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BANKING & FINANCE

CMVM REGULATION 5/2020 – SPECIALISED ALTERNATIVE INVESTMENT FUNDS

Published in the Official Gazette on 27 April 2020, Portuguese Securities Market Commission (“**CMVM**”) Regulation no. 5/2020, foresees the first amendment to the CMVM Regulation no. 3/2015, from November 3 2015, related with venture capital, social entrepreneurship and specialised alternative investment funds (“**Regulation 3/2015**”). The main feature to this amendment is the regulatory framework enacted in relation to the Alternative Investment Funds of Credit, usually referred to as credit funds (“**Credit AIFs**”), and the conditions foreseen for the latter to concede loans to companies.

In this context, the CMVM's approval of this Regulation aims to improve the financing of the economy, directly through the granting of credit to companies, and indirectly through the acquisition of credit, including non-performing loans, making it possible to remedy market failures in the demand and supply of financing and to deepen the relationship between the banking sector, the venture capital and securitisation sectors.

- **Scope**

This Regulation applies to specialized alternative investment companies and specialized alternative investment funds that invest in credit.

This Regulation establishes the conditions for the incorporation, as well as the regulation of such Credit AIFs.

- **Credit AIFs Assets**

The assets of Credit AIFs shall consist of the following :

- a. Loans granted exclusively by such Credit AIFs or by the Credit AIFs as part of a syndicated loan;
- b. Participations in loans acquired by the Credit AIFs to the credit originator or third parties.

As a restriction to the acquisition of such credits, the maturity of the credits acquired shall not exceed the maturity of the Credit AIFs itself.

In addition to the assets of the Credit AIFs abovementioned, the Regulations establish other assets that may be held by the Credit AIFs and which shall respect the following conditions:

- a. In case of liquidity, it must be observed a maximum limit of 20 % of the assets of the Credit AIFs;
- b. In case of debt securities issued by eligible borrowers, a maximum limit of 20 % of the assets of the Credit AIFs must be observed; and
- c. Other assets that arise from or are necessary to maximize credit satisfaction of the loans granted.

Contrarily to debt securities and other assets, the limit on liquidity held by the Credit AIFs will only be applicable sixth months after of activity of the Credit AIF.

- **Risk Exposure and Credit Risk Analysis**

Credit AIFs must have its portfolio of assets properly diversified in order to ensure greater security for the return on investment of its participants, thus imposing a credit limit, per entity (or entity in a control or domination relationship), of 20% of the total assets of the Credit AIFs.

Concerning credit risk analysis, the Credit AIFs must comply with certain formalities imposed by the Regulation and which contemplate, amongst others, (i) a credit granting model, (ii) the creation of credit files containing qualitative and quantitative information on the borrowers, (iii) the creation of a duly formalised credit granting procedure, (iv) a collateral management policy, (v) the creation of procedures for managing default situations and (vi) the creation of credit measurement procedures.

- **Credit AIFs duties with the Borrowers**

Additionally, and regarding the duties of the Credit AIFs with the borrowers, the Regulation essentially refers to the duties of information provided for in article 312 of the Portuguese Securities Code, with the necessary adaptations, to the duty of professional secrecy applicable to banking entities and to the information duties foreseen and applicable to banking credit lending entities.

This Regulation comes into force on 28 April 2020.

VdA remains available for further clarification regarding this Regulation.