PLMJ

AUG. 21

INFORMATIVE NOTE

DISPUTE RESOLUTION AND REAL ESTATE AND TOURISM

Prevent and combat money laundering and terrorist financing in the real estate sector

Regulation 603/2021 was approved by the Governing Board of the Institute of Public Markets, Real Estate and Construction I.P. (“IMPIC”) and came into force on 5 July 2021. The aim of this regulation (“Regulation”) is to establish and regulate the procedures to be adopted in the fight against money laundering and terrorist financing in the real estate sector.

This Regulation repeals Regulation 276/2019 of 26 March (see PLMJ Information Note), but retains most of the existing rules.

"Came into force on 5 July 2021 the procedures to be adopted in the fight against money laundering and terrorist financing in the real estate sector."

As a result, the obligations provided for continue to apply to entities which, regardless of whether they are financial or non-financial in nature, engage in Portugal in material acts of (i) real estate agency, (ii) purchase, sale, purchase for resale or exchange of real properties, (iii) property development and (iv) property rentals ("**Obliged Entities**").

As part of the effort to adopt measures to combat money laundering and terrorist financing, the Regulation has, in general, reinforced the existing procedures. The following are the most important of the obligations that apply to Obliged Entities:

Duty of control

Article 4 continues to require the management bodies of Obliged Entities to define and adopt the policies and procedures necessary to comply with the legal and regulatory standards on preventing money laundering and terrorist financing. It also requires them to effectively manage the associated risks. In doing so, they must take into account the sector and the activity carried out, the risks/exposure to risk involved, and the nature, size and complexity of the Obliged Entity. The quality, appropriateness and effectiveness of the policies and procedures adopted must be assessed regularly and independently.

Dirce Rente
Dispute Resolution team

"The range of entities that must appoint a member of their senior management or equivalent to act as Compliance Officer for the legal and regulatory provisions applicable to combating money laundering and terrorist financing has been extended."

Duties of identification and due diligence

The new Article 5 now has two additional paragraphs. These clarify that compliance with these duties is imposed, not only when (i) business relations are established or (ii) occasional transactions of EUR 15,000.00 are made, but also whenever (iii) there is a suspicion that transactions may be related to money laundering or terrorist financing or (iv) there are doubts about the veracity or adequacy of previously obtained customer identification data.

Duty of retention

Article 9 maintains the duty to keep certain documents and information for seven years, especially in the context of complying with the duty of identification.

Duty of communication

Obliged Entities continue to be required to communicate (i) the date of the beginning of their activity and the information relating to (ii) each real estate transaction in which they take part and (iii) lease contracts with a monthly rent of EUR 2500 or more.

However, a change has been made to the frequency of the last two communications. They must now be made on a quarterly basis, by the end of the quarter following the one to which they relate[1].

Finally, the range of entities that must appoint a member of their senior management or equivalent to act as Compliance Officer for the legal and regulatory provisions applicable to combating money laundering and terrorist financing has been extended. The Compliance Officer acts as the main point of contact between the Obliged Entity and the IMPIC regarding compliance and matters relating to the Regulation. Now, all Obliged Entities are subject to this obligation, regardless of their legal nature, if they have more than five employees in their commercial or administrative areas. ■

1 Under General Guideline 1/IMPIC/2021, communications regarding the third quarter of 2021 can be made up to 28 February 2022, being applicable the rules set out in Regulation 279/2019 in this regard.