

JULY 2019

## IMPIC REGULATION NO. 276/2019, OF MARCH 26<sup>TH</sup> PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING IN THE REAL ESTATE SECTOR

### INTRODUCTION

On June 26<sup>th</sup> 2019 the new IMPIC – Institute of the Real Estate and Construction Public Markets (hereinafter “IMPIC”) regulation no. 276/2019 entered into force, establishing new obligations regarding prevention of money laundering and terrorist financing for the entities that carry out real estate activities in national territory (hereinafter “Regulation”).

The Regulation implements, in large part, the obligations set forth in the Law no. 83/2017, of August 18<sup>th</sup> – which establishes measures on combating money laundering and the financing of terrorism –, adapting such obligations to the real estate sector.

### WHICH ENTITIES ARE AFFECTED BY THE REGULATION?

All companies and individual entrepreneurs that carry out real estate activities in Portugal, whether in the financial or non-financial area, are subject to the obligations set forth in the Regulation.

For the above-mentioned purposes, the Regulation is applicable to all companies and individual entrepreneurs which: **(i)** have registered or effective offices in Portugal and **(ii)** those that develop the activity through branches, agencies, delegations, permanent representatives and whose activity is developed regarding buildings or other real estate in Portugal.

### WHICH REAL ESTATE ACTIVITIES ARE SUBJECT TO THE REGULATION?

The Regulations considers as real estate activities: **(i)** real estate brokerage; **(ii)** purchase, sale, purchase for resale or exchange of properties; **(iii)** property development (stimulation, programming, direction and financing of real estate works towards its sale or transmission) and **(iv)** leasing of immovable property.

### MAIN OBLIGATIONS

The Regulation establishes several obligations that the above-mentioned entities have to comply with while conducting its activities, namely:

**Control** – The company is obliged to, according to the money laundering and terrorist

financing risk management model, create, maintain and monitor policies and procedures adequate to the management of the identified risks on money laundering and terrorist financing.

**Identification and Diligence** – It is now required that the companies identify all their clients, counterparts and beneficial owners, according to the new rules, collecting identification information and the legally demanded supporting documents. The identification shall occur previously to the execution of a transaction or signature of a promissory agreement (if it exists). The company shall keep this information available to any supervisory or judiciary authorities.

**Storage** – The companies shall keep, for 7 years: **(i)** all documentation regarding the client identification procedure; **(ii)** copies of communications to supervisory and judiciary authorities; and **(iii)** proof of the analyzes on money laundering and terrorist financing carried out.

**Training** – The companies are obliged to provide training on the prevention of money laundering and terrorist financing to its employees, staff, legal representatives, compliance officers and directors/managers that have relevant roles in the area. The training obligation can be achieved through courses or seminars, for example, whose frequency shall depend on the company's size:

- (i)** Between 1 and 5 employees – One training session every two years;
- (ii)** Between 6 and 10 employees – One training session every year;
- (iii)** Companies with more than 10 employees – at least one training session every year, rotationally.

In the event of hiring of new employees, these shall attend a training session within 6 months after admission or appointment.

**Communication** – The Regulation sets forth several obligations of communication to IMPIC by the companies and individual entrepreneurs acting in real estate transactions.

It is mandatory to communicate to IMPIC, through the forms available on its website, the following information: *(i)* start of operations date; *(ii)* information regarding each transaction in which they take part; *(iii)* information related to the lease agreements whose monthly rent value is equal to or higher than €2.500,00 (two thousand and five hundred euros).

The above-mentioned information regarding lease agreements whose monthly rent value is equal to or higher than €2.500,00 (two thousand and five hundred euros) must only be communicated to IMPIC regarding agreements signed after July 1<sup>st</sup> 2019.

## APPOINTMENT OF THE COMPLIANCE OFFICER

The Regulation stipulates that the entities which are **(i)** public limited companies; **(ii)** private limited companies or **(iii)** individual entrepreneurs with more than five employees must appoint a compliance officer who shall control the compliance with the rules on money laundering and terrorist financing.

The appointment must be communicated until September 19<sup>th</sup> (60 business days after Regulation enters into force) through electronic form.

Whenever the number of employees is lower than five, the compliance officer's functions shall be secured by an appointed employee.

## NON-COMPLIANCE

The non-compliance with the mentioned obligations is considered an administrative offence, subject to the following penalties:

- From €50.000,00 to €5.000.000,00, if the perpetrator is a Bank or financial institution;
- From €25.000,00 to €2.500.000,00, if the perpetrator is other legal person who develops financial activities;
- From €50.000,00 to €1.000.000,00, if the perpetrator is a legal person who develops non-financial activities;

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**PARES | Advogados** is available to provide more client-specific information regarding applicable laws and regulations to this subject, as well as to assist on the adaptation to the new rules regarding Combating of Money Laundering and Terrorist Financing.

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