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Update

Finance and Governance

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Legal regime of Pension Funds and Pension Funds' Managers (Incorporation and Operation)

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Law no. 27/2020 was published on the 23rd of July, aiming at implementing EU Directive no. 2016/2341 of the EU Parliament and Council, of December 14, 2016 (the IORP II Directive) and to undertake the fourth amendment to the legal regime of access and exercise of insurance and reinsurance activity which had been published together with Law no. 147/2015, September 9th.

This legal regime replaces the current legal regime of pension funds and pension funds' managers, hence revoking Decree-Law no. 12/2006, January 20th.

This substantial amendment applies not only to new pension funds, but also to existing pension funds, and has entered into force on the 1st of August. Nonetheless, the law sets deferred deadlines for the entry into force of several provisions depending on its content, hence enabling the relevant stakeholders an adaptation period that, in some cases, may even reach 12 (twelve) months.

Main amendments

With a view to achieve a most welcome cross-border level playing field in this sector, the legislator approved a non-negligible amendment to the activity and operation of pension funds, its managers, associates, beneficiaries, participants and insurance companies.

Considering the wide range of amendments, one needs to highlight, based on relevance and meaning criteria, the **strengthening of governance and internal control requirements, the introduction of new sustainability criteria when it comes to investment decisions, risk policy and risk management (the ESG – Environment, Social and Governance criteria), the considerable reinforcement of information duties towards the associates (aiming at more and better information)**, the definition of fees' limits and the introduction of additional flexibility on payment of benefits.

In turn, **this law chooses to also apply the legal regime of insurance and reinsurance distribution, as approved by Law no. 7/2019, January 16th**, thus increasing market conduct duties, defining and implementing new products' production, governance and distribution rules, setting an autonomous role

in terms of complaints' handling and management and further incrementing information duties towards associates, contributors, participants and beneficiaries.

Alongside these amendments, **it should be noted that the Insurance and Pension Funds Authority (ASF - Autoridade de Supervisão de Seguros e Fundos de Pensões), the market's supervisor, receives increased competences and supervisory powers**, the sanctions framework is updated and the cooperation between the supervisor and other EU competent authorities is improved too.

Adaptation periods

During the next 12 (twelve) months, the pension funds' managers and the insurance companies will have to undertake several changes on their management activity, as well as to the pension funds they relate to.

By the end of the fast approaching month of October, these players will have to divide the equity of the closed pension funds into new units and further ensure compliance with all the new information requirements that this regime has set.

Additionally, and until the end of January 2021, each pension funds management entity ought also to ensure the full compliance of its distribution activity with the legal regime of insurance and reinsurance distribution, as approved by Law no. 7/2019, January 16th.

Finally, and by the 31st of July of 2021, pension funds management entities and insurance companies ought to have already, respectively, amended their respective pension funds' incorporation documents and subscription contracts, as well as changed any insurance policy that finances professional pension funds in order to include the relevant vested rights, notably its insured person's right to keep the insurance coverage even after the contract with the employer/policy holder has been terminated.

Alongside these conformation tasks that pension funds management entities and insurance companies have been put in charge of, the new management entity responsible for exercising the global administrative and actuarial roles in a pension plans jointly funded by different pensions funds which, in turn, are managed by different management entities needs to be appointed. If this appointment is not done until the end of August 2020, this legal regime defines, by default, that the management entity in charge of managing the pension fund that has allocated more assets to that particular pension plan shall be deemed as having been appointed for this purpose.