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CRIMINAL, CONTRAORDENACIONAL E COMPLIANCE

Coronavirus: The impact on the fight against money laundering and terrorist financing

The exceptional situation caused by the Covid-19 pandemic has had an impact on many areas of economic activity, in particular, the commercial, real estate and financial sectors. This has created obstacles to meeting the regulatory obligations imposed on obliged entities in the context of combating money laundering and terrorist financing.

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In view of the global character of the Covid-19 pandemic, its repercussions in the field of regulating and combating money laundering and terrorist financing have led to recommendations by various international, European and Portuguese bodies.

On 1 April 2020, the Financial Action Task Force (FATF) issued a statement¹ on the impacts of Covid-19 in the context of combating illicit financing and warned that certain criminals may attempt to take advantage of the Covid-19 pandemic through the following practices:

- i) Financial fraud and exploitation scams, including advertising and trafficking in counterfeit medicines, and offering fraudulent investment opportunities.
- ii) Engaging in phishing schemes that prey on virus-related fears.
- iii) Fundraising for fake charities;
- iv) Various medical scams targeting innocent victims to obtain undue profits by exploiting people at risk or in need of care.
- v) Exploitation of gaps or weaknesses of national systems to obtain undue enrichment and access to privileged information in relation to Covid-19.

In addition, this pandemic has also had a huge impact on the economy. This is the result of the application of social distancing rules and the suspension and closure of many economic activities. For this reason, it has become essential to ease the movement of funds to inject capital into the companies most affected, as a way to avoid the collapse of economies.

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As a result, the FATF is encouraging countries and obliged entities, such as financial institutions, to adopt measures to prevent crime. They are also encouraged to explore the proper use of simplified measures to facilitate the granting of government benefits in response to the pandemic.

Indeed, when obliged entities identify situations with a low risk of money laundering and terrorist financing, the FATF recommends they adopt simplified measures of due diligence adapted to the current situation.

The use of financial technology, in particular, digital and contactless payments and digital onboarding, reduces the risk of spreading the virus, so its use should be preferred.

Finally, the FATF highlights the vital work and assistance provided by non-profit organisations (NGOs) in combating the current global public health emergency. It also recognises that the majority of these associations have a reduced risk in relation to money laundering and terrorist financing. The goal will be to encourage flexibility and ensure that donations can be made quickly through legitimate and transparent channels, without disruption.

¹ Information available [here](#).

"The exceptional situation caused by this pandemic is especially conducive to an increase in criminal activity in terms of fraud, a range of cybercrimes, and money laundering and terrorist financing, among others."

Obligated entities should continue to take a risk-based approach to the monitoring carried out, to ensure that the legitimate activity of associations and companies is not unnecessarily delayed, disrupted or discouraged.

In addition, on 31 March 2020, the European Banking Authority (EBA) issued a statement² emphasising the importance of preserving the effectiveness and stability of the financial system of the European Union. This statement also recalls the importance of continuing to maintain effective systems and checks to ensure that the EU financial system is not misused for the purposes of money laundering or terrorist financing in the context of the pandemic.

We can conclude from the recommendations of these institutions that the national authorities responsible for supervising obliged entities should support the efforts of these entities by continuously sharing information on the emerging risks of this pandemic. They should also set clear expectations about the measures that the entities must implement to mitigate those risks.

As a result, the adverse effects of this pandemic may create a need for temporary changes to how supervision is carried out and, potentially, an adjustment of the priorities of the supervisory bodies. These effects may also make it necessary to define plans to ensure that the fight against money laundering and terrorist financing continues to be effective.

To supervise obliged entities, the supervisory bodies must plan their supervision activities in an effective, pragmatic and risk-sensitive way. This may involve, for example, (i) the temporary postponement of non-essential on-site inspections, on a case-by-case basis, even after the current restrictions on freedom of assembly and movement have been lifted, (ii) the holding of virtual meetings and inspections, when appropriate, or (iii) the extension of the dates to submit AML/TF questionnaires and reports.

As has been pointed out, without prejudice to the trend of economic slowdown, illegal activities will persist and will even potentially be worsened by the pandemic. For this reason, it is recommended that the supervisory authorities adopt the following measures:

- i) Ensure that obliged entities remain alert to money laundering and terrorist financing techniques that might change due to the economic downturn and, if necessary, update their money laundering and terrorist financing risk assessments accordingly.
- ii) Remind obliged entities to continue monitoring transactions and pay particular attention to any unusual or suspicious patterns in customers' behaviour and financial flows.

² Information available [here](#).

- i) Remind obliged entities to take risk-sensitive measures to establish the legitimate origin of unexpected financial flows, where these financial flows stem from customers in sectors that are known to have been impacted by the economic downturn and Covid-19 mitigation measures. Examples of these customers include cash-intensive businesses in the retail sector, companies involved in international trade, and any type of shell companies in sectors facing the economic downturn which will keep a similar volume of financial flows in the absence of real economic activity.
- ii) Remind obliged entities that they must continue to report suspicions of money laundering and terrorist financing to the relevant Financial Intelligence Unit.

In Portugal, some of these recommendations have already been implemented in the banking and financial sector. In particular, to avoid personal contact, but also to reduce the operational effort required by institutions supervised by Banco de Portugal during this period, a decision was made to suspend or postpone all inspections. This applies to the supervision of the prevention of money laundering and terrorist financing, except in very critical situations or where it is possible to continue to work at a distance. Measures have also been adopted to postpone or cancel reports and to bring more flexibility to account opening requirements by using videoconferencing, among others³.

As a final note, we would stress that above communications make the following recommendations to the authorities that supervise and monitor the different sectors of activity most exposed to the risk of money laundering and terrorist financing:

- i) The global pandemic is especially conducive to an increase in criminal activity and, in particular, in cybercrime, fraud and money laundering. For this reason, obliged entities should be aware of and look out for this type of crime.
- ii) The constraints on managing the resources of obliged entities may, on a case-by-case basis, justify the adoption of exceptional measures such as the temporary lifting of regulatory requirements (in particular the suspension of time limits for communication), the adoption of simplified control mechanisms, and the preferential use of digital tools and media.
- iii) Regardless of the need to bring greater flexibility to the movement of funds, it is crucial for national regulatory authorities to remain vigilant and for obliged entities to ensure strict compliance with their duties to monitor and report on the prevention of money laundering and terrorist financing. ■

³ See Banco de Portugal Circular Letter CC/2020/00000017, available [here](#).