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Practical cross-border insights into anti-money laundering law

Anti-Money Laundering 2023

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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 the national level?

The criminal offence of money laundering and its relevant penalties are provided for in article 368-A of the Portuguese Criminal Code ("PCC"). This provision was established in 2004 – Law 11/2004, March 27th – and its last amendment took place in 2021 – Law 79/2021, November 24th.

Other relevant provisions regarding money laundering are provided for in Law 83/2017, August 18th. This Law establishes a set of preventive and repressive measures aimed at tackling money laundering and terrorism financing.

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?

Under article 368-A of the PCC, a money laundering criminal offence is committed by whoever converts, transfers, assists or facilitates any operation of conversion of property obtained by oneself or a third party, directly or indirectly, with the purpose of concealing its illicit origin or in order to prevent the criminal prosecution of the perpetrator of a predicate offence.

The crime of money laundering is also committed by anyone who, without being the perpetrator of the predicate offence, acquires, holds, or uses the illicit property while being aware of its illicit origin.

Underlying each money laundering offence is the concept of "illicit property", meaning the assets resulting directly or indirectly from a specific predicate offence provided for in no. 1 of article 368-A.

The catalogue of predicate offences includes any crime punishable with a minimum sentence of over six months imprisonment or a maximum sentence of over five years imprisonment, and various specified crimes such as child sexual abuse, tax fraud, bribery, corruption, influence peddling and trafficking of arms, organs, drugs, or people.

All the elements outlined must be proven by the authorities in order to convict a defendant for money laundering. Additionally, as in any other intentional crime, the Public Prosecutor must also prove the wilful intent of the perpetrator, particularly that the agent knew the property was a product of a predicate offence and that they intended to dissimulate the property's illicit origin or to avoid the prosecution of the offence's perpetrator.

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

Yes. As a rule, Portuguese criminal law applies to all acts committed in Portuguese territory, regardless of the offender's nationality. Therefore, Portuguese criminal law applies provided that any stage of the money laundering process occurs within Portuguese territory (for example, if funds are transferred to Portuguese banks).

The crime of money laundering is punishable regardless of the location of the predicate offence or even if such location is unknown.

Portuguese criminal law is also applicable to acts committed abroad in cases affected by international conventions to which Portugal is bound.

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

In Portugal, the legal judicial authority with competence to prosecute money laundering is the Public Prosecutor, in particular the Central Office for Combating Corruption, Fraud and Economic and Financial Offences ("*Direção Central para o Combate à Corrupção, Fraudes e Infracções Económicas e Financeiras*"), which has jurisdiction over money laundering offences nationwide and takes part in the implementation of actions to prevent money laundering and combat the financing of terrorism.

The Public Prosecutor is assisted by police agencies, particularly the Judiciary Police's National Anti-Corruption Unit ("*Unidade Nacional de Combate à Corrupção*") and the Judiciary Police's Financial Intelligence Unit ("*Unidade de Informação Financeira*") ("FIU"), which have competence in anti-money laundering ("AML") and countering the financing of terrorism ("CFT") operations.

In addition, the Bank of Portugal, Portuguese Securities Market Commission, Registry and Notary Office, Real Estate and Construction Authority, Tax Authority and National Anti-Corruption Mechanism, among other entities, are also responsible for investigating regulatory infractions related to money laundering offences.

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

Under article 11, nos 1 and 2 of the PCC, there is both corporate and natural person criminal liability for money laundering criminal offences.

Article 11, no. 1 of the PCC contains a catalogue of crimes for which there might exist criminal liability of legal persons, which expressly includes the crime of money laundering.

A legal person may be held liable (without excluding the individual liability of the material perpetrators) if the relevant offence is committed in its name and according to the collective interest by an individual who occupies a position of leadership, or by an individual who acts under the authority of someone occupying a position of leadership, due to a violation of the monitoring and control duties pertaining to the latter.

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

The penalty of imprisonment may reach up to a maximum of 12 years, although it is always limited to the highest penalty applicable to predicate offences.

The penalty may be aggravated by one-third if the perpetrator commits the crime routinely.

In the case of legal entities, the imprisonment sentence is converted into a fine penalty. One month of imprisonment equates to a 10-day fine and each day of fine amounts to a sum of between €100 and €10,000. Within this framework, the court shall determine the applicable sentence according to the economic and financial situation of the convicted entity and its expenses regarding employees.

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

As stated in article 118, no. 1 (a) of the PCC, the statute of limitations for money laundering crimes is 15 years. However, this period is subject to normal suspension and interruption causes that may extend it.

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

Yes, currently enforcement applies only at the national level.

Since Portugal is a unitary state, the state has exclusive competence regarding criminal law.

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?

The Judiciary Police's Asset Recovery Office is responsible for the identification, location and seizure of the proceeds or products resulting from or related to crimes.

If the Public Prosecutor has solid suspicions that the defendant may lack funds to guarantee the payments of debts related to the crime under investigation, it can issue a petition to the court, and the pre-emptive confiscation of the defendant's assets may be ordered before any criminal conviction.

In the event of conviction for a crime of money laundering, article 7 of Law 5/2002, January 11th, provides for the confiscation of some of the defendant's assets, establishing the presumption that, to a certain extent, the difference between the value of the accused's assets and their lawful income constitutes an advantage of criminal activity.

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 Portugal, all criminal actions are resolved through judicial proceedings.

The records of the proceedings become public, at the latest, during the trial stage.

There is no contractual resolution mechanism applicable to criminal offences; however, specific norms favour defendants that cooperate with the competent authorities, by either mitigating the penalty or exempting them from it.

1.12 Describe anti-money laundering enforcement priorities or areas of particular focus for enforcement.

The most recent amendment to Law 83/2017, August 18th, which establishes a set of measures aimed at combatting money laundering and terrorism financing, was enacted by Law 56/2021, June 30th, transposing both Directive (EU) 2019/2177 on insurance and reinsurance activity and Directive (EU) 2020/1540 on collaborative finance providers.

This legislative evolution reveals a specific concern with the reinforcement of the cooperation framework between national supervisors and the European Insurance and Occupational Pensions Authority, particularly when it comes to cross-border activity, as well as the intention to regulate the regime applicable to new forms of funding such as crowdfunding and collaborative financing.

Besides ensuring the due and uniform application of the already existing preventive and repressive measures to combat money laundering, another constant priority is to steadily ensure such measures encompass the growing formats relevant crimes may take.

The recent Resolution of the Council of Ministers no. 69/2022, August 9th, approved the National Strategy to Prevent and Combat Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction. This Strategy sets the following enforcement priorities: (i) strengthen instruments, mechanisms, and procedures to prevent and combat money laundering, the financing of terrorism, and the financing of the proliferation of weapons of mass destruction; (ii) complete the shift from a compliance approach to a risk-based approach; and (iii) strengthen domestic and international cooperation.

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 Law 83/2017, August 18th, the authorities responsible for imposing AML 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 the Inspectorate-General Management Agency of Finance, in relation to the Treasury and public debt.

In other business sectors, the responsible authorities are professional associations and other government agencies and authorities with supervisory powers within the relevant business sector.

AML requirements include limitations to the use of cash, duties of control, identification and due diligence, communication, abstention, refusal, conservation, examination, cooperation, non-disclosure, *etc.* The extent of each requirement is proportional to the nature, dimension and complexity of each institution, business, or activity.

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

The entities referred to in question 2.1, as those responsible for the enforcement of and compliance with AML legislation, have the competence to impose regulations creating requirements to ensure adequate compliance, and the development of the general duties enforced by Law 83/2017.

Examples of these regulations are: (i) Notice 2/2021, of the Bank of Portugal; (ii) Resolution 822/2020, of the Portuguese Bar Association; (iii) Regulation 2/2020, of the Portuguese Securities Market Commission; (iv) Regulation 276/2019, of the Real Estate and Construction Authority; and (v) Regulation 314/2018, of the Economic and Food Safety Authority.

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

Yes, other than the previously mentioned self-regulatory organisations, professional associations are responsible for AML compliance and enforcement against their members, within their scope of competence. This is the case for the Bar Association, the Certified Accountants' Association, the Chartered Accountants Association and the Solicitors' and Execution Agents' Association.

2.4 Are there requirements only at national level?

No, there are also many requirements at the European Union level. For instance, Law 83/2017, August 18th, is a national transposition measure of Directive (EU) 2015/849 (4th AML Directive) and of Directive (EU) 2016/2258. Such Law was amended by Law 56/2021, June 30th, the transposition of the Directives (EU) 2018/843 (5th AML Directive) and 2018/1673 (6th AML Directive).

There are other regulatory acts at the European level that directly or indirectly govern the combat against money laundering and the financing of terrorism, for example: Regulation (EU) 2018/1672; Regulation (EU) 2015/847; Commission Delegated Regulation (EU) 2019/758; Commission Delegated Regulation (EU) 2018/1108; and Commission Delegated Regulation (EU) 2016/1675.

On July 20th, 2021, the European Commission presented a package of legislative proposals to strengthen the EU's rules on anti-money laundering and countering the financing of terrorism. The package consists of: (i) a regulation establishing a new EU anti-money laundering authority which shall have powers to impose sanctions and penalties; (ii) a regulation recasting the regulation on transfers of funds which aims to make crypto-asset transfers more transparent and traceable; (iii) a regulation on anti-money-laundering requirements for the private sector; and (iv) a directive on anti-moneylaundering mechanisms.

At the international level, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) was the first international treaty covering both the prevention and control of money laundering and the financing of terrorism.

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?

Please see question 2.1 above: the agencies/authorities responsible for compliance and enforcement of AML requirements are the same. There are specific sectoral regulations that complement Law 83/2017, such as those mentioned in question 2.2.

Decree-Law 109-E/2021, December 9th, implemented the National Anti-Corruption Mechanism. The Mechanism's mission includes collecting and organising information on the prevention and repression of money laundering, as well as assisting the Portuguese government in defining and implementing policies for such repression.

The criteria for each examination derive strictly from the legal requirements, and therefore are publicly available. If failure to comply with compliance duties results in the commission of an administrative offence, the final decision reached in the relevant proceedings is in general, but not necessarily, made public.

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") within the Judiciary Police.

The FIU is responsible for collecting, centralising, processing, and disseminating information regarding the prevention and investigation of money laundering crimes at the national level. The FIU also prepares and updates statistical data related to reported suspicious transactions and to transnational information requests.

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

Under Law 83/2017, the statute of limitations concerning regulatory offences is five years. This period may be suspended and interrupted in certain circumstances.

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 AML requirements may entail penalties of up to €5,000,000, depending on the nature of the entity. However, the penalty may be aggravated up to double the economic benefit obtained

from the infraction or up to 10% of the total annual turnover of the company in certain circumstances.

Failures to comply with AML requirements subject to sanctioning include: (i) illegitimate disclosure of information, communications, analyses, or other elements to clients or third parties; (ii) disclosure or improper favouring of identity discovery of those who provided information, documents or elements concerning suspicious transactions; and (iii) non-compliance with orders or legitimate instructions from sectoral authorities or, by any means, the creation of obstacles to the execution of such orders/instructions.

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

In addition to monetary fines, regulatory offences may entail additional sanctions, such as: (i) forfeiture of the economic benefit derived from the offence, in favour of the state; (ii) closure of the establishment where the activity or job related to the offence took place, for a period of up to two years; (iii) prohibition of the professional activity or job related to the offence, for a period of up to three years; (iv) prohibition of exercising certain directorial and representative functions in entities obliged to the supervision or control of a certain sectoral authority, for a period of up to three years; and (v) publication of the definitive conviction.

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 applicable to violations of AML obligations. Besides the crime of money laundering itself, crimes related to violations of AML obligations include: (i) illegitimate disclosure of information; (ii) disclosure and improper favouring of identity discovery; and (iii) non-compliance with lawful orders or instructions from the competent agencies/authorities.

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?

The process of assessment and collection of sanctions is carried out by several different government agencies and authorities as listed above (see question 2.1), depending on the sector of activity of the obliged entity.

In the administrative stage of the sanctioning procedure, the defendant may present their defence before the administrative entity after a formal indictment is issued. If the competent authority decides to impose a sanction on an individual or legal entity, they may appeal to a judicial court.

Although not all administrative resolutions become public, the secrecy regime that applies to the proceedings in the administrative stage elapses with the final decision.

Several financial institutions have challenged penalty assessments in judicial and regulatory proceedings.

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

3.1 What financial institutions and non-financial businesses and professions are subject to anti-money laundering requirements? Describe any differences in the anti-money laundering requirements that each of them are subject to.

The financial institutions subject to AML requirements are:

(i) banks, including credit, payment, and electronic money institutions;
(ii) investment firms and other financial companies;
(iii) self-managed collective investment companies and management companies of collective investment undertakings;
(iv) venture capital companies, venture capital investors, social entrepreneurship companies, venture capital fund management companies, self-managed venture capital investment companies and self-managed specialised alternative investment companies;
(v) credit securitisation companies and securitisation fund management companies;
(vi) companies that commercialise contracts relating to an investment in tangible assets to the public;
(vii) securities investment consultants;
(viii) pension fund management companies;
(ix) insurance companies, insurance intermediaries, carrying on life insurance activities;
(x) securities investment companies for the promotion of the economy;
(xi) managers of qualifying venture capital funds and social entrepreneurship funds;
(xii) long-term self-managed investment funds of the European Union, known as "ELTIFs";
(xiii) real estate investment and management companies in Portugal;
(xiv) branches located in the Portuguese territory of any of the previous entities headquartered abroad;
(xv) offshore financial centres;
(xvi) payment institutions headquartered in another EU Member State, when operating in Portuguese territory through agents; and
(xvii) any electronic money institutions headquartered in another EU Member State, when operating in a Portuguese territory through agents or distributors.

Any of the aforementioned entities operating in Portugal under the free provision of services may have to render information to the relevant sector authority.

Agents and distributors, whether natural or legal persons, are also subject to AML requirements, along with the following entities relating to professional activities:

(i) providers of gambling, lottery or other betting services, whether in an establishment or online;
(ii) non-financial real estate entities;
(iii) auditors, certified accountants and tax advisors, whether as natural or legal persons;
(iv) lawyers, solicitors, notaries and other independent legal professionals, whether operating individually or as legal persons;
(v) trust or company service providers in certain activities;

(vi) professionals intervening in operations of alienation and acquisition of rights over practitioners of professional sports activities;
(vii) economic operators engaging in auction or lending activities;
(viii) persons that store, negotiate or act as intermediaries in the commerce of works of art, in certain circumstances;
(ix) economic operators carrying out import and export activities involving rough diamonds;
(x) entities authorised to exercise the activities of transportation, custody, handling and distribution of funds and values;
(xi) traders dealing in goods of high-unit value, including gold and other precious metals, precious stones, antiques, aircrafts, ships and motor vehicles, in certain circumstances;
(xii) other entities/persons trading in goods, when payment is made in cash, and the value of the transaction is equal or higher than €3000, regardless of whether the payment is made through a single transaction or several transactions; and
(xiii) entities that carry out any activity with virtual assets.

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

The aforementioned financial and non-financial institutions and professions are subject to various AML requirements, such as pre-emptive duties of control, identification, communication, refusal, conservation, examination, collaboration and non-disclosure.

Financial institutions are also obliged to comply with some specific requirements, such as a prohibition on the issuance or acceptance of anonymous e-money payments, and special duties of identification and diligence when celebrating life insurance contracts, along with others provided for in sectoral regulation.

3.2 Describe the types of payments or money transmission activities that are subject to anti-money laundering requirements, including any exceptions.

Within their scope of activity, financial institutions and non-financial businesses and professions that are subject to AML requirements, as mentioned in question 3.1, shall observe identification and due diligence procedures when carrying out transactions, regardless of whether a transaction is carried out through a single operation or several, when:

(i) the transaction's value is equal to or greater than €15,000;
(ii) the transaction is executed within the context of a virtual asset-related activity and its value exceeds €1,000;
(iii) the transaction, regardless of its value, is suspected to be related to money laundering or the financing of terrorism; and
(iv) there are doubts regarding the veracity or adequacy of the customer identification data previously obtained.

However, obliged entities may simplify their identification and due diligence measures when they identify a demonstrably low risk of money laundering and the financing of terrorismin their occasional transactions. In contrast, when an increased risk of money laundering or the financing of terrorism is identified by the obliged entities or sectoral authorities, they must reinforce their identification and due diligence measures.

3.3 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry? Describe the types of cryptocurrency-related businesses and activities that are subject to those requirements.

Virtual currency exchanges and crypto custodian wallet services are subject to AML requirements under Law 83/2017. Various forms of cryptocurrency-related businesses and activities are subject to such requirements:

(i) exchange services between virtual assets and fiat currencies;
(ii) services for exchanging one or more virtual assets;
(iii) services whereby a virtual asset is moved from one address or wallet to another (virtual asset transfer); and
(iv) safekeeping and/or administration services for virtual assets or for instruments that allow the control, holding, storage or transfer of such assets, including private cryptographic keys.

In this regard, entities that carry out activities with virtual assets, including entities related to the cryptocurrency industry, are included in the range of non-financial parties subject to the AML requirements provided for in Law 83/2017.

This legal framework is fairly recent within the Portuguese legal system, having been introduced by Law 58/2020, August 31st, which transposed Directive (EU) 2018/843, May 30th.

Before this legislative amendment, the Bank of Portugal had issued Circular Letter 11/2015/DPG recommending that credit, payment, and electronic money institutions refrain from buying, owning, or selling virtual currency to prevent a variety of risks associated with virtual currency, including the risk of money laundering. The Bank of Portugal has restated that financial institutions must assess transfers of funds against their origin and destination on virtual currency trading platforms according to the AML/CFT requirements.

Notice 3/2021 of the Bank of Portugal establishes the legal framework regarding the registration process applicable to entities that carry out activities with virtual assets, and the most recent Bank of Portugal regulation on the matter, Notice 1/2023, lays down the necessary measures to ensure compliance with AML obligations, within the scope of activity of entities that carry out operations with virtual assets.

3.4 To what extent do anti-money laundering requirements apply to non-fungible tokens ("NFTs")?

Even though the concept of "non-fungible token" has never been explicitly mentioned in any national legislation concerning AML requirements, the broad nature of the concept of "virtual asset" included in article 2, no. 1 (ll) of Law 83/2017 may suggest that NFTs are encompassed by the provisions of Law 83/2017.

For the purposes of Law 83/2017, a "virtual asset" is to be considered as any digital representation of value that is not necessarily linked to a legally established currency and does not have the legal status of money, security, or another financial instrument, but is accepted by natural or legal persons as a medium of exchange or investment and can be transferred, stored and traded electronically.

Since NFTs are unique digital assets that can be sold and bought like tangible property, it is arguable that they are already included in the legal definition of a virtual asset, and therefore that the businesses and activities involving the commerce of NFTs are subject to the requirements mentioned above in question 3.3.

In July 2022, the Committee on Economic and Monetary Affairs and the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament published a proposal for a European Regulation that would ensure the direct application of already existing AML directives to all Member State jurisdictions, while also explicitly extending them to entities dealing with the commerce of NFTs.

More specifically, the approval of this proposal would result in the application of EU AML standards, as enshrined in Law 83/2017, to "*persons and platforms, other than crypto-asset service providers, trading or acting as intermediaries for importing, minting, sale and purchase of unique and not fungible crypto-assets that represent*

ownership of a unique digital or physical asset, including works of art, real estate, digital collectables and gaming items and any other valuable".

Since it does not seem to have been the unequivocal intention of the Portuguese or European legislators to subject operations with NFTs to the same requirements as, for example, cryptocurrency-related businesses, doubt remains until further clarification.

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

Law 83/2017 determines that all the obliged entities, as identified above in question 3.1, must define and ensure the effective implementation of policies and procedures appropriate to the effective management of money laundering risks.

These policies and procedures should be proportional to the nature, dimension and complexity of the activity pursued by the entity at stake, and must include, among other requirements, at least the following written elements:

(i) The definition of an effective risk management model, with adequate practices for the identification, evaluation and mitigation of money laundering risks to which the obliged entity is or may be exposed to.
(ii) The development of policies, procedures and controls regarding the acceptance of clients and compliance with the applicable regulatory framework.
(iii) The definition of adequate programmes of continuous training for the employees of the obliged entity, applicable from the act of admission of those employees, regardless of the nature of the respective bond.
(iv) The designation, when applicable, of a person responsible for the control of compliance with the applicable normative framework.
(v) The disclosure, to the employees of the obliged entity whose functions are relevant for the prevention of money laundering, of updated and accessible information on the respective internal rules of execution.
(vi) Establishment of investigation procedures to ensure high standards in the process of hiring employees whose functions are relevant to the prevention of money laundering.
(vii) The establishment of mechanisms to control the actions of the employees of the obliged entity whose functions are relevant for the prevention of money laundering and financing of terrorism, regardless of the nature of the employment relationship.

Pursuant to Law 83/2017, the Bank of Portugal and the Portuguese Securities Market Commission set out several requirements regarding the prevention of money laundering and the financing of terrorism.

For example, Regulations 2/2018 and 2/2020 of the Portuguese Securities Market Commission require that entities subject to the Commission's supervision have an internal control system that includes in its policies an effective risk management model with guidelines on the identification, assessment, and mitigation of AML risks. Such policies, procedures and controls are in accordance with the law and subject to permanent updating and periodic evaluation. These regulations also require the appointment of a compliance officer to ensure the effective implementation of policies, procedures, and adequate controls.

In addition, Notice 3/2020 of the Bank of Portugal regulates the governance and internal control systems, and defines the minimum standards on which the organisational culture of the entities subject to the Bank's supervision must be based.

Regulations on the matter also impose several periodic reporting duties on the subject entities, particularly the annual drafting and submission of the information set out in article 73 of Regulation 2/2020 of the Bank of Portugal and Appendix I of Regulation 2/2020 of the Portuguese Securities Market Commission. The information required in both regulations includes, for example, detailed information on the internal control system and the evaluation of the effectiveness of prevention, information on clients with whom there are contractual relationships, the training provided, and shortcomings detected in the policies and procedures.

Additionally, the General Regime for the Prevention of Corruption approved by Decree-Law 109-E/2021, December 9th, imposes upon a comprehensive list of entities – including all legal persons with their head office in Portugal employing 50 or more people – the implementation of an extensive programme of compliance, including: (i) a risk prevention plan for corruption and related offences, such as money laundering; (ii) a code of conduct; (iii) a training programme; and (iv) a whistleblowing channel, with the aim of preventing, detecting and sanctioning acts of corruption and related offences, including the offence of money laundering.

The risk prevention plan for corruption and related offences must cover the entire organisation and activity of the entity, including its administration, management, and support functions. The plan must include, among other elements:

(i) the identification and classification of the risks of situations that may expose the entity to acts of corruption and related offences, such as money laundering, including those associated with the performance of duties by the members of the management and administrative bodies;
(ii) preventive and corrective measures to reduce the probability of occurrence and the impact of the risks and situations identified; and
(iii) the designation of a person responsible for the execution, control, and revision of the prevention plan for corruption and related offences.

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

There are no thresholds for reporting transactions suspected of money laundering. According to article 43 of Law 83/2017, all suspicious transactions ought to be reported regardless of the amounts involved.

The reporting of suspicious transactions is made to the Central Department of Criminal Investigation and Prosecution and to the FIU, and must be performed as soon as suspicion arises regardless of whether the operation has merely merely proposed or attempted, if it is underway, or if it has already been concluded. The report must include, at least: (i) the identification of the natural or legal persons involved, as well as any known information on their activity; (ii) the specific procedures carried out; (iii) the characteristic and descriptive elements of the operation; (iv) the specific suspicious factors identified; and (v) a copy of all supporting documentation obtained through due diligence.

All entities subject to AML requirements must keep records for seven years from the moment the client was identified, or in the case of a business relationship from the moment it was terminated, of all documents and data obtained from clients, as well as all documents pertaining to the client's files and accounts, as well as all documentation produced in compliance with legal

requirements, such as the documents gathered and sent to the relevant authorities to comply with reporting duties.

3.7 Are there any requirements to report routinely 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.

Yes. According to article 46 of Law 83/2017, obliged entities that carry out real estate activities shall communicate, every quarter, details of each real estate transaction and real estate lease contract carried out. These reports are to be presented before the Portuguese Institute for Public Markets, Real Estate and Construction.

Furthermore, according to Ordinance 310/2018, December 4th, all entities subject to AML requirements must communicate to the Central Department of Criminal Investigation and Prosecution and to the FIU cash transactions of €50,000 or more, as well as transactions of those values made by cheque or any other paper document drawn on the payment service provider. In addition, fund transfers of €50,000 or more to or from "risky jurisdictions", early repayment of funds and insurance policies of €50,000 or more, and operations or transactions of gambling service providers must also be communicated. A list of "red flags" can be found at http://portalbcft.pt/.

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

The AML requirements apply to all transactions, regardless of whether they are national or cross-border operations.

Within the EU, there is a level playing field regarding applicable requirements, authority control and information sharing. If the transaction is carried out within the context of a correspondent relationship or with a high-risk third party, there are no specific requirements for reporting; however, the operation's risk profile is increased, which warrants enhanced due diligence measures.

As previously mentioned in question 3.7, Ordinance 310/2018 provides that all entities subject to AML requirements must communicate to the Central Department of Criminal Investigation and Prosecution and to the FIU the occurrence of fund transfers of €50,000 or more to or from "risky jurisdictions". All jurisdictions are to be considered included in internationally binding lists applicable to Portugal.

3.9 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?

The duty of customer identification is provided for in article 23 *et seq.* of Law 83/2017.

Entities subject to AML requirements must comply with customer identification and due diligence requirements whenever they establish a business relationship and when carrying out occasional transactions: (i) that amount to €15,000 or more, whether the transaction is carried out in a single operation or through several operations that appear to be linked; or (ii) that exceed €1,000 when their object is a virtual asset.

For providers of gambling, lottery or betting services, the threshold corresponds to transactions amounting to €2,000 or more, whether the transaction is carried out in a single operation or through several operations that appear to be linked.

Such requirements also apply whenever there is a suspicion of money laundering practices, regardless of any derogation, exemption, or threshold, or whenever there are doubts regarding the veracity or adequacy of previously obtained customer identification data.

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.

Notice 1/2022 of the Bank of Portugal and Regulation 2/2020 of the Portuguese Securities Market Commission set out criteria and procedures to be adopted by financial entities and auditors to comply with know-your-client ("KYC") requirements. They also determine that the obliged entities must assure independent assessments of the quality, adequacy, and effectiveness of their identification and due diligence procedures, carried out by duly qualified third-party entities.

3.10 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?

Article 66 of Law 83/2017 prohibits all financial entities subject to AML requirements from establishing or maintaining correspondence relationships with shell banks and with financial institutions that are known to allow their accounts to be used by shell banks.

As soon as they become aware that a correspondence relationship with a shell bank or with a financial institution that is known to allow their accounts to be used by shell banks has been established, financial entities shall terminate them immediately and inform the competent sectorial authority.

3.11 What is the criteria for reporting suspicious activity?

Article 43 of Law 83/2017 imposes a duty to report any suspicious transactions to the Central Department of Criminal Investigation and Prosecution and to the FIU.

Therefore, if an entity subject to AML requirements knows, suspects, or has reasonable grounds to suspect that certain funds or other assets, regardless of their amount or value, are derived from criminal activity or are related to terrorism financing, they must immediately report all operations proposed to them, as well as any transactions which have been attempted, that are in progress or that have been carried out.

3.12 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

The main existing mechanism is the aforementioned ("FIU"). In Portugal, the FIU is the authority responsible for collecting, centralising, processing and analysing information resulting from the reports that take place under Law 83/2017. In addition, the FIU is also responsible for disseminating, at the national

level, relevant information on AML and for cooperating with the judicial authorities, the police, and sectoral authorities, in particular, for tax and customs purposes.

The FIU plays a central role in cooperating at the international level with counterpart units, namely by triggering the procedures provided for in Law 83/2017 following a request from a counterpart to suspend suspicious operations. The FIU also collaborates with the European Commission as is necessary for the pursuit of its functions under Directive (EU) 2015/849.

3.13 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

There is a public corporate registry that can be accessed through a code for each company.

Legislation regarding the Central Register of Beneficial Owners entered into force on November 19th, 2017. The purpose of this Register is to provide, through different levels of access, information regarding the ultimate beneficial ownership of legal entities, among others, to financial institutions and other entities subject to AML requirements and customer due diligence responsibilities.

3.14 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? Describe any other payment transparency requirements for funds transfers, including any differences depending on role and domestic versus cross-border transactions.

Where the customer is a legal or natural person who may not be acting on their own behalf, obliged entities must obtain accurate information on the client's beneficiaries, depending on the client's risk profile and the specific features of the operation.

When executing transfers of funds that they identify as high risk, financial entities acting as respondents in any cross-border correspondence relationships should, under the terms to be defined by sectorial regulation: (i) have knowledge of the entire circuit of the funds they entrust to their correspondents, from the moment they are delivered to them by the originators of the operations to the moment they are made available, in the country or jurisdiction of destination, to the respective final beneficiaries; (ii) have knowledge of all participants in that circuit, ensuring that only entities or persons duly authorised to process transfers of funds, by the competent authorities of the countries or jurisdictions involved, intervene, in whatever capacity; and (iii) obtain and keep permanently updated documentation that attests the compliance of their identification duties, which must be made available, at all times, to the sectorial authorities.

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

No, not since 2017.

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

Non-financial institutions are subject to the general anti-money laundering requirements provided for in Law 83/2017, but there are certain specific requirements applicable to them; notably, to providers of gambling, lottery or betting services, regarding, for example, the form of prize payment. Specific requirements are also applicable to legal professionals, although there is a derogation of the reporting duty whenever the services provided for the client are in the context of a judicial process.

3.17 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, with applicable AML requirements such as the gathering of information on their beneficial ownership to be declared to the Central Register of Beneficial Owners.

Aside from those previously mentioned in question 3.16, certain other business sectors are also bound by AML requirements, such as business operators involved in the importation or exportation of rough diamonds.

3.18 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

On March 18th, 2021, the Portuguese government approved the Anti-Corruption National Strategy, which includes measures designed to tackle money laundering by adopting a risk-based and preventive approach.

One of the Strategy's objectives is to involveme private companies in the fight against corruption and money laundering, through amending the substantive and procedural criminal and regulatory offence laws that reward companies for implementing effective compliance programmes.

In the implementation of the Strategy, Decree-Law 109-E/2021, December 9th (as mentioned in question 3.5) was recently approved. This Decree standardises and intensifies the compliance burden on a comprehensive list of entities.

In addition to these initiatives, see also the response to question 1.12 above, regarding the recent Resolution of the Council of Ministers no. 69/2022, August 9th, which approved the National Strategy to Prevent and Combat Money Laundering, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction.

4 General

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

Aside from the abovementioned, other guidelines, notices and instructions that are and may be issued by the competent

regulatory authorities must be taken into account. Such instruments are of the utmost importance as they define the meaning and scope of legal norms.

As mentioned in question 3.18, several objectives of the Anti-Corruption National Strategy have been implemented through the approval of Law 93/2021, December 20th, and Decree-Law 109-E/2021, December 9th.

On July 2021, the European Commission presented a package of legislative proposals to strengthen EU rules on anti-money laundering and countering the financing of terrorism. The proposed changes are primarily aimed at improving processes for detecting suspicious transactions and suspicious activity, and closing loopholes that may be exploited to launder illicit proceeds or finance terrorist activities through the financial system. The package consists of: (i) the proposal for a regulation establishing a new Authority for Anti-Money Laundering and Countering the Financing of Terrorism on the EU level, which will have the power to impose sanctions and fines; (ii) the proposal for a regulation on the prevention of the use of the financial system for money laundering and terrorist financing; (iii) the Sixth Directive on AML/CFT that would replace the existing Fifth Directive (EU) 2015/849; and (iv) the Amendment of the Regulation 2015/847 on the information accompanying the transfers of funds.

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 and effective 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, Council of Europe (Moneyval) or IMF? If so, when was the last review?

The FATF conducted an on-site visit between March 28th and April 13th, 2017, and later produced a Mutual Evaluation Report in December 2017, as mentioned above, which can be found at https://www.fatf-gafi.org/countries/#Portugal.

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

The Coordination Committee for Preventing and Combating Money Laundering and the Financing of Terrorism, established in 2015, is responsible for the overall policy coordination and implementation of AML, CFT and counter-proliferation financing policies. The relevant legislation and guidance can be accessed at its homepage (available at https://www.portalbcft.pt/) (not available in English).

Some of the aforementioned sectoral authorities have webpages in English, such as the Bank of Portugal (available at https://www.bportugal.pt/) and the Portuguese Securities Market Commission (available at https://www.cmvm.pt/).

The Public Prosecutor's office has a collection of criminal law-related legislation translated to English (available at http://gddc.ministeriopublico.pt/pagina/portuguese-legislation-english), but more often than not translated versions are not available.

All the previously mentioned Portuguese laws may be found at https://www.pgdlisboa.pt/.

Tiago Geraldo joined Morais Leitão in 2008. He is a senior lawyer within the firm's litigation department.
His practice focuses on the area of criminal litigation, including regulatory offences and a particular focus on economics and finance.
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