



## LITIGATION AND DISPUTE RESOLUTION

# COMBATING MONEY LAUNDERING AND TERRORISM FINANCING

## NEW MEASURES

*The new prevention and control measures to combat money laundering and terrorism financing, established in Law no. 83/2017 of 18 August, will come into force on 17 September 2017.*

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This new law partially enacts Directive 2015/849/EU of the European Parliament and of the Council of 20 May 2015 and Directive 2016/2258/EU of the Council of 6 December 2016. It also amends the Criminal Code and the Industrial Property Code, and repeals Law 25/2008 of 5 June and Decree-Law 125/2008 of 21 July.

### 1. NEW INTERNAL CONTROL MEASURES

When it comes to **internal control policies and procedures and risk management practices**, entities are now required to introduce: (i) formal processes to gather, process and store information relating to the analysis and decision-making process in respect of potential suspects; (ii) mechanisms to test the quality, suitability and effectiveness of these processes; (iii) procedures to control specific money laundering and terrorism financing risks inherent to operations; (iv) a **specific independent and anonymous channel** to **communicate** any **breaches** and risk situations; (v) then (internal or external) **officer responsible for monitoring compliance** with the applicable rules and for compliance with the obligations to communicate and cooperate with the authorities; (vi) appropriate risk management tools including blocking and suspending operations.

The introduction and application of internal control procedures, which must **be set out in writing**, are the responsibility of the **management body of the obliged entity**.

**Groups of companies** must define and adopt **procedures to share information** between branches, subsidiaries or entities under their control.

When the country where the company is represented adopts less strict mechanisms, the company is required to ensure that effective combat measures are applied.

If not, the authorities for each sector must take **actions to control the group** – and, among others, the authorities may **terminate the activity in the country in question**.

*When the country where the company is represented adopts less strict mechanisms, the company is required to ensure that effective combat measures are applied.*

## 2. DUTIES OF IDENTIFICATION, DUE DILIGENCE AND REVIEW

The **duty of identification and due diligence** is imposed not only on “occasional transactions” of €15,000<sup>1</sup> or more, but also on any **transfers of funds exceeding €1000** and on any other transactions when it is suspected that “they may be related to money laundering or terrorism financing”.

**Gambling service providers** must comply with these duties when they engage in transactions with the value of €2000 or more<sup>2</sup>.

The **duty to review** transactions to establish whether transfers of funds are suspicious has also been increased.

The **duty to identify the beneficial owner** has been enlarged with the obligations to consult the information appearing in the **central beneficial owner registry**<sup>3</sup> periodically, and to communicate any non-conformities to the Portuguese Institute of Registry and Notary Services (Instituto de Registos e Notariado, I. P.)

<sup>1</sup> Regardless of whether the transaction is completed in a single operation or in various apparently related operations.

<sup>2</sup> *Idem*.

<sup>3</sup> Created by Law no. 89/2017 of 19 August, which proves the legal rules on registration of beneficial owners.



 FUNDAÇÃO  
PLMJ

JOSÉ LOUREIRO  
S/título, 1998 (detail)

Óleo s/ tela  
95 x 95 cm

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## *The law introduces 25 new concepts including definitions of correspondent relationship, politically exposed person and money laundering.*

### 3. NEW CONCEPTS

The law introduces 25 new concepts and one of the highlights among them is the definition of **correspondent relationships**, which is of great relevance in cross-border correspondent relationships with institutions in third countries. In these cases, when they act as correspondents, financial institutions are required to adopt **stronger due diligence** measures in respect of customers.

The concept of **politically exposed person** has been broadened to cover representatives of the Republic and members of the governing bodies of the Autonomous Regions; the Ombudsman, the members of the Council of State, the National Data Protection Commission, the Superior Council of the Magistracy, the Superior Council of Administrative and Tax Courts, the Office of the Attorney General of the Republic, the Superior Council of the Public Prosecutor’s Office, the Superior Council of National Defence, the Economic and Social Council, and the Media Regulatory Authority; presidents and councillors with executive duties in municipal councils; and members of the managing bodies of political parties on a national and regional level. Furthermore, it continues to be necessary to reconcile the concept of particularly exposed person with the concepts of “close family members” and “persons recognised as closely associated”.

The law introduces a definition of **money laundering**, which covers (i) the conduct prohibited and punishable under 368A of the Criminal Code; (ii) the acquisition, possession and use of assets, with knowledge, at the moment they are received, that they originate from a criminal activity or from participation in an activity of this nature; and (iii) participation in and association with any of the said acts, attempting or abetting the commission of the said acts, or facilitating them or advising on their commission.

### 4. NEW OBLIGED ENTITIES

**Holders of concessions to operate bingo halls** now appear on the list of obliged entities.

Furthermore, the Government may now grant a full or partial exemption from the application of the law to gambling services (except for casinos), based on risk assessment.

The definition of obliged entities now also includes: (i) real estate agents engaged in **letting**, (ii) economic operators engaged in **auctioning activities** or (iii) **importing or exporting rough diamonds**, (iv) entities that engage in **distribution of money and securities**, and (v) certified accountants.

The list of **financial institutions** now includes (i) payment and electronic money institutions based in another Member State of the European Union that operate in Portugal through agents or distributors; (ii) self-managed securities investment companies and real estate investment companies; and (iii) self-managed social entrepreneurship companies and specialist alternative investment companies.

Finally, the new law identifies the acts in which providers of services to companies are obliged to comply with the duties set out in the law. These include the incorporation of companies, the provision of registered offices, and the provision of the services of director to a company.

## *Holders of concessions to operate bingo halls now appear on the list of obliged entities.*

## 5. NEW RULES ON ACCESS TO INFORMATION BY AUTHORITIES

The Tax and Customs Authority may now **request information** in the context of preventing and combating money laundering and terrorism financing. It may also **access the mechanisms, procedures, documents and information** relating to the duties of identification, effective due diligence and conservation in respect of beneficial owners, to ensure the proper functioning of the automatic exchange of information in the area of taxation.

The new law also strengthens the powers of the Central Department of Investigation and Criminal Action and, in taking criminal action, allows it to have **direct access, upon an order being issued**, to all the information necessary for the procedures for preventive investigations into money laundering and terrorism financing.

Special importance is also given to the exchange of information, with a strengthening of **coordination and cooperation** between national and international authorities.

## 6. SANCTIONS FRAMEWORK

The new law creates three new types of crime: (i) unlawful disclosure of information, (ii) revealing and benefiting from the discovery of identity and (iii) disobedience – which are punishable with prison sentences and fines.

Any breach of the duties and obligations provided for in the new law amounts to the commission of one of the administrative offences appearing on an **extensive list**, and the number of offences has tripled compared with the previous law. These offences are punished with **significant fines**, which can rise to €5 million (in the case of a legal entity) and €1 million (in the case of an individual).

The maximum limits may also **correspond to the limit of the benefit obtained** or, in the specific case of legal entities that are (i) credit institutions or financial institutions, (ii) holders of concessions to operate gambling in casinos and holders of concessions to operate bingo halls, (iii) entities that pay betting and lottery prizes, and (vi) entities covered by the Legal Framework of Online Gambling and Betting, **to an amount corresponding to 10% of the total annual turnover, if higher.**

The loss of the economic benefit obtained and the closure of the commercial establishment have been added to the list of ancillary sanctions.

Other important changes have also been made. These include: (i) the possibility to impose a sanction in the case of an **attempt**; (ii) special rules providing for heavier sanctions in the case of **concurrent offences**; (iii) longer maximum period to suspend the proceedings; (iv) suspension of the running of the limitation period for administrative offence proceedings until hidden facts are known; (v) new grounds to suspend the running of the limitation period in proceedings and (vi) a **special reduction in the sanction** applied to members of corporate, management or supervision bodies, when those members are not responsible for the department or area where the offence was committed, and when their responsibility lies in the fact of not having taken appropriate measures to prevent the commission of the offence by the actual perpetrator, and when the most serious sanction is not applied to that perpetrator.

*The new law also strengthens the powers of the Central Department of Investigation and Criminal Action.*

*The number of offences has tripled compared with the previous law.*

## 7. PROCEDURAL PROVISIONS

The new law requires that the **sanction decision must be published** on the website of the authorities for the sectors of **all obliged entities.**

Provision is also made for the **possibility of reformatio in peius**, which means that when a defendant brings a challenge or appeal against the sanction decision, the higher court may increase the sanctions appearing in the decision challenged or appealed.

**Joint and several liability on the part of legal entities** for payment of any fines applied to members of their corporate bodies and/or staff is **limited** to cases in which the offence that has been committed is also attributable to the legal entity itself.

The new law also makes it possible to **suspend**, in full or in part, the **enforcement of the sanction applied** for a period of five years, whenever this is considered appropriate and sufficient for the purposes of prevention. The suspension can be made subject to compliance with certain obligations.

Finally, the new law introduces a **wide range of preventive measures** intended to safeguard the investigation into the administrative offence, the financial system or the rights of the interested parties. These preventive measures include the seizure of objects intended to be used in the commission of the offence, a suspension of the activity or profession, and the imposition of conditions on carrying on activity.

The text of the new law can be consulted [here](#) (in Portuguese).

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