

## LEGAL ALERT

# REGULATION OF IMPIC, I.P., ON THE PREVENTION AND COMBATING OF MONEY LAUNDERING AND TERRORIST FINANCING IN THE REAL ESTATE SECTOR

[Regulation 276/2019, of 26 March](#), which will enter into force on 25 June 2019 (Regulation 276/2019), lays down the conditions for the exercise and defines the procedures, instruments, mechanisms and formalities for the fulfilment of the general and specific obligations laid down in [Law 83/2017, of 18 August](#), and the other aspects necessary to ensure that entities involved with real estate activities in Portugal perform their duties to prevent and combat money laundering and terrorist financing, under the supervision of the Institute for Public Markets, Real Estate and Construction (*Instituto dos Mercados Públicos, do Imobiliário e da Construção, I.P./IMPIC, I. P.*).

Entities subject to this Regulation are those involved in real estate activities or which carry out the following acts:

- Estate agency;
- Purchase, sale, purchase for resale or exchange of real estate;
- Real estate development; and
- Real estate leasing.

This Legal Alert aims to highlight the main innovations introduced by this Regulation, which will be outlined below:

## **Identification and due diligence procedures**

One of the main practical aspects clarified by Regulation 276/2019 concerns transactions involving a promissory agreement. According to article 5 (2), the identification and due diligence procedures must be carried out at a time prior to the conclusion of that Agreement, regardless of whether it is a purchase and sale or a lease agreement.

In addition, IMPIC, I.P., elaborates and specifies the type of documents that should be requested as proof of customer identification, supplementing articles 24 and 25 of Law 83/2017, of 18 August. This is particularly relevant, *inter alia*, in cases where those engaged in real estate activities are sole traders, foreign entities with no registered business activity in Portugal intending to only carry out a single transaction or business activity for a period of less than one year, minors, unemployed persons or non-resident natural persons (article 6).

## **Identification of beneficial owners by means of a statement issued by the client or its legal representative**

Regulation 276/2019 also specifies the low-risk situations of money laundering and terrorist financing, in which identification of the beneficial owner is permitted on the basis of a statement issued by the client. It is cumulatively necessary that (article 8 (3)):

- The real estate entity, at a time prior to the transaction, states in writing the circumstances which demonstrate that there is a low-risk situation;
- The information relating to the beneficial owner raises no doubts that it is up-to-date and accurate;
- The party is established in a low-risk country or territory (according to Annex II of Law 83/2017, of 18 August); and
- The real estate entity immediately establishes the identity of the beneficial owner if it becomes aware of any circumstances which might jeopardise verification of a risk situation proven to be low.

## **Regulatory compliance officer**

Whenever the entity is a private limited company or a sole trader, with more than five employees (with employment contracts or service provision contracts), or a public limited company, it must designate a regulatory compliance officer from its senior board or equivalent management body, provided that it has the necessary powers and duties to monitor compliance with the rules on the prevention and combating of money laundering and terrorist financing (article 10 (1)).

The appointment must be communicated within 60 business days of the date of designation using the form available on the IMPIC, I. P., portal, and annexing the relevant appointment and acceptance documents. If such an officer has already been appointed, the entities have 60 business days from the date of entry into force of the Regulation to make that notification (article 10 (3), (4) and (6)).

Any change to the designation must be notified within 20 business days of the alteration (article 10 (5)).

## **Training requirement**

Real estate entities shall conduct (and register) specific training activities of their managers, employees and other staff to prevent and combat money laundering and terrorist financing, with the following frequency (article 11):

- One training session every two calendar years, in entities with one to five members of staff;
- One training session every calendar year, in entities with six to ten members of staff; and
- At least one training session every calendar year, in entities with more than ten members of staff; all these training sessions must be attended by the regulatory compliance officer.

## **Communication of irregularities and reports**

Real estate entities shall draw up an annual report – to be archived for seven years and to be made available on a permanent basis to IMPIC, I. P. This report should contain (article 12):

- Description of the specific, independent and anonymous channels that appropriately ensure the internal reception, handling and archiving of reported irregularities; and
- Summary of the internal communications received and the processing thereof.

## **Compulsory communications to IMPIC, I.P.**

Real estate entities are obliged to report to IMPIC, I. P. (article 14):

- The date they start business activities;
- Details of each real estate transaction in which they participate; and
- Details of lease agreements with a monthly rent equal to or greater than EUR 2,500.

The data to be reported and the template to be used are those set out in the Annexes to the Regulation. To this end, real estate entities should be registered on the [www.impic.pt](http://www.impic.pt) website and compulsory communications shall be electronically authenticated using a qualified digital certificate (pursuant to [Decree-Law 290-D/99, of 2 August](#)) (articles 14 and 15).

Compulsory communications of details of real estate transactions and lease agreements shall be made within the following time limits (article 20(1)):

- By the end of August, for real estate transactions and lease agreements carried out in the first half of each year; and
- By the end of February of the following year, for real estate transactions and lease agreements carried out in the second half of each year.

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