
Regulation of the Asset Management Regime

CMVM Regulation 7/2023 regulates the Asset Management Regime (*Regime de Gestão de Ativos*), repealing CMVM Regulations 2/2015 and 3/2015

Portugal - Legal Update

January 5, 2024



Key aspects

- Portuguese Securities Market Commission (“CMVM”) Regulation 7/2023 regulates the new Asset Management Regime, with the main objective of promoting investor protection, market competitiveness and efficiency.
- CMVM Regulation 2/2015, on collective investment undertakings, and CMVM Regulation 3/2015, on venture capital, social entrepreneurship, and specialized investment, are repealed.
- The regulation was published on December 29, 2023 and entered into force on January 1, 2024.
- Fund managers and collective investment undertakings have 180 days to adapt to the regulation.



Context

CMVM Regulation 7/2023 (“**RRGA**”), which aims to regulate and implement the Asset Management Regime (“**RGA**”), has been approved and published. Regarding the RGA, established by Decree-Law 27/2023 of April 28, see our previous Legal Flash: [Asset Management Regime](#).

The RRGGA represents the CMVM’s continued involvement in policymaking in the sector of collective investment undertakings (“**CIUs**”). The aim is to preserve the benefits of the solutions provided in that regime while also expanding regulatory solutions for simplification and proportionality purposes.

Eagerly anticipated by the market, the RRGGA is based on the draft regulation that was open for public consultation until August 2, 2023 (CMVM public consultation 6/2023), receiving almost 100 contributions from the market. Therefore, the RRGGA includes significant amendments to the draft regulation open to public consultation.

Main amendments

The approval of the RGA in April 2023 was an important step in the Portuguese market towards simplifying, consolidating and harmonizing the legal regime for collective asset management. This will reduce cases of gold-plating in the Portuguese legal system and consolidate the *ex post* supervisory paradigm, imposing additional responsibility on fund managers (management companies and alternative investment fund managers).

The RGA unifies the regimes for securities and real estate CIUs, private equity/venture capital, social entrepreneurship, and specialized investment, repealing the General Regime for Collective Investment Undertakings and the Legal Regime for Venture Capital, Social Entrepreneurship and Specialized Investment (*Regime Geral dos Organismos de Investimento Coletivo e do Regime Jurídico do Capital de Risco, Empreendedorismo Social e Investimento Especializado*).

However, the CMVM regulations adopted under these regimes—Regulation 2/2015 and Regulation 3/2015—remained in force until their replacement, provided they were compatible with the RGA provisions. This created a situation in which the CMVM regulations created to regulate the previous legal regimes ended up regulating the RGA on a temporary basis, which sometimes created uncertainty in the application of the rules.

Therefore, as with the RGA, the RRGGA unifies the regulatory regimes applicable to the various types of fund managers and CIUs, repealing CMVM Regulation 2/2015 and CMVM Regulation 3/2015.

Among the amendments introduced by the RRGGA, it:

- establishes a single prospectus and management regulations document, which should follow a prescribed format as defined in an annex to the RRGGA, applicable only to certain types of CIUs, including, in some cases, closed-ended alternative investment funds (“AIFs”) by private placement;
- creates a new procedure requiring fund managers authorized to manage AIFs to communicate their intention to the CMVM with 30 days advance notice if they intend to manage an AIF of a different type or with a different investment strategy from the AIFs they already manage, updating the program of operations and proving appropriate technical and human resources, representing a significant change for fund managers who want to make practical use of the possibility of managing AIFs of other types (e.g., private equity/venture capital AIFs and real estate AIFs);
- clarifies the obligation to inform CMVM of any subsequent changes to the authorization of fund managers and CIUs, by distinguishing between substantial and non-substantial changes, and specifying those that apply only to sub-threshold AIF managers;
- establishes the rules for valuing assets of CIUs, including in relation to real estate AIFs, which had not been included in the RGA, with certain amendments to the preexisting rules;
- establishes the rules for mergers, divisions, re-registration, and liquidation of CIUs, in some cases with important clarifications with regard to the regime provided for in the RGA;
- governs due costs and charges and outlines specific rules regarding real estate AIFs and loan AIFs, including investment limits; and
- establishes liquidity management mechanisms for the management of open-ended CIUs.

The RRGGA also consolidates the reporting duties of fund managers into nine annexes, resulting in increased transparency and clarity.

Lastly, the RRGGA amends two other CMVM regulations: Regulation 7/2003, regarding fees; and Regulation 8/2020, regarding the submission of information to the CMVM on pricing schedules for non-professional investors, marketing, and expenses of CIUs.

Next steps

The RRGAs entered into force on January 1, 2024.

However, the RRGAs provide for a set of transitory rules requiring fund managers and CIUs to adapt to the new rules, such as the 180-day period, which ends on June 28, 2024.

Another important change has also been established with regard to the draft regulation that the CMVM has submitted for public consultation. This change pertains to the exemption, for closed-ended CIUs that were already established by January 1, 2024, from the obligation to prepare management regulations in accordance with the prescribed format of the single document annexed to the RRGAs.

For more information about the contents of this document, please contact *Cuatrecasas*.

©2024 CUATRECASAS

All rights reserved.

This document is a compilation of legal information prepared by Cuatrecasas. The information and comments included in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment or any other full or partial use of this legal flash is prohibited, unless with the consent of Cuatrecasas.

