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Hugo Moredo Santos | hms@vda.pt

Benedita Aires | bla@vda.pt

Carlos Couto | cfc@vda.pt

BANKING & FINANCE

ANTI-MONEY LAUNDERING AND COMBATING TERRORIST FINANCING

On 26 September 2018, the Bank of Portugal issued Notice no. 2/2018 (“**Notice 2/2018**”), which sets out the conditions for compliance with the prevention of money laundering and combating terrorist financing (“**AML/CTF**”), complementing Law no. 83/2017 (“**Law 83/2017**”), regulating the means and mechanisms necessary for financial entities to comply with the duties set forth in Law no. 97/2017 (“**Law 97/2017**”).

Notice 2/2018 also lays down measures for payment service providers to be able to detect transfers of funds in the face of missing or incomplete information and to manage transfers of funds not accompanied with the information required by Regulation (EU) no. 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers (“**Regulation 2015/847**”).

Notice 2/2018, which will enter into force on 25 November 2018, repealed, *inter alia*, Bank of Portugal Notices no. 9/2012 and no. 5/2013, and applies to financial entities subject to the supervision of the Bank of Portugal, according to the terms set forth on Law 83/2017.

Among the innovations introduced by Notice 2/2018, we highlight the following:

- i. **Appointment of a member of the management body:** according to the criteria established in Notice 2/2018, financial entities must now appoint a member of the management body responsible for implementing AML/CTF provisions, notwithstanding the responsibility in this matter of the remaining members of the management body.
- ii. **Compliance Officer:** Notice 2/2018 strengthens the duties of the Compliance Officer, establishes rules regarding segregation of duties and determines that, when the Compliance Officer is not the responsible of the compliance function (Chief Compliance Officer), it is now regarded as a holder of essential functions, under the terms and for the purpose of article 33-A of the Legal Framework of Credit Institutions and Financial Companies (particularly, in what regards its adequacy assessment and designation authorization).

- iii. **Collecting information mechanisms:** Notice 2/2018 defines a set of information sources that financial entities are obliged to use in order to identify, assess and mitigate the specific AML/CTF risks that may result from their specific operational reality and the use of new technologies or products likely to increase anonymity – such as information or guidelines from the Bank of Portugal or from the Financial Information Unit.
- iv. **Hiring with other entities:** for the execution of identification and verification procedures, financial entities may resort to third entities, under the terms established in Law 83/2017 and further regulated by Notice 2/2018. In addition, certain identification and verification procedures may now be exercised through credit intermediaries (although the financial entities still are exclusively responsible for the compliance therewith), as well as resort to third service providers.
- v. **Alternative means or procedures for verifying the identity:** in addition to clarifying the requirements for the admissibility to use videoconferencing, Notice 2/2018 introduces, as an alternative mean of verification, the use of reliable qualified service providers for the purpose of verifying the identity elements of the customers and their representatives.
- vi. **Report on the Prevention of Money Laundering and Combating Terrorist Financing:** in order to simplify the regulatory framework applicable in this matter, Notice 2/2018 unifies, under the same report – the “Report on the Prevention of Money Laundering and Combating Terrorist Financing” – the information that, until now, was transmitted to Bank of Portugal through two separate reports (the “Prevention of Money Laundering and Combating Terrorism Financing Report” and the “Self-Assessment Questionnaire”), systematizing, in a single regulatory instrument, previously dispersed information.

These new rules will entail a significant effort by financial entities to ensure that their AML/CTF policies and procedures are adequate. Said rules complete the regulatory framework applicable to financial entities subject to Bank of Portugal supervision.

VdA remains available to provide more detailed clarifications regarding the effects of this new act.