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# Legal Regime on Asset Management

**Decree-Law 27/2023 of April 28, which approves the asset management regime, promotes a comprehensive in-depth review of the management of collective investment undertakings, including venture capital and private equity funds.**

Portugal - Legal Update

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## Key aspects

- > Decree Law 27/2023 of April 28 aims to simplify regulation of the asset management sector and make it more proportional in order to boost competition and market development without adversely affecting investor protection.
- > The RAM enters into force on May 28 and the CMVM is expected to launch a public consultation on the draft RAM regulation in the next few days.
- > It also establishes transitory provisions for current entities, including a 180-day period for compulsory adaptation to the new RAM provisions.



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## Background

On April 28, Decree-Law 27/2023 of April 28, which approves the Legal Regime on Asset Management, was published (“**RAM**”).

The legislation was the result of a process initiated by the Portuguese Securities Market Commission (“**CMVM**”) in December 2021 with the public consultation of the draft RAM and followed by the collection and analysis of market responses. The final version of the RAM approved by the Government contains some changes to the proposal submitted by the CMVM during the public consultation.

The RAM revokes and fully replaces the rules on collective investment undertakings that had been mainly laid down in the General Regime on Collective Investment Undertakings (“**GRUCI**”) and in the Legal Regime on Venture Capital, Private Equity, Social Entrepreneurship and Specialized Investment (“**LRVCPESESI**”). The legislation also made several amendments to other important legislation, such as the Portuguese Securities Code and the Legal Regime on the Central Credit Liabilities Register, and revoked certain special investment fund regimes, including real estate management funds (“**REMF**”).

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## Main changes

The RAM aims to bring together in one single decree-law the rules on collective investment undertakings, including venture capital, private equity and specialized investment funds.

The new regulation also aims to simplify regulation of the asset management sector and make it more proportional in order to boost competitiveness and market development without adversely affecting investor protection.

The RGA has four key objectives:

- **greater regulatory consistency:** unitary approach to matters concerning collective investment undertakings, including alternative investment funds, by no longer treating similar matters differently;
- **no more goldplating:** removal of several additional legal and regulatory requirements to those imposed by European law;
- **reduced complexity:** reduction of cross-reference chains, and increased systematization of legal provisions;
- **greater proportionality:** principles of necessity, appropriacy and rationality of legal requirements established for operators in the asset management market.



- > **Simplifying the types of management company:** The RGA simplifies the types of agents that can carry on the activity of collective asset management, which now only includes management companies of collective investment undertakings (“**UCIMC**”) and venture capital and private equity companies (“**VCPEC**”). It eliminates social entrepreneurship companies, venture capital and private equity fund management companies and venture capital and private equity investors. In addition, regional development companies will no longer be able to carry on this activity.
- > **Criteria for differentiating small and large management companies:** UCIMC and VCPEC will now be either small or large management companies (in accordance with Directive 2011/61/EU on alternative investment fund managers), depending on the amount of assets under management or their request.
- > **Simplifying the rules for small management companies:** Small management companies are subject to less stringent legal requirements, including:
  - > a minimum initial capital of only EUR 75,000 (as opposed to the current EUR 125,000),
  - > members of their supervisory bodies and holders of qualifying holdings not having to comply with appropriacy requirements, and being exempt from adopting a remuneration policy for those in charge of activities and risk-taking,
  - > benefiting from a simplified prior authorization regime. In addition, they no longer need to appoint a depositary for the AIFs they manage when these are aimed exclusively at professional investors.
- > **UCIMC:** These can continue to manage all types of collective investment undertakings (but cannot exclusively manage venture capital AIFs – the new name for venture capital and private equity funds).
- > **VCPEC:** These will now be able to manage any type of AIF if at least one of the managed funds is classified as a venture capital or private equity AIF and most of the funds under management are not real estate AIFs. This is, in fact, a development on the final version of the RAM approved by the Government in its preliminary draft, which established that VCPECs were prohibited from managing real estate AIFs. This development will partially blur the differences between UCIMC and VCPEC.
- > **Simplifying the procedures for setting up UCIs:** This involves reducing :
  - > the CMVM’s decision deadlines;
  - > the items that must accompany the application; and
  - > replacing some authorization procedures with mere communications.
- > **Sale of UCIs:** Regarding the sale of UCI units (or shares), the RAM clarifies a matter previously discussed by the market by introducing the concept of tied agent as an entity that can represent the management company. The provisions of the Securities Code apply to this agent.



- > **Real estate AIFs:** The developments in the types of AIF include greater flexibility in the rules on real estate AIFs, especially regarding permitted activities and limits on the activity. It is still possible to create charges over assets (e.g., property guarantees) if this is to obtain own financing.
- > **Loan AIFs:** These can be managed by any management company, including small ones. The RAM now governs the rules on this matter, which were previously laid down in the LRVCPESSEI and CMVM Regulation 3/2015, and provides for these AIF to participate in the Central Credit Liabilities Register managed by the Bank of Portugal.
- > **Venture capital and private equity AIFs:** After the last amendment on this matter removed the maximum asset-holding period for venture capital and private equity AIFs, the RAM now provides that when the holding period is 12 or more years, this must be established in the incorporation documents. Investors no longer have to subscribe a minimum of EUR 50,000.00 in units. There was also a change in the investment limits for listed securities: the 50% maximum limit on investment in these assets has been dropped. For entities that decide to invest in them, there is now a minimum limit of 10% (as opposed to the 20% initially proposed in the draft for public consultation) of the shares of these companies, thus ensuring a substantial influence in the management of the investees.
- > **Possibility of issuing bonds:** The RAM now also expressly establishes that AIFs can issue bonds, subject to the provisions of the Portuguese Companies Code, with the necessary changes. Bond issues do not require a resolution of the unit holders' meeting, but management companies cannot subscribe or acquire bonds issued by the managed AIFs.
- > **Supervision:** Lastly, the RAM provides for the continuation and expansion of the supervisory paradigm shift by prioritizing the exercise of supervisory powers according to the actual activities carried on by the supervised entities (*ex post*) over supervision of the information and documentation provided in authorization and registration procedures (*ex ante*).

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## Next steps

The RAM enters into force on May 28 and the CMVM is expected to launch a public consultation on the draft regulation for the RAM in the next few days.

It also establishes transitory provisions for current entities, including a 180-day period for compulsory adaptation to the new RAM provisions.



These entities must comply with the requirements to change the name (in accordance with the terms established in the RAM) and inform the CMVM by 90 days after the RAM enters into force. This change will not be subject to any registration fees or costs.

In addition, with regard to small companies, UCIMC and self-managed collective investment undertakings that hold assets under management of a value below the thresholds established for these companies and are already authorized to carry on this activity will **automatically** qualify as small management companies if they fail to inform the CMVM, within 90 days of the date the RAM enters into force, of their wish to qualify as large management companies. This communication may be significant for different reasons, especially because small management companies do not have the European passport for cross-border management and sale of collective investment undertakings.

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