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1 The Decision to Conduct an Internal Investigation

1.1 What statutory or regulatory obligations should an entity consider when deciding whether to conduct an internal investigation in your jurisdiction? Are there any consequences for failing to comply with these obligations or with regulatory expectations? Are there any regulatory or legal benefits for conducting an investigation?

Under Portuguese Law, there is no general framework on internal investigations. There are, however, some provisions that entail the need to follow-up on internal suspicions, including duties to start an internal investigation.

The National Strategy for Combating Corruption (2020–2024) and the subsequent entry into force of the General Regime for the Prevention of Corruption ("GRPC") (Decree-Law No. 109-E/2021, of 9 December) and the General Regime for the Protection of Whistleblowers (Law No. 93/2021, of 20 December) ("GRPW") have introduced a new legal framework on compliance and whistleblowing, including on matters relating to internal investigations. Under this framework, obliged entities (companies with 50 or more employees) are under a duty to examine any verbal or written report from a whistleblower and, depending on the type of complaint, to start an internal investigation should that be considered the appropriate measure. Covered entities must also give notice to the whistleblower within seven days to inform him/her that the report was received and that an external complaint may also be presented. Portuguese law also establishes a duty to inform the whistleblower of the steps envisaged or taken to act on the report. Failure to comply with these duties gives cause to regulatory offences punishable with fines that can be applicable to the company and to individuals. It should be highlighted, however, that these rules arising from the GRPW are only applicable to suspicions relating to the infractions included in the Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019.

On a more general standpoint, the GRPC demands companies to implement internal control and compliance systems for preventing and detecting suspicions of corruption-related acts. Accordingly, a company may be under a duty to start an internal investigation even when no report was presented but there are reasons to suspect that illegal acts have been committed. Failure to commence an internal investigation in these situations may also be seen as a breach of legal duties, punishable with similar fines.

Decree-Law No. 298/92, of 31 December, establishes a duty for credit institutions to follow-up on complaints related to the issues surrounding the management and governance of the company. Even though this Decree-Law does not foresee a duty to start an internal investigation, that measure may be seen in some cases as the best solution to follow-up on a received complaint.

Also, under the Portuguese Anti-Money Laundering and Counter-Terrorism Financing Law (Law No. 83/2017, of 18 August – "AML Law"), obliged anti-money laundering ("AML") entities are required to examine and report activities that may be linked to money laundering or the financing of terrorism. Moreover, entities under this obligation must define and apply internal compliance systems to mitigate the risk of money laundering and financing of terrorism. Once again, even though no direct provision demands companies to start an internal investigation, in some cases the start of one investigation may be seen as the best course of action to comply with said AML rules. Failing to comply may give cause to liability and to fines.

As for the legal benefits, the criminal codes in force under Portuguese Law do not directly mention internal investigation. However, it should be highlighted that Law No. 94/2021, of 20 December, introduced new benefits to the Portuguese Criminal Code and Criminal Procedural Code for companies that have a compliance programme in place and those that help (namely through their internal investigations) the criminal public investigation. Among others, the implementation of compliance programmes is now legal cause for mitigating penalties applicable to legal persons (article 90.º-A/4 and article 90.º-B, of the Criminal Code). Also, under article 281.º/3 of the Portuguese Criminal Procedural Code, in some cases a company may avoid criminal liability by agreeing to adopt a compliance programme.

1.2 How should an entity assess the credibility of a whistleblower's complaint and determine whether an internal investigation is necessary? Are there any legal implications for dealing with whistleblowers?

Under the GRPW, a whistleblower is defined as a natural person who reports or publicly discloses an infringement based on information obtained during his or her professional activity,

regardless of the nature of that activity and the sector in which it is carried out. The law lists examples of people who can be considered whistleblowers, ranging from workers in the private, social, or public sectors to volunteers and interns. According to the GRPW, these rules will only apply to complaints regarding infringements that fall within the scope of the infringements listed in the Directive (EU) 2019/1937 of the European Parliament and of the Council of October 23, 2019.

The GRPW demands that companies recognise a whistleblower when the person reporting a suspicion is acting in good faith and reveals the reasons why he/she has grounds for believing that an infringement has occurred. On the other hand, when there are reasons to believe that the report is not presented in good faith or when the report contains insufficient information or evidence to give cause to suspicion, the company may refuse to carry out an investigation, and refuse to recognise the person as a whistleblower.

When dealing with a whistleblower, entities are under different duties to protect his/her identity. These protection duties may also be applicable to third parties related to the whistleblower. In addition, entities must keep the whistleblower updated on the measures being adopted to follow-up on the complaint, including, when applicable, that an internal investigation will be carried out. Also, after receiving a complaint, companies must inform the whistleblowers about the requirements for presenting an external complaint, when applicable. Moreover, companies are banned from promoting any type of retaliatory measure against the whistleblower. Failing to comply with such duties is punishable with a fine that can be applied to the company and to the individuals responsible for the infringement.

In line with the Portuguese AML Law, obliged AML entities must record any complaints filed and immediately proceed with the implementation of new due diligence measures whenever the complaint gives the obliged entity reasons to doubt the veracity or accuracy of the data provided by a client. Every complaint, even if not particularly detailed, must be considered. Furthermore, if the complaint provides the obliged entity with enough reasons to suspect that certain funds or assets may be the product of criminal activities or linked to the financing of terrorism, those funds or assets should be immediately reported to the authorities.

1.3 How does outside counsel determine who "the client" is for the purposes of conducting an internal investigation and reporting findings (e.g. the Legal Department, the Chief Compliance Officer, the Board of Directors, the Audit Committee, a special committee, etc.)? What steps must outside counsel take to ensure that the reporting relationship is free of any internal conflicts? When is it appropriate to exclude an in-house attorney, senior executive, or major shareholder who might have an interest in influencing the direction of the investigation?

The outside counsel's "client", for the purposes of an internal investigation, is the company, and the outside counsel must report its findings to whoever is designated to act on the company's behalf in the internal investigation. Outside counsel should seek, at the outset of the investigation, preferably in the engagement letter, to establish clear reporting channels and provide for an alternative reporting channel, to be used in case a conflict of interests compromises the main reporting channel. Outside counsel act in the interests of the company, and therefore it is always appropriate to exclude a person when there are compelling reasons to believe there is a conflict of interests between that person and the company. In this regard, the GRPW stipulates that internal reporting channels can be operated internally (for the purposes of receiving and following up on reports, which is carried out by the designated persons or services) or externally (for the purposes of receiving and following up on reports). In both situations, independence, impartiality, confidentiality, data protection, secrecy and absence of conflict of interests must be guaranteed in the performance of duties. Failure to comply with these obligations gives rise to liability for a serious regulatory offence, punishable with fines.

When deciding the report channels applicable to outside counsel, it is relevant to keep in mind that the GRPC requires the designation of a compliance officer as the main responsible person for all internal procedures, including those relating to whistleblowers and internal investigations. A compliance officer or an individual from the legal department are, therefore, persons to be favoured as contact points for outside counsel.

2 Self-Disclosure to Enforcement Authorities

2.1 When considering whether to impose civil or criminal penalties, do law enforcement authorities in your jurisdiction consider an entity's willingness to voluntarily disclose the results of a properly conducted internal investigation? What factors do they consider?

As mentioned above, under Law No. 94/2021 there are now increased legal incentives to share the conclusions of an internal investigation with the criminal authorities. If an entity provides important information to the authorities, it may later be eligible for a benefit, such as the exclusion of criminal liability or a mitigation of the applicable penalties, depending on the crime. Since under Portuguese law there is a general rule that criminal liability may be the basis for a civil penalty, these benefits may also be useful in order to avoid or mitigate civil risks. It should be noted, however, that civil liability will not be completely excluded as a result of disclosing the results of internal investigations, because there is legal basis for a consequence of that nature. The extent of the benefits will depend on the quality of the compliance programme, the quality of the internal investigation, the content of the internal investigation and the importance of the facts and evidence brought to the criminal authorities.

An overview of more specific regulations shows that entities serving as financial intermediaries are required by the Portuguese Securities Code (Decree-Law No. 486/99, of 13 November) to report facts that may be linked to financial crime to the Portuguese Securities Market Commission, offering a detailed account of the reasons for suspicion, the operations in question and any other relevant information. Failure to comply with this duty is a regulatory offence under the Portuguese Securities Code. The Portuguese Securities Code establishes that the minimum and maximum limits of the fines applicable to regulatory offences may be lowered if a defendant assists the Portuguese Securities Market Commission's investigation.

Likewise, the Legal Framework of Credit Institutions and Financial Companies (Decree-Law No. 298/92, of 31 December) requires that the management and supervisory bodies of credit institutions inform the Bank of Portugal of internal or external instances of fraud with potential adverse impacts on results or capital. Failure to comply with this duty is a regulatory offence under the Legal Framework of Credit Institutions and Financial Companies.

The Portuguese Competition Law (Law No. 19/2012, of 8 May) allows the first company to report infractions in which it participated to benefit from an exemption from the applicable fine, and also allows other companies that offer additional evidence to benefit from a reduction of the applicable penalty.

The Framework for Regulatory Offenses in the Energy Sector (Law No. 9/2013, of 28 January) provides that a company that

spontaneously comes forward with the necessary information for the Portuguese Energy Sector Regulator to safeguard the public interest spontaneously redresses any damages caused and, henceforth, is fully cooperative and can benefit from an exemption from the applicable fine.

2.2 At what point during an internal investigation should a disclosure be made to enforcement authorities? What are the steps that should be followed for making a disclosure?

During an internal investigation, a disclosure should be made to enforcement authorities in accordance with the GRPC and the GPRW when and if it is needed to identify the occurrence of the infringement and/or the person responsible. It should be noted, however, that there is no general duty to report, and that when the internal investigation points to a criminal suspicion against the company, a duty to disclose the contents of the investigation would infringe the right of non-self-incrimination.

In accordance with the Portuguese Criminal Procedure Code (Decree-Law No. 78/87, of 17 February), only public officials, including executives and employees of companies engaged in a public service concession, are required to report to authorities any crime that they become aware of in the exercise of, and because of, their duties.

Pursuant to the Portuguese Securities Code, facts that may come to be qualified as financial crimes must be immediately disclosed to the Portuguese Securities Market Commission. However, the disclosure must describe the reasons for the suspicion, as well as offer a detailed account of the operations in question and the persons involved. Therefore, disclosures should be made as soon as the necessary information is obtained or deemed unobtainable by the company.

Under the AML Law, facts should be reported as soon as there are sufficient reasons to believe that certain funds or assets are the result of criminal activity or are related to the financing of terrorism.

Companies should attempt to examine whether the facts revealed during the investigation constitute an offence and of what kind, regulatory or criminal, in order to establish whether disclosure is warranted and which authority is competent to receive the disclosure.

2.3 How, and in what format, should the findings of an internal investigation be reported? Must the findings of an internal investigation be reported in writing? What risks, if any, arise from providing reports in writing?

Neither the GRPC nor the GRPW establish formal or format requirements for disclosing the findings of an internal investigation to the authorities. It should be noted, however, that all duties relating to the protection of the whistleblower are still applicable should a company decide to report its findings.

In addition, entities have a duty to maintain an archive of the internal reports (and the follow-up measures) that can later be requested by the competent authorities.

Apart from these rules, disclosure may be made through the usual written or verbal channels used to communicate with public authorities, either directly or through a legal representative or a lawyer. Should a public investigation follow the disclosure of the findings gathered in the internal investigation, there is a risk that at a later stage all documents and interviews may be made public, since all legal cases concerning the possible application of criminal penalties are of a public nature (save for very strict and rare exceptions, which are examined on a case-by-case basis).

The AML Law establishes a specific framework for disclosures, which must be made in writing through the secure channels defined by the competent authority.

3 Cooperation with Law Enforcement Authorities

3.1 If an entity is aware that it is the subject or target of a government investigation, is it required to liaise with local authorities before starting or progressing an internal investigation? Should it liaise with local authorities even if it is not required to do so?

An entity under government investigation is not required to liaise with any local authorities before launching an internal investigation. It should be noted, however, that following Law No. 94/2021, of 20 December, the Portuguese Criminal Code and the Criminal Procedural Code have been modified to include a wider range of provisions that value a company's willingness to liaise with authorities. Cooperation may be construed as a relevant factor for excluding or mitigating any future liability against the entity. In fact, as already stated, the entity may be exempted from punishment or have its penalty reduced if it reports the crime or helps in discovering the facts and evidence of the wrongdoing.

3.2 If regulatory or law enforcement authorities are investigating an entity's conduct, does the entity have the opportunity to influence the scope of a government investigation? If so, how is it best achieved, and what are the risks?

A company may always offer relevant information or request that the authorities execute certain investigative measures, which may influence the scope of an investigation. Public authorities, however, are free to reject the companies' requests, if deemed unnecessary.

3.3 Do law enforcement authorities in your jurisdiction tend to coordinate with authorities in other jurisdictions? What strategies can entities adopt if they face investigations in multiple jurisdictions?

In criminal procedures, law enforcement usually coordinates and cooperates with authorities in other jurisdictions, with the aid of the Bureau of Documentation and Comparative Law, a specialised section of the Prosecutor General's Office which has contacts within European Union criminal bodies and other international organisations, such as the United Nations and the Community of Portuguese Language Countries ("CPLP"). In regulatory offence procedures, the degree of coordination and cooperation with authorities in other jurisdictions varies depending on the sector in question. The Portuguese Competition Authority, the Bank of Portugal and the Portuguese Securities Market Commission have several collaboration protocols with their respective foreign counterparts, both within and outside the European Union.

When facing investigations in multiple jurisdictions, it is important to seek outside counsel with a strong international network, in order to ensure the legality of the investigation in all relevant jurisdictions. A joint defence team is the best course of action for the purposes of keeping up with the investigation and for anticipating the risks arising from different law enforcement actions.

4 The Investigation Process

4.1 What steps should typically be included in an investigation plan?

The applicable laws do not specify the contents of the investigation plan, even though some duties and procedural guarantees are mandatory. Investigation plans should establish the scope of the investigation, define the main and alternative reporting channels, identify the relevant documentation and individuals to interview and investigate, provide for the proposal and execution of preventive and corrective measures, establish whether the interviews are to be recorded, and outline the structure of the final report. The entity must also ensure that feedback is given to the whistleblower (if the investigation is based on a report provided by a whistleblower). It is advisable that the investigation plan also sets out the applicable procedures to protect the identity of the whistleblower and his/hers connected third parties. The plan should also include provisions concerning the archive and access to the final report.

4.2 When should companies engage the assistance of outside counsel or outside resources such as forensic consultants? If outside counsel is used, what criteria or credentials should one seek in retaining outside counsel? To what extent is independence of outside counsel desirable?

Outside counsel and resources should be hired whenever the complexity of the issue demands specialised knowledge, or whenever it is foreseeable that the issue may generate a conflict of interests within the company or give rise to criminal or regulatory proceedings.

The most important criteria for retaining outside counsel are experience, specialised knowledge and confidentiality guarantees.

5 Confidentiality and Attorney-Client Privileges

5.1 Does your jurisdiction recognise the attorney-client, attorney work product, or any other legal privileges in the context of internal investigations? What best practices should be followed to preserve these privileges?

Portuguese law recognises attorney-client privilege with respect to any information or materials obtained in the context of the provision of legal services, including internal investigations.

Attorney-client privilege can be revoked in exceptional cases, notably in criminal proceedings against the attorney or for the defence of the client or the lawyer's legitimate interests. However, an attorney will be neither forced nor permitted to reveal any information if it was obtained through the provision of the legal services in the case at hand.

5.2 Do any privileges or rules of confidentiality apply to interactions between the client and third parties engaged by outside counsel during the investigation (e.g. an accounting firm engaged to perform transaction testing or a document collection vendor)?

In Portugal, many professionals are subject to duties of secrecy (including accountants), covering information or materials obtained in the context of the provision of the respective services.

Notwithstanding the aforementioned legal duties of secrecy, it is advisable to conclude non-disclosure agreements with any third parties contacted during the course of the investigation.

5.3 Do legal privileges apply equally whether in-house counsel or outside counsel direct the internal investigation?

Yes, as long as the in-house counsel is a registered member of the Portuguese Bar Association. The legal privilege may, however, be denied if the in-house counsel also embrace management duties within the company. Should that be the case, there is a risk that the privilege will only be granted for lawyer-related acts, and not to the interactions carried out for non-legal purposes.

5.4 How can entities protect privileged documents during an internal investigation conducted in your jurisdiction?

Privileged documents should be clearly marked as such, and archived in a different space within the company, so that it is easy for authorities to understand the privilege of said documents. It is also advisable that the investigation plan includes rules on the security of all files used during the investigation, for example, by limiting the individuals with access to the physical or digital archive and by determining a confidential password for access. In the event that privileged documents are accessed or seized, the legality of the access or seizure should be immediately challenged by the entity's attorney in the authority's report of the search.

5.5 Do enforcement agencies in your jurisdictions keep the results of an internal investigation confidential if such results were voluntarily provided by the entity?

Should the facts discovered through an internal investigation lead to a criminal suspicion, it should be noted that, under Portuguese law, proceedings may only be confidential until criminal charges are pressed. Afterwards, all information and documentation provided to the authorities will be made public, according to the principle of publicity that rules the Portuguese criminal procedure. There are, however, some exceptions to this rule, namely to ensure the protection of privacy data and trade secrets in competition offence proceedings.

If the internal investigations pave the way for an administrative offence investigation, the same principle of publicity will be applicable. There are, however, special rules on secrecy that may be applicable to proceedings on competition law and financial law that foresee the confidentiality of some cases when dealing with commercial secrets or with information that may be harmful to third parties.

Under the GRPW, it is also important to note that, when it comes to internal investigation confidentiality, the identity of the whistleblower, as well as the information that directly or indirectly allows the identity of the whistleblower to be deduced, is of a confidential nature and access is restricted to the people responsible for receiving or following up on complaints, and can only be disclosed as a result of a legal obligation or a court order.

6 Data Collection and Data Privacy Issues

6.1 What data protection laws or regulations apply to internal investigations in your jurisdiction?

The processing of personal data under the GRPW, including the exchange or transmission of personal data by the competent

authorities, is submitted to the rules enshrined in the General Data Protection Regulation ("GDPR") and the Portuguese Personal Data Protection Law. Furthermore, the Portuguese Labour Code's data protection rules will also apply whenever the investigation involves the personal data of employees. Criminal liability may arise if the investigation makes use of unlawful materials, such as unauthorised video or sound recordings, among others.

6.2 Is it a common practice or a legal requirement in your jurisdiction to prepare and issue a document preservation notice to individuals who may have documents related to the issues under investigation? Who should receive such a notice? What types of documents or data should be preserved? How should the investigation be described? How should compliance with the preservation notice be recorded?

Preservation notices are usually given when and if the investigation evolves to a public proceeding. Nevertheless, companies should have a clear document preservation policy, accessible to all employees that lists the data retained and for how long.

If a public investigation is to be started, the company should retain the documents. Also, criminal authorities may issue preservation notices, including for computer data.

Furthermore, parties in civil proceedings may also request that the court orders the opposing party to produce a document. Non-compliance with the court's order may result in a fine and the inversion of the burden of proof.

6.3 What factors must an entity consider when documents are located in multiple jurisdictions (e.g. bank secrecy laws, data privacy, procedural requirements, etc.)?

When the required documents are located in multiple jurisdictions, the company should investigate if the documents can be accessed in its jurisdiction, and if that access within an internal investigation may give cause to unlawful accesses under foreign country laws. Should a liability risk arise from accessing such documents, the entity should consider alternative paths, namely the contact with the local team or provider to better understand alternative courses of action.

Also, the entity should consider whether mutual legal assistance is required to obtain such documents, and which are the most efficient mutual legal assistance instruments in order to do so. Should an entity find itself unable to further carry out an investigation for reasons relating to the lack of access to protected documents owned or archived in foreign jurisdictions, the public authorities may be allowed to access them under the international legal assistance rules.

6.4 What types of documents are generally deemed important to collect for an internal investigation by your jurisdiction's enforcement agencies?

When investigating crimes and regulatory offences, authorities typically focus on bank records, transaction records, meetings summaries and emails. Thus, internal investigations should focus on the same kinds of documents.

6.5 What resources are typically used to collect documents during an internal investigation, and which resources are considered the most efficient?

Electronic software for collecting evidence is the most common resource used when conducting investigations. It is advisable that adequate measures be taken to guarantee the integrity of the documents collected, namely through the use of hash functions and by employing digital forensics professionals.

6.6 When reviewing documents, do judicial or enforcement authorities in your jurisdiction permit the use of predictive coding techniques? What are best practices for reviewing a voluminous document collection in internal investigations?

There are no rules denying the use of predictive coding techniques within an entity. The Portuguese authorities do not commonly use predictive coding techniques for analysing data. There are, however, some precedents in which experts have been called to help the public investigation when the matter at hand is complex or relates to big data. Several Portuguese law firms have begun adopting AI tools for due diligence and electronic discovery.

7 Witness Interviews

7.1 What local laws or regulations apply to interviews of employees, former employees, or third parties? What authorities, if any, do entities need to consult before initiating witness interviews?

There are no laws or regulations applicable to interviews of employees, former employees or third parties in the context of internal investigations. It should be noted, however, that the GRPW states that the rules that lay out the follow-up to a whistleblower complaint do not exclude the administrative and criminal rules applicable to public administrative and criminal proceedings. This means that if an interview is carried out in disrespect for the basic rights of an interviewee (namely, the right to remain silent and avoid self-incrimination, as well as the right to a lawyer), the content of the interview may later be deemed unlawful if the internal investigation leads to a public investigation.

No authorities need to be consulted before initiating such interviews.

7.2 Are employees required to cooperate with their employer's internal investigation? When and under what circumstances may they decline to participate in a witness interview?

Employees are subject to the employer's power of direction. As such, employees can be instructed to cooperate in an internal investigation. However, the employer's power of direction cannot infringe upon the employee's rights, namely, the employee's rights to privacy and to remain silent in disciplinary proceedings.

7.3 Is an entity required to provide legal representation to witnesses prior to interviews? If so, under what circumstances must an entity provide legal representation for witnesses?

Companies are not required to provide legal representation to witnesses. However, pursuant to article 66, section 3 of the Portuguese Bar Association's Statutes, witnesses cannot be forbidden from seeking legal representation. Also, denying legal representation to witness when requested may later jeopardise the value of the evidence obtained through the interview, should the case later evolve to a public investigation by an administrative or criminal authority.

7.4 What are best practices for conducting witness interviews in your jurisdiction?

Interviews should begin by informing the witness of the relevant context and of his or her rights, and initial questions should be open ended. Impertinent or leading questions should be avoided. The employee should be questioned on how he or she gained knowledge of the facts being reported.

Interviews should be documented, and the resulting documents reviewed and signed by all participants. Audio and video recordings should only be used if the employee offers his or her express consent.

Non-disclosure agreements may be concluded with the employee if the subject matter is particularly sensitive.

7.5 What cultural factors should interviewers be aware of when conducting interviews in your jurisdiction?

There are no cultural factors in Portugal that require special attention when conducting interviews. It should be noted, however, that Portugal has little experience with internal investigation; therefore, it is advisable to inform the interviewee about what an internal investigation is, and how the information provided may be used.

7.6 When interviewing a whistleblower, how can an entity protect the interests of the company while upholding the rights of the whistleblower?

Companies should ensure that complaints are acknowledged and offer feedback to the whistleblower. The whistleblower should be allowed to suggest next steps to the internal investigation, in order to give him/her a significant role that assures that all doubts have been cleared.

The interview should preferably be conducted by an impartial third party that the whistleblower can recognise as a specialist and neutral party.

7.7 Can employees in your jurisdiction request to review or revise statements they have made?

Employees are entitled to review the documentation of any statement made and challenge its veracity or accuracy.

Employees can also ask to review or revise past statements, but the company is not required to allow unreasonable changes or corrections to the original statements.

7.8 Does your jurisdiction require that enforcement authorities or a witness' legal representative be present during witness interviews for internal investigations?

Portuguese law does not require enforcement authorities or the witness' legal representatives to be present during the witness interview conducted in the context of an internal investigation. Nonetheless, and as mentioned above, the witness' legal representative should be allowed to be present if the witness expressly requests that presence.

8 Investigation Report

8.1 How should the investigation report be structured and what topics should it address? Is it always desirable or recommended that a formal written report is prepared?

The applicable laws do not contain many specific rules on the content of the final report.

Following the best practices, investigation reports should include: an executive summary; scope of the investigation; evidence collected (interviews and documents); facts ascertained; analysis of the facts ascertained; and recommendations.

Certain sectors have specific requirements. In particular, the AML Law requires that reports contain: the identification of the persons involved and, if known, their respective activities; the analysis methodology employed by the obliged entity; a description of the suspicious operations; the concrete factors that gave rise to suspicion; and a copy of the documentation that supports the analysis methodology.

Also, the Portuguese Securities Code requires that financial intermediaries, when reporting financial crimes, describe: the reasons for suspicion; the operations in question; the orders given; the persons involved in the transaction; the means of trading; the portfolios involved; the transaction's economic beneficiaries; the markets in question; and any other information potentially of significance.

9 Trends and Reform

9.1 Do corporate investigations tend to lead to active government enforcement in your jurisdiction? Has this increased or decreased over recent years?

Since the regulations on private compliance and internal investigations were only approved at the end of 2021, and the public authority responsible for applying those rules has only begun its actions in 2023, there has not yet been time for the formation of trends.

In a more general sense, any type of internal investigation that is shared with government enforcement agencies is always used to start a public investigation into the facts, since as a general rule all complaints must at least be examined by the authorities. Considering the new rules, it is expected that in future the number of internal investigations will increase and, consequently, that the number of government investigations based on corporate findings will also increase. Some cases of public investigation have already started, as well as examples of using information gathered in internal investigations, namely in cases relating to foreign or multi-national companies that have a wider experience with private compliance.

9.2 What enforcement trends do you currently see in your jurisdiction?

As stated above, the GRPC and GRPW are only now starting to be applied by Portuguese public and private companies. As of the time of writing, it is visible that all companies are going through a period of acquaintance with the new regulations. There is an increased demand for legal and non-legal services related to the implementation of compliance programmes, whistleblowing channels and training on internal investigations. It is expected that, in future, government agencies will start to monitor the existence of these systems. In addition, it is also expected that fines will be applied to companies without internal programmes or with defective systems.

9.3 What (if any) reforms are on the horizon?

The anti-corruption strategy that paved the way for the GRPC and GRPW was approved in 2020 and includes a plan for its implementation up until 2024. In the next few years, it is expected that both the GRPC and GRPW will start to be subject to strict control by government enforcement agencies. Even though at this stage there is no news on future reforms, the coming years will certainly provide new content regarding the correct interpretation and application of the legal framework; it is expected that, over time, guidelines will be issued by the public authorities, as well as good practice manuals. It is also expected that in the coming years, the Portuguese courts will be presented with cases that will give way to the first judicial decisions on the correct application of the GRPC and GRPW. Finally, an evolution is expected within the Criminal Code and the Criminal Procedural Code that will gradually include more and more provisions regarding the need for proper private compliance channels and benefits for companies that carry out internal investigations.

Tiago Félix da Costa joined the firm in 2007 and became a partner in 2015. He is co-head of the criminal, regulatory offences and compliance departments, and coordinates the data protection team.
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Tiago has also acted in the personal data protection field, providing legal assistance on criminal and regulatory processes in this area, and assisting several companies on the creation of policies and programs of "compliance" in the personal data protection field.
In 2017, he received the "Forty under 40 Award" award, organised by *Iberian Lawyer*, which distinguishes 40 lawyers under the age of 40 in Portugal and Spain. In 2019, Tiago was nominated as "Client Choice", exclusively for Portugal, in the category "Litigation".

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João Matos Viana joined Morais Leitão in 2001 and became a non-equity partner in 2019.
Currently, he practises in the area of litigation, focusing specifically on criminal and administrative offences involving banking, securities, insurance competition and pharmaceutical law.
João collaborates regularly in administrative, tax and corporate areas regarding criminal/administrative matters.

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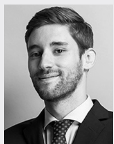

Nuno Igreja Matos joined Morais Leitão in September 2015. He is a member of the litigation team, and works mainly in the areas of criminal and regulatory offences litigation, as well as on matters concerning legal compliance.
Nuno provides legal and judicial support on matters concerning, among others, economic and financial crime, as well as transnational crime and international judicial cooperation in criminal matters. Furthermore, Nuno also works in regulatory and sanctions procedures relating to financial law, competition law, audit and supervision rules, and sports.

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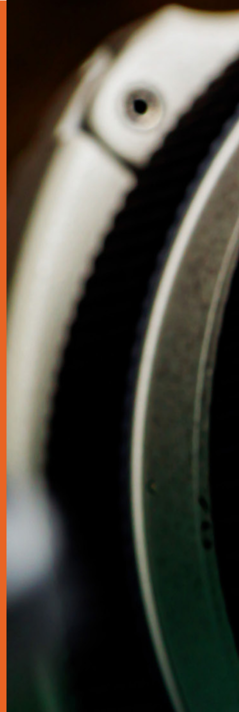

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