



May 10, 2013

New Legal Framework for Collective Investment Undertakings

Decree-Law no. 63-A/2013, of 10 May 2013, which enacts the New Legal Framework for Collective Investment Undertakings (“NLFCIU”) and revokes Decree-Law no. 252/2003, of 17 October 2003, has been published today.

NLFCIU implements Directives no. (i) 2009/65/EC, of the European Parliament and of the Council of 13 July 2009, known as UCITS IV; (ii) 2010/42/EU, which implements UCITS IV as regards as regards fund mergers, master-feeder structures and notification procedure, (iii) 2010/43/UE, which implements UCITS IV as regards organization requirements, conflicts of interest, management activity, risk management and the contents of the agreement between the custodian and the fund manager, and (iv) partially, 2010/78/EU, in relation to the powers of the European Securities and Markets Authority.

Apart from the changes resulting directly from the aforementioned Directives, NLFCIU introduces some relevant changes, namely concerning the organization of the diploma and the definition of some concepts. The concept of OICVM (*organismos de investimento coletivo em valores mobiliários*), previously used for all undertakings investing in securities (regardless of being UCITS-compliant), has been narrowed to include only structures complying with UCITS IV. The remaining collective investment schemes are now called Undertakings for Alternative Investment (“UAI”). Some of these UAI may also be considered Undertakings for Alternative Investments on Transferable Securities (“UAITS”).

In an attempt to promote the establishment of fund managers in Portugal, NLFCIU comes closer to current European requirements establishing lower requirements in relation to fund managers’ own funds and minimum share capital. A level of concern about the independence and efficiency of the management companies is also reflected on new governance requirements, such as the minimum number of independent directors and the need for a majority of independent members on the Supervisory Board.

Finally, as regards conflicts of interest, the NLFCIU sets out rules regarding incompatibilities of the fund auditor, as well as the extension of the restrictions applicable to operations between parties related to the management of any collective investment undertaking.

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