NEWS LEXTTER

GLM
GABINETE LEGAL MOÇAMBIQUE
ADVOGADOS

DECEMBER 2013

GLOBAL VISION, LOCAL EXPERIENCE.

THE LEGAL RULES ON PREVENTION AND COMBATTING MONEY LAUNDERING AND FINANCING OF TERRORISM

Law no. 14/2013 of 12 August was recently approved and published in the official journal of the Republic of Mozambique. This law expressly repeals Law no. 7/2002 of 5 February containing the previous rules on prevention and repression of the use of the financial system for laundering money, assets, products or rights derived from criminal activities as defined in the said law.

Law no. 14/2013 of 12 August, referred to as the Law to Prevent and Combat Money Laundering and Financing of Terrorism, was approved to bring Mozambique's rules on combating and preventing money laundering into line with international standards in this area at a time when these problems are increasing considerably.

In terms of its scope of application, the new law broadens the range of entities covered by the money laundering rules to the extent that Law no. 14/2013 of 12 August applies to financial institutions and non-financial entities based in Mozambique. It also applies to the respective branches, agencies, subsidiaries or any other form of representation and to other institutions capable of money laundering and financing of terrorism.

The main innovations introduced by the new law demonstrate a legislative effort to fight terrorism that involves a broadening of the role of entities legally deemed capable of allowing money laundering and in the introduction of the duty to communicate suspicious transactions to the Mozambique Office for Financial Information (Gabinete de Information Financeira de Moçambique - "GIFM").

It is important to note that the duty on non-financial institutions to communicate suspicious transactions is subject to certain restrictions that apply to compliance with this duty by lawyers. In carrying on their professional activity and under the provisions of the Statute of the Mozambique Bar Association, lawyers must observe the rules of professional secrecy in relation to the information provided to them by their clients. This means that the duty to communicate suspicious transactions must be interpreted in harmony with the rules of professional secrecy applicable to lawyers as set out in the said Bar Association Statute.

The law deems the following to be financial institutions:

i. Credit institutions - banks, financial leasing companies, credit cooperatives, factoring companies, investment companies, micro banks, electronic currency institutions and other companies classified as credit institutions by Decree of the Council of Ministers;

ii. Financial companies as defined by law - financial brokerage companies, investment fund management companies, property management companies, risk capital companies, group purchase administration companies, credit card issuer and management companies, exchange houses, discount houses and other companies that are classified as such by Decree of the Council of Ministers; as well as

iii. Micro-finance operators, insurance companies, re-insurance companies, pension fund management companies, insurance brokers and other related investment entities, stock exchange and any other entities that carry on other activities and are classified as such by specific legislation.

On the other hand, the following entities are deemed to be non-financial entities: casinos and gaming institutions; estate agencies; construction companies that sell the properties they build directly; agents trading in precious stones and metals; sellers and re-sellers of vehicles; lawyers, notaries, registrars and independent legal professionals; accountants and independent auditors when involved in transactions in the interest of their clients or in other circumstances in relation to the activities sale and purchase of properties, fund management, securities or other assets of the client, management of savings accounts or securities, organisation of contributions destined to create, operate or manage companies, creation, management or operation of legal or commercial entities; postal companies to the extent they carry on financial activity, and providers of fiduciary fund services.
The crime of money laundering is committed by anyone who intentionally or when they should be aware:

i. Converts, transfers, assists or facilitates any operation of conversion or transfer of the proceeds of the crime, in whole or in part, directly or indirectly with the objective of hiding or disguising their unlawful origin or assisting the person implicated in the criminal activities to escape the legal consequences of their acts;

ii. Hides or disguises the true nature, origin, location, disposal, movement or ownership of the proceeds of the crime or rights relating to them;

iii. Acquires or possesses in any way, or uses assets knowing of their unlawful origin at the time they receive them.

The knowledge, intention or purpose required as elements constituting the crime may be inferred from objective factual circumstances. Furthermore, punishment of the crime of money laundering may also occur even if the unlawful fact in relation to the connected crime took place abroad or even if it is not known where it took place or who did it.

The crime of financing terrorism is committed by anyone who, by any means, directly or indirectly and intentionally supplies or receives funds with the intention they be used or knowing they will be used, in whole or in part, to carry out a terrorist act or by an individual terrorist or a terrorist organisation. Whether the terrorist act actually occurs or whether the funds have actually been used for such act is irrelevant to the commission of the crime of financing of terrorism.

As with the crime of the money laundering, the crime of financing of terrorism may be punished even if the terrorist act was planned abroad or to finance terrorists abroad.

For better control over money laundering, the new prevention and combat rules establish as set of special duties on financial institutions and non-financial entities. These include the duty to communicate suspicious transactions.

In fact, financial institutions and non-financial entities are bound to observe, among others, the duty to identify their clients and check their identity with an appropriate and valid document, the duty to examine any activity that may be related to money laundering and financing of terrorism and the duty to cooperate with the legal authorities as well as the GIFM. They are also under a duty to supply information on operations carried out by their clients and representatives or to present documents related to the respective operations, assets, deposit or any other values in their care. Financial institutions and non-financial entities must also abstain from executing any operations related to the request of the client whenever they have a well-founded suspicion that such operation constitutes a crime. They are also subject to the duty of professional secrecy in relation to the communication of suspicious transactions as well as any information that is subject to a criminal investigation.

The new law also establishes duties on the supervisory authorities. These authorities must ensure compliance with the provisions of the new law and, whenever they detect a violation of the obligations established by the law, they must impose the sanction it also establishes and inform the GIFM of the violations and any sanctions applied.

The Law to Prevent and Combat Money Laundering and Financing of Terrorism also establishes provisional measures with a view to avoiding the disposal of assets originating from the unlawful acts it is intended to combat.

In fact, funds, rights or any other objects deposited in banks or other credit institutions belonging to the suspect or over which the suspect has power equivalent to ownership or any other right of this nature, are subject to attachment, in order to preserve these assets, and even to confiscate them.
The law also imposes an obligation on the judge, at the request of the Public Prosecutor, within 48 hours, to order the attachment of funds, assets, rights and any other objects, in the name of the suspect or of third parties, when there are solid grounds to believe that they are the proceeds of crime or intended for criminal activity. This may also occur even if there are simply sufficient indications of the crime of money laundering or financing of terrorism.

The law also establishes rules to protect the rights of third parties in good faith under which, having become aware of the attachment, a third party who claims ownership of funds, assets, rights and any other objects, may defend their rights by means of a well-founded petition alleging and proving the facts from which their good faith results.

Chapter VI of the law is dedicated to international cooperation and it establishes a set of rules that give rise to obligations. Among the obligations established in respect of international cooperation, the duty of cooperation is one of the most important. This duty requires the Mozambican authorities to promote cooperation as widely as possible with their counterparts in other countries for the purposes of extradition and mutual legal assistance in criminal investigations and cases related to money laundering and financing of terrorism.

Special attention is given to requests for extradition related to the crimes of money laundering and financing terrorism, which, under the new law, are subject to the procedures and principles described in the applicable extradition treaties and in Law

no. 17/2011 of 10 August. The possibility to refuse extradition is also enshrined under the Constitution and in the said Law no. 10/2011.

The Law to Prevent and Combat Money Laundering and Financing of Terrorism lists a set of administrative infringements and establishes rules on the liability of financial institutions, non-financial entities and other legal entities.

The said infringements are punished as follows:

a) When the infringement is committed in the context of the activity of a financial institution:

   i. With a fine of eight hundred thousand to eight million meticals, if committed by a legal entity;

   ii. With a fine of three hundred and seventy thousand to three million seven hundred thousand meticals, if committed by an individual.

b) When the infringement is committed in the context of the activity of a non-financial entity:

   i. With a fine of four hundred thousand to four million meticals, if committed by a legal entity;

   ii. With a fine of one hundred and eighty five thousand to one million eight hundred and fifty thousand meticals, if committed by an individual.

Besides the sanction indicated above, the new law provides for a set of ancillary measures to be applied in the case of infringement. These range from the revocation or suspension of the authorisation granted for a period of three years to the expulsion from the country after enforcement of the sentence in the case of a foreign citizen.

The liability of financial institutions and of non-financial entities does not exclude the individual liability of the persons committing the infringements in their capacity as members of their management bodies or managers, or those who act as legal or voluntary representatives, their employees and staff. The application of the sanction to a person who breaches a duty does not remove the obligation to comply with the duty unless it is unenforceable.

Legal entities are jointly and severally liable for fines, justice tax, costs and other charges incurred by their directors, managers and employees in committing infringements for which they are condemned under the law.

From the point of view of procedure, the supervisory authorities are exclusively responsible for all infringement procedures established in the law.

The procedure for other offences relating to criminal activity, as well as those which are crimes established in the criminal law, are the exclusive responsibility of the Criminal Investigation Police.

Besides this, the processing and trial of crimes provided for in the law do not depend on the processing and trial of connected crimes, even if they are committed abroad.

During a specific period, the judicial authorities are authorised to order access to any type of information in the possession of financial institutions and non-financial entities. This includes information on the existence of an account or other business relationship, access to and monitoring of the account or other business relationship, access to the register of information on the client, representative or the person in whose name they act. It also includes acts done by employees other persons who perform duties for clients located in Mozambique and acts aboard ships or aircraft registered under Mozambican law, among others.

In this respect, the said entities are responsible for infringements committed by the members of the respective bodies and by those sitting on boards of directors or in management positions, in the context of their duties, as well as acts done in their name or in their interest.

The Law to Prevent and Combat Money Laundering and Financing of Terrorism has come into force 90 days after it was published, in other words, 10 November 2013.

Pascoal Bié

This newsletter was prepared by a multidisciplinary team made up of lawyers from GLM – Gabinete Legal Moçambique and lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics. This Newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please send an email to **glm.geral@glm-advogados.com**.

Edifício Millenium Park , Torre A, Avenida Vladimir Lenine, n. 179, 6º Dtº, Maputo, Moçambique
T. (+258) 84 3014479 . F. (+258) 21 303723 . E. glm.geral@glm-advogados.com . ww.glm-advogados.com