CMVM

The official text published in the Offical Gazette should be consulted herewith

Decree-Law No. 357-D/2007 of 31 October

The public marketing of contracts for investment in tangible assets, i.e. stamps, precious stones, works of art and antiques is poorly regulated. Presently, this type of activity is not supervised by any financial markets' regulatory authority, thus the level of protection when investing in these products falls short due to their inherent risk. This Decree-Law aims to improve its meager normative framework. It introduces measures for reinforcing the quality of information of these products by clarifying and ensuring that the contractual relationship between parties is satisfactory, and sets evenhanded patterns for its supervision and sanctions regime.

The key factor in these products is behaviour-risk related. In order to ensure its efficiency, both the products and its marketing entities will be supervised by the *Comissão do Mercado de Valores Mobiliários* (CMVM), given the latter's experience on the subject. The marketing of such contracts implies the reception of funds from the public as a receivable or for investing in assets or in the rights attached to said assets, with the intent of obtaining part of or the entire return on the investment made.

On the subject of investor protection, this Decree-Law regulates the array of prohibitions that endorse investment policy, the pre- and post-contractual requirements and also, rules that entities supplying these contracts, are subject to in order to safe-keep and segregate clients' assets. Public limited companies are the sole executors of such activity and are obliged to provide structured accounting and audited financial statements. Furthermore, companies carrying out the latter audit control are obliged to inform the CMVM on any irregularities or situations that might influence the activity that is exercised by the marketing entities of contracts for investment in tangible assets.

CMVM will be disclosing a list of entities carrying out said activity which will compel marketing entities to notify the CMVM before and after the activity commences. Such disclosure duties will be set per Regulation by the said Supervisory Authority and focus on the activity carried out by said entities.

Hence, pursuant to the power invested through Law No. 25/2007 of 18 July and pursuant to the terms of article 198/1/a and b/ of the Constitution, the Government hereby decrees the following:

Article 1
Object

1 – This decree-law regulates the public marketing of contracts for investment in tangible assets for persons residing or having their business place in Portugal.

2 – The tangible assets mentioned in the previous paragraphs are any movable and imovable assets, i.e., stamps, precious stones, works of art and antiques.

Article 2
Scope

1 – Regardless of the type of contract signed, contracts for investment in tangible assets are those for which the marketing entity:

a) Accepts any amount as a receivable or for purchasing certain tangible assets or their inherent rights; and

b) Is obliged to make any other business arrangement concerning the tangible assets or their acquired rights with the object of *restitutio in integrum* or its partial recovery in full or by installments of the price paid or its profit or valorization.

2 – This decree-law does not apply to the marketing of derivatives with tangible assets or their inherent rights as their underlying asset, by entities that are officially entitled for said purpose.

3 – Real estate investment funds, special investment undertakings, venture capital companies, asset securitisation funds, asset securitisation companies, mortgage bond issuers and asset management companies are regulated by special legislation.

Article 3
Type of Company

Only public limited companies with their social capital as registered shares may market contracts for investment in tangible assets.

Article 4
Prohibitions

Those that carry out the activity mentioned in article 2/1 may not:

a) Execute any activity or transaction that is reserved solely for credit institutions, financial companies, investment companies, collective investment undertakings, insurance companies and reinsurance companies or any other entities that are subject to supervision by the *Banco de Portugal*, the *Comissão do Mercado de Valores Mobiliários* or the *Instituto de Seguros de Portugal* (Portuguese Insurance Institute)*;*

b) Make any reference in their company name or in publicising their activities, to the financial activity or collective investment or any other reference provided to the public or its clients that might be confused with the activities reserved for those entities mentioned in the previous subparagraph or with financial instruments.

Article 5
Prior Information

Prior to the signing of a tangible asset investment contract, the client must be informed in writing of the following:

a) Marketing entity;

b) Type, characteristics, inherent risks, costs and other charges related to the proposed contracts;

c) Methods for evaluating tangible assets for marketed contracts and access to same;

d) Rules for safe-keeping and segregation of clients' assets;

e) Minimum guaranteed value and obligation compliance guarantees taken on my the marketing entity;

f) Law applicable to said contract;

g) Rules and procedures used for complaints;

h) No compensation coverage by the investor compensation scheme;

i) Existence, conditions and methods for exercising the right to cancel the contract, indicating the address, physical or electronic for notification purposes concerning said right.

Article 6
Contract Type and Contents

1 – Contracts made with clients within the exercise of the regulated activity in this decree-law shall, on pain of nullity, be put in writing and shall contain all the data referred to in the previous article.

2 – The contract's description must be precise and comprehensible;

3 – The client is requested to date and sign the document referred to in paragraph 1 and a copy given to same duly signed by the marketing entity;

4 – The invalidity in paragraph 1 is always invocable and solely by the client.

Article 7
Contract Dissolution

1 – The client may cancel the contract within 14 days as from the signing of the contract without giving any reason therefor. Furthermore there will be no right to compensation nor will the client be penalized.

2 – The period mentioned in the previous paragraph may be extended by mutual agreement.

3 - Clauses that establish the waiving of the right provided for in the previous paragraphs as well as clauses that establish indemnity or any penalty should the right be exercised, are considered as non-written acceptance of a written contract.

4 – So as to safeguard the dissolution right mentioned in the previous paragraphs, the marketing entity shall, until the period established for the purpose and a further three days, abstain from practising any contract execution acts including that of receiving any amounts from the client.

5 – Termination of the contract at the client's discretion shall be notified to the marketing entity via confirmed means, per the contract and the prior information provided for in article 5.

6 – Written notice or notice given through other durable means which is made available or is accessible to the recipient, is considered to be timely effected if it is sent until and including the last day of the deadline.

7 – The right to exercise the dissolution cancels the contract obligations and rights, with effect as from the client's signing.

8 – The client shall return to the marketing entity any such amount or assets received from former within 30 days as from the forwarding date of the dissolution notice.

9 - Whenever the contract price of the investment in tangible assets is entirely or partially covered by a credit given by a third party, which is based on an agreement between the latter and the marketing entity, the credit contract is automatically and simultaneously cancelled as from the date of its entering into to. Furthermore, there will be no compensation should the client exercise the dissolution right as per the previous paragraphs.

Article 8
Segregation

1 – During the exercise of the activity mentioned in this decree-law, the marketing entity shall adopt the rules provided for in this article, as well as any other rules that bind the market entity and its clients in what concerns safe-keeping and segregation of their assets.

2 – The marketing entity shall ensure that a clear distinction is made between the marketing entity's assets and that of its clients', in all acts practiced as well as in all the book-keeping and transaction registers.

3 - Company insolvency and streamlining does not affect the acts carried out by the marketing entity on behalf of its clients.

4 – The marketing entity, either for own account or on behalf of third parties, may not dispose of the assets or rights of its clients, save under mutual written agreement.

5 – Moneys received from the client or on their behalf shall be deposited in a bank account in the latter's name.

Article 9
Financial and Audit Reports

1 – The marketing entity's financial accounts shall be audited by a chartered accountant registered at the CMVM.

2 – The marketing entity is subject to the auditing mentioned in article 413/1/b or article 278/1/b or c/ of the Commercial Companies Code.

3 – Persons carrying out supervisory functions provided for in the previous paragraphs shall communicate to the CMVM, facts that they have come to be aware of on the entity concerned and which may:

a) Constitute infraction of any legal or regulatory rule that regulates the activity mentioned herein;

b) Influence the continuity of the activity of the entity concerned;

c) Be grounds for refusal of the accounts certification or issuance of reserves thereto;

4 – The duty imposed in the previous paragraph has priority over any restrictions imposed on information disclosure, be it legal or contractual and its *bona fide* compliance does not involve liability on behalf of the parties concerned.

5 – The CMVM may establish through regulation, communication and disclosure duties concerning financial statements and accounts certification from marketing entities.

Article 10
Activity Disclosure Information

1 – Companies wishing to carry out the activity referred to in this decree-law, are obliged to communicate such intention to the CMVM at least 15 days prior to initiating the activity.

2 – The communication referred to in the previous paragraph shall contain the data established in CMVM Regulation.

3 – Changes to prior communications including termination of activity, are likewise to be communicated to the CMVM.

Article 11
Disclosure Duties

The marketing companies shall communicate to the CMVM within the time-frame and provisions provided for via regulation, the number of clients and the liability of same within the ambit of the mentioned activity.

Article 12
Disclosure

The CMVM discloses, via its information disclosure system, a list of entities that disclose the information referred to in article 10, as well as other information related to same established via regulation.

Article 13
CMVM Supervision and Powers

1 – The CMVM supervises the activity that is regulated herein.

2 - The CMVM may, as regards the marketing companies:

a) Approve regulations on the exercise of the activity and may set organisational and prudential requirements on the propriety of the stakeholders and the members of the boards of directors;

b) Ordain additional disclosure of information concerning the contract, the suspension or dissolution of the contract, whenever the clients' or the general public's legitimate interests is at stake;

c) Prohibit or suspend the marketing of contracts for investment in tangible assets, in situations where the rules laid out herein or in additional legislation or regulation, are not met;

d) Exercise the powers conferred by the Statute approved by Decree-Law No. 473/99 of 8 November and by the Securities Code, approved by Decree-Law No. 486/99 of 13 November, as regards the pursuer of the activity.

Article 14
Administrative Offences

1 – The following acts or omissions executed by those that carry out marketing of contracts for investment in tangible assets regulated herein, constitute an administrative offense, punishable with a fine between € 2 500 and € 25 000.

a) Executing the activity of marketing of contracts for investment in tangible assets simultaneously with activities and operations reserved for credit institutions, financial companies, investment companies, collective investment undertaking, insurance companies and reinsurance companies or any other entities that are subject to the supervision by *Banco de Portugal*, the *Comissão do Mercado de Valores Mobiliários* or the *Instituto de Seguros de Portugal* (Portuguese Insurance Institute)*;*

b) Any reference made in their company name or in publicising their activities, to the financial activity or collective investment or any other reference provided to the public or the client, that might be confused with the activities reserved for those entities mentioned in the previous subparagraph or with financial instruments.

c) Breaching the duty of written contract for investment in tangible assets;

d) Breaching the duty to provide the participant with a duly signed copy of the contract;

e) Failing to supply the client with prior information required by law;

f) Receiving any amounts from the clients during the contract period that has been prohibited by law;

g) Violating the duty to submit its financial accounts to be audited by a chartered accountant registered at the CMVM.

h) Carrying on the activity without prior notice to the CMVM;

i) Failure to inform the CMVM on changes to information that have been previously supplied concerning the exercise of the activity;

j) Failure to inform the CMVM on the number of clients and the liabilities toward the latter;

l) Violation of the duties to be determined in CMVM Regulation;

m) The adoption by companies that carry out the activity of marketing in contracts for investment in tangible assets, of a:

i) Different company type than the 'public limited company';
ii) Different auditing regime than required by law.

2 - The following acts constitute an administrative offence and are punishable with a fine between € 25 000 and €250 000:

a) Violation of the duty to adopt the procedures for safe-keeping of assets and segregation of assets legally provided for and agreed with the client by persons who carry out the marketing activity of contracts for investment in tangible assets;

b) violation by members of the supervisory boards and the charted accountant of the company that carries out the activity regulated herein, of the duty of informing the CMVM on facts pertaining to said company of which they have knowledge of whilst performing their duties that might constitute an infraction to any legal or regulatory rule that regulated the activity, affect the continuity of the activity or justify the refusal of the accounts certification or issuance of reserves thereto;

3 – The provided for in the Securities Code is applicable to the administrative offences herein as regards the following:

a) Ancillary sanctions;

b) Preventive measures;

c) Proceedings, both in the administrative and the judicial phase, including the provided for in article 422 of same Code.

4 – The provided for in articles 401, 403, 405, 406, 419 and 420 of the Securities Code are equally applicable.

5 – Preventive measures provided for in paragraph 3/b and those in the general regime on administrative offences are applicable when deemed fit for the inquiry or to protect the public and clients' interests.

6 – Administrative offences herein are charged as *dolus* or involuntary (*mens rea*).

7 – The attempt to perpetrate any administrative offence herein, is punishable.

Article 15
Transitory Provision

The entities that carry out the activity mentioned herein, on the date of the coming into force of this decree-law, shall proceed as indicated in article 10 during the following 30 days after said date.

Seen and approved by the Council of Ministers on 9 August 2007 – *José Sócrates Carvalho Pinto de Sousa – Manuel Lobo Antunes - Fernando Teixeira dos Santos – Alberto Bernardes Costa*.
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The President of the Republic, *Aníbal Cavaco Silva*
Countersigned on 25 October 2007
The Prime Minister, *José Sócrates Carvalho Pinto de Sousa*