

## LEGAL ALERT

# LEGAL FRAMEWORK FOR PREVENTING AND COMBATING THE UNAUTHORISED FINANCIAL ACTIVITY AND PROTECTING CONSUMERS

### LAW NO. 78/2021, OF 24 NOVEMBER

Law no. 78/2021, of 24 November (Law 78/2021), establishes a complementary legal framework of consumer protection in relation to the offer of products, goods or the provision of financial services, by a person or entity that is not qualified to carry out such activity. “Unauthorized financial activity” is defined as: (i) the attempt to or carry out of acts or the professional practice of an activity regulated by the financial sector legislation without qualification or registration; or (ii) the attempt to or carry out of other permissive facts legally due or out the scope of the qualification, registration or of such facts.

We highlight the following:

- A general duty to abstain is provided for with a twofold scope: (i) no one shall disseminate, advise or recommend products, goods or financial services that are being advertised, offered, provided for, marketed or distributed by any person or entity that is not legally qualified to do so or is not acting on behalf of a qualified person or entity; and (ii) any person who has knowledge of the practice of an unauthorized financial activity must report it to the financial supervisory authorities, *i.e.*, the Insurance and Pension Funds Supervisory Authority (*Autoridade de Supervisão de Seguros e Fundos de Pensões – ASF*), the Bank of Portugal (*Banco de Portugal – BdP*) or the Portuguese Securities Market Commission (*Comissão de Mercado de Valores Mobiliários – CMVM*), as the case may be.

- Lawyers, registrars, notaries, solicitors, official registrars, or chambers of commerce and industry (except those acting on behalf of entities authorised by the financial supervisors) will now have more detailed duties, being noted that, as a general rule, as from 1 March 2022, they must electronically communicate to the BdP information on public deeds, certified private documents or documents with their certified signature in which intervene and which fall under certain types of contracts, such as, for instance, loan agreements, debt acknowledgements, restitutive leasing or real estate purchase and sale contracts associated to a lease agreement to the seller or of transfer of ownership to the original seller.
- In civil loan contracts exceeding 2500 euros, the delivery of the money loaned must be made by means of a bank instrument, and the document signed by the borrower, in a public deed, or in a certified private document, must state the date and the bank instrument used, as well as the information necessary for its documentary or computer traceability.
- Advertisement aimed at marketing of products, goods or financial services may only be provided by an entity qualified for this activity (or by a person acting on its behalf).
- In the disclosure, broadcasting or dissemination of advertisement relating to the marketing of any products, goods or provision of financial services in media or websites organised as a coherent whole of a commercial, editorial, newsworthy or other character, or promoted in any way by advertising professionals or agencies (which also have additional duties, namely of veracity assessment), advertisers and credit intermediaries shall demonstrate registration as a qualified entity and declare compliance with the principles of lawfulness in matters of advertisement and consumer information.
- If an unauthorized financial activity is attempted or promoted, the BdP, CMVM and ASF are empowered to order, namely, the blocking of access to electronic websites, internet protocol or domain name system, or the removal of specific illicit content.
- Enhanced reporting duties are also set forth, such as the provision of expeditious reporting channels or the disclosure of final criminal or administrative offence convictions regarding the attempt or the exercise of unauthorised financial activity or the disclosure (as an ancillary

penalty in administrative offence proceedings) of an alert regarding the entity's lack of qualification to provide financial services on the BdP, CMVM and ASF websites.

Law 78/2021 comes into force on **1 January 2022**.

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