

## **English Version**

# **Anti-money laundering and financing terrorism (aml/ft)- amendments – law no. 58/2020**

*Law no. 58/2020, came into force on 1 September and implemented into Portuguese law, Directive (EU) 2018/843, of 30 May (commonly referred to as the AML/FT 5th Directive) and Directive (EU). 2018/1673, of the European Parliament and of the Council, of 23 October 2018, regarding the prevention and fight against money laundering and financing terrorism.*

*Law No. 58/2020 introduced a set of changes to the national legal framework[1] being the most significant to Law 83/2017, of 18 August (Measures to combat money laundering and financing terrorism) and Law No. 89/2017, of 21 August (Legal Regime of the Central Register of the Beneficial Owner) of which we highlight:*

### **1. The Concepts Of Politically Exposed People And Close Members Of The Family (Of Politically Exposed People) are Extended**

*The concept of “politically exposed people” (“PEP”) now includes members of parliamentary chambers (in addition to members of parliament), General Officers of the Republican National Guard and Chief Superintendents of the Public Security Police (in addition to Officers Generals of the Armed Forces, already identified as PEP).The concept of «close family members» (of PEP) now includes the co-habiting partners of the PEP’s first degree*

relatives.

## **2. Activities With Virtual Assets and Virtual Assets included in AML/FT**

The changes also include two new concepts: (i) "Virtual asset", a digital representation of value that is not necessarily linked to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange or investment, and which can be transferred, stored and traded electronically; and (ii) "Activities with virtual assets", defined as any of the following economic activities, performed in the name or on behalf of a client: (a) Exchange services between virtual assets and fiat currencies; (b) Exchange services between one or more virtual assets; (c) Services through which a virtual asset is moved from one address or wallet to another (transfer of virtual assets); (d) custody services and administration of virtual assets or instruments that allow controlling, holding, storing or transferring these assets, including private cryptographic keys.

According to the new regime, activities with virtual assets can only be carried by entities registered with the Bank of Portugal ("BdP") for that purpose. BdP proceeds to assess competence and suitability as a condition for granting and maintaining registration.

## **3. New Obligated Entities**

In the range of financial entities required to adopt a anti money laundering procedures, the new regime included:

- Securities investment companies to promote the economy;
- Qualified venture capital fund managers;
- Qualified social entrepreneurship fund managers;
- Self-managed EU long-term investment funds with the name 'ELTIF'; and
- Investment and Real Estate Management Companies in Portugal (commonly referred as "SIGI").

All under the exclusive competence of the CMVM in this matter.

In non-financial sector should be highlighted the entities engage in any activity with virtual subject to Banco de Portugal's exclusive supervision.

## **4. The Duty Of Identification now Covers Virtual Assets**

The obligation to comply with the duty of identification and diligence now includes transactions carried out within the scope of activity with virtual assets, whenever their amount exceeds € 1000.

## **5. Clarifications on the Ultimate Beneficiary Owner Regime (UBO)**

The Obligated Entities must record any difficulties eventually encountered during the process of verifying the identity of the beneficial owners; the criteria used to determine a company's UBO should be applicable to Collective Investment Undertakings; It is clarified that pension funds are subject to the rules on beneficial owners if they finance, pension plans whose participants or beneficiaries are board members of the participants, and at least 2% of the value of the pension fund is linked to the financing of their past liabilities or to the value of their individual accounts, being these participants or beneficiaries qualified as effective beneficiaries.

## **6. Communications Of Real Estate Activities Go To Quarterly (Art. 46)**

The communications of real estate transactions and lease contracts to IMPIC will be made on a quarterly basis, and the Tax and Customs Authority will make available to IMPIC, IP, the elements it has regarding these transactions and contracts.

## **7. Anonymous Prohibition**

*Anonymous prohibition is now expressly provided for the opening, maintenance, and existence of safes and for accepting payments in anonymous electronic money, including using anonymous prepaid instruments.*

### **8. Statistical Data And Other Relevant Information - Disclosure Of Pep List**

*The Coordination Commission for Preventing and Combating Money Laundering and Financing of Terrorism is expected to prepare, keep updated and publish on the respective portal (<https://portalbcft.pt/>), the list of prominent public functions at a higher level that fit the definition of 'politically exposed people'.*

### **9. Administrative offenses**

*Non-qualified administrative offenses are distinguished from especially serious administrative offenses. Fines are reduced to a half for the non-qualified administrative offenses.*

### **10. Information On Effective Beneficiary – duty to inform the company**

*The obligation to inform the companies (subject to the Beneficial Owner regime) on the elements necessary for the identification and registration of the beneficiary owner fall not only on the shareholders, but also on the persons that hold, even if indirectly or through third, the ownership or control in any way.*

### **11. Annual Confirmation Of the UBO**

*Annual confirmation of the information on the beneficial owner starts to be made until December 31 of each year (instead of July 15).*

*[1] Law No. 15/2001, of 5 June – General Rules on Tax Infringements; Law No. 20/2008, of 21 April – Criminal Liability for Crimes of Corruption in International Trade and Private Activity; Legal Regime on Access to and exercise of Insurance and Reinsurance Activity; Law No. 83/2017, of 18 August – Measures to combat money laundering and financing terrorism; Law No. 89/2017, of 21 August – Legal Regime of the Central Register of the Beneficial Owner; Law No. 97/2017, of 23 August – Application and Enforcement of restrictive measures approved by the United Nations and European Union; Criminal Code; Commercial Registry Code; General Rules on Credit Institutions and Financial Companies; Decree-Law No 15/93, of 22 January – Legislation to combat Drugs; Notarial Code; Fee Regulations for Registries and Notaries; Decree-Law No 14/2013, of 28 January – Organization and Harmonization of the legislation regarding Tax Identification Number.*

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