

THE NEW LEGAL FRAMEWORK APPLICABLE TO PRIVATE EQUITY AND VENTURE CAPITAL INVESTMENTS



CAPITAL MARKETS

1. INTRODUCTION

Law no. 18/2015, of March 4 (“**Law no. 18/2015**”), which provides extensive changes to the regulatory framework of private equity and venture capital investment (*investimento em capital de risco*) in Portugal and allows for the establishment of collective undertakings in social entrepreneurship and specialised alternative investment, has recently been enacted.

The abovementioned diploma transposes Directive no. 2011/61/EU of the European Parliament and of the Council of 8 June 2011, on alternative investment fund managers, Directive no. 2013/14/ EU, of the European Parliament and of the Council, of 21 May 2013, on alternative investment fund managers in respect of over-reliance on credit ratings and ensures the execution, among others, of Regulation (EU) no. 345/2013 of the European Parliament and of the Council, of 17 April 2013, on European Venture Capital Funds. It is also worth noting that the diploma revokes the old framework applicable to investment in private equity and venture capital, previously set out in Decree-Law no. 375/2007, of November 8.

2. INVESTMENT IN SOCIAL ENTREPRENEURSHIP AND SPECIALISED ALTERNATIVE INVESTMENT

For the first time in the Portuguese legal system, Law no. 18/2015 enshrines and regulates the investment in social entrepreneurship and specialised alternative investment which consist, respectively, in the acquisition of equity or debt instruments in companies which develop adequate solutions for social issues and the acquisition of any kind of assets, as long as each asset does not represent more than 30% of the net asset value of the respective collective undertaking.

3. INNOVATIONS COMMON TO ALL COLLECTIVE UNDERTAKINGS IN PRIVATE EQUITY AND VENTURE CAPITAL INVESTMENT

Law no. 18/2015 also introduces relevant changes in what regards investment activities in private equity and venture capital collective undertakings. Highlights include:

- a) *Investment compartments* – the management regulations of private equity or venture capital funds may now establish that the fund may be divided into several investment compartments, named “subfunds”, represented by one or more unit classes, each of which subject to limited liability and asset partitioning rules.

Law no. 18/2015 enshrines and regulates the investment in social entrepreneurship and specialized alternative investment

- b) *Management may change certain aspects of the management regulations in private equity or venture capital funds without the consent of unit holders* – such as the change in the name, registered office and contact details of the fund manager or the reduction in the amounts charged as management, deposit, redemption and transfer fees or the setting of more favourable conditions for unit holders; and
- c) *Own funds requirements* – private equity and venture capital companies must have own funds corresponding to 0.02% of the amount of the net value of assets under management exceeding € 250,000,000.00.

4. THE NEW FRAMEWORK OF LARGE PRIVATE EQUITY AND VENTURE CAPITAL COMPANIES AND OF PRIVATE EQUITY AND VENTURE CAPITAL INVESTMENT MANAGEMENT COMPANIES

The main innovation put in place by the enactment of Law no. 18/2015 is imposing a more demanding regulatory framework to management entities of collective undertakings which have assets under management with a value exceeding: (i) € 100,000,000.00, when the respective portfolios include assets acquired with leverage; or (ii) € 500,000,000.00, when the respective portfolios do not include assets acquired through leverage and regarding which there are no reimbursement rights which may be exercised during a five year period counting from the date of initial investment.

The following obligations imposed by Law no. 18/2015 to managing entities of collective undertakings in private equity and venture capital which assets under management exceed any of the abovementioned thresholds are highlighted:

- a) *Prior authorisation* – Their incorporation is subject to the prior authorisation of the Portuguese Securities Market Commission (CMVM);
- b) *Risk management* – Risk management should be functionally and hierarchically separated from the operating units, including the portfolio management function;
- c) *Conflicts of interest* – Measures should be taken to identify situations of possible conflicts of interest as well as to prevent, manage and monitor conflicts of interest which may damage the interests of the collective undertakings in private equity or venture capital and their respective unit holders or shareholders;
- d) *Delegation* – CMVM shall be informed of the intention to delegate services to third parties for carrying out functions in the name of the abovementioned managing entities;
- e) *Liquidity management* – Managing entities shall employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the collective undertaking and to ensure that the liquidity profile of the investments of the collective undertaking comply with the underlying obligations of the latter;

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f) “EU Passport” – Law no. 18/2015 establishes rules regarding the authorisation for the management and marketing of collective undertakings in private equity and venture capital in Portugal by managing entities of other European Union countries and third countries, as well as rules to carry out investment activities, in the European Union, of managing entities established in Portugal and managing entities of third countries authorised in Portugal.

5. ENTRY INTO FORCE AND TRANSITION PERIOD

The new rules impacting private equity and venture capital investment, as well as social entrepreneurship and specialised alternative investment, come into force 30 days after the enactment of Law no. 18/2015.

In what regards private equity and venture capital companies trading on the date of entry into force of said diploma which assets under management exceed the limits foreseen above, the latter must, within three months counting from the date of entry into force of Law no. 18/2015, take necessary measures to comply with the new rules implemented by the statute and request authorisation for the carrying out of the respective activity before CMVM. It is noted that managing entities of undertakings which do not make any additional investments after the entry into force of Law no. 18/2015, are exempt from the aforementioned obligation to request authorisation for the carrying out of the activity of private equity and venture capital investment management before CMVM.

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