

2ND OF SEPTEMBER OF 2020

NEW RULES ON THE PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING – LEGAL SECTOR

On August the 21st, it was published the Resolution no. 822/2020 of the General Meeting of the Portuguese Bar Association, which approved in its annex the Regulation of the Portuguese Bar Association on the Prevention of Money Laundering and Terrorism Financing (the "Regulation").

This Regulation implements and adapts the rules on the prevention of money laundering and terrorism financing ("AML/TF"), contained in Law no. 83/2017, of August the 18th (the "AMLTF") to Lawyers, establishing in particular which AML/TF duties are applicable to their Profession, as well as to which specific situations individual Lawyers and Law Firms (together, the "Lawyers") are subject to such duties.

A) SCOPE OF APPLICATION

The regulation is applicable to all Lawyers, who are now required to comply with customer due diligence and "Know Your Customer" duties, when intervening or providing services in any of the following situations:

- a) Exchange or Sale and Purchase Agreements regarding: Real Estate, commercial establishments, shares or other securities;
- b) Management of investment funds activities, transferable securities or other assets belonging to clients;
- c) Opening and/or management of bank accounts, savings accounts or transferable securities accounts;
- d) Activities regarding the sale and acquisition of registration rights relating to practitioners of professional sports;
- e) Any activities regarding incorporation, management, representation, performance of duties in companies, or other legal persons;
- f) Other financial or real estate activities, in representation or in assistance of the client.

EXCLUSIONS

In the remaining situations, namely in legal consultation acts, issuing of legal advice and forensic and judicial representation, Lawyers are not required to apply the provisions contained in both the AMLTFL and in the Regulation.

B) APPLICABLE DUTIES

1) CUSTOMER DUE DILIGENCE

Whenever one of the above mentioned services, in points a) to f), are requested, Lawyers are required to identify their clients – in the moment immediately prior to the provision of any service.

In order to fulfil this duty, Lawyers collect all the identification elements, as well as the legally required supporting documents, through a proper form, which will be approved by the General Council of the Portuguese Bar Association. Additionally, and with the exception of low risk cases ⁽¹⁾, the Lawyer must also collect information regarding the purpose and intended nature of the transaction, as well as information that prove the lawful origin of the funds.

2) DUTY OF EXAMINE AND REPORT OF SUSPICIOUS TRANSACTIONS

During the identification process, whenever Lawyers have any doubts regarding the authenticity of the identification elements provided, or their respective supporting documents, or if some of the risk elements present in the annex to the AMLTFL are verified, they are bound to request all the necessary documentation to prove that the requested transaction does not carry any AML risk. In such cases, the demonstration of absence of risk must be included into an analysis that shows the compliance of the activity/transaction with AMLTF regulations.

Should the Lawyers be unable to mitigate this risk and the suspicion remains, or should they know that the activity or operation is aimed at money laundering and terrorist financing, they must immediately report this situation to the President of the Portuguese Bar Association, along with all the necessary information, so that he can decide whether to send the suspicious operation to UIF and DCIAP or not.

⁽¹⁾ The Lawyer must demonstrate, through a written analysis, the existence of low risk.

3) DUTY TO ABSTAIN

The regulation also requires lawyers to refrain from carrying out any transaction in which:

- a) They have suspicions that the operation is aimed at money laundering or the financing of terrorism, and have, therefore, informed the President of the Bar Association, and the President of the Bar has not yet made a statement;
- b) The customer has refused to provide the requested identification elements;
- c) The UIF and/or DCIAP have requested the suspension of the transaction.

4) DUTY OF CONSERVATION

Finally, it becomes mandatory for lawyers to archive all the aforementioned documentation (forms, proofs, communications and analysis) for a period of seven years.

C) REGULATORY COMPLIANCE OFFICER

The regulation also requires law firms to appoint someone responsible for the regulatory compliance (the "RCO") to ensure compliance with AMLTF rules in the firm. The nomination of the RCO must be communicated to the President of the Bar Association and registered with it, and he will also become the point of contact of this entity for AMLTF purposes. The RCO may cumulate its functions with those of the regular compliance officer of the firm.

The regulation will come into force on the 11th of September, and all lawyers and firms have until the 10th of March of 2021 to comply with the provisions contained in the new law.

PARES | Advogados is available to provide information on this and other matters in a more specific and adequate way, suited to the reality of each Client, and is able to offer all necessary support regarding Compliance or on the Prevention of Money Laundering and Terrorism Financing.

Duarte Canotilho
dac@paresadvogados.com

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