AMENDMENT TO THE ASSET MANAGEMENT REGIME

With the entry into force, on 23 November 2024, of Decree-Law n.º 89/2024, of 18 November, the first amendment was made to the asset management regime, approved in the annex to Decree-Law n.º 27/2023, of 28 April (AMR).

This amendment focused exclusively on adding a new paragraph 8 to Article 31 of the AMR, which is entitled 'Own funds " and which reads as follows: " The management company may invest amounts that exceed the own funds required under the terms of the law, provided that the investment is, at all times, ancillary to the main activity, and conflicts of interest are prevented, and the CMVM is responsible for regulating the terms under which this activity may take place'.

This is only applicable to large management companies, as can be seen from the preamble to Decree-Law 89/2024 and from the systematic plan in which Article 31 is included in the AMR.

Although the addition to Article 31 of the AMR that we are dealing with here came into force, as has already been said, on 23 November 2024, its full effectiveness is dependent on the CMVM approving the regulations it provides for.

Own Funds

Management companies - both large and small - are obliged to maintain, continuously, minimum levels of own funds on an ongoing basis (Article 29 letter e) and Article 33, paragraph 1, letter e) of the AMR) to guarantee their financial soundness.

For the purposes of the AMR, the concept of own funds corresponds to the elements laid down in European Union legislation on the prudential requirements of credit institutions, namely: i) Regulation 575/2013 of the European Parliament and of the Council of 26 June (Capital Requirements Regulation - CRR) and; ii) Directive 2013/36 of the European Parliament and of the Council of 26 June (Capital Requirements Directive IV - CRD IV) - (Article 31, paragraph 2 of the AMR).

The innovative part of Decree-Law

Before the entry into force of the addition to Article 31 of the AMR that we are dealing with here, the constituent availabilities of the own funds of large management companies, although not, so to speak, 'locked up' for investment, were nevertheless subject to limitations, and could only be invested in liquid assets or readily convertible into cash in the short term (Article 31, paragraph 7, letter a) of the AMR) and, on the other hand, they could not include speculative positions aimed at profiting from price changes (Article 31, paragraph 7, letter b) of the AMR).

With the addition of the aforementioned paragraph 8 to Article 31 of the AMR, large management companies will now also be able to invest their own funds in excess of the legally required minimum thresholds in other investment assets (in addition to those listed above), provided that this investment is ancillary to the management company's main activity (the management of collective investment undertakings) and that situations of conflicts of interest with natural or legal persons who own assets managed by the management company are prevented.

Finally, it should be noted that it is widely believed - and we share this view - that this amendment to the rules governing the own funds of large management companies is positive, insofar as broadening the range of investments it offers - albeit subject to certain conditions - will help to optimise the resources of management companies, adding value to them.

Arlindo Vieira de Sá
Lawyer, Of Counsel