

JANUARY 10TH, 2022

## NEW REGIME FOR INVESTMENT COMPANIES

In December 2021, Decree-Law 109-H/2021, of the 10<sup>th</sup> of December was published ("**Dec.-Law**") which approved the new Regime for Investment Companies ("**New Regime**"), transposed three EU directives on the financial sector and amended several laws (including the Legal Regime of Credit Institutions and Financial Companies and the Securities Code ("**CVM**").

### **A. To whom does the New Regime apply?**

The New Regime applies to legal entities that, not being credit institutions but rather financial intermediaries, have as their main activity:

- The provision of investment services to third parties;
- The exercise of investment activities on a professional basis provided for in the CVM;
- The provision of ancillary services foreseen in the CVM;
- The provision of investment consulting services for structured deposits.

### **B. What are the requirements for investment companies to start their activity?**

The start of activity by investment companies in Portugal depends on the prior authorization of the Securities and Exchange Commission ("**CMVM**")<sup>(1)</sup> who will define the services and activities that the investment firm is authorized to provide or perform.

The general requirements for the granting of authorization are:

1. The adoption of the limited company type, if they exclusively perform investment consulting activities; otherwise, the adoption of the public limited company type;
2. To have as exclusive object the exercise of investment services and activities, including the provision of ancillary services;

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<sup>(1)</sup> Before granting authorization, the CMVM may consult the Bank of Portugal and/or the Supervisory Authority for Insurance and Pension Funds, in cases where such is legally required.

3. To have the main and effective management headquarters in Portugal;
4. To have a minimum share capital of between €150,000.00 and €750,000.00, depending on the form of business activity or services provided by the company;
5. To have an adequate structure of holders of qualifying shareholdings;
6. To integrate in its management and supervisory bodies members who meet the legal requirements for adequacy;
7. To have a sound, adequate, effective corporate governance system that is proportionate to the nature, scale, and complexity of the risks inherent to its business model and activities;
8. Fulfill its obligations to its clients and investors.

The decision of the authorization is notified by the CMVM to the interested parties within two months from the reception of the application or from the reception of the additional information requested and, subsequently, the CMVM officiously registers the investment company that has been authorized.

The investment companies authorization's lapse if the company does not start its activity within 12 months from the date the authorization is granted, may be amended (by broadening or narrowing its scope), and may be revoked by the CMVM in the cases provided for by law, including when companies cease to comply with the requirements on an ongoing basis.

### **C. How is the activity of investment companies carried out?**

In the exercise of their activity, investment companies must comply with the following duties and considerations:

1. **Communication duties** It is the obligation of members of the management and supervisory bodies to communicate to the CMVM any facts susceptible of compromising the compliance with the requirements or any situation (or risk) of financial unbalance or insolvency and it is the obligation of the holders of qualifying shareholdings to report to the CMVM any serious irregularities of which they become aware related to the management, accounting organization and internal supervision.
2. **Internal organization and corporate governance** Investment companies implement and maintain internal control mechanisms and administrative and accounting procedures that enable CMVM to assess, at all times, compliance with the

prudential requirements and have a sound, adequate, effective corporate governance system that is proportionate to the nature, scale and complexity of the risks inherent to their business model and activities.

3. **Risk Management** Investment companies have sound strategies, policies, procedures and systems in place to identify, measure, manage and control risk. In some cases, the establishment of a risk committee is mandatory.
4. **Remuneration Policy** Investment companies adopt, implement, and periodically review a remuneration policy for their employees by written document. In some cases, the establishment of a remuneration committee is mandatory.
5. **Members of corporate bodies and holders of qualifying shareholdings** The New Regime establishes criteria for assessing the suitability, experience, and availability of the members of the management and supervisory bodies and criteria for determining the suitability for the performance of duties of the members of the management and supervisory bodies and the holders of qualifying shareholdings that are assessed, respectively, at the beginning of their functions and during the term of their mandate and initially and continuously.
6. **Duty of Secrecy** The provisional directors appointed in the context of corrective intervention measures, the potential buyers contacted by the CMVM, any experts or consultants and the senior management, members of the management body and employees of the entities referred to in the previous sub-paragraphs, as well as other persons who provide or have provided services to them, are bound by the duty of professional secrecy.

## **D. Who supervises the activity of investment companies?**

Investment companies are subject to supervision by the CMVM and must provide it with all information necessary to assess their compliance with the prudential requirements of investment firms.

The CMVM has and exercises supervisory powers, prerogatives and procedures, and may apply various measures in order to ensure compliance with the requirements and to reduce risk inherent to the performed activities.

## **E. How do investment companies terminate business and how are other operations carried out?**

Mergers, divisions and transformation operations involving investment companies are subject to prior authorization from the CMVM, and the dissolution of investment companies - which can occur by resolution of the shareholders or by revocation of their authorization - and subsequent liquidation, is subject to CMVM supervision.

The Dec.-Law will come into effect on the 1<sup>st</sup> of February of 2022, in general, with the exception of some provisions that will only come into effect on the 28<sup>th</sup> of February of 2022 and on the 2<sup>nd</sup> of November of 2022.

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A **PARES | Lawyers** is available to provide information on this and other topics in a more adequate and suitable way to the reality of each client and is able to help its clients on any topic regarding investment companies.

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**Marta Belchior**

[mb@paresadvogados.com](mailto:mb@paresadvogados.com)

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