

Summary of national provisions governing the marketing requirements for AIFs and UCITS

25th January 2022

Summary of the marketing requirements for UCITS

All UCITS must be approved by the CMVM before their units or shares can be marketed in Portugal, and notification of this approval constitutes authorization of their marketing in Portugal. Any EU UCITS managed by an EU management company must be notified to the CMVM by the competent authority of the home Member State of the UCITS before its units or shares can be marketed in Portugal. The notification must include the information stipulated in Article 93 of the UCITS Directive. The UCITS or its asset management company must provide investors in Portugal with facilities to perform the tasks stipulated in Article 92 of the UCITS Directive.

Articles 4 and 7 of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 specify the requirements relating to marketing communications and the ex-ante verification of such communications by the competent authorities. These communications must also comply with certain formalities pursuant to article 70 to 74 of CMVM Regulation. In particular, these communications, which must be clearly identifiable as such, must be accurate, clear and not misleading (otherwise, the CMVM may request that their presentation or content be changed) and must mention that the prospectus and key investor information document are available to investors.

Marketing communications are not subject to pre-approval from the CMVM. The CMVM may require any amendment or take decisions based on its ex-post supervisory activity.

The marketing of UCITS units or shares in Portugal is also subject to rules related to the nature of the service provided by the distributor (direct marketing, handling subscription or redemption orders, etc.).

Summary of the marketing requirements for AIFs

All AIFs must be approved by the CMVM before their units or shares can be marketed in Portugal, and notification of this approval constitutes authorization of their marketing in Portugal. The marketing of EU AIFs to professional investors in Portugal, on a cross-border basis, should be preceded of a notification file sent from the NCA of the AIF home Member State to the CMVM, with the documentation listed in article 230(3) and 233(1) of the General Framework for Collective Investment Undertakings («RGOIC»). It should be highlighted that the AIFM must have in place procedures to prevent that any units from the EU AIF are marketed to retail investors.

The marketing of non-EU AIFs to professional investors and the marketing of non-EU AIFs and EU AIFs to retail investors are subject to prior authorization from CMVM.

Articles 4 and 7 of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 specify the requirements relating to marketing communications and the ex-ante verification of such communications by the competent authorities. These communications must also comply with certain formalities pursuant to article 70 to 74

of CMVM Regulation no. 02/2015. In particular, these communications, which must be clearly identifiable as such, must be accurate, clear and not misleading (otherwise, the CMVM may request that their presentation or content be changed) and must mention that the prospectus and key investor information document are available to investors.

When an asset management company authorized in Portugal, management company authorized in another Member State of the European Union or the European Economic Area, or manager established in a third country intends to market AIF units or shares to retail clients in Portugal, it must provide these clients with facilities to perform the tasks mentioned in article 230 to 237-B of the RGOIC.

The marketing of AIF units or shares in Portugal is also subject to rules related to the nature of the service provided by the distributor (direct marketing, handling subscription or redemption orders, etc.).

Legislation and weblinks:

- the General Framework for Collective Investment Undertakings («RGOIC»), Approved by Law No. 16/2015, of 24th February, as amended to date ([English version](#) and [Portuguese version](#));
- The CMVM Regulation No. [02/2015](#), as amended to date.

National provisions governing the marketing requirements for AIFs and UCITS

25th January 2022

This page contains information on the national laws, regulations and administrative provisions governing the marketing requirements referred to in Article 5(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings.

Marketing requirements for UCITS

(a) format and content of marketing material, including identification of the information and documents to be notified to the competent authority prior to beginning of marketing:

UCITS marketing material, which encompass its legal documents and any marketing communication, should comply with the applicable legal requirements foreseen in the General Framework for Collective Investment Undertakings (hereafter «RGOIC») and CMVM Regulation no. 2/2015 (hereafter «CMVM Regulation»). The UCITS legal documents should comply with articles 153 to 159 of RGOIC and articles 63 to 65 of CMVM Regulation and specific templates and content are foreseen in Annexes 7 and 8.1 of the CMVM Regulation.

Prior to the beginning of any marketing activity, a draft distribution agreement, an acceptance confirmation from the appointed distribution entity and updated versions of the UCITS legal documents must be communicated by the UCITS management company to the CMVM and are subject to a non-opposition procedure.

Any change to the UCITS legal documents and to the distribution agreement must be pre-communicated by the UCITS management company to the CMVM and are subject to a non-opposition procedure.

(b) verification of marketing communications by the competent authority:

Marketing communications shall only be used after the UCITS' initial authorization procedure is concluded with the CMVM and it shall not contain statements which contradict or diminish the importance of the information included, where required, in the UCITS legal documents [article 152 of RGOIC]. Mandatory mentions, foreseen in article 72 of CMVM Regulation, must be included. Information on UCITS risk and past returns shall comply with articles 70, 71, 73 and 74 of CMVM Regulation. Marketing communications are not subject to pre-approval from the CMVM. The CMVM may require any amendment or take decisions based on its ex-post supervisory activity.

(c) passporting regime:

The marketing of EU UCITS in Portugal, on a cross-border basis, should be preceded of a notification file sent from the NCA of the EU UCITS home Member State to the CMVM, with the documentation listed in article 196(1) of RGOIC. It should be highlighted that the notification file encompasses the document with the specific conditions for the marketing of the EU UCITS in Portugal, which it includes at least the following information: UCITS, sub-funds and classes available for distribution, main charges levied on the investor, information on the nature, functioning and main risks of the UCITS and its sub-funds (it may be used a valid link to where this information is made available to all

investors), targeted market and main information on tax aspects. If the EU Management Company appoints a local distribution entity, the specific conditions for the marketing of the EU UCITS in Portugal should name the appointed distributor.

Both the EU UCITS KIID and the document with the specific conditions for the marketing of the EU UCITS in Portugal should be translated to Portuguese language. All mechanisms should be in place in order to ensure the equal treatment of investors from the UCITS Management Company.

EU UCITS marketed in Portugal on a cross-border basis, the EU Management Company must notify the CMVM of any change to the information contained in the documents listed in article 196(1) of RGOIC, one month prior to their effectiveness.

(d) reporting obligations in relation to marketing activity:

The appointed distribution entity of the EU UCITS marketed on a cross-border basis shall report to the CMVM, on a monthly basis, information regarding the marketing activity of the UCITS in accordance with the CMVM Regulation No. 06/2020.

(e) de-notification of arrangements made for marketing:

The EU UCITS de-notification procedure is foreseen in article 201-A of the RGOIC and it transposes to the national legal framework the requirements foreseen in article 93a of the Directive (EU) of the European Parliament and of the Council of 20 June 2019.

(f) other rules governing the marketing of UCITS:

The marketing of UCITS may encompass the provision of services by an asset management company or an EU management company which are subject to conduct of business rules foreseen in the Securities Code. Other relevant legal provisions may be anti-money laundering or financing terrorism legal requirements and local tax legal regimes. Tax law falls outside the CMVM supervisory duties.

Disclaimer: The CMVM has taken reasonable care to ensure that the information on the national provisions governing the marketing requirements for UCITS in Portugal included on this webpage is up-to-date and complete. The CMVM is not responsible for maintaining external websites and is not liable for any error or omission on any external website to which hyperlinks are provided on this webpage.

Marketing requirements for AIFs

(a) prior authorisation for marketing:

AIFs marketing material, which encompass its legal documents and any marketing communication, should comply with the applicable legal requirements foreseen in the General Framework for Collective Investment Undertakings (hereafter «RGOIC») and CMVM Regulation n.º 2/2015 (hereafter «CMVM Regulation»). The AIFs legal documents should comply with articles 153 to 159 and 221 of RGOIC and articles 63 to 65 of CMVM Regulation and specific templates and content are foreseen in Annexes 7 and 8.2 and 8.3 of CMVM Regulation. Prior to the beginning of marketing, a draft distribution agreement, an acceptance confirmation from the appointed distribution entity and updated versions of open-ended and closed-ended (marketed to the public) AIFs legal documents must be communicated by the AIFM to the CMVM and are subject to its non-opposition decision. AIFs marketed exclusively to professional investors must solely communicate the same set of documents to the CMVM.

Any change to the open-ended and closed-ended (marketed to the public) AIFs legal documents and to the distribution agreement must be communicated by the AIFM to the CMVM and are subject to its non-opposition decision. AIF marketed exclusively to professional investors must solely communicate the same set of documents to CMVM.

(b) format and content of marketing material, including identification of the information and documents to be notified to the competent authority prior to beginning of marketing:

Marketing communications shall only be used after the AIF's initial authorization is issued by CMVM and it shall not contain statements which contradict or diminish the importance of the information included, where required, in the AIFs legal documents [article 152 of RGOIC]. Mandatory mentions, foreseen in article 72 of CMVM Regulation, must be included. Information on AIFs risk and past returns shall comply with articles 70, 71, 73 and 74 of CMVM Regulation. Marketing communications are not subject to pre-approval from the CMVM, unless from closed-ended AIF offered to the public.

(c) verification of marketing communications by the competent authority:

The CMVM may require any amendment or take decisions based on its ex-post supervisory activity.

(d) marketing to retail investors or to professional investors:

The marketing of EU AIFs to professional investors in Portugal, on a cross-border basis, should be preceded of a notification file sent from the NCA of the AIF home Member State to the CMVM, with the documentation listed in article 230(3) and 233(1) of RGOIC. It should be highlighted that the AIFM must have in place procedures to prevent that any units from the EU AIF are marketed to retail investors.

The marketing of non-EU AIFs to professional investors and the marketing of non-EU AIFs and EU AIFs to retail investors are subject to prior authorization from CMVM. For further information, consult the applicable authorization application forms [[professional investors](#) | [retail investors](#)].

(e) reporting obligations in relation to marketing:

The appointed distribution entity of the AIFs marketed on a cross-border basis shall report to the CMVM, on a monthly basis, information regarding the marketing activity of the AIFs in accordance with the CMVM Regulation No. 06/2020. However, for the time being, the CMVM is not enforcing the reporting obligations foreseen in the abovementioned CMVM Regulation, concerning AIFs.

(f) passporting regime;

Any material changes to the information provided to the CMVM must be communicated by the UE-AIF Home NCA, in case of an UE-AIF marketed in Portugal to professional investors on a cross-border basis, or by the AIFM, according to articles 233 and 237.^o-A of RGOIC, respectively.

(i) de-notification of arrangements made for marketing:

The EU AIFs de-notification procedure is foreseen in article 233-A of the RGOIC and it transposes to the national legal framework the requirements foreseen in article 32a of the Directive (EU) of the European Parliament and of the Council of 20 June 2019.

(j) other rules governing the marketing of AIFs:

The marketing of AIFs may encompass the provision of services by an AIFM or an EU AIFM which are subject to conduct of business rules foreseen in the Securities Code. Other relevant legal provisions may be anti-money laundering or financing terrorism legal requirements and local tax legal regimes. Tax law falls outside the CMVM supervisory duties.

Legislation and weblinks:

- the General Framework for Collective Investment Undertakings («RGOIC»), Approved by Law No. 16/2015, of 24th February, as amended to date ([English version](#) and [Portuguese version](#));
- The CMVM Regulation No. [02/2015](#), as amended to date;
- The CMVM Regulation No. [06/2020](#);
- [Securities Code](#);

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Other requirements

In addition to the provisions referred to above, which are set out specifically for the marketing of UCITS and AIFs, there may be other legal provisions that may apply when marketing them in Portugal, although they are not specifically

designed for the marketing of UCITS and AIFs, depending on the individual situation of those involved in the marketing of shares or units of UCITS or AIFs. Marketing in Portugal may trigger the application of other requirements, such as the general data protection regulation and/or the local tax regimes.

Disclaimer: The following is a non-exhaustive list of national laws that could be applicable and the CMVM is not liable for any omission in that list. Supervision of the requirements deriving from these laws is not under the supervision of the CMVM. The applicability of these requirements, and any other legal requirements, should be assessed before marketing or investing in UCITS or an AIF. Where uncertainty exists, those marketing or investing in UCITS or AIFs should obtain independent advice as to the applicable requirements to their individual situation.

- [General Data Protection Regulation](#)
- Relevant tax information may be consulted [here](#).