

**BANKING AND FINANCE**

The obligation to register entities that carry out activities with virtual assets

Bank of Portugal Notice no. 3/2021

Bank of Portugal Notice 3/2021 (“**Notice**”) was published on 23 April 2021 and it regulates the registration process for entities carrying out activities with virtual assets. This is provided for in article 112-A of Law 83/2017 of 18 August¹ (Law to Combat Money Laundering and Terrorist Financing or LCMLTF), which was introduced in the LCMLTF in the context of the incorporation of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 (“**5AMLD**”) into Portuguese law.

The Notice sets out the terms for the submission to the Bank of Portugal of (i) applications to register entities wishing to carry on activities with virtual assets and (ii) applications to amend the information subject to registration by the same entities.

The duty to register with the Bank of Portugal

Following the implementation of the 5AMLD, engaging in activities with virtual assets on a professional basis became subject to prior registration with the Bank of Portugal.

Virtual assets are considered to be any digital representations of value that, despite not being legal tender, are accepted as a means of exchange or investment and can be transferred, stored and traded electronically. Along the same lines, any of the following economic activities, carried out in the name or on behalf of a client, are considered to be activities with virtual assets: (i) exchange services between virtual currencies and fiat currencies; (ii) exchange services between one or more virtual assets; (iii) virtual asset transfer services; (iv) virtual asset safeguarding and/or administration services.

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¹ The LCMLTF establishes measures to combat money laundering and terrorist financing. It partially implements 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.

This registration duty applies to all entities that engage in activities with virtual assets in Portugal, including entities that are already authorised and registered with the Bank of Portugal to carry out other regulated activities. However, the applicant entities that carry out another activity already authorised by the Bank of Portugal may refer, in their respective applications, to the information and documents previously provided to this regulator, as long as they remain valid and up-to-date².

The granting and maintenance of the registration of the applicant entities with the Bank of Portugal depends on the assessment of the competence and suitability of the applicant. For this purpose, the application for registration must be accompanied by the information in Annex I to Notice 3/2021, including information on (i) the applicant entity; (ii) its beneficial owners, holders of shareholdings, members of the management and supervisory bodies; and (iii) its business plans and internal procedures, in particular, the procedures to prevent money laundering and terrorist financing³.

"Entities that engage in activities with virtual assets in Portugal under the principle of free provision of services are not subject to the duty of prior registration provided for in article 112-A of the LCMLFT and regulated by Notice 3/2021."

The supervision by Bank of Portugal

The Bank of Portugal is responsible for the supervision of the following entities carrying out activities with virtual assets in Portugal and these entities are, therefore, subject to this registration requirement:

- i) **companies incorporated** in Portugal to engage in activities with virtual assets;
- ii) natural or legal persons **domiciled or established in Portugal** to conduct business with virtual assets;
- iii) other individuals or companies that, due to engaging in activities with virtual assets, are **required to file a declaration of start of activity with the Portuguese Tax and Customs Authority**.

Therefore, all activities that have elements of connection with Portugal other than those indicated above will be considered by the Bank of Portugal as being outside its scope of supervision. Consequently, entities that engage in activities with virtual assets in Portugal under the principle of free provision of services are not subject to the duty of prior registration provided for in article 112-A of the LCMLFT and regulated by Notice 3/2021. ■

² Article 5 of Notice 3/2021.

³ Annex I to Notice 3/2021 and article 112-A(5) of the LCMLFT.