
Legal Update - 1st Semester 2023

Portugal | Banking, Finance and Capital Markets Newsletter

1st Semester 2023



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Regime on Asset Management

On April 28, 2023, the Regime on Asset Management (“**RAM**”) was published as part of the in-depth review of the General Regime on Collective Investment Undertakings and the Legal Regime on Venture Capital, Social Entrepreneurship and Specialized Investment. Following input from over 22 entities during the public consultation process, we can now take a look at the legislative solutions that entered into force on May 29, 2023.

As explained, the RAM aims to carry out a comprehensive review of the legal regime on the activity of collective investment undertakings (“**CIUs**”) to further promote the competitiveness of the activity in the national market and provide a greater supply of financing sources to the economy.

The RAM aims to establish a unified and proportionate legal framework that is in line with European Union (“**EU**”) law for the management of CIUs. To achieve this, it aims to simplify and standardize regulations, eliminate excessive regulation, and ensure investor protection. This initiative is in step with one of the reforms outlined in the Recovery and Resilience Plan, which aims to create a more business-friendly environment by incentivizing investment, promoting company capitalization, and encouraging sector consolidation through enhanced competitiveness in offering alternative financing sources to the economy.

We highlight the following innovations:

- Concept of CIU unified by excluding from the regime any CIUs created exclusively with family assets. The set of existing CIUs is simplified, with the inclusion of Undertakings for Collective Investment in Transferable Securities (“**UCITS**”) (as in the current regime), and the reorganization of Alternative Investment Undertakings (“**AIUs**”), introducing an open-ended type. Venture capital AIUs, credit AIUs, and real estate AIUs—due to their specific nature—will be maintained.
- Management companies reduced by eliminating the four existing legal types and establishing only two: Collective Investment Undertakings Management Companies (“**CIUMCs**”) and Venture Capital Companies (“**VCCs**”). However, the activities of Social Entrepreneurship Companies and Venture Capital Fund Management Companies—which are the companies that have been eliminated—can still be carried out by CIUMCs and VCCs.
- Distinction between large and small-scale management companies based on the total value of assets under management. Small-scale management companies are subject to a simplified authorization procedure. The Portuguese Securities Market Commission (“**CMVM**”) has 30 days to complete the authorization process. As for large-scale management companies and UCITS, the CMVM must complete the authorization process in a shorter timeframe. The RAM establishes a decision period of 90 days, extendable by 30 days.

- Reorganization of the permitted activities according to the type and size of the management company.
- Simplification of procedures, including the replacement and elimination of authorization procedures by communications, reduction of required documentation, and shortened decision timeframes.

The RAM also introduces several new developments, such as allowing AIUs to issue bonds, eliminating the requirement for half-yearly reports and accounts, simplifying the content of annual reports and accounts, and abolishing the obligation to meet an overall net value of the fund for CIUs, requiring only a positive value.

The RAM entered into force on May 29 of this year. However, entities subject to the GRUCI and LRVCPESESI have 180 days to adapt to the provisions of the RAM, enabling them to continue to apply the revoked legislation on a temporary basis.

CMVM Regulation 1/2023

CMVM Regulation 1/2023 (the “**Regulation**”), which regulates the information duties of issuers of securities subject to CMVM supervision and the regime applicable to public takeover bids, entered into force as a result of the comprehensive review of the Portuguese Securities Code (the “**Securities Code**”) carried out at the end of 2021. The Regulation consolidates, in a single piece of legislation, all the duties that had previously been scattered across the following CMVM regulations: Regulation 6/2002, on Presentation of Financial Information by Segments; Regulation 11/2005, on the Scope of International Accounting Standards; Regulation 3/2006, on Offers and issuers; Regulation 5/2008, on Information duties; and Regulation 7/2018, amending CMVM Regulation 5/2008, which the Regulation revokes.

According to the CMVM, in addition to the necessary adaptation of the above regulations to the changes made by the Securities Code, “the regulatory review continues to simplify duties and eliminate those that are redundant (...) or that are additional to EU legislation, whenever there are no national nuances that justify maintaining them.”

In addition to the necessary adjustments resulting from the review of the Securities Code, such as the elimination of the so-called “open company” (*sociedade aberta*) concept and the modification of the regime governing public offerings (particularly takeover bids), the Regulation brings about the following key changes:

A) Issuers' disclosure obligations

- 1) **Multiple obligations stemming from the Securities Code and Regulation (EU) 596/2014 of the European Parliament and of the Council of April 16, 2014, known as the Market Abuse Regulation, are eliminated.** These include the requirement to disclose lists of qualifying holdings, as such information is already disclosed annually in corporate governance reports and is continually updated through the obligation to report qualifying holdings.
- 2) The **requirement to inform the CMVM and disclose information about acquiring and selling the company's own shares** and other securities are limited to (i) companies with securities listed on a regulated market, and (ii) situations where the percentage of voting rights linked to the shares or other securities held by the company exceeds or falls below 5% or 10% of the total voting rights.
- 3) **The requirement to report transactions involving directors and closely related individuals upon their appointment or after securities are listed for trading are removed.** This is because such information is already disclosed by issuers in proposals for general meetings when the appointment of directors is on the agenda. However, the obligation to report transactions after the appointment of directors or the listing of securities will continue to apply.
- 4) **The requirement to provide segmental financial information for individual accounts is eliminated,** in accordance with the Accounting Standardization System.

B) Public offerings

The approval process for the telephone customer service manual for receiving and executing orders is eliminated. This should make the approval process for prospectuses for public securities offerings faster and more efficient.

C) Public takeover bids

- 1) **Communication obligations regarding changes in how voting rights are allocated** will now be limited. Specifically, they will only apply when the change affects the minimum percentage of voting rights required to maintain control (i.e., 1/3 or 1/2), regardless of whether the holding itself remains unchanged. This change does not affect the obligations related to the qualified holdings regime. **The scope of these communication obligations is now limited to the thresholds for triggering the obligation to launch a public takeover bid.** Stockholders holding above the **1/3 or 1/2 thresholds** must immediately notify the company and the CMVM of any changes to the source or basis of the allocation, by

referring to the title certificates established in article 20 of the Securities Code. The company is responsible for promptly disclosing this information to the market.

- 2) **The requirements for the specialized expertise, good standing, and independence of the expert responsible for evaluating the target company are defined.**
- 3) The minimum elements—Schedule II to the Regulation—and the deadline for preparing the expert **report justifying the minimum price for the takeover bid** are defined. Additionally, **the CMVM criteria for assessing the liquidity of the securities subject to the takeover bid**—Schedule III to the Regulation—**will now be publicly available.**
- 4) **How the takeover bid prospectus is structured**—Schedule IV to the Regulation—is simplified (e.g., by introducing a summary that provides key information about the offering). Schedule IV applies to the prospectus of a public exchange offering, and if the offering amount exceeds €8 million, the prospectus will also be subject to the provisions regarding public offerings for distribution and admission to trading on a regulated market (particularly Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14, 2017—the so-called Prospectus Regulation—and the Securities Code).

The Regulation was published on April 26, 2023, and it entered into force the following day.

Legislation: Banking and finance law

Portuguese law

Law 24/2023 - Official Gazette of the Republic of Portugal 103/2023, Series I of May 29, 2023

Approving the rules on the protection of financial service consumers and amending Decree-Laws 3/2010 of January 5, 74-A/2017 of June 23, 80-A/2022 of November 25, and 27-C/2000 of March 10, as well as Law 19/2022 of October 21.

Law 4/2023 - Official Gazette of the Republic of Portugal 1/2023, Series I of January 16, 2023

Authorizing the government to review the laws on the activity of CIUs. This includes defining the requirements for accessing and carrying out activities related to the management of CIUs, including those involved in securities, as well as the AIUs provided for in (i) the General Regime on Collective Investment Undertakings, approved in an annex to Law 16/2015 of February 24; and (ii) the Legal Regime on Venture Capital, Social Entrepreneurship and Specialized Investment, approved in an annex to Law 18/2015 of March 4.

Council of Ministers Resolution 1-A/2023 - Official Gazette of the Republic of Portugal 2/2023, Series I of January 3, 2023

Authorizing the Treasury and the Public Debt Management Agency - IGCP, E.P.E., to issue public debt in accordance with the limits established in the State Budget for 2023.

EU law

Regulation (EU) 2023/1092 of the European Central Bank - OJEU L-146/15 of June 6, 2023

Amending Regulation (EC) 2157/1999 concerning the powers of the European Central Bank to impose sanctions.

Commission Delegated Regulation (EU) 2023/511 of November 24, 2022 - OJEU L-71/1 of March 9, 2023

Complementing Regulation (EU) 575/2013 of the European Parliament and of the Council regarding the technical regulatory standards for calculating risk-weighted exposure amounts of CIUs according to a mandate-based approach.

Commission Delegated Regulation (EU) 2023/451 of November 25, 2022 - OJEU L-67/7 of March 3, 2023

Specifying the factors to be considered by the competent authority and the supervisory college in assessing the recovery plans of central counterparties.

Commission Delegated Regulation (EU) 2023/363 of October 31, 2022 - OJEU L-50/3 of February 17, 2023

Amending the regulatory technical standards outlined in Delegated Regulation (EU) 2022/1288 concerning the content and format of information disclosure in pre-contractual documents and periodic reports for financial products investing in environmentally sustainable economic activities.

Commission Delegated Regulation (EU) 2023/314 of October 25, 2022 - OJEU L-43/2 of February 17, 2023

Amending the regulatory technical standards outlined in Delegated Regulation (EU) 2016/2251 concerning the application date of certain risk management procedures for the exchange of collateral.

Commission Implementing Regulation (EU) 2023/313 of December 15, 2022 - OJEU L-46/1 of February 15, 2023

Amending the implementing technical standards outlined in Commission Implementing Regulation (EU) 2016/2070 concerning the benchmark portfolios and the reporting templates and instructions for the information referred to in Article 78.2 of Directive 2013/36 (EU) of the European Parliament and of the Council.

Commission Delegated Regulation (EU) 2022/262 of September 7, 2022 - OJEU L-38/1 of February 8, 2023

Amending Schedule II to Regulation (EU) 1233/2011 of the European Parliament and of the Council on the application of certain guidelines in the field of officially supported export credits.

Commission Delegated Regulation (EU) 2023/206 of October 5, 2022 - OJEU L-29/1 of February 1, 2023

Supplementing Regulation (EU) 575/2013 of the European Parliament and of the Council, specifically concerning the regulatory technical standards specifying the types of factors to be considered for the assessment of the appropriateness of risk weights for exposures secured by immovable property and the conditions to be taken into account for the assessment of the appropriateness of minimum loss given default values for exposures secured by immovable property.

Bank of Portugal notices

Notice 4/2023 - DR 63/2023, Series II, Part E of March 29, 2023

Revoking Instruction 19/2020, regarding the reporting of information on exposures subject to measures implemented in response to the COVID-19 pandemic.

Notice 3/2023 - DR 52/2023, Series II, Part E, of March 14, 2023

Establishing the aspects necessary to ensure compliance with the regulatory provisions applicable to payment instruments covered by the restricted network exclusion and to the respective communication model under the Legal Regime on Payment Services and Electronic Money.

Notice 2/2023 - DR 17/2023, Series II, Part E, of January 24, 2023

Revoking a set of regulatory acts issued by the Bank of Portugal regarding the Mutual Agricultural Credit Guarantee Fund.

Notice 1/2023 - DR 17/2023, Series II, Part E, of January 24, 2023

Establishing the aspects necessary to ensure compliance with anti-money laundering and terrorist financing obligations for entities engaged in activities involving virtual assets, introducing amendments to Notice 1/2022 of June 6.

Bank of Portugal instructions

Instruction 15/2023 – Official Bulletin 6/2023, 2nd Supplement of June 26, 2023

Regulating the reporting of statistical information to the Bank of Portugal for compiling consolidated international banking statistics, revoking Instruction 7/2017.

Instruction 14/2023 – Official Bulletin 6/2023, Supplement of June 21, 2023

Amending Instruction 3/2015, which establishes uniform rules for implementing the single monetary policy by the Eurosystem.

Instruction 13/2023 – Official Bulletin 6/2023, Supplement of June 21, 2023

Amending Instruction 7/2012, which establishes temporary measures regarding the eligibility criteria for collateral for Eurosystem credit operations.

Instruction 12/2023 – Official Bulletin 5/2023, 3rd Supplement of June 21, 2023

Disclosing the maximum rates to be charged in consumer credit agreements for the 3rd quarter of 2023 under Decree-Law 133/2009 of June 2.

Instruction 11/2023 – Official Bulletin 5/2023 of May 15, 2023

Regulating the conditions for joining and using the Relevant Information System of Supervised Entities service (SIREs, in its Portuguese acronym). This service aims to facilitate the uniform processing of authorization, non-opposition, communication, and registration procedures with the Bank of Portugal. It will replace the current Authorization and Registration Request service (PAR, in its Portuguese acronym) regulated by Instruction 7/2016 of May 20, which is revoked.

Instruction 10/2023 – Official Bulletin 4/2023, 3rd Supplement of April 28, 2023

Amending Instruction 16/2021, which establishes the information requirements for institutions to report on the implementation of the procedures outlined in the Default Risk Action Plan (“**DRAP**”) and the Extrajudicial Procedure for Settlement of Default Situations (“**EPSDS**”). It also includes the communication model that institutions must adhere to for this purpose.

Instruction 9/2023 – Official Bulletin 4/2023, 2nd Supplement of April 27, 2023

Amending Instruction 19/2012, which regulates the reporting of information on payment systems and instruments.

Instruction 8/2023 – Official Bulletin 3/2023, Supplement of March 17, 2023

Amending Instruction 8/2018, which regulates the Interbank Clearing System (SICOI).

Instruction 7/2023 – Official Bulletin 2/2023, 3rd Supplement of March 9, 2023

Disclosing the minimum rates to be charged in consumer credit agreements for the 2nd quarter of 2023 under Decree-Law 133/2009 of June 2.

Instruction 6/2023 – Official Bulletin 2/2023, 2nd Supplement of March 1, 2023

Amending Instruction 3/2015 and establishing uniform rules for the implementation of the single monetary policy by the Eurosystem.

Instruction 5/2023 – Official Bulletin 2/2023, 2nd Supplement of March 1, 2023

Amending Instruction 10/2015, which defines and regulates the Collateral and Operations Asset Management System.

Instruction 4/2023 – Official Bulletin 2/2023, Supplement of February 24, 2023

Defining the places, times, rules, conditions, and application support through which deposits and withdrawals of euro banknotes and coins can be made at the Bank of Portugal, revoking Instruction 18/2021.

Instruction 3/2023 – Official Bulletin 2/2023, Supplement of February 24, 2023

Regulating the Bank of Portugal’s core cash account co-management service, in accordance with Annex I to Instruction 16/2022, on the operation of the TARGET national component system—TARGET-PT.

Instruction 2/2023 – Official Bulletin 2/2023, Supplement of February 24, 2023

Regulating the opening and management of euro-denominated current deposit accounts with the Bank of Portugal for settling central bank currency operations. It revokes Instruction 2/2009, which regulated the procedure for opening and operating current deposit accounts with the Bank of Portugal and established the Integrated Settlement Management Application for the local management of deposit account access at the Bank of Portugal for institutions that do not participate directly in TARGET2-PT.

Instruction 1/2023 – Official Bulletin 1/2023, Supplement of January 30, 2023

Strengthening the regulatory framework applicable to the activity of payment institutions and electronic money institutions, revoking Instructions 27/2009 and 14/2014.

Bank of Portugal circulars**Circular CC/2023/00000025 – Official Bulletin 6/2023 of June 21, 2023**

Transmitting a set of recommendations to ensure that the impacts of phishing on customers are minimized.

Circular CC/2023/00000020 – Official Bulletin 4/2023 of April 28, 2023

Transmitting the European Banking Authority (“EBA”) Guidelines (EBA/GL/2022/14) issued under Article 84.6 of Directive 2013/36/EU, which specify the criteria for identifying, assessing, managing, and mitigating risks arising from potential interest rate changes, as well as assessing and monitoring the credit spread risk arising from activities not included in the trading portfolio.

Circular CC/2023/00000016 – Official Bulletin 3/2023 of April 12, 2023

Informing about the adoption of proportional countermeasures in response to the very high risk of money laundering and terrorist financing, following the release of the Financial Action Task Force (“FATF”) communiqués (February 2023 plenary meeting), regarding the Democratic People’s Republic of Korea (North Korea) and the Islamic Republic of Iran. It also highlights the additional measures taken by the FATF regarding the Russian Federation.

Circular CC/2023/00000017 – Official Bulletin 3/2023 of April 3, 2023

Clarifying the applicability of the EBA Guidelines (EBA/GL/2017/15) on the concept of “group of connected clients” established in Article 4.1.39 of Regulation (EU) 575/2013 of the European Parliament and of the Council of June 26, 2013, to the entities identified in article 1 of Bank of Portugal Notice 11/2014.

Circular CC/2023/00000005 – Official Bulletin 2/2023 of February 15, 2023

Providing, in accordance with paragraph 9 of Instruction 18/2015 of January 2016, the reporting templates for financing and capital plans, along with a description of the macroeconomic and financial scenario, and other necessary guidelines for institutions to complete the exercise and submit the required information.

Circular CC/2023/00000004 – Official Bulletin 2/2023 of February 15, 2023

Releasing the Guidelines of the Committee of European Banking Supervisors on the exclusion of certain very short-term exposures for the purposes of calculating the value of the risk under the large exposures framework of July 28, 2010.

Circular CC/2023/00000001 – Official Bulletin 16-01-2023 of January 16, 2023

Releasing the Guidelines that amend EBA/GL/2018/10 on the disclosure of non-performing and restructured exposures, which entered into force on December 31, 2022.

Bank of Portugal reports

2022 Behavioral Supervision Report

The Bank of Portugal monitored the entry into force of the extraordinary rules adopted by lawmakers to protect borrowers of mortgage loan contracts from the effects of rising inflation and the impact of increasing interest rates. These measures included strengthening—towards the end of 2022—the rules that require institutions to monitor the execution of mortgage loan contracts, requiring banks to act diligently under the DRAP. The processes initiated by institutions under the EPSDS increased in 2022, both in mortgage loans and in consumer credit, the latter reaching levels high than those observed in the pre-pandemic period.

European Central Bank acts

Decision (EU) 2023/55 of the European Central Bank of December 16, 2022 - OJEU L-3/16 of January 5, 2023

Amending Decision (EU) 2019/1743 on the remuneration of holdings of excess reserves and of certain deposits (ECB/2019/31) and Decision (EU) 2022/1521 on temporary adjustments to the remuneration of certain non-monetary policy deposits held with national central banks and the European Central Bank.

EBA acts

EBA guidelines of June 16, 2023

Amending the guidelines on resolution improvements for institutions and resolution authorities, adding a new section on resolution testing.

EBA report of May 16, 2023

On the holding of eligible liabilities issued by globally systemic important institutions and other systemic important institutions.

EBA report of March 10, 2023

On the annual assessment of banks' internal approaches to calculating capital requirements. It discloses the annual market and credit risk benchmarking exercises conducted in 2022. These exercises aim to monitor the consistency of risk-weighted assets across all EU institutions authorized to use internal approaches for calculating capital requirements.

Guidelines of February 21, 2023, on methods for calculating contributions to a deposit guarantee scheme (“DGS”)

The published guidelines further strengthen the existing connection between the risk profile of a credit institution and the amount of its contribution to the DGS funds that will be used to reimburse depositors in the event of the credit institution’s insolvency. The most significant changes include the following:

- i) Setting minimum thresholds for most key risk indicators, in line with the applicable regulatory minimum requirements and adjusting their minimum weights to better reflect the performance of these indicators in risk mitigation for the DGS.
- ii) Introducing a technical improvement to the formula for determining the risk-adjustment factor of each member institution, ensuring a constant relationship between the institutions’ risk profile and their contributions to the DGS.
- iii) Specifying how to account for deposits where DGS coverage is subject to uncertainty. This includes cases such as when a deposit is subject to settlement by inheritance or when customer funds are deposited in a bank by another financial institution. This specification will ensure a better alignment between the amount of a credit institution’s covered deposits and its contributions.
- iv) Introducing the possibility for DGS to use an equity-based approach to raising contributions, incentivizing banks to reduce their risk profile even after the DGS fund has reached its contribution target.
- v) Clarifying the procedure for increasing contributions following the use of DGS funds.

Report on high earners data from the end of 2021, of January 19, 2023

Under Directive 2013/36/EU (CRD) and Directive (EU) 2019/2034, the EBA is mandated to publish aggregated data on high earners who make €1 million or more per financial year. Competent authorities are responsible for collecting relevant information from credit institutions and investment firms, and for submitting this information to the EBA.

Peer review report on the PSD2 authorization of January 11, 2023

The revised Payment Services Directive (“**PSD2**”) has been applicable since January 13, 2018, establishing the requirements that applicants must meet to be authorized as payment institutions (“**PIs**”) and electronic money institutions (“**EMIs**”). This report presents the EBA’s findings on the review of the authorization for PIs and EMIs under PSD2, considering the EBA’s 2017 guidelines to supplement the PSD2. The review shows that competent authorities have largely implemented the guidelines, and when implemented, they have achieved their goal of providing consistency and transparency in the authorization information that potential PIs and EMIs are required to submit. However, some competent authorities have not fully implemented the guidelines, particularly regarding obtaining the complete set of information from applicants. There are also significant divergences in competent authorities’ practices in assessing the information provided, with varying levels of scrutiny observed among competent authorities. Specifically, there are divergent practices

regarding the evaluation of applicants' business plans and governance provisions, as well as internal control mechanisms. This includes the assessment of the directors and individuals who are responsible for the management of PIs and EMIs, particularly regarding whether applicants meet the requirement set by the PSD2 of (i) having their head office in the jurisdiction where they intend to obtain authorization, and (ii) conducting part of their activities in that jurisdiction.

Legislation: Insurance and pension funds law

EU law

Commission Implementing Regulation (EU) 2023/967 of May 16, 2023 - OJEU L-133/125 of May 16, 2023

Laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from March 31 until June 29, 2023, in accordance with Directive 2009/148/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance.

Commission Implementing Regulation (EU) 2023/895 of April 4, 2023 - OJEU L-120 of April 4, 2023

Laying down implementing technical standards for the application of Directive 2009/138/EC of the European Parliament and of the Council with regard to the procedures, formats and templates for the disclosure by insurance and reinsurance undertakings of their report on their solvency and financial condition and repealing Implementing Regulation (EU) 2015/2452.

Commission Implementing Regulation (EU) 2023/894 of April 4, 2023 - OJEU L-120 of April 4, 2023

Laying down implementing technical standards for the application of Directive 2009/138/EC of the European Parliament and of the Council with regard to the templates for the submission by insurance and reinsurance undertakings to their supervisory authorities of information necessary for their supervision and repealing Regulation (EU) 2015/2450.

Insurance and Pension Funds Supervisory Authority (ASF) regulatory standards

Regulatory Standard 3/2023 of June 6

Establishing the quarterly capital update indices for policies in the "Fire and natural elements" category starting or maturing in the third quarter of 2023.

Regulatory Standard 2/2023 of June 6 - DR 123/2023, Series II of June 27, 2023

Establishing the guarantees to be provided in the scope of the reinsurance activity in Portugal by insurance or reinsurance undertakings from non-equivalent third countries and not established in Portugal.

Regulatory Standard 1/2023 of February 28 - DR 59/202, Series II of March 23, 2023

Establishing the quarterly capital update indices for policies in the "Fire and natural elements" category starting or maturing in the second quarter of 2023.

Insurance and Pension Funds Supervisory Authority circulars

Circular 6/2023 of April 18, 2023

Establishing recommendations regarding the information that pension fund managers should include in the statement of investment policy principles, particularly the asset allocation strategy, considering the way that the investment policy considers environmental, social, and governance (ESG) factors.

Circular 5/2023 of April 18, 2023

On the collection of information from the national insurance sector on the physical risks covered by the “Fire and natural elements” and “Other damage to objects” categories.

Circular 4/2023 of April 11, 2023

On the adoption of stronger identification and diligence measures for the Democratic People’s Republic of Korea (North Korea), the Islamic Republic of Iran, and the Republic of the Union of Myanmar. It also outlines proportional countermeasures to address the very high risk of money laundering and terrorist financing associated with the Democratic People’s Republic of Korea and the Islamic Republic of Iran.

Circular 3/2023 of March 29, 2023

Providing recommendations on the information to be provided when changing insurance premiums. In several cases, the ASF has observed that insurers often fail to provide sufficient information regarding changes in contractual conditions, such as insurance premium increases resulting from updates or contractually defined rules that are not properly communicated or clarified at the time the contract is signed. The ASF’s primary goal is to ensure the proper functioning of the insurance and pension funds market in Portugal, while also safeguarding the interests of policyholders, insured parties, subscribers, participants, beneficiaries, and injured third parties. Drawing on its supervisory experience and the promotion of transparency and accurate information for policyholders, the ASF recommends a set of best practices for payment notices and other aspects related to potential changes in insurance contracts, as outlined in article 60 of the Legal Regime on Insurance Contracts, approved by Decree-Law 72/2008 of April 16.

Circular 2/2023 of February 14, 2023

On the evaluation and prior registration for regulated functions. Since 2015, insurance and reinsurance undertakings, undertakings within insurance or reinsurance groups supervised by the ASF, and pension fund management companies have been subject to an increasingly stringent regulatory and legislative regime when it comes to governance. This includes the evaluation and prior registration of individuals carrying out regulated functions, considering predefined suitability requirements. In the first phase, this framework was initiated with the publication of the Solvency II Directive, the Commission Delegated Regulation (EU) 2015/35 of October 10, 2014, and the Legal Regime for the Taking-up and Pursuit of Insurance and Reinsurance Activities. In the second phase, it was further reinforced with the publication of the IORP II Directive and the Legal Regime on the Establishment and Operation of Pension Funds and Pension Fund Management Entities. In recent years, the ASF has gained sufficient experience to justify the need for

a more transparent and consistent supervision process, particularly concerning the evaluation and registration of (i) those responsible for management bodies and other individuals effectively running supervised entities, (ii) those responsible for supervisory bodies and statutory auditors, (iii) key function holders and senior managers, and (iv) responsible actuaries. This will be achieved through developing and issuing guidelines that define the supervisor's expectations and benchmark standards, both internally (i.e., for the technical staff involved in the supervisory process) and externally, benefitting the market (i.e., for individuals and entities directly affected by this supervision).

Circular 1/2023 of January 24, 2023

Impact of inflation on the prudential assessment of insurance companies.

Throughout 2022, there was a sharp and persistent increase in inflation, which had significant consequences for the economy and society at large. This included a reduction in economic growth forecasts and a decrease in consumers' purchasing power. Simultaneously, changes in monetary policies brought an end to the low-interest-rate environment that had persisted over the past decade. While the increased cost of claims is the most direct impact of inflation on the insurance industry, there are several other factors to consider. These include the current and future impact of changes in monetary policy, capital management tools, risk management policies, choice of valuation models, and policyholder behavior.

In this macroeconomic context, the ASF issued Circular 10/2022 of November 29, which provides a set of recommendations for the insurance sector. Its objective is to mitigate the impacts of the current situation on policyholders, insured parties, and beneficiaries.

Given the significant impact of the current situation on the operations of life and non-life insurance and reinsurance undertakings, the ASF emphasizes the importance of complying with existing legal and regulatory provisions. It also highlights the need for insurance and reinsurance undertakings to prudently consider the inflation outlook when evaluating their current and future assets and liabilities.

European Insurance and Occupational Pensions Authority ("EIOPA") opinions

EIOPA's Progress Report on Greenwashing – Advice to the European Commission – June 1, 2023

On defining greenwashing and assessing the level of implementation of greenwashing legislation, and identifying the inconsistencies, gaps, and issues in the current legislative framework of the EU.

EIOPA opinion to the European Commission, of January 26, 2023, on the European Financial Reporting Advisory Group's ("EFRAG") technical advice regarding European Sustainability Reporting Standards

On evaluating whether the European Sustainability Reporting Standards developed by the EFRAG effectively promote the disclosure of high-quality information on material sustainability. It also evaluates their consistency and compatibility with other EU laws, alignment with global standard setting initiatives, and their ability to encourage companies to apply them consistently and proportionately.

Legislation: Securities and capital markets law

Portuguese law

Decree-Law 27/2023 – Official Gazette of the Republic of Portugal 83/2023, Series I of May 28, 2023
Approving the asset management regime.

Rectification Declaration 6-A/2023 of February 7, 2023

Amending Law 23-A/2022 of December 9, which transposes Directive (EU) 2019/878 on access to banking and prudential supervision, and Directive (EU) 2019/879 on the recovery and resolution of credit institutions and investment firms, modifying the General Regime on Credit Institutions and Financial Companies, the Securities Code, and related legislation.

EU law

Regulation (EU) 2023/1114 of the European Parliament and of the Council of May 31, 2023 - OJEU L-150/40 of May 31, 2023

On markets in crypto-assets, and amending Regulations (EU) 1093/2010 and (EU) 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937.

Regulation (EU) 2023/1113 of the European Parliament and of the Council of May 31, 2023 - OJEU L-150/1 of May 31, 2023

On information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849.

Regulation (EU) 2023/606 of the European Parliament and of the Council of March 15, 2023 - OJEU L- 081 of March 21, 2023

Amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules.

Commission Implementing Regulation (EU) 2023/266 of February 9, 2023 - OJEU L-041 of February 10, 2023

Laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from December 31, 2022, until March 30, 2023, in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance.

Commission Delegated Regulation (EU) 2023/351 of October 25, 2022 - OJEU L-43/4 of March 13, 2023

Amending the regulatory technical standards laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 with regard to the date from which the clearing obligation takes effect for certain types of contracts.

Commission Delegated Regulation (EU) 2023/662 of January 20, 2023 - OJEU L-026 of January 30, 2023

Amending Delegated Regulation (EU) 2015/63 as regards the methodology for the calculation of liabilities arising from derivatives.

International law

IFRS S1- Sustainability Information Disclosure Standards of June 2023

This is one of the first sustainability information disclosure standards issued by the International Sustainability Standards Board (“ISSB”). Its main objective is to require companies to disclose financial information about their sustainability risks and opportunities that could reasonably be expected to affect their cash flow, access to financing, or cost of capital.

These standards can help investors evaluate a given entity’s business value.

IFRS S2 - Sustainability Disclosure Standards of June 2023

This is one of the first sustainability information disclosure standards issued by the ISSB. Its main objective is to require companies to start disclosing information about climate-related risks and opportunities. This standard requires entities to disclose information that could reasonably be expected to affect their cash flow, access to financing, or cost of capital.

IFRS Feedback Statement on sustainability disclosure standards of June 2023

This is the IFRS Opinion on the proposals made by IFRS S1 and IFRS S2, and the response of the ISSB.

Summary of the Draft Sustainability Disclosure Standards of June 2023

This summarizes the project to promote and develop sustainability disclosure standards IFRS S1 and IFRS S2.

IFRS - Analysis of effects of June 2023

Although this accompanies sustainability disclosure standards IFRS S1 and IFRS S2, it is not part of them. It describes their potential benefits and costs.

IFRS S2 - Sustainability Disclosure Standard – Conclusions of June 2023

Although this accompanies sustainability disclosure standard IFRS S2, it is not part of it. It describes the ISSB’s considerations in developing IFRS S2.

CMVM regulations

Regulation 1/2023 - DR 81/2023, Series II, of April 26, 2023

On the information obligations applicable to issuers and the regime applicable to takeover bids, revoking CMVM Regulations 6/2002, 11/2005, 3/2006, 5/2008, and 7/2018.

CMVM circulars

Circular of May 25, 2023

On asset management and the main impacts of the entry into force of the new RAM on asset management companies and CIUs in operation, as well as on ongoing administrative and supervisory procedures at the CMVM.

Circular of May 15, 2023

On financial intermediation and the sustainability obligations under the Markets in Financial Instruments Directive (“MiFID II”).

Circular of May 5, 2023

To financial intermediaries on advertising, which aims to enhance the level of investor trust and protection, promote greater transparency in the functioning of the market, and prevent the advertising of financial services by unqualified entities.

Circular of April 28, 2023

On issuers and the new issuer regulation. Systematizes the regulatory framework resulting from the new CMVM Regulation 1/2023 of April 26, on the information obligations of issuers and the regime applicable to public takeover bids.

Circular of March 31, 2023

On venture capital activity: general duty of identification and due diligence—identification, assessment, and mitigation of money laundering and terrorist financing risks.

Circular of March 14, 2023

On information and communication technologies: cybersecurity.

Circular 004/2023 of February 28, 2023

Annual asset management circular outlining the CMVM’s objectives for 2023. These objectives include improving timeliness, prioritizing on-site and off-site supervision, enhancing the value-for-money assessment of financial instruments, and supporting the adoption of national and EU regulations relating to the regulation on digital operational resilience for the financial sector (DORA), ESG, and the real estate appraisal regime. The CMVM also aims to develop a sustainability guide, implement the electronic one-stop shop and launch a new website.

Circular 003/2023 of February 28, 2023

Annual circular to issuers establishing the CMVM's objectives for 2023. These objectives include improving timeliness regarding approvals and supervision findings, conducting on-site and off-site supervision actions to assess sustainability reporting practices, expanding the CMVM *Via Mercado*, reducing market access barriers stemming from perceived regulatory barriers, particularly through developing a sandbox for potential new issuers in the domestic market. The CMVM also aims to develop a sustainability guide, implement the electronic one-stop shop and launch a new website.

Circular of February 28, 2023

Annual circular on financial intermediation that outlines the CMVM's strategic objectives in its approach to supervising this activity.

Circular of February 8, 2023

On disclosure obligations regarding sustainability in the management of CIUs. Its objective is to encourage the adoption of the reporting duties set out in the Sustainable Finance Disclosure Regulation and related regulations.

CMVM Circular of January 4, 2023

On the assessment of the suitability of services, providing clarification to companies that offer investment advice (independent or otherwise) and portfolio management services. The circular outlines the obligations arising from articles 314-A.1 and 314-A.3 of the Securities Code and Articles 54.8 and 54.10 of Delegated Regulation (EU) 2017/565, as well as European Securities and Markets Authority ("ESMA") Guidelines on certain aspects of MiFID II suitability requirements (Guideline 1, points 15 to 19 – ESMA35-43-1163). These guidelines relate to the duty of ensuring the suitability of services provided, transactions made, recommendations given.

CMVM guidelines

Guidelines of January 16, 2023

On the suitability assessment for the exercise of regulated functions and holders qualified holdings.

ESMA acts

Guidelines of June 23, 2023

On template written arrangements for resolution colleges.

Guidelines of June 23, 2023

On templates for summary resolution plans.

Final report of May 31, 2023

On the Legal Regime for the 5th ESMA Stress Test Exercise for Central Counterparties.

Final report of May 24, 2023

On market disruptions.

Follow-up report of May 17, 2023

To the peer review of the ESMA Guidelines on exchange-traded funds and UCITS.

Common understanding of the European Supervisory Authorities (“ESAs”) (EBA, EIOPA and ESMA) on greenwashing in the sectors they regulate, June 1

Common high-level understanding among ESAs of greenwashing as a practice that undermines the sustainability of supervised financial sectors.

ESMA Opinion of May 17 for legislative amendments to costs incurred by investment funds

Opinion sent to the European Commission regarding the legal concept of “unfair costs” in funds, referring to the UCITS Directive (Directive 2009/65/EC) and the Alternative Investment Fund Managers Directive (Directive 2011/61/EU, or AIFMD). This regulatory initiative aims to urge European legislators to mitigate the imposition of unfair costs on investors and ensure appropriate compensation for them by harmonizing the concept of “unfair cost” across European jurisdictions.

ESMA report, of April 19, on data quality under the European Market Infrastructure Regulation and the Securitized Financing Transactions Regulation (SFTR)

Highlighting the increasing use of transaction data by EU financial regulatory authorities in their ongoing supervision and identifying significant improvements in data quality following a novel approach to data monitoring. The report also explains how ESMA, together with national competent authorities, the ECB, and the European Systemic Risk Board, incorporates data into various internal workflows.

Guidelines on certain aspects of suitability and execution under MiFID II

Companies must inform their clients in a clear and uncomplicated way about the suitability assessment and its purpose, which is to enable the company to act in the best interest of the client. In this context, companies must clearly explain that it is the company’s responsibility to carry out the suitability assessment, so that clients understand why certain information is being requested from them and the importance of keeping that information up to date, accurate, and complete. This information can be provided in a standardized format.

Selected caselaw

Portuguese caselaw

Ruling of the Supreme Court of Justice of March 3, 2023 (Case 18742/16.7T8LSB.L1.S2)

The Supreme Court of Justice ruled that banks, in their role as financial intermediaries, must provide complete, truthful, up to date, clear, objective, lawful, and suitable information to investors. This is to ensure that investors can make informed and reasoned decisions, having all the relevant details.

When this obligation is breached, the requirements of unlawfulness and fault are met, along with the causal link, if it is proven that clients would not have invested in a given product if they had been

provided with complete, truthful, up to date, clear, objective, lawful, and suitable information for their profile.

The Supreme Court ruled that financial intermediaries act with serious negligence when their actions deceive clients, leading them to invest in a product they would not have chosen if they had been fully aware of its characteristics.

Ruling of the Supreme Court of Justice of January 31, 2023 (Case 12422/16.0T8LSB.L1-A.S1)

The Supreme Court ruled that the presumption provided for in article 304-A.2 of the Securities Code, in its version prior to the entry into force of Decree-Law 357-A/2007 of October 31, constitutes only a presumption of fault and unlawfulness, and does not cover the presumption of a causal link between the unlawful act and the damage.

In this case, it was not proven that the plaintiffs—as investors—would have decided not to invest had they been made aware of the information that should have been provided to them, as they actually made the investment. This demonstrates a lack evidence regarding the existence of a causal link between the unlawful act committed by the financial intermediary and the damage suffered by its clients.

This ruling is in line with the doctrine established in harmonizing ruling 8/2022 in Case 1479/16.4T8LRA.C2.S1-A, published in the Official Gazette, Series I, on November 3, 2022. In that ruling, it was decided that “to establish the causal link between the breach of information duties by the financial intermediary and the damage resulting from the investment decision, the investor must prove that the provision of the required information would have led him or her not to make the investment decision.”

Ruling of the Porto Court of Appeals of January 10, 2023 (Case: 1053/20.0T8MAI.P1)

The court ruled that gross negligence, within the context of using an electronic banking payment system, involves a severe and inexcusable misjudgment, an unexplainable lack of attention, and an unacceptable level of carelessness. This is compared to the behavior expected of ordinary individuals, even those who are not particularly diligent. If a large number of system users engage in an act that causes harm, it cannot be considered gross negligence because the average person would not see it as a severe and inexcusable misjudgment, an unexplainable lack of attention, or an unacceptable level of carelessness. To categorize conduct as gross negligence, it must be recurring and harmful to a significant number of users, and a general reference to the system’s potential for causing such harm is insufficient.

An example of gross negligence is when a user of an electronic payment service, while following the instructions from an unknown person regarding a sale, using their own debit card and the associated authentication PIN, replaces their own telephone number associated with the service with the unknown person’s number, breaching the service’s terms of use and ignoring its warnings.

Consequently, the unknown person can access the user's bank account, withdraw money, and transfer funds.

Ruling of the Guimarães Court of Appeals of May 11, 2023 (Case 1406/21.7T8BRG-B.G1)

The court ruled that when the lower court considers that certain information is subject to the banking secrecy obligations, as established in article 78 of the GRCIFC, but attempts to bypass such secrecy obligations by obtaining authorization from the party (bank customer), as provided for in article 79.1 of the GRCIFC, and such authorization is denied, the court cannot immediately require that the banking entity hand over the information subject to secrecy.

Ruling of the Coimbra Court of Appeals of June 13, 2023 (Case 329/22.7T8LRA.C1)

The court ruled as follows:

- I- The Portuguese legal system does not have a specific definition for an insurance contract. However, scholars have generally understood it to be “an agreement where the insurer, in exchange for payment from the policyholder, agrees to compensate for damages or pay a predetermined amount if a specific uncertain event occurs in the future.”
- II- Insurance contracts are regulated by the terms stated in the policy, provided they are not prohibited by law. If the policy lacks or has insufficient provisions, the Legal Regime on Insurance Contracts, approved by Decree-Law 72/2008 of April 16 (and its subsequent amendments), will apply.
- III- The interpretation of insurance contracts is based on the rules established in articles 236 to 238 of the Portuguese Civil Code, the principles of good faith in contracts (article 762.2 of the Portuguese Civil Code), and the provisions of Decree-Law 446/85 of October 25 regarding general contractual terms.
- IV- When determining the risk location in a property damage insurance contract (such as a home insurance policy), it is essential to consider the insured assets as specified in the policy proposal signed by the policyholder. Therefore, if there is no annex to the proposal (when the contents of that annex were intended to be insured), it can be reasonably assumed that only the author's home and its contents are covered.

For additional information on the contents of this document, please contact Cuatrecasas.

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