

LEGAL ALERT

THE NEW PREVENTION OF CORRUPTION AND WHISTLEBLOWING REGIMES

The laws that implement the National Anti-Corruption Strategy 2020-2024 were published last December, namely [Law No. 93/2021, of 20 December](#), and [Decree-Law No. 109-E/2021, of 9 December](#), which entered into force in June 2022, establishing the **General Regime for the Protection of Whistleblowers** and the **General Regime for the Prevention of Corruption**.

Those regimes create a list of new obligations applicable to all legal persons with registered offices in Portugal employing 50 or more employees and to branches in national territory of legal persons with registered offices abroad employing 50 or more employees. Said regimes also provide for the corresponding sanctioning regimes, which, in the case of the General Regime for the Prevention of Corruption, will only come into effect one year after the entry into force of the respective legal diploma.

New obligations for companies with more than 50 employees

- Implementation of a **regulatory compliance programme**, which includes:
 - A **plan for the prevention of risks of corruption and related infractions** (PPR), covering the entire organisation and activity of the company, whose purpose is to identify, analyse and classify risks and situations that may expose the entity to acts of corruption and related infractions, as well as to contain the preventive and corrective measures to reduce the probability of occurrence and impact of the identified risks and situations;
 - A **code of conduct**, applicable and made known to all managers and employees, which should establish the company's principles, values and rules regarding

professional ethics and identify the disciplinary sanctions applicable in the event of non-compliance;

- An internal **training programme** that instructs managers and workers on the policies and procedures implemented by the company to prevent corruption and related infractions;
- A **whistleblowing channel** to follow up on reports of acts of corruption and related infractions, in compliance with the provisions of the General Regime for the Protection of Whistleblowers;
- Appointment of a **compliance officer**, to ensure and control the implementation of the compliance programme, as well as guaranteeing that this officer has the necessary internal information and human and technical resources to perform his duties properly; and
- Creation of an **evaluation system** covering internal control and monitoring mechanisms for the execution of the PPR, in order to assess its effectiveness and ensure its improvement.

Sanctioning regime

Both diplomas provide for sanctioning regimes of misdemeanour nature. In the **General Regime for the Protection of Whistleblowers**, fines range from EUR 500 to EUR 25,000 for natural persons and from EUR 1000 to EUR 250,000 for legal persons, while in the **General Regime for the Prevention of Corruption** fines may reach EUR 3740.98 for natural persons and range from EUR 1000 to EUR 44,891.81 for legal persons. By way of example, the following constitute misdemeanour offences:

- Failure to adopt a PPR or the adoption of a PPR lacking certain elements;
- Failure to adopt a code of conduct or the adoption of a code of conduct that disregards the penal rules regarding corruption and related infractions;
- Failure to implement an internal control system;
- Posing obstacles for the presentation or follow-up of reports/denunciations;
- The practice of retaliatory acts against the whistleblower;
- Failure to comply with the duty of confidentiality set out in the General Regime for the Protection of Whistleblowers;
- The communication or public disclosure of false information.

The team at Morais Leitão continues to analyse in detail this new legislation in order to collaborate with its clients in the implementation of measures and internal regulations necessary to comply with it and, above all, to manage the risks associated with corrupt practices, in general, and the violation of these new rules, in particular. Morais Leitão will soon also publish a guide on these matters, with the purpose of helping all entities involved to navigate through this new and demanding regulatory reality.

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