



**CMVM**

## **CMVM Regulation No. 9/2007**

### **Public Marketing of Contracts for Investment in Tangible Assets**

Pursuant to article 9/5, article 10/2, articles 11 and 12, article 13/2/a of Decree-Law No. 357-D/2007 of 31 October, that regulated the public marketing of contracts for investment in tangible assets and after placing the draft regulation on public consultation and consulting with the *Banco de Portugal*, the Executive Board of the CMVM approved the following Regulation:

#### **Chapter I Marketing Company**

##### **Article 1 Activity Pursuit**

Companies that market contracts for investment in tangible assets shall at least fulfil the following requirements:

- a) Human, material and technical resources adequate for pursuing same activity;
- b) Ensure that employees have the necessary training in their field of activity.

##### **Article 2 Information Technology and Human Resources**

1. The company that markets contracts for investment in tangible assets shall have the necessary IT resources for pursuit of the activity, namely in what concerns the network structure, non-interruptible power supply unit, servers, operative system, back-ups and system access.

2. The IT systems of the company marketing contracts for investment in tangible assets shall as regards IT, allow for:

- a) Disclosure of information to the public and supervisory authorities in fulfilling the legal and regulatory rules in force;

b) When deemed fit, search and select data per client or representative / nominee, date and time of the signing of the contract, type and number of operation and contract.

3. The companies marketing contracts for investment in tangible assets shall permanently update the list of persons that carry out functions in the company, regardless of the status or job title.

### **Article 3 Internal Control**

1. The company marketing contracts for investment in tangible assets shall adopt within the company's organisation and functioning, internal procedures necessary for:

a) Ensuring the regular processing and establishing an adequate internal control of the operations;

b) Ensuring the confidentiality of the operation data and the services supplied to its clients;

c) Preventing conflicts of interest;

d) Maintaining high standards of efficiency and safety in the services supplied;

e) Preventing the disclosure of material information;

2. For the purposes of the previous paragraph, the company marketing contracts for investment in tangible assets shall establish an adequate internal control system for fulfilling the legal and regulatory provisions applicable to the activity performed.

3. The person responsible for ensuring that the provided for in the previous paragraph is met, shall be a member of the board of directors, despite carrying out other duties in the company.

### **Article 4 Document Maintenance**

The companies marketing contracts for investment in tangible assets shall maintain on file the contracts and documents for a period of five years after terminating the relationship with the client.

## **Article 5**

### **Handling and Deposit of Clients' Money**

1. The money is handed to the marketing company of contracts for investment in tangible assets by the clients and is immediately deposited in one or more bank accounts at a Central Bank or a credit institution that is authorised to receive deposits in the EU or a bank that is authorised in a third country;
2. The bank accounts mentioned in the previous paragraph are opened in the marketing company's name on behalf of its clients (a sole or many clients) and shall distinguishable from the clients' and the marketing entities' accounts;
3. The marketing entity shall take due care and diligence in the selection and periodic assessment of the depository, whenever it does not deposit the clients' money at a central bank;
4. Marketing companies shall establish written procedures for the reception of clients' money, and the prevention of money laundering and terrorism financing.
5. Marketing companies may only handle debt accounts mentioned in paragraph 1 under the following situations:
  - a) Payment of the tangible assets' purchase price acquired by the clients;
  - b) Payment of commissions or other costs owed by the client to the marketing company; or
  - c) Transfer ordered by the clients.

## **Chapter II**

### **Supervision**

## **Article 6**

### **Experience and Propriety**

1. Members of the board of directors or of the supervisory boards, the stakeholders in the companies marketing contracts for investment in tangible assets, shall be proper and adequately experienced for their duties thus ensuring sound and prudent management.
2. The CMVM's assessment of the propriety and professional experience requirements are applied with the due adaptations in article 30/2-4 and article 31 of the General Regime on Credit Institutions and Financial Companies, approved by Decree-Law No. 298/92 of 31 December.
3. Article 31 of the General Regime on Credit Institutions and Financial Companies, approved by Decree-Law No. 298/92 of 31 December is applicable with the due adaptations by the Board of Directors or the Supervisory Board, in cases where propriety and professional experience requirements are lacking.

## **Article 7 Stakeholders**

1. A qualifying holding is that which:
  - a) Represents direct or indirectly a percentage not less than 10% of the voting rights of the social capital of a marketing company for investment in tangible assets, or
  - b) Due to a different reason, significantly influences the management of the company marketing contracts for investment in tangible assets.
2. Voting rights of the stakeholders in the marketing company of contracts for investment in tangible assets are those mentioned in article 20/1 of the Securities Code with the necessary adaptations.

## **Article 8 Disclosure of Activity Commencement**

1. Prior communication to the CMVM on the pursuit of the marketing of contracts for investment in tangible assets' activity shall be initiated with the following data:
  - a) Description of the organisation's structure and the human, material and technical resources suitable for the type and volume of activity to be performed;
  - b) Company contract;
  - c) Members of the board of directors and the supervisory board, as well as the auditor registered at the CMVM;
  - d) Economic and Financial feasibility study of the company;
  - e) Stakeholders and their stake in the equity, as well the following information for legal persons:
    - i. Company contract and identification of the members of the board of directors and the supervisory board;
    - ii. Stakeholders;
    - iii. Relationship of the companies in which the participating company is a stakeholder, as well as, and if applicable, an illustration of the group structure in which the stakeholder is inserted.

- f) Models of the marketing contracts, showing its scope of activity;
- g) Technical fact sheet of the tangible assets linked to the marketing contracts;
- h) Identification when applicable, of the return-on-investment guarantee of the marketed contracts;
- i) Description of the assessment and valorisation methods used for the contract for investment in tangible assets;
- j) Written information to be made available to investors;
- l) Identification and grounds of the nature of the investors to whom the marketing of contracts for investment in tangible assets is aimed at;
- m) Description of the way and the marketing channels used in contracts for investing in tangible assets, i.e. using third-parties in that marketing;
- n) Expected date for the activity commencement.

2. The pursuit of the activity on marketing of contracts for investment in tangible assets relies on the disclosure on the CMVM's website of the company concerned, prior to the commencement of the activity.

3. Without prejudice to the provided for in the previous paragraphs, whenever new contracts are launched on investment in tangible assets, the marketing company shall beforehand inform the CMVM on the elements provided for in article 1/f to /m.

## **Article 9 Disclosure by the CMVM**

The following elements submitted by the company marketing contracts for investment in tangible assets are disclosed on the CMVM's website:

- a) Company;
- b) Composition of the Management and Supervisory Boards;
- c) The tangible assets pertaining to the marketed contracts as well as its technical fact sheet;
- d) Financial Statements and Accounts;
- e) Stakeholders.

## **Article 10 Accounts Reporting**

The company marketing contracts for investment in tangible assets shall send the annual financial statements and accounts to the CMVM within five days after approval at the Annual Shareholders General Meeting.

## **Article 11 Advertising**

1. Advertising for marketing of contracts for investment in tangible assets shall mention the following:

- a) Full name of the marketing entity;
- b) Identification of the tangible assets that base the contracts;
- c) Any existing information on these contracts, i.e. technical fact sheet as well as the location and way in which to obtain same;
- d) Loss-risk on the invested capital and the lack of the minimum guaranteed return, when applicable;

2. The publicity referred to in the previous paragraph shall be previously communicated to the CMVM and shall include the data on which they are based.

## **Article 12 Supplying Information to the CMVM**

1. Companies marketing contracts for investment in tangible assets shall send the CMVM until the 15 day of the month and with reference to the last day of previous month, information on the number of clients, the off-balance-sheet exposure concerning same and the number of contracts signed.

2. For the purposes of the previous paragraph, the off-balance-sheet exposure shall indicate the amount of the invested capital by the clients and the amount of tangible assets under management.

## **Chapter III Clients**

### **Article 13 Adequacy**

Companies marketing contracts for investment in tangible assets shall request the necessary information from the client in order to assess whether the contract is suitable to the personal circumstance of the client, so as to allow the client to make a sound investment decision.

### **Article 14 Information for Clients**

1. Companies marketing contracts for investment in tangible assets shall make available an extract with the contracts, quantity, amount and total amount invested. This information shall be made available at least on a quarterly basis.
2. The valorisation of the tangible assets of the contract shall be based on the respective market value.

### **Article 15 Client Complaints**

1. The company marketing contracts for investment in tangible assets shall ensure the adequate and speedy handling of clients' complaints and for said purpose, shall establish an internal effective and transparent procedure as follows:
  - a) The receipt, routing and handling of the complaint which is to be processed by a different employee to the one on which the complaint is based;
  - b) Material procedures to be adopted for examining the complaint;
  - c) Maximum time-period for responding to the client.
2. Complaints are kept on file for five years and shall contain:
  - a) The client's complaint;
  - b) Identity of the complainant, the contract concerned, the date of the facts on which the complaint is based and the entry date;
  - c) The company employee that supplied the service;
  - d) The analysis undertaken, the solution presented and the date of the complainant's communication.

**Article 16**  
**Entry into Force**

This regulation comes into force on the day following that of its publication.

Lisbon, 15 November 2007 – The Chairman of the Executive Board - *Carlos Tavares*; the Vice-Chairman of the Executive Board, *Amadeu Ferreira*