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CRIMINAL LAW AND COMPLIANCE AND CAPITAL MARKETS

Coronavirus: CMVM – Time limits for money laundering and terrorist financing reports

On 5 March, the CMVM published Regulation 2/2020 on the Prevention of Money Laundering and Terrorist Financing, to provide the regulations under Law 83/2017 of 18 August. The CMVM did this as the sector regulator responsible for supervising financial entities including investment companies, investment fund management companies, venture capital companies, and securitisation companies.

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**"Regulation 2/2020
of the CMVM
(Portuguese
Securities Market
Commission) of
5 March comes into
force on 16 April 2020
and sets out the
regulations under the
Law on the Prevention
of Money Laundering
and Terrorist
Financing. It also
imposes information
and reporting duties
on the financial
institutions under
its supervision."**

The Regulation also applies to entities of a financial nature whose supervision is shared with Banco de Portugal, and to auditors, whether companies or individual practitioners.

The official publication of the Regulation completes the process that began on 1 February 2019, the date on which the CMVM published the draft Regulation on the prevention of money laundering and terrorist financing.

This Regulation now sets out the regulations under Law 83/2017, as done previously by Banco de Portugal in its Notice 2/2018, which was addressed to the entities subject to its supervision. The Regulation clarifies the scope of the rules applicable to the entities subject to CMVM regulations in accordance with the specific characteristics of their activity.

The financial institutions subject to supervision shared with Banco de Portugal can establish procedures and systems for common control among the different sectors of activity. They can also give shared duties to the same people, provided this does not have an adverse impact on effectiveness of its measures to combat money laundering and terrorist financing.

Indeed, the Regulation introduces a set of solutions in line with those already adopted by Banco de Portugal in its Notice 2/2018, in particular, for the procedures to identify customers¹ and beneficial owners, to assess situations with a risk of money laundering and terrorist financing, and to detect apparently related occasional transactions.

The Regulation gives obliged entities a broad margin of discretion as to the internal control mechanisms they use to comply with the duties imposed and procedures to be adopted for this purpose. Each entity's mechanisms must take into account the specific risks they face in their operations and relationships with customers.

In particular, the Regulation provides that financial entities must include the items required in Law 83/2017 in their policies, procedures and controls. The emphasis here is on the procedures to be adopted to obtain information about the origin and destination of the funds transferred by customers when the risk profile of the customer or the characteristics of the operation with financial instruments warrant it.

The Regulation also provides that obliged entities must review their internal control systems at 12-monthly intervals. However, if justified on the basis, among others, of the nature, size and complexity of the activities carried on, an interval of up to 24 months can be defined.

¹ For example, videoconferencing and using the services of trusted service providers as a means of proving identification details at a distance.

In re-evaluating their internal procedures, obliged entities must consider, among other things, any changes in their business model, any change in risks as a result of external circumstances relating to their activity, and the recommendations issued by the CMVM or by international bodies. These entities should also evaluate the adequacy, appropriateness and effectiveness of these procedures.

Obliged entities are also required to appoint a compliance officer to perform the role laid down in Law 83/2017. The same person can hold this position and the position of head of the internal control system or an operational position at the same time. The identity of the compliance officer must be communicated to the CMVM by 16 May 2020 and the subsequent communications must be made within a maximum of 5 days of any new appointment.

"The Circular issued on 2 April 2020, which acknowledged the exceptional situation caused by the Covid-19 pandemic, has added a three-month extension to the period initially established for obliged entities to provide information and comply with their reporting obligations."

The Regulation also includes guidelines to ensure that obliged entities can assess the possible relationship between operations and assess whether a particular customer should be subject simplified or reinforced measures to comply with the duties of identification and due diligence provided for in Law 83/2017.

There are also obligations on obliged entities of a financial nature and on auditors to report periodically to the CMVM. These reports are essential to for CMVM to supervise them, but also so that it can meet its obligations to national and international organisations, in particular, the FATF (Financial Action Task Force).

The periodic reporting duties now enshrined in the Regulation include:

- Obliged entities must complete and submit annually to the CMVM, **by 28 February of each year, by reference to the period between 1 January and 31 December of the previous year**, the information referred to in Annex I of the Regulation (financial entities) or the information provided for in Annex II of the Regulation (auditors registered with the CMVM).
- Obliged entities of a financial nature operating in Portugal under the freedom to provide services, in the circumstances provided for in this Regulation, must submit a report on their activity in Portugal to the CMVM by the same date, **28 February of each year**.
- Obliged entities of a financial nature must **submit information relating to activities in the years 2018 and 2019 by 30 June 2020**.

The Regulation comes into force on 16 April 2020 and it represents an effort to set out the guidelines under the money-laundering legislation without merely repeating the rules already contained in Law 83/2017 of 18 August.

In face of the Covid-19 pandemic, on 2 April 2020, the CMVM sent a Circular to the obliged entities under its supervision to add a three-month extension to the period to comply with reporting obligations in relation to money laundering and terrorist financing.

Portugal is currently subject to a state of emergency and the information to be reported under the Regulation which comes into force on 16 April 2020 is innovative in character. Therefore, the regulator has recognised that it will be very difficult for obliged entities to comply in time with the reporting obligations now defined. As a result, it has already **extended the deadline for this purpose to 30 of September of this year.**

The CMVM communication also emphasises that, **in view of the current exceptional circumstances, it is essential for the systems to control and monitor money laundering to remain active**, because the pandemic has created a set of circumstances that are particularly conducive to an increased risk of illegal actions.

In this respect, the CMVM also points out various communications from international bodies, in particular, the European Banking Authority (EBA) and the FATF (Financial Action Task Force), warning about fraudulent investment schemes and schemes to obtain financing based on false information.

It also warns about the increase in criminal and terrorist activity seeking to exploit the loopholes and weaknesses of national systems to combat money laundering and terrorist financing at a time when we know national resources are concentrated on dealing with the pandemic. This means that financial institutions and undertakings must remain vigilant to emerging risks of money laundering and terrorist financing. They must also make sure they are in a position to maintain their mechanisms to mitigate risks and their capacity to detect and report suspicious activities. ■

"As a result, the original deadline of 30 June 2020 for obliged entities to report information on their activities in the years 2018 and 2019 has now been extended by 3 months, until 30 September 2020."