

OCT. 26

INFORMATIVE NOTE

CAPITAL MARKETS

Venture Capital

Implications of CMVM Circular 007/2026

On 21 October 2026, the Portuguese Securities Market Commission (*Comissão do Mercado de Valores Mobiliários* – "**CMVM**") published Circular 007/2026 (the "**Circular**"). The Circular is addressed to companies managing alternative investment funds ("**AIFs**") specialising in venture capital. It sets out the CMVM's interpretation of various aspects of the applicable legal framework following a thematic supervisory review carried out with management companies.

The Circular does not change the regulatory framework for venture capital AIFs. However, it is significant in that it clarifies the CMVM's understanding of various obligations applicable to management companies. The Circular highlights areas that are likely to require special attention during supervision.

The Circular does not change the regulatory framework for venture capital AIFs. However, it is significant in that it clarifies the CMVM's understanding of various obligations applicable to management companies.

At the same time, amendments to the Securities Code have recently been approved. These amendments affect key aspects of the rules applicable to collective investment undertakings and their management entities.

This Legal Update summarises the key points arising from the Circular and the relevant amendments to the Securities Code for the asset management sector.

In practical terms, the Circular provides an opportunity to review the following: (i) internal investment and risk management procedures; (ii) pre-contractual information documents; (iii) marketing practices and the use of referral agents or introducers; (iv) appropriateness assessment questionnaires; and (v) the cost structure attributable to venture capital AIFs.

João Dias Lopes
Madalena Perestrelo de Oliveira
Joana Marques dos Reis
Rita Almeida
José Eduardo Oliveira
João de Castro Rodrigues
Equipa de Capital Markets

In business models involving third parties or direct or indirect shareholding structures, the role played by the management company must be unequivocally demonstrated by the procedures.

CMVM Circular 007/2026

1. Organisational structure for investment and risk management

The Circular reflects the CMVM's particular concern regarding the robustness, documentation and traceability of internal investment and risk management processes. It reiterates the need for management companies to substantiate investment decisions properly and monitor risks effectively throughout the investment cycle. In this context, the CMVM emphasises the importance of clear, formalised internal procedures; written, standardised analyses of investment opportunities; and complete retention of supporting documentation.

In business models involving third parties or direct or indirect shareholding structures, the role played by the management company must be unequivocally demonstrated by the procedures.

In particular, the Circular emphasises the importance of management companies:

i) Having formalised investment procedures in place.

ii) Ensuring that the performance of investment and risk management functions, and the rationale behind the decisions taken, is properly documented.

iii) Adopting formal criteria for appointing the governing bodies of companies in which they hold interests.

iv) Ensuring the effective involvement of the risk management function throughout the investment cycle, including identifying, quantifying and monitoring the relevant risks associated with the portfolio investments. The Circular emphasises that this function must be permanent and, unless this would be inappropriate and disproportionate, must be both hierarchically and functionally independent.

For large management companies, the Circular also refers to the enhanced requirements of the Asset Management Framework (*Regime da Gestão de Ativos* – "**RGA**"). These requirements include a documented process for analysing each investment decision prior to implementation, and continuous measurement of the risk associated with each position.

2. Assessment of the eligibility of investments to be made on behalf of venture capital AIFs

The Circular provides a more detailed explanation of the CMVM's understanding of the eligibility criteria for investments made by venture capital AIFs. It clarifies how certain investments should be classified under the applicable legal framework.

In particular, the Circular states that:

i) Holding interests in companies whose activities do not qualify as venture capital investments is permitted, provided such shareholdings play a complementary role in the investment strategy and are provided for in the relevant constitutive documents. This does not affect the fact that such shareholdings do not contribute to the defining feature that distinguishes venture capital AIFs.

ii) Classification of an investment as venture capital presupposes a strategy for developing the investee company and increasing its value and must go beyond merely holding assets indirectly.

iii) The eligibility of investments must be subject to periodic review.

iv) The use of debt or hybrid instruments presupposes an existing or prospective holding in the company's equity instruments, and such instruments must not be used in isolation.

3. Legal, regulatory and contractual limits applicable to venture capital AIFs

The Circular emphasises the importance of management companies having mechanisms in place to ensure compliance with and monitoring of the legal, regulatory and contractual limits applicable to venture capital AIFs. In particular, it highlights the requirement that venture capital investments must represent at least two-thirds of the AIF's total assets at all times. To this end:

i) The balance sheet items that contribute towards the legal, regulatory and contractual limits of venture capital AIFs must be adequately and explicitly identified.

ii) Periodic monitoring and tracking mechanisms must be implemented to ensure compliance with these limits. These mechanisms must involve the relevant compliance functions.

4. Introducers or referral agents

The Circular recognises that management companies may use introducers or referral agents to obtain data and information on potential investors.

The Circular confirms, once again, that management companies may use introducers or referral agents to obtain data and information on potential investors. However, these activities must not conflict with the rules that reserve the marketing of fund units for marketing entities (and, where applicable, tied agents) as set out in the RGA. Furthermore, they may only refer potential investors or share their contact details, in line with the provisions of CMVM Circular 13/2023. To put this principle into practice, management companies must:

i) Enter into written contracts with introducers that clearly and explicitly limit their activities to merely referring potential investors to the management company or sharing their contact details. These contracts must specify the prohibited activities, which include acting in the name of or on behalf of the management company, canvassing for investors, and marketing, advertising or promoting the venture capital AIF managed by the management company.

ii) Ensure that introducers do not: (a) go beyond referring potential investors or sharing their contact details, for example, by acting as intermediaries in correspondence between the management company and investors, (b) provide information on venture capital AIFs to potential investors, even if the information derives from documents shared by the management company, (c) present venture capital AIFs to potential investors, even if the presentation has been pre-approved by the management company.

iii) Ensure that introducers do not: (a) provide information on venture capital AIFs, (b) present investment opportunities, (c) act as intermediaries in the relationship with potential investors, or (d) carry out prospecting, marketing, advertising or promotional activities likely to influence the investment decision.

iv) Implement appropriate control and monitoring mechanisms for the activities carried out by these third parties. These mechanisms must ensure that third parties comply with the contractually defined limits and do not engage in any activity that is subject to authorisation or prior notification to the CMVM under the rules governing marketing. The management company must also be able to demonstrate that such controls are in place and effective.

The CMVM emphasises that the management company must not enter into contracts that do not impose functional or material restrictions on the introducer's activities.

The CMVM emphasises that the management company must not enter into contracts that do not impose functional or material restrictions on the introducer's activities. It also stresses that sharing potential investor contact details must comply with applicable personal data protection legislation.

In practice, the Circular raises the question of revising any client acquisition contracts in force and the materials and communication flows used by client introducers. This is because common market practices, such as providing AIF documentation or pre-approved presentations, are expressly identified by the CMVM as going beyond mere referral. The CMVM has been paying particular attention to this area since Circular 13/2023, and the regulatory framework may evolve further with the transposition of Directive (EU) 2024/927 ("**AIFMD II**"). Among other things, AIFMD II now classifies marketing carried out by distributors on behalf of the management company as delegation, and it strengthens the obligations regarding conflicts of interest in AIFs managed on the initiative of third parties (third-party funds).

5. Pre-contractual information to be provided to clients

The Circular emphasises the importance of management companies ensuring that investors receive the legally required information in a clear, complete and appropriate manner prior to subscription, so that they can make an informed investment decision. Evidence must also be provided that the required documentation has been made available.

In particular, the Circular emphasises that it is important for management companies to:

i) Ensure the completeness, clarity and accuracy of the information contained in the Key Information Documents (**KIDs**) and other pre-contractual documentation.

The CMVM reiterates that management companies must limit the appropriateness assessment to the investor's knowledge and experience without considering factors relating to their investment objectives or financial circumstances.

ii) Ensure that the KID adequately reflects the characteristics, risks, expected returns and costs associated with the venture capital AIF in accordance with applicable European regulations (Regulation (EU) 1286/2014 and Delegated Regulation (EU) 2017/653).

iii) Ensure that marketing communications are clear and truthful, and do not mislead investors, in accordance with Regulation (EU) 2019/1156 and ESMA's guidelines on promotional communications.

iv) Present the risks and potential benefits of the investment in a balanced manner, avoiding disproportionate emphasis on potential returns in relation to the associated risks.

The Circular provides specific guidance on the content of KIDs, the presentation of performance scenarios, the summary risk indicator, information on costs, and balancing risks and benefits in promotional communications. Therefore, these materials should be reviewed whenever they are used to market venture capital AIFs.

6. Assessment of the appropriateness of transactions

The Circular emphasises the importance of basing appropriateness procedures on effectively gathering and assessing the investor's experience and knowledge. These procedures should avoid a purely formal approach that relies excessively on self-assessment mechanisms, and should not be based on algorithms that do not sufficiently consider responses that test the investor's actual knowledge.

In particular, the CMVM reiterates that management companies must:

i) Gather sufficient, detailed information on the investor's knowledge and experience of venture capital AIFs and other relevant financial instruments.

ii) Ensure that the questionnaires include appropriate mechanisms to assess and validate investors' actual knowledge.

iii) Limit the appropriateness assessment to the investor's knowledge and experience without considering factors relating to their investment objectives or financial circumstances.

iv) Implement methodologies and tools that enable reliable and consistent results to be achieved when assessing the appropriateness of transactions.

v) Ensure that the questionnaire does not disclose the scores assigned to the answers or the profiles that result in a finding of appropriateness, that the statement refusing to provide information is not sent at the same time as the questionnaire, that warnings that a transaction is inappropriate are used only in the situations provided for by law, and that the staff involved in this process have the appropriate training and knowledge.

The CMVM also points out that the transaction being unsuitable, or impossible to assess, is not grounds for refusing the subscription, but merely for issuing a warning to the investor.

7. Costs and charges levied on or attributable to venture capital AIFs

In this regard, the Circular aims to define more precisely the costs that venture capital AIFs may incur. This reflects heightened concerns about transparency regarding charges borne by investors, and the appropriate allocation of costs associated with management companies' activities.

The Circular aims to define more precisely the costs that venture capital AIFs may incur. This reflects heightened concerns about transparency regarding charges borne by investors.

The CMVM states the following:

i) Only costs that are appropriate to sound and prudent management, consistent with the investment policy, and expressly provided for in the relevant constitutive documents should be charged to or allocated to the AIF. The management regulations must include a general provision drawing attention to other costs arising from compliance with legal obligations.

ii) Costs associated with the outsourcing – even if only occasional – of functions forming part of the management activity must not be charged directly to the AIF. These functions should, in principle, be covered by the management fee, whether they are carried out by the management company or outsourced entities.

Other important matters: Amendments to the Securities Code under Decree-Law 171/2026

On 26 August 2026, Decree-Law 171/2026 ("**DL 171/2026**") was published, introducing a comprehensive reform of the Portuguese capital markets framework. Among other legislation, it amends the Securities Code, the Commercial Companies Code, and the Asset Management Framework.

With regard to collective investment undertakings ("**CIUs**") and their management companies, DL 171/2026 introduces new transparency and reporting obligations concerning the investment strategy for shares traded on a regulated market.

From 10 January 2030, this information must also be submitted to the CMVM for publication via the ESAP. The information will also be subject to applicable EU requirements concerning reporting, data formats and metadata.

CIUs and management entities that invest in such shares are now required to disclose the key elements of their share investment strategy to the public on their website (and update it annually where relevant). The disclosure must explain how: (i) the main elements of the equity investment strategy are consistent with the profile and duration of the undertaking's liabilities, particularly its long-term liabilities, and (ii) how they contribute to the medium- to long-term performance of its assets.

The CIU must publish information about its arrangement with the asset manager on its website. This includes information on how the asset manager's incentives are aligned with the CIU's investment strategy and decisions, and with the profile and duration of its liabilities, particularly its long-term liabilities. The CIU must also explain how the agreement encourages the asset manager to make investment decisions based on assessments of the medium- to long-term financial and non-financial performance of investee companies. It must also explain how the agreement encourages the asset manager to engage with those companies to improve their medium- to long-term performance, among other matters.

Finally, from 10 January 2030 onwards this information must also be submitted to the CMVM for publication via the European Single Access Point (ESAP). The information will also be subject to applicable EU requirements concerning reporting, data formats and metadata.

In this context, management companies should assess whether their procedures, documents, and business practices allow them to demonstrate compliance with the expectations now set out by the CMVM in a consistent and documented manner. Particular attention should be paid to investment governance, risk management, distribution, investor information, the assessment of the appropriateness of transactions, and cost allocation. ■

This document is intended for general distribution to clients and colleagues, and the information contained in it is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this document may not be reproduced, in whole or in part, without the express consent of the author. If you require any further information on this topic, please contact **João Dias Lopes (joao.diaslopes@plmj.pt)** or **Madalena Perestrelo de Oliveira (madalena.perestrelo@plmj.pt).**