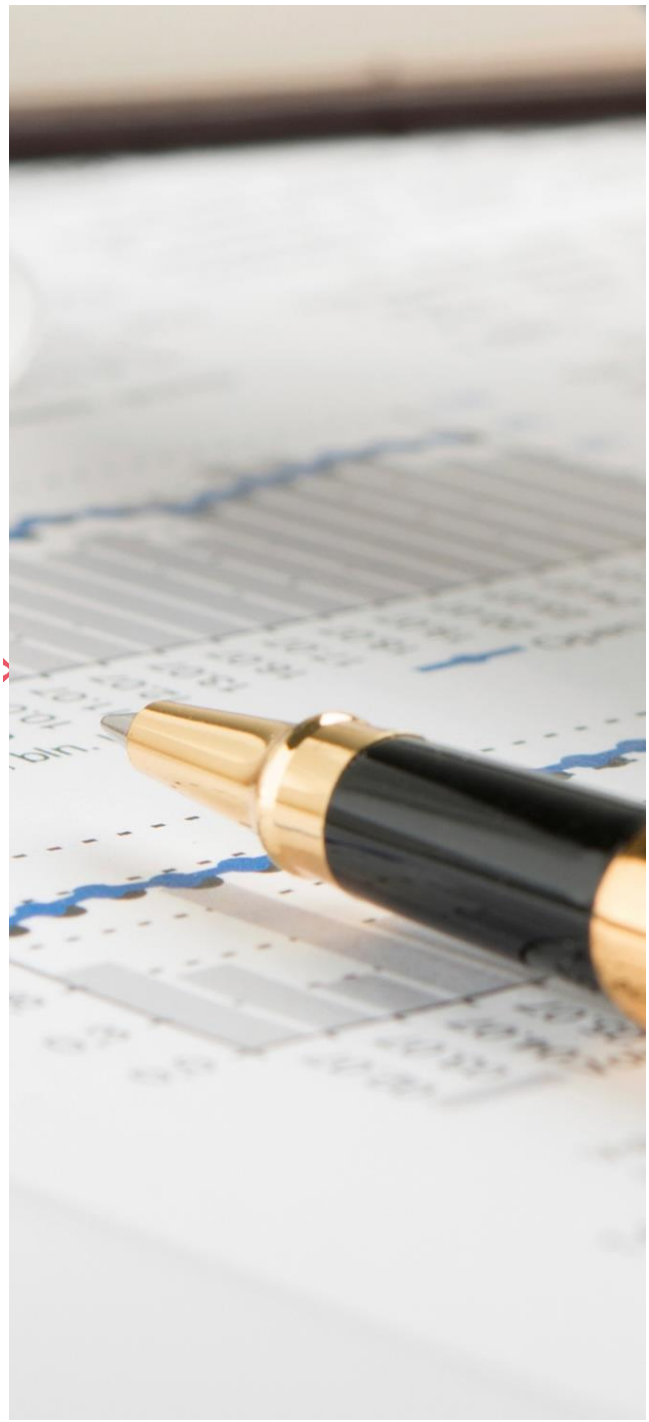
CUATRECASAS

Legal Update - 4th Quarter 2023

Portugal | Banking, Finance and Capital Markets

4th Quarter 2023



Contents

Asset Management Regime Regulation (*Regulamento do Regime de Gestão de Ativos,* "RRGA")

1. Introduction

On June 21, 2023, the Portuguese Securities Market Commission (the "CMVM") launched public consultation 6/2023 on a draft regulation with three main objectives:

i) to approve the CMVM Regulation implementing the Asset Management Regime (approved by Decree-Law 27/2023 of April 28);
ii) to amend CMVM Regulation 7/2003 on fees; and
iii) to revoke CMVM Regulation 2/2015 and CMVM Regulation 3/2015.

The CMVM collected and analyzed the contributions from the sector and, on December 21, 2023, it approved Regulation 7/2023 (the "RRGA"). The RGGA concerns the new Asset Management Regime (*Regime da Gestão de Ativos*, "RGA"), and its main objectives are to promote investor protection, competitiveness, and market efficiency.

To this end, the RRGA implemented the RGA and the following aspects in particular:

i) conditions for management companies and collective investment undertakings ("CIUs") to enter the asset management activity;
ii) requirements for CIU activity (such as valuation rules, incorporation documents, or demerger and transformation rules);
iii) requirements for the organization and pursuit of the management company activity;
iv) marketing; and
v) disclosure and reporting of information to the CMVM.

In line with the RGA, the RRGA also unified the regulatory regimes for the different types of management companies and CIUs, consolidating the rules established for venture capital, social entrepreneurship, specialized investment and other CIUs, and revoking CMVM Regulations 3/2015 and 2/2015, which regulated the RGA until the approval of the RRGA, though not without some eccentricity in certain cases.

We highlight the following new features:

2. Classification of the authorization conditions for management companies and CIUs

The RGA establishes a specific regime for subsequent changes to the authorization conditions for management companies and CIUs (see articles 26 and 27 RGA), differentiating between material and non-material amendments. This distinction is relevant because it determines the type of administrative procedure applicable to these amendments—prior notification, prior notification subject to CMVM clearance or subsequent notification. Furthermore, in the case of CIUs, the amendment may have significant implications, such as the possibility for holders of units in closed-ended CIUs—where redemption is not allowed—to redeem their units on an exceptional basis.

However, the RGA does not exhaustively establish the changes that should be considered material and non-material, and the lack of harmonization with the previous regulatory regimes has raised

several questions, which is why the sector called for clarification. It was in fact one of the issues discussed at the joint conference between the Portuguese Association of Investment Funds, Pension Funds and Asset Management (APFIPP) and Cuatrecasas at our offices on July 7, 2023, just after the public consultation on the draft regulation that led to the RRGA was launched. The RRGA has now clarified the list of material and non-material changes to the authorization of management companies.

The list of material changes includes a relatively short and closed number of situations aimed at simplifying the process of reporting to the regulator. These include management and supervisory structures that involve a less stringent supervisory model (e.g., changing from a supervisory board to a single auditor, made possible by other recent legislative amendments), a reduction of own funds or a change of compliance officer.

Changes to the purviews of the management body, the introduction of variable remuneration components and reduced availability (e.g., due to holding other positions as well) are included in the list of non-material changes that must be reported to the CMVM. Some of these changes may have a significant impact on assessing whether members of the management and supervisory bodies are fit and proper under the CMVM Guidelines on assessing fitness for the pursuit of regulated positions and for qualifying stakeholders, as amended.

As regards the changes to the conditions for incorporating CIUs, material changes are considered those made to the investment policy, the income distribution policy, the debt policy or the period for calculating and disclosing the value of the units.

While there are still certain issues that require more attention to ensure legal compliance, the changes introduced by the RRGA are an important and welcome step.

3. **Management of new types of alternative investment undertakings**

The RGA introduced an important development by establishing that authorization for a management company (including venture capital companies) to manage an alternative investment undertaking ("**AIU**") means that it can manage any type of AIU without needing to obtain an extension of its initial authorization. For example, a venture capital company can now manage other alternative investment funds ("AIFs"), including real estate AIFs or credit AIFs, if it complies with the ratio of fund types established in the RGA.

However, the RRGA establishes a new administrative procedure requiring management companies authorized to manage AIFs that intend to set up a different type of AIU, or an AIU with a different investment strategy from the AIU investment types or strategies they already manage, to notify the CMVM at least 30 days in advance. This prior notification must be accompanied by an updated activity program and proof that they have the appropriate technical and human resources for that purpose.

We are, therefore, looking at a limitation to that principle. In fact, while formally maintaining that the authorization covers other types of AIU, in practice this development implies the need for management companies that want to use this authorization (e.g., a venture capital company beginning to manage a real estate AIU or a generalist AIU) to conduct a thorough analysis of their

internal structure and a detailed review of their activity program, ensuring that they are prepared for the procedure at the CMVM. The CMVM may verify the authorization conditions based on the "new activity," so it is important for management companies to be prepared for this.

4. **CIU merger, demerger, and transformation procedures**

The regime on CIU mergers, demergers and transformations established in the RGA has been clarified. Besides requiring a resolution of the unit holders' meeting (though not a qualified majority), it now regulates demerger and transformation processes in some detail, setting out the information to be provided to the unit holders, the elements to be included in the demerger and transformation plan, and the right to redemption, among others, and simplifying several aspects of the applicable procedures.

5. **Information**

As part of the duty to prepare the prospectus and management regulations, the RRGA establishes an obligation to prepare a single document that must comply with an RRGA-stipulated format, applicable in particular to:

i) open-ended UCIs that are not aimed exclusively at professional investors;
ii) closed-ended UCIs that are the subject of a public offering; and
iii) closed-ended UCIs that are not (a) aimed exclusively at professional investors, (b) the subject of a public offering, and (c) whose minimum subscription value per investor is less than €100,000.

These rules aim to ensure the harmonization and completeness of the CIU's incorporation documents, thus guaranteeing a higher level of protection for investors. In addition to the provisions of the now revoked regulations, the single document envisages a new chapter that groups together legal information of interest to unit holders. We are referring to the conditions for increasing and reducing the capital of closed-ended UCIs and the possibility, already allowed by the RGA, for participants to amend the UCI's management regulation.

We should point out that the RRGA does not establish any specific rule for different categories of units. Therefore, it seems that, if any of those categories requires a minimum subscription of less than €100,000 per investor (including the category for the fund manager or sponsors), the single document will apply to most closed-ended AIFs also aimed at professional investors (e.g., most venture capital funds whose investment policies are compatible with the investment residence permit or golden visa regime).

However, we should keep in mind that the RRGA establishes—and this is an important development on the draft regulation released for public consultation—a transitional rule hat closed-ended CIUs already incorporated on January 1, 2024, are not subject to this duty, so they do not need to amend their management regulation for this purpose.

In addition, the RRGA establishes that the CIU's incorporation documents (namely the management regulation and the fundamental information documents or fundamental information for investors (DIF/IFI)) must keep the current charge rate (no later than 10 working days after April 30 each year) and the risk and remuneration indicators up to date.

We also highlight the definition of relevant changes to costs and charges and the specific rules on real estate AIFs and credit AIFs, including with regard to investment limits and the establishment and dissemination of liquidity management mechanisms for the management of open-ended CIUs. The RRGA did not specifically regulate this aspect for AIFs, and the regime established in the RGA remains in place.

Finally, we should highlight the reorganization and clarification of the information reporting duties to the CMVM systematized in article 83 of the RRGA and in several long schedules. This is also a positive change and one that compliance departments should pay close attention to, preparing themselves by mapping out all the reporting duties to avoid administrative offenses.

6. **Final notes**

The RRGA was published on December 29, 2023 and entered into force on January 1, 2024. Management companies and CIUs have a 180-day adaptation period that ends on June 28.

Legislation: Banking and finance

Portuguese Law

Decree-Law 91/2023 of October 11 - DR 197/2023, Series I, of October 11, 2023
Establishes the measure that temporarily sets the mortgage payments relating to agreements for the purchase or construction of owner-occupied housing and boosts the extraordinary measures and support for mortgage loans. It entered into force on October 12, 2023.

Bank of Portugal notices

Notice 8/2023 of December 18, 2023 - DR 242/2023, Series II, Part E, of December 18 2023
Regulates the registration of information on subcontracting agreements and the format for communicating this information and information on new functions or material changes to essential or important subcontracted functions to the Bank of Portugal.

Notice 7/2023 of November 23, 2023 - DR 205/2023, Series II, Part E, of November 23, 2023
Regulates the periodic reporting of concentration risk information to the Bank of Portugal for supervisory purposes and revokes Bank of Portugal Instruction 5/2011 of March 15.

Bank of Portugal instructions

Instruction 29/2023 of December 21, 2023
Amends Instruction 8/2018, which regulates the interbank clearing system (SICOI).

Instruction 28/2023 of December 15, 2023
Sets the base rate for determining periodic contributions to the Resolution Fund in 2024 at 0.032%.

Instruction 27/2023 of December 15, 2023
Sets the basic contribution rate for determining each institution's rate at 0.0009%, as well as the minimum contribution to the Deposit Guarantee Fund to be made by participating institutions (€600)

in 2024. It stipulates that participating credit institutions may not replace their annual contribution by irrevocable payment commitments.

Instruction 26/2023 of December 7, 2023
Establishes the maximum rates applicable to consumer credit agreements in the 1st quarter of 2024.

Instruction 24/2023 of October 30, 2023
Regulates the provision of information to bank customers and the reporting of information to the Bank of Portugal regarding the implementation of the regimes that temporarily set the mortgage payment and the temporary interest subsidy for owner-occupied mortgage agreements. This instruction comes in the wake of Decree-Law 91/2023 of October 11, which established the measure to temporarily set the mortgage payment relating to agreements for the purchase or construction of owner-occupied housing and bolstered the extraordinary measures and support for mortgage loans.

Instruction 23/2023 of October 9, 2023
Establishes the criteria for measuring the impact on consumer solvency of increases in the index for variable interest rate or mixed interest rate mortgage agreements and revokes Bank of Portugal Instruction 3/2018.

Bank of Portugal circulars

Circular CC/2023/00000044 of December 7, 2023
Following the release of the FATF statements, it reports the adoption of proportional countermeasures for the very high risk of money laundering and terrorist financing from the Democratic People's Republic of Korea (North Korea) and the Islamic Republic of Iran. It also highlights the continued suspension of the membership status of the Russian Federation.

Circular CC/2023/00000043 of November 27, 2023
Announces the adoption of European Banking Authority ("EBA") guidelines and recommendations on recovery plans, namely the "Guidelines on the range of scenarios to be used in recovery plans" (EBA/GL/06/2014), the "Recommendation on the coverage of entities in a group recovery plan" (EBA/REC/2017/02), the "Guidelines on recovery plan indicators" (EBA/GL/2021/11), and the "Guidelines on the overall recovery capacity in recovery planning" (EBA/GL/2023/06).

Circular CC/2023/00000041 of November 3, 2023
States the deadlines for reporting the amount of minimum reserves (monthly and quarterly reporting), as well as the maintenance period schedule for 2024.

European Banking Authority acts

EBA report of December 20, 2023
Report on the amendment to the guidelines on the specification and disclosure of systemic importance indicators (EBA/GL/2020/14) applied by the largest institutions in the EU, whose leverage ratio exposure measure exceeds €200 billion.

EBA guidelines of December 18, 2023
Guidelines on the benchmarking of diversity practices, including diversity policies and the gender pay gap, under the Capital Requirements Directive (2013/36/EU) and the Investment Firms Directive (2019/2034/EU).

EBA report of December 18, 2023
Report on the deposit coverage level and coverage of public authorities' deposits, in response to a call for advice by the European Commission.

EBA guidelines of December 15, 2023
Guidelines on the assessment of adequate knowledge and experience of the management body of a credit servicer as a whole, under the Non-Performing Loans Directive (2021/2167/EU).

EBA report of October 12, 2023
Report on the role of environmental and social risks in the prudential framework of credit institutions and investment firms. The report recommends specific improvements to accelerate the integration of environmental and social risks into the Pillar 1 framework.

EBA guidelines of November 27, 2023
Amends Guidelines EBA/GL/2021/16 on the characteristics of a risk-based approach to anti-money laundering and terrorist financing supervision and the measures to be taken when conducting supervision on a risk-sensitive basis under article 48(10) of the Fourth Anti-Money Laundering Directive (2015/849/EU).

Legislation: Insurance and pension funds

EU Law

Commission Implementing Regulation (EU) 2023/2574 of November 20, 2023 - OJEU L-214 of November 21, 2023
Lays down technical information for the calculation of technical provisions and basic own funds for reporting, with reference dates from September 30, 2023, to December 30, 2023, under 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. It entered into force on November 22, 2023.

Insurance and Pension Funds Supervisory Authority (ASF) regulatory standards

Regulatory Standard 8/2023-R of September 28 - DR 218/2023, Series II, Part E, of November 10, 2023
Defines the required procedures for correctly identifying the applicant when a non-face-to-face application is made for access to the holder's data, including through the use of information technology and electronic documents, and clarifies stakeholders' access to the information contained in the central register of life insurance contracts, personal accident insurance contracts, and

capitalization operations with beneficiaries in the event of the death of the insured or the subscriber. It entered into force on November 10, 2023.

Regulatory Standard 9/2023-R of October 3 - DR 225/2023, Series II, Part E, of November 21, 2023
Defines the fitness, qualifications, availability, and independence requirements prior to registration for directors, officers and others responsible for key positions in national and foreign insurance companies operating in Portugal. It entered into force on November 22, 2023.

Legislation: Securities and capital markets

EU Law

Regulation (EU) 2023/2845 of the European Parliament and of the Council of December 13, 2023 - OJEU Series L of December 27, 2023
Effective from January 16, 2024, it amends Regulation (EU) 909/2014—which standardizes the requirements for settling financial instruments and the rules on the organization and functioning of central securities depositories (CSDs) to promote safe, efficient, and simple settlement—as regards settlement discipline, crossborder services, supervisory cooperation, ancillary banking services and requirements for other countries' CSDs, and it amends Regulation (EU) 236/2012.

Regulation (EU) 2023/2859 of the European Parliament and of the Council of December 13, 2023 - OJEU L series of December 20, 2023
Establishes a European single access point providing centralized access to publicly available information of relevance to financial services, capital markets and sustainability to promote the efficient functioning of the internal market through this structured access to data for all stakeholders. It entered into force on January 9, 2024.

Regulation (EU) 2023/2631 of the European Parliament and of the Council of November 22, 2023 - OJEU L Series of November 30, 2023
Concerns European green bonds and optional disclosures for bonds marketed as environmentally sustainable and sustainability-linked bonds with a view to transitioning to an impact-neutral, sustainable, efficient, circular, and fair economy to ensure the long-term competitiveness of the EU economy. It entered into force on December 20, 2023 and will apply from December 21, 2024.

Commission Regulation (EU) 2023/2579 of November 20, 2023 - OJEU Series L of November 21, 2023
Amends Regulation (EU) 2023/1803—which establishes international accounting standards and interpretations—as regards International Financial Reporting Standard 16 ("IFRS 16") establishing how a company should recognize, measure, present and disclose leases. The amendments to IFRS 16 specify how the seller-lessee subsequently measures sale and leaseback transactions. Companies must apply these amendments no later than the start date of their first financial year on or after January 1, 2024. It entered into force on December 10, 2023.

Commission Delegated Regulation (EU) 2023/2486 of June 27, 2023 - OJEU L Series of November 21, 2023

Completes Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to:

- the sustainable use and protection of water and marine resources;
- the transition to a circular economy;
- pollution prevention and control; and
- the protection and restoration of biodiversity and ecosystems and for determining whether that economic activity causes significant harm to any of the other environmental objective. It also amends Commission Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those activities. It entered into force on December 11, 2023 and applies from January 1, 2024.

Commission Delegated Regulation (EU) 2023/2175 of July 7, 2023 - OJEU L Series of October 18, 2023

Supplements Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying in greater detail the risk retention requirements for originators, sponsors, initial lenders and credit servicers. Article 1 defines (i) synthetic retention as the retention of a material net economic interest through the use of derivative instruments and (ii) contingent retention as the retention of a material net economic interest through the use of credit support that ensures an immediate enforcement of the retention, including by guarantees, letters of credit or similar forms of credit support. It entered into force on November 10, 2023.

Directive (EU) 2023/2673 of the European Parliament and of the Council of November 22, 2023 - OJEU L Series of November 28, 2023

Amends Directive 2011/83/EU of the European Parliament and of the Council—containing rules on contracts for the sale of goods and provision of services at a distance between a trader and a consumer—as regards financial services contracts and consumer financial services contracts entered into at a distance. It repeals Directive 2002/65/EC, effective from June 19, 2026, and entered into force on December 18, 2023.

Directive (EU) 2023/2225 of the European Parliament and of the Council of October 18, 2023 - OJEU Series L of October 30, 2023

Concerns credit agreements for consumers and repeals Directive 2008/48/EC, as digitalization has contributed to market developments that were not envisaged when it was adopted. The repeal is effective from November 20, 2026.

This directive entered into force on December 10, 2023. Member States must adopt and publish the legislative, regulatory and administrative provisions necessary to comply with it by November 20, 2025 and begin applying such provisions from November 20, 2026.

Portuguese Law

CMVM regulations

CMVM Regulation 7/2023 - Official Gazette of the Portuguese Republic 250/2023, 2nd Supplement, Series II of December 29, 2023.

Regulates the Asset Management Regime approved by Decree-Law 27/2023 of April 28 and revokes CMVM Regulation 2/2015 of July 17 and CMVM Regulation 3/2015 of November 3. It entered into force on January 1, 2024.

CMVM circulars

Circular 17/2023 of December 20, 2023

Establishes duties regarding advertising and strengthens the need to ensure full compliance with the current regulatory framework deriving from the transposition of the Markets in Financial Instruments Directive (MiFID II) and the implementation of the respective delegated acts regarding advertising for financial instruments and investment services.

Circular 15/2023 of November 29, 2023

Establishes the duty to release *ex post* information on the costs and charges of financial intermediaries, emphasizing the need to differentiate between service costs (those related to investment services provided to the client) and product costs (those related to the production and management of financial instruments).

CMVM notices

Notice 24967/2023 of December 22 - Official Gazette of the Portuguese Republic 246/2023, Series II of December 22, 2023

Approves the updated version of the CMVM's Conduct and Ethics Code and Good Administrative Practices Code.

European Securities and Markets Authority (ESMA) acts

Publication of data for quarterly bond liquidity assessment and systematic internalizer calculations of October 31, 2023

ESMA has published a new quarterly bond liquidity assessment, the data for the quarterly systematic internalizer calculations for equities, equity-like instruments, bonds, and other non-equity instruments under MiFID II and MiFIR.

EBA and ESMA public consultation on joint guidelines under the Markets in Financial Instruments Directive (MiCA) of October 20, 2023

The consultation concerns the assessment of the fitness of members of the management body, shareholders and members with qualifying holdings of asset-backed token (ART) issuers and crypto asset service providers (CASP). Contributions to this consultation could be sent until January 22, 2024.

Selected caselaw

EU caselaw

Judgment of the Court of Justice of December 21, 2023 (Case C-278/22)

In this judgment, the Court of Justice of the European Union (the "CJEU") addressed issues that included whether operating leases and long-term car rental services are under the scope of Directive 2006/123/EC of the European Parliament and of the Council of December 12, 2006 on services in the internal market (the "Directive"); in particular, whether article 2(2)(b) of the Directive must be interpreted to mean that the services provided under a long-term rental agreement for vehicles purchased by the lessor at the lessee's request for the purpose of renting them to the lessee in return for payment of charges constitute financial services within the meaning of that provision.

Article 2(2)(b) establishes that the Directive does not apply to financial services such as banking, credit, insurance, reinsurance, occupational or personal pension regimes, securities, investment, funds, payment and investment advice, including those listed in Annex I to Directive 2006/48/EC.

The CJEU pointed out that the Directive does not contain a definition of the term "credit." However, as this term must be interpreted in the light of everyday legal language, "credit" must be understood as it refers to the creditor providing a sum of money or granting time limits or payment facilities to the debtor for financing or deferred payment purposes. Therefore, a financial services credit agreement is characterized by the fact that it involves financing or a deferred payment with the creditor granting funds, time periods or payment facilities to the consumer for that purpose.

To determine whether a long-term vehicle rental agreement is a credit service and aims to provide financial services within the meaning of the above provision of the Directive, its main purpose must be the reference point in verifying whether the credit component prevails over the rental component and vice versa.

Therefore, the CJEU ruled that article 2(2)(b) of the Directive must be interpreted to mean that services provided under a long-term rental agreement for vehicles purchased by the lessor at the lessee's request for the purpose of renting them to the lessee in return for payment of charges do not constitute financial services within the meaning of that provision unless: (i) the rental agreement includes an obligation to purchase the vehicle at the end of the lease; (ii) the aim of the charges paid by the lessee under the agreement is full payment of the expenses incurred by the lessor in purchasing the vehicle; or (iii) the agreement implies a transfer of the risks associated with the residual value of the vehicle at the end of its term.

Portuguese caselaw

Judgment of the Lisbon Court of Appeals 24123/18.0T8LSB.L1-2 of December 14, 2023

In this judgment, the Lisbon Court of Appeals ruled on issues that included the conduct of a creditor that, facing the debtor's non-payment, upon maturity, of obligations secured by a financial pledge over 26,700,000 shares traded on a regulated market and representing 5% of the issuing company's share capital, under a financing agreement entered into by the parties, decided, after informing the debtor that it would enforce the guarantees if the outstanding amount was not paid, to enforce the pledge non-judicially by conducting a process of collecting investment intentions from third parties

(accelerated bookbuilding or "ABB"), following which the extrajudicial sale of the pledged shares took place at the best price obtained by the bookrunners.
The guarantor (and, for the purposes of this judgment, the plaintiff), seeking an order against the creditor for the payment of compensation equivalent to the difference between the selling price of the pledged shares and the average quotation price of those shares during the week before the default date, plus interest accrued and accruing until payment was made in full, based its claim on the allegedly unlawful conduct and breach of the principle of creditor good faith, which manifested itself in the selling method chosen and the selling price of the pledged shares.
The court ruled that the creditor did not act in bad faith, and the conduct described above did not breach any legal or contractual provision. The creditor was entitled to enforce the financial pledge non-judicially and opted for the accelerated bookbuilding process to sell the pledged shares. The plaintiff was unable to prove that selling the shares using a different method would have made it possible to obtain a higher price per share, or that the creditor had breached any principles of good faith or applicable legal or contractual provisions. The court pointed out that selling the shares gradually "would undoubtedly lead to fluctuations in the value of the shares, and it would take longer to sell all of them. In addition, if prior information was given to the market (since the ABB process is carried out between the end of one session and the opening of the next) or to the plaintiff itself, this would have immediate effects on the value of the shares, reducing their value."
Regarding another argument raised by the plaintiff to the effect that, under the financing contract, the pledged shares should be valued at the average quoted share price during the week before the date on which the unfulfilled payment obligation fell due, the court ruled that the clause relied on by the plaintiff did not apply to this situation but to appropriation, where the creditor and beneficiary of the guarantee make the subject of the guarantee their own, which was not the case. Moreover, the price achieved in the ABB was equivalent to the average quoted share price during the week before the default date.
Therefore, the court dismissed the appeal and upheld that the creditor's enforcement was valid.

Judgment of the Porto Court of Appeals 61/22.1T8CPV.P1 of October 9, 2023
The court decided on a dispute over a trilateral group life insurance contract involving the insurance company, the policyholder, and the insured individuals. The plaintiff, who belonged to the latter group, had no influence over the contract clauses, as he signed a standard-form contract, so the general contractual clauses regime applied. His wife was also covered by the life insurance policy. On December 9, 2020, she died after an epileptic seizure (she had been diagnosed as epileptic on March 26, 2015). As they signed up for the life insurance on June 12, 2018, the illness that caused her death had already been diagnosed, so it qualified as a pre-existing condition. However, clause 6 of the policy excluded pre-existing conditions.

The issue was whether clause 6 of the policy breached article 26(4) of the Legal Regime on Insurance Contracts (approved by Decree-Law 72/2008 of April 16). This article establishes the consequences for the insured in cases of negligent omissions or inaccuracies by the policyholder or the insured. The plaintiff argued that clause 6 unduly supersedes that mandatory rule.
The court maintained that clause 6 did not concern the consequences of omissions but merely defined the scope of coverage. Its purpose was not, therefore, to penalize an insured person that had failed to

comply with their duty to inform but to exclude from the contract all situations that were not duly communicated.
Therefore, the court ruled that the clause (i) was not abusive, (ii) was in line with the purpose of life insurance and (iii) did not unduly affect the policyholder. Consequently, it revoked the previous decision considering the exclusion clause valid and dismissed the claim against the insurance company.

Judgment of the Coimbra Court of Appeals 720/23.1T8VIS-A. C1 of October 10, 2023
In an action concerning the verification of death as a condition for paying a claim against the insurance policy, the court ruled on the admissibility of the insurance company's intention to obtain medical information from the healthcare center that had treated the deceased. The insurance company revealed that it had no way of accessing the information and that this information could affect verification of the event that had triggered the risk, i.e., death, covered by the policy.
The court ruled that the insured person's complete medical file was necessary to determine whether the death fell within the scope of the insurance coverage. Therefore, the appellant's application for evidence, to the extent that it requested that the health center be ordered to add the insured person's complete medical records to the case file, was justified.

Therefore, the court revoked the appealed decision, ordering that it should be replaced by another granting the application.

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