

9TH OF MARCH 2022

UNAUTHORIZED FINANCIAL ACTIVITY AND CONSUMER PROTECTION

On the 24th of November of 2021, Law no. 78/2021 was published, creating the System for the Prevention and Combat of Unauthorized Financial Activity and Consumer Protection ("RPAFNA").

This law came into effect on the 1st of January of 2022 and aims to protect consumers from the offer of financial goods and services by entities that are not qualified to do so¹, as well as to combat this illegal practice.

Given that there are provisions from this law that came into force on the 1st of March of 2022, we remind you of the main changes to this legal framework that are relevant for this purpose.

I. CONSULTATION AND REPORTING DUTIES TO THE BANK OF PORTUGAL²

This law requires that notaries, solicitors, lawyers, registration officers or chambers of commerce and industry, whenever they intervene in acts related to:

- i) attempt or exercise of unauthorized financial activity, namely, in loan agreements or declarations of assumption or confession of debt;
- ii) financial leasing (restitutive or not);
- iii) buying and selling real estate where the seller will be a lessee or the buyer the original owner; and
- iv) acquisition and sale of real estate or movable assets subject to registration which do not involve the granting of loans by entities qualified for credit activities, abstain from aiding or executing any operation which they know or suspect to be associated with the exercise of unauthorized financial activity.

To guarantee compliance with the above, these professionals must now consult the public registry of qualified entities with the BoP for the acts and documents prepared in the above-mentioned acts and are also obliged to state in the act or document whether it is prepared

¹ i.e., that are not duly authorized by the competent Supervisory Authorities, or that do not fulfill any other requirement required by law to have such authorization

² BoP

within the scope of financial activities reserved for entities qualified by the BoP.

In acts of assumption or confession of debt and loan agreements, the same professionals now also have a duty of negative certification with the lenders, i.e., to obtain a declaration from the latter attesting that they are not engaged in a financial activity reserved for qualified entities and to attach the same to the document in question.

It should be stressed that, similarly to what occurs with the anti-money laundering/ counter terrorism financing provisions, the above-mentioned duties (reporting, registration and abstention) do not apply to lawyers and solicitors when they are acting in connection with their own acts, i.e. representing or defending the client, providing legal advice or preparing legal opinions.

Finally, as of the 1st of March of 2022, the aforementioned professionals will have to report to the BoP, information on the public deeds, authenticated private documents, and authentication of signatures in which they intervene in the scope of the acts referred to in subparagraphs i to iv above.

II. ACTIONS OF THE SUPERVISORY AUTHORITIES

To enable the exercise of the above mentioned reporting duty, as of the 1st of March of 2022, the BoP will have a database in which to register the data reported in this regard, which will be subject to secrecy.

The BoP will also regulate the way in which notaries, solicitors and lawyers must register and report the required information periodically.

III. DUTIES IN THE ADVERTISING OF FINANCIAL GOODS AND SERVICES

The referred law also establishes that the advertising of products, goods or financial services may only be carried out by entities qualified to do so.

Among other obligations, the media and commercial, editorial, news or other sites are now responsible for the verification of the veracity of the information conveyed and must keep records of the due diligence performed that demonstrate the veracity of this information.

The aforementioned entities are also obliged to refuse to publish any advertisement if the entity proves to be unqualified, and to communicate the entity's details and the content of the advertisement to the competent supervisory authority. In cases of suspicion, they must confirm directly with the supervisory authority the identity and legitimacy of the requesting entity.

Failure to comply with these rules is punishable by administrative offenses of up to €45,000.00

IV. OTHER OBLIGATIONS

The law also imposes that:

- a) In Civil loan contracts exceeding € 2,500.00 (two thousand and five hundred euros), the amount loaned must now be delivered by means of bank instruments - namely cheque or bank transfer - and the loan contract must state the date, payment method and necessary information for its traceability.
- b) Any person who has knowledge of the financial activity being carried out by a non-qualified entity is also required to communicate this fact to the competent supervisory authority and refrain from disseminating or recommending the goods and services in question.

Finally, the Supervisory Authorities will make available on their websites a specific channel for receiving such communications.

PARES | Advogados is available to provide information on this and other subjects in a more personalized and adequate manner to each client's reality, being able to assist its clients in any subjects regarding financial activity and consumer rights.

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