



# ICLG

The International Comparative Legal Guide to:

## **Anti-Money Laundering 2018**

### **1st Edition**

A practical cross-border insight into anti-money laundering law

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# Portugal

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## 1 The Crime of Money Laundering and Criminal Enforcement

### 1.1 What is the legal authority to prosecute money laundering at national level?

The Public Prosecutor, assisted by police agencies.

### 1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

Anyone who converts or transfers funds – or intervenes or aids within such operations – in order to conceal their unlawful origin may be held liable for money laundering. Predicates include tax evasion, incitement and exploitation of prostitution, child abuse, trafficking (arms, organs, drugs), bribery and corruption, influence peddling and any crime punishable with a minimum sentence above six months' imprisonment or with a maximum sentence above five years' imprisonment.

### 1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

Yes. The Portuguese criminal law applies provided that any stage of the money laundering process relates by any way with the Portuguese territory (e.g. funds transferred to Portuguese banks).

### 1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

The public prosecutor – and the police agencies – have full competence regarding money laundering criminal offences. However, the Bank of Portugal, the Portuguese Securities Exchange Commission, the Registry and Notary Office, the Real Estate and Construction Authority and the Tax Authority, among others, are also responsible for investigating infractions related with money laundering offences.

### 1.5 Is there corporate criminal liability or only liability for natural persons?

There is both corporate and natural person criminal liability for money laundering criminal offences and related regulatory offences.

### 1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

The imprisonment penalty may range up to a maximum of 12 years, although this is always limited to the maximum sentence applicable to the predicate offence, if lower. In case of legal entities, the imprisonment sentence is converted into a fine penalty. One day of prison corresponds to 10 days of fine, and each day of fine corresponds to an amount of between €100 and €10,000, which the court shall set depending on the economic and financial situation of the convicted entity and its expenses with employees.

### 1.7 What is the statute of limitations for money laundering crimes?

The statute of limitations is 15 years (without prejudice of potential causes of interruption or suspension, which may impact the calculation of the maximum time period).

### 1.8 Is enforcement only at the national level? Are there parallel state or provincial criminal offences?

Yes, currently the enforcement applies only at national level.

### 1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

If the Public Prosecutor has solid suspicions that the defendant may lack funds to guarantee the payments and debts related to the crime under investigation, it can issue a petition to the court and the latter may order the confiscation of the defendants' assets, even without criminal conviction.

### 1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

Yes, including directors.

**1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?**

In the case of money laundering, there is no other way if not by a criminal (judicial) proceeding to settle the case. The records of the proceedings become public, if not early, at the trial stage.

**2 Anti-Money Laundering Regulatory/ Administrative Requirements and Enforcement**

**2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.**

Under the recent Law 83/2017, from August 18<sup>th</sup> 2017, the authorities responsible for imposing anti-money laundering requirements on financial institutions, depending on the type of institution, are the Bank of Portugal, the Portuguese Securities Market Commission, the Portuguese Insurance and Pension Funds Supervisory Authority and even the General Inspectorate for Finance. On other businesses, the responsible authorities are professional associations and other government agencies and authorities.

**2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?**

Yes, our legal framework allows self-regulatory organisations or professional associations to impose regulatory provisions or rules concerning anti-money laundering requirements in development of the above-mentioned Law.

**2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?**

Yes, some professional associations are responsible for anti-money laundering compliance and enforcement against their members, including the legal requirements.

**2.4 Are there requirements only at the national level?**

No, there are also requirements at the European Union level.

**2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?**

The government agencies and authorities responsible for examination for compliance and enforcement of anti-money laundering requirements on financial institutions, depending on the type of institution, are the Bank of Portugal, the Portuguese Securities Market Commission, the Portuguese Insurance and Pension Funds Supervisory Authority and even the General Inspectorate for Finance. For other businesses, the same examination and enforcement is carried out by some professional associations and other government agencies and authorities.

**2.6 Is there a government Financial Intelligence Unit (“FIU”) responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?**

Yes, there is a Financial Intelligence Unit (“FIU”) that integrates the bodies of the Portuguese Criminal Police. FIU is responsible for preparing and updating statistic data related to suspicious transactions that have been reported and their results, and also data related to transnational information requests that have been sent, received or refused by FIU. You can find further information at the following link: <http://www.portalbcft.pt/pt-pt/content/unidade-de-informa%C3%A7%C3%A3o-financeira>.

**2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?**

In what concerns administrative offences, under the Law 83/2017, the statute of limitations is five years, with possible suspension (and interruption) of this deadline in certain cases.

**2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?**

Failure to comply with the regulatory/administrative anti-money laundering requirements can reach a penalty of up to €5,000,000 depending on the nature of the entity, and may be aggravated up to double of the economic benefit obtained or up to 10% of the annual volume of business, in certain cases.

Penalty provisions concern: the illegitimate disclosure of information, communications, analyses or other elements, to clients or third parties; the disclosure or improper favouring of identity discovery of those who provided information, documents or elements concerning suspicious transactions; and the refusal of following orders or legitimate commands from sectorial authorities when given in the context of performing their duties, or, by any means, creating obstacles to their execution.

**2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?**

It is possible to impose on both individuals and legal entities for administrative offences, besides monetary fines, additional sanctions such as: (i) losing for the State the object of the offence and the economic benefit obtained with the offence; (ii) closing the establishment where the agent develops the activity or job related to the offence, for a period up to two years; (iii) prohibition of professional activity or job related to the offence, for a period up to three years; (iv) prohibition of exercising certain directorial and representative functions, among others, in obliged entities to the supervision or control by a sectorial authority, for a period up to three years; and (v) publishing the final or definitive decision.

**2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?**

There are both administrative and criminal penalties in case of violations of anti-money laundering obligations. Besides the crime of money laundering itself, the crimes related to violations of

anti-money laundering obligations concern illegitimate disclosure of information, disclosure and improper favouring of identity discovery and even disobedience.

There are also disciplinary sanctions.

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**2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?**

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The process for assessment and collection of sanctions is carried out by several different government agencies and authorities, such as the Bank of Portugal, the Portuguese Securities Market Commission, the Portuguese Insurance and Pension Funds Supervisory Authority and even the General Inspectorate for Finance, depending on the type of institution or obliged entity. The process has an entire administrative procedural stage where the individuals or legal entities may defend themselves. If the competent authority decides to impose a sanction on an individual or legal entity, they may appeal to a judicial court.

Not all resolutions of administrative penalty actions by competent authorities are public, because the publishing of the resolution must be decided by the competent authority as an additional sanction.

Yes, financial institutions have challenged penalty assessments in judicial and even administrative proceedings.

### 3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

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**3.1 What financial institutions and other businesses are subject to anti-money laundering requirements? Describe which professional activities are subject to such requirements and the obligations of the financial institutions and other businesses.**

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The financial institutions subject to anti-money laundering requirements are: credit, payment and electronic money institutions; investment firms and other financial companies; self-managed securities and real estate investment companies; self-managed venture capital companies, investors in venture capital, social entrepreneurship companies, venture capital investment management companies, venture capital investment companies and specialised alternative investment companies; securitisation companies; companies which commercialise contracts relating to the investment in tangible assets to the public; consultants for investment in securities; pension fund management companies; and companies and insurance intermediaries with activity in life insurance. The requirements apply also to any branches located in Portuguese territory pertaining to any previous entities headquartered abroad, as well as to any off-shore financial centres; to payment institutions headquartered in another EU Member State, when operating in Portuguese territory through agents, or any electronic money institutions headquartered in another EU Member State, when operating in Portuguese territory through agents or distributors. Any of the previously mentioned entities operating in Portugal under the free provision of services may have to render information to the relevant sector authority. The agents and distributors, whether natural or legal persons, are also subject to anti-money laundering requirements.

The following professional activities are also subject to anti-money laundering requirements: providers of gambling, lottery or betting services, whether in an establishment or online; non-

financial real estate entities; auditors, external accountants and tax advisors, whether as natural or legal persons; lawyers, solicitors, notaries and any other independent legal professionals performing certain activities; trust or company service providers in certain activities; other professionals who intervene in operations of selling and buying rights over professional sport's players; economic operators exercising auction or lending activities, economic operators importing or exporting rough diamonds; entities which are authorised to exercise the activity of transportation, custody, handling and distribution of funds and values; and other persons trading in goods where payment is made in cash.

Finally, some requirements are also applicable to crowdfunding platforms, of the loan and capital type, and managing entities of crowdfunding platforms, in the categories of donation and reward and non-profit organisations.

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**3.2 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?**

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Financial institutions must maintain an independent, permanent and effective "function of compliance" in terms of accompanying internal control procedures regarding anti-money laundering and other risks. The Bank of Portugal defines several requirements for this "function" such as independence and adequacy.

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**3.3 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?**

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There are no thresholds for reporting transactions suspected of money laundering, all suspicious transactions ought to be reported, regardless of the amounts involved.

The reporting of suspicious transactions is directed at the General Prosecution Office and the Financial Information Unit and must be made as soon as the suspicion arises and whether the operation has been merely proposed or attempted, if it is under course or it has already been concluded. The report must, at least, include: the identification of the natural or legal persons involved, as well as any known information on their activity; the specific procedures of enquiry and analysis carried out; the characterising and descriptive elements of the operation; the specific suspicious factors identified by the entity; and a copy of all supporting documentation obtained by the entity during their due diligence.

All entities subject to anti-money laundering requirements must keep records for a period of seven years, from the moment the client was identified, or in case of a business relationship, from the moment it terminated, of all documents and data obtained from clients, as well as all documents pertaining to the client's files and accounts, and all documentation in compliance with a legal requirement, such as the reporting duty.

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**3.4 Are there any requirements to report routine transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.**

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The current anti-money laundering legislation allows for the ministry of justice to define certain types of transactions which should be systematically reported, as well as the layout, deadline, contents or other aspects of such reports. However, such regulation has not been passed at the present.

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### 3.5 Are there cross-border transaction reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

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The anti-money laundering requirements are applicable to all transactions, regarding whether it is a national operation or a cross-border one. Within the EU there is a level playing field regarding applicable requirements and authority control and information sharing. If the transaction is carried out in the context of a correspondent relationship or with a high-risk third party, even though there are no specific requirements for reporting, there is a higher risk profile to the operation leading to enhanced due diligence measures having to be taken by the entities in question.

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### 3.6 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

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Entities subject to anti-money laundering requirements must comply with customer identification and due diligence requirements whenever they establish a business relationship or when carrying out an occasional transaction that (i) amounts to €15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked or (ii) constitutes a transfer of funds, as defined in point (9) of Article 3 of Regulation (EU) 2015/847 of the European Parliament and of the Council, exceeding €1,000. For providers of gambling, lottery or betting services, when carrying out transactions amounting to €2,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked. Finally, whenever there is a suspicion of money laundering regardless of any derogation, exemption or threshold or when there are doubts about the veracity or adequacy of previously obtained customer identification data.

Customer identification and due diligence require obtaining elements of identification, the activity exercised, documents to verify such elements and information regarding the purpose and nature of the intended business relationship. When the specific risk profile of the client or the characteristics of the operation justify it, information should be obtained regarding the origin and destination of the funds. There must be a constant monitoring of the business relationships in order to ensure that the operations carried out in its course are coherent with the knowledge the entity has of the activities and risk profile of the client and the origin and destination of the movement of funds.

Due diligence requirements are enhanced whenever there is a transaction involving high-risk third countries, non-face-to-face business relationships or transactions, politically exposed persons or other high public and political offices, life insurance policies or cross-border correspondent relationships with third country institutions. The Bank of Portugal is currently undergoing works for the issuance of additional regulation under Law 83/2017.

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### 3.7 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

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Financial entities are prohibited from establishing or maintaining correspondent relationships with shell banks or to establish or

maintain correspondent relationships with other financial institutions which allow their accounts to be used by shell banks.

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### 3.8 What is the criteria for reporting suspicious activity?

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If an entity knows, suspects or has enough reason to believe that certain funds or other assets, regardless of the amount involved, originated in criminal activity or are related to terrorism financing, they must report the suspicious activity.

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### 3.9 Does the government maintain current and adequate information about legal entities and their management and ownership, i.e., corporate registries to assist financial institutions with their anti-money laundering customer due diligence responsibilities, including obtaining current beneficial ownership information about legal entity customers?

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There is a public corporate registry that can be accessed through a code for each individual company. The legislation regarding a central register for beneficial owners entered into force on 19<sup>th</sup> November 2017. The register itself is still under implementation but its intention is to provide, through different levels of access, information about the beneficial ownership of legal entities, amongst others, to financial institutions and other entities which are subject to anti-money laundering requirements, and in particular, to customer due diligence responsibilities.

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### 3.10 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions?

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Accurate information on originators and beneficiaries will depend on the client's risk profile and the characteristics of the operation.

But in the specific case of funds transfer when not associated with an account, the financial institution of the originator or the beneficiary must comply with collecting a certain amount of accurate information, depending on the type of the entity, and regarding the originator or beneficiary's identification, if the amount of the transfer is €15,000 or more (according to Regulation 5/2013 from the Bank of Portugal).

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### 3.11 Is ownership of legal entities in the form of bearer shares permitted?

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No, not since 2017.

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### 3.12 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

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Yes, there are certain requirements that are specific to providers of gambling, lottery or betting services, regarding, for example, the form of prize payment. Specific requirements also apply to legal professionals, considering there is a derogation of the reporting duty whenever the services provided for the client are in the context of a judicial process.

**3.13 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?**

Under Portuguese jurisdiction, trusts can only be registered in the free trade zone of Madeira. In that sense, there are anti-money laundering requirements applicable in terms of the information on beneficial ownership that needs to be collected from entities and declared to the Central Register of Beneficial Owners.

## 4 General

**4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?**

The Bank of Portugal is preparing a regulatory instrument that was under public consultation until 29<sup>th</sup> March 2018. Other sectorial authorities are also preparing additional regulatory instruments.

**4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force (“FATF”)? What are the impediments to compliance?**

In the last FATF evaluation (December 2017), Portugal was considered to have a sound legal framework in place to combat money laundering. According to that Evaluation, Portugal was deemed Compliant for 12 and Largely Compliant for 22 of the FATF 40 Recommendations. The areas of non-profit organisations, correspondent banking, wire transfer, customer due diligence of designated non-financial businesses and professions, transparency and beneficial ownership of legal persons were deemed partially compliant.

**4.3 Has your country’s anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Counsel of Europe (Moneyval) or IMF? If so, when was the last review?**

FATF conducted an onsite visit (28<sup>th</sup> March–13<sup>th</sup> April 2017) and produced a Mutual Evaluation Report in December 2017, mentioned above. On 22<sup>nd</sup> April 2014, the IMF Report “Portugal: Eleventh Review Under the Extended Arrangement, and Request for Extension of the Arrangement and Waivers of Applicability of End-March Performance Criteria” was published that mentions AML efforts of Portugal.

**4.4 Please provide information for how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?**

The AML/CFT Coordination Commission, established in 2015, is responsible for the overall policy coordination and implementation of AML, CFT and counter-proliferation financing measures. Relevant legislation and guidance can be accessed in their homepage, at the following link: <http://portalbcft.pt/pt-pt>; however, it is not available in English. Some sectorial authorities may have internet pages in English, such as the Bank of Portugal (<https://www.bportugal.pt/en/page/legislation-and-rules?mlid=1149>) but usually the legislation is in Portuguese.



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Filipa Marques Júnior joined the firm in 2002 and became a non-equity partner in 2016. She is a member of the litigation team and is active in the areas of criminal and regulatory litigation, investigations and compliance.

Filipa has assisted clients both in court proceedings and in the preventive and pre-litigation stages on matters relating to regulatory and criminal liability in the most diverse areas related to white-collar defence, such as anti-bribery and corruption, money laundering, tax crimes, market manipulation, and insider trading, among others. She also advises on criminal matters within the international judicial cooperation. In recent years Filipa has given special attention to developing preventive and compliance measures, working together with the clients on the prevention and investigation of possible wrongdoings. Filipa also conducts internal training on topics related to the prevention of corruption, money laundering and terrorism financing.

Former professor at the Law Faculty of Nova University, where she taught Interdisciplinary Legal Practice from 2008 to 2009.

Filipa was an advisor at the Legal Policy and Planning Office of the Ministry of Justice in the area of enforcement procedure from 2000 to 2001.



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In parallel, he has been counselling companies and individual clients on a variety of matters related to compliance and regulatory enforcement, in different sectors such as banking, capital markets, energy, telecommunications and media.

He is an Assistant Teacher of the Law Faculty of the University of Lisbon, teaching Criminal Law.

He is also a Researcher at the Center for Research in Criminal Law and Criminal Studies and founding associate of the Institute of Criminal Law and Criminal Studies of the Law Faculty of the University of Lisbon, participating as guest lecturer in conferences and postgraduate courses on matters related to criminal law, criminal procedure, regulatory offences and compliance.

MORAIS LEITÃO  
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