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# THE NEW PORTUGUESE ASSET MANAGEMENT FRAMEWORK

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The Portuguese Securities Market Commission ("CMVM") has recently made available for public consultation the draft of the new Asset Management Framework ("AMF") aiming to review and compile in the same statute the existing General Framework of Collective Investment Undertakings and the Legal Framework for Venture Capital, Social Entrepreneurship and Specialised Investment. The draft will then be submitted to the Portuguese Government, being expected to come into force by the end of the year.

The key goals of this comprehensive and transversal review of the existing statutes applicable to the asset management sector are to simplify its regulation turning it into a more effective and efficient regime capable of increasing the Portuguese market competitiveness and safeguarding the investors.

## A. GENERAL REMARKS

Since the AMF results from a structural revision of all the legal framework applicable to the asset management sector, there are several changes to be taken into consideration, but we would like to highlight the following:

### 1. Harmonized regime for all the asset management sector

Creation of a single and harmonized regime for all of the asset management sector nonetheless taking into account the specifics of its several areas and the size of its players, thus contributing to an adequate and proportional legal regime.

### 2. Scope

Exclusion from CMVM's scope of supervision of the:

- (i) collective investment undertakings ("CIU") formed merely by family assets ("*family offices*"), provided that the assets belong to only one family and there are no external investors;
- (ii) regional development companies, which will no longer be able to manage venture capital funds (these companies will continue being supervised by the Bank of Portugal under their specific legal framework); and
- (iii) the figure of the "*Venture Capital Investors*", which is eliminated.

### 3. Ex post supervision

Replacement of the current *ex ante* supervision by an *ex post* supervision, reducing the complex and time consuming initial procedures for the incorporation and authorization of the investment vehicles. The purpose of this structural change is to enhance the responsibility of the economic operators as regards the fulfillment of the legal requirements applicable to their activity, offering a more competitive and "*investors' friendly*" legal framework.

### 4. CMVM's decision deadlines

Reduction of the deadlines for CMVM to decide on the incorporation, modification and extinction of the investment vehicles. It is

envisaged that the applicable regime and deadlines vary depending on the size of the CIUs and that in some cases the current prior authorization from CMVM is replaced by a prior communication regime. The idea is to simplify and make the system more flexible. For instance, CMVM decision deadline for the authorization of the beginning of the activity of a small-scale management company is dramatically reduced to 30 days. Also, the incorporation of hetero-managed Alternative Investment Undertakings ("AIU") of private subscription under the contractual or corporate form is merely subject to a prior communication duty and no longer to a prior authorization process.

### 5. Management companies

- (i) Reduction of the existing 4 categories of management companies into 2 categories only: the Collective Investment Undertaking Management Companies ("CIUMCs") and the Venture Capital Companies ("VCCs");
- (ii) Creation of the concepts of small and large-scale management companies (depending on the amount of assets under their management), creating a proportionate and appropriate regulatory regime for small management companies, including a simplified prior authorisation process by CMVM;
- (iii) CIUMCs will be able to manage all types of CIU, although they may not exclusively manage venture capital AIU and small CIUMCs may hold portfolios of their own;
- (iv) VCCs will be able to manage all types of AIUs, with the exception of real estate AIUs, provided that at least one of the bodies managed qualifies as a venture capital AIU.

### 6. Real estate AIUs

Reduction of the complexity of types of AIUs, maintaining the venture capital AIUs, the credit AIUs and the real estate AIUs since only those have specific features justifying their autonomy. Therefore, AIUs do not need to correspond to any of these specific legal subcategories.

Real estate AIUs may develop real estate investment consultancy activities as well as management of real estate or real estate portfolios, these activities are not subject to authorisation by CMVM. Also, real estate AIUs become allowed to invest in rural and mix properties (and not only in urban properties).

### 7. Minimum global net amount

Elimination of the requirement of CIUs having a minimum global net amount, it only being required that such global net amount is positive.

### 8. Goldplating

Align the solutions of the Portuguese regulations with the ones resulting from the other European reference markets and eliminating the gold-plating existing in Portuguese law notably as regards Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

## B. INVESTMENT FUNDS IN PORTUGAL

The activity of the funds in Portugal has been growing since the beginning of 2019 (with the only exception in March 2019, a month marked by the outbreak of the COVID-19 pandemic in Portugal) and, by the end of December 2021, the investment funds had issued the highest number of participating interests since January 2008<sup>1</sup>. Also, foreign investors remain interested in investing in Portugal and Lisbon is ranked as one of the most attractive European cities for real estate investment in 2022<sup>2</sup>.

Within this positive environment, we trust that the new asset management regime will bring to the Portuguese market an enhanced stability based on a simpler, well-structured and organized legal framework capable of conveying confidence to the management entities, depositaries, brokers, investors and other market players. A more competitive and developed asset management industry is expected, contributing as such to the reinforcement of Portugal as an increasingly attractive financing market. ■

<sup>1</sup> Bank of Portugal statistic note dated 10 February 2022.

<sup>2</sup> PwC and Urban Land Institute (ULI) report "Emerging Trends in Real Estate - Road to Recovery".