the provisions of the AMR.

Applications for authorization or registration for the commencement of activity and for the constitution of a CIU pending on the date on which this Decree-Law comes into force shall be **subject to the provisions of the AMR**, being converted into the corresponding procedures, where applicable, and the new rules on decision deadlines by CMVM apply.

At the date of entry into force of the new AMR, all pending procedures for the authorization or registration of facts under the old legal framework, which are now subject to a simple communication under the AMR, shall be extinguished and new deadlines will start running: a) as from the date on which the AMR comes into force, for the CMVM to oppose; b) under the terms set forth for communications under the AMR, in the case of subsequent communications.

The deadlines established in the previous regime shall apply to communications that can be subject to an objection by the CMVM, which are still set forth in the AMR and regarding which the maximum period for filing an objection by the

CMVM is still running on the date of AMR's entering into force.

To the pending procedures for the extension of the maximum period for the liquidation of a CIU or for the reversal of the winding-up of a privately subscribed AIF the previous regime is applicable.

SGOICs and self-managed AIFs that have assets under management with a valuation that is lower than the thresholds laid down in Article 7 no. 1 of the AMR are classified **as small management companies**, if they do not notify CMVM, **within 90 days** of the date on which the Decree-Law comes into force, of their intention to be classified as **large-scale management companies**.

With this communication, such entities are automatically classified as large management companies.

A period of adaptation to the AMR is granted, and for that purpose any changes of name of management companies and CIUs are subject to notification to CMVM **within 90 days** of AMR's entry into force and are exempt of registration fees.

CMVM regulations adopted under the RGOIC and the RJGRESIE remain in force until they are replaced, amended or expressly revoked, insofar as they are compatible with the provisions of the AMR.

The AMR comes into force 30 days after the publication of the diploma, on 29th May 2023

To access to the entire wording of Decree-Law No. 27/2023, of April 28, please click [Decree-Law no. 27/2023 \(in Portuguese\)](#).

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