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New Asset Management Regime

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On 28 April 2023, Decree-Law No. 27/2023 was published, approving the new Asset Management Regime ("**Asset Management Regime**" or "**AMR**"), which came into effect on 28 May 2023.

The Asset Management Regime replaces the Legal Regime for Venture Capital, Social Entrepreneurship and Specialised Investment (the "**VCLR**"), approved by Law No. 18/2015, of 4 March 2015, and the General Regime of Collective Investment Undertakings (the " **GRCIU**"), approved by Law No. 16/2015, of 24 February 2015. With the repeal of these two regimes and the approval of the AMR, the various types of collective investment undertakings and management companies will be subject to a sole unified regime.

i. Types of Collective Investment Undertakings

The AMR reduces the existing types of collective investment undertakings. Collective investment undertakings are divided into two types: Undertakings for Collective Investment in Transferable Securities (UCITS) and Alternative Investment Undertakings (AIUs).

Four sub-types of AIUs are now foreseen:

- Real Estate AIUs. Corresponding to the current Real Estate Investment Undertakings (*organismos de Investimento imobiliário*), encompassing the current Real Estate Investment Funds;
- Credits AIUs. Corresponding to the current credits AIUs (*OIAEs de créditos*);
- Venture capital AIUs. Corresponding to the current venture capital collective investment undertakings (*OICRs*), encompassing the current venture capital funds (*fundos de capital de risco*);
- Other AIUs. This is a residual and open category, encompassing funds that do not fit into one of the previous typologies, including (but not limited to) funds that used to fall under the current undertakings for investment in non-financial assets, specialised alternative investment undertakings, with the exception of credit AIUs, and social entrepreneurship funds. These AIUs may invest in transferable securities or other financial or non-financial assets, including those assets permitted to be held by other types of AIUs.

The collective investment undertakings may, as in the previous regime, assume a corporate form, as a collective investment company or contractual form, as an investment fund.

ii. Types of Management Company

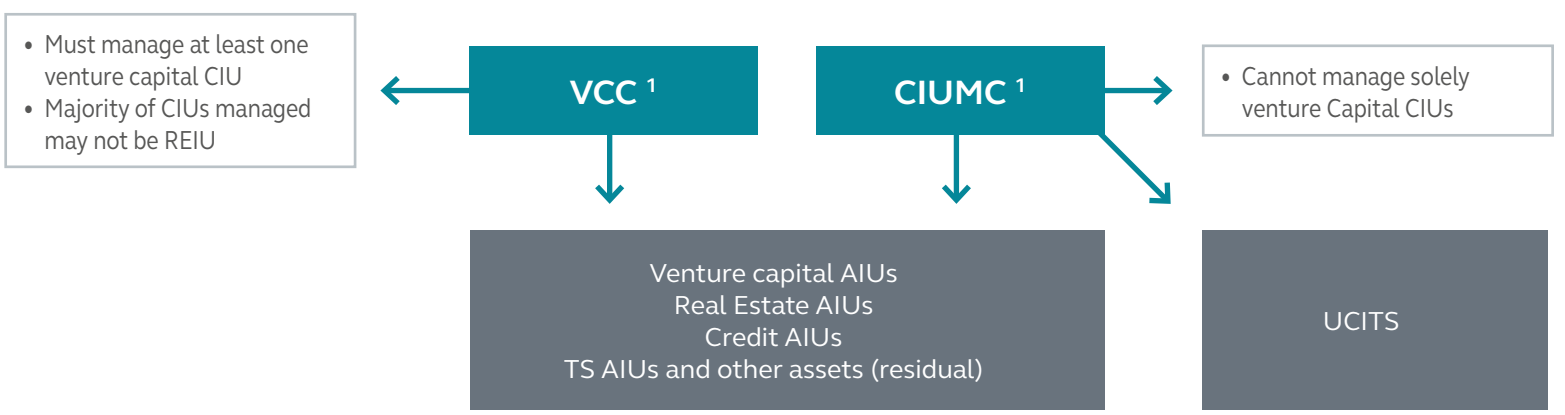
The AMR also reduces the existing types of management companies, now only venture capital companies ("**VCCs**") and collective investment undertakings' management companies ("**CIUMCs**") exist, instead of the previous four types of management company: collective investment undertakings management companies (*SGOICs*), venture capital companies (*SCRs*), social entrepreneurship companies (*SES*) and venture capital funds management companies (*SGFCRs*).

VCCs may manage any type of AIU, provided that at least one of the managed undertakings qualifies as a venture capital AIU and the majority of the undertakings under management are not real estate AIUs. VCCs however, cannot manage UCITS.

On the other hand, CIUMCs are allowed to manage UCITS and any type of AIU, provided they do not only manage venture capital AIUs.

For any AIU management company, the AMR also distinguishes, with an impact on the respective authorisation and activity regime, between small and large management companies according to the value of assets under management, applying the thresholds already provided for within the VCLR and resulting from Directive 2011/61/EU on alternative investment fund managers. Thus, a management company will be considered to be large if its assets under management exceed (i) EUR 100,000,000.00 and include assets acquired through use of leverage, or (ii) EUR 500,000,000.00 and do not include assets acquired through use of leverage and for which there are no redemption rights exercisable during a period of five years from the date of the initial investment. [1]

The following scheme explains the main differences between the two types of management company admitted in the AMR.



[1] mandatory conversion into a "large cap" manager when the thresholds of EUR 100m or EUR 500m are exceeded

In this way, the distinction of authorisation and activity regime according to the thresholds of Directive 2011/61/EU is extended to the management companies of the various types of AIUS, and is no longer only a distinction applicable in venture capital.

In comparison to the previous legislation, the AMR is now more flexible as to the funds that each type of management company can manage, allowing, for example, a large or small venture capital company to manage real estate funds (something that was previously only allowed for CIUMCs), and a small venture capital company to manage a credit fund (something

[1] Under Article 32.5, a small management company exceeding these limits must within 30 days either (i) reduce the amount under management to the permissible values or (ii) apply for authorisation to be considered a large management company.

that was previously only allowed for SGFCRs, equivalent to the new large venture capital companies, and CIUMCs).

At the level of permissible investment activities, the main innovation is the possibility that not only the CIUMCs, but also now the large VCCs, provided they comply with the requirements resulting from the legislation that transposes MiFID II for this purpose, can carry out the activity of discretionary portfolio management, investment advice, registration and deposit of units and receipt and transmission of orders on financial instruments.

Asset Management Regime

VCC [1]	CIUMC
1. Ancillary services (consultancy, management participations, etc.) 2. Property management, property development 3. Discretionary portfolio management (including real estate)) [2] 4. Investment consultancy (including real estate) [2 3] 5. Registration and deposit of PUs [2 3] 6. Receiving and transmitting orders on FIs [2 3]	

[1] VCC must be large to provide service 3 through 6 (but may engage into consultancy and management of real estate assets)
[2] Requires special authorisation by the CMVM and compliance with additional requirements
[3] Only admissible upon authorisation for discretionary portfolio management
Application of additional requirements

iii. Designations

The designation of the collective investment companies will have to include the expression "*Sociedade de Investimento Coletivo*" or "SIC" and for the investment funds the expression "*Fundo de Investimento*" or "*Fundo*" will be required.

The name of the collective investment undertaking will also have to identify its nature, open or closed, its type and be appropriate to its investment policy.

These new rules on designations will mean that a very substantial proportion of existing collective investment undertakings will have to change their names, particularly venture capital funds.

iv. Authorisation procedures

The AMR amends the rules regarding the authorisation and communication processes for the incorporation of management companies and collective investment undertakings, with the aim of simplifying them and reducing the respective terms.

The provision of simplified prior authorisation procedures for small management companies wishing to manage AIUs should be highlighted, as well as the express distinction between cases in which prior notification is subject to the possibility of opposition by the CMVM (constitution of an autonomous asset compartment of an open or closed-end publicly subscribed collective investment undertaking, the custodian and auditor of which are the same as those of another compartment of the same undertaking), and those in which it is not in which it is not (incorporation of private subscription AIU under contractual or corporate form and respective autonomous asset compartments).

v. Conflict of interest

A particular novelty in the AMR is the existence of a new general rule on conflicts of interest applicable to small venture capital companies in Article 76 of the AMR (in the previous regime, there was only a reference to the fact that these companies should restrain "from intervening in businesses that generate conflicts of interest with the owners of the investment units of the venture capital funds under their management" and a normal one that submitted certain transactions to the approval of the General Meeting of Participants).

Furthermore, the rules applicable to the management of UCITS (Articles 77 to 82 of the AMR) are very similar to those already contained in the GRCIU.

On the other hand, the rules applicable to AIUs managed by large venture capital firms are simpler than those applicable under the VCLR to former large venture capital fund management companies.

vi. Regime Applicable to Small Management Companies

As for the regime applicable to small-sized management companies under the AMR, as opposed to the VCLR, the main changes are related to:

- Outsourcing of functions. The outsourcing regime of management functions of collective investment undertakings is now also regulated for small management companies. The outsourcing depends on prior communication to the CMVM. Outsourcing may cover the investment management function itself, but may not involve a delegation of functions to the extent that the management company becomes a letter-box entity. In the case of AIUs aimed exclusively at professional investors and subject to prior authorisation by the CMVM, the outsourcing may be carried out with entities that are not authorised to carry out the activity of management of collective investment undertakings or the management of portfolios on behalf of third parties; in all other cases, the outsourced entity must be an entity authorised to carry out such activities;

- Activity Scope -Ancillary Activities. Small management companies may carry out, on an ancillary basis and without the need for prior authorisation, activities of property investment consultancy and individual property management

- Minimum Initial Capital. Under the AMR, a small Management Company will only be required to maintain a minimum share capital of EUR 75,000.00, as opposed to the minimum share capital of EUR 125,000.00 required under the VCLR;

- Custodian. The appointment of a custodian is no longer compulsory for AIUs addressed exclusively to professional investors managed by small management companies;

- Risk management. The requirement to maintain a permanent risk management function, which must be hierarchically and functionally independent from the operational areas of the small management company (including asset management), applies to small management companies unless it is not appropriate and proportionate in view of the nature, scale and complexity of the business of the management company and the collective investment undertakings it manages;

- Decision period for mergers and demergers of Management Companies. Under the AMR, the deadline for CMVM to authorise a merger or demerger of a small management company is 30 days (as opposed to the general deadline of 60 days set out in Article 246(2)).

Finally, and pursuant to the reference contained in paragraph 2 of Article 33 of the AMR, an extensive set of rules dispersed by the AMR is applicable to the small management companies, being therefore the regime of the small management companies undesirably materialised through simple references, which may complicate the understanding by the management companies themselves of the legal framework applicable thereof.

vii. Management Regulation - Mandatory Minimum Content

Unlike the VCLR and the GRCIU, the AMR does not contain a rule that defines the minimum mandatory content that must be included in the management regulations of collective investment undertakings.

However, from the analysis of the AMR, it is already possible to extract a set of elements that should be included in the management regulations, including:

- Terms and conditions of subscription, redemption and refund of Participation Units (Art. 17 of the AMR);
- Definition of the functions that the Management Company may outsource in the context of the management of collective investment undertakings (Art. 70(7), of the AMR);

- OThe holding period for the investment made by venture capital AIUs, where this is 12 years or more (Art. 227 of the AMR);
- Setting of a qualified majority for the approval of amendments to certain matters in the management rules (Art. 212(3), of the AMR);
- Listing of the matters contained in the management regulations that may be amended without the need for approval at a General Meeting of Participants (Art. 212(4), of the AMR);
- Form of calculation and collection of commissions (subscription, redemption, transfer and management) to be paid by the Collective Investment Undertaking to the Management Company (Arts. 68 and 74 of the AMR);
- Costs and Charges of the Collective Investment Undertaking (Art. 69(1) of the AMR);
- In the context of bond issues by AIUs, the criteria for fixing the remuneration of the common representative must be laid down in the management regulations (Art. 209 of the AMR);
- Terms and conditions for increases and reductions of the AIU's capital (Articles 213 and 214 of the AMR).

viii. Marketing

Rules on the marketing of units of collective investment undertakings are amended and developed.

Among other changes, it is now provided that the marketing is subject to the rules of the Securities Code for the marketing of financial instruments by financial intermediaries, through the activities of placement with or without guarantee or the reception and transmission of orders on behalf of others, including in the following matters:

- Safeguarding customer assets;
- Information to be made available to actual and potential customers;
- Assessment of the adequacy of the operation;
- Categorisation of investors;
- Intermediation contracts;
- Receipt of orders.

Express reference is also made to the possibility of the management company being represented by a tied agent for the purposes of marketing, subject to the rules of the Securities Code in this regard.

ix. Issuance of Bonds

AIUs may now issue bonds, and the Commercial Companies Code will apply, with adaptations, including by being subject to the indebtedness limits set out in the AMR.

x. Reporting obligations

The AMR maintains the obligation to inform the CMVM on the acquisition of controlling positions by the AIUs both in unlisted and listed companies. Although the AMR's initial draft when made available for public consultation by the CMVM had set forth this obligation (in an innovative way) for small management companies, following the suggestion made by CS' Associados in the public consultation, these remain exempt from this obligation under the AMR.

The obligation referred to in the previous paragraph shall not apply only where the unlisted company acquired is an SME or where its corporate purpose is the purchase, holding or management of real estate.

The CMVM must also be informed, within 10 days, on the acquisition, sale or holding by AIUs of voting rights that reach, surpass or fall below 10%, 20%, 30%, 50% and 75%.

The AIU, in the cases described above, is also obliged to communicate such fact to the representatives of the employees of the target company or, in their absence, to the employees themselves.

At the same time, during the 24 months following the acquisition of the controlling stake, it will not be possible to promote, approve or accept, among others, distributions, capital reductions, share redemptions or acquisition of own shares by the participated companies.

xi. Changes in venture capital AIUs

Venture capital AIUs, in addition to being integrated into the same regime as UCITS (and other AIUs), also have some significant changes to the regime applicable to them. By way of example:

- There is no longer a minimum subscription value of the Participation Units [2];
- Venture capital AIUs whose investors are only professionals or, regardless of their nature, have a minimum subscription of EUR 100,000.00 or more, are exempt from the investment concentration limits. Under the previous regime, the reference value for this purpose was EUR 500,000.00 (since the funds exempted from the concentration limits were only those that met the requirements to be subject to mere prior communication to CMVM)

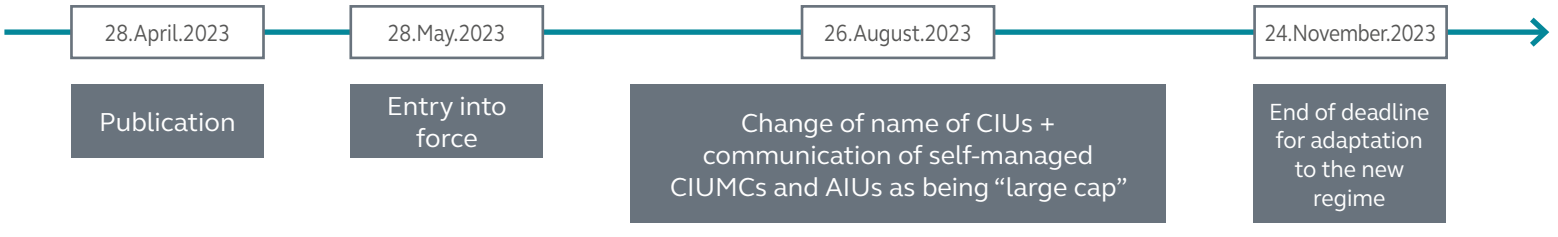
xii. Adaptation to the Regime

While the AMR will be in force on 28 May 2023, management companies have until 24 November 2023 to comply with its requirements.

However, until the 26th August, they will have to change the names of the managed CIUs, insofar as the change of name for the purposes of the AMR only requires the replacement of the current name with one of the new expressions foreseen in the AMR.

The CIUMCs, and self-managed AIUs that existed under the previous regime and have assets under management below the thresholds described in Section II, must also communicate to the CMVM by 26 August if they intend to be qualified as large managing companies for the purposes of the AMR (including in order to benefit from the EU passport).

Below is a diagram illustrating the steps that must be taken by each management company to ensure compliance with the requirements of the AMR.



[2] There are, however, additional requirements (such as marketing) if the participants are not professional investors

Applications for authorisation or registration to commence business and to incorporate a collective investment undertaking that are pending on the date of entry into force of the AMR (i.e. 28 May 2023) shall be subject to the provisions thereof, being converted into the corresponding procedures, when applicable, and restarting the counting of new decision deadlines.

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

xiii. Critical appraisal

With the AMR, CIUs are now subject to a sole regime, preserving the most common categories of real estate, credit and venture capital AIUs, and substituting various other categories of CIUs dispersed in these statutes, sometimes with incoherent scope among themselves, for a single category of residual CIU, which may be managed by CIUMCs or VCCs, with broad freedom in the respective composition of assets.

However, some matters are not without criticism. In the first place, the fact that the AMR provides that the CMVM may, without restriction, regulate all or any of its provisions leads to uncertainty for operators, especially as there are relevant matters that appear to still require regulation.

It is also difficult to understand the option of maintaining two different types of management company, when it is clear from the regime that both CIUMCs and VCCs will be subject to exactly the same requirements at the institutional level, with only the regime variations resulting from the type of CIU they manage. Therefore, it would have been preferable to assume that they are subject to the same regime, and allow the use of the CIUMC, VCC or other designation, depending only on the type of CIU under management at any given time.

It is also worth noting that the AMR has added unnecessary complexity for small VCCs. Previously subject to a concise and straighforward VCFLR, , their limited human resources will now have to deal with a huge and highly complex legislation.

On the other hand, the announced aim of the new regime to simplify the applicable rules was not entirely achieved, as small VCC now have to comply with rules resulting from EU Directives that were designed only for large entities, such as on subcontracting, marketing of units or relationship with depositaries (in the latter case, without prejudice to the welcome exemption applicable to venture capital funds marketed only to professional investors). CS'