



REGULATION NO. 276/2019 AND LAW NO. 83/2017, OF AUGUST 18

“REAL ESTATE COMPLIANCE OFFICER, REAL ESTATE WHO?”

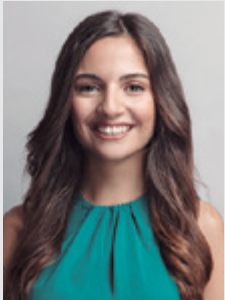
by: Duarte Santana Lopes, Bernardo Silveira, Patrícia Garcia | Lawyers



On June 25, 2019, Regulation 276/2019, of March 26 (“**Regulation 276/2019**”) of the Institute for Public Markets, Real Estate and Construction (Instituto dos Mercados Públicos, do Imobiliário e da Construção, I.P./IMPIC, I. P.) (“**IMPIC**”) came into force, defining the conditions, procedures, instruments, mechanisms and formalities for the fulfilment of the general and specific obligations laid down in Law 83/2017, of August 18, on the prevention and combat of money laundering and terrorist financing, as amended through Decree-Law 144/2019, of September 23, and Law 58/2020, of August 31, (“**Law 83/2017**”).



Regulation 276/2019 central focus is to establish and regulate the specific aspects that entities involved with real estate activities in Portugal must perform in order to comply with their legal duties to prevent and combat money laundering and terrorist financing (“**AML/CTF**”). In this context, entities involved with real estate activities in Portugal are subject to the supervision IMPIC, which is the authority of the real estate sector with powers to oversee and verify the compliance of said entities with their specific AML/CTF obligations.



Under Law 83/2017, sectoral authorities, such as IMPIC, may decide to impose as mandatory, within the companies subject to its supervision, the appointment of a Compliance Officer. IMPIC resorted to this legal option to, in fact, lay down said mandatory appointment as established by Regulation 276/2019.

Considering the legal framework summarized above, the purpose of this article is to outline the main features of the legal regime applicable to Compliance Officer role in **AML/CTF** prevention within companies operation in the real estate sector, considering the laws and regulations currently in force in Portugal.

i) Entities subject to Regulation 276/2019

Entities subject to Regulation 276/2019 are those, irrespective of their financial or non-financial nature, involved in real estate activities or which carry out the following acts in Portugal: Real Estate brokerage; Purchase, sale, purchase for resale or exchange of real estate; Real estate development; and Real estate leasing.

ii) Compliance Officer Appointment

Under article 10(1) of Regulation 276/2019, whenever the entity is a private limited company or a public limited company, with more than five employees (either with employment contracts or with service provision contracts), it must appoint a regulatory Compliance Officer from its senior board or equivalent management body, provided that it has the necessary powers to monitor the compliance with the rules on AML/CTF

This legal duty to appoint a Compliance Officer, as established in Regulation 276/2019 and in line with Law 83/2017, goes further than the mere designation of said employee. In fact, the appointment itself must be communicated to the sectoral authority, IMPIC, within 60 (sixty) business days of the date of designation.

The obligation to report the choice and appointment of the Compliance Officer within a real estate company shall be made using the form available on the IMPIC online portal, and it shall enclose the relevant appointment and acceptance documents.

Furthermore, any change to the designation of the chosen officer must be notified to IMPIC within 20 (twenty) business days of such change, under article 10(5) of Regulation 276/2019.



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As previously mentioned, Regulation 276/2019, as foreseen in its article 10(1), only established the appointment of a Compliance Officer as a legal obligation whenever the entity is a private limited company or a public limited company with more than five employees. Therefore, in the case of an entity not meeting those requirements, neither the duty to appoint a compliance officer nor the duty to notify such decision to IMPIC are applicable to such entity, since, considering its corporate structure, it does not fall under said article's scope. Notwithstanding, the need of proper implementation of AML/CTF policies by the respective board of directors in light of the applicable AML/CTF law shall continue to be respected, as well as the other duties foreseen in the applicable legislation on these matters.

iii) Specific Duties of the Compliance Officer

Article 16(2) of the Law 83/2017 sets out the specific duties that must be carried out exclusively by the person appointed to perform the role of Compliance Officer.

According to said provision, the board member appointed or to be appointed to carry out the role of Compliance Officer must ensure that the company defines and applies internal policies and procedures suitable to effectively manage money laundering risks (cf. articles 12 and 16(2) of Law 83/2017). In this regard, the Compliance Officer shall participate in the definition of such internal policies and procedures, issuing a prior opinion on its adequacy and sufficiency.

The Compliance Officer shall also be responsible for ensuring that the company complies with the AML/CFT duties that it is subject to as foreseen in the legal and regulatory rules on this matter (e.g. duty of control, duty of report, duty of refusal and duty to abstain, among others)

Furthermore, the quality, adequacy and effectiveness of the AML/CTF policies, procedures and controls shall be monitored, by the designated director, through periodic and independent evaluations with the appropriate frequency related with the company's business area. The director shall propose any update of the policies deemed as relevant (cf. article 16(2) of Law 83/2017).

Additionally, the director must ensure that all relevant information from the company's different business areas is compiled and centralized, in order to effectively perform its role as Compliance Officer.

Finally, the appointed director shall also assume the role of first contact person between the company and the judicial and supervisory authorities, namely in what concerns to the communication of suspicious transactions, under article 43 of the Law 83/2017. According to this provision, in the event of the company acknowledging, suspecting or having sufficient reason to suspect that certain funds or other assets, regardless of the amount or value involved, are related with criminal activities or terrorist

financing or that any operation may violate the AML/CTF legislation, it shall immediately notify the Central Prosecutor General's Office of Investigation and Prosecution (Departamento Central de Investigação e Ação Penal da Procuradoria-Geral da República, DCIAP) and the Financial Intelligence Unit (Unidade de Informação Financeira), as set forth on article 43 of Law 83/2018. This communication shall be made by the Compliance Officer and the decision to do so shall not depend on a prior decision of all the members of the board of directors.

On a practical note, considering that the Suspicious Transactions Reporting Portal (portal COS) is not yet available, the Compliance Officer may submit said communication through the form available at <http://www.portalbcft.pt>.

iv) Sanction

Under Law 83/2017, the failure to comply with the appointment of a director to perform the role of the Compliance Officer, as well as the failure to comply with the specific duties attributed to said person are considered serious misdemeanours, pursuant to Article 169-A, paragraphs g) and h) of said legislation.

The penalties applicable in the case of the referred infractions vary according to the outlines of its perpetration. As such, under Law 83/2017, the failure to comply with the appointment of a Compliance Officer, when mandatory, and the failure of said Compliance Officer to comply with its specific AML/CTF duties is punished with a penalty from 5,000.00€ (five thousand euros) to 1,000,000.00€ (one million euros) if the misdemeanor was committed by a legal entity/company, or with a penalty from 2,500.00€ (two thousand and five hundred euros) to 1,000,000.00€ (one million euros) if the misdemeanor was committed by an individual.

Final remarks

Notwithstanding the important steps made in mitigating and preventing risks in connection with money laundering in real estate market, a lot is still to be done, for sure.

In a nutshell, real estate entities will have an important role to play in what concerns the proper implementation of AML/CTF policies (preventing getaways) in their corporate organizations, notably by creating and empowering the corporate bodies deemed as required for an appropriate definition and enforcement of internal policies and procedures suitable to effectively manage money laundering risks and comply with the legal duties established on this matter.

In that sense, Compliance Officer's role is key to ensure the corporate commitment and awareness in the implementation of the best AML/CTF practices. ■