



# Update

Momentum



Finance and Governance

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## **REGULATION OF THE PORTUGUESE SECURITIES MARKET COMMISSION (CMVM) nº 3/2015 – VENTURE CAPITAL, SOCIAL ENTREPRENEURSHIP AND SPECIALIZED ALTERNATIVE INVESTMENT**

After a public survey period, the Regulation of the CMVM nº 3/2015, of 3 November, in force since November 4, that regulates some specific aspects of the Legal Regime of Venture Capital, Social Entrepreneurship and Specialized Alternative Investment ("RJGRESIE"), approved by the Law nº 18/2015, of March 4, was finally published in the Official Gazette.

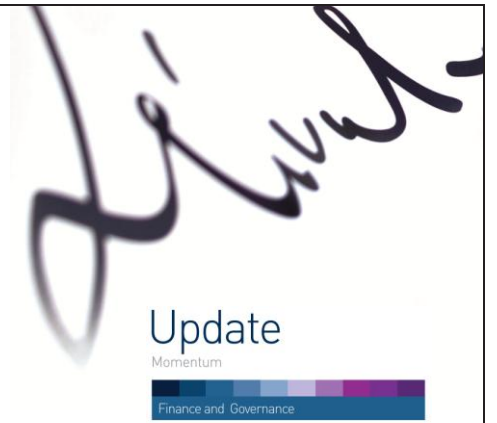
This regulation revokes the previous Regulation of the CMVM nº 1/2008, that ruled the venture capital activities, and, namely, regulates evaluation of assets held by venture capital companies (VCC), venture capital investment funds (VCIF), social entrepreneurship funds (SEF) and specialized alternative investment funds (SAIF), their trade, and information duties to the investors.

Specifically, as per the asset evaluation, the reference to “conservative value” as one of the assessment methods is eliminated, and the acquisition value is now included as one of the “just value” criteria, provided that it is used in the first 12 months following the asset acquisition. For the SEF and SAIF, the asset evaluation period increases from 6 to 12 months (the VCC and VCIF being maintained in 12 months), with the exception of shorter periods foreseen in the Internal or Management Regulation. Similarly, the materially relevant transactions operating as reference need to have occurred in the last

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12 months, instead of 6, and must now all be independent from the VCIF/VCC (and not just one of them as before). As a consequence of the public survey process, the leveraging also became one of the comparable companies multiples, adding to the already included activity sector, dimension and profitability. As per credits evaluation methods, the reference now also includes contractual schedules, equity reimbursements and payments forecasted, further to the previous market interest rates, the borrower credit risk at evaluation date, and the interest rate that would be granted to the borrower on that same date. Exceptionally, and upon written request, the credits evaluation may be accrued in accordance to the acquisition cost, considering the amount determined for the credits and other debt instruments in their initial acknowledgement, the aggregated equity reimbursements and payments, the unrecoverable amounts, and any situations that may have a material impact on value and execution expectancy.

The instruments traded in organized markets are specifically treated in the Regulation of the CMVM nº 2/2015, which establishes rules on collective investment funds.

As per SEF assets, the evaluation criterion used is the just value obtained from the best practices in force within the social investment sector, related to an accrual of the investments' impact or positive social influence, factors which will naturally bring some difficulties of quantification and some level of abstraction.

A new chapter of the Regulation defines the nature of SEF and VCI AF assets, establishing, for the latter, a maximum threshold of 20% of their global net value, if the assets are issued or guaranteed by their company organized collective investment funds, by the managing entity, by entities holding units over 10% of their global net value, by companies in a group or dominant relation with the managing companies (either dominant or dominated), by entities in which the latter have more than 20% of the equity or voting rights, the depositaries (and entities in which these hold participations overcoming 10% of the global net value/or with dominant or group relations with them). The Regulation indicates all situations that should be interpreted as holding: ownership, use, powers of administration or asset transfer, entities that may in fact deal with their administration and transfer, or the real beneficiary of their profits.



The Regulation also determines rules for equity payment in companies of specialized alternative investment, of minimum 5% at the moment of subscription and full payment completion by the end of the first 12 months of operation. Moreover, the minimum global net value of the SAIF amounts to €1,250,000 from the first 12 months of activity, and should this become inferior to 2/3 of the said threshold, the managing entity should convene the participants' assembly to decide its termination, a decision quorum of ¼ of participants being necessary.

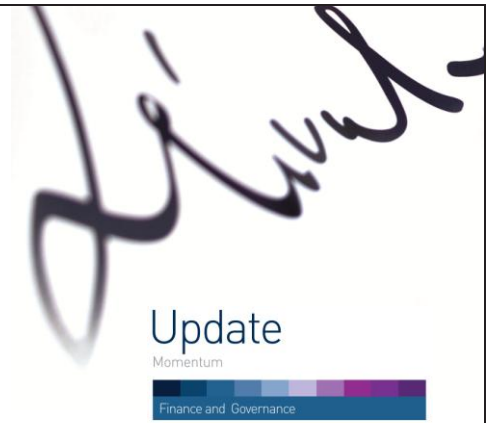
The trade of units in VCIF, VCC, SEF, Social Entrepreneurship Companies and SAIF, by companies which are not financial intermediaries, is also allowed to qualified investors, and to all the non-qualified investors that, upon a written request and a liability assumption statement on the consequences of the investment, are able to demonstrate their knowledge and experience to make decisions of investment and understanding of associated risks, provided they fulfill two of the following criteria:

- a) Having executed operations in the venture capital market, SEF and EAIF in the last 3 years;
- b) Having a financial instruments portfolio (including money deposits) of over € 500,000;
- c) To render or have rendered services within financial areas where knowledge of the above services or operations are demanded, for at least 2 years.

The managing entity may review these evaluation criteria, and withdraw the qualification *in casu* from the investor, if it considers that the requisites for its qualification are no longer verified, the documents of such qualification having to be properly archived for 5 years.

Specifically in the case of SEF and SEC, the trade of units/shares is enabled also to non-qualified investors, provided they do not exceed €5,000, and that also includes a statement of acknowledgement of the involved risk, unless the units/shares are held internally, that is, by employees of the managing entity of these funds and companies, in which case the limit is not applicable.

The following entities are authorized to trade units: the managing companies, the depositaries and the financial intermediaries registered in the CMVM for the placement, reception and transmission of orders on account of third parties, not different from what is already foreseen for collective investment



funds. In these last two cases, the relation between the aforementioned subjects and the managing entity should be regulated in writing.

The Regulation has also created minimum content for the Internal Regulation of VCC and SEC, such as the general rules of the company, the investment policy (if managing its own portfolio), the assets evaluation rules, the investment/divestment procedures, the outsourcing of tasks, money laundering, conflict of interest management and risk control policies, and the information on the policy of supervision of participated entities.

In what concerns the information rights, the Regulation expressly refers to the information content of EU Regulations nº 345/2013 and nº 346/2013, indicating also the mandatory elements of biannual information of the managing entities/companies for the CMVM site, and these should include the balance sheet, the profit and loss account, the asset portfolio, the equity, performance and fees, the participants' identification, the purchase and sale of assets. The annual accounts, on the other hand, should be handed to CMVM up to 30 days after the meeting of participants/ shareholders.

The description of the merger and spin-off procedures of VCIF, SEF and SAIF and their management with the supervisor CMVM concludes this Regulation, with special attention being given to their effects: the subscription of participation units or shares in the acquiring entity or in the spin-off entities, respectively.

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