

LEGAL ALERT

LOAN FUNDS

On 23 September, [Decree-Law no. 144/2019](#) was published (Decree-Law 144/2019), which, *inter alia*, approved the transfer of the supervision over management companies of investment funds and securitisation funds from the Bank of Portugal to the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários/CMVM*).

Aiming to transfer the aforementioned supervision role to the CMVM, but also introducing certain new unrelated rules, Decree-Law 144/2019 amended certain provisions and included several new others in the Legal Framework for Undertakings for Collective Investment approved under [Law no. 16/2015, of 24 February](#) (LFUCI), which was fully reinstated and republished as an annex to Decree-Law 144/2019, as well as in the Legal Regime for Private Equity, Social Entrepreneurship and Specialized Investment approved under [Law no. 18/2015, of 4 March](#) (LRPE).

Among the amendments to LRPE, in this Legal Alert we highlight the addition of a new set of provisions allowing the establishment of alternative investment funds (AIFs) specialized in credit that will be allowed to grant and purchase credits, although subject to certain restrictions regarding eligible borrowers, which are also commonly known as loan funds (Loan Funds).

Loan Funds will be allowed to borrow money from third parties in order to finance their credit activity, subject to the following limits: (i) the maturity of their borrowing arrangements must be equal or higher than the maturity of the assets which they intent to finance, and (ii) leverage cannot be higher than 60% of their total assets.

Further limitations are provided under Decree-Law 144/2019, as Loan Funds will also be restricted from (i) short selling financial instruments, providing direct or indirect financing in relation to securities or entering into derivatives, except for hedging purposes, and (ii) granting credit to

individuals, credit institutions, other investment funds, or related entities, such as their own investors, their management company or their depositary.

Lastly, we note that in addition to Decree-Law 144/2019 the CMVM will need to further regulate Loan Funds, namely by enacting and publishing a new CMVM regulation to the effect (CMVM Regulation), which, in line with the [public consultation made by CMVM in 2017](#), is likely to contain new rules on (i) the maximum maturity of the loans to be granted by Loan Funds, (ii) portfolio diversification requirements, (iii) information duties towards investors and reporting requirements to the CMVM, and (iv) eventual stress tests applicable to Loan Funds.

Decree-Law 144/2019 enters into force on 1 January 2020 and it is expected that the CMVM Regulation will be published on or before such date.

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