

LAWYERS IN PORTUGAL SET FOR INCREASE IN HEDGE FUND WORK

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Category: [Archive](#)



Portuguese lawyers are set for a wave of instructions relating to Alternative Investment Undertakings, a form of hedge fund, when an EU directive is implemented later this year

Whether it is the government's high-profile privatisation programme or a bumper debt sale market, there has been a surge of interest in Portuguese investments from international and domestic venture capitalists. Hedge funds – investment portfolios that use a variety of investments to generate high returns – have been at the forefront.

“There has been an increase in funds looking at Portugal, which is then split into two investor bases,” says Marcos de Sousa Monteiro, a counsel at Linklaters. “The first base is big international hedge funds while the second base is hedge funds from local investors and institutions.” In the first category, such funds are looking at buying assets, such as Portuguese bank bonds. For the second, a bespoke fund is established in Portugal to target such assets. Portugal, however, does not

currently have a specific legal framework to establish hedge funds per se so investors have to form an alternative investment undertaking (AIUs). There are presently around 100 AIUs active in Portugal, which invest in a variety of assets, ranging from financial instruments to football players.

AIUs tend to be structured like other funds in that they are operated by a management company, more often than not part of a Portuguese financial institution. AIUs are regulated as retail funds by the Comissão do Mercado de Valores Mobiliários (CMVM) but can also be structured as an investment company, which provides investors with greater control over the management and investment decisions of the fund. Lawyers claim that AIUs have been on the rise to plug the gap between investor appetite and regulatory restrictions.

"We've seen an increased demand for AIUs since 2013," explains Pedro Simões Coelho from Viera de Almeida. "Probably due to the fact that traditional funds have much tighter legal frameworks, with less risk and lower returns – investors are willing to take greater risk for higher returns." He adds: "Likewise, AIUs are more flexible, notably in terms of how they may be structured, the type of assets they may invest in and the portfolio limitations they are subject to, although they tend to have stricter disclosing and information rules."

Lawyers claim the tendency of migration from more traditional types of funds – which tend to be open-ended funds investing in plain vanilla assets, such as shares or simple bonds – to AIUs is continuing and creating interesting legal work relating to innovative structuring and regulatory matters.

"We worked on the first-ever funds set-up according to the Portuguese investment funds legal framework for Portuguese football players, for Benfica and then Sporting, the two rival clubs from Lisbon," Simões Coelho says. "These were clearly AIUs, which were innovative to set-up and involved lots of correspondence with the CMVM."

Finding a balance

Advisers stress that they have to temper the flexibility in establishing AIUs with the requirements of ensuring they stick within the regulatory framework, making it a dual mandate. "AIUs present interesting challenges for lawyers because the framework is a two-way street," says de Sousa Monteiro. "AIUs are designed to be more flexible in terms of structure when compared with other funds and regulators are thorough and relatively conservative in their review of a structure – finding the right balance between the legislative framework, the investors' goals and the regulators' permitted flexibility is indeed the key factor."

Lawyers expect the next wave of AIU-related work to come from the implementation of EU Directive 2011/61/EU, also known as the Alternative Investment Fund Managers Directive (AIFMD). AIFMD must be transposed into national law by this year. "In Portugal [the directive] will bring greater regulatory duties for the management entities of AIUs, notably covering matters such as transparency, remuneration, leverage and the requirement for individual custodians and risk managers; all of which will require high-end legal advice," Simões Coelho concludes.