



# ICLG

The International Comparative Legal Guide to:

## **Alternative Investment Funds 2017**

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A practical cross-border insight into Alternative Investment Funds work

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**General Chapters:**

1	<b>How External Forces Will Shape Fund Terms</b> – Stephen G. Sims & Greg Norman, Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates	1
2	<b>The Global Subscription Credit Facility and Fund Finance Markets – Key Trends and Forecasts</b> Michael C. Mascia & Wesley A. Misson, Cadwalader, Wickersham & Taft LLP	3
3	<b>Allocating Fees and Expenses: The SEC Is Paying Close Attention</b> – Leor Landa & James H. R. Windels, Davis Polk & Wardwell LLP	6
4	<b>Bringing Foreign Investment Funds into Japan</b> – Yasuzo Takeno & Fumiharu Hiromoto, Mori Hamada & Matsumoto	13

**Country Question and Answer Chapters:**

5	<b>Andorra</b>	Cases & Lacabra: Miguel Cases	18
6	<b>Angola</b>	VdA Vieira de Almeida: Pedro Simões Coelho & Alexandre Norinho Oliveira	23
7	<b>Bermuda</b>	Taylor (in Association with Walkers): Jonathan Betts & Ariane West	29
8	<b>British Virgin Islands</b>	Maples and Calder: Richard May & Heidi de Vries	37
9	<b>Canada</b>	McCarthy Tétrault LLP: Sean D. Sadler & Nigel P. J. Johnston	45
10	<b>Cayman Islands</b>	Maples and Calder: Grant Dixon & Andrew Keast	52
11	<b>China</b>	FenXun Partners: Sue Liu	58
12	<b>Cyprus</b>	Andreas M. Sofocleous & Co LLC: Christina Sofocleous & Antigoni Hadjiyianni	63
13	<b>Denmark</b>	Horten Advokatpartnerselskab: Claus Bennetsen	69
14	<b>England &amp; Wales</b>	Travers Smith LLP: Jeremy Elmore & Emily Clark	76
15	<b>France</b>	Jones Day: Florence Moulin & Guillaume Cavalin	85
16	<b>Germany</b>	WTS Tax Legal Consulting: Steffen Gnutzmann & Robert Welzel	91
17	<b>Guernsey</b>	Babbé LLP: Robert Varley & Chris Dye	98
18	<b>Ireland</b>	Dillon Eustace: Brian Kelliher & Sean Murray	104
19	<b>Korea</b>	Bae, Kim & Lee LLC: Tongeun Kim & Dongwook Kang	113
20	<b>Liechtenstein</b>	König Rebholz Zechberger Attorneys at Law: Dr. Helene Rebholz	121
21	<b>Luxembourg</b>	Bonn & Schmitt: Corinne Philippe & Amélie Thevenart	127
22	<b>Mozambique</b>	VdA Vieira de Almeida: Pedro Simões Coelho & Carlos Filipe Couto	134
23	<b>Portugal</b>	VdA Vieira de Almeida: Pedro Simões Coelho & Manuel Simões de Carvalho	140
24	<b>Puerto Rico</b>	Ferraiuoli LLC: Yarot T. Lafontaine-Torres & Alexis R. González-Pagani	149
25	<b>Scotland</b>	Brodies LLP: Andrew Akintewe & Karen Fountain	160
26	<b>Singapore</b>	WongPartnership LLP: Charlotte Sin	167
27	<b>Spain</b>	Cases & Lacabra: Miguel Cases & Toni Barios	173
28	<b>Switzerland</b>	Lenz & Staehelin: François Rayroux & Patrick Schleiffer	179
29	<b>USA</b>	Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates: Heather Cruz & Anna Rips	187

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# Angola



Pedro Simões Coelho



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## 1 Regulatory Framework

### 1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The activity involving the management, investment and marketing of Alternative Investment Funds (AIFs) is mainly regulated by the Undertakings for Collective Investment Law (*Regime Jurídico dos Organismos de Investimento Coletivo*), enacted by Decree no. 7/2013 of 11 October 2013 (UCI Law) and CMC Regulation no. 4/2014 on Undertakings for Collective Investment (Regulation no. 4/2014), which sets forth more specific rules regarding certain aspects of the UCI Law and the Angolan Securities Law (*Lei dos Valores Mobiliários* or ASL), enacted by Law no. 12/05 of 23 September 2005, as amended from time to time. Lastly, please note that venture capital merits a specific legal framework, set forth by Decree no. 4/15 of 16 September (Venture Capital Law).

The Angolan Securities Exchange Commission (*Comissão do Mercado de Capitais* or CMC) is the main regulatory body in relation to the aforementioned matters.

### 1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Yes. Fund managers, as non-credit financial institutions, are subject to the CMC's supervision, notably in respect of prudential matters and in what concerns most of the rules governing their management of AIFs' activity.

Therefore, the fund managers' authorisation procedure will be conducted before the CMC pursuant to Law no. 13/05 of 30 September 2005, on financial institutions, and thus any entity wishing to provide alternative fund management services ought to be authorised by and registered with the CMC. Financial institutions, provided the authorisation to provide fund management services has been obtained, as well as management companies of collective investment undertakings, may perform fund management services. In any event, this is without prejudice to the application of a registration with the CMC requirement, on top of the aforementioned authorisation requirement, prior to the beginning of the provision of management services.

On the other hand, the foregoing is also without prejudice to the possibility of an investment company (i.e. collective investment undertakings with legal personality) ensuring its own fund management.

The UCI Law does not foresee any *de minimis* exemption or fast-track authorisation procedure. Accordingly, all fund managers, regardless of the asset under management, will need to comply, in general terms, with the same requirements.

Nonetheless, considering the type of AIFs the fund manager intends to manage, i.e. AIFs investing in securities or financial assets or real estate, there will be some specific requirements to be met as regards investment policies, contracts with services providers, etc.

### 1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Yes. The setting up of any fund, including AIFs, is subject to authorisation by the CMC, which is the competent regulator to conduct the supervision of AIF management, ancillary service providers, distribution and compliance with the general rules applicable to AIFs, notably those relating to the protection of the investors' interests.

### 1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds) and if so how?

Yes. In general terms, the UCI Law distinguishes between AIFs investing (i) in securities or financial assets, and (ii) in real estate (real estate investment funds).

Both AIF types may be open or closed-ended, but the real estate investment funds may also be of a mixed type, thus allowing the coexistence of both features in the same AIF.

In general terms, open-ended AIFs are addressed to the retail market, while closed-ended AIFs target affluent or professional investors, thus in open-ended AIFs the scrutiny of the CMC tends to be tighter.

Furthermore, depending on the type of AIF at stake and if such is open or closed-ended, different investing limits and portfolio composition limits will apply.

### 1.5 What does the authorisation process involve?

In a nutshell, the authorisation for the setting up of an AIF is filed with the CMC.

In requesting such authorisation, the relevant AIF's manager must provide the CMC with the AIF's documentation, notably the prospectus (if applicable) in simplified and full versions, which

must also include the AIF's regulation, subscription form, and an announcement on the beginning and ending of the subscription period.

In addition, the CMC must also be given copies of the agreements to be executed between the management company and (i) the depository, (ii) the distributors or entities that will market the AIF, and (iii) any other entities that will render services to the AIF or to the AIF manager.

Documents evidencing the acceptance of the rendering of the relevant services by all entities involved in the AIF's activities must also be delivered to the CMC.

Furthermore, in the case of a closed-ended AIF, if applicable, the authorisation application for the public placement of the units/shares shall too be provided. On the other hand, in the case of open-ended AIFs, the fund manager shall provide a copy of a bank guarantee, in an amount no less than 20% of the AIF's NAV, in order to secure the necessary liquidity to pay potential redemption requests placed by the investors.

An authorisation is given within 45 days of the receipt of either the application, with all necessary documentation having been provided in attachment thereto, or of any additional information or amendments to the documents required by the CMC. If at the end of such a period the applicants have not yet been notified of the deferral of their application, the authorisation is considered to have been tacitly refused.

The CMC may refuse the authorisation, *inter alia*, if the applicant does not submit the required documentation or if the AIF manager at stake engages in irregular management of other investment funds.

After the authorisation has been granted, an AIF will be fully set up from the moment the first subscription is settled.

### 1.6 Are there local residence or other local qualification requirements?

Considering that the vast majority of AIFs in Angola are set up under the contractual form with no legal personality, it is required that such AIFs be managed by a separate fund manager, which needs to be incorporated and have its centre of main interests and effective management located in Angola.

Furthermore, the fund manager must have in place several internal policies aimed at addressing the risk of its activity, remuneration issues, outsourcing, internal control and evaluation of the assets pertaining to the AIFs under management, all being subject to the control of the CMC and, to a certain extent, the depository, and entailing permanent record-keeping by the fund manager.

Lastly, the employees of the fund manager with technical functions, as well as the management, shall have the proper qualification and professional aptitude in accordance with high-level standards. Pursuant to Regulation no. 4/14, it shall be assumed that persons that have held office with similar functions within the financial sector have the necessary professional competence.

### 1.7 What service providers are required?

An AIF is legally required in Angola to have: a fund manager, except if it is endowed with legal personality, in which case such an AIF may perform its own management; a depository; an auditor; and, in the case of real estate AIFs, real estate appraisal experts.

Furthermore, the AIF may also have, but is not legally compelled to have, distributors or entities that will market the AIF, the existence of such entities being more usual in the case of open-ended AIFs.

### 1.8 What co-operation or information sharing agreements have been entered into with other governments or regulators?

There is no specific protocol or sharing agreement signed by the CMC with other governments or regulators in respect of AIFMs or AIFs.

However, the CMC signed a general (low-detail) understanding protocol with the Portuguese Securities Exchange Commission (*Comissão do Mercado de Valores Mobiliários* or CMVM) on September 2006, including some information sharing provisions.

## 2 Fund Structures

### 2.1 What are the principal legal structures used for Alternative Investment Funds?

An AIF may take one of two forms or structures, both subject to the licensing procedures described in question 1.5 above:

- Contractual structure with no legal personality. This is the classic structure and requires that the AIF is managed by a separate fund manager. The investors' or participants' interests in these funds are called units (*unidades de participação*).
- Collective investment company endowed with legal personality (*sociedade de investimento*). Collective investment companies which mainly invest in securities are classified as SIMs (*sociedades de investimento mobiliários*), while those which mainly invest in real estate are classified as SIIs (*sociedades de investimento imobiliário*). Both SIMs and SIIs may be self-managed or have appointed a third party as their manager, which must be a duly authorised investment fund manager. Participants in these collective investment companies will hold shares (*ações*).

In Angola, AIFs are usually set up under the contractual structure with no legal personality.

In an overall assessment of the pros and cons of both structures, it is possible to verify that the contractual structure has a longer track record in Angola, being the preferred choice for the setting up of AIFs as it offers an affordable, simple and well-known model for AIFs in Angola.

Conversely, the collective investment company endowed with legal personality is clearly a more complex model that allows, however, greater control for the investors over the management of the AIF.

### 2.2 Please describe the limited liability of investors.

Legally, the assets of an AIF are only liable for its debts, thus it will not be liable for the investors, fund manager, depository, distributors or other AIFs' debts. Likewise, investors are not personally liable for the AIF's debts and will therefore not, under any circumstances, be burdened by any of the AIF's debts.

As regards collective investment companies endowed with legal personality, they are also subject to the limited liability provisions applicable to commercial companies by special law.

### 2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

AIFs, which are not self-managed, will need to be managed by a:

- fund manager (non-credit financial institution) authorised to manage AIFs investing in securities and other financial assets

or real estate investment funds (*sociedade gestora de fundos de investimento mobiliário*); or

- real estate fund manager (non-credit financial institution), which may only manage real estate funds (*sociedade gestora de fundos de investimento imobiliário*).

#### **2.4 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?**

The UCI Law is silent in respect of the ability of the fund manager to restrict redemptions in open-ended funds, but considering that such types of AIFs in general target retail investors, the CMC will most certainly scrutinise this matter. In fact, such a possibility would need to be clearly set out in the AIF's regulation, which is analysed during the authorisation procedure.

Moreover, the minute of the AIF regulation, approved by Regulation no. 4/14, contains a field where the conditions set out for redemptions need to be described, but only seems to refer to the applicable fees, settlement dates and the criteria for the determination of which units/shares will be redeemed. Likewise, Regulation no. 4/14 only seems to foresee conditions under which redemptions may be suspended, but not restricted.

As regards the restriction of transfers in open-ended funds, the same rationale described above in respect of the redemption shall apply.

Conversely, regarding closed-ended AIFs, mainly those targeting professional investors, we trust that it is possible to establish in the AIF's regulation restrictions on the transfer of units from investors to third parties.

#### **2.5 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?**

No. However, the limitations established on foreign investment, which place constraints on transfers abroad of profits or dividends obtained in Angola, should be borne in mind. Therefore, prior to the investment in an Angolan AIF being performed, the thresholds and requirements to be met by such an investment shall be assessed, on a case-by-case basis, as well as the provisions applicable to the transfer abroad of the profits or dividends obtained pursuant to the redemption of the units/shares or liquidation of the AIF.

### **3 Marketing**

#### **3.1 What legislation governs the production and offering of marketing materials?**

Please refer to question 1.1 above, plus the General Marketing Law, approved by Law no. 9/02 of 30 July 2002.

#### **3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?**

The UCI Law and Regulation no. 4/14 provide minutes that the legal documents of the AIF (prospectus and regulation) must abide by.

In respect of marketing materials, there are no minutes available; however, it is customary for the fund manager and other distribution entities to provide information on the investment policy, markets targeted, main features (identification of the relevant entities, terms and conditions of the investment, links to the legal documents) and historic returns of the AIF.

Pursuant to Regulation no. 4/14 the marketing material shall contain the following warnings:

- "Reading of the prospectus and regulation of the AIF is recommended, before investing in it."
- In cases where the marketing material discloses return figures, "past returns do not guarantee future returns" and "the disclosed returns are subject to taxation".
- In cases where the figures have a reference period of less than a year, "[t]his UCI has less than 12 (twelve) months. In order to analyse the performance of an UCI, it is recommended the analysis of at least 12 (twelve) months".

Lastly, as a general note, in accordance with Regulation no. 4/14, the information contained in the marketing materials must comply with the following principles: objectivity; identification; truthfulness; transparency; balance; timeliness; and comparability.

#### **3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?**

Yes. All marketing materials are subject to the CMC's prior approval.

#### **3.4 What restrictions are there on marketing Alternative Investment Funds?**

The marketing or distribution (*comercialização*) of AIFs under the UCI Law occurs when there is collection of funds with the public in order to be channelled to the investment in the AIF, provided that the activity is: (i) addressed to undetermined investors; (ii) preceded or followed by prospection or gathering of investment intentions with undetermined investors; and (iii) addressed to at least 150 addressees.

Therefore, only this kind of marketing will be caught by the regime set out in the UCI Law and Regulation no. 4/14.

Furthermore, the concept of reverse solicitation is not an official exemption from the UCI Law requirements, but rather a tolerated practice, which consists in the investor, on its own initiative and without any previous engagement on the part of the distributor, requesting information on the AIF at stake. However, a case-by-case assessment needs to be conducted, considering that the use of the reverse solicitation expedient may come under the scrutiny of the CMC.

Closed-ended AIFs shall register the performance of marketing/distribution activities with the CMC.

Lastly, the marketing/distribution of foreign AIFs in Angola is subject to the prior authorisation of the CMC.

#### **3.5 Can Alternative Investment Funds be marketed to retail investors?**

Yes. However, it must be noted that special AIFs investing in transferable securities or financial instruments (*organismos especiais de investimento coletivo em valores mobiliários*) are distributed within specific segments of the market. If it is intended for the distribution to be carried out with non-institutional investors, the fund manager shall provide the CMC with a training plan of the entities in charge of such distribution. Notwithstanding, the CMC may refuse to grant the authorisation for the AIF to be distributed with certain segments of the market, in case it considers that the investors are not sufficiently protected.

### 3.6 What qualification requirements must be carried out in relation to prospective investors?

There is no particular requirement to be fulfilled in relation to investors in AIFs.

Nonetheless, the fund manager shall ensure that the “know your customer and investment adequacy analysis” is properly carried out in relation to the investor, as well as that the anti-money laundering and terrorism financing procedures are respected.

### 3.7 Are there additional restrictions on marketing to public bodies such as government pension funds?

There are no additional restrictions.

### 3.8 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

No. However, the relationship established between the intermediaries and the AIF shall be put in a written agreement and disclosed in the AIF’s legal documents.

Furthermore, the intermediary, when carrying out the fundraising process, needs to act within its authorised scope of activities, i.e. if the fundraising process corresponds to marketing of the AIF under the UCI Law, the intermediary will need to be an authorised institution under the applicable legal terms to carry out the distribution of securities.

### 3.9 Are there any restrictions on the participation in Alternative Investments Funds by particular types of investors, such as financial institutions (whether as sponsors or investors)?

No. However, the holding of units/shares in AIFs may have an impact, that needs to be assessed on a case-by-case basis, on the own funds and reserves of the credit and financial institutions.

## 4 Investments

### 4.1 Are there any restrictions on the types of activities that can be performed by Alternative Investment Funds?

Yes. AIFs can only focus on investment activities and their management and investment shall comply with the general rules applicable to the financial instruments markets.

### 4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund’s portfolio whether for diversification reasons or otherwise?

Yes. The assets eligible for the portfolio of the AIF will depend on its specific type.

Therefore, in general terms, an AIF investing in securities or financial assets may have in its portfolio: (i) securities admitted to trading in an Angolan regulated market; (ii) securities admitted to trading in a third country regulated market, provided that such is foreseen in the law, the AIF’s legal documents or approved by the CMC; (iii) units/shares in other UCIs; (iv) bank deposits with a term of up to a year; (v) derivatives traded in regulated markets

referred to in (i) and (ii) above; (vi) derivatives traded in OTC, provided that CMC regulations are complied with; (vii) money market instruments, which issuer or issuer is subject to regulation for the purposes of investors’ protection or savings schemes; and (viii) other instruments provided in the CMC’s regulations.

The derivatives may only be used for hedging purposes and naked short-selling is forbidden.

As regards real estate investment funds, they may invest the majority of their assets in real estate, but may also invest in shares of real estate investment companies (*sociedades de investimento imobiliário*), derivatives, mainly for hedging purposes, units/shares of other real estate investment funds and liquidity instruments. The extent to which the investment in the referred assets is limited will depend on whether the AIF is closed-ended, open-ended or targeting a specific scope, i.e. real estate investment funds investing in house renting, agriculture, livestock, industrial exploration, etc.

### 4.3 Are there any restrictions on borrowing by the Alternative Investment Fund?

Fund managers may obtain loans on behalf of AIFs under their management, but the loan period cannot exceed 120 days, consecutive or not, within a period of one year and up to the maximum of 10% of the AIF’s NAV.

The loan to be granted under the terms described above shall be previously authorised by the CMC and the fund manager shall ground the reasoning for the loan, as well as provide the CMC with the loan’s contractual conditions.

## 5 Disclosure of Information

### 5.1 What public disclosure must the Alternative Investment Fund make?

The AIF’s legal documents and their updates shall be available in a durable means or on an internet website. Considering that the legal documents shall describe the fund manager’s identity, depository, auditor, distributors and other services providers to the AIF, the majority of the data in connection with the AIF will be made available to the public.

However, the identity of the investors in the AIF is not mandatorily subject to public disclosure.

### 5.2 What are the reporting requirements in relation to Alternative Investment Funds?

The fund manager must prepare and publish annual and biennial accounts. These must be made available free of charge on request by the investors.

Moreover, the fund manager must publish and send to the CMC:

- The annual accounts within four months after the end of the financial year.
- The biennial accounts within two months after the end of the relevant semester.

### 5.3 Is the use of side letters restricted?

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-ended AIFs, considering that they usually target retail investors and/or a broader unrestricted scope of investors, the use of side letters which alter any relevant provision of the legal documents shall be deemed illegal, considering that, as a general principle, fund managers need to abide by the AIF's legal documents during the provision of their services.

In closed-ended AIFs, notably in AIFs targeting only professional investors, we trust that there is a wider margin to set out, namely through a side letter, specific provisions in respect of certain matters. However, in general terms, as the provisions of the UCI Law are imperative; 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.

## 6 Taxation

### 6.1 What is the tax treatment of the principal forms of Alternative Investment Funds?

The Angolan tax regime for UCIs set up under the contractual structure with no legal personality and the collective investment company endowed with legal personality has been enacted by Decree no. 1/14 of 13 October 2014.

An AIF is subject to Corporate Income Tax (CIT or "*Imposto Industrial*") on the annual profit obtained on a worldwide basis in compliance with the accounting rules, including rents from real estate and investment income. Capital gains and losses which are not realised will not be taxed. The CIT rate is 7.5% for AIFs investing in securities or financial assets and 15% for AIFs investing in real estate.

An AIF will be exempted from any other income tax, namely Investment Income Tax and Urban Property Tax. An AIF is also exempt from Stamp Duty and Consumption Tax on bank commissions, and Stamp Duty on capital increases.

Additionally, opened-ended real estate AIFs are exempt from Property Transfer Tax and Stamp Duty on acquisition of real estate.

### 6.2 What is the tax treatment of the principal forms of investment manager / adviser?

There is no special tax treatment or rules applicable in Angola for investment managers or advisers. Therefore, as Angolan-resident entities, they will be subject to the general taxation regime: (i) 30% Industrial Tax on income obtained on a worldwide basis; and (ii) capital gains, interest and dividends are subject to Investment Income Tax under a withholding mechanism (rates may vary from 5% up to 15%).

Dividends paid between resident companies in Angola may be exempt from Investment Income Tax provided that a 25% stake is held for a minimum holding period of one year.

### 6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

There are none.

### 6.4 What is the tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors in Alternative Investment Funds?

Income obtained by an AIF's resident and non-resident or pension funds unit holders is exempt from Investment Income Tax and Industrial Tax on any income obtained, namely those from redemption or distribution of income, as well as gains from the sale of units.

### 6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?

Yes, it is advisable, because the tax regime is quite new and there is still no track record or official guideline on how the Angolan Tax Authorities will enforce it.

Moreover, the tax legislation is quite incipient in dealing with finance-structured investments.

### 6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the Common Reporting Standard?

On 9 November 2015, the Intergovernmental Agreement (IGA) under Model I to improve international tax compliance with respect to the U.S. Foreign Account Tax Compliance Act (FATCA) was signed between Angola and the USA, although it is not yet in effect.

### 6.7 Are there any other material tax issues?

There are no other material tax issues.

### 6.8 What steps are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 6 and 7, insofar as they affect Alternative Investment Funds' operations?

Please note that Angola is not an OECD member country. Despite this, we are not aware of any initiative from the Angolan Tax Authorities regarding this subject.

## 7 Reforms

### 7.1 What reforms (if any) are proposed?

At the time of writing, the Angolan legal UCI framework is in the consolidation stage, considering that the legal documents at issue have been recently enacted.

Nevertheless, depending on the economic environment and political circumstances in the upcoming years, it may be necessary to update certain aspects of the Angolan legislation in light of developments and international experience, namely those stemming from the Alternative Investment Fund Managers Directive's implementation in EU Member States and new approaches adopted in the international AIF market.



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- The AIFMD Passport and non-EU Alternative Investment Funds, *Funds People*, 2016.
- Mozambique chapter, *The International Comparative Legal Guide to: Alternative Investment Funds 2016*.
- Angola chapter, *The International Comparative Legal Guide to: Alternative Investment Funds 2016*.
- Fund Management – Portugal, *Getting the Deal Through*, 2016.
- Hedge Funds in Portugal – *The European Lawyer Reference Series*, 2011 (first edition) and 2014 (second edition).
- Investment Funds in Portugal: Regulatory overview – *Practical Law Company Investment Funds Handbook* 2012, 2013, 2014, 2015 and 2016.
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Alexandre joined VdA in 2011. He is an associate in the firm's Banking & Finance practice, where he has been actively involved in several transactions, involving securities laws, banking and insurance sectors. Alexandre has been actively involved in securitisation transactions, debt and other instruments issuances, structuring of covered bonds programmes and complex financial products placement, restructuring of loans and acquisition finance. His experience includes providing legal advice to credit institutions with regard to the above and compliance matters, to investment funds and to some of the leading players in the banking and financial sector, as well as to borrowers. Previously, he was also a trainee in VdA's competition and EU practice area, where his practice focused on cases of abuse of dominant position, merger control and state aid proceedings.

He is the author and co-author of articles such as:

- *The Lending and Secured Finance Review*: Portugal chapter (co-author), Law Business Research, 2<sup>nd</sup> edition, 2016;
- Angola chapter, *The International Comparative Legal Guide to: Alternative Investment Funds 2016* (co-author);
- "Da Diretiva dos Gestores de Fundos de Investimento Alternativo ao Regime Geral dos Organismos de Investimento Coletivo: Regime Atual e Perspetivas Futuras" (From the Alternative Investment Fund Manager Directive to the Portuguese Collective Investment Undertakings Legal Framework: current regime and future prospects), published in the Portuguese Securities Commission Review, Portuguese Securities Market Commission, no. 52, December 2015, available at [www.cmvm.pt](http://www.cmvm.pt); and
- collaborated in the preparation of "*Contratos Privados, das Noções à Prática Judicial*" (Private Contracts: from the general principles to judicial practice) – Volumes I, II and III, 1<sup>st</sup> and 2<sup>nd</sup> editions, author: Fernando Baptista de Oliveira, Coimbra Editora, Coimbra, 2014.



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