



## PRIVATE EQUITY/ CAPITAL MARKETS

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# THE NEW LEGAL FRAMEWORK OF COLLECTIVE INVESTMENT UNDERTAKINGS

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Amendments and innovations of the Portuguese legal framework of management of collective investment undertakings:

- I. Unification of the Legal Framework of Collective Investment Undertakings and of the Legal Framework of Real Estate Investment Funds
- II. Amendments to the Legal Framework of Collective Investment Undertakings
- III. Amendments to the Legal Framework of Real Estate Investment Funds
- IV. Outsourcing of functions by the management company
- V. Remuneration Policy
- VI. Depositary
- VII. Valuation of assets
- VIII. Framework of sanctions
- IX. Cross-border connections

### I. UNIFICATION OF THE LEGAL FRAMEWORK OF COLLECTIVE INVESTMENT UNDERTAKINGS AND OF THE LEGAL FRAMEWORK OF REAL ESTATE INVESTMENT FUNDS

The NLFCIU unifies and standardises the regulation of investment undertakings in movable, immovable or non-financial assets, thus removing the often unjustified legal asymmetry regarding these undertakings.

### II. AMENDMENTS TO THE LEGAL FRAMEWORK OF COLLECTIVE INVESTMENT UNDERTAKINGS, APPROVED BY DECREE-LAW NO. 63-A/2013, OF 10 MAY

#### The new concept of alternative investment undertaking

An alternative investment undertaking, for the purposes of this regulation, means a collective investment undertaking that is not a collective investment undertaking in securities, namely: (i) alternative investment undertakings in securities; (ii) real estate investment undertakings, and (iii) investment undertakings in non-financial assets.

The introduction of new information requirements regarding the alternative investment undertakings' risk and leverage levels must also be highlighted, as well as the fact that alternative investment funds will have to notify the CMVM (the Portuguese securities supervisory authority) about every acquisition, sale or holding of participation in non-listed companies that reach, exceed or fall below the thresholds of 10%, 20%, 30% and 75%.

### III. AMENDMENTS TO THE LEGAL FRAMEWORK OF REAL ESTATE INVESTMENT FUNDS

#### 1. Amendments to the legal framework of open real estate investment undertakings

The amendments that are now introduced will align the Portuguese framework with the most relevant frameworks in Europe and will constitute an effective and perhaps essential instrument to face the serious liquidity problems generated by real estate assets in order to meet daily redemptions.

The amendments essentially relate to issues regarding the composition of open real estate investment undertakings' assets and their redemption conditions.

##### a. Three fundamental innovations can be highlighted:

##### i) Introduction of special rules on the liquidity and limits of open undertakings

The amendments ensure a more liquid asset composition, while preserving a minimum core of investment in the assets that represent the "essence" of a real estate investment undertaking.

Furthermore, the obligation to ensure a minimum portion of investment in assets that generate periodic revenues (such as rents and others) is now established.

##### ii) Establishment of subscription and redemption periods

New rules about redemption notice are introduced that make it possible to anticipate the liquidity necessities of open real estate investment undertakings, thus providing management companies with essential tools of liquidity management. Management companies will also be responsible for establishing suitable redemption periods.

For the same purposes, minimum investment periods of 12 months are now established.

##### iii) Provision of rules about the suspension of redemption and subscription operations

The law also provides for a 6-month period of adaptation to the provisions regarding the subscription and redemption and the composition of the assets of already existing open real estate investment undertakings, except in respect of the redemption of funds' shares that have already been issued.

Another important issue is the safeguard clause provided for on-going projects, according to which open real estate investment undertakings that are already in place at the date of entry into force of the law may keep the construction or regeneration projects that they have under development, until the completion of the works.

### IV. OUTSOURCING OF FUNCTIONS BY THE MANAGEMENT COMPANY

The NLFCIU prohibits the outsourcing of functions of investment management activity to the depositary or to other entities whose interests may collide with those of the management company or of the participants.

The new regulation also makes the authorisation to sub-outsource subject to the prior consent of the management company and to prior notification to the CMVM (the Portuguese securities supervisory authority). In the case of private subscription undertakings, the prior agreement of all participants is also required.

### V. REMUNERATION POLICY

The NLFCIU determines that it is mandatory for management companies of collective investment undertakings to adopt policies and practices that promote sound and effective risk management and that are suited to the risk profile of the undertakings managed by them, to the management company's dimension and structure and to the nature, scope and complexity of its activities.

### VI. DEPOSITARY

One of the most remarkable changes that the NLFCIU introduces is to the rules that apply to the depositary: the level of detail of the rules related to the functions and responsibilities of the depositary is greatly increased. Firstly, the function of depositary is extended to other entities besides credit institutions. These include investment companies that are authorised to carry out services of registration and deposit of financial instruments, provided that they meet the capital requirements of credit institutions in accordance with Regulation (EU) no. 575/2013 of the Parliament and of the Council, of 26 June 2013, regarding the prudential requirements of credit institutions and investment companies. Secondly, the legal framework of the depositary's accountability to the management company and to the participants is developed.

Finally, the role and responsibility of the depositary with respect to the custody of non-financial assets is at last clarified.

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#### VII. VALUATION OF ASSETS

The NLFCIU makes it mandatory for all collective investment undertakings to establish appropriate and coherent procedures for a correct and independent valuation of the managed assets, by way of resorting to internal and external valuers.

Thus, if the valuation is carried out by the management company, the department responsible for the valuation must be functionally independent from the management of the collective investment undertaking.

On the other hand, if the valuation is done externally, the valuer must be an individual or a legal entity that is independent from the collective investment undertaking, from its management company and from any other person closely related to the collective investment undertaking or to its management company.

#### VIII. FRAMEWORK OF SANCTIONS

The NLFCIU adopts an autonomous and specific framework, assuring a unitary framework for unlawful acts that is designed to comply with the requirements of the principle of legality in the context of sanctions (i.e., that unlawful acts are ascertainable, knowable and defined by law), as well as the requirements of the principle of equality.

#### IX. CROSS-BORDER CONNECTIONS

The NLFCIU establishes the European passport for managing and marketing alternative investment undertakings domiciled in other Member States, provided that those undertakings are managed by management companies authorised in accordance with Directive no. 2011/61/EU and that they are marketed to qualified investors.

In this context, the NLFCIU establishes the extension of the European passport to EU management companies that market alternative investment undertakings of other EU countries. It also extends the passport to management companies of other countries that are authorised in a Member State and which manage or market alternative investment undertakings within the EU.

A final point of note is that the regulation provided for in the Legal Framework of Collective Investment Undertakings (approved by Decree-Law no. 63-A/2013, of 10 May) with respect to foreign alternative investment undertakings marketed to non-qualified investors, which are subject to authorisation by the CMVM, remains essentially unchanged.

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