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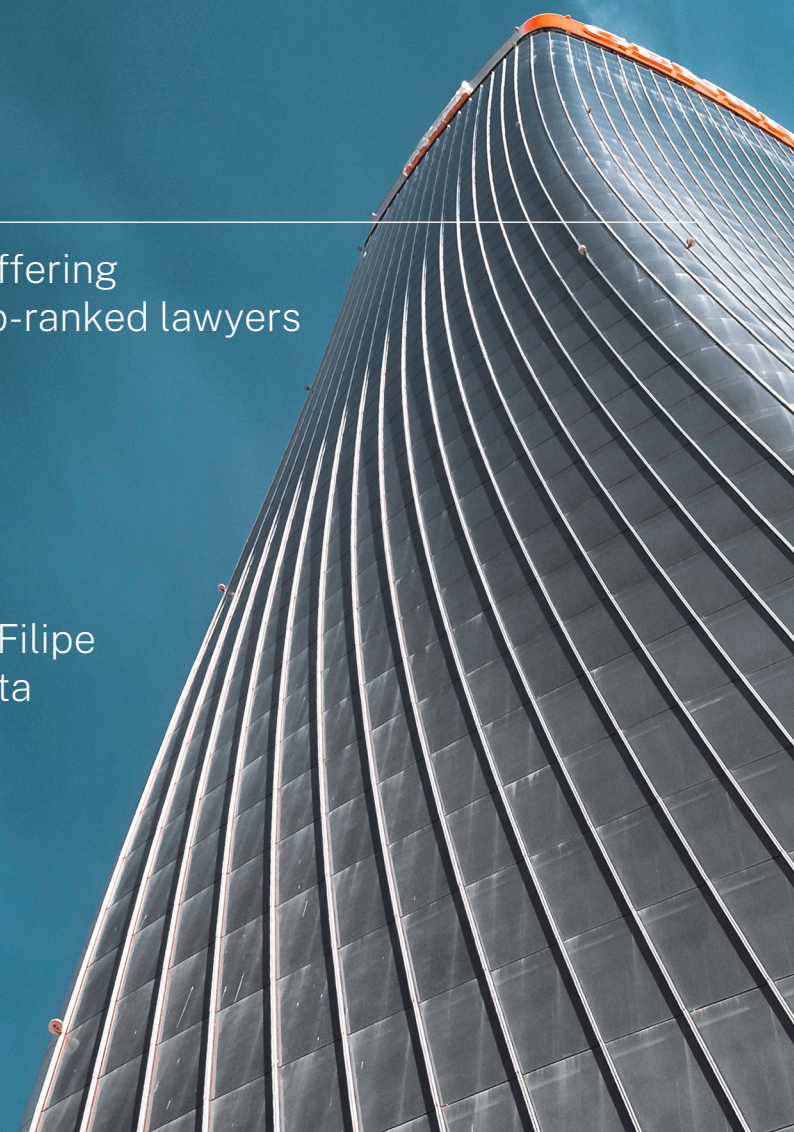

Portugal: Law & Practice

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PORTUGAL

Law and Practice

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Carlos Filipe Couto joined VdA in 2011 and is a managing associate in the banking and finance practice, where he has been involved in a number of key transactions, particularly with regard to securities issues in the banking and insurance sectors. He advises asset managers on regulatory and legal issues, including the establishment of collective investment schemes, and offers ongoing counsel to the respective fund managers, assisting them with the sale and purchase of assets under management and respective shares. In addition to advising common representatives and trustees, he is involved in regulatory and contractual matters relating to banking entities, aviation finance and cross-border factoring.

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1. General

1.1 General Overview of Jurisdiction

The Portuguese alternative funds market remains rather traditional. However, in recent years there has been a discernible trend of new foreign players stepping in, mainly through the acquisition of existing fund managers or through direct investment in alternative funds.

Fund managers integrated into banking groups hold a relevant position in the local market, but independent managers have been increasing their footprint and market share, with the market being sought after by investors wishing to establish local partnerships, while at the same time looking for a faster and more flexible decision-making process.

The performance of the real estate market in recent times has helped boost investments in real estate alternative investment funds (AIFs). A relevant factor in this was the Portuguese "Golden Visa" programme, which attracted substantial interest from investors in Portuguese real estate as it was one of the eligible investments to fulfil the visa requirements. The Golden Visa programme allows a non-EU national to obtain a residency permit in Portugal and to travel in the Schengen area, provided that, among other requirements and investment alternatives, the applicant makes an investment in real estate of EUR500,000, or invests at least EUR500,000 in units/shares of investment funds or venture capital funds dedicated to the capitalisation of Portuguese companies.

As a result, among alternative funds, real estate investment is the leader in assets under management, although this lost momentum in the second half of 2023. This is because the Golden Visa programme was recently amended under the legislative package called "*Mais Habitação*", which eliminated both direct and indirect (through real estate investment funds) real estate investment.

Venture capital funds have also been able to take advantage of the Golden Visa programme by developing vehicles targeted at foreign investors who are required to meet certain eligibility criteria.

2. Funds

2.1 Types of Alternative Funds

Portugal permits the establishment of alternative funds that invest in:

- securities or financial assets, such as undertakings for collective investment in transferable securities that do not comply with the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive limits (see **2.3 Regulatory Regime for Funds**) and are thus classified as alternative funds;
- real estate assets (real estate, units in real estate AIFs and shareholdings in real estate companies);
- venture capital;
- securities or other financial or non-financial assets, including the assets permitted for the types of AIF; and
- loans.

Alternative funds investing in securities may adopt the branding of alternative funds investing in bonds, shares, index-trackers, money-market funds, etc, provided that they comply with specific asset allocation limits.

Moreover, other laws establish the possibility of specific AIFs being created. However, due to the

strict legal limitations, these specific types are seldom used.

Of all the fund types indicated above, the majority of alternative funds in Portugal are venture capital and real estate funds, followed by undertakings for collective investment in transferable securities that do not comply with the UCITS Directive. The remaining types of alternative funds have only a residual representation in the Portuguese market.

2.2 Fund Structures

AIFs may take either one of the two forms or structures listed below, both of which are subject to licensing procedures:

- the contractual structure with no legal personality; or
- the collective investment company endowed with legal personality.

The contractual structure is the classic structure and requires that the alternative fund be managed by a separate fund manager. The investors' or participants' interests in these funds are called "units" (*unidades de participação*).

The collective investment company (*sociedade de investimento coletivo*) may be self-managed or may appoint a third party as its manager, which must be a duly authorised investment fund manager. Participants in these collective investment companies will hold shares (*ações*).

In Portugal, alternative funds are usually set up under the contractual structure.

Nevertheless, a recent market trend is based on the transformation of commercial companies into collective investment companies, which are externally managed by fund managers. Considering that this requires there to be a fund manager in place, this model does not differ significantly from the contractual structure.

Lastly, it should be noted that real estate investment trusts (*sociedades de gestão e investimento imobiliário* or SIGIs), are not subject to the UCI Law (see **2.3 Regulatory Regime for Funds**), nor do they need to be managed by a fund manager. Even though SIGIs qualify as real estate collective investment companies endowed with legal personality, they are only subject to the SIGIs Framework, the Companies Code and certain provisions of the Securities Code regarding publicly traded companies.

2.3 Regulatory Regime for Funds

Activity involving the management of, investment in and marketing of alternative funds is mainly regulated by:

- the Undertakings for Collective Investment Law (*Regime da Gestão de Ativos*), enacted by Decree Law No 27/2023 of 28 April 2023 (UCI Law), implemented in the Portugal Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (UCITS Directive), as amended from time to time;
- the Securities Code or PSC (*Código dos Valores Mobiliários*), enacted by Decree Law No 486/99 of 13 November 1999, as amended from time to time, that came into force on 1 March 2000;
- the Directive 2011/61/EU on Alternative Investment Fund Managers (AIFMD), which sets out most of the rules relating to alternative funds;
- CMVM Regulation No 2/2015 on Undertakings for Collective Investment (Regulation No 2/2015), which sets forth more specific rules regarding certain aspects of the UCI Law

(soon to be replaced by a new CMVM Regulation); and
- CMVM Regulation No 3/2015 on venture capital, social entrepreneurship and alternative specialised investment (Regulation No 3/2015) (soon to be replaced by a new CMVM Regulation).

The Portuguese Securities Exchange Commission (*Comissão do Mercado de Valores Mobiliários* or CMVM) is the competent regulatory body in relation to the aforementioned matters.

2.4 Disclosure/Reporting Requirements

In accordance with the CMVM's regulations and instructions, all alternative funds and their fund managers are required to report to the CMVM on the items referred to in Annex IV to Delegated Regulation (EU) No 231/2013, among others, on an ongoing basis, by electronic means.

Furthermore, fund managers need to disclose their qualifying shareholders to the public on the CMVM's website, as well as the composition of the portfolio, the legal documents of the alternative funds under management, the accounts and report, and the unit/share value.

These obligations do not apply to venture capital funds and specialised AIFs, which are subject to less public disclosure, without prejudice to the ongoing reporting made directly to the investors.

2.5 Tax Regime for Funds

UCITS and Real Estate Funds (Not Venture Capital Funds)

UCITS and real estate funds are subject to corporate income tax (CIT) at the general rate – currently set at 21% – but are exempt from municipal and state surcharges. Taxable income corresponds to the net profit assessed in accordance with their respective accounting standards. However, passive income, such as investment income, rental income and capital gains (except when sourced in a tax haven), is disregarded for taxable profit assessment purposes. In this respect, it should be noted that Instruction 107/2020-XXII issued by the Secretary of State for Tax Affairs confirmed that real estate disposals should fall within the scope of capital gains. Costs incurred in connection with the referenced passive income (including funding costs) are also disregarded for profit assessment purposes. Non-deductible expenses under the CIT code, and income and expenses relating to management fees and other commissions earned, are also disregarded for taxable profit assessment purposes. In addition, income received is not subject to withholding tax, although autonomous tax rates established in the CIT code will apply.

Investment funds that exclusively invest in money-market instruments and bank deposits are also subject to stamp tax applicable over their global net asset value at a rate of 0.0025% (per quarter). Other funds (notably real estate funds) are subject to stamp tax on their global net asset value at a rate of 0.0125% (per quarter).

Venture Capital Funds

Venture capital funds are CIT-exempt pursuant to the Tax Benefits Code.

2.6 Loan Origination

Loans funds are AIFs that can originate loans.

Loan funds were introduced into national legislation by Decree Law No 144/2019 of 23 September 2019, with a view to boosting the capital market and diversifying sources of financing for companies. This type of fund fills a market gap in the demand for and supply of financing, improving complementarity between the bank-

ing sector and the venture capital and securitisation sectors.

They are an alternative way of granting credit to companies, and increasing competition and the chances of obtaining more attractive and appropriate financing conditions.

Loan funds in UCI Law maintain their social purpose, but cannot grant credit to individuals or a group of entities. They can be managed by a management company that falls below the AIFMD's thresholds.

In the granting of credit by these funds, the framework applicable to the granting of bank credit applies, depending on the type of operation, particularly with regard to information on interest. In its relationship with borrowers, the management company complies with the information duties of financial intermediaries, with the necessary adaptations, namely, on the special risks of the operations to be carried out and the costs of the service. In order to mitigate credit risk, it is envisaged that these funds will be able to participate in the credit liability centre (*Central de Responsabilidades de Crédito*).

Alternative funds of this type are able to borrow money for the purpose of granting loans of up to 60% of the fund's assets. The regulatory framework of loan-originating funds is further detailed in Regulation No 3/2015, soon to be replaced by the new CMVM Regulation.

Venture capital funds may also grant loans to companies in which they hold equity or in which they intend to hold equity.

2.7 Non-traditional Assets

The CMVM accepts that funds may invest directly in crypto-assets if they are an alternative fund investing in non-financial assets or a specialised alternative investment fund. The CMVM also considers that, in the case of investments in crypto-assets, it is necessary to have adequate identification of the investment policy, an acceptable definition of the valuation rules and satisfactory management of the risk associated with such type of investment.

Other types of assets, such as cannabis-related investments (cannabis is currently only legal in Portugal for health and industrial purposes, ie, non-recreational use) and crypto-assets, may also be included in the portfolio of a venture capital fund under a special purpose vehicle.

The granting of contractual loans by an alternative fund, when allowed, will likely subject it to the regime of the loan-originating funds (see **2.6 Loan Origination**).

2.8 Use of Subsidiaries for Investment Purposes

It is not common practice for alternative funds to resort to subsidiaries for investment purposes. However, certain real estate alternative funds do use subsidiaries to rationalise the management of assets.

The use of subsidiaries may be particularly useful in the case of alternative funds set up under the contractual form, which cannot directly hire employees. Conversely, a subsidiary that is fully held by an alternative fund would be able to hire personnel.

2.9 Requirement for Local Investment Managers

The alternative fund may also be managed by a fund manager from another EU member state that is passported under the AIFMD regime,

based on the freedom of services or the freedom of establishment.

Third-country entities may also request the CMVM to authorise their management of alternative funds in Portugal. However, it is unlikely that the CMVM will grant authorisation unless the fund manager has at least a minimum local presence.

2.10 Other Local Requirements

In Portugal, it is not permitted to create an alternative fund under the general partner/limited partner structure. In this sense, all alternative funds are either set up under the contractual form or incorporated as a limited liability company by shares.

For externally managed alternative funds or funds set up under contractual form, see **3.8 Local Substance Requirements** regarding the requirements applicable to the fund manager.

In the case of self-managed alternative funds, the requirements applicable to the fund itself will follow very closely the requirements established in respect of the external fund manager. The number of personnel involved in this type of fund will largely depend on the nature, size and complexity of its activities. In any case, this type of alternative fund must have business premises in Portugal and at least some staff located in Portugal with knowledge and experience of the local regulatory framework.

2.11 Rules Concerning Other Service Providers

The custodian of the alternative fund must be established in Portugal, ie, either be incorporated and authorised by Portuguese supervisors or have a branch in Portugal.

As for the roles of administrator, money-laundering reporting officer, etc, there is no carved-in-stone provision stating that these need to be resident in Portugal.

Nevertheless, from experience and a case-by-case analysis, the fact of such roles being undertaken by non-residents may jeopardise the effective performance of the functions or may create serious difficulties for personnel who do not speak Portuguese, in terms of understanding the local regulatory environment, and may thereby impact the performance of the relevant tasks.

The personnel in charge of vital roles within the alternative fund and/or the fund manager must have the necessary competence, experience, suitability, availability and independence to carry out the tasks at hand.

2.12 Anticipated Changes

The new UCI Law has been published and is in force, and the CMVM regulation that will detail it is currently underway, which will lead to both CMVM Regulation 2/2015 and CMVM Regulation 3/2015 being repealed and replaced by a single regulatory instrument.

3. Fund Managers

3.1 Origin of Promoters/Sponsors of Alternative Funds

Besides the local sponsors/promoters who still represent a significant share of the market, foreign players (from countries such as the USA, Turkey and Brazil, as well as from the Middle East and Portuguese-speaking African countries) are also searching the Portuguese market for investment opportunities that can be utilised

by nationals of those countries to qualify for the Portuguese Golden Visa.

3.2 Legal Structures Used by Managers

The UCI Law distinguishes between large fund managers and small fund managers.

In the case of large fund managers:

- assets under management (AUM) exceed EUR100 million and include assets acquired through leverage; or
- AUM exceed EUR500 million and do not include assets acquired through leverage; and
- no redemption rights are exercisable for a period of five years from the date of the initial investment.

In the case of small fund managers: the above-mentioned limits should not be exceeded, in line with the de minimis exemption foreseen in the AIFMD.

3.3 Regulatory Regime for Managers

See **2.3 Regulatory Regime for Funds**.

In Portugal, large fund managers are subject to prior authorisation from the CMVM, whereas small fund managers are subject to simplified prior authorisation from the CMVM.

Depending on the type of AIFs the fund manager intends to manage – that is, AIFs investing in securities or financial assets, non-financial assets, real estate, venture capital, etc – additional requirements will need to be met, notably as regards internal policies.

It should also be emphasised that control of the suitability of the members of the board of directors and audit board of the alternative fund manager lies with the supervisory authority (the CMVM).

3.4 Tax Regime for Managers

If the fund is endowed with legal personality and is self-managed, the tax regime referred to in **2.5 Tax Regime for Funds** applies.

In the case of a third-party managed fund, income derived by the manager will be subject to CIT at a rate of 21%, to which a municipal surcharge of up to 1.5% may be applicable on taxable profits, depending on which municipality the fund manager is located in (municipalities have the right to decide if and at what rate a municipal surcharge will be levied).

Taxable profits are also subject to a progressive state surcharge at the following rates:

- 3% on the part of the taxable profits exceeding EUR1.5 million up to EUR7.5 million;
- 5% on the part of the taxable profits exceeding EUR7.5 million up to EUR35 million; and
- 9% on the part of the taxable profits exceeding EUR35 million.

3.5 Rules Concerning Permanent Establishments

In Portugal, there are no exemptions or other rules regarding “permanent establishments”.

3.6 Taxation of Carried Interest

The amount of carried interest on the date of transfer qualifies as interest rather than capital gains for tax purposes.

3.7 Outsourcing of Investment Functions/Business Operations

Alternative fund managers can outsource investment management functions to third parties, subject to filing the draft of the outsourc-

ing agreement with the CMVM and subject to compliance with Articles 75–82 of the Delegated Regulation (EU) No 231/2013. This type of work can only be outsourced to other alternative fund managers or individual portfolio managers (Markets in Financial Instruments Directive (MiFID) firms).

Notwithstanding the general rule described in the paragraph above, where the outsourcing arrangement relates to an alternative investment undertaking exclusively targeting professional investors, the investment management functions may be outsourced to a non-regulated third party, subject to the prior authorisation of the CMVM and to the third party's compliance with the asset allocation criteria defined by the fund manager.

Although subject to the rules described above, business operations and similar non-investment management functions can be outsourced to a non-regulated entity.

3.8 Local Substance Requirements

Local substance requirements are not set in stone.

Nevertheless, the fund manager will need to have a board of directors with at least two executive members, a statutory auditor and a replacement. Additionally, at least one person should be allocated to internal control functions, such as compliance, AML/CFT, risk management and internal auditing, as needed.

Furthermore, there is usually a department tasked with evaluating the assets of the funds, a department tasked with financing and accounting, a fund manager assigned to each fund under management, and a department tasked with human resources or administration. It is possible to combine some roles, provided that the general principle that the person who assumes management functions or day-to-day business tasks cannot be responsible for control functions is respected.

3.9 Change of Control

For a large fund manager, the authorisation process involves the prior assessment of the suitability of qualifying shareholders by the CMVM, therefore changes in the qualifying shareholders' chain up to the ultimate beneficial owner are subject to prior authorisation from the CMVM. Small fund managers, on the other hand, are only subject to simplified prior authorisation from the CMVM, meaning that changes in the qualifying shareholders' chain up to the ultimate beneficial owner are not subject to prior authorisation from the CMVM, but still need to be notified to the regulator.

3.10 Anticipated Changes

The new UCI Law has been published and is in force, and the CMVM regulation that will detail it is currently underway, which will lead to both CMVM Regulation 2/2015 and CMVM Regulation 3/2015 being repealed and replaced by a single regulatory instrument.

4. Investors

4.1 Types of Investors in Alternative Funds

In Portugal, real estate and venture capital funds are the most sought-after types of alternative funds.

In the case of real estate alternative funds, the trend is for investors to convert existing commercial companies into externally managed collective investment companies, subject to the

UCI Law, to benefit from a more favourable tax regime.

Venture capital funds represent a very dynamic segment of the local alternative funds market, being set up mainly to take advantage of public programmes and tax benefits granted for innovation and R&D, and to address the demand by foreign investors for local vehicles that are an eligible investment for the purposes of obtaining a Portuguese Golden Visa.

4.2 Side Letters

The use of side letters that set out particular terms and conditions in respect of governance, investment, etc, of the AIF is not specifically addressed by the UCI Law.

However, in the case of open-end AIFs, considering that they tend to target retail investors and/or a broader unrestricted scope of investors, the use of side letters that alter any relevant provision of the legal documents is deemed illegal, since, as a general principle, the fund manager needs to abide by the AIF's legal documents during the provision of its activity and treat all investors equally. In closed-end AIFs, notably those that are privately subscribed or that target only professional investors, there is a wider margin to set out, namely through a side letter, specific provisions in respect of certain matters. However, in general terms, the provisions of the UCI Law are imperative; therefore, any side letter providing for actions in breach of such legal provisions will be deemed illegal and may subject the fund manager to administrative offence proceedings.

4.3 Marketing of Alternative Funds to Investors

Local alternative funds can be marketed to both professional and non-professional investors, depending on the limitations provided under the fund's legal documents. An alternative fund passported to Portugal under the AIFMD may only be marketed to professional investors.

Nevertheless, the Portuguese national private placement regime allows for alternative funds to obtain local authorisation from the CMVM to be marketed to both professional and non-professional investors. However, due to the strictness of the applicable requirements, this option has not been used frequently by foreign players.

4.4 Rules Concerning Marketing of Alternative Funds

Besides the Securities Code and the UCI Law, the marketing of alternative funds is subject to the general rules and good practices applicable to advertising in general, particularly if the investor is a natural person.

In the case of alternative funds (that are not venture capital funds), pursuant to Regulation No 2/2015 (soon to be replaced by the new CMVM Regulation), if the marketing materials disclose return data, they must also contain at least the following:

- the identification of the alternative fund and its manager;
- the warning that "the disclosed returns represent past data and do not guarantee future returns";
- indication of the reference period for the return figures;
- confirmation on whether the return figures disclosed already include the applicable taxation;
- information on where and how the key investor information document and other legal documents may be obtained;

- in cases where the alternative fund's units/shares are admitted to trading on a regulated market, identification of the relevant market and whether the values disclosed are calculated on the basis of the asset value or on the market value of the units/shares;
- a warning that investment in the alternative fund may lead to the loss of the principal invested, in cases where the alternative fund does not guarantee payment of the principal invested;
- if the data disclosed is annualised, but has a reference period greater than one year, the information disclosed must also contain the reference according to which the reference return may only be obtained if the investment is performed during the entire period of the reference; and
- the risk level, with identical emphasis on the return figure, for an identical period of reference.

4.5 Compensation and Placement Agents

The use of placement agents is common in the Portuguese jurisdiction in relation to private equity/venture capital funds.

The UCI Law lists the entities that can market units in funds, including the possibility of the fund managers, for marketing purposes, being represented by tied agents (to whom the Securities Code applies).

Although the placement agent is not expressly regulated in the national legal framework, there is nothing to prevent the placement agent from putting potential investors in contact with a fund manager, provided that the fund managers ensure that the activity of the placement agents does not conflict with the rules that reserve the marketing of fund units to the respective marketing entities provided for in the UCI Law (as well as to tied agents, if any).

The CMVM, in a circular letter, therefore recommends that the fund manager enters into a written contract with the placement agent, which clearly and explicitly establishes, among other requirements, the scope of its activities, that its remuneration is exclusively provided by the fund manager itself (even if upon charging the fund a set-up fee) and that its activities do not amount to pre-marketing.

4.6 Tax Regime for Investors

The tax regime applicable to investors depends on:

- the type of investment fund;
- whether the investor is an individual or a legal entity; and
- whether or not the investor is resident in Portugal.

UCITS and Real Estate Funds

Distributions received by individual investors resident in Portugal for tax purposes are subject to final Portuguese Income Tax (PIT) withholding tax at a rate of 28%.

Distributions received by individual investors not resident in Portugal for tax purposes are exempt from PIT in Portugal in the case of UCITS, and subject to a final 10% withholding tax rate in the case of real estate funds, provided that proof of non-residence is submitted in a timely manner and:

- the investors are not resident in a country, territory or region with a clearly more favourable tax regime, as identified in the list of the Ministerial Order 150/2004 of 13 February

2004 (as amended) (ie, a "blacklisted jurisdiction"); and
- the income is not paid or made available to accounts in the name of one or more account holders acting on behalf of undisclosed third parties and the beneficial owner of the income is not disclosed.

In such cases, distributions are subject to PIT at a final 35% withholding tax rate.

Distributions received by legal entities resident in Portugal for tax purposes are subject to CIT withholding tax (25%) on account of the final tax due. The distribution constitutes part of the taxable profits, and the withholding tax will be credited against the CIT assessed at year end.

Distributions received by legal entities not resident in Portugal for tax purposes are exempt from CIT in the case of UCITS, and subject to a final 10% withholding tax rate in the case of real estate funds, provided that:

- they are not directly or indirectly held in more than 25% of the share capital of Portuguese resident entities (except for non-resident investors that are legal entities resident in another EU member state; in an EEA member state which is bound to co-operate with Portugal under an administrative co-operation arrangement in tax matters similar to the exchange of information schemes in relation to tax matters existing within the EU; or any country with which Portugal has a double tax treaty);
- they have provided proof of non-residence in a timely manner;
- they are not resident in a blacklisted jurisdiction; and
- the income is not paid or made available to accounts in the name of one or more account holders acting on behalf of undisclosed third parties and the beneficial owner of the income is not disclosed.

If the corporate investor is resident in a blacklisted jurisdiction or the income is paid or made available to accounts in the name of one or more account holders acting on behalf of undisclosed third parties, distributions are subject to CIT at a final 35% withholding tax rate. In all other cases, if the exemption above is not applicable, distributions are subject to CIT at a final withholding tax rate of 25%.

In Portugal, income resulting from the sale of units is regarded as a capital gain. As mentioned in **2.5 Tax Regime for Funds**, Instruction 107/2020-XXII issued by the Secretary of State for Tax Affairs confirmed that income arising from any disposal of real estate should be qualified as a capital gain.

Capital gains resulting from the sale of units obtained by individuals resident in Portugal for tax purposes are subject to PIT at a 28% rate over the positive difference between the capital gains and capital losses of a given year (ie, tax is levied on the net capital gains).

Capital gains resulting from the sale of units obtained by individuals not resident in Portugal for tax purposes are exempt from PIT in the case of UCITS and subject to a 10% tax rate in the case of real estate funds, provided that they are not resident in a country, territory or region with a clearly more favourable tax regime identified in the list of the Ministerial Order 150/2004 of 13 February 2004 (as amended). In such a case, capital gains are subject to PIT at a rate of 35%.

Capital gains resulting from the sale of units obtained by legal entities resident in Portugal

form part of the taxable profits for the relevant year.

As a rule, capital gains resulting from the sale of units obtained by legal entities not resident in Portugal are subject to CIT at a 10% rate, although an exemption may be applicable if certain requirements are met, notably, that the legal entity is not domiciled in a blacklisted jurisdiction.

Venture Capital Funds

Distributions received by individuals resident in Portugal for tax purposes are subject to final PIT withholding at a rate of 10%.

In Portugal, distributions received by individuals not resident in Portugal for tax purposes are exempt from PIT, provided that such individuals are not resident in a blacklisted jurisdiction. The distributions in such a case are subject to PIT of 10%.

Distributions received by legal entities resident in Portugal are subject to CIT withholding tax (10%) on account of the final tax due. The distribution forms part of the taxable profits, and the withholding tax will be credited against the CIT assessed at year end.

Distributions received by legal entities not resident in Portugal are exempt from CIT provided that:

- no more than 25% of their share capital is, directly or indirectly, held by Portuguese residents or by individuals resident in Portugal;
- they have provided proof of non-residence in due time; and
- they are not domiciled in a blacklisted jurisdiction.

If the CIT exemption does not apply, distributions will be subject to a final withholding tax of 10%.

In Portugal, for tax purposes, capital gains resulting from the sale of units obtained by resident individuals are subject to PIT at a rate of 10% over the positive difference between the capital gains and capital losses of the relevant year.

Capital gains resulting from the sale of units obtained by individuals not resident in Portugal are exempt from PIT, provided the individuals are not resident in a blacklisted jurisdiction. In such cases, capital gains will be subject to PIT at a rate of 10%.

Capital gains resulting from the sale of units obtained by legal entities resident in Portugal form part of the taxable profits for the relevant year.

Capital gains resulting from the sale of units obtained by legal entities not resident in Portugal are exempt from CIT, unless:

- more than 25% of the share capital of the legal entity is held by Portuguese-resident entities, directly or indirectly – this 25% threshold is not applicable when the following cumulative requirements are met by the seller –
  - (a) it is an entity resident in the EU or in the EEA or in any country with which Portugal has a double tax treaty in force that foresees the exchange of information;
  - (b) such entity is subject to and not exempt from IRC (Portuguese corporate income tax), or a similar tax with a rate not lower than 60% of the Portuguese IRC rate;
  - (c) it has held at least 10% of the share capital or voting rights of the entity subject

to disposal for at least one year without interruption; and

(d) it does not intervene in an artificial arrangement or a series of artificial arrangements that have been put in place with the main purpose of, or having as one of their main purposes, obtaining a tax advantage; or

- the legal entity is domiciled in a blacklisted jurisdiction.

If the CIT exemption does not apply, capital gains will be subject to CIT at a rate of 10%.

4.7 Double Tax Treaties

UCITS and real estate funds are subject to CIT (and only exempt for certain types of income). As such, the Portuguese tax authorities consider such entities resident for tax purposes and issue the respective tax residence certificate.

Since venture capital funds are fully exempt from CIT, they do not benefit under double tax treaties.

Despite the above, the recognition of a Portuguese fund as resident in Portugal for tax purposes will also depend on the perspective in terms of treaty eligibility of non-resident funds by the source state where the paying entity is resident.

4.8 Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS) Compliance Regime

FATCA

Portugal signed the international group agreement (IGA) with the USA on 6 August 2015 and has implemented the legal framework based on the reciprocal exchange of information regarding financial accounts subject to disclosure to the USA through Law No 82-B/2014, enacted on 31 December 2014. The IGA was ratified by Portugal on 5 August 2016 and came into force on 10 August 2016.

The Portuguese government approved the complementary regulation required to comply with FATCA through Decree Law No 64/2016, of 11 October 2016 (as amended by Decree Law No 98/2017 of 24 August 2017 and Law No 17/2019 of 14 February 2019) and Ministerial Order (Portaria) No 302-A/2016, of 2 December 2016 (as amended by Ministerial Order No 169/2017 of 25 May 2017 and Ministerial Order No 302-E/2016 of 2 December 2016).

Under this legislation, the issuer is required to obtain information regarding certain account holders and to report such information to the Portuguese tax authorities, which, in turn, will report such information to the IRS.

CRS

The Council Directive 2014/107/EU of 9 December 2014 regarding the mandatory automatic exchange of tax was transposed into Portuguese law by Decree Law No 64/2016 of 11 October 2016, as amended by Decree Law No 98/2017 of 24 August 2017 and Law No 17/2019 of 14 February 2019.

Under this law, the issuer is required to collect information regarding certain account holders and to report such information to the Portuguese tax authorities using forms which, in turn, will report such information to the relevant tax authorities of EU member states or states that have signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information for the Common Reporting Standard.

In view of the regime enacted by Decree Law No 64/2016 of 11 October 2016, all information regarding the registration of a financial institution, the procedures to comply with the reporting obligations arising therefrom and the forms to use to that end was provided by the Ministry of Finance, through Order No 302-B/2016, Order No 302-C/2016, Order No 302-D/2016 and Order No 302-E/2016, of 2 December 2016, all of which are amended from time to time.

4.9 Anti-Money Laundering (AML) and Know Your Customer (KYC) Regime

The applicable framework for Portuguese fund managers on AML-related duties is in line with the AML Directive. As such, the applicable law is Law 83/2017, 18 August 2017, that establishes measures to combat money laundering and terrorist financing, partially transposing Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015, and Directive 2016/2258/EU of the Council of 6 December 2016.

As mentioned in **3.8 Local Substance Requirements**, the AML/CFT officer role is a key function to be performed by a human resource with adequate knowledge of the European and national applicable provisions.

The responsible regulator for supervising fund managers in AML-related matters is the CMVM, which within the scope of its powers requests and analyses the annual report submitted by fund managers (and other operators) for statistical purposes, and applies sanctions for non-compliance with AML-related regulatory duties.

It is worth noting that a different regulator, the Institute of Public Markets, Real Estate and Construction (*Instituto dos Mercados Públicos, do Imobiliário e da Construção* – IMPIC) supervises specific real estate transactions carried out by funds.

4.10 Data Security and Privacy for Investors

General data protection regulations apply to fund managers when processing personal data. These include the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, which repealed Directive 95/46/EC (General Data Protection Regulation) and the Law 58/2019, 8 August 2019 (Portuguese Data Protection Law).

In addition, more specific requirements are applicable to fund managers, such as European Securities and Markets Authority (ESMA) Guidelines on outsourcing to cloud service providers and the national financial supervisory authorities' (BdP, ASF and CMVM) Recommendations on Business Continuity Management (revised) approved by the National Council of Financial Supervisors ("CNSF") on 20 September 2021.

4.11 Anticipated Changes

The new UCI Law has been published and is in force, and the CMVM regulation that will detail it is currently underway, which will lead to both CMVM Regulation 2/2015 and CMVM Regulation 3/2015 being repealed and replaced by a single regulatory instrument.

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