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Working Group on Evaluations and Implementation

MUTUAL EVALUATION OF PORTUGAL: THIRD BIENNIAL UPDATE

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MUTUAL EVALUATION OF PORTUGAL: THIRD BIENNIAL UPDATE

Report from Portugal

1. This is the third biennial update report from Portugal following the adoption of its mutual evaluation report in October 2006.
2. The update gives an overview of the progress made since the previous biennial update (September 2010) specifically in regard to Recommendations 12, 16, 24, 25, 32 and 33, along with statistical information and translations of relevant legislation. It does not repeat information provided in earlier reports concerning other Recommendations.

FATF Secretariat
1 October 2012

PORTUGAL MER – DOC. FATF/ME (2006)7
UPDATE REPORT

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September 2012

UPDATE REPORT

Portugal presents this third update report on the legislative and other measures taken in reply to the comments made by FATF in the third AML/CFT Mutual Evaluation Report of October 2006.

This third update report is in accordance with the structure of presentation proposed in the document FATF/PLEN (2006)6 REV6 and provides the necessary information related to the comments identified in Recommendations rated with PC or NC.

PORTUGAL FATF MUTUAL EVALUATION REPORT – UPDATE Document FATF/ME (2006)7

I. INTRODUCTION

1. RELATION WITH THE SECOND BIENNIAL UPDATE REPORT PRESENTED IN SEPTEMBER 2010

- 1.1** The present biannual report updates detailed information that was provided in September 2010 concerning the compliance with the Recommendations that have been rated as PC in the MER of Portugal.
- 1.2** As mentioned in the 2010 second biannual update report, all those situations were expressly endorsed in the AML/CFT Law No 25/2008, of 5 June 2008, which transposed into national law Directive 2005/60/EC of the European Parliament and of the Council, of 26 October 2005 and Commission Directive 2006/70/EC, of 1 August 2006, on the prevention of the use of the financial system for the purpose of money laundering and terrorism financing, taking also into consideration the Warsaw Convention of the Council of Europe, of 16 May 2005, the relevant provisions of UN Conventions and the 40+9 FATF Recommendations, aiming to comply with the requirements of these legal instruments, as suitable to the needs of the Portuguese environment.
- 1.3** Law No 25/2008 establishes the general duties and the legal framework applicable to the subject entities within and outside the financial sector.¹
- 1.4** In the second update report of September 2010, complemented with updated information, the Portuguese authorities considered that the regime applicable to DNFBPs complied with Recommendation 5 on the adequate duties imposed to DNFBPs.
- 1.5** Law No 25/2008 is expressly applicable to money laundering and terrorism financing prevention as referred for instance in its Article 1, meaning that CDD measures apply to any transaction that might be suspicious of money laundering or terrorism financing, regardless of whether it occurs within a financial or non-financial institution.

¹ For more detailed references, please consult the 2nd Update Report of September 2010 (the 1st Update Report was released in September 2008).

- 1.6** Regarding terrorism financing prevention, it was underlined that the National Institute for Construction and Real Estate, which oversees real estate mediation activity, the purchase, sale and resale of real property and the promotion of real estate, has a link on its website to inform the public and the persons involved in the activities it oversees on the updated lists of terrorist suspects, according to the UN Security Council Resolutions 1267 (1999) and 1373 (2001).
- 1.7** The same happens with Authority for Food and Economic Safety(ASAE), which oversees persons trading high value goods, as well as company and legal arrangements service providers, tax advisers and external auditors, where they are not subject to monitoring by a specific competent authority, as happens for instance with lawyers and *solicitadores*.
- 1.8** Article 12 (4) of Law No 25/2008, applicable to DNFBPs, requires a continued duty of enhanced due diligence regarding business relationships with PEPs that are not residing in Portugal. Moreover, the following is also required: (i) that DNFBPs have systems in place to determine whether the customer is a PEP; (ii) senior management approval for establishing a business relationship with a PEP; (iii) take measures to establish the source of wealth and the source of funds involved in the business relationship with a PEP.
- 1.9** Therefore, Portuguese authorities considered that the legal regime in force applicable to DNFBPs complies with FATF Recommendation 6.
- 1.10** Regarding compliance with Recommendation 8, Law No 25/2008 addresses the issue raised by this Recommendation on the risk stemming from the use of new technologies which might favour anonymity. As noted in the second update report, the Portuguese authorities considered that the legal regime in force complies entirely with FATF Recommendation 8.
- 1.11** Therefore, as mentioned in the previous report of September 2010, the approval of Law No 25/2008 and Decree-Law No 125/2008, of 21 July 2008 (that implemented the penalty regime of the Regulation (EC) No 1781/2006 of the European Parliament and of the Council, of 15 November 2006, which is directly applicable in Portugal) demonstrate the compliance of the national legal regime with Recommendation 12, including Recommendations 5, 6, 8-11 and consequently the reference to those Recommendations

will not be repeated in this third update report, except what regards to the improvements made by DNFBPs since September 2010.

1.12 In what concerns Recommendation 34, Special Recommendation I and Special Recommendation III, the Portuguese authorities are of the opinion, as explained in the previous Report of September 2010, that the system in force complies with the requirements of those Recommendations and consequently the reference to them will not be repeated.

2. MEASURES ADOPTED OR ONGOING RELATED TO LAW NO 25/2008

A) LAWS AND REGULATIONS DEVELOPED OR ONGOING SINCE SEPTEMBER 2010, RELATED TO LAW NO 25/2008

2.1 *Article nr 118-A of Legal Framework of Credit Institutions and Financial Companies (RGICSF), added by article 6 of Law No 28/2009, of 19 June 2009*

Pursuant to this article, credit institutions are not authorized to grant credit to entities having their head office in an off-shore jurisdiction considered to be non-cooperative or whose ultimate beneficial owner is unknown. Moreover, credit institutions shall register the transfers whose beneficial owner is an entity having its head office in an off-shore jurisdiction, and shall communicate the said registration to the Bank of Portugal, provided that such transactions amount to more than €15,000 (regardless of whether the transfer is made in one single operation or through several related operations).

2.2 *Instruction of the Bank of Portugal No 17/2010, of 16 August 2010*

Issued by the Bank of Portugal, it governs the communication to this supervisory authority of transfers to off-shore jurisdictions in accordance with Article 118-A of the Legal Framework of Credit Institutions and Financial Companies.

2.3 *Notice of the Bank of Portugal No 9/2012, of 29 May 2012*

With the aim of enhancing the quality of information reported to it by supervised entities, the Bank of Portugal has redesigned the relevant information materials for the prevention of money laundering and terrorism financing, by providing greater autonomy and expanding information reported by institutions on their internal control systems.

This Notice introduced a new and more comprehensive reporting template, aimed at contributing to a more precise understanding and assessment of policies and procedures adopted by institutions in order to ensure compliance with the obligations envisaged in Law No 25/2008, particularly as regards their internal control mechanisms and compliance, risk management and internal audit procedures.

B) OTHER RELEVANT LEGISLATIVE INSTRUMENTS ISSUED SINCE THE PRESENTATION OF THE SECOND UPDATE REPORT IMPORTANT IN THE FRAMEWORK OF THE AML/CFT REGIME

2.4 Law No 36/2010, of 2 September 2010

Creates a central database, within the Bank of Portugal containing information on bank accounts.

2.5 Law No 17/2011, of 3 May 2011

Criminalises public incitement to commit terrorism offences, recruitment for terrorism and terrorist training.

2.6 Law No 45/2011, of 24 of June 2011

Creates the Assets Recovery Office (ARO) within the remit of the Criminal Police.

2.7 Law No 46/2011, of 24 of June 2011

Creates the Court for Competition, Regulation and Supervision.

This Court has territorial jurisdiction and specialised competence deciding on the appeal, review and execution of any decision given by supervisory authorities (of financial and non-financial entities) in penalty proceedings for infringement of, namely, the provisions of Law No 25/2008 (on the prevention of the use of the financial system for the purpose of money laundering and terrorism financing).

C) THE BANK OF PORTUGAL

2.8 The international financial crisis led the Bank of Portugal to strengthen and provide autonomy to one of its supervisory arms – more specifically, enforcement –, resulting in the reorganisation of its supervisory structure and the creation, on 1 January 2011, of a new department within the Bank – the Legal Enforcement Department. Among other tasks, this Department now gathers together all supervisory tasks related to money laundering and

terrorism financing prevention in the universe of institutions subject to supervision by the Bank of Portugal.

2.9 Between the second half of 2010 and the first half of 2012, the Bank of Portugal, as an AML/CFT supervisor, has stepped up its intervention in entities under its supervision, in terms of both on-site intervention and off-site supervision, particularly as regards the following:

- a) redesigning methodologies and procedures, based on a risk assessment model for its supervised institutions;
- b) creating new information materials to be sent to the Bank of Portugal by all supervised institutions, for a more thorough understanding and assessment of the quality of the AML/CFT prevention systems, namely:
 - a report on internal control policies and procedures aimed at ensuring compliance with AML/CFT legislation;
 - a self-assessment questionnaire on supervised institutions' compliance with AML/CFT legislation, as well as on the degree of risk inherent to their activity;
- c) introducing new verification procedures into the processes for authorising payment service providers' establishment and launch of operations, namely:
 - on-site inspections to directly assess AML/CFT mechanisms and procedures;
 - requirement of a formal declaration by institutions providing payment services corresponding to money remittance services, certifying that all processed payment transactions – at any stage of the funds' circuit and up to their payment to the financial beneficiaries – will be carried out exclusively by natural or legal persons duly authorised by the competent authorities of countries or territories of destination/origin of the funds (and, where applicable, by the competent authorities of countries or territories where any intermediaries participating in the transactions may be located);
- d) conducting 29 on-site inspections specifically geared towards monitoring the quality of money laundering and terrorism financing prevention mechanisms (5 credit institutions, 11 payment institutions and 13 financial companies).

2.10 A new regulation is also being drafted for the Bank of Portugal together with other supervisory authorities of the financial sector, namely the Securities Market Commission

and the Insurance Institute of Portugal, consolidating the obligations placed upon financial entities by Law No 25/2008.

2.11 As stated in 2.4., on 2 March 2011 the Bank of Portugal launched a banking system accounts database (*Base de Dados de Contas do Sistema Bancário – BCB*), established by Law No 36/2010, of 2 September 2010, which compiles and stores information reported by credit institutions regarding all types of account (bank deposit, financial instruments, credit facility and payments accounts). The purpose of the BCB is to provide information to judicial authorities in the framework of criminal investigations and proceedings. Within the framework of the EU fifth round of mutual evaluations on financial crime and financial investigations, its creation has been highlighted as an example to be followed by other Member States.

The information system keeps a record of all information reported, broken down by participant, and focuses on three concepts: (i) *Account holder* (identification of the natural or legal person); (ii) *Account* (identification, type, opening and closing dates) and (iii) *Relationship between the Stakeholder and the Account* (period and type – ownership or authorisation).

Below are some statistical data regarding the BCB:

	2011	1 st half of 2012
Judicial requests received	817	1,064
Reporting institutions	186 (a)	183 (a)
Files received	2,315 (b)	1,769 (b)
Bank accounts	61,117,668 (c) 65,784,794 (d)	68,428,687
Account holders	31,545,953 (c) 32,582,292 (d)	32,947,796

(a) Institutions that have sent at least one data file via the BCB information system, regardless of what resulted from its processing.

(b) Files received by the BCB information system, regardless of what resulted from their processing.

(c) As at 24 October 2011.

(d) As at 9 March 2012.

The following table shows the volume of requests sent to the Bank of Portugal by the judicial authorities, within the scope of criminal investigations and proceedings:

Code of type of letter		2011	1 st half of 2012
21	Other information on customers	3,957	3,133
19	Article 861-A (6) of the Code of Civil Procedure	2,808	482
18	Criminal investigation, tax enforcement and civil procedures	46	113
15	Law No 5/2002 - Combating organized crime	155	53
9	Locating deposited accounts and valuables and corresponding balances	3,561	1,178
1	Article 60 of Decree-Law No 15/93	14	3
Total:		10,541	4,962

2.12 In accordance with the provisions of Article 118-A of the Legal Framework of Credit Institutions and Financial Companies (RGICSF), as amended by Article 6 of Law No 28/2009, of 19 June 2009, credit institutions shall register the transfer operations amounting to more than €15,000 and shall communicate the said registration to the Bank of Portugal (regardless of whether the transfer is made in one single operation or through several related operations) whose beneficial owner is an entity having its head office in an off-shore jurisdiction.

Therefore, following the publication of Instruction of the Bank of Portugal No 17/2010 of 16 August 2010, this supervisory authority established a database (*Base Transferências Offshores*) with the purpose of compiling information on offshore transfers (among other aspects, this includes the transferred amount, the destination jurisdiction, the payer's identity, the payee's identity and participating institutions).

Moreover, in accordance with Article 118-A (1) of the Legal Framework of Credit Institutions and Financial Companies, credit institutions are not authorised to grant credit to entities having their office in an off-shore jurisdiction considered to be non-cooperative or whose ultimate beneficial owner is unknown.

2.13 During the reference period of this Report, cooperation both between supervisory authorities of the financial sector (the Bank of Portugal, the Securities Market Commission and the Insurance Institute of Portugal) and these entities and the judicial and enforcement authorities (the Prosecutor General's Office and the Criminal Police), was consolidated by

streamlining and perfecting articulating mechanisms and communication channels, namely through the:

- establishment of cooperation protocols;
- admission of the Bank of Portugal to the new FIU platform for the reporting of suspicious transactions;
- provision of technical advice with respect to ongoing criminal investigations;
- exchange of information and inquiries into common matters;
- development of educational exchanges, in terms of AML/CFT, with the Prosecutor General's Office and the Criminal Police.

D) Portuguese Treasury and Government Debt Agency

2.14 On 1 July 2010, a new protocol was signed between the Portuguese Treasury and Government Debt Agency and the Portuguese Postal Services (CTT) regarding the sale of savings certificates and Treasury certificates, pursuant to which CTT (given that these financial instruments are subscribed at post office counters) has assumed full responsibility for compliance with all obligations and duties under Law No 25/2008, within the scope of the subscription and redemption of these types of retail debt. CTT has prepared a manual of procedures applicable to savings certificates (approved by the Portuguese Treasury and Government Debt Agency), which includes the AML/CFT measures adopted by this entity.

2.15 Turning to other financial transactions carried out by CTT (issue and payment of domestic/international money orders and transfers via Western Union), in the case of those deemed more risky (more specifically, international transfers), identification details are compiled along with other supplementary information. In the case of money orders, the payee must sign the receipt being the corresponding ID number.

2.16 Acting on a risk assessment approach on the nature of the operation/service provided, CTT has developed procedures used by their post office network to report suspicious transactions, which, after they have been centrally examined, have resulted in reports being sent to the competent authorities pursuant to legislation in force.

II. FORTY RECOMMENDATIONS

Recommendation 12, DNFBP: PC

Including R. 5, 6, 8-11

1. SUMMARY OF FACTORS UNDERLYING RATING

- The deficiencies in the implementation of Recommendation 5, 6 and 11 that apply to financial institutions also apply to DNFBPs;
- There are few implementation measures that clarify the specific obligations of DNFBPs (similar to regulations and circulars for financial institutions);
- Portugal has not implemented explicit AML/CFT measures concerning PEPs applicable to DNFBPs;
- There is no requirement that DNFBPs have policies in place to deal with the misuse of technological developments (Recommendation 8);
- More generally, the implementation of the FATF requirements (both ML and TF) by DNFBPs raises concerns given the low number of STRs submitted.

2. FATF RECOMMENDATIONS IN THE MUTUAL EVALUATION REPORT RELATED TO THIS RECOMMENDATION

- Portugal should implement Recommendation 5 and 6 fully to all DNFBPs;
- Portugal should bring in legislative changes to ensure that all DNFBPs have adequate CDD and record keeping obligations in situations required by Recommendation 12;
- DNFBPs should be required to establish and maintain internal procedures, policies and controls to prevent ML and TF, and to communicate these to their employers. These procedures, policies and controls should cover: CDD and the detection of unusual and suspicious transactions and the reporting obligation. DNFBPs should be required to maintain an independent audit function and establish ongoing employee training.

3. DESCRIPTION OF LAWS, REGULATIONS AND OTHER MEASURES ADOPTED OR ONGOING

In this section, Portuguese authorities restate the information provided in the first and second update reports, and complement it with updated information. As stated above (“I - Introduction”), DNFBPs have been complying with Recommendations 5, 6, and 12 and continue to improve their awareness and training of their staff to enhance the level of compliance with the Recommendations.

3.1 Issuance of General Guidance and Guidelines

A) *Gambling Inspection Service of the Tourism of Portugal I.P.*

In addition to Resolution No 35/2008/CJ, of 20 June 2008, referred in the last update report of 2010 (whose purpose was to comply and ensure compliance with Law No 25/2008, and which clarified certain aspects of this Law, in order that concessionaires operating games of chance in casinos and inspection teams, in the exercise of their powers, could implement rules and procedures), the Gambling Inspection Service of the Tourism of Portugal, I.P. also uses institutional communication channels, whereby it replies to requests and provides and clarifies information where there is a suspicion of money laundering offences.

Gambling inspection offices, located in the ten casinos operating in the country, conduct inspections with a view to verifying compliance with Law No 25/2008; the supervised features have been found to be compliant with that Law.

B) *Institute for Registrars and Notaries*

Amongst the non-financial entities that, pursuant to Law No 25/2008, must comply with a set of obligations in the course of their business, are registrars and notaries [Article 4 (t)].

Pursuant to that Law, the Institute for Registrars and Notaries monitors compliance with obligations laid down therein, as regards registrars and notaries [Article 38 (e)].

According to Article 4 (f), registrars and notaries must comply with the obligations laid down in that Law, where they intervene in the registry of:

- purchase and sale of real estate, commercial establishments and shareholdings;
- formation of companies, cooperatives, associations, foundations and, in general, entities with a corporate or similar structure;
- formation of legal arrangements, such as partnerships, associations having no legal personality, investment funds, trusts governed by foreign law, where recognised by national law, management of jointly owned buildings or estates of deceased persons;

- legal acts related to the operation or management of the entities mentioned in the foregoing subparagraphs, namely capital increases, mergers or divisions.

As referred in the second update report, the Institute for Registrars and Notaries issued Decision No 104/2009 aimed at raising awareness on Law No 25/2008 to be applicable respectively to notaries and registrars, which was disclosed to all services and published on its website.

Other measures include:

- creation by the Ministry of Justice of a database where, pursuant to Implementing Regulatory Decree No 3/2009, of 3 February, the creation/extinction of irrevocable powers of attorney for the transfer of ownership of real estate is subject to registration. The Institute for Registrars and Notaries is responsible for data processing, and the database can be consulted free of charge by judges and prosecutors, officials of the Criminal Police and other bodies governed by public law where the law confers powers relating to the preventing and combating of corruption and economic and financial crime;
- Order No 25/2010, of 3 February, was published, authorising access to this database by the Department for Investigation and Criminal Action;
- the 2009 risk management plan dealing with corruption and related offences, which cuts across areas where the Institute for Registrars and Notaries operates and aims at reducing the probability of corruption risks; this document is also available on the Institute for Registrars and Notaries' intranet.

C) *National Institute for Construction and Real Estate*

The following measures were implemented in the period under review:

a) Legislation and/or regulations and recommendations issued

Approval of Regulation No 282/2011, published on 6 May 2011, in force since 9 May 2011 (revokes Regulation No 79/2010):

- regulates conditions and establishes the instruments, mechanisms and formalities inherent to compliance with general duties of identification, conservation and training, laid down in Law No 25/2008, by companies operating in the Portuguese real estate sector;
- completes the dematerialisation of proceedings for the communication of real estate transactions and taking up of business by companies operating in the real estate

sector, transposing measure M137 of the Simplex 2009 Programme, and establishes and clarifies the form and conditions of said communication.

b) Disclosure of information to entities subject to the provisions of Law No 25/2008, of 5 June

- development and implementation of an information area on the National Institute for Construction and Real Estate's website (www.inci.pt), devoted to the disclosure of general and specific duties incumbent upon entities operating in the real estate sector and relevant regulations, including 50 FAQs exclusively on this matter;
- creation of an electronic communication channel aimed exclusively at clarifying any doubts about the legal framework envisaged in Law No 25/2008, as well as at overcoming technical difficulties and problems inherent to the compliance with obligations to report real estate transactions and corresponding procedures;
- drawing up posters and leaflets on the demands and procedures inherent to the compliance with the specific obligation to report real estate transactions; disclosure of said posters and leaflets to the competent official entities and the economic agents that are subject to those obligations.

D) Order of Statutory Auditors

The Order of Statutory Auditors has issued Circular Letter No 56/2011 of 18 July 2011, reminding statutory auditors of their reporting requirement, enshrined in Article 16 of Law No 25/2008, stating that all subject entities shall, on their own initiative, report a suspicious transaction where they know, suspect or have reasonable grounds to suspect that a transaction which may constitute a money laundering or terrorist financing offence has been committed or attempted.

That Circular Letter also informed statutory auditors of the new support for reporting suspicious transactions to the FIU, which are now processed through electronic means.

3.2 Duty to Report STRs

A) *Gambling Inspection Service of Tourism of Portugal, I.P.*

Reports listing the casino players that have purchased chips (against cash) to gamble in casinos, to an amount of more than € 2,000, are issued every month to the competent authorities.

B) *Institute for Registrars and Notaries*

Pursuant to Article 16 of Law No 25/2008, where registrars and notaries know, suspect or have reasonable grounds to suspect that a transaction which may constitute a money laundering or terrorist financing offence has been committed or attempted, they must immediately report it.

Order No 104/2009, which established internal procedures, has fostered a broad dissemination of communication mechanisms, as currently highlighted in all training actions. Disclosure/training initiatives have led to a significant increase in the number of reports sent to the FIU by registrars and notaries.

In their regular course of business, registrars and notaries must meet reporting requirements towards the Tax and Customs Authority, namely by filling in Model 11, which includes most transactions carried out in registry/notary offices. Although not directly related to the prevention and combat of money laundering and terrorist financing, these transactions are a crucial instrument for the detection of irregular situations by other entities.

C) *National Institute for Construction and Real Estate*

With a view to improving the reporting of suspicious transactions, mention should be made of the:

- participation in the “1st FIU/Non-financial sector Seminar” (May 2011): disclosure of the work carried out by the National Institute for Construction and Real Estate, within its fields of competence, and statistical data on real estate transactions reported between 2008 and 2010;
- implementation of an electronic certification system applicable to the form used to report real estate transactions and the taking up of business (mandatory as of 1 July 2010), geared towards the safety and quality of data received;
- improvements introduced into the electronic form, as regards registration options for means of payment used in real estate transactions;

February 2011: preparation and approval by the Governing Board of the National Institute for Construction and Real Estate of an analytical report on recorded real estate transactions (up to 31 December 2010), including the establishment of both relevant indicators for the analysis of transactions and mechanisms used to monitor reported transactions;

December 2011: preparation of a detailed analytical report on real estate transactions in 2010 with payments in cash equal to or over €15,000 (as laid down in the previous report), including the establishment of criteria to calculate irregular transactions with payments in cash. This is used to compile data on real estate transactions which, by meeting these criteria, are to be reported to the FIU for review.

D) *Order of Chartered Accountants*

In the period under review, no cases were brought to the attention of this entity (via whistleblowing or in any other way) pointing to money laundering or terrorism financing, although the Order of Chartered Accountants has sent 312 reports (compared with 104 in 2010 and 208 in 2011) of crimes of public nature to the Public Prosecutor (according to Article 58 of the Order's Statute).

E) *Order of Statutory Auditors*

Between 2010 and the first quarter of 2012, statutory auditors sent 92 reports to the Public Prosecutor, via the Order, of facts detected in the performance of their public interest tasks that indicated that crimes of public nature have been committed, pursuant to Article 158 of the Order's Statute, although there were no cases of suspected money laundering/terrorist financing.

Recommendation 16, DNFBP: PC

Including R. 13-15 21

1. SUMMARY OF FACTORS UNDERLYING RATING

- All DNFBPs are subject to comprehensive legislation with regard to reporting duties. However only 10 suspicious transactions were reported from 2003 to 2005;
- No co-operation procedures have been so far established between the *Bar Association* and the *Chamber of Solicitadores* on the one hand, and the *Attorney-General Office* or the *FIU*, on the other hand;
- Even though training is not satisfactory yet except in the area of casinos, the evaluation team noted the planning for improvements concerning this matter;
- There is no obligation to give special attention to business relationships and transactions with persons (including legal persons) from or in countries which do not or insufficiently apply the FATF Recommendations;
- Sanctions provided by law are in particular proportionate, as fines have a wide range of amounts and article 47 of Law 11/2004 allows to imposition of supplementary penalties. However no sanctions have been imposed yet, except in the supervisory area of *Authority for Food and Economic Safety* (formerly the IGAE).

2. FATF RECOMMENDATIONS IN THE MUTUAL EVALUATION REPORT RELATED TO THIS RECOMMENDATION

- All Customer Due Diligence requirements should be extended to clearly reflect the risk related to terrorist financing (R. 12 & 16);
- The requirement to identify beneficial ownership should be fully applicable to DNFBPs as well as the obligation to carry out additional identification/know-your-customer rules (R. 12 & 16);
- Requirements in relation to ongoing due diligence and the obligation for DNFBPs to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant should be clarified and impose direct obligations as asked for in Recommendation 5 (R. 12 & 16);

- With regard to higher risk situations, measures in place should be completed. Portugal should also address whether or not DNFBPs should be permitted to apply simplified or reduced CDD measures, and issue appropriate guidance (R. 12 & 16);
- Portugal should ensure that the measures in place are adequately implemented and fully effective (R. 16).

3. DESCRIPTION OF LAWS, REGULATIONS AND OTHER MEASURES ADOPTED OR ONGOING

In this section, Portuguese authorities consider that the new measures adopted by DNFBPs, as described in Recommendation 12, are hereby applicable too.

3.1 Training Provided to DNFBPs

3.1.1 Action taken by the Financial Intelligence Unit

The table below relates to the training actions carried out by the FIU or where this entity participated jointly with other entities after October 2010.

	2010	2011	2012 (1 st quarter)
No of training actions	22	14	4

Bearing in mind the need to raise awareness of the non-financial sector regarding the prevention of ML/TF, the FIU organised the “FIU/Non-financial sector Seminar” in May 2011, with a duration of two days.

This seminar was organised jointly with the Gambling Inspection Service of Tourism of Portugal, I.P. and with the Institute for Registrars and Notaries. It welcomed approximately 120 participants from across the non-financial sector (Authority for Food and Economic Safety, Institute for Construction and Real Estate, the Chamber of *Solicitadores*, the Order of Statutory Auditors and the Order of Chartered Accountants). The seminar aimed at disseminating information on each sector of activity, consisting in a plenary and several specialised workshops.

In addition to this seminar, six training actions took place in the period under review, addressing specifically the non-financial sector. These training actions privileged the sectors of registrars and notaries, statutory auditors, lawyers and real estate brokerage. Specifically regarding this latest sector, three additional training actions have been planned for the first half of 2012.

In 2010, the FIU organised the “7th FIU/ Banking sector Seminar”, aiming at the promotion, detection and combat against ML/TF, as well as the sharing of experiences in the dissemination and adoption

of best practices. This was a two-day seminar, dedicated to thematic pannels with the participation of various banking institutions.

Also, in terms of dissemination of information with interest to the non-financial sector, the FIU published in its *2010 Annual Report* several typical cases and suspicion indicators linked to the various activities within this sector. In 2011, in addition to the statistics disseminated, the Annual Report was focused on typical cases and suspicions indicators linked to money laundering and corruption, with an emphasis on PEPs.

Also in the area of dissemination of information, the FIU has continued to regularly deliver feedback on the status of the reports on suspicious transactions on a quarterly, case-by-case basis, to the reporting entities.

3.1.2 Action taken by DNFBPs

A) *Institute for Registrars and Notaries*

The Institute for Registrars and Notaries has organised training, pursuant to Article 22 of Law No 25/2008, with a view to promoting awareness amongst professionals about compliance with AML/CFT obligations, more specifically:

- a group of internal trainers was formed within the Institute for Registrars and Notaries, to give specific training provided for this purpose by the FIU;
- 29 training sessions were given, involving 424 trainees, totalling 203 training hours. These sessions aimed at raising awareness about compliance with legal obligations in terms of AML/CFT prevention;
- the annual training plan of the Institute for Registrars and Notaries includes these training actions, on a regular basis and with compulsory attendance;
- the Institute for Registrars and Notaries has also actively cooperated in the organisation of the 1st FIU seminar for the non-financial sector, in 2011, with the participation of trainers specialised in AML/CFT prevention;
- the Institute for Registrars and Notaries has also organised, in liaison with the Spanish *Colegio de Registradores*, a series of four international seminars, with the participation of representatives of the judiciary, financial intelligence units, tax authorities and registries, from Portugal, Spain and Romania, with a view to analysing their legislation and exchanging various practices in this field.

B) *Bar Association*

The District Councils of the Portuguese Bar Association have organised information-sharing exercises aimed at lawyers and trainee lawyers, on “preventing and combating money laundering”, with particular reference to the following events promoted by the Oporto District Council:

- Conference on "The new tax regime applicable to banking secrecy";
- "The exceptional tax regularisation scheme for assets placed abroad envisaged in Article 131 of the 2010 State Budget".

C) *National Institute for Construction and Real Estate*

In 2012 the National Institute for Construction and Real Estate organized training across the country, geared towards associates of the Portuguese Realtors and Estate Agents Association (APEMIP) and participated in events related to AML/CFT, notably the following:

- (May 2012, Oporto) participation in a conference organized by the EGP – University of Porto Business School on the “Parallel economy and anti-money laundering”;
- participation in a series of five seminars (active role, including the definition of the thematic programme), dedicated to the provision of information on Regulation No 282/2011 and obligations and procedures inherent to the observance of general and specific duties incumbent upon entities operating in the real estate sector, including a brief approach to the main indicators of suspicious transactions, the most common types of money laundering in the real estate sector and systems to ensure compliance with national and international rules and guidelines:
- (21 July 2011, Oporto) – seminar on the “Framework for the prevention of and combat against the laundering of benefits of illicit origin and terrorist financing”, promoted by the Association of professionals in the construction and public works sector – North of Portugal – target audience: developers/constructors and realtors;
- (13 September 2011 – Lisbon, 16 September 2011 – Vilamoura; 20 September 2011 – Coimbra; 23 September 2011 – Oporto) – series of four clarification sessions on the “Framework for the prevention of and combat against the laundering of benefits of illicit origin and terrorist financing – real estate sector”, organized by APEMIP – target audience: realtors and estate agents.

D) Order of Statutory Auditors

The Order of Statutory Auditors provided several training courses to associates, and organised other events, namely:

- in March 2011, two courses (in Lisbon and Oporto) on "Fraud and money laundering", with a view to raising awareness on specific themes related to money laundering and terrorism financing prevention, fraud, concepts and legal obligations in force, and consequences of non-compliance with those legal obligations;
- in May 2011, two courses (in Lisbon and Oporto) on "Statutory and tax obligations", with the purpose of providing an overview of the various obligations incumbent upon statutory auditors performing public interest missions, consultancy assignments and missions under special laws related to the various types of liabilities that may result from non-compliance with these obligations (including their AML obligations);
- in September 2011 (in Lisbon and Oporto), two meetings on "Prevention of the laundering of benefits of illicit origin and terrorism financing";
- in March 2012, two courses (in Lisbon and Oporto) on "Fraud and money laundering", with a view to raising awareness on the specific theme related to money laundering and terrorism financing prevention, fraud, concepts and legal obligations in force, and consequences of non-compliance with those legal obligations.

The Order of Statutory Auditors also participated in the following events related to AML/CFT:

- in May 2011, the "1st FIU/Non-financial sector Seminar", in which the representatives of the Order participated. The purpose of this event was to act as a catalyst for financial sector participation in the combat against money laundering and terrorism financing;
- on 18 April 2011, the "FEE Anti-Money Laundering Round Table - Joining Forces to Better Fight Money Laundering", which took place in Brussels.

Recommendation 24 – DNFBP: PC**Regulation, supervision and monitoring****1. SUMMARY OF FACTORS UNDERLYING RATING**

- With regard to all DNFBPs competent authorities or SROs are designated to perform monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. However except for the IGJ and IGAE/ASAE, no inspections or other monitoring activities were carried out by the competent authorities.
- Where an oversight role exists the SROs do not have sufficient resources to perform these functions.

2. FATF RECOMMENDATIONS IN THE MUTUAL EVALUATION REPORT RELATED TO THIS RECOMMENDATION

- Portugal should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and very practical guidelines (especially in the CFT area).
- Portugal should ensure that the measures in place are adequately implemented and fully effective.

3. DESCRIPTION OF LAWS, REGULATIONS AND OTHER MEASURES ADOPTED OR ONGOING

As stated before in the second update report of 2010 and as referred previously in Section concerning to Recommendation 12, the Gambling Inspection Service of Tourism of Portugal, I.P., the Institute for Registrars and Notaries, the National Institute for Construction and Real Estate and the Order of Statutory Auditors have adopted measures and issued guidelines to increase awareness and the effectiveness of compliance with duties prescribed in AML/CFT regime in force in Portugal.

3.1. Other measures adopted

A) *Authority for Food and Economic Safety (ASAE)*

As one of the oversight authorities monitoring DNFBPs, ASAE carried out inspections between the 2nd half of 2010 and the end of the 1st half of 2012, which focused on 305 economic operators. In the performance of such activities 51 offences were detected and 36 penalty proceedings were initiated. None of the offences fell within the scope of Law No 25/2008.

B) *Gambling Inspection Service of Tourism of Portugal, I.P.*

As regards the Gambling Inspection Service offices, located in the ten casinos operating in the country, they regularly conduct inspections with a view to verifying compliance with Law No 25/2008; the supervised features have been found to be compliant with that Law.

In the period under review (2010/2012), no cases of money laundering were detected in the course of inspections made by the Gambling Inspection Service of Tourism of Portugal, I.P.

C) *National Institute for Construction and Real Estate*

Number of inspections and other supervisory procedures

April and May 2011:

- Notifications sent to around 842 entities, for further clarification / confirmation / amendment of real estate transactions paid in cash that had been reported in previous years; these notifications covered 1,727 transactions and involved the processing of 1,494 reports, following feedback;
- Definition and implementation of new planning criteria for inspections, based on the analysis of registered transactions and reports made by entities operating in the real estate sector having their head office in the territory under review.

As of the second half of 2011, regular inspections of estate agents (of all three activities subject to supervision, this is the sole activity regulated and supervised by this entity, since 1992) include the oversight of compliance with general (identification, conservation and training) and specific duties (reporting of transactions), in accordance with the criteria and assessments previously defined when planning these actions, as mentioned above. Over this period and up to the moment, 314 estate agents have been inspected.

D) Order of Statutory Auditors

During the 2009/2011 mandate, the Disciplinary Board's work can be summarised as follows:

- of all the inquiries that were closed, 58% were not followed by disciplinary proceedings while 42% resulted in disciplinary proceedings;
- of all disciplinary proceedings concluded, 72% resulted in a penalty and 28% were closed without further action, as reports proved to be without foundation.

As regards the nature of offences committed and penalised, 41% were related to the quality of work, 38% with ethical issues, 11% with incompatibility problems and the remaining 10% with non-compliance with obligations set by the Order. None of these offences were directly related to compliance with Law No 25/2008.

Recommendation 25: PC

Guidelines & feedback

1. SUMMARY OF FACTORS UNDERLYING RATING

- There is very little guidance provided to the DNFBPs under the new Law 11/2004 by the competent authorities, except for IGAE/ASAE and casinos.

2. FATF RECOMMENDATIONS IN THE MUTUAL EVALUATION REPORT RELATED TO THIS RECOMMENDATION

- Portugal should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and very practical guidelines (especially in the CFT area).
- Portugal should ensure that the measures in place are adequately implemented and fully effective.

3. DESCRIPTION OF LAWS, REGULATIONS AND OTHER MEASURES ADOPTED OR ONGOING

3.1. Issuance of guidance and guidelines

As previously stated, in addition to the legal preventive duties on money laundering and terrorism financing prescribed in Law No 25/2008, several DNFBP oversight authorities have issued guidelines explaining to subject entities how to comply with the legal regime in force:

A) The ASAE has available on its website an informative paper elaborating on the legal system in place to prevent money laundering and terrorism financing as well as links to the European Union, the European External Action Service (http://eeas.europa.eu/cfsp/sanctions/index_en.htm) and the UN Security Council pursuant to Resolutions 1267(1999) and 1989(2011) (<http://www.un.org/sc/committees/1267/index.shtml>), in order to facilitate consultation on both financial sanctions in force and lists of entities and persons suspected of being involved in terrorist activities, so that economic agents may have access to and comply with the obligations laid down in Chapter II of Law No 25/2008.

B) The Bar Association and the Chamber of *Solicitadores* have also published on their websites information on the legal preventive regime of money laundering and terrorism financing as well as the EC Directives on this subject.

C) The Order of Chartered Accountants also published Law No 25/2008 on its website, as well as in SITOC, a CD-ROM distributed to these professionals on a monthly basis. With the aim of clarifying and promoting awareness of these professionals on the preventive AML legal regime, several opinion articles were published in *TOC* magazine and in national newspapers.

D) The Order of Statutory Auditors has also published on its website information on the legal AML regime and issued an internal guideline (Circular Letter No 56/2011, of 18 July 2011) as above mentioned in relation to Recommendation 12.

E) The Institute for Registrars and Notaries approved Regulation No 282/2011, on 5 June 2011, regulating the conditions and defining the tools, mechanisms and formalities to comply with the duties of identification, record keeping and training by companies engaged in real estate activities in Portugal.

3.2. Feedback

In accordance with Article 43 of Law No 25/2008, the FIU is charged with the obligation of providing feedback to all entities subject to this law on the results and follow-up of the communications on money laundering and terrorism financing received from the reporting entities.

As a legal prescription under Law No 25/2008, the FIU provides feedback to reporting entities. Moreover, Article 42 of Law No 25/2008 requires that authorities responsible for the supervision of both the financial sector and DNFBPs, including self-regulatory organizations, as well as the FIU, within the scope of their respective competences, issue warnings and disseminate updated information on trends and known practices with the aim of addressing money laundering or terrorism financing involving threats.

Recommendation 32: PC

Statistics

1. SUMMARY OF FACTORS UNDERLYING RATING

- Portugal has not conducted a full and comprehensive review of its AML/CFT regime.
- There are no comprehensive statistics on ML and TF investigations, prosecutions and convictions. There are no TF statistics on which to judge the effectiveness of the TF legislation as no TF cases have been tried.
- More detailed statistics should be kept, particularly concerning the nature and disposition of investigations and prosecutions.
- It is not possible to assess the effectiveness of freezing of terrorist funds under Special Recommendation III as no funds have been identified for freezing action.
- There are very limited statistics on the number of cases and the amounts of property frozen seized and confiscated relating to ML, TF and criminal proceeds.
- There are insufficient statistics upon which to assess the efficiency of the measures in place [issue of effectiveness SR IX].

2. FATF RECOMMENDATIONS IN THE MUTUAL EVALUATION REPORT RELATED TO THIS RECOMMENDATION

- Ensure that comprehensive statistics on ML prosecutions and convictions are kept.
- Portugal should also maintain more statistics in the following areas: (1) data on the amounts of property frozen, seized and confiscated relating to money laundering, terrorist financing and criminal proceeds; (2) statistics cross-border transportation of currency and bearer negotiable instruments; (3) statistics on whether the request for mutual legal assistance was granted or refused and on how much time was required to respond; (4) number of requests for extradition for ML/TF cases and figures on whether the request was granted or refused and how much time was required to respond.

3. DESCRIPTION OF LAWS, REGULATIONS AND OTHER MEASURES ADOPTED OR ONGOING

3.1. Financial Information Unit

The number of subject entities that are bound to report suspicious transactions to the *FIU*, pursuant to the law, has been increasing. In this respect, in 2010, 51 entities reported suspicious transactions to the FIU; in 2011, the entities increased to 77, and in the first quarter of 2012, 69 entities had already reported suspicious transactions. It should be emphasised that this increase is also noticeable in terms of non-financial subject entities, under the Portuguese law, namely as far as registrars and notaries are concerned.

Also as far as financial entities are concerned, both the number of reporting entities and the number of reports have increased, in particular as regards the number of reports from entities providing postal services and from financial companies – payment institutions.

In 2011, the FIU was ready to receive suspicious transactions reports by electronic means. Until now, approximately 55 entities have chosen this form of reporting, which allows for a quicker collection and analysis of the information received.

SUBJECT ENTITIES	Years								
	2010			2011			2012 (1 st quarter)		
	STR	CTR	Total	STR	CTR	Total	STR	CTR	Total
Financial Entities	1,220	958	2,178	1,574	2,310	3,884	486	369	855
Credit Institutions	1,061		1,061	1,083		1,083	360		360
Foreign Exchange Agencies/ Payment Institutions	37	958	995	289	2,310	2,599	71	369	440
Insurance Companies	4		4	9		9	5		5
Postal Services	118		118	193		193	50		50
Non-Financial Entities	9	6,179	6,188	26	5,078	5,104	39	1,033	1,072
Gambling Inspection Service		6,142	6,142		4,859	4,859		926	926
Registrars and Notaries Institute			0	1		1			0
Bets and Lotteries			0	1		1	1		1
Registrars and Notaries	7	37	44	17	219	236	34	107	141
High Value Goods Dealers	2		2	7		7	4		4
OTHER ENTITIES	107	2,150	2,257	99	1,588	1,687	33	322	355
Tax Authority		2,150	2,150	4	1,588	1,592		322	322
Bank of Portugal	103		103	87		87	30		30
Securities Market Commission	1		1	1		1			0
Others	3		3	7		7	3		3
TOTAL	1,336	9,287	10,623	1,699	8,976	10,675	558	1,724	2,282

From the total number of reports, as illustrated in the table above, the analysis carried out by the FIU made it possible to confirm 240 cases in 2010, 712 in 2011 and 171 in the 1st quarter of 2012. As to the presumably predicate offences, tax-related fraud, swindle and drugs trafficking stand out.

Regarding cooperation with our FIU's counterparts, there has been an increase in the requests received by these FIU, as shown in the table below.

	2010		2011		2012 (1 st quarter)	
	Received	Sent	Received	Sent	Received	Sent
No of requests for information	127	94	199	96	70	12

In 2011, the FIU joined to the European Union application *FIU.NET*.

The FIU has continued to sign MoUs and currently 34 agreements have been signed with counterparts.

In the period under review, the FIU proposed the freezing of several transactions and the respective amounts, as shown in the table below. It is worth emphasising the significant increase both in the number of cases and in the amounts involved in 2011, when compared with the previous year.

	2010		2011		2012 (1 st quarter)	
	No of cases	Overall amount	No of cases	Overall amount	No of cases	Overall amount
Proposals of Freezing	14	20,601,884.39 EUR	35	30,077,971.89 EUR	13	25,048,798.62 EUR
		6,548,194.00 USD				

3.2. Prosecutor General's Office

A) Remarks on statistical data collection

The recommendations addressed to Portugal in the 2006 Mutual Evaluation Report, according to which more elaborate statistical collections on money laundering and terrorism financing should be maintained, lead to the development of efforts to centralise information at the Public Prosecution Service's intervention level.

Thus, there are currently mechanisms allowing for an accurate picture of the results of anti-money laundering and terrorism financing, identifying the inquiries opened and the amounts frozen, following the suspicious transactions.

It is also possible to quantify and describe charges brought in proceedings involving suspected money laundering, and identify illicit acts suspected of originating the funds and transactions identified.

However, an IT system data pertaining to proceedings dispersed nationally, particularly regarding seized items, especially property, and final results of convictions in courts of first instance, collected in a centralised manner, hasn't yet been implemented.

Regarding the criminal assets recovering or assets purchased with criminal funds, legal bases were launched with the setting-up of the Portuguese Asset Recovery Office.

The number of inquiries, i.e. formal investigations initiated on reasonable grounds for suspicion of money laundering, has increased. There was a significant number of inquiries initiated based on information deriving from anti-money laundering duties, whose reporting currently leads to over 30% of new inquiries opened, which are expected to grow in the second half of 2012.

The trends of money laundering predicate offences has profoundly changed if compared with previous years, and cases involving the laundering of proceeds originated from drug trafficking gave way to cases involving the laundering of proceeds derived from economic crimes, particularly tax offences and fraud in general, which went on to play an increasingly dominant role.

The results from investigations are the following:

Table 1- Inquiries and charges for money laundering offences

	2010	2011	2012 (1 st quarter)
Inquiries opened	137	156	87
Charges brought	80	26	17

B) Anti-money laundering and terrorism financing activities

Anti-money laundering and terrorism financing activities are centralised at the FIU and the Central Department for Criminal Investigation and Prosecution (DCIAP), and thus statistical data collection is comprehensive and reliable.

Table 2- Reports received and suspension of transactions

	2010	2011	2012 (1 st half)
Number of reports received	1459	1838	992
Number of suspended transactions	28	48	30
Amount of suspended transactions	EUR 20.5 million USD 7.5 million	EUR 20 million USD 16.5 million	EUR 13.8 million USD 3.1 million

Information resulting from reports received is always followed up, according to the following case percentages:

- 8% led to new inquiries, whether or not with suspension of transactions.
- 20% led to information being sent to previously opened and pending inquiries.
- 45% led to information addressed to administrative entities for investigation, particularly into tax-related matters.
- Only the remaining 27% led to the filing of all information collected due to being deemed irrelevant or insufficient to trigger other investigations.

Situations that could potentially involve terrorism financing were reported, and these gave rise to inquiries or reporting to foreign counterparts. From the suspicious transactions reports received and subsequent investigations, no evidence of terrorism or terrorism financing was found.

Table 3 – Terrorism financing

	2010	2011	2012 (1 st half)
Potentially relevant terrorism financing reports	4	7	6
Inquiries opened	1	1	2

C) Investigation stage: inquiry and charges

As seen in Table 1 above, the number of inquiries opened in the years under review has been following an upward trend, which has not always been accompanied by the number of charges brought.

The lack of alignment between the number of inquiries and charges brought does not mean that there are a great number of cases closed, but rather the investigations are more complex, which lead to a more time consuming inquiry investigation stage.

As stated before, the main difference from previous years is the nature of underlying offences, which ceased to be a mostly related to drug trafficking and are now more related to economic and financial crimes.

Percentage wise, the main preceding illicit acts are:

- 30% to 35%, tax fraud.
- 15%, swindle.
- 10%, drug trafficking.

The table below identifies the predicate offences and property identified into inquiry type:

Table 4 – Inquiries into money laundering broken down by predicate offence

	2010	2011	2012 (1 st half)	TOTAL
Drug trafficking	23	21	8	52
Tax offences	69	60	49	178
Corruption and crimes committed by public officials	2	8	4	14
Swindle and other cases of fraud	24	32	27	83
Computer crimes	3	8	1	12
Theft	2	1	0	3
Arms trafficking	1	2	1	4
Abduction	2	0	0	2
Extortion	2	1	1	4
Other forms of organized crime	10	21	29	60
Money laundering following unidentified type of illicit act	54	73	32	159
TOTAL	192	227	152	571

Table 5 – Convictions for money laundering in courts of 1st Instance

	2010	2011	2012 (1 st quarter)
Defendants	80	(*)	N/A
Convictions	13	2 (**)	N/A

(*) Official figures of the «Statistics of Justice» only available in late October;

(**) Provisional figures. Official figures of the «Statistics of justice» only available in late October 2012

Recommendation 33: PC**Legal persons – beneficial owners****1. SUMMARY OF FACTORS UNDERLYING RATING**

- The National Register of Legal Persons does not include information on the beneficial ownership and the persons who control a legal person.
- There is not full transparency of the shareholders of companies that have issued bearer shares.

2. FATF RECOMMENDATIONS IN THE MUTUAL EVALUATION REPORT RELATED TO THIS RECOMMENDATION

- Portugal should ensure information on the beneficial ownership and the persons who control a legal person and there is full transparency of the shareholders of companies that have issued bearer shares.

3. DESCRIPTION OF LAWS, REGULATIONS AND OTHER MEASURES ADOPTED OR ONGOING

- 3.1.** As mentioned in the previous update reports, legal persons of civil or commercial nature operating in Portugal must be registered in the National Register of Legal Persons, where their name and constitution must be recorded and containing, for instance, the details of the setting up, name and purpose of its business, the amount of capital, the address, mergers, winding-up and liquidation.
- 3.2.** The National Register of Legal Persons provides the identification number of the legal person - the Legal Person Identification Number (NIPC) - which accompanies the legal person from its creation to its liquidation. Commercial entities - such as, general partnerships, limited liability companies, joint-stock companies, limited partnerships and partnerships limited by shares - must also be recorded into the Commercial Registry.
- 3.3.** The Commercial Registry contains e.g. the by-laws of the companies, the transfer of the company's shares, the statutory seat of the companies, the updated identification of the shareholders and the amount of capital they hold, which are not bearer shares, the annual accounts of the companies, the mergers, the winding-up and the deliberation on the liquidation of the companies.

- 3.4.** The information recorded in the Commercial Registry is available to all public authorities or any interested person and contains sufficient elements on the identification of the shareholders, allowing to ascertain the persons that control the company.
- 3.5** Even when the company has issued physical bearer stock certificates (certificated shares), the identity of the holder of the bearer shares should be reported to the company, according to Articles 447 and 448 of the Companies Code, with regard to the shares held by members of the management and supervisory committees and closed family members, such as spouses and descendents, and by anyone else on their behalf.
- 3.6.** Furthermore the same duty to inform the company applies to any shareholder holding at least 1/10, 1/3 or half of the capital of the joint-stock company. This information is published in the annex to the annual report of the company.
- 3.7** For some publicly traded companies further thresholds apply, i.e., in addition to those mentioned above, and new duties apply upon exceeding the thresholds of 2%, 5%, 15%, 20%, 25%, two thirds and 90%. In what regards associations and foundations, all the updated elements related to the holders of the property are also recorded in the National Register of Legal Persons.
- 3.8.** Therefore information on the shareholders that control a company, i.e. holding 10% or more of the company shares, is available either from the Commercial Registry to any kind of company or directly from the joint-stock company when it issues bearer paper shares (certificated shares), even when the company is a publicly traded company.
- 3.9.** In what regards to the transparency of the information, competent authorities have access to the National Register of Legal Persons to which civil legal persons and business companies, associations, foundations, cooperatives, state-owned companies, cooperative undertakings, European economic interest groupings and any other personalized collective bodies are subject (Article 4 (1) a) of the National Register of Legal Persons Regime, approved by Decree-Law No 129/98, of 13 May 1998 and last amended by Law No 29/2009, of 29 June 2009).
- 3.10.** Furthermore, Article 86 of the Securities Code expressly lays down that, in pursuance of their duties, the Securities Market Commission and the Bank of Portugal have direct access to information on the facts and legal situations found in the records and supporting documents of the entities (financial intermediaries) where the securities are registered.
- 3.11.** The Securities Market Commission may request any information from issuers, financial intermediaries and the managing bodies of centralized systems of securities (Articles 359 (1) (a) to

(c) and 361 (2) (a) of the *Securities Code*) that cannot claim professional secrecy (to which financial intermediaries – Article 304 (4) of the *Securities Code* - and the managing bodies of centralized systems of securities are subject – Articles 37 and 46 of the body Law governing market management entities, approved by Decree-Law No 357-C/2007, of 31 October 2007) and have the duty to collaborate (Article 361 (2) (a) *in fine* and Article 359 (3) of the *Securities Code*).

- 3.12.** Financial intermediaries are required to keep the supporting documents and records as they are custodians in the securities registration system (Article 291 (a) of the *Securities Code*, Articles 6 (1) (b) and 7 (1) of Regulation No 14/2000 of the Securities Market Commission; see also Articles 16 (a) and 17 (1) (b) of Regulation No 14/2000 of the Securities Market Commission); custodians and issuing bodies are further responsible for opening and movements in individual accounts (Articles 6, 7, and 8 of Regulation No 14/2000).
- 3.13.** All the information contained in the accounts and related documents is kept for a five-year period, counting from the date of their definitive cancellation (Regulation No 14/2000 of the Securities Market Commission) – this duty applies to the managing bodies of centralized systems of securities, financial intermediaries and issuers, who are all *common participants* in the systems (Articles 2 (1), 6 (1), 7 (1) and 8 of Regulation No 14/2000 of the Securities Market Commission).
- 3.14.** Therefore, the only difference between the regimes applicable to nominative and bearer paper certificated shares that are not integrated in a centralized system, registered with a single financial intermediary or with the issuer and do not fall under the communication duties of the Companies Code or the Securities Code, is that their ownership is always less than 10% of the share capital, or less than 2%, in the case of a public company (see Articles 61 to 64 and 99 of the Securities Code and Regulation No 14/2000 of the Securities Market Commission).
- 3.15.** Nevertheless, the ownership of bearer shares is disclosed in the minutes of the general meetings, which contain the names of the partners present or represented and which are filed with the company over the following ten years, safeguarding those cases in which the law requires that a presence list be organized and annexed to the minutes – e.g. Articles 382, 63 (2) (c) and 63 (4) and (5) of the Companies Code; when information is requested on the preparatory documents of the general meetings, so long as they hold at least 1% of the share capital (Article 288 (1) of the Companies Code); through the voluntary representation instruments in a general meeting, which are filed with the company for the mandatory conservation period of documents (Article 380 (2) of the Companies Code); or when equity claims on the company are exercised, irrespective of the amount of share capital they have.

- 3.16.** In addition, Article 2 (5) of Law No 25/2008 requires from the subject entities the identification of the beneficial owner of legal persons, whose definition is also provided for in the same provision, independently of the shares being nominative or bearer, and the verification of the identity of the beneficial owner should be carried out according to the risk involved in the operation.
- 3.17.** Similar provisions, although not as detailed, had already been provided for in Instruction of the Bank of Portugal No 26/2005 and in Regulatory Standard No 10/2005-R of the Insurance Institute of Portugal in paragraph 2.2, as well as in Regulation No 2/2007 of the Securities Market Commission.
- 3.18** Although the information described above is considered sufficient and appropriate for an effective reaction against money laundering and terrorism financing, one should bear in mind that the efforts to strengthen the aforesaid struggle will be made easier by the expected enactment of a bill, that will abolish bearer shares and promote the conversion to nominal shares within five years from its enactment.

ANNEX

RELEVANT LEGISLATION (working translations)
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1. **Law No 36/2010**, published in Official Gazette No 171, Series I, of 2 September 2010

Article 1

Amendment to the legal framework of credit institutions and financial companies

Article 79 of the Legal Framework of Credit Institutions and Financial Companies, approved by Decree-Law No 298/92 of 31 December 1992, is reworded as follows:

“Article 79 [...]

1 - ...

2 - ...

(a) ...

(b) ...

(c) ...

(d) To the judicial authorities, within the scope of criminal proceedings;

(e) ...

(f) ...

3 – A database of the existing bank accounts on the Portuguese banking system is created at the Bank of Portugal, including the identification of all bank account holders, according to the following procedures:

(a) Within three months of the entry into force of this rule, all entities authorised to open any type of bank accounts shall report to the Bank of Portugal the identification of such bank accounts and respective holders, as well as the persons authorised to move them, including attorneys, and the account opening date;

(b) Such entities shall also report to the Bank of Portugal, on a monthly basis and up to the 15th of each month with reference to the previous month, information on the opening and closing of bank accounts, including the bank account number, the identification of the respective holders and the persons authorised to move them, including attorneys, as well as the account opening or closing date;

(c) the Bank of Portugal shall take the necessary measures to ensure the restricted access to this database, which shall only comprise information on the bank account number, the respective banking entity, the account opening date, the respective holders and persons authorised to move them, including attorneys and the account closing date. This information may only be provided to the entities mentioned in paragraph 2 (d) of this Article, within the scope of criminal proceedings.

2. **Law No 45/2011**, published in Official Gazette No 120, Series I, of 24 June 2011

In accordance with Article 161(c) of the Constitution, the Assembly of the Republic hereby decrees the following:

Chapter I
General provision

Article 1
Objective

1 – *The present law creates the Asset Recovery Office in compliance with Council Decision No 2007/845/JHA of 6 December 2007, concerning cooperation between the Asset Recovery Offices of Member States in the field of tracing and identification of proceeds from, or other property related to, crime.*

2 – *Rules regarding the administration of seized, frozen or confiscated assets are also set up, bearing in mind their good management and, if possible, their patrimonial increase.*

Chapter II
Asset Recovery Office

Article 2
Scope

The Asset Recovery Office (GRA) is set up under the remit of the Criminal Police, with powers of investigation similar to those of the criminal police bodies.

Article 3
Mission

1 – *GRA has, as mission, the identification, tracing and seizing of proceeds from, or property related to, crime, either at national or international level, to ensure the cooperation between assets recovery offices of other States and to perform all other powers legally conferred upon it.*

2 – *GRA is also entrusted with the collection, analysis and processing of statistical data on the seizing, confiscation and allocation of proceeds from, or property related to, crime.*

Article 4
Jurisdiction

1 – *GRA carries out the financial or patrimonial investigation referred to in the preceding number upon decision of the Public Prosecution Service:*

a) *Whenever the instrumentalities, proceeds or property are related to crimes punishable with a custodial sentence of three or more years; and*

b) *When the estimated value of such proceeds is higher than 1000 units of account.*

2 – *Upon prior authorisation of the Prosecutor General's Office or, by delegation, of the general district prosecutors, GRA may carry out financial or patrimonial investigations in cases not covered in the previous number, once the estimated economic, scientific, artistic or historical value is considered.*

3 – *The seizure of property is performed by GRA on the terms of the Code of Criminal Procedure; the owner of the property or of the rights may require the fact-finding judge to, within 10 days after notification, modify or repeal that measure.*

4 – *The notification referred to in the preceding number is made by edict or announcement whenever the owner of the property or of the rights is not found.*

5 – *The proceedings carried out by GRA are documented and joined to the case.*

6- *The financial or patrimonial investigation may be carried out for the purposes set out in Article 8 (2) of Law No 5/2002 of 11 January 2002, as soon as the fact-finding phase ends.*

Article 5
Composition and coordination

1 – *GRA is composed by elements that are part of the following entities:*

- a) *Criminal Police;*
- b) *Institute for Registrars and Notaries;*
- c) *Directorate General for Taxation;*
- d) *Directorate General for Customs and Excise Taxes.*

2 – *The composition and the coordination of GRA are established by joint order of the members of government responsible for the finance and justice areas.*

3 – *The appointment of the elements that compose GRA is made through a fee-service contract whose duration is established in the order referred to in the preceding number.*

Article 6
Functioning

The rules related to the functioning of GRA are defined by order of the national director of the Criminal Police or, by delegation, of the national deputy director.

Article 7
Delegations

1 – *GRA has its seat in Lisbon and comprises the following delegations:*

- a) *The North Delegation, located in Oporto;*
- b) *The Centre Delegation, located in Coimbra;*
- c) *The South Delegation, located in Faro.*

2 – *The GRA elements referred to in Article 5 (1) (c) and (d) perform their duties in Lisbon.*

3 – *The territorial jurisdiction of the GRA delegations concurs with that of the headquarters of the Criminal Police's directories and of the criminal investigation departments under their remit.*

Article 8
Access to information

1 – *In view of the financial or patrimonial investigation referred to in the current chapter, GRA may accede to the information held by national or international bodies, on the same terms of those criminal police bodies in charge of criminal investigations.*

2 – *For the purposes foreseen in the preceding number, GRA may accede, namely, to the databases of:*

- a) *The Institute for Registrars and Notaries;*
- b) *The Directorate General for Taxation and the Directorate General for Customs and Excise Taxes;*
- c) *The Social Security;*
- d) *The Insurance Institute of Portugal;*
- e) *The Securities Market Commission;*
- f) *The Bank of Portugal.*

3 – *Where such access depends upon authorization of the judicial authority, the order has to identify the natural or the legal persons covered by the measure and specify the information that has to be provided, the deadlines for its concession and the documents that have to be delivered; whenever such specification is not possible, it may assume a generic form for each of the subjects covered.*

4 – *In the case of information on bank accounts and where their holders or the persons intervening in the transactions are not known, shall be sufficient to identify the accounts and the transactions on which information is sought.*

**Article 9
Cooperation**

- 1 – GRA cooperates, at a police level, with the asset recovery offices of other States and exchanges information, data and good practices.
2 – In addition, GRA assists the judicial authorities in carrying out relevant acts of judicial cooperation.

**Chapter III
Management of property**

**Article 10
Management of property**

- 1 – The administration of frozen or seized property in the scope of national proceedings or of international judicial cooperation acts is ensured by an office of the Institute for Financial Management and Justice Infra-structures, I.P. (IGFIJ, I.P.), designated as Property Management Office (GAB).
2 – The board of directors of IGFIJ, I.P. is in charge of all administration and management acts carried out by GAB.
3 – In the course of their powers of administration, GAB is entrusted to:
a) Protect, preserve and manage the property that has been seized or that is under State custody;
b) Determine the sale, allocate to the public service or destruct the property referred to in the previous item, once the compliance with applicable communitarian regulation is safeguarded;
c) Perform all other duties that have been legally conferred upon it.
4 – GAB performs its duties within the strict respect for the principle of transparency bearing in mind a rational and efficient management of the administrated property and, if possible, its patrimonial increase.
5 – GAB examines, describes and registers the evaluation of the property in order to establish a value for a possible compensation.
6 – GAB provides GRA with the statistical data for the purposes set forth in Article 3 (2).

**Article 11
Jurisdiction**

On the terms of the current chapter, GAB at the request of GRA or of the judicial authorities may intervene whenever the value of the frozen property exceeds the 50 units of account.

**Article 12
Evaluation**

- 1 – Once the deadline established in Article 4 (3) has run out or the decision therein is overdue, GAB carries out an evaluation on the frozen property so that it may administrate and establish the value of a possible compensation.
2 – Where the evaluation shows special complexity or requires special skills, GAB may request the cooperation of entities with recognised expertise.
3 – The homologation of the evaluation by the president of IGFIJ, I.P. may be appealed against to the competent judge, who then decides by order not subject to appeal and after the diligences deemed convenient are carried out; it is ancillary applied the provisions set forth in Article 68 (5) of the Code of Criminal Procedure.

4 – *The owner or the legal holder of the property not considered relevant evidence may require the competent judicial authority that the property be returned to him against the deposit of the value of the evaluation in the name of IGFIJ, I.P.*

Article 13
Prior information

1 – *Before the sale, allocation or destruction of the property, GAB may request the Public Prosecution Service to provide information on the probative value and on a possible confiscation; such is considered an urgent request.*

2 – *The Public Prosecution Service must consider whether the probative interest may be satisfied through a sample of the frozen property.*

Article 14
Advanced sale

GAB carries out the sale of perishable, deteriorative or devalued goods or their allocation to a public or to a socially useful purpose before the res judicata decision, whenever they are not deemed relevant evidence.

Article 15
Exemption from the single vehicle tax

The vehicles, when seized, deposited or temporarily allocated to public service by the entities referred to in article 5(1), item (a) of the Single Tax on Motor Vehicles Code are exempted from paying such tax.

Article 16
Real estate

1 – *Real estate is maintained and managed by GAB and cannot be alienated until a res judicata sentence is delivered.*

2 – *Without prejudice to the provisions set forth in the preceding number, GAB may carry out the sale in advance or the allocation of the administrated real estate whenever they are in a serious risk of losing their value or may endanger the security or public health and are not deemed relevant evidence.*

3 – *In the cases foreseen in the previous number, whenever the real estate is considered relevant evidence, GAB may carry out the rehabilitation construction works required.*

4 – *GAB shall liquidate the municipal tax on the real estate (IMI) that is under its administration.*

Article 17
Allocation of the revenue

1 – *The revenue obtained by the management of the seized or confiscated goods revert:*

a) *In 50% to the Justice Modernization Fund;*

b) *In 50% to IGFIJ, I.P.*

2 – *Are excluded from the regime of the preceding number:*

a) *The provisions of Article 39 of Decree-Law No 15/93 of 22 January 1993, Article 110 of Law No 144/99 of 31 August 1999, Article 18 of Law No 88/2009 of 31 August 2009, as well as the provisions set out in agreements, treaties or conventions to which the Portuguese State is bound;*

b) *The product revenue from goods related to tributary crimes as well as the revenues that comprise their own communitarian resources.*

Article 18

Compensation

1 – *Expenditure with real estate pursuant to Article 16 and with movable goods allocated to public service is object of reimbursement should they be handed back to their owner.*

2 – *For the purposes of the provisions set out in the previous number, an evaluation is made on the value of the construction works and improvements carried out by GAB on the real estate that is under its management as well as the IMI (Real Estate Municipal Tax) paid and, as regards the movable goods, the expense brought about by its allocation to a public or to a socially useful purpose.*

3 – *Once the compensation is evaluated, the creditor is compensated with the surplus obtained.*

4 – *If a sale in advance has occurred, it is handed back to the owner the value obtained plus the accrued statutory interest as from the moment of the sale, once the expenses referred to in nos. 1 and 2 are deducted.*

Chapter IV Information and data exchange and data protection

Article 19 Information and data exchange

The information and data exchange requested or made available between asset recovery offices or other authorities in charge of facilitating the tracing and identification of crime proceeds is carried out according to legal terms.

Article 20 Data protection

Personal data are protected in accordance with the provisions set forth in the Law for Personal Data Protection, approved by Law No 67/98 of 27 October 1998, and its transmission follows the regime legally established.

Chapter V Final provisions

Article 21 Subsidiary regime

The financial and patrimonial investigation and the assessment, use, management and alienation of frozen or confiscated property which are not covered by the present law follow the general terms.

Article 22 Transparency and monitoring

1 – *The offices foreseen in the present law jointly draft, until 31 March of the following year, a report on the previous year's activity on terms to be defined by joint order of the members of Government responsible for the finance and justice areas.*

2 – *The report referred to in the preceding number is sent to the Ministry of Justice.*

3 – *Within five years, the activity of the offices created by the current law is subject to evaluation.*

Article 23

Application of the law in time

1 – *The provisions set forth in the current law apply to the cases that begin from the entry into force of the present law.*

2 – *Without prejudice to the provisions set out in the previous number, and once the circumstance of Article 4 (2) are verified, the Prosecutor General's Office or, by delegation, the general district prosecutors may entrust GRA with the financial or patrimonial investigation of cases which have begun before the entry into force of the present law.*

3 – *In the cases referred to in the preceding number, GRA or the judicial authorities may request the intervention of GAB on the terms of Article 11.*

3. **Article No 118-A of the LEGAL FRAMEWORK OF CREDIT INSTITUTIONS AND FINANCIAL COMPANIES**, added by Law No 28/2009 of 19 June 2009, published in Official Gazette No 117, Series I, of 19 June 2009

Article 118-A

Duty to refrain from carrying out operations and registration of operations

1 - *Credit institutions are not authorized to grant credit to entities having their head office in an off-shore jurisdiction considered to be non-cooperative or whose ultimate beneficial owner is unknown.*

2 – *It shall be incumbent upon the Bank of Portugal to define, by means of a Notice, the off-shore jurisdictions considered to be non-cooperative for the purposes of the provisions of the foregoing paragraph.*

3 – *Without prejudice to the provisions of paragraph 1 above, credit institutions shall make the registration of transfer operations whose beneficial owner is an entity having its head office in an off-shore jurisdiction, and shall communicate the said registration to the Bank of Portugal, under the terms and with the frequency defined by the latter.*

4 – *The provisions of the foregoing paragraph shall apply to operations amounting to more than €15,000, regardless of whether the transfer is made in one single operation or through several related operations, and shall include the identity of the paying agent and of the beneficial owner, as well as of any intermediaries.*

4. **Notice of the Bank of Portugal No 9/2012**, published in Official Gazette No 104, Series II, of 29 May 2012

In the course of 2011, the Bank of Portugal reorganised its supervisory structure with the purpose of enhancing its ability to act within the framework of its responsibilities as financial system regulator and supervisor. Hence, the Legal Enforcement Department, also created in 2011, focused its supervisory tasks on preventing the use of the financial system for money laundering or terrorist financing.

Aware that correct intervention as supervisor must also rely on improving the quality of the information reported to it by the entities subject to its supervision, the Bank of Portugal deems it essential to reshape the information media used for preventing money laundering and terrorist financing.

This Notice is the first step towards that aim, as it renders autonomous and broadens the information that has been reported on this issue by institutions, under Notice of the Bank of Portugal No 5/2008 published on 1 July 2008, and Instruction No 24/2002 published on 16 September 2002. A new type of information reporting is now envisaged, the so-called Relatório de Prevenção do Branqueamento

de Capitais e Financiamento do Terrorismo (RPB, 'Report on Anti-Money Laundering and Terrorism Financing'). This report aims to contribute to a stricter perception and assessment of the policies and procedures adopted by institutions to ensure compliance with the duties provided for in Law No 25/2008 of 5 June, especially the respective internal control mechanisms and compliance, assessment, risk management and internal audit procedures.

Hence, in use of the powers entrusted to it by Article 17 of its Organic Law and by Article 39(1)(a) of Law No 25/2008 of 5 June, the Bank of Portugal provides for the following:

Article 1

Purpose and scope

1 - This Notice defines information requirements in the field of money laundering and terrorist financing risk management, to be periodically reported to the Bank of Portugal by entities subject to its supervision or providing financial services related to matters under its supervision.

2 – The rules of this Notice are addressed to the following entities, hereinafter generically referred to as 'institutions':

(a) Credit institutions, financial companies and payment institutions established in the Portuguese territory;

(b) Portuguese branches of credit institutions, financial companies and payment institutions established abroad;

(c) Entities providing postal services, insofar as they provide the public with financial services related to matters under the supervision of the Bank of Portugal.

Article 2

Report on Anti-Money Laundering and Terrorist Financing

1 - Institutions shall send the Bank of Portugal on an annual basis a specific report on their anti-money laundering and terrorist financing control system, hereinafter referred to as 'RPB', with the information set out in the Annex to this Notice.

2 - In addition to the main text, the RPB is composed of the following Annexes:

(a) Annex I, containing an overall opinion of the institution's management board on the suitability and effectiveness of the respective internal control system, within the scope of money laundering and terrorist financing prevention.

(b) Annex II, containing:

(i) Information on the possible detection by the institution's audit board of high-risk shortcomings in the anti-money laundering and terrorist financing system during the RPB reference period;

(ii) Opinion of the institution's audit board – issued in a clear, positive, detailed and well-grounded manner – on the quality of the respective anti-money laundering and terrorist financing internal control system.

Article 3

Sending of the RPB

1 - The RPB, including the Annexes referred to in paragraph 2 of the foregoing Article, shall be sent to the Bank of Portugal:

(a) By 30 June each year, referring to the period from 1 June of the year prior to sending to 31 May of the year of sending;

(b) Through the BPnet system, created by Instruction No 30/2002 published in Official Bulletin No 10 of 15 October 2002, by filling in the corresponding electronic form online.

2 - In case of force majeure or technical inoperability of the BPnet system, institutions may, on an exceptional basis, send the RPB by email, and for that purpose they shall:

(a) Request the Bank of Portugal beforehand to provide the corresponding file through email to das.saa@bportugal.pt;

(b) Send the filled-in file to the email address referred to in the foregoing sub-paragraph.

3 – The Bank of Portugal shall not consider any RPB sent:

(a) By email when any of the conditions provided for in the foregoing paragraph are not met, or when an updated file that is provided by the Bank of Portugal beforehand is not used;

(b) Through any means other than the BPnet system.

Article 4

Subsequent changes

1 - Institutions shall immediately notify the Bank of Portugal of the following changes affecting those responsible for the compliance function, in the field of money laundering and terrorist financing prevention:

(a) Holding of office;

(b) Contact information;

(c) Inclusion in the organisational structure;

(d) List of tasks assigned.

2 – Notification of the changes provided for in the foregoing paragraph shall be made via email to das.saa@bportugal.pt.

Article 5

System of penalties

Breaches of the provisions of this Notice shall be punishable under Chapter V of Law No 25/2008 of 5 June.

Article 6

Information support

Any request for information or clarification related to the implementation of this Notice shall be addressed to the Anti-Money Laundering Unit of the Legal Enforcement Department of the Bank of Portugal by email to das.aia@bportugal.pt.

Article 7

Transitional provision

In order to ensure that institutions have sufficient time to comply with the requirements in this Notice, the RPB referring to the period from 1 June 2011 to 31 May 2012 may be sent to the Bank of Portugal by 30 September 2012.

Article 8

Amending provision

Article 25 (4) of Notice of the Bank of Portugal No 5/2008 published in 1 July 2008 shall be amended as follows:

“Article 25

Individual report

1 - ...

2 - ...

3 - ...

4 – *Reporting of information on money laundering and terrorism financing risk management shall be the object of a separate report, pursuant to a Notice of the Bank of Portugal.*

5 - ...

6 - ...

7 - ...

8 - ...

9 - ...

10 - ...

Article 9

Revocation

1 - *Instruction No 24/2002 published in the Boletim de Normas e Informações do the Bank of Portugal No 9 of 16 September 2002 is hereby revoked.*

2 – *All references to the Instruction referred to in the foregoing paragraph shall be construed as references to this Notice.*

Article 10

Entry into force

This Notice shall enter into force on the day following that of its publication.

17 May 2012. - Governor, Carlos da Silva Costa.

Annex to Notice of the Bank of Portugal No 9/2012

ANNEX

(referred to in Article 2)

Report on Anti-Money Laundering and Terrorism Financing

1 - Reference period:

- *Start*
- *End*

2 - Institutional information:

- *Financial agent code*
- *Company or business name*
- *Legal person identification number*
- *Type of institution*
- *Credit institutions, financial companies, payment institutions:*
 - *Location of head office or principal place of business*
 - *Countries or jurisdictions of subsidiaries*
 - *Countries or jurisdictions of branches*
 - *Countries or jurisdictions of agents*

- *Branches established in Portugal:*
 - *Location of the branch in Portugal*
 - *Country or jurisdiction of head office*
- *Other entities providing financial services:*
 - *Location of head office or principal place of business*
- *Total number of employees*
- *Main business areas of the institution (defined in the strategic plan or an equivalent document)*

3 – Anti-money laundering/terrorist financing (AML/CFT) control environment:

3.1 – Description of the institution’s AML/CFT risk management model, with information on:

(a) AML/CFT risk factors specific to the institution’s operation, by business area

(b) The qualitative assessment of the (high, average or low) probability of each of the risk factors identified in (a), duly substantiated

(c) The qualitative assessment of the (high, average or low) impact on the institution’s activity of each of the risk factors identified in (a), duly substantiated

(d) The control mechanisms and procedures in place to mitigate the risk factors identified

(e) The manner in which the institution monitors the adequacy and efficiency of controls implemented to mitigate the risk factors identified

3.2 – Description of the institution’s internal control strategies, policies, procedures and processes in place to ensure compliance with the laws and regulations governing AML/CFT and avoid its involvement in transactions related to such crimes.

3.3 - Description of the institution’s AML/CFT internal control system assessment procedures in place to test its effectiveness on a regular basis.

3.4 – Information on the degree of involvement of the institution’s management board in defining, approving, and/or monitoring:

(a) the institution’s AML/CFT risk management model

(b) the institution’s AML/CFT internal control strategies, policies, procedures and processes

(c) the assessment of the institution’s internal control system effectiveness

3.5 - Description of the AML/CFT procedures used to assess the various parties to the transaction contracts the institution carries out on its own behalf (including intra-group transactions), in the course of implementing its investment policy.

3.6 - Description of the AML/CFT procedures used to assess the various parties to the transaction contracts the institution carries out on behalf of third parties, including those resulting from providing portfolio management services on behalf of third parties.

3.7 - Description of the processes implemented to verify compliance by the institution’s agencies with the laws and regulations governing AML/CFT, especially as regards the following duties: duty of identification, duty of due diligence, duty to keep documents and records, duty of scrutiny, duty to refrain from carrying out transactions, duty of confidentiality and duty to report.

3.8 - Description of the control mechanisms implemented to ensure and verify implementation on an ongoing basis of AML/CFT principles, policies and effective measures at the institution’s branches and subsidiaries, including those with head office in offshore centres.

3.9 - Identification of branches and subsidiaries located in third countries whose legislation prevents or

hinders implementation of AML/CFT principles, policies or measures, as well as indication of supplementary measures adopted to mitigate the ensuing risk.

3.10 - Identification of restrictions in the flow of information within the institution's financial group that prevent or hinder effective control of AML/CFT risks.

3.11 – Where the institution is a branch established in Portugal, description of possible additional AML/CFT procedures developed at the level of the respective head office and applicable to transactions conducted by the branch.

3.12 – Indication of the criteria and requirements adopted for selecting staff members performing AML/CFT key tasks, so as to ensure and assess the suitability of their profile to the required task.

3.13 – Detailed description of the information path following detection of suspicious behaviours, activities or transactions in the latter's reporting process (from the moment the suspicious situation is detected up to a decision to report it to the competent authorities), including information on:

- (a) The type of internal documentation produced*
- (b) The formal participants in the process*
- (c) Reporting to the institution's management board*
- (d) The means used to report suspicious transactions to the competent authorities*

3.14 - Description of the identification and enhanced due diligence procedures regarding:

- (a) Transactions conducted without the customers or their representatives being physically present*
- (b) Transactions with politically exposed persons residing outside the national territory*
- (c) Correspondent banking operations with credit institutions established in third countries*
- (d) Transactions subject to enhanced due diligence measures, as expressly stated by the Bank of Portugal, pursuant to the provisions of Article 12(2) of Law No 25/2008*
- (e) Other situations involving increased AML/CFT risk identified by the institution*

3.15 - Description of the identification and due diligence procedures regarding:

- (a) Transactions related to offshore centres*
- (b) Transactions related to private banking customers*
- (c) Trade finance transactions*
- (d) Transactions with politically exposed persons residing in Portuguese territory*
- (e) Transactions related to countries or jurisdictions where the Financial Action Task Force has identified strategic shortcomings at AML/CFT level (referenced in a document published by that Task Force on www.fatf-gafi.org) or to countries or jurisdictions that have been subject to additional countermeasures decided by the Council of the European Union*
- (f) Transactions related to countries, jurisdictions, entities or individuals on which sanctions or restrictive measures have been imposed by the United Nations Security Council or the European Union*

3.16 - Description of the procedures adopted by the institution to identify the beneficial owner, within the meaning of Article 2(5) of Law No 25/2008, with regard to record-keeping:

- (a) The identity of the beneficial owner*
- (b) His/her capacity as beneficial owner*

3.17 - Identification of procedures adopted by the institution to detect the splitting of transactions.

3.18 – In the case of payment institutions, description of the internal control mechanisms implemented to render the agents' conduct adequate (in Portugal or abroad) at AML/CFT level.

3.19 – In the case of payment institutions that assign operational tasks to third parties:

- (a) Identification of third parties*
- (b) Description of procedures to ensure internal control quality and allow the Bank of Portugal to verify compliance with all applicable legal provisions*

4 - Information systems:

4.1 - Description of IT systems (stating the main parameterised indicators of suspected AML/CFT) or any other devices or procedures making it possible to:

- (a) Monitor and analyse transactions of the institution's customers, as well as (centrally) identify transactions involving greater AML/CFT risk
- (b) Associate transactions performed by occasional customers, in order to comply with the EUR 1000 threshold provided for in Article 5(4) of Regulation (EC) No 1781/2006 and the EUR 15,000 threshold provided for in Article 7(1)(b) of Law No 25/2008

4.2 - Description of the architecture/ configuration of the information system supporting infrastructure:

- (a) Indication of the physical location of information on customers and their transactions (local servers, international servers with remote access, external hosting)
- (b) Indication – in case such information is located outside Portuguese territory – of a possible functional replica of the database referring to activity in Portugal, accessible online
- (c) Information on high-level operational vulnerabilities/risks (e.g. recourse to third parties to implement business support services)
- (d) Information on the use of cloud technology

4.3 – Description of the accounting system and the third party management system regarding:

- (a) Operating systems (windows, linux, solaris, aix, zOS)
- (b) Database management systems
- (c) Servers (physical servers, virtual servers, mainframe)
- (d) Access to applications (web technology, server customer)
- (e) Network infrastructure and peripheral security
- (f) Workstations and peripherals (desktops, virtual workstations)
- (g) Existence of a change management process

4.4 - Description of the security policies implemented regarding:

- (a) Access control
- (b) Access profiles
- (c) Auditability (audit logs and trails)
- (d) Backup policy (frequency, period for safekeeping and location)

4.5 - Information on the support/exploitation of accounting and third party management systems:

- (a) Identification and contact details of the entity/person in charge of their management
- (b) Identification and contact details of the entity/person in charge of the communication media implemented
- (c) Identification and contact details of the entity/person in charge of the information system (application + information in the database or files)
- (d) Identification of the owner (entity in charge of collecting/creating data) and the custodian (entity in charge of data management according to the rules defined by the owner) of computer data

4.6 - Information on the availability of information systems regarding:

- (a) Operating hours
- (b) Response time
- (c) Tolerable down time
- (d) Existence of an alternative contingency/circuit system

4.7 - Information on the existence of a Service Level Agreement (SLA) and possible service level management processes.

5 - Compliance function:

5.1 – *With regard to the compliance staff member specifically responsible for AML/CFT ('AML/CFT compliance officer') and, where appropriate, to the head of the institution's compliance function:*

- (a) Identification*
- (b) Date of entry into service*
- (c) Direct telephone*
- (d) Email address*
- (e) Inclusion in the organisational structure*
- (f) Detailed curriculum vitae*
- (g) List of tasks assigned*

5.2 – *In the case of institutions belonging to the same financial group which has a common service to perform compliance tasks, identification of institutions sharing that service.*

5.3 – *Indication of the number of employees allocated to the compliance function and specifically devoted to AML/CFT, and information on the suitability of the number of existing resources to the function's requirements.*

5.4 – *Description of the compliance function, including information on the degree of independence, permanence and tenure of the AML/CFT compliance officer and his/her level of access to the institution's activities and the respective supporting information.*

5.5 – *In the case of institutions where there is no segregation between the compliance function and the functional areas under assessment (pursuant to the provisions of Article 17(3) and (4) of Notice of the Bank of Portugal No 5/2008):*

- (a) Information showing the suitability and independence of the compliance function*
- (b) Description of the control mechanisms to mitigate potential conflicts of interest*

5.6 - *Description of activities carried out during the RPB reference period by the compliance area specifically responsible for AML/CFT.*

5.7 - *Information on the activity plan of the compliance area specifically responsible for AML/CFT, forecast for the subsequent reference period.*

6 - Risk management function:

6.1 – *With regard to the individual(s) responsible for the risk management function (risk manager – 'RM'):*

- (a) Identification*
- (b) Date of entry into service*
- (c) Direct telephone*
- (d) Email address*
- (e) Inclusion in the organisational structure*
- (f) List of tasks assigned at AML/CFT level*

6.2 - *In the case of institutions belonging to the same financial group which has a common service to perform risk management tasks, identification of institutions sharing that service.*

6.3 - *Description of the risk management function, including information on the degree of independence, of the RM and his/her level of access to the institution's activities and the respective supporting information.*

6.4 - *In the case of institutions where there is no segregation between the risk management function and the functional areas under assessment (pursuant to the provisions of Article 16(5) of Notice of the Bank of Portugal No 5/2008), description of the mechanisms implemented to ensure compliance with the provisions of (1)(a) of the same Article.*

6.5 - Description of the institution's internal policies and procedures in the field of risk assessment and management, to guarantee observance of AML/CFT duties.

7 - Internal audit function:

7.1 - With regard to the individual(s) responsible for the internal audit function (internal audit manager – 'IAM'): (a) Identification

(b) Date of entry into service

(c) Direct telephone

(d) Email address

(e) Inclusion in the organisational structure

(f) List of tasks assigned at AML/CFT level

7.2 – Should any internal audit task be outsourced to third parties:

(a) Identification of the entity responsible

(b) Identification of the individual(s) directly responsible for carrying out the final internal audit tasks

(c) Direct telephone of the individual(s) referred to in (b)

(d) Email address of the individual(s) referred to in (b)

7.3 - In the case of institutions belonging to the same financial group which has a common service to perform internal audit tasks, identification of institutions sharing that service.

7.4 - Description of the internal audit function, including information on the degree of independence of the IAM and his/her level of access to the institution's activities and the respective supporting information.

7.5 - Description of the institution's additional monitoring procedures, should it not have an audit function, pursuant to Article 21(8) of Notice of the Bank of Portugal No 5/2008.

7.6 - Description of the audit plan provided for in Article 22(1)(a) of Notice of the Bank of Portugal No 5/2008 where it refers to AML/CFT.

7.7 – Indication of the last audit conducted on each of the institution's functional areas, in the field of AML/CFT procedures.

7.8 - Identification of the institution's functional areas that have not been audited - in the field of AML/CFT procedures – in the course of the RPB reference period.

7.9 - Description of internal audit policies and procedures to ensure the observance of AML/CFT duties.

8 - External auditor:

8.1 - Identification of the institution's external auditor.

8.2 - Information on the assessment of the institution's AML/CFT control system, included in the last external auditor's report.

9 - Relevant quantitative information (referring to the RPB reference period):

9.1 – With regard to operations subject to the duty of scrutiny provided for in Article 15 of Law No 25/2008:

- (a) Total number of transactions*
- (b) Aggregate amount of transactions*
- (c) Number of transactions on which there was a decision not to report to the competent authorities*

9.2 – *With regard to transactions subject to the duty to report as provided for in Article 16 of Law No 25/2008:*

- (a) Total number of transactions*
- (b) Aggregate amount of transactions*

9.3 - *Information on the existence during the RPB reference period of AML/CFT training courses addressed to staff members and/or members of the institution's management board (in compliance with the provisions of Article 22 of Law No 25/2008).*

9.3.1 – *Should these training courses take place, information (per course) on:*

- (a) Title of the training course*
- (b) Month and year in which it is held*
- (c) Identification of the training entity*
- (d) Nature (internal or external training)*
- (e) Type (face-to-face or distance training)*
- (f) Duration (in hours)*
- (g) Number of participants from the institution*
- (h) Number of external participants*

10 - Shortcomings detected in AML/CFT:

10.1 - *Information on shortcomings detected (by the compliance, risk management and internal audit functions plus the external auditor) during the RPB reference period or on a previous date, and which have not yet been fully corrected, indicating the following elements:*

- (a) Functional area where the shortcoming was detected*
- (b) Function that identified the shortcoming*
- (c) Description of the shortcoming*
- (d) Implications arising from the shortcoming*
- (e) Degree of risk associated with the shortcoming (high, average or low)*
- (f) Date of detection of the shortcoming*
- (g) Date of reporting of the shortcoming to the management board*
- (h) Justification for not correcting the shortcoming*
- (i) Corrective or preventive measures under way or to be adopted*
- (j) Date forecast for correcting the shortcoming*

11 – Additional information:

11.1 – *Summary explaining the main changes occurred in the institution during the RPB reference period at the level of AML/CFT procedures.*

11.2 - *Email address of the institution's management board and/or of the internal structure, person or entity appointed by the above body to receive relevant information on AML/CFT disseminated by the Bank of Portugal [information sent in full to the email address(es) indicated by the institution is considered for all purposes to have been transmitted].*

11.3 – *Any other information on AML/CFT deemed relevant by the institution.*

12 – Specific information on the activity of exchange offices and payment institutions (currency purchase and sale):

12.1 – With reference to (i) the period from 1 January to 31 May of the reference period prior to this RPB, (ii) the period from 1 January to the reference period prior to this RPB and 31 December of the reference period of this RPB and (iii) the period from 1 January to 31 May of the reference period of this RPB, information on:

- (a) Euro equivalent value of purchases – involving customers – of Canadian dollars, US dollars, Swiss francs, pounds sterling, Brazilian reais and other currencies, in aggregate terms
- (b) Euro equivalent value of sales – involving customers – of Canadian dollars, US dollars, Swiss francs, pounds sterling, Brazilian reais and other currencies, in aggregate terms
- (c) Euro equivalent value of purchases – involving the financial system – of Canadian dollars, US dollars, Swiss francs, pounds sterling, Brazilian reais and other currencies, in aggregate terms
- (d) Euro equivalent value of sales – involving the financial system – of Canadian dollars, US dollars, Swiss francs, pounds sterling, Brazilian reais and other currencies, in aggregate terms

13 – Specific information on fund transfers by payment institutions, exchange offices acting as agents for national or foreign payment institutions and by other entities providing financial services:

13.1 - Information on fund transfers carried out.

13.2 – Complete and detailed information of the whole circuit of transferred funds:

- (a) In the case of transfers abroad, from the moment when the amounts to be sent are delivered by the transaction originator until they are made available, in the destination country or jurisdiction, to their final beneficiary
- (b) In the case of transfers from abroad, from the moment when the amounts to be sent are delivered by the transaction originator until they are delivered to their final beneficiary in Portugal

13.3 - Identification (name/business name) of all parties intervening in the transfer circuit, including final paying agents that – in destination countries or jurisdictions of processed transfers abroad – actually make the funds available to their beneficiaries, whichever the manner used for that purpose (deposit/transfer in/to a bank account held by the transfer beneficiary, direct cash delivery or cheque to the transfer beneficiary, etc.).

ANNEX I Overall opinion of the institution's management board on the suitability and effectiveness of the respective internal control system, within the scope of money laundering and terrorist financing prevention.

ANNEX II

1 - Information on the possible detection by the institution's audit board of high-risk shortcomings in the institution's AML/CFT system during the RPB reference period.

2 - Opinion of the institution's audit board – issued in a positive, clear, detailed and well-grounded manner – on the quality of the respective anti-money laundering and terrorist financing internal control system, including:

- (a) Express mention of the opinion's reference date
- (b) Audit board's assessment of the efficiency of the institution's preventive strategies, policies, processes and procedures and their suitability to requirements provided for in laws and regulations (including Notice of the Bank of Portugal No 5/2008 of 1 July)
- (c) Information on shortcomings detected within this specific scope and during the performance of the audit board's tasks – organised into functional areas and indicating the associated degree of risk (high, average or low) and its potential implications – or, where appropriate, express reference stating that the audit board detected no shortcomings in the anti-money laundering and terrorist financing internal control system
- (d) Information on initiatives agreed on with the institution's management board to correct materially relevant shortcomings detected and the respective plan for implementation (e) Information on the status of implementation of the measures to correct materially relevant shortcomings determined in the previous reference period

5. **Instruction of the Bank of Portugal No 17/2010**, published in Official Bulletin of the Bank of Portugal No 8/2010 of 16 August 2010

SUBJECT: Communication of transfer operations to off-shore jurisdictions

Having regard to the need to have systematised information on compliance with the provisions of Article 118–A (3) of the Legal Framework of Credit Institutions and Financial Companies (RGICSF), approved by Decree-Law No 298/92 of 31 December 1992, the Bank of Portugal, in use of the powers conferred on it by Article 17 of its Organic Law, and taking into account Article 120 (1) (b) to (e) of RGICSF, lays down the following:

- 1. The institutions subject to supervision by the Bank of Portugal on the basis of their consolidated financial situation under Notice of the Bank of Portugal No 8/94 shall submit to the Bank of Portugal the information laid down in Article 118-A (3) of RGICSF, covering all entities included in the perimeter of prudential supervision.*
- 2. The entities authorised to carry out transfer operations and not included in the reporting laid down in the foregoing paragraph shall submit to the Bank of Portugal the information laid down in Article 118-A (3) of RGICSF.*
- 3. The entities referred to in paragraphs 1. and 2. shall have updated and complete information on all transfers covered by Article 118-A (3) and (4) of RGICSF.*
- 4. The entities referred to in paragraphs 1 and 2 shall submit to The Bank of Portugal the items of information contained in the Annex to this Instruction on each transfer operation covered by Article 118-A of RGICSF.*
- 5. The items of information referred to in paragraph 4. shall be submitted to the Bank of Portugal by the end of the month following each quarter's end and shall cover all operations carried out in that quarter.*
- 6. Without prejudice to the provisions of the foregoing paragraph, the first set of information shall be submitted by 31 October 2010 and cover all transfer operations carried out from 22 June 2009 to 30 September 2010.*
- 7. The items of information referred to in this Instruction shall be submitted to the Bank of Portugal via the BpNet electronic communication system, created by Instruction of the Bank of Portugal No 30/2002, published in the Official Bulletin of the Bank of Portugal No 10 of 15 October, in accordance with the technical specifications to be disclosed by means of a circular letter.*
- 8. This Instruction shall enter into force on the date of its publication.*

Annex to Instruction of the Bank of Portugal No 17/2010

The reporting of information on transfers covered by Article 118-A (3) and (4) of RGICSF shall comply with the following conditions:

- a) Reporting entity** - Entity responsible for submitting information to the Bank of Portugal.
- b) Covered transfers** – All transfers made to a beneficial owner account domiciled in an off-shore jurisdiction, as well as transfers made to beneficial owners that are customers of the reporting entity having their head office in an off-shore jurisdiction.
- c) Reporting threshold** - € 15,000, or equivalent for transfers denominated in another currency.
- d) Related operations** – All transfers carried out in each calendar month having the same paying agent and beneficial owner.
- e) Intermediary** - Entity which carries out the transfer in compliance with a request from another entity without directly receiving the transfer order from a customer.