



LEGAL ALERT

June 5, 2023

Money laundering prevention duties applicable to entities that carry activities with virtual assets

Bank of Portugal (hereinafter "BoP") is the competent national authority for the registration of entities that intend to carry out activities with virtual assets and for the verification of compliance with the legal and regulatory provisions applicable to registered entities on the prevention of money laundering and terrorism financing (hereinafter "AML/CFT").

The BoP's authority in this area, attributed by Law No. 83/2017 of 18th August 2017 (hereinafter "AML/CFT Law") is limited to AML/CFT, and does not extend to other areas of prudential, behavioural or other nature.

In the use of these powers, BoP published Regulation no. 1/2023 (hereinafter "Regulation").

With this Regulation, BoP has strengthened the duties of information and the mandatory preventive duties which entities that carry out activities with virtual assets must comply with, establishing, among other aspects:

- ✓ The procedures, instruments, mechanisms, and formalities inherent to the compliance with the preventive duties and other obligations set out in the AML/CFT Law; and
- ✓ The means and mechanisms necessary to comply with the duties provided in Law No. 97/2017, of August 23rd (hereinafter "Law no. 97/2017"), which regulates the implementation and enforcement of

restrictive measures adopted by the United Nations or the European Union.

Here we list the main aspects of the Regulation **Compliance monitoring, the appointment of a member of the management body and a compliance officer**

Entities that carry out activities with virtual assets must ensure the existence of a compliance control function in matters of AML/CFT, which ensures, in a functionally independent manner, the proper management of risks and the control of compliance with the preventive duties, appointing, for this purpose, a Compliance Officer (hereinafter "RCN").

As a rule, entities must ensure the segregation of the functions performed by the RCN from the activities it supervises. However, entities whose number of employees is less than six and whose operating income in the last financial year is less than EUR 1,000.00 are not required to have this segregation of duties.

Additionally, entities that carry activities with virtual assets must assign a competent executive member of the management body responsible for enforcing the AML/CFT preventive duties.

Internal Control System

In the identification of the specific AML/CFT risks that these entities are exposed to, the Regulation lists, as examples, the criteria that should be

considered in the activity and definition of the internal control system, among others:

- ✓ The types of virtual assets made available and the main characteristics of each one.
- ✓ The total value of the virtual assets made available.
- ✓ The number and value of transactions with virtual assets.
- ✓ The execution of virtual asset transfers to or from self-hosted addresses; and
- ✓ The nature and scope of each distribution channel used, including whether it is an open-loop or closed-loop.

The Regulation establishes that entities that carry out activities with virtual assets must review the up-to-datedness, adequacy, and effectiveness of the preventive procedures implemented in these matters at least every 12 months.

Regarding evaluations of the effectiveness of the internal control system, the Regulation adds that the existence or outsourcing of an audit function, or a suitably qualified third-party entity that ensures the independence of these evaluations must be guaranteed.

Information sources, procedures, and systems

The Regulation sets forward in Article 9 (3) a list of information sources that entities that carry out activities with virtual assets must consider in the identification, evaluation, and mitigation of the AML/CFT specific risks to which they are exposed.

In the context of the duty of identification and due diligence, in order to ensure the proper and complete identification of customers, the Regulation requires these entities to adopt information management tools or systems. In particular, network analysis systems that use distributed logging or similar technology to filter addresses or wallets held by or associated with customers against blacklists or to detect the use of technologies to hide identity or location, including through the use of mixers, tumblers or anonymizers, or virtual private network services.

Outsourcing

The Regulation sets out the processes, services, and activities which are not susceptible to being outsourced, as they may be detrimental to compliance with the measures and procedures provided for in the AML/CFT Law and the Regulation. To this end, the Regulation establishes this general rule by expressly prohibiting the outsourcing of certain aspects that may impair the quality of the measures and procedures adopted.

In cases where outsourcing is allowed, the Regulation establishes a set of prior obligations that aim to ensure that the risks involved are adequately assessed and mitigated, namely through the prior opinion of the RCN and the permanent monitoring of outsourced processes, services, and activities.

Reporting of irregularities

The Regulation provides that the entities that carry activities with virtual assets must draft, before February 28th of each year, an annual report containing the description of the specific channels, independent and anonymous, that internally ensure, in an appropriate manner, the receipt, treatment, and filing of reports of irregularities and a summary description of the reports received and their follow up.

Restrictive measures

In light of Law No. 97/2017, the Regulation establishes that the entities that carry activities with virtual assets must adopt the necessary means and mechanisms to, as enforcing entities, ensure compliance with the duties provided in that law regarding the application of restrictive measures.

Duty of identification and diligence

The Regulation under analysis also governs the duty of identification and due diligence, namely in regard to:

- ✓ The procedures for the admission of natural person customers and the collecting of identifying information.
- ✓ The requirements for verification of the information on the beneficial owner of legal person customers.
- ✓ Rules on the proof of origin of funds and virtual assets, as well as information on the movement of fiat currency and virtual assets.
- ✓ The possibility of deferred verification of customer identification.
- ✓ The information to be provided on the activity of customers.
- ✓ The activities to be carried out when enforcing simplified or enhanced due diligence measures, and the low and high-risk circumstances to be considered are provided for in Annexes II, III, and IV of the Regulation.
- ✓ The obligation to identify the employee responsible and the date of the activities of collecting, registering, and verifying the identity of the customers.
- ✓ The possibility of using videoconferencing as an alternative procedure for the verification of customers' identification, which procedure must follow the rules detailed in greater detail in Annex I to this Regulation; and
- ✓ Specific obligations when dealing with transactions involving: i) "jumbo wallets", ii) "pooled wallets", iii) sending virtual asset transfers, iv) transferring virtual assets received, or v) transferring intermediated virtual assets.

Additionally, the Regulation allows the use of third-party entities to carry out the identification and due diligence measures, provided certain requirements are fulfilled, as provided in Article 43 of the Regulation

Other duties

Within the scope of the duty to refrain, the Regulation sets out how entities must proceed when they decide to terminate a business relationship, as well as how the restitution of the fiat currency or virtual assets must be carried out. Specifically, the virtual assets must be transferred to a "hosted wallet" or a "self-hosted address".

Lastly, the Regulation reinforces the compliance with other AML/CFT duties.

The Regulation also amends Bank of Portugal's Regulation No. 1/2022, of June 6th.

Regulation No. 1/2023 takes effect on July 15, 2023. However, entities that carry activities with virtual assets may immediately use videoconferencing as an alternative means for the verification of the identity of the parties involved.

To access the entire wording of Regulation No. 1/2023, please click [here](#).

For more information on this subject, please contact:



Miguel Cordeiro
Head of Banking and Finance
mcordeiro@ctsu.pt



If you do not intend to receive these communications, you may oppose, at any time, to the use of your data for these purposes, by sending a written request to the following email address: geral@ctsu.pt. CTSU also ensures the right to access, update, rectify and delete, as per the applicable law, upon written request sent to the above mentioned email address. This communication contains only general information, therefore it is not an advice nor a provision of professional services by CTSU. Before any act or decision which may affect you, you should seek advice from a qualified professional. CTSU is not liable for any damages or losses suffered as a result of decision-making based on this communication.

CTSU – Sociedade de Advogados, SP, RL, SA, is a Portuguese independent law firm, and the Deloitte Legal practice in Portugal. Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited (“DTTL”) member firms, their affiliates or their related entities that provide legal services. The exact nature of these relationships and provision of legal services differs by jurisdiction, to allow compliance with local laws and professional regulations. Each Deloitte Legal practice is legally separate and independent, and cannot obligate any other Deloitte Legal practice. Each Deloitte Legal practice is liable only for its own acts and omissions, and not those of other Deloitte Legal practices. For legal, regulatory and other reasons, not all member firms, their affiliates or their related entities provide legal services or are associated with Deloitte Legal practices.