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CMVM Regulation no. 3/2015
Venture Capital, Social Entrepreneurship and Specialised Alternative Investment

(Repeals CMVM Regulation no. 1/2008)

The review of the venture capital legal framework by the entry into force of the Venture Capital, Social Entrepreneurship and Specialised Investment Legal Framework (RJCRESE), recently approved by Law no. 18/2015 of 4 March, means a comprehensive review of the regulatory framework for venture capital is required, which had been, to date, that set out in CMVM Regulation no. 1/2008. That law also compels the drawing up of regulations for the social entrepreneurship and specialised investment activities.

The matters which had been included in regulations and which have been included in the RGOIC [General Legal Framework for Collective Investment Undertakings] are excluded from the regulation adopted herein. This applies in particular to the requirements regarding the good repute of members of the governing bodies and the holders of qualifying holdings. The matters regulated in the European Regulations adopted under the delegated legislation of AIFMD are also excluded from the national regulatory environment.

The stand out changes of the various amendments made are: the review of the valuation rules, in particular concerning the valuation of assets of social entrepreneurship funds, social entrepreneurship companies and specialised alternative investment undertakings, and the valuation of financial instruments not traded in markets, allowing the use of internationally recognised methods such as those accepted by the European Private Equity and Venture Capital Association (EVCA).

In relation to eligible assets, it is expected that the assets of specialised alternative investment undertakings may consist of any asset that is eligible for the portfolio of a collective investment undertaking. Restrictions have been placed on the direct or indirect holding of assets issued or guaranteed by related entities, as a form of preventing conflicts of interest.

The marketing framework has been implemented. The highlights of that framework are the rules on treatment as a qualified investor at the request of the same, and the requirements for the marketing of social entrepreneurship funds and social entrepreneurship companies to non-qualified investors.

The prior information to investors framework provided for in Regulations (EU) no. 345/2013 and no. 346/2013 concerning EuVECA and EuSEF funds is also extended to management entities below the AIFMD thresholds. The framework applying to venture capital with regard to the annual report and accounts and the reporting of business information was also extended to social entrepreneurship and specialised alternative investment, albeit with different deadlines.



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Lastly, the rules governing mergers and splittings of venture capital investment undertakings, social entrepreneurship funds and specialised alternative investment undertakings were regulated in terms of vicissitudes.

The contributions received through the CMVM Public Consultation no. 1/2015 were considered in the solutions adopted in this Regulation.

Thus, under the provisions of article 67 (2) of the Venture Capital, Social Entrepreneurship and Specialised Alternative Investment Legal Framework, approved by Law no. 18/2015 of 4 March, article 353 (1)(b) and article 369 (1), both of the Securities Code, and article 12 (r) of the CMVM Statutes, approved by Decree-Law no. 5/2015 of 8 January, the Management Board of the Portuguese Securities Market Commission (CMVM) approves the following Regulation:

Title I General provisions

Article 1 Scope

This Regulation builds on the framework provided for in the Venture Capital, Social Entrepreneurship and Specialised Alternative Investment Legal Framework, approved by Law no. 18/2015 of 4 March, hereinafter abbreviated as «Legal Framework», specifically in respect of the following matters:

- a) Terms and conditions of operation;
- b) Rules applying to specialised alternative investment companies and specialised alternative investment funds;
- c) Rules applying to social entrepreneurship companies and social entrepreneurship funds;
- d) Marketing;
- e) Vicissitudes of investment undertakings.



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Title II
Terms and conditions of operation

Chapter I
Valuation

Section I
General rules

Article 2
Principles

1. The assets of venture capital investment undertakings, venture capital companies, social entrepreneurship funds, social entrepreneurship companies and specialised alternative investment undertakings are valued using the fair value method.
2. The assets referred to in preceding paragraph are valued with the following minimum frequency, unless a shorter frequency is established in the management rules or in-house rules of procedure:
 - a) Annually, for social entrepreneurship funds, social entrepreneurship companies and specialised alternative investment undertakings; and
 - b) Half-yearly, for venture capital investment undertakings and venture capital companies.
3. The method, frequency and criteria for valuing the assets of venture capital investment undertakings, social entrepreneurship funds and specialised alternative investment undertakings, as well as venture capital companies and social entrepreneurship companies are specifically established in the management rules or in-house rules of procedure, respectively, and in the annual report and accounts.
4. The management entities adopt uniform criteria and assumptions for the valuation of identical assets in their portfolios under management, unless the situation has specific features that justify the adoption of different criteria and assumptions, the grounds for which shall be well-reasoned.
5. In the audit report of the annual accounts, the auditors state whether the valuation criteria and assumptions were complied with.

Article 3
Valuation datasheet

The criteria, assumptions and sources used in the individual valuation of each asset, including forward contracts, are justified in detail and filed in accordance with article 307-B (1)(a) and (3) of the Securities Code.



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Section II

Valuation of the assets of venture capital investment undertakings and venture capital companies

Article 4

Valuation of financial instruments not traded on an organised market

1. The fair value method, obtained by one of the following criteria, is used for the valuation of financial instruments not traded on an organised market that form part of the venture capital investment assets:

- a) Acquisition value;
- b) Materially relevant transactions, carried out within the 12 months immediately prior to the valuation, and also those carried out by entities independent of the venture capital fund, the venture capital company and the venture capital investment company;
- c) Multiples of comparable companies, particularly in terms of business activity, size, leverage and profitability;
- d) Discounted cash flows;
- e) Last asset value disclosed by the entity responsible for management in respect of shareholdings in collective investment undertakings;
- f) Other internationally recognised methods, in exceptional situations duly substantiated in writing.

2. Whenever the criterion established in sub-paragraph (b) of the preceding paragraph is used, the existence of facts or circumstances occurring after the transaction date, which may imply a change in the value considered at the time of valuation, shall be assessed.

3. When the transactions referred to in paragraph 1(b) exist, their value is used to assess the venture capital assets.

4. The acquisition value can only be used over the 12 months following the acquisition date.

5. Loans and other instruments of a debt-related nature not traded on an organised market, which are acquired or granted as part of venture capital investments, are valued in accordance with the criterion set out in paragraph 1(d), taking into account:

- a) The contractually established maturities;
- b) The planned principal repayments and amortisations;



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- c) The effective interest rate calculated taking into account the following:
- i) The current market interest rates and borrower's credit risk; or
 - ii) The interest rate that would apply if the loan had been granted on the valuation date.

6. In exceptional and duly substantiated situations in writing, the valuation of the assets referred to in the preceding paragraph may be carried out in accordance with the acquisition cost criterion, taking into account:

- a) The amount by which loans and other instruments of a debt-related nature were measured at initial recognition;
- b) The accumulated principal repayments and amortisations;
- c) Irrecoverable amounts;
- d) Situations that may have a material impact on value; and
- e) The expectation of realisation.

7. The right and obligation to trade a particular venture capital asset at a future date (forward contract) is valued and recognised on the balance sheet in accordance with the criteria set out in paragraph 1.

Article 5

Valuation of financial instruments traded on an organised market

Financial instruments traded on an organised market that form part of the assets of venture capital investment undertakings and venture capital companies are valued in accordance with articles 30 (2) and 31 of the CMVM Regulation no. 2/2015 on collective investment undertakings (transferable securities and real estate) and the marketing of individually-subscribed open pension funds, *mutatis mutandis*.



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Section III

Valuation of social entrepreneurship assets

Article 6

Valuation of assets of social entrepreneurship funds and social entrepreneurship companies

1. The fair value method obtained in accordance with the best practices in the social investment sector is used for the valuation of the assets of social entrepreneurship funds and social entrepreneurship companies, taking into account the quantifiable positive social result or impact of the investments made.
2. The management entities of social entrepreneurship funds and social entrepreneurship companies adopt procedures which, for the purposes of the valuation referred to in the preceding paragraph:
 - a) Are clear and transparent; and
 - b) Include indicators that can, depending on the corporate purpose of the type of company, quantify the positive social impact of its activity.

Chapter II

Specialised Alternative Investment Undertakings and Investment in Social Entrepreneurship

Article 7

Assets of specialised alternative investment undertakings

1. The assets of specialised alternative investment undertakings may consist of any asset that is eligible for the portfolio of a collective investment undertaking.
2. The specialised alternative investment undertaking may not hold, directly or indirectly, assets in excess of 20% of their net asset value issued or guaranteed by the following entities:
 - a) The promoters of collective investment undertakings of the corporate type, where appropriate;
 - b) The entity responsible for management;
 - c) Entities with holdings in excess of 10% of the respective net asset value;



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- d) Entities in a control or group relationship with the entity responsible for management, or the entities with which those are in a control or group relationship;
- e) Entities in which the entity responsible for management, or the entity with which it is in a control or group relationship, holds more than 20% of the share capital or voting rights;
- f) The depositary or any entity with which it is in one of the relationships referred to in sub-paragraphs (c) and (d);
- g) The members of the governing bodies of any of the entities referred to in the preceding sub-paragraphs.

3. The holdings referred to in this article cover ownership, usufruct, situations granting the holder the power to manage or dispose of the assets, as well as those in which, while not having either of those powers, the entity is the actual beneficiary of the proceeds of the asset or is in fact able to dispose of or manage the asset.

Article 8

Assets of social entrepreneurship funds and companies

1. The companies which are eligible to be part of the assets of social entrepreneurship funds and companies, by developing appropriate solutions to social problems in accordance with article 4 (1) of the Legal Framework, are those fulfilling the conditions laid down in article 3 (d) of Regulation (EU) no. 346/2013.
2. The limits referred to in article 9 (1)(b) and (c) of the Legal Framework do not apply to social entrepreneurship funds and companies if there are statutory or legislative limitations on investment in the share capital of entities eligible to form part of such assets.

Article 9

Capital and net asset value requirements of specialised alternative investment undertakings

1. 5% of the share capital of specialised alternative investment companies shall be compulsorily paid up at the time of subscription and it shall be paid up in full by the end of the first 12 months of business activity.
2. The net asset value of specialised alternative investment undertakings shall be at least EUR 1,250,000 from the first 12 months of activity onwards.



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3. If the net asset value of the specialised alternative investment undertakings is less than two-thirds of the limit laid down in the preceding paragraph, the entity responsible for management convenes a general meeting of unit holders to decide on the liquidation of the undertaking. Such a general meeting has to be held no later than 40 days after verifying the net asset value shortfall.

4. The liquidation envisaged in preceding paragraph requires the approval of one-quarter of the unit holders attending the meeting.

Title III Marketing

Article 10 Qualified investors

1. Qualified investors are considered to be, for the purposes of marketing by entities which are not subject to the rules applying to financial intermediation under the Securities Code, approved by Decree-Law no. 486/99 of 13 November:

- a) Those envisaged in article 30 (1) of the Securities Code, approved by Decree-Law no. 486/99 of 13 November; and
- b) Those who are qualified investors at their own request, in accordance with the following paragraphs.

2. The non-qualified investor may ask the entity responsible for management to be treated as a qualified investor for the purpose of subscribing investments in one or more venture capital investment undertakings and venture capital companies, in social entrepreneurship funds and companies or in specialised alternative investment undertakings, indicating these.

3. The favourable response to the request made under the preceding paragraph depends on the prior assessment of the knowledge and experience of the interested party, carried out in a documented manner by the entities referred to in paragraph 1 which undertake the marketing. This assessment is to ensure that the interested party is capable of making its own investment decisions and understands the risks associated with venture capital, social entrepreneurship or specialised alternative investments.



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4. The interested party shall comply with at least two of the following requirements, for the purposes of the assessment referred to in the preceding paragraph:

- a) Have carried out transactions in the last three years on the relevant market concerning the activities referred to in paragraph 2;
- b) Have a portfolio of financial instruments exceeding EUR 500,000, including cash deposits;
- c) Performs or has performed roles in the financial area over at least two years, in a role requiring knowledge of the services or operations concerned.

5. When the request has been made by a legal person, the assessment envisaged in paragraph 3 and that concerning the requirement referred to in sub-paragraph (c) of the preceding paragraph are made in respect of the person responsible for the applicant's investment activities.

6. The request for treatment as a qualified investor complies with the following procedures:

- a) The interested party requests, in writing, that the entity responsible for management treats it as a qualified investor;
- b) On completion of the assessment referred to in paragraph 3, the entity responsible for management shall inform the interested party in writing of the approval of its request and the consequences of its new status;
- c) On receipt of that information, the interested party shall declare in writing, in a separate document, that it is aware of the consequences of its choice.

7. It is the responsibility of the investor who has applied for treatment as a qualified investor to keep the entity responsible for management informed of any change that might affect the assumptions that led to its treatment as such.

8. The entity responsible for management that becomes aware that an investor no longer meets the requirements for treatment as a qualified investor shall inform it that if it does not prove it continues to comply with the requirements, within the time limit it has specified, it shall begin to be treated as a non-qualified investor.

9. Without prejudice to stricter legal and regulatory requirements, the entity responsible for management keeps on file all the relevant documents for the qualification of the investor, for a minimum period of five years.



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Article 11 Marketing entities

1. The following may be marketing entities of units:
 - a) Entities responsible for management;
 - b) Depositaries;
 - c) Financial intermediaries registered with the CMVM for the purpose of placement of public offerings or the reception and transmission of orders on behalf of third parties.
2. The relationship between the entity responsible for management and marketing entities is governed by a written contract.
3. The marketing entities are liable to the unit holders for any damage caused in the course of their business.
4. The marketing entities make available to investors all the information referred to them by the entity responsible for management.

Article 12 Marketing to non-qualified investors

1. Social entrepreneurship funds and social entrepreneurship companies may be marketed to non-qualified investors, provided that they:
 - a) Invest a maximum of EUR 5,000;
 - b) State in writing that they are aware of the risks associated with the planned investment.
2. The requirements of the preceding sub-paragraphs do not apply to investments made by directors, managers or employees involved in the management activities of the social entrepreneurship funds or companies, when investing in the funds or companies they manage.



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Title IV Information

Article 13 In-house Rules of Procedure

The in-house rules of procedure of venture capital companies and social entrepreneurship companies establish the following, at least:

- a) The general rules governing the operation of the company;
- b) The investment policy, when the company manages its own portfolio;
- c) The asset valuation rules;
- d) The investment and divestment procedures;
- e) Outsourcing of roles;
- f) The procedures for the prevention of money laundering, for the management and mitigation of conflicts of interest, and for risk management and control; and
- g) Information on the policy of monitoring the entities in which the investments are held.

Article 14 Information to investors

1. The management entities of venture capital funds as provided for in article 17 (2) of the Legal Framework and venture capital companies provide their investors with clear and understandable information as provided for in article 13 of Regulation (EU) no. 345/2013, *mutatis mutandis*, before those investors make investment decisions.
2. The management entities of social entrepreneurship funds as provided for in article 4 (5) of the Legal Framework and social entrepreneurship companies provide their investors with clear and understandable information as provided for in article 14 of Regulation (EU) no. 346/2013, *mutatis mutandis*, before those investors make investment decisions.



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3. In addition to the information provided for in article 5 (3) of the Legal Framework, the entities responsible for the management of specialised alternative investment undertakings make information available to investors on the risks inherent to the assets in which those undertakings invest, in accordance with the undertakings' instruments of incorporation and before any investment is made in them.

Article 15 Reporting obligations

1. The management entities of venture capital funds, in relation to each venture capital fund, venture capital companies and venture capital investment companies send the following files to the CMVM every half-year, by the end of the second month following each half-year:

- a) Portfolio;
- b) Capital, performance and commissions;
- c) Investors;
- d) Acquisition and disposal of assets;
- e) Accounts, with balance sheet and income statement data.

2. The management entities of social entrepreneurship funds, social entrepreneurship companies, the management entities of specialised alternative investment funds and specialised alternative investment companies send the information referred to in preceding paragraph to the CMVM each year, by the end of the second month following the year's close.

3. Those referred to in article 17 (2) of the Legal Framework other than venture capital companies provide the CMVM with the information referred to in article 13 of the Legal Framework on an annual basis, as provided for therein.

Article 16 Report and accounts

The management entities of venture capital funds, social entrepreneurship funds and specialised alternative investment funds, in relation to each fund they manage, venture capital companies, venture capital investment companies, social entrepreneurship companies, and specialised alternative investment companies, and venture capital investors, send to the CMVM, within 30 days of the annual meeting of investors or shareholders, respectively, the following documents, if applicable:



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- a) Management report;
- b) Balance sheet, income statement, cash flow statement, statement of changes in equity and notes thereto;
- c) Report of the auditor registered in the CMVM;
- d) Minutes of the annual general meeting;
- e) Other accounting documents required by law or regulation.

Article 17 Reporting format

The entities responsible for management send to the CMVM, via the extranet portal, and as defined in the CMVM's instructions, the information provided for in articles 15 and 16 and the updated management rules, without prejudice to the obligation to report any changes to the same, as established in the Legal Framework.

Title V Vicissitudes

Article 18 Merger

1. The merger of two or more venture capital investment undertakings, social entrepreneurship funds and specialised alternative investment undertakings may take place:

- a) By merging one or more undertakings into the acquiring undertaking, carried out by means of total transfer of the assets of one or more undertakings to the acquiring undertaking, with the winding up of the merged undertakings;
- b) By setting up a new undertaking, into which all the assets of the merging undertakings are transferred, and they are then wound up.

2. The merger of undertakings is subject to:

- a) Subsequent communication to the CMVM within 15 days after taking effect, in the case of investment undertakings exclusively for qualified investors.
- b) Prior communication to the CMVM, 30 days before taking effect, in the case of all other investment undertakings.



3. The merger procedure is conducted and sent to the CMVM with the following data and documents:

- a) The draft terms of merger, duly approved at general meetings of the investors of the merging undertaking and the acquiring undertaking, containing the following information in particular:
 - i) The type, reasons, conditions and objectives of the merger for all the undertakings involved;
 - ii) The planned date for the merger to take effect;
 - iii) Demonstration of the compatibility of the acquiring undertaking or the new undertaking, as appropriate, with its investment policy and asset valuation;
 - iv) The balance sheet of each of the undertakings concerned, showing in particular the value of the assets and liabilities to be transferred to the acquiring undertaking or to the new undertaking;
 - v) The criteria adopted for valuation of the assets and liabilities and fair values used;
 - vi) Demonstration of the swap ratio of units or shares;
 - vii) The criteria for the allocation of units or shares to the investors in the undertaking resulting from the merger;
 - viii) The rights ensured by the acquiring undertaking or by the new undertaking relative to investors in the merged undertaking who held special rights;
 - ix) The date from which the transactions of the undertakings are treated from the accounting point of view as being carried out on behalf of the acquiring undertaking or the new undertaking;
 - x) The updated version of the management rules or in-house rules of procedure of the acquiring undertaking;
 - xi) The opinion of the statutory auditors of the undertakings involved in the merger;
 - xii) Report of an independent registered in the CMVM on the draft terms of merger, in particular on the matters set out in sub-paragraphs (v), (vi) and (vii).



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- b) The statements of agreement of each of the depositaries involved in the merger;
 - c) Approval of the merger by the general meetings of the investors in the undertakings involved in the merger, in the case of the operations referred to in paragraph 2(a);
 - d) The information necessary for the incorporation of the new undertaking, in the case referred to in paragraph 1(b), in particular the documents of incorporation;
 - e) The date on which the transactions referred to in paragraph 2(a) take effect.
4. The balance sheet referred to in sub-paragraph (a)(iv) of the preceding paragraph may be:
- a) The balance sheet for the last financial year, provided that it has been closed during the six months preceding the date of the terms of merger;
 - b) A balance sheet up to a date no earlier than the quarter preceding the draft terms of merger.
5. The merger takes effect on the date of subscription of the units or shares of the acquiring undertaking. This date is also that for the calculation of the terms of exchanging the units or shares of the merging undertaking for units or shares of the acquiring undertaking and, if applicable, for the calculation of the net asset value for cash payments.
6. Investors voting against the merger may request the reimbursement of the units or shares held, and this right may be exercised up to five business days before the date on which the merger takes effect.

Article 19 Splitting

The provisions relating to mergers apply to the splitting of venture capital investment undertakings, social entrepreneurship funds and specialised alternative investment undertakings, *mutatis mutandis*.



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Title VI
Final provisions

Article 20
Entry into force

This Regulation enters into force on the day following its publication.

Lisbon, 15 October 2015 - The Chair of the Management Board, Carlos Tavares - The Member of the Management Board, Carlos Alves