



## **Prevention and action against money laundering and terrorist financing in the real estate sector**

On June 26 2019, **Regulation no. 276/2019** (“**Regulation**”) of the Institute of Public Markets, Real Estate and Construction, I.P. (“**IMPIC, I.P.**”), was published in the Portuguese official Gazette. It aimed at the **prevention and action against money laundering and terrorist financing in the real estate sector**.

This Regulation was prepared by IMPIC, I.P. in compliance with the **anti-money laundering and terrorist financing measures** (“**ML/TF**”), approved by Law no. 83/2017, of August 18 (the “**Law**”), in particular, under its Article 94, that establishes that the sectorial authorities can elaborate, approve or push through regulations, or other general rules, designed to ensure that the obligations foreseen in the Law or the Regulation are enforced with the appropriate ML/TF risks of each sector, as well as the extent, nature and complexity of the entities and activities pursued.

**ML/TF measures in real estate.**

In order to clarify some of the legal obligations and deadlines provided in the Regulation, IMPIC, I.P. published on June 24, 2019 the “**Informative Circular no. 02/IMPIC/2019**”.

The Law and Regulation are applicable to entities that, regardless of their financial or non-financial nature, engage in any real estate activity, i.e. real estate brokerage, acquisitions, sales, purchases for resale or property exchange, real estate promotion and real estate rental, whether they have statutory or effective headquarters in Portugal, whether they develop real estate through branches, agencies, delegations, permanent representations or other local forms of representation or regarding real estate located in Portugal ("**Obligated Entities**").

**Establishment and adoption of policies and procedures, commensurate with the nature, size, and complexity of the entity and the activity pursued by it.**

The measures to prevent and combat money laundering and terrorism financing that must be performed by the Obligated Entities shall comply with the following duties: (a) control duty; (b) identification and diligence duty; (c) communication duty; (d) abstention duty; (e) refusal duty; (f) conservation duty; (g) examination duty; (h) collaboration duty; (i) non-disclosure duty and (j) training duty.

Indeed, the Regulation establishes the conditions of exercise and defines the procedures, instruments, mechanisms, formalities and other aspects necessary to ensure the fulfillment of the above-mentioned duties, of which we highlight the **control duty**, the **identification and diligence duty**, the **communication duty** and the **conservation duty**.

**(a)** Regarding the **control duty**, the Obligated Entities shall proceed to the creation and adoption of policies and procedures, commensurate to the nature, size and complexity of the entity and the activity pursued by it, enabling the effective management of the ML/TF risks and compliance with ML/TF prevention laws and regulations.

**Duty of designation of the Regulatory Compliance Officer.**

Taking the above in consideration, it should be noted that whenever the entity is (a) public limited company, (b) limited company, (c) or an individual sole trader – in the last 2 cases if the number of employees, under an employment contract or service provision is greater than 5 – they should appoint one member of their senior management or equivalent to perform the role of Regulatory Compliance Officer ("**RCO**").

In particular, the RCO is responsible for:

- (i) participate in the definition and issue a prior opinion on policies, procedures and controls intended to prevent ML/TF;
- (ii) monitor the adequacy, sufficiency and timeliness of the ML/TF policies, procedures and controls, proposing the necessary updates;

- (iii) participate in the definition, monitoring and evaluation of the internal training policy;
- (iv) ensure the centralization of all relevant information that comes from the various business areas of the real estate entity;
- (v) assume the role of interlocutor of the judicial, police and supervisory and inspection authorities.

The Obligated Entities must notify the appointment of the RCO by **September 19, 2019**, i.e. 60 working days counting from the publication date of the Regulation.

The nomination of the RCO should be communicated to IMPIC, I.P. by submitting an electronic form available on their respective website, accompanied by all the necessary attachments.

**(b)** Within the scope of the **identification and diligence duty**, the Regulation foresees that before the transactions are concluded or before the sale and purchase promissory agreement or lease agreements are concluded, the Obligated Entities, should in particular:

- (i) collect, prove and retain for a period of 7 years the identifying data of the clients, of each of the real estate transaction participants and their representatives;
- (ii) if the client is a legal person or a collective interest center without legal personality, collect the identifying elements of the formal equity holders and members of the management body, as well as their effective beneficial owners and their registration in the central register of the beneficial owner.

**(c)** In relation to the **duty of communication**, the Obligated Entities have to inform IMPIC, I.P. about:

- (i) the date of commencement of business, within 60 days of the date of commencement of business for tax purposes;
- (ii) the elements regarding each transaction in which they intervene and the elements regarding to lease agreements with monthly income equal to or greater than € 2,500, until August 31, when made in the first semester of the year, and until February of the following year, when carried out in the second semester of the year.

**(d)** Regarding **training duty**, the Obligated Entities must provide their legal representatives, officers, RCO and employees performing relevant functions for

**The Obligated Entities must report the RCO's appointment by September 19, 2019.**



**Training duty in ML/TF prevention.**

preventing and combating ML / TF purposes, the possibility of attending training courses, conferences, symposia and similar events.

These training actions must meet the following periodicity criteria:

- (i) 1 training course every 2 calendar years for companies with 1 to 5 employees;
- (ii) 1 training course per calendar year for companies with 6 to 10 employees;
- (iii) rotational training for entities with more than 10 employees, with at least 1 training action per calendar year, with the presence of RCO in all of them.

Such training actions shall provide managers, employees and other employees of the Obligated Entities with adequate knowledge for the purpose of ML / TF prevention, as well as knowledge regarding the protection of personal data.

In addition, the Obligated Entities should keep an up-to-date and complete record of the training courses attended, which should be made available to IMPIC, I.P. whenever requested.

Finally, it should be noted that the violation of the duties foreseen in the Law and the Regulation, as typical unlawful facts, may constitute administrative offenses that, depending on the type of entity that commits the infringement, may be punishable by fines ranging from € 2,500.00 up to € 5,000,000.00.

As mentioned above, the Regulation entered into force on June 26, 2019.

We are available to provide any additional clarifications regarding this matter.

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**The Obligated Entities shall keep an up-to-date and complete record of the training attended, which shall be made available to IMPIC, I.P. whenever requested.**

**Necessity of adequate knowledge of ML/TF prevention, as well as knowledge of personal data protection.**

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