



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

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September 2010

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

This second 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

SECOND UPDATE

September 2010

I. INTRODUCTION

I - Relation with the first biennial updated Report presented in September 2008.

The Portuguese authorities would like to recall that in the first biennial updated report detailed information was provided concerning the compliance with several Recommendations in relation to the financial sector, such as Recommendation 6, on the legal regime applicable to Politically Exposed Persons, Recommendation 7 on the regime of Correspondent Banking and Special Recommendation VII on the elements of information that should be included on Wire Transfers.

As mentioned in that report, all these situations were expressly endorsed in the AML/CFT Law no. 25/2008 and in the European EC Regulation 1781/2006 of the European Parliament and the Council of 15th of November 2006, which is directly applicable in the country and in Decree-Law no. 125/2008, of 21st of July, implementing the EC Regulation. Therefore, Portuguese authorities consider that the above mentioned legal instruments demonstrate the compliance of the national legal regime with Recommendations 6, 7 and Special VII and consequently the reference to those Recommendations will not be repeated in this second update report.

Regarding Recommendation 34 on Legal Arrangements - Beneficial Owners, the Portuguese authorities refer also to the previous biennial report taking into account that no changes were made to the legal regime presented in 2008 and no significant differences exist in the number of registered foreign trusts, which are in July 2010 in the number of 57.

II –The new money laundering and terrorist financing prevention Law no. 25/2008, of 5th June and the legislative developments since 2008

A- Some Highlights on the 2008 AML/CFT Law.

As stated in the previous report, in 2007 an Inter-Ministerial group of representatives from the Minister of Finance and Public Administration, the Ministry of Justice and the supervisory authorities of the financial sector¹ conducted a general assessment of the Portuguese AML/CFT prevention system, involving working meetings with the authorities responsible for the monitoring AMLCFT preventive duties on the financial and non-financial sectors, with the purpose of evaluating the needs of these authorities to deal with the ML/FT threats and the challenges they were facing on the prevention of those crimes, as well as the shortcomings of the legislation and regulation in force.

After the general assessment and the preparation of the draft legislation, the Assembly of the Republic on the 5th of June 2008 approved the new money laundering and terrorist prevention law which entered in force in the 10th of June and abrogated the previous AML Law, no 11/2004, of 27 March.

The new AML/CFT Law was conceived with the aim to transpose into national law the European Directive no. 2005/60/EC, of 26 October 2005, and European Directive no. 2006/70/EC of the Commission, of the 1st of August, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, but also to take into consideration the legal regime of the Warsaw Convention of the Council of Europe, of 17th May of 2005, the UN Conventions on the prevention of money laundering and terrorist financing and also the 40+9 FATF Recommendations, aiming to comply with the requirements of these various sources of law and legal principles, as suitable to the needs of the Portuguese environment.

Law no. 25/2008 followed the principle of legal continuity, and as far as possible maintained in force the general duties and legal framework applicable to the subject entities inside and outside the financial sector stated in the previous AML Law, avoiding whenever possible to create unnecessary enforcement difficulties on procedures that financial entities and DNFBPs had already in place and were accustomed with.

1 - Extension of the AML regime to cover terrorism financing.

Law no. 25/2008 brought substantive changes to the preventive scenario. One of the most relevant changes was the extension of the entire legal regime to the terrorism financing prevention, encompassing in this new approach all the entities included in the financial sector, such as credit institutions, investment companies and financial companies, entities managing or marketing venture capital funds, collective investment

¹ For more detailed references consult the 1st Update Report of September 2008.

undertakings marketing their units, insurance companies and insurance brokers carrying activities of non-life insurance, pension-fund managing companies, credit securitisation companies, venture capital companies and investors, investment consulting companies, companies pursuing activities dealing with contracts related to investment in tangible assets and all DNFBPs, such as casinos, real estate agents, dealers in goods that receive payments in cash of €15 000 or more, lawyers, notaries, registrars and *solicitadores*, chartered accountants, statutory auditors, trust and company service providers, operators awarding betting and lotteries, entities constructing buildings for direct sale and tax advisors(Articles 3 and 4 of Law no.25/2008),

With the extension of the preventive legal system of Law no. 25/2008 to the prevention of terrorism financing the role of the FIU, the central national authority competent to receive analyse and disseminate suspicious transactions of money laundering, has seen its scope enlarged to receive, analyse and disseminate suspicious transactions related to terrorism financing (Article 16 of Law no. 25/2008).

At the same time Law no. 52/2003 (Anti-terrorism Law) has been amended in 2007 and a new independent and autonomous offence of terrorism financing has been created.

2 – More detailed provisions on CDD and consideration given to risk

CDD requirements are also more detailed in Law no. 25/2008 when compared with the previous law, allowing for a more consistent cross-sector implementation (financial and non financial). Therefore some provisions on CDD previously dealt with in regulations of the BdP and the ISP are now expressly mentioned in the Law. Among others we would underline the concept and procedures on the identification of the beneficial owner and on shell banks (Articles 2, 5, 7 to 9, and 30).

Another aspect which is worth mentioning is the enhance consideration given to the risk assessment of customers and transactions.

Examples of situations where the consideration of the risk of money laundering and terrorism financing involved is expressly required in the Law are namely the following: the verification of the identity of the beneficial owner (Article 7 (4)), situations where the origin and destination of the funds should be obtained from the customer (Article 9 (1) c)), the extension of procedures of verification of the customers' identity and of due diligence measures (Article 10).

Besides that specific situations exists which receive a different legal treatment according to risk considerations, such as those referred in Articles 11 and 25, dealing respectively with simplified due diligence applicable to financial entities set up in the European Union, to the State or public entities subject to transparent accounting practices and monitoring, and on the opposite requirements of enhanced due diligence applicable to clients presenting a higher risk of ML/FT, such as politically exposed persons (PEPs) or non face to face transactions (Articles 12 and 26).

Therefore Law no. 25/2008 reflects an increased consideration of the risk involved in the transactions and business relationships and the customer's risk profile, which affects the measures that subject entities should have in place to deal with this risk.

3 – Collection of statistical data

Taking into consideration the need to clearly improve the collection of statistical data, namely in what regards the Justice and law enforcement sectors of the preventive money laundering and terrorism financing system, Law no. 25/2008 considered this issue in depth.

Therefore in Article 44 of the Law it is expressly prescribed that the FIU is now responsible for collecting and maintaining up-dated the statistical data on the number of suspicious transactions on money laundering and terrorism financing reported, as well as the routing and results of such reports. This data are then published by the FIU in its annual reports.

Furthermore is also legally prescribed in Article 44 of the new Law that the General Directorate for Justice Policy, a department of the Ministry of Justice, shall collect, on an annual basis, all the data referring to the number of cases of money laundering and terrorism financing investigated, the number of persons prosecuted, the number of convictions, and the amount of property frozen, seized and confiscated for the State. This information shall be published regularly, according to the same provision, by the Ministry of Justice in the official "Statistics of Justice".

B - Subsequent legal instruments related with Law no. 25/2008.

1. Executive Order no. 41/2009 of 17th December 2008 - Equivalent third countries.

Law no.25/2008, in accordance with the requirements of 2005/60/EC Directive, adopted the legal concept of "equivalent third country", which encompasses any country mentioned in an executive order of the member of government responsible for finance, having an AML/CFT regime considered as equivalent to the national one in respect to money laundering and terrorism financing prevention and to the supervision of such obligations. The concept also applies in respect to the information requirements applicable to listed companies in a regulated market, whose list is to be set out by the Securities Market Commission (Article 2 (8) of the AML/CFT Law).

In 2008, after a grounded debate made at the European level, all EU member states have reached a common understanding on the countries and jurisdictions to be considered by EU members states as having equivalent regimes to combat ML/TF based on the assessment that they have AML/CFT regimes

consistent with FATF Recommendations and are also supervised by competent authorities on its compliance with those Recommendations.

At national level the list has been defined by Executive Order no. 41/2009 from the Minister of Finance. The current list includes the following countries and jurisdictions: South Africa, Argentina, Australia, Brazil, Canada, United States of America, Hong-Kong, Japan, Mexico, New Zealand, Russian Federation, Singapore, Switzerland, and also Mayotte, New Caledonia, French Polynesia, San Peter and Miquelon, Wallis and Futuna, Netherlands Antilles and Aruba.

This list is in force since 14th of January 2009 and can be updated by a decision of the Ministry of Finance, according to the available information at the international level, taking into consideration the criteria defined by the Committee for the Prevention of Money Laundering and Terrorism Financing, established under Article 41 of the Directive 2005/60/EC, and the Mutual Evaluation Reports from FATF, FATF-style regional bodies and also the reports issued by the International Monetary Fund and the World Bank.

The mentioned list is currently under revision in the European Union within the Committee for the prevention of money laundering and terrorism financing.

The AML/CFT Law states that financial entities established in “an equivalent third country“, are considered in principle, as involving a lower ML/FT risk. Therefore, when the customer is such an entity, a simplified due diligence procedure of customer identification and verification may apply if there are no suspicious over a particular institution of being connected with ML or TF (Article 11 (1) a) of the AML/CFT Law). However even in these situations the subject entities with whom the operation is established must verify whether the financial entity is in the position to benefit from the simplified CDD regime, as well as monitor the relationship to detect whether operations with apparently no economic or legal rationale are being carried on (Article 11 (3)).

2. Decree-Law no. 317/2009, of 30th of October

This legal instrument has transposed to the internal legal order Directive 2007/64/EC of the European Parliament and the Council of 13th of November on payment services in the internal market which, among other provisions, has created a new type of financial institutions - the payment institution- allowed to provide payment services within the European Union. Therefore Decree-Law no. 317/2009 has extended all the preventive legal framework for ML/TF stated in the Law no. 25/2008 to the new payment institutions, having their head office in Portugal or having branches in the national territory.

III - Other relevant legislative instruments issued since the presentation of the first update report important to the AML/CFT regime.

Some other legal instruments having a connection with the AML/CFT regime have been approved after the submission of the first update report, which are the following.

Law no.114/2009 of 22nd September, adapting the criminal identification regime to the criminal liability of the legal persons and creating the criminal record database for legal persons.

According to this new law, judicial decisions related to convictions of legal persons, such as the extinction of the convicted legal person or any organisation with a similar regime is now registered. The record of these facts allows for the successive control of the convicted legal person, since it makes possible its identification in mergers or de-mergers.

The Portuguese authorities would like to stress that the access to the most sensitive economic activities requires the presentation of the legal persons' criminal record. An effective control is carried out whenever it is considered fundamental – at the moment of the access to the economic activity or when the contract is made – and so the activity of a legal person, convicted of a crime is hindered.

In this context, it must be highlighted that it is under preparation, by the Directorate-General of the Justice Administration, a new project on the Criminal Records of Legal Persons, the SIRCRIM, that comprises its merger in the Central Register of Legal Persons (FCPC) and in the Integrated Commercial Register Information System (SIRCOM). Therefore, the Registers and Notaries Institute has already taken steps to develop the computerisation of SIRCOM in order to obtain an automatic validation of the situation of the criminal record of the management or supervisory bodies of the companies, whenever a sanction inhibiting the performance of office, following the commission of a crime, has been applied.

At the same time, the establishment of the criminal record of legal persons represents an important step for a closer control on the legal person's oversight in the framework of crime prevention.

Law no. 93/2009 of 1st September, establishing the legal regime for the emission and execution of decisions on financial penalties, transposing into domestic law the European Union Council Framework Decision 2005/214/JHA of 24th February 2005 on the application of the principle of mutual recognition to financial penalties.

Law no. 88/2009 of 31st August, establishing the legal regime for the emission and execution of confiscation orders of instrumentalities, proceeds or assets of crime, transposing into domestic law the

European Union Council Framework Decision 2006/783/JHA of 6th October on the application of the principle of mutual recognition to confiscation orders.

Law no. 25/2009 of 5th June, establishing the legal regime for the emission and execution of decisions of seizure of assets and pieces of criminal evidence, transposing into domestic law the European Union Council Framework Decision 2003/577/JHA of 22 July on the application of the principle of mutual recognition to seizure orders.

Decree-Law no. 42/2009, of 12th February, establishing the new competences of the Criminal Police Units and enlarging the competences of the Portuguese FIU to financing of terrorism prevention.

Law no. 36/2010, of 2nd of September, which will be in force after the 2nd of March 2011, providing for the creation in the Central Bank of a database including the names of the owners of bank accounts, the identification number of the account and the name of the institution where the account is based, the date of its opening and closure and also the identification of the persons authorised to operate the account. This information can be provided directly by the Central Bank to the judiciary authorities investigating any crime, which will allow for a faster criminal investigation, since the investigative authorities do not need to search for the specific credit institution where the account exists.

Decree-Law no. 52/2010 of 26th May, establishing the procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, transposing into domestic law the Directive 2007/44/EC of the European Parliament and of the Council of 5th September 2007 amending Council Directive 92/49/EC and Directives 2002/83/EC, 2004/39/EC and 2006/48/EC.

Decree-Law no. 225/2008, of 11th November, creating a National Council for Audit Supervision (the Conselho Nacional de Supervisão de Auditoria - CNSA) composed by the three financial supervisory authorities, the Order of Statutory Auditors and the General Inspectorate of Finance, with the aim to improve and complement the statutory auditor's supervision. This Decree-Law transposes into domestic law the EU Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.

Executive Order no. 3/2009, of 2nd of August, creating a database to record irrevocable power of attorney allowing for the acquisition of real estate. An irrevocable power of attorney for this purpose can't produce legal effects if it is not registered in the database. This database has been created with the aim of enhancing the combat on corruption.

IV – Regulations and other instruments issued since the presentation of the first update report

Decision no. 35/2008/CJ of 20th of June of the Service for Gambling Inspectorate of the Tourism of Portugal I.P. on the compliance of Article 32 of Law no. 25/2008 of 5th June and referring also to training of the staff and internal control of casinos in AML/CFT prevention as well.

Regulation no. 79/2010 of the National Institute for Construction and Real Estate (INCI), published in the Official Gazette in 5th February 2010, establishes the obligation to report the outset of the business activity and regulating the conditions to comply with the duty to report to the INCI the transactions concerning the real estate mediation activity, the purchase, sale and resale of real property and the real estate promotion foreseen in Article 34 of Law no. 25/2008, of 5th June.

Decision no. 104/2009 of 1st July 2009, of the Institute for Registrars and Notaries regarding the measures to combat money laundering and terrorism financing and the non compliance of the sanctions on terrorist financing imposed by UNSC Resolutions or EU Regulations, imposed to registers and notaries.

Decision no. 11389/2010 of 6th July of the Minister of Justice, establishing an *ad-hoc* working group to elaborate a draft bill on the creation of the Portuguese Assets Recovery Office (ARO).

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

The Portuguese authorities would like to recall that Law no. 25/2008 is broad and covers activities and professions that go beyond those referred in Recommendation 12, such as operators awarding betting and lotteries prizes and individuals and companies dealing with the construction of buildings for direct sale and also activities of real estate promotion as well as acquisition and sale of rights over professional sportspersons.

In this Section we remind the information provided in the first update report now complemented with updated information.

Compliance with Recommendation 5

In accordance with Law no. 25/2008 the legal duties referred in Article 6 and described in detail in the following Articles 7 to 22 are applicable both to the financial and non financial entities, such as casinos, real estate agents, dealers in high value goods that receive payments in cash of €15 000 or more, lawyers, notaries, registrars and *solicitadores*, chartered accountants, statutory auditors, trust and company service providers, operators awarding betting and lotteries prizes, entities dealing with the purchase, sale and resale of real property and the construction of buildings for direct sale, external auditors and tax advisors.

All these entities are obliged to comply with the customer identification and verification requirements, the other due diligence obligations stated in Article 9 of the AML/CFT Law, the duty to refuse carrying out suspicious transactions in certain legal conditions, to keep documents and records, to scrutiny the operations, to report suspicious operations to the Financial Intelligence Unit and to the Attorney-General, to cooperate with the competent authorities, to maintain secrecy in relation to the customer on the reports they have made, to have internal control mechanisms to comply with the AML/CFT Law and to train their staff to be able to comply with the legal preventive duties to avoid money laundering and terrorist financing.

They are also obliged to ask for the identification of the beneficial owner of the transaction whenever the customer is a legal person or legal arrangement or whenever they know or suspect that the customer is not acting on its own behalf (Article 7 (4) of the AML/CFT Law).

Therefore all legal duties to prevent money laundering and terrorism financing imposed through the AML/CFT Law are applicable to all DNFBPs above mentioned in accordance with the provisions of Chapter II, Section II of the mentioned Law, with the specifications provided for in Section III, which are required by the specific nature of the activity of each DNFBP.

Furthermore Article 15 of Law no. 25/2008 imposes to DNFBPs the duty to scrutinize all the operations they perform which might involve an increased risk of money laundering and terrorism financing. DNFBPs should reduce the results of this scrutiny to a written form and maintain this written information for a period of five years, information that should be available to auditors, when they exist, and also to the oversight authorities.

In conclusion the Portuguese authorities consider that the regime applicable to DNFBPs complies with Recommendation 5 on the adequate duties imposed to DNFBPs.

On the other hand, Law no. 25/2008 is expressly applicable to money laundering and terrorism financing prevention as referred for instance in its Article 1, therefore CDD measures apply to any transaction that might be suspicious of money laundering or of terrorist financing, in despite of occurring within a financial or non-financial institution.

Regarding terrorism financing prevention it should be underlined that the National Institute for Construction and Real Estate (INCI), which supervises the real estate mediation activity, the purchase, sale and resale of real property and the promotion of real estate, has a link in its website to inform directly 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).

The same happens with the Authority for Food and Economic Safety (ASAE), that supervises 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*.

Compliance with Recommendation 6

Article 2 (6) of Law no. 25/2008 provides for the definition of PEPs considering as such natural persons who hold or have held in the previous twelve months preceding the transaction prominent public or political functions, regardless of the place of residence, and their immediate family members or persons known to be closed associates with him through a business or commercial relationship. It should be underlined that the legal notion of PEPs and the regime of enhanced due diligence applicable to non resident PEPs is also applicable to all DNFBPs, without exceptions.

Beyond that the broad definition of PEP's is further developed in Article 2 (6) of the Law and it refers expressly to the high ranking politicians or public officials concerned.

Furthermore Article 12 (4) of Law no. 25/2008, applicable to DNFBPs, requires a continued duty of enhanced due diligence regarding business relationships with PEP's that do not have residence in Portugal. Besides that is also required the following: a) that DNFBPs have systems in place to determine whether the customer is a PEP; b) senior management approval to establish a business relationship with a PEP; c) take measures to establish the source of wealth of funds that are involved in the business relationship with a PEP.

That implies for instance that when a real estate company is arranging a purchase of a property of any kind, urban or rural, to a non resident PEP it should have measures in place to identify the person as a PEP, it

should seek senior management approval to the transaction, and establish the source of the funds used in the transaction and monitor the operation till the very end.

In conclusion, Portuguese authorities consider that the actual legal regime in force applicable to DNFBPs complies with FATF Recommendation 6.

Compliance with Recommendation 8

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. It should be noted that the issue has different implications according to the characteristics of the business of the various DNFBPs.

In the situations where DNFBPs operations are performed at distance and without the physical presence of the customer, Law no. 25/2008 prescribes specific enhanced due diligence measures that should be applied (Article 12 (2) and (3)) requiring supplementary procedures to verify the identity of the customer or his/her representative.

In addition Article 15 of Law no. 25/2008 also imposes a special duty of scrutiny according to the money laundering or terrorism financing risk, taking in consideration the means of payments used and the type of products or transactions that could favour anonymity.

In conclusion, as stated in the 2008 update report, the Portuguese authorities consider that the actual legal regime in force complies entirely with FATF Recommendation 8.

Issuance of general guidance, guidelines and regulations

In addition to the legal preventing duties on money laundering and terrorism financing prescribed in Law no. 25/2008, several DNFBPs oversight authorities have issued guidelines directed to the entities they oversee, explaining them how to comply with the legal regime in force.

That was the case of the ***Service for Gambling Inspectorate of the Tourism Institute IP***, a public authority with the competence to oversee on a daily basis and directly in the casino premises their activities (that replaced the General Inspectorate for Gambling, referred in the MER). This Institute issued two Internal Notes: Decision no. 2/2008, of 5th of June, directed to casino operators clarifying the application to the gambling industry of the legal regime of Law no. 25/2008 and the Decision no. 35/2008, of 20th of June prescribing the procedures to be adopted by the gambling operators and inspection teams referring to the application of the AML/CFT Law, namely Article 32.

The Decision no. 35/2008 makes clear that the casinos must identify and verify the identity of every customer when purchasing tickets or *tokens* of € 2 000 or more in its premises and regardless of the kind of game, clarifying the application of the provision of Article 32 (1) of the AML/CFT Law. The Decision no. 35/2008 also recalls that the board of the casino operator is responsible for reporting to the FIU and to the Attorney General the suspicious operations and to inform the Service for Gambling Inspectorate on the identification of the persons responsible for the reporting duty.

It also refers expressly to the training duties that should be provided to the employees and management of the casino operators.

The Authority for Food and Economic Safety (ASAE), that maintains competence to oversee dealers in 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 another competent authority in accordance with the Article 38 b) of Law no. 25/2008, published in its website, in 2008, guidance elaborating on the legal duties of the entities subject related to the prevention of money laundering and terrorism financing.

The National Institute for Construction and Real Estate (INCI), which received through Article 4 c) of Law no. 25/2008 the competence to oversee and regulate real estate agents and construction entities selling property directly into the market, has published in its website information referring to the subject entities and to their legal duties, to raise awareness on the compliance with the AML/CFT Law.

The **INCI** has also issued Regulation no. 79/2010, of 13th of January 2010, published in the Official Gazette of 5th of February 2010, to instruct in detail subject entities acting in the real estate mediation sector, the purchase, sale and resale of real property on how to comply with the legal duties prescribed in Article 34 of the AML/CFT Law, namely how to forward the declaration of the outset of its activity and the main elements of each transaction they carry on that should be reported to the INCI.

The Regulation no. 79/2010 refers in detail how the subject entities, must in electronic form, provide the Institute, every six months, with the main elements of all the transactions carried on its business activity, such as the identification of the parties on the transaction, the legal nature of the transaction, the price, the means of payment used, the identification of the real estate, and the date of the transaction.

The Institute is building a database and adequate programmes to analyse all the information received from the subject entities also for AML/CFT purposes, namely to transmit relevant data to the FIU and the Attorney-General.

The Institute for Registrars and Notaries issued Decision no. 104/2009 related to raise awareness to the Law no. 25/2008 to be applicable respectively to notaries and registrars (Article 4 f)).

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

The Order of Chartered Accountants published also Law no. 25/2008 in its website, as well as in SITOC, a CD-ROM distributed every month to these professionals with the aim of clarifying and promoting awareness of these professionals to the preventive AML/CFT legal regime.

The Order of Statutory Auditors has published in its website information on the legal AML/CFT regime disseminating information on Law no.25/2008 on money laundering and terrorism financing.

Duty to Report STRs

All DNFBPs are obliged to report ML or TF suspicious transactions to the FIU and the Attorney General, as provided in Article 16 of the AML/CTF Law.

DNFBPs are effectively applying their AML/CFT preventing duties and reporting suspicious transactions (STR) and making currency transaction reports (CTR). Indeed there were reports received in the FIU from casinos, betting and lotteries, traders in high value goods, notaries, real estate activity, as we can see in the tables referred on Recommendation 32.

In conclusion DNFBPs are 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.

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 DCIAP or FIU/PJ, 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 ASAE (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 we remind the information provided in the first update report now complemented with updated information.

Concerning the remark made in the second bullet of the factors underlying the rating the Portuguese Authorities consider that lawyers and *solicitadores*, taking into consideration their legal professional functions and duties, do not need protocols or other kind of cooperation procedures to reach effective compliance with the AML/CFT Law. In other words these entities are bound by the provisions of the Law, which they know better than any other DNFBP and do not require any additional guidelines on how to comply with the legal regime beyond what is done by the Bar Association and the Chamber of *Solicitadores*.

Therefore it was considered that a legal clarification of the duties of lawyers and *solicitadores* through Law no. 25/2008 was the most appropriate way to be chosen to ensure compliance with its provisions.

Article 35 of the AML Law was revised with the aim of clarifying that the Bar Association and the Chamber of *Solicitadores* can't act as a filter on the reporting of suspicious transactions to the FIU and the Attorney General of the Republic. It has been clarified that the Order and the Chamber can't retain the suspicious operations communicated to them respectively by lawyers and *solicitadores* and should send them promptly and without filtering to the authorities above mentioned.

Training and awareness provided to DNFBPs

With regard to training, in 2007 a seminar has been organized by the **Chamber of *Solicitadores*** where it was explained in full detail the duties of the *Solicitadores* relating to the prevention of the AML/CFT, which included presentations provided by the FIU. In this seminar it was also presented and discussed the draft of the new law that was published in 5th June 2008 (Law no. 25/2008).

The ***Service for Gambling Inspectorate of the Tourism Institute IP***, which oversees the activity on casinos, has established in its Decision 35/2008/CJ, of 20 of June 2008, the obligation to provide specific training to prevent ML to the casino board, directors and also staff relevant to prevent this illegal activity and oversees the compliance with their legal duties

The Authority for Food and Economic Safety (ASAE) has established in 2008 and maintains a specific service accessible via e-mail or telephone by the subject entities to provide immediate answer to any doubts arising from the application of the AML Law and regulations.

The ASAE is preparing for 2011 a training action on ML/FT prevention directed to their subject entities.

The Institute for Registrars and Notaries organized with the participation of the FIU an international seminar on Money Laundering, in 2010.

It is scheduled for the month of September 2010 a training session of the FIU to 32 staff of the Portuguese Institute for Registrars and Notaries.

In April 2010 the FIU participated with the **Bar Association** in a training session on the AML/CFT regime and the reporting duties of lawyers.

The **Order of Chartered Accountants** offers regular counselling to its associates relating to the compliance with the AML/CFT prevention regime, clarifying how they should act when facing suspicious situations to be reported. It also promoted several training sessions for its associates under the theme "Statutory Accounts Responsibility in the Internal Legal Order", to raise awareness on the legal regime to combat money laundering and also terrorism financing amongst these professionals.

In 2008 the **Order of Statutory Auditors** promoted as well several training sessions directed to its associates.

Warnings related to non cooperative countries or jurisdictions.

In accordance with Article 42 of Law no. 25/2008 supervisory and oversight authorities should issue warnings with the purpose of preventing money laundering and terrorism financing threats, including the identification of countries and jurisdictions that do not apply or insufficiently apply FATF Recommendations.

DNFBPs, as the financial entities, must comply with those warnings and scrutiny with enhanced due diligence operations with countries and jurisdictions that are recognized as non cooperative countries regarding money laundering and terrorism financing.

Beyond that the source and destination of funds, including geographical, are elements that should be considered by DNFBPs under the duty to scrutiny transactions from or directed to non cooperative countries according to Articles 15 (2) c) and 31 of Law no 25/2008.

It should also be considered that in accordance with Article 31 of Law no. 25/2008, DNFBPs monitoring authorities may impose through regulation, where necessary, enhanced due diligence obligations in operations performed with countries and jurisdictions that do not apply or apply insufficiently FATF Recommendations.

Sanctions imposed to DNFBPs

The Service for Gambling Inspection, of the Tourism Institute imposed in 2007 an administrative sanction (*coima*) in the amount of € 63 547,50, for breach of Article 45 a) of former Law no. 11/2004, through its Deliberation 5/2007/CJ, to a gambling entity, for failing to identify and verify the identity of a customer..

In February 2010 it imposed also an administrative penalty of € 2 500 to a casino operator for failing to comply with the identification duty of a customer (Decision no. 36/2010, of 26 of February).

The **Authority for Food and Economic Safety (ASAE)** initiated in 2010 an administrative procedure against a company selling automobiles for failing to identify a client and the procedure is under instruction.

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 the **Service for Gambling Inspectorate of the Tourism Institute IP** issued two Internal Notes no. 2/2008, of 5th of June and Decision no. 35/2008, of 20th of June.

As referred previously the **Authority for Food and Economic Safety (ASAE)** until the entry into force of Law no. 25/2008, was the competent authority for overseeing compliance with the AML regime stated in the previous Law no.11/2004 with regard to the most important number of DNFBPs, such as those integrating the real estate sector and the buying and selling of high value goods.

In performing their monitoring duties the ASAE established in 2006 a working group for the analysis of the priority areas in the field of money laundering prevention, with the purpose of increasing the effectiveness of inspections and its results and issued an informative Circular to assist in the compliance with the anti-money laundering regime in force to be disseminated to the entities subject to the ASAE monitoring activities.

In 2009 and the first semester of 2010 the ASAE carried on 119 inspections to ensure the compliance with the AML/CFT Law including 39 specific inspections *to pawn shops*.

The **Institute for Construction and Real Estate (INCI. IP)**, received in 2008 the powers to oversee the real state sector from ASAE and both authorities have dealt with the transfer of data and procedures in 2008 and part of 2009.

The INCI issued Regulation no. 79/2010, of 13th of January 2010, to instruct in detail the subject entities in the real estate sector, to comply with the legal duties prescribed in Article 34 of the AML/CFT Law, namely the declaration of the outset of its activity and the main elements of each transaction they carry on that must be transmitted to the Institute, as explained before.

The real estate intermediaries report to the INCI the starting date of its activities and every six months important data referring to its detailed transactions such as the identification of customers, the value of the property negotiated, the amount of the transactions performed, the respective deeds and means of payment used by the parties in the agreement.

In 2010 the INCI has already put in place its data base to collect and analyze the obligatory legal data on the real estate sector reported by the subject entities to the Institute and has programmed inspection visits to the real estate intermediation sector to be initiated in the second semester of 2010..

As already stated *the Institute for Registrars and Notaries* issued Decision no. 104/2009 to raise awareness to the Law no. 25/2008 to notaries and registrars (Article 4 f)).

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

The Order of Chartered Accountants published also Law no. 25/2008 in its website, as well as in SITOC, a CD-ROM distributed every month to these professionals with the aim of clarifying and promoting awareness of these professionals to the preventive AML/CFT legal regime.

The Order of Statutory Auditors has published in its website information on the legal AML/CFT regime disseminating information on Law no.25/2008 on money laundering and terrorism financing.

Recommendation 25: PC

Guidelines & feed-back

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

Issuance of guidance and guidelines

In addition to the legal preventive duties on money laundering and terrorism financing prescribed in Law no. 25/2008, several DNFBPs oversight authorities have issued guidelines directed to the subject entities explaining them how to comply with the legal regime in force.

That was the case of the ***Service for Gambling Inspectorate of the Tourism Institute***, a public authority with the competence to oversee on a daily basis the casino industry (replacing the General Inspectorate for Gambling), that issued Internal Note no. 2/2008, of 5th of June and Decision no. 35/2008, of 20th of June, as mentioned in relation to Recommendation 24.

The ***Authority for Food and Economic Safety (ASAE)*** has available in its website an informative paper elaborating on the legal system in place to prevent money laundering and terrorism financing as well as the links to the updated lists of terrorist suspects issued by the United Nations Security Council and the European Union.

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

The **Order of Chartered Accountants** published also Law no. 25/2008 in its website, as well as in SITOC, a CD-ROM distributed every month to these professionals.

With the aim of clarifying and promoting awareness of these professionals to the preventive AML legal regime several opinion Articles were published in TOC Magazine and also in national newspapers.

The **Order of Statutory Auditors** has also published in its website information on the legal AML regime related to Law no. 11/2004 and is preparing new information disseminating Law no. 25/2008.

Feedback

In accordance with Article 43 of the 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.

It should be clarified that in practice the FIU was already providing feed-back to reporting entities but under the new AML/CFT Law this corresponds to a legal prescription.

Besides that Article 42 of Law no. 25/2008 requires the authorities responsible for the supervision of the financial sector and for the oversight of DNFBPs, including the self-regulatory organizations, as well as the FIU, within the scope of their respective competences, to issue warnings and to disseminate updated information on trends and known practices with the aim to address 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

As stated in the previous report, the General Directorate for Justice Policy (DGPJ) is the body, within the Ministry of Justice, responsible for the collection of the justice and law enforcement statistical data. Empowered by the National Statistics Institute, it is entrusted with the collecting, use, treatment, analysis and public diffusion of the justice statistical data as well as their dissemination within the national statistical framework.

The collection, treatment and dissemination of statistic data in the field of Justice is a fundamental activity for the acknowledgement of criminal phenomena and for the definition of the criminal justice policy.

Taking into account the specific needs reported to the Department of Statistics within DGPJ, in special in the field of international relations and related to the statistics on the money laundering offence, the mentioned Department is engaged in the improvement of the collection and treatment of such data.

Since 2007 the collection of data near the courts of 1st instance is possible through a new system of automatic transfer of data from the courts to the SIEJ (Integrated System of Justice Statistics) data base, allowing for the collection of detailed and updated statistical information.

As an example, before 2007 it was only possible to know the figures on convicted individuals and accused persons for money laundering in criminal procedures in which this type of crime was the most serious crime in the criminal file. After 2007, all accusations and convictions have been included in the statistical data regardless of the fact that money laundering was the most serious crime in the criminal file. At the same time statistical information on money laundering crime is getting more accurate referring for instance information on the attempt for the commission of ML.

Additionally, it is possible nowadays to identify all the crimes judged in criminal files in the courts where money laundering is included taking into account that the information of all different crimes is collected in one single criminal file. That's to say in other words, that it is possible now to take into consideration the predicate offence together with the money laundering offence. However some refinements should yet be considered to ensure the completeness of this information.

The table below shows the number of criminal enquiries that include the investigation of a money laundering offence, even when this offence was not the main one recorded in the criminal file or when the money laundering offence was not identified at the beginning of the investigation and appeared in a subsequent phase of the procedure.

In concrete terms the figures of money laundering investigations, enquiries and convictions illustrate an increase when compared with 2007. For instance the Public Prosecution initiated 200 enquiries for money laundering in 2008, 154 in 2009 and 64 in the first semester of 2010. These figures compare with 95 enquiries initiated in 2007 and 84 in 2006.

The number of convictions for money laundering increased as well. The table below illustrates that there were 16 convictions in Court (First Instance) in 2008, compared with 4 in 2007.

Money Laundering Enquiries, Accusations and Convictions in the period of 2008 to 2010 (1st Semester)

	2008	2009	2010 (1st half)
Enquiries	200	154	64
Enquiries above referred with accusations	30	17	N A
Convictions	16	14	N A

In what regards the number and amount of funds and assets frozen the table below shows also an increasing trend when compared with 2007. For instance in 2007 the value of assets frozen was €310.313 and an automobile and in 2008 the value was € 1 429 000,00 and \$12 000 000,00.

Amounts frozen in the period of 2008 to 2010 (1st Semester)

	2008	2009	2010 (1st half)
Number of cases	18	15	14 (*)
Amounts frozen	€ 1.429.000,00 \$ 12.000.000,00	€ 14.700.000,00	€ 5.750.000,00 \$ 3.550.000,00

(*) It should be added three more cases, till August 2010 with the frozen amounts of € 9.002. 021, 85 and \$ 1.380.102, 63.

Regarding the suspension of execution of transactions and the freezing of funds the table above illustrates that the preventive system is maintaining its effectiveness.

The Portuguese Authorities would like to add as well that within the context of the specific program "Prevention of and fight against crime" (EU Council Decision 2007/125/JAI of 12/02/2007), the Portuguese Attorney General Office and the Judiciary Police, in cooperation with the Public Prosecution Service of Spain and with the Netherlands ARO, have been working on a broad project of cross border law enforcement cooperation (Fénix Project), namely with the aim of improving the procedures on assets recovery, seizure and confiscation.

Predicate offences related to ML enquiries from 2008 to 2010 (1st Semester)

	2008	2009	2010(1st half)	Total
Drugs Trafficking	64	39	5	108
Cyber Fraud	22	21	10	53
Tax Fraud	15	14	16	45
Corruption	21	10	2	33
Fraud	2	7	6	15
Robbery	7	5		12
Arms Trafficking	2	6		8
Kidnapping	2	3	1	6
Extortion	2	1	1	4
Counterfeiting of currency	1	3		4
Child Abuse		2	1	3
Document forgery		3		3
Organized crime	2	1		3
Money Laundering (Non identified predicate offence)	60	39	22	121
Total	200	154	64	418

The table above illustrates that in the period of 2008 to the first semester of 2010 the most common predicate offences for money laundering were drugs trafficking (26%), cyber fraud (13%), tax fraud (11%) and corruption (8%).

According to Article 44 of the AML/CFT Law the FIU is the body incumbent with the collection of statistical data relating to all the suspicious transaction reports and the respective routing and results.

The Table below illustrates the reports received by the FIU between 2008 and the 1st quarter of 2010 and shows also an increase in the figures related to reports received from credit institutions, bureaux the change, customs, and DNFBPs such as, entities awarding betting and lotteries prizes and casinos. We should highlight as well that the Portuguese Postal Services have initiated to report suspicious transactions.

Reports received by the FIU

Reporting Entities	2008			2009			2010 (1 st quarter)		
	STR	CTR	TOTAL	STR	CTR	TOTAL	STR	CTR	TOTAL
Credit institutions	508	163	671	546	207	753	163	60	223
Central Bank	28	118	146	27	69	96	8	16	24
Insurance	3	25	28	2		2			
Securities Market Commission	1		1	3		3			
Bureaux de change	17	7	24	18	18	36	8	13	21
Notaries		4	4						
Traders in high value goods	1	7	8	3		3			
General Inspectorate for Gambling		21.142	21.142		12.852	12.852		1760	1760
General Directorate for Customs and Special Taxes on Consumption (DGAIEC)		698	698		1.390	1.390			
Betting & Lotteries	2		2	3	7	10			
Real Estate	1		1						
Postal Services				21	17	38	8	9	17
Others	7	1	8	11	5	16			
TOTAL	568	22.165	22.733	634	14.565	15.199	187	1858	2045

The table below illustrates the formal co-operation procedures between the Portuguese FIU and its counterparts.

Exchange of information – FIU's (Number of requests)

2008		2009		2010 (1 st quarter)	
Received	Sent	Received	Sent	Received	Sent
94	183	104	91	29	18

As referred in the previous reports the General Directorate for Customs and Special Taxes on Consumption (DGAIEC), under the Ministry of Finance and Public Administration, is responsible for monitoring for economic and excise purposes the national territory and the EC borders of Portugal.

The results of this oversight action in the Portuguese borders during the period of 2008 to the 1st quarter of 2010 illustrate a significant increase in the declarations of currency above the threshold of € 10 000 made by travelers arriving or leaving the national territory as well as in the amounts of currency seized. For instance in 2008 the number of declarations was 1331 compared with 820 in 2007.

Declarations of cash at the borders from 2008 to 2010 (1st quarter)

2008	2009	2010 (1st quarter)	Total
1331	1878	733	3942

Seizure of currency by Portuguese Customs from 2008 to 2010 (1st quarter)

2008	2009	2010(1st quarter)
14	76	13
€ 487.433 \$ 60.000	€ 3.838.523 \$ 524.782 £ 4.175 ZAR 2.370	€ 259.750 \$ 323.365

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

As mentioned in the previous update report, 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 is obligatory recorded and where can be found for instance the details of the set-up, the name and purpose of its activity, the amount of capital, the address, the mergers, winding-up and liquidation.

The National Registry of Legal Persons provides the number of identification of the legal person - the Legal Person Identification Number (NIPC) - which follows 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 Register.

In the Commercial Register it can be found for instance 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.

The information recorded in the Commercial Register is available to all public authorities or any interested person and contains sufficient elements on the identification of the stock-holders which allow for the knowledge of the person who have the control of the company.

Even when the company has issued bearer paper shares (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 descendants, and by someone else on their behalf.

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.

For some publicly traded companies further thresholds apply, i.e., besides the mentioned ones, and new duties arise from crossing 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.

Therefore information on the shareholders that control a company, meaning holding 10% or more of the company shares, is available either from the Commercial Register 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.

In what regards to the transparency of the information, competent authorities have access to the National Registry 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 personalised collective bodies are subject (Article 4 (1) a) of the National Registry of Legal Persons Regime, approved by Decree-Law no. 129/98, of 13th of May and last changed by Decree-Law no. 29/2009, of 26th of June).

Furthermore, Article 86 of the Securities Code expressly lays down that, in pursuance of their duties, the CMVM and the BdP 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.

The CMVM may request any information from issuers, financial intermediaries and the managing bodies of centralised systems of securities (Articles 359 (1) a) to c) and 361 (2) a) of the Securities Code), who cannot claim professional secrecy (to which financial intermediaries – Article 304 (4) of the Securities

Code - and the managing bodies of centralised 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 31st October) and have the duty to collaborate (Article 361 (2) a) *in fine* and Article 359 (3) of the Securities Code).

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 CMVM ; cf. also Articles 16 (a) and 17 (1) b) of Regulation no. 14/2000 of CMVM); custodians and issuing bodies are further responsible for opening and movements in individual accounts (Articles 6, 7, and 8 of Regulation no. 14/2000).

All the information contained in the accounts and related documents is kept for a 5 year period, counting from the date of their definitive cancellation (Regulation no. 14/2000 of CMVM) – this duty applies to the managing bodies of centralised 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 CMVM).

Therefore, the only difference between the regimes applicable to nominative and bearer paper shares (certificated shares) is that, in the latter case, there is no access to the continued ownership of certificated shares that are not integrated in a centralised 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, *i.e.* the ownership of which 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 CMVM).

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 next ten years, safeguarding those cases in which the law requires that a presence list be organised 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.

In addition Law no.25/2008 in its Article 2 (5) 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.

Similar provisions, although not so detailed were already provided for in the Instruction no. 26/2005 of the BdP and in the Regulatory Standard no. 10/2005-R of the ISP in point 2.2, as well as in the Regulation no. 2/2007 of the CMVM.

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 are expected to be made easier by the enactment in the near future of a bill, that will abolish bearer shares and promote the conversion to nominal shares in a timeframe of 5 years from its enactment

III. 9 SPECIAL RECOMMENDATIONS

Special Recommendation I: PC

Ratification, implementation UN instruments

1. Summary of factors underlying rating

- S/RES/1267 (1999) has been implemented but S/RES/1373 (2001) has not yet been comprehensively implemented.
- There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to some DNFBPs.
- DNFBPs are not adequately monitored for compliance with measures taken under the Resolutions.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Ensure that DNFBP's are advised of their obligations under S/RES/1267 (1999) and S/RES/1373 (2001).

3. Description of laws, regulations and other measures adopted or ongoing

As referred in the 1st Update Report, regarding the comment in the first bullet of the factors underlying the rating, the Portuguese authorities are not convinced that UN Resolution S/RES/1373 (2001) has not been comprehensively implemented, taking into account that Common Position 2001/931/CFSP and (EC) Regulation no. 2580/2001, both from the European Union that implemented the aforementioned UN Resolution.

According to Article 288 of the Lisbon Treaty, European Regulations are binding and directly and immediately applicable in domestic law (as stated also in Article 8 of the Constitution of the Portuguese Republic).

Since the mutual evaluation of Portugal, more exactly during the first half of 2007, measures were adopted at the European Union level in order to improve the effectiveness of implementation of UN Resolution S/RES/1373 (2001) and to establish clear and more transparent procedures for the freezing actions.

Besides other innovations, one of the most important improvements is the de-listing procedure where a request for de-listing can be presented by a Member State or the third State which had originally proposed the listing in question in addition to requests made by listed persons, groups or entities.

One of the tasks of the new "Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism" (CP931 Working Party) is the discussion of all requests for listing and de-listing of persons, groups and entities, preparing the regular review of the list by the Council as foreseen in Article 1(6) of Common Position 2001/931/CFSP.

Other improvements are the obligation of notification and the review procedure. In the first situation, after a listing decision taken by the EU Council, the persons, groups or entities subject to restrictive measures under (EC) Regulation no. 2580/2001 should be informed by a letter where the reference to the possibility for the persons, groups or entities to send a file to the Council with supporting documents, asking for their listing to be reconsidered and reference to the possibility of an appeal to the Court of First Instance in accordance with the EC Treaty is set forth.

Listed persons, groups and entities included in the list have now different possibilities to react to the listing procedure, have the possibility to submit a request to the Council to reconsider their case, on the basis of supporting documentation, to challenge the listing decision of the national competent authority according to national procedures, to challenge the Council's decision before the Court of First Instance of the European Communities, if subject to restrictive measures under Regulation no. 2580/2001 and also to request humanitarian exemptions to cover basic needs, as allowed by the mentioned European legal instruments.

The Council should make the regular review of the list of assets that have been frozen at regular intervals, at least in a six months period and, in addition can, regardless of any period of time, adopt decisions for new listing or delisting of persons, groups and entities. Member States should also inform each other about any new facts and developments relating to listed persons, groups or entities.

These developments have contributed to enhance the credibility and legal certainty of the EU regime on financial sanctions.

Taking into account that Special Recommendation I states that «*Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373*» ,and after the cross-checking of all its provisions, we can conclude that the mentioned Resolution has been comprehensively implemented in the Portuguese legal order.

After the third mutual evaluation and due to the fact that the prevention and fight against terrorism and terrorism financing is a matter of particular concern at international level and also due to the

recommendations made by the evaluation team, the Portuguese authorities have taken some measures to improve the ways of communication of actions taken under the freezing mechanisms to DNFBPs.

In that regard, with the purpose to communicate to DNFBPs subject to its oversight the list of entities subject to financial sanctions, **the Authority for Food and Economic Safety (ASAE)** published in its official website, in 2008, the links to European Union and United Nations websites related to the lists of persons and entities suspected of terrorism in order to allow designated non-financial businesses and activities subject to its oversight to comply with the obligations that are mandatory.

The mentioned disclosure in the ASAE website was accompanied of previous information sent to the referred entities of the non-financial sector, warning them of the obligations that they should comply with.

The **Institute for Registries and Notaries** receives through the Ministry of Justice the mentioned list of persons and entities suspected to be terrorists or to support terrorism, promoting the dissemination of the lists to all notaries and different registries services (for instance Commercial Registry or Real Estate Registry) in order to verify if those persons are involved in acts performed by notaries and registers or if such persons or entities are the owners of any type of property in Portugal.

With the purpose of a better clarification of the obligations set forth in the new AML/CFT Law the Institute for Registers and Notaries provide in the website the links to the European Union and United Nations, sending through informative letter (Circular) – as already made in the past – information about the obligations for notaries and registers in the field of prevention and repression of money laundering and terrorism financing, including the freezing measures.

The **General Directorate for the Justice Policy of the Ministry of Justice** also publishes updated information on consolidated lists facilitating the access in particular to the Bar Association and Chamber of *Solicitadores* and their associates and regularly sends the information to the Criminal Police and the Institute for Registries and Notaries.

According to the provisions of Law no. 25/2008 of 5th June, the **INCI - National Institute for Construction and Real Estate**, provides information about the lists of persons and entities subject to UN and European Union restrictive measures, warning subject entities of the real estate sector of the obligations that they need to comply with, which means, the prohibition to deal with persons suspected of being involved or supporting terrorism financing and the freezing obligations set forth in UNSC Resolutions and EC Regulations.

Furthermore, **GPEARI, the Office of Planning, Strategy, Assessment and International Relations** of the Ministry of Finance and Public Administration, provides all relevant information in the website related to financial sanctions and restrictive measures, in order to facilitate its public acknowledgement, both for financial and non-financial entities, especially the chartered accountants (TOC) and statutory auditors (ROC).

Regarding the oversight of the compliance with the measures resulting from UNSC Resolutions and EC Regulations we can state that, with new Law no. 25/2008 of 5th June, the powers of oversight of competent authorities have been enlarged to include terrorism financing, creating the legal basis to allow them to include the matter in its monitoring and oversight activities.

In conclusion the Portuguese Authorities are convinced that the system in place complies with the requirements of Special Recommendation I, being S/RES/1373(2001) disseminated to the entities subject to the oversight of the competent authorities.

Special Recommendation III: PC

Freezing and confiscation of terrorism assets

1. Summary of factors underlying rating

- Portugal has a limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system.
- Communication mechanisms to all DNFBPs are limited.
- Portugal does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds.

2. FATF Recommendations in the Mutual Evaluation Report related to this Recommendation.

- Portugal should extend its current limited ability to freeze funds in accordance with S/RES/1373 and ensure that all freezing actions are communicated to relevant DNFBPs. There should be adequate monitoring of DNFBPs to ensure they comply with required freezing actions.

3. Description of laws, regulations and other measures adopted or ongoing

As stated in the 1st Update Report, the legal system allows the Portuguese competent authorities to freeze assets in accordance with UNSC Resolution 1373 (2001) of terrorists that fall outside the European system of lists (the so-called “terrorists outside EU”) through the application of internal legislation in force, namely Law no. 5/2002 of 10th January and Law no. 11/2002 of 16th February as well as through existing mechanisms for mutual legal assistance in criminal matters, regulated by Law no. 144/99, of 31st August.

In this particular issue, we should bear in mind the wording of Interpretative Note of Special Recommendation III that consists of two obligations. The first requires jurisdictions to implement measures that will freeze or, if appropriate, seize terrorist-related funds or other assets without delay in accordance with relevant United Nations resolutions. The second obligation of Special Recommendation III is to have measures in place that allow a jurisdiction to seize or confiscate terrorist funds or other assets on the basis of an order or mechanism issued by a competent authority or a court. This means that, it is up to the States, according to their constitutional principles, the use of freezing mechanisms, regardless of their nature – administrative or judicial – in a timely basis.

Therefore, according to the mentioned internal legislation, any Public Prosecutor has the power to initiate an inquiry and freeze, without delay, any funds or other assets or economic resources belonging (i) to persons that commit or attempt to commit terrorist acts, participate or facilitate in the commission of the acts, (ii) that are owned or controlled, directly or indirectly, by such persons or entities or (iii) to persons or

entities acting in its behalf or under its supervision, including the freezing of funds that are derived from or representing the result of funds that are owned or controlled, directly or indirectly, by such persons or persons and entities linked to them, regardless the fact that the person are classified as « EU internal terrorist » or not.

In addition, the freezing could also take place under the mutual legal assistance request submitted by another State – that may send the request directly to the Attorney-General Office or to any Public Prosecutor. Therefore the Portuguese Authorities are empowered with the mechanisms to give execution to actions initiated under freezing mechanisms of other jurisdictions. In this framework, when a request is received and there are suspicions or reasonable grounds to suspect that a designated person is a terrorist, a terrorism financier or that we are dealing with a terrorist organization, there are mechanisms in place for the freezing of funds or other assets or economic resources placed in Portugal.

The issue of the limited mechanisms of communication for DNFBPs as well as the oversight of compliance with the relevant laws for freezing of terrorist funds have been addressed in the answer provided for in relation to Special Recommendation I.

A new draft law (Decree-Law) is under discussion in the Ministries of Justice and Foreign Affairs, that albeit respecting the Constitutional rules and principles defining a Democratic State of Law, aims to clarifying the power to implement the United Nations Security Council Resolutions that apply financial sanctions to individuals and legal persons, describing the internal procedure to publish those Resolutions in the internal legal order and regulating the process of implementing them in more detail.

The draft law also deals in depth with the power and process to manage the funds and assets frozen and the rights of terrorism suspects to utilize some of those funds for humanitarian reasons, and deals also with the relationship between Law no. 11/2002, of 16th of February that prohibits the establishment or performance of financial and commercial transactions with individuals and organisations suspicious of terrorism activities according to the UN Security Council Resolutions, and punishes those breaches with severe criminal penalties (three to five years in prison).

Portuguese authorities believe that the existing system in Portugal to freeze assets in accordance with UNSC Resolution 1373 (2001) is broad and in accordance with the provisions set forth in Special Recommendation III and its Interpretative Note, allowing competent authorities to freeze funds of any type regardless the person or entity involved is considered a EU terrorist or not.

In addition, Portuguese authorities also believe that the communication of freezing and other actions to all DNFBPs is well regulated under AML/CFT Law.

However with the aim of still clarifying the legal regime, Portuguese authorities decided to prepare the mentioned draft legislation to enhance the implementation of UNSC Resolutions by individuals and entities.

Annex 1
Relevant Legislation

**Law No. 25/2008
of 5 June**

Establishing the preventive and repressive measures for the combat against the laundering of benefits of illicit origin and terrorism financing, transposing into the domestic legal system Directive 2005/60/EC of the European Parliament and Council, of 26 October 2005, and Directive 2006/70/EC, of the Commission, of 01 August 2006, relating to the prevention of the use of the financial system and of the specially designated activities and professions for purposes of money laundering and terrorism financing, first amendment to Law No. 52/2003 of 22 August, and revoking Law No. 11/2004, of 27 March

The Assembly of the Republic decrees, pursuant to Article 161 c) of the Constitution, the following:

CHAPTER I

General provisions

SECTION I

Subject matter and definitions

Article 1

Subject matter

- 1- This Law establishes preventive and repressive measures to combat the laundering of unlawful proceeds and terrorism financing and transposes into Portuguese law Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005 and Commission Directive 2006/70/EC of 1st August 2006 on the prevention of the use of the financial system and designated non-financial businesses and professions for the purpose of money laundering and terrorism financing.
- 2- Money laundering and terrorism financing are prohibited and punishable in accordance with the procedures established by the applicable criminal law.

Article 2

Definitions

For the purposes of this Law the following shall mean:

- 1) «Entities subject to this Law», the entities referred to in Articles 3 and 4 of this Law;
- 2) «Business relationship», professional or commercial relationship between institutions and entities subject to this Law and their customers which, at the time when the relationship is established, is expected to last;
- 3) «Occasional transaction», any transaction carried out by entities subject to this Law outside the scope of an already established business relationship;
- 4) «Legal arrangements», autonomous property, such as condominium based building, claimed but undistributed inheritances, and trusts governed by foreign law, where and under the terms recognised by Portuguese law;
- 5) «Beneficial owner», the natural person on whose behalf a transaction or activity is carried out, or who ultimately owns or controls the customer. The beneficial owner shall at least include:

a) where the customer is a corporate entity:

- i) the natural person who ultimately owns or controls a legal entity, directly or indirectly, or control over at least a percentage equivalent to 25 % of the shares or voting rights in that legal entity, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards;
- ii) the natural person who otherwise exercises control over the management of a legal entity;

b) where the customer is a non-corporate entity, such as foundations and legal arrangements which administer and distribute funds:

- i) where the future beneficiaries have already been determined, the natural

- person(who is the beneficiary of 25 % or more of the property;
 - ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
 - iii) the natural person who exercises control over 25 % or more of the property of a legal arrangement or legal person;
- 6) "Politically exposed persons", natural persons who hold or who have held up to the previous twelve months prominent public or political functions and immediate family members, or persons known to be close associates of such persons through a business or commercial relationship. For the purposes of this paragraph:
- a) "Prominent public or political functions" is understood as:
 - i) Heads of State, heads of government, ministers and deputy or assistant ministers;
 - ii) Members of parliaments, or members of parliamentary chambers;
 - iii) Members of supreme courts, constitutional courts or other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
 - iv) Members of management or auditing boards of central banks;
 - v) Ambassadors and heads of diplomatic missions and consulates;
 - vi) High-ranking officers in the armed forces;
 - vii) Members of the management and auditing boards of State-owned enterprises and corporations in which the State holds exclusively or the majority of the capital, public institutes, public foundations, public establishments, irrespective of their specific name, including the management boards of companies belonging to the regional and local corporate sectors;
 - viii) Members of the executive bodies of the European Communities and the European Central Bank;
 - ix) Members of executive bodies of international law organisations;
 - b) "Immediate family members" shall include:
 - i) The spouse or partner;
 - ii) The parents, the children and their spouses or partners;

- c) "Persons known to have a close company or business relationship":
 - i) Any natural person who is known to have joint beneficial ownership of legal persons or legal arrangements, or any other close business relations, with a person entrusted with prominent public or political functions;
 - ii) Any natural person who has ownership of the capital stock or voting rights of a legal person or legal arrangement which is known to have as sole beneficial owner a person entrusted with prominent public or political functions;

- 7) "Shell bank" a credit institution, incorporated in a State or jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group;
- 8) «Equivalent third country» any country mentioned in an executive order of the member of government responsible for finance, having a regime equivalent to the national one in respect of money laundering and terrorism financing prevention and the supervision of such obligations; and in respect of the information requirements applicable to listed companies in a regulated market, the regime set out in a list approved by the Securities Market Commission;
- 9) «Service providers to companies and other legal persons and legal arrangements», any person who by way of business provide any of the following services to third parties:
 - a) Incorporation of companies, other legal entities or legal arrangements as well as providing related services of representation, management and administration to such legal entities or legal arrangements;
 - b) Fulfilment of the functions of director, secretary or shareholder for a company, or other legal person, or acting in a similar position in relation to legal arrangements;
- 10) «Financial Intelligence Unit (FIU)», the national central unit for receiving, analysing and disseminating suspected money laundering or terrorism financing information, set up by Decree-Law No 304/2002 of 13 December.

SECTION II

Scope of application

Article 3

Financial entities

- 1- The following entities, having their head office in the national territory, shall be subject to the provisions of this Law:
- a) Credit institutions;
 - b) Investment companies and other financial companies;
 - c) Entities managing or marketing venture capital funds;
 - d) Collective investment undertakings marketing their units;
 - e) Insurance companies and insurance brokers carrying on the activities referred to in subparagraph c) of Article 5 of Decree-Law No 144/2006 of 31 July, with the exception of connected insurance brokers as mentioned in Article 8 of the aforementioned Decree-Law, when they carry on activities within the area of life insurance;
 - f) Pension-fund managing companies;
 - g) Credit securitisation companies;
 - h) Venture capital companies and investors;
 - i) Investment consulting companies;
 - j) Companies pursuing activities dealing with contracts related to investment in tangible assets².
 - l) Payment institutions³.
- 2- The branches established in the Portuguese territory of the entities referred to in the preceding paragraph having their head office abroad, as well as off-shore branches are also covered.
- 3- The current law also applies to the entities providing postal services and to Treasury and Government Debt Agency, where providing financial services to the public.
- 4- For the purposes of this Law, the entities referred to in the preceding paragraphs are hereinafter referred to as «financial entities».

Article 4

Non-financial entities

² Text in accordance with the Declaration of Rectification no. 41/2008, published in the Official Gazette of 4th of August 2008.

³ Text in accordance with Decree-Law no. 317/2009, of 30th of October.

The following entities, carrying on activities in the national territory, shall be subject to the provisions of this law:

- a) Those acting under a concession granted in order to operate games in casinos;
- b) Operators awarding betting or lottery prizes;
- c) Real estate agents as well as agents buying and reselling real estate and construction entities selling directly real property;
- d) Persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- e) Statutory auditors, chartered accountants, external auditors and tax advisors;
- f) Notaries, registrars, lawyers, *solicitadores* and other independent legal professionals, acting either individually or incorporated as a company, when they participate or assist, on behalf of a client or otherwise in the following operations:
 - i) Purchase and sale of real property, or businesses, as well as equity;
 - ii) Management of funds, securities or other assets belonging to clients;
 - iii) Opening and management of bank, savings or securities accounts;
 - iv) Creation, operation or management of a company or similar structures, as well as legal arrangements;
 - v) Acting on behalf of the client in any financial or real estate operation;
 - vi) Acquisition and sale of rights over professional sportspersons;
- g) Service providers to companies and other legal entities or legal arrangements that are not covered by the provisions of subparagraphs e) and f).

Article 5

Financial activity on an occasional and limited basis

This law shall not apply to companies operating in the tourism and travel sector, authorised to carry out, on an occasional and limited basis, foreign currency exchange transactions, pursuant to the provisions of Decree-Law No 295/2003 of 21 November.

CHAPTER II

Duties of the entities subject to this Law

SECTION I

General duties

Article 6

Duties

The entities subject to this law, in the exercise of their professional activities, are obliged to comply with the following general legal duties:

- a) Duty of identification;
- b) Duty of due diligence;
- c) Duty to refuse to carry out operations;
- d) Duty to keep documents and records;
- e) Duty of scrutiny;
- f) Duty to report;
- g) Duty to refrain from carrying out transactions;
- h) Duty to cooperate;
- i) Duty of confidentiality;
- j) Duty to control;
- l) Duty of training.

Article 7

Duty of Identification

1- The entities subject to this law shall identify and verify the identity of their customers and the respective representatives:

- a) When establishing a business relationship;
- b) When carrying out occasional transactions amounting to EUR 15000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- c) When there is a suspicion of money laundering or terrorism financing operations, regardless of their amount, and any exemption or threshold, taking into account, in particular the nature, complexity, atypical or unusual pattern of the transaction

regarding the customer's profile or activity, amounts involved, frequency, source and destination of funds, economic and financial situation of intervening parties or means of payment used;

d) When there are doubts about the veracity or adequacy of previously obtained customer identification data.

2- In the case of casino operators and operators awarding betting or lottery prizes, the identification obligation shall apply for amounts higher than those set out respectively in subparagraph a) of paragraph 1 of Article 32 and in Article 33.

3- Verification of the identity shall be made:

a) In the case of a natural person, through the presentation of a valid original document with photo, containing the full name, date of birth and nationality;

b) In the case of a legal person, through the presentation of the legal person identification card, commercial registration certificate or, in the case of non-residents in the national territory of an equivalent document.

4- Where the customer is a legal person or legal arrangement or, in any event, whenever it is known or there is grounded suspicion that a customer is not acting for his/her own account, the entities covered by this Law shall obtain from the customer information on the identity of the beneficial owner; this information shall be adequately verified, according to the risk of money laundering or terrorism financing.

Article 8

Identity checking moment

1- Checking the identity of a customer, its representatives and, where applicable, of the beneficial owner shall take place at the moment when the business relationship is established or before the carrying out of any occasional transaction.

2- Without prejudice to the provisions of the previous paragraph, where there is limited risk of money laundering or terrorism financing and except as otherwise provided for in a legal rule or regulation applicable to the activity carried on by the subject entity, the verification of the identity of the customer mentioned in the previous paragraph can be completed after the establishment of a business relationship, if this is indispensable for the completion of the transaction, in which case these identification procedures shall be completed as soon as possible.

3- When opening a bank account, credit institutions shall not allow any credit or debit

movements to the account after the initial deposit, make available any payment instruments on the said account or make any change to the ownership, until full compliance with the customer's identification procedure, in accordance with the legal or regulatory provisions applicable.

- 4- In the case of life insurance contracts, verification of the identity of the beneficiary under the policy may take place after the business relationship has been established, but always at or before the time of payout or at or before the time the beneficiary intends to exercise rights vested under the policy.

Article 9

Due diligence

- 1- In addition to the identification of customers, representatives and beneficial owners, the entities subject to this law shall:

- a) Take appropriate measures to understand the ownership and control structure of the customer, as regards legal persons or legal arrangements;
- b) Obtain information on the purpose and intended nature of the business relationship;
- c) Obtain information, where required by the risk profile of the customer or the characteristics of the operation, on the source and destination of funds within the scope of a business relationship or of an occasional transaction;
- d) Conduct ongoing monitoring of the business relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, as well as of its business and risk profile;
- e) Ensure that the information elements gathered in the course of the business relationship are kept up-to-date.

- 2- Customer due diligence procedures shall apply not only to new customers but also to existing customers, on a regular basis and according to the existing risk level.

Article 10

Adaptation to the risk level

- 1- In compliance with the identification and due diligence duties set out in Articles 7 and 9, the entities subject to this law may adapt the nature and extent of the checking procedures and the due diligence measures depending on the risk associated with the

type of customer, the business relationship, the product, the transaction and the source and destination of the funds.

2- The entities subject to this law shall be able to demonstrate to the competent supervisory or monitoring authorities, that the extent of the measures adopted pursuant to the previous paragraph is appropriate.

Article 11

Simplified due diligence

1- Except where there are suspicions of money laundering or terrorism financing operations, the entities subject to this law shall be exempt from compliance with the duties referred to in Articles 7 and 9 in the following situations:

- a) Where the customer is a financial entity set up in a European Union Member State or in a third country which imposes equivalent requirements in respect of money laundering and terrorism financing prevention;
- b) Where the customer is a listed company whose securities have been admitted to trading in a regulated market, within the meaning of Article 199 of the Portuguese Securities Code, as amended by Decree-Law no. 357-A/2007 of 31st October, in any European Union Member State, as well as listed companies in third country markets, which are subject to reporting obligations equivalent to those required by Community legislation, as publicized by the competent supervisory authority;
- c) Where the customer is the State, autonomous regions, local authorities or a legal person governed by public law, of any nature, integrated in the central, regional or local governments;
- d) Where the customer is a public authority or body with transparent accounting practices and subject to monitoring, including those institutions referred to in the Treaty establishing the European Community and any others to be disclosed through an executive order of the member of government responsible for finance;
- e) Where the customer is the entity providing postal services or is the Treasury and Government Debt Agency.

2- The provisions of the previous paragraph shall also apply to beneficial owners of customer accounts with credit institutions, opened by lawyers or *solicitadores* established in Portugal, provided that it is ensured, through a declaration made to the credit institution where the account is opened and at the time of opening, that the

information on the identity of the beneficial owner is promptly available, on request, of the credit institution.

- 3- In the cases referred to in the previous paragraphs, the entities subject to this law shall in any case gather sufficient information to establish if the customer falls into any of the categories or professions mentioned above, and monitor the business relationship in order to detect particularly complex or unusually high amounts transactions, which have no apparent economic or visible lawful purpose.

Article 12

Enhanced due diligence

- 1- Without prejudice to the provisions of Articles 7 and 9, the entities subject to this law shall apply enhanced due diligence measures, in respect of customers and transactions which by their nature or characteristics can present a higher risk of money laundering or terrorism financing.
- 2- Enhanced due diligence measures shall always apply in non-face-to-face transactions and in particular to those operations that may favour anonymity, to the operations carried out with politically exposed persons residing outside the national territory, correspondent banking operations with credit institutions established in third countries and any others designated by the competent supervisory or monitoring authorities, provided that they are legally empowered thereto.
- 3- Without prejudice to the regulations issued by the competent authorities, where the operation takes place without the customer or his/her representative being physically present (non face-to-face operations), verification of identity can be supplemented by one of the following means:
 - a) Additional documents or information considered adequate to check or certify the data provided by the customer, namely those supplied through a financial entity;
 - b) Carry out the first payment related to the operation through an account opened in the customer's name with a credit institution.
- 4 - In respect of business relationships or occasional transactions with politically exposed persons residing outside the national territory, the entities subject to this law shall:
 - a) Have appropriate risk-based procedures to determine whether the customer is a politically exposed person;
 - b) Have senior management approval for establishing business relationships with

such customers;

- c) Take adequate measures to establish the source of wealth and the source of funds that are involved in the business relationship or occasional transaction;
- d) Conduct enhanced ongoing monitoring of the business relationship.

5 - The regime set out in the previous paragraph shall continue to apply to all persons, who no longer being a politically exposed person, continue to present a higher risk of money laundering or terrorism financing, due to their profile or to the nature of operations carried out.

Article 13

Duty to refuse to carry out transactions

1- The entities subject to this law shall refuse to carry out a transaction through a bank account, establish a business relationship or carry out any occasional transaction, when:

- a) The information referred to in Article 7 for the identification of the customer, his/her representative or of the beneficial owner, where applicable, has not been provided;
- b) The information referred to in Article 9 on the ownership and control structure of the customer, the purpose and intended nature of the business relationship, and the source and destination of funds, has not been provided.

2- Whenever the refusal provided for in the previous paragraph occurs, the entities subject to this law shall analyse the circumstances that determined it and where the situation may be related to the commission of a money laundering or terrorism financing offence, they shall report it as provided for in Article 16 and shall consider putting an end to the business relationship.

Article 14

Duty to keep documents and records

1- A copy or the references to the documents demonstrating compliance with the duty of identification and due diligence, shall be kept for a period of seven years after the customer identification moment or, in the case of a business relationship, after the

business relationship with the customer has ended.

- 2- Original documents, copies, references or any other durable support systems, equally admissible in court proceedings as evidence, of the demonstrative documents and of the records of the transactions, shall always be kept to enable the reconstruction of the transaction, for a period of seven years after its execution, even if the transaction is part of a business relationship that has already ended.

Article 15

Duty of scrutiny

- 1- Without prejudice to enhanced customer due diligence, the entities subject to this law shall examine with particular care and pay special attention, based on their professional experience, to any conduct, activity or transaction which they regard as particularly likely, by its nature, to be related to money laundering or terrorism financing.
- 2- For the purposes of the previous paragraph, the following features are particularly important:
 - a) The nature, purpose, frequency, complexity, unusual type and pattern of the conduct, activity or transaction;
 - b) The apparent inexistence of an economic or visible lawful purpose associated with the conduct, activity or transaction;
 - c) The amount, source and destination of the flow of funds;
 - d) The means of payment used;
 - e) The nature, activity, operative pattern and profile of the parties intervening in the transaction;
 - f) The type of transaction or product that may particularly favour anonymity.
- 3- The results of the examination referred to in paragraph 1 above, shall be written down and kept for a period of at least five years, being available for auditors, where applicable, and for the supervisory and monitoring authorities.
- 4- The evaluation of the degree of suspicion indicated by any conduct, activity or transaction does not necessarily imply the existence of any type of document confirming such suspicion, rather, it may be based on the evaluation of a concrete situation, in the light of the due diligence criteria required from a professional in the analysis of the situation.

Article 16

Duty to report

- 1- The entities subject to this law shall promptly inform, on their own initiative, the Attorney General of the Republic and the FIU, where they know, suspect or have reasonable grounds to suspect that an operation is likely to incorporate a money laundering or terrorism financing offence is being or has been committed or attempted.
- 2- The information provided pursuant to the previous paragraph shall only be used in criminal proceedings, and the identity of the person who provided the information shall in no case be disclosed.

Article 17

Duty to refrain from carrying out transactions

- 1- The entities subject to this law shall refrain from carrying out transactions which they know or suspect to be related to the commission of money laundering or terrorism financing offences.
- 2- The entities subject to this law shall promptly inform the Attorney-General of the Republic and the FIU that they have refrained from executing the operation, and the Attorney-General of the Republic may determine the suspension of the suspicious operation, notifying for the purpose, the entity subject to this law.
- 3- The frozen transaction may however be carried out, where the freezing order is not confirmed by the criminal investigation judge within two working days, as of the report made by the subject entity, in accordance with the previous paragraph.
- 4- Where the entity subject to this law consider that the obligation to refrain referred to in paragraph 1 cannot be complied with, or when after consulting the Attorney-General of the Republic and the FIU, they consider that compliance therewith is likely to frustrate the prevention or the future investigation of money laundering or terrorism financing, the operation may be executed, as long as the entity covered by this Law promptly forwards to the Attorney-General of the Republic and the FIU the information regarding the transaction.

Article 18

Duty to cooperate

The entities subject to this law shall promptly provide assistance as requested by the

Attorney-General of the Republic, by the FIU for the performance of its tasks, by the judicial authority responsible for leading the inquiry, or by the competent authorities to supervise or monitoring⁴ compliance with the obligations provided for in this law, according to their respective legal competences, namely by granting direct access to information and presenting the documents or records required.

Article 19

Duty of confidentiality

- 1- The entities subject to this law, as well as the members of their management, auditing or other corporate bodies, those holding office as director, manager or head of department or similar, their employees, representatives and other persons providing services on a permanent, temporary or occasional basis, shall not disclose to the client nor to third persons that they have reported the information legally due or that a money laundering or terrorism financing investigation is being carried out.
- 2- It shall not constitute a breach of the duty mentioned in the previous paragraph the disclosure of information, legally imposed, to the supervisory or monitoring authorities of the duties provided for in this Law, including the professional self-regulatory bodies of the businesses or professions subject to this law.
- 3- The provisions of paragraph 1 shall not prevent the disclosure of information, for the purposes of money laundering and terrorism financing prevention:
 - a) Between institutions belonging to the same company group, within the meaning of Articles 2 and 3 of Decree-Law No 145/2006 of 31st July, established in a European Union Member State or in a third country, which imposes equivalent requirements in respect of money laundering and terrorism financing prevention;
 - b) Between the persons referred to in subparagraphs e) and f) of Article 4 established in a European Union Member State or in a third country, which imposes equivalent requirements in respect of money laundering and terrorism financing prevention, that provide services or are employees within the same legal person or in a group of companies to which it belongs, with common ownership or management.
- 4- The prohibition laid down in paragraph 1 shall not prevent disclosure of information between the financial and non-financial entities referred to in subparagraphs e) and f)

⁴ Text in accordance with the Declaration of Rectification n°. 41/2008 published in the Official Gazette of 4th August 2008.

of Article 4 on a common business relationship, regarding the same customer, provided that the information exchanged shall be exclusively used for the purposes of money laundering and terrorism financing prevention and all entities are subject to equivalent obligations as regards professional secrecy and personal data protection and are established in European Union Member States or in a third country which imposes equivalent requirements in respect of money laundering and terrorism financing prevention.

Article 20

Protection in the disclosure of information

1- The disclosure of information in good faith by the entities subject to this law, in compliance with the duties laid down in Articles 16, 17 and 18, shall not constitute a breach of any duty of confidentiality, imposed by any legislative, regulatory or contractual provision, and shall not hold liable in any way the persons who disclose the information.

2 - Whoever, even due to mere negligence, discloses or favours the disclosure of the identity of the person that provided the information, in accordance with the Articles referred to in the previous paragraph, shall be punished with a maximum penalty of three years' imprisonment or shall be liable to a fine.

Article 21

Duty of to control

The entities subject to this law shall establish adequate internal policies and procedures for compliance with the duties laid down in this law, namely as far as internal control, evaluation and risk assessment and management and internal audit are concerned, in order to effectively combat money laundering and terrorism financing.

Article 22

Duty of training

1- The entities subject to this law shall take the measures necessary for their directors and employees, whose functions are relevant for money laundering and terrorism financing prevention, to have adequate knowledge of the duties imposed by the legislation and regulations in force concerning this matter.

2- The measures set out in the previous paragraph shall include participation in specific

and regular training programmes, suitable for each sector of activity, enabling their employees to identify operations which may be related to the commission of money laundering or terrorism financing offences and to instruct them to act in accordance with the provisions of this law and respective regulatory rules.

SECTION II

Specific duties of financial entities

Article 23

Duties of financial entities

- 1- Financial entities shall be subject to the duties referred to in Article 6, as well as to the specific provisions laid down in the following Articles and in the related regulatory rules issued by the competent supervisory authorities, under the terms of this law and of the legal ordinances regulating their activity.
- 2- Under no circumstance can anonymous bank accounts or anonymous passbooks exist.

Article 24

Performance by third parties

- 1- Financial entities, with the exception of bureaux de changes and payment institutions⁵, are authorised to rely on a third party for customer identification and due diligence, pursuant to Article 7 and subparagraphs a) to c) of paragraph 1 of Article 9, in accordance of regulations to be established by the competent supervisory authorities, provided that the financial entity is:
 - a) A financial entity referred to in paragraph 1 of Article 3, established in the national territory, other than a bureau de change;
 - b) A financial entity whose nature is similar to that of the entities authorised under this paragraph, having its head office in the European Union or in a third country which imposes equivalent requirements against money laundering and terrorism financing prevention.
- 2- The financial entities that rely on third parties to ensure compliance with the duties mentioned in the previous paragraph shall retain responsibility for full compliance with

⁵ Text in accordance with Decree-Law no. 317/2009, of 30th October.

such duties, as if they were their direct performers and shall have immediate access to the information relating to the carrying out of that operation.

Article 25

Specific duty of simplified due diligence

1- Except when there are suspicions of money laundering or terrorism financing, the financial entities are exempt from complying with the duties set out in Articles 7 and 9, in the following situations:

- a) Issuance of electronic money, whose monetary value is stored on an electronic device and represents a claim on the issuer, issued on receipt of funds of an amount of not less than the monetary value issued and accepted as a means of payment by undertakings other than the issuer; if the electronic device cannot be recharged since the maximum amount stored in the device is no more than €150, or even if it can, a threshold of EUR 2500 is imposed on the total amount transacted in a calendar year, except when an amount of EUR 1000 or more is redeemed in that same calendar year by the bearer, as referred to in Article 3 of Directive 2000/46/EC of the European Parliament and of the Council of 18th September 2000;⁽⁶⁾
- b) Life insurance policies, pension fund contracts or similar savings schemes, where the annual premium or contribution is no more than EUR 1000, or the single premium is no more than EUR 2500;
- c) Insurance policies for pension schemes if there is no surrender clause and the policy cannot be used as collateral;
- d) Pension, superannuation or similar schemes that provide retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

2- The financial entities shall also be exempt from the duties set out in Article 7 in insurance policies, life insurance policies and pension schemes, where the premium or the contribution is paid through a debit of, or cheque drawn on an account opened in the name of the insured with a credit institution subject to the obligations laid down in Article 6.

⁶ Text in accordance with the Declaration of Rectification no 41/2008, published in the Official Gazette of 4th of August 2008.

Article 26

Enhanced specific customer due diligence

- 1- Financial entities that are credit institutions shall also apply enhanced customer due diligence in respect of cross-border correspondent banking relationships with institutions established in third countries.
- 2- For the purposes of the previous paragraph, credit institutions shall gather sufficient information about a respondent institution to understand fully the nature of the respondent's business, to assess the respondent institution's anti-money laundering and anti-terrorism financing controls and to determine from publicly available information the reputation of the institution and the characteristics of its supervision.
- 3- Approval shall be obtained from senior management before a credit institution establishes a new correspondent banking relationship and the respective responsibilities shall be written down.
- 4- If the correspondent relationship involves payable-through accounts, the credit institution shall be satisfied that the respondent credit institution has verified the identity of the customer and performed due diligence on the customer having direct access to the accounts, ensuring that all these elements of information can be provided , upon request.

Article 27

Specific reporting duty

In the case of transactions which present a special risk of money laundering or terrorism financing, namely when they are related to a specific country or jurisdiction subject to additional counter-measures decided by the Council of the European Union, the competent supervisory authorities may determine their obligation of immediately reporting to the Attorney-General of the Republic and the FIU of such transactions, when they amount to EUR 5 000 or more.

Article 28

Specific duty to cooperate

The financial entities shall have systems and instruments in place that enable them to respond fully and appropriately to enquiries from the Attorney-General of the Republic, the FIU, or from other competent judicial authorities, as to whether they maintain or have maintained during the previous five years a business relationship with specified natural or legal persons and respective the nature of that relationship.

Article 29

Branches and subsidiaries in third countries

- 1- Financial entities, in respect of their branches and majority-owned subsidiaries located in third countries, shall:
 - a) Apply measures equivalent to those laid down in this law, with regard to the duties of identification, due diligence, document and record keeping and training;
 - b) Communicate the policies and internal procedures defined in compliance with the provisions of Article 21, where applicable within the scope of the activity carried out by the branches and subsidiaries.

- 2- Where the legislation of the third country does not allow the application of the measures laid down in subparagraph a) of the previous paragraph, the financial entities concerned shall inform its competent supervisory authorities of that fact and take additional measures to prevent the risk of money laundering and terrorism financing.

Article 30

Shell banks

- 1- Credit institutions shall not establish correspondent banking relationships with shell banks.
- 2- Credit institutions shall take appropriate measures to ensure that they do not enter into correspondent banking relationships with other credit institutions that are known to allow their accounts to be used by shell banks.
- 3- As soon as the institutions learn they keep a correspondent banking relationship with the entities referred to in the previous paragraphs, they shall terminate that relationship.

SECTION III

Specific duties of non-financial entities

Article 31

Duties of non-financial entities

Non-financial entities shall be subject to the duties set out in Article 6, with the specifications laid down in the following Articles and in the regulatory rules issued by the member of government responsible for the respective sector of activity or by the legally competent monitoring authorities, for that purpose.

Article 32

Entities acting under a concession to operate games in casinos

- 1- The entities acting under a concession granted in order to operate games in casinos are subject to the following duties:
 - a) Identifying all casino customers and verifying their identity immediately on entry in the gambling room or when they purchase or exchange gambling chips or other gambling-related items with a total value of EUR 2 000 or more;
 - b) Issuing cheques in their own name in gambling rooms in exchange for gambling chips or other gambling-related items only to the order of identified casino customers that have purchased them through a bankcard or valid cheque and up to a maximum amount equal to the cumulative amount of all those purchases;
 - c) Issuing cheques in their own name in gambling and slot machine rooms to pay prizes only to the order of previously identified casino players' winners and resulting from combination of machine payout schemes or accumulated prize schemes.
- 2- Casino customers' identity shall always be registered.
- 3- The cheques referred to in subparagraphs *b)* and *c)* of paragraph 1 shall bear the name of the payee and must be crossed with a clause prohibiting any endorsement.
- 4- The reports to be submitted under the terms of this law shall be made by the administration of the company acting under concession.

Article 33

Operators awarding betting or lottery prizes

Entities awarding betting and lottery prizes in an amount of EUR 5000 or more shall

identify and verify the identity of payment beneficiaries.

Article 34

Real estate agents

1- Natural or legal persons dealing in real estate mediation, as well as natural or legal persons engaged in the purchase, sale, purchase for resale or exchange of real property and who, with their own or any third party resources, directly or indirectly decide, promote, program, manage and finance the construction of buildings, intended for their subsequent transmission or sale, on whatever grounds, shall forward the following documents to the Institute for Construction and Real Estate:

a) Communication, in accordance with the terms laid down in the law, of the start-date for the real estate mediation activity, purchase, sale, purchase for resale or exchange of real property and of any person(s) who, with their own or any third party resources, directly or indirectly decide, promote, program, manage and finance the construction of buildings, intended for their subsequent transmission or sale, on whatever grounds, together with the access code to the permanent commercial registration certificate, within a maximum period of 60 days as of the date of verification of any such situations;

b) Report on a half-yearly basis and in the appropriate form, containing the following particulars on each transaction carried out:

- i) Clear identification of the intervening parties;
- ii) Overall amount of the legal transaction;
- iii) Reference to the title deeds thereof;
- iv) Means of payment used;
- v) Identification of the real estate.

2- Natural or legal persons, that have already started the activities referred to in the previous paragraph, shall forward the communication mentioned in subparagraph a) above within a maximum period of 90 days after the entry into force of this Law.

3- The communication referred to in subparagraph a) of paragraph 1 shall be accompanied by a commercial registration certificate, where the entity does not have the permanent certificate mentioned in the said subparagraph.

Article 35

Lawyers and *solicitadores*

- 1- In compliance with the reporting duty provided for in Article 16, lawyers and *solicitadores* shall report suspicious transactions respectively to the President of the Bar Association and to the Chairman of the Chamber of *Solicitadores*, which shall forward promptly and unfiltered this information to the Attorney-General of the Republic and the FIU, notwithstanding the provisions of the following paragraph.
- 2- In the case of lawyers or *solicitadores* and in respect of the transactions referred to in subparagraph *f*) of Article 4, the reporting obligation shall not cover information obtained in the course of ascertaining the legal position of a client, when providing legal advice, or when performing their task of defending or representing that client in, or concerning judicial proceedings, including when advising that client in relation to instituting or avoiding judicial proceedings, as well as whether such information is obtained before, during or after the judicial proceedings.
- 3- The provisions of the previous paragraphs shall equally apply to compliance by lawyers and *solicitadores* with the duties to refrain and to cooperate laid down in Articles 17 and 18, and it shall be their responsibility within the scope of the cooperation duty, and as soon as the judicial authority requires their assistance, to communicate to the President of the Bar Association or to the Chairman of the Chamber of *Solicitadores*, providing them the information required under paragraph 1.

Article 36

Dissuasion from engagement in illicit activities

Where the persons referred to in subparagraphs *e*) and *f*) of Article 4 seek to dissuade a client from engaging in illegal activity or action, this shall not constitute a disclosure within the meaning of paragraph 1 of Article 19.

Article 37

Specific training duty

Where the non-financial entity subject to this law is a natural person performing his professional activities as an employee of a legal person, the obligations set forth in Article 22 shall apply to that legal person.

CHAPTER III

Supervision and monitoring

Article 38

Authorities

Monitoring of compliance with the duties set forth in this law shall fall under the responsibility of:

a) In the case of financial entities:

- i) The Central Bank, the Securities and Market Commission and the Portuguese Insurance Institute, within the framework of the respective functions;
- ii) The Minister responsible for finance, with regard to the Treasury and Government Debt Agency.

b) In the case of non-financial entities:

- i) The Service for Gambling Inspectorate, with regard to the entities referred to in subparagraphs *a)* and *b)* of Article 4;
- ii) The Institute for Construction and Real Estate, with regard to the entities referred to in subparagraph *c)* of Article 4;
- iii) The Economy and Food Safety Authority, with regard to the entities referred to in subparagraph *d)* of Article 4, as well as to external auditors, legal advisors, company and legal arrangements service providers, and other independent professionals referred to in subparagraph *f)* of Article 4, where they are not subject to monitoring by another competent authority referred to in this provision.

c) The Order of Statutory Auditors, with regard to statutory auditors;

d) The Chamber of Chartered Accountants, with regard to chartered accountants;

e) The Institute for Registrars and Notaries, with regard to notaries and registrars;

f) The Bar Association, with regard to lawyers;

g) The Chamber of Solicitadores, with regard to *solicitadores*.

Article 39

Competences

1- Within the scope of the respective tasks, the supervisory and monitoring authorities referred to in the previous Article shall retain responsibility for:

a) Regulating the conditions of exercise, the reporting and clarification duties, as well as the implementation instruments, mechanisms and formalities required for the full compliance with the duties set out in Chapter II, always in accordance with the principles of legality, necessity, adequacy and proportionality;

b) Monitoring compliance with the rules laid down in this law and corresponding regulatory ordinances applicable to the sector;

c) Instituting and investigating the respective breach of regulations proceedings and, where applicable, applying or proposing sanctions.

2- Financial sector supervisory authorities should make consultations on a reciprocity basis, directly or through the competent institutional bodies, before issuing regulations on the issues referred to in this law in order to avoid any overlapping, loophole or opposition between the respective regulatory rules.

Article 40

Reporting duty of authorities

1- Whenever, in the performance of their functions, the supervisory authorities of financial entities and the monitoring authorities of non-financial entities, have knowledge or grounds to suspect of facts likely to incorporate money laundering or terrorist financing, they shall promptly report to the Attorney-General of the Republic and to the FIU, if the reporting has not yet been made.

2- The reporting obligation referred to in the previous paragraph is equally applicable to the authorities responsible for the supervision of securities management companies, settlement system and centralised securities management companies and foreign exchange market management companies.

3- The provisions of Article 20 shall apply to the information provided under paragraphs 1 and 2 above.

CHAPTER IV

Information and statistics

Article 41

Access to information

In order to properly fulfil their tasks of preventing money laundering and terrorism financing, the Attorney-General of the Republic and the FIU have access, on a timely basis, to the financial, administrative and law enforcement information, which shall be subject to the provisions set forth in paragraph 2 of Article 16.

Article 42

Dissemination of information

Financial sector supervisory authorities and monitoring authorities of non-financial entities, including professional self-regulatory organizations, as well as the FIU, within the scope of their tasks and legal competences, shall give warning and disseminate updated information on trends and practices known to them, in order to prevent money laundering and terrorist financing.

Article 43

Feedback

The FIU shall give timely feedback to the entities subject to this law and to the supervisory and monitoring authorities on the routing and follow-up of suspicious reports of money laundering and terrorism financing that they have sent.

Article 44

Collection, keeping and publication of statistical data

- 1- The FIU shall be responsible for preparing and keeping updated statistical data on the number of suspicious transactions reported as well as on the routing and result of such communications.
- 2- Law enforcement authorities shall send, on an annual basis, to the General Directorate for Justice Policy statistical data on money laundering and terrorism financing, namely the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences and how much property has been frozen, seized or confiscated in favour of the State.
- 3- The General Directorate for Justice Policy shall publish the statistical data gathered on money laundering and terrorism financing prevention.

CHAPTER V

Administrative offences regime

SECTION I

General provisions

Article 45

Territorial application

Regardless of the nationality of the offender, the provisions of this Chapter shall apply to:

- a) Acts committed within the Portuguese territory;
- b) Acts committed outside the Portuguese territory, which fall under the responsibility of the entities referred to in Articles 3 and 4, operating through their branches or by providing services, as well as the persons who, in relation to such entities, fall into any of the situations referred to in subparagraph c) of paragraph 1 of the following Article;
- c) Acts committed on board of Portuguese vessels or aircrafts, except as otherwise provided for in any international treaty or convention.

Article 46

Liability

1- The following entities shall be liable for the breaches of regulations referred to in this Chapter:

- a) Financial entities;
- b) Non-financial entities, with the exception of lawyers and *solicitadores*;
- c) Natural persons who are members of the organs of the legal persons of entities referred to in the preceding subparagraphs or those holding office as director, manager or head of department or similar, as well as those acting legally or voluntarily on their behalf and, in case of breach of the duty mentioned in Article 19, their employees and other persons providing services on a permanent or occasional basis.

2- Legal persons are liable for the offences committed in the performance of their functions or in their name or on their behalf, by the members the organs of the legal

persons, nominees, representatives, employees or any other persons providing services on a permanent or occasional basis.

3- The liability of legal persons shall not preclude the individual liability of the respective offenders.

4- When the legal definition of the offence requires the existence of certain personal requirements which are only present in the legal person, or requires that the agents commit the act in their own interest, while they have acted for the interest of a third party, these circumstances shall not preclude the responsibility of individual agents.

5- Where the deed justifying the relationship between the individual person and the legal is void or null, that shall not preclude the application of the provisions of the preceding paragraphs.

Article 47

Negligence

Negligence shall always be punishable. In this case, the maximum and the minimum thresholds of the fine shall be reduced by half.

Article 48

Fulfilment of an omitted duty

1- Whenever the breach of regulation is a result of failure to perform a duty, the application of the penalty and the payment of the fine do not exempt the offender from performing the said duty, if this is still possible.

2- The offender may be given an injunction to fulfil the obligation in question.

Article 49

Statute of limitations

1- The legal procedure for breaches of regulations laid down in this Chapter shall expire by statute of limitation within five years starting on the date when the breach was committed.

2- The fines and ancillary sanctions shall expire by statute of limitation within five years as of the day the administrative decision became final, or the day when the judicial decision becomes *res judicata*.

Article 50

Allocation of fines

Regardless of the phase in which the conviction becomes final or the judgement becomes *res judicata*, the proceeds of fines shall revert 60% to the State and 40% to:

- a) The Deposits Guarantee Fund, created by Article 154 of the Legal framework of credit institutions and financial companies, approved by Decree-Law No 298/92 of 31st December 1992, in the case of fines imposed on financial entities in proceedings in which Banco de Portugal is vested with decision-making powers;
- b) The Investors Compensation Scheme, created by Decree-Law No 222/99 of 22 June 1999, in the case of fines applied in proceedings in which the Securities Market Commission is vested with decision-making powers;
- c) The Portuguese Tourism of Portugal (Public Institute), in the case of fines applied in proceedings in which the Inspection Services of the Portuguese Tourism Institute is vested with decision-making powers;
- d) The entity responsible for the investigation of the proceedings, as far as the other cases are concerned.

Article 51

Responsibility for the payment of fines

- 1- Legal persons shall be jointly held responsible for the payment of fines and costs to which their directors, nominees, representatives or employees may be sentenced to pay for the commission of offences punishable under the terms of this law.
- 2- Members of the bodies of legal persons who, although having had the possibility to do so, did not prevent it, shall be individually and subsidiary liable for the payment of any fines and costs to which legal persons have been sentenced to pay, even if by the date of the decision being passed, those legal persons have been wound up or have gone into liquidation.

Article 52

Subsidiary law

The general regime governing the breaches of regulations shall be subsidiary applicable to the offences referred to in this Chapter.

SECTION II

Administrative offences

Article 53

Breach of laws and regulations

The following typical illicit acts shall constitute breach of regulations:

- a) Failure to comply with the obligations of identification and identity verification of customers, representatives and beneficial owners, breaching the provisions of Article 7, subparagraph a) of paragraph 1 and of paragraph 2 of Article 32 and of Article 33;
- b) Failure to comply in due time with the rules laid down in paragraphs 1, 2 and 4 of Article 8 regarding the identity verification of customers, representatives and beneficial owners;
- c) Allowing debit and credit movements in bank deposit accounts, making available any payment instruments on the said accounts or making changes to their ownership, until full compliance with the customer's identification procedure, breaching the provisions laid down in paragraph 3 of Article 8;
- d) Failure to comply with the customer due diligence measures and procedures set out in subparagraphs a) to e) of paragraph 1 of Article 9;
- e) Failure to adapt the nature and extent of customer identification and verification procedures and customer due diligence on a risk-sensitive basis, breaching the provisions laid down in paragraph 1 of Article 10, as well as failure to provide evidence to the competent authorities of that adaptation, breaching the provisions laid down in paragraph 2 of the same Article;
- f) Adoption of simplified customer identification and due diligence procedures, failing to comply with the terms and conditions set out in Articles 11 and 25;
- g) Total or partial omission of enhanced customer due diligence to customers and transactions liable of presenting a higher risk of money laundering or terrorism financing and cross-border correspondent banking relationships with institutions established in third countries, breaching the provisions laid down in Articles 12 and 26 respectively;
- h) Failure to comply with the duty to refuse to carry out transactions through a bank account, establishment of business relationships or carrying out of occasional transactions, where the identification or information elements referred to respectively in subparagraphs a) and b) of paragraph 1 of Article 13

are not provided;

- i) Failure to analyse the circumstances that give rise to refusal of a transaction, business relationship or occasional transaction and their prompt report to the Attorney-General of the Republic and the FIU, breaching the provisions laid down in paragraph 2 of Article 13;
- j) Failure to keep original documents, copies, references or any other durable support systems admissible in court proceedings, supporting the identification and due diligence of customers and the execution of transactions, under the terms and within the periods set out respectively in paragraphs 1 and 2 of Article 14;
- l) Failure to comply with the duty to examine with particular care and pay special attention to any conduct, activity or transaction regarded as particularly likely to be related to money laundering or terrorism financing, breaching the provisions laid down in paragraph 1 of Article 15;
- m) Failure to comply with the obligations of registration, document and record keeping and provision of access to the results of the examination of suspicious conducts, activities or transactions, breaching the provisions laid down in paragraph 2 of Article 15;
- n) Failure to promptly report to the Attorney-General of the Republic and to the FIU of suspicious money laundering or terrorism financing-related transactions, breaching the provisions laid down in Article 16;
- o) Failure to comply with the duty to refrain from carrying out the suspicious transactions referred to in paragraph 1 of Article 17 as well as with the obligation to promptly report to the Attorney-General of the Republic and to the FIU, breaching the provisions laid down in paragraphs 2 and 4 of the same Article;
- p) Failure to comply with the suspension order of suspicious transactions under the terms of paragraph 2 of Article 17, as well as the carrying out of such transactions after the judicial confirmation of the suspension order mentioned in paragraph 3 of the same Article;
- q) Failure to promptly cooperate with the Attorney-General of the Republic, the FIU, the judicial authority responsible for the conducting of the inquiry, or the competent authorities monitoring compliance with the obligations laid down in this Law, breaching the provisions laid down in Article 18;
- r) Disclosure to customers or to third parties of the reporting of information to the Attorney-General of the Republic and the FIU or of a pending criminal investigation, breaching the provisions laid down in paragraph 1 of Article 19;

- s) The disclosure and the exchange of information between the entities referred to in paragraphs 3 and 4 of Article 19, failing to comply with the purposes, terms and conditions referred to therein;
- t) Failure to define and apply policies and internal control procedures, breaching the provisions laid down in Article 21;
- u) Failure to adopt disclosure and training programmes and measures on the prevention of money laundering and terrorism financing, breaching the provisions laid down in Articles 22 and 37;
- v) Opening anonymous accounts or the existence of anonymous passbooks, breaching the provisions laid down in paragraph 2 of Article 23;
- x) Execution of the duties of identification and customer due diligence by relying on a third party, breaching the terms and conditions set out in Article 24;
- z) Failure to communicate to the Attorney-General of the Republic and the FIU transactions which present a special risk of money laundering or terrorism financing and whose reporting obligation has been determined by the competent supervisory authority, breaching the provisions laid down in Article 27;
 - aa) Failure to have systems and instruments in place that enable financial entities to respond fully and promptly to enquiries from the Attorney-General of the Republic, the FIU, or the judicial authorities, breaching the provisions laid down in Article 28;
 - ab) Failure to comply with the obligations to apply equivalent preventive measures, communication of policies and internal procedures, reporting of information to supervisory or monitoring authorities and adoption of additional preventive measures, within the scope of the activity of branches and subsidiaries established in a third country, breaching the provisions laid down in Article 29;
 - ac) Establishment or maintenance of business relationships with shell banks or credit institutions with which they have a business relationship, breaching the provisions laid down in Article 30;
 - ad) Issuance of cheques to the order of casino customers, breaching the terms and conditions set out in subparagraphs *b*) and *c*) of paragraph 1 and in paragraph 3 of Article 32;
 - ae) Failure to comply with the obligations of communication imposed on real estate agents, breaching the provisions laid down in Article 34;
 - af) Failure to comply with the injunction issued in accordance with the terms of paragraph 2 of Article 48;
 - ag) Failure to comply with the rules laid down in regulatory ordinances for the

specific sectors, issued pursuant to this Law, in the performance of the competences laid down in subparagraph a) of paragraph 1 of Article 39.

Article 54

Fines

The breaches of regulations referred to in the previous Article shall be punishable as follows:

- a) Where the offence is committed within the scope of activity of a financial entity:
 - i) By a fine from EUR 25000 to EUR 2500000, where the offender is a legal person;
 - ii) By a fine from EUR 12500 to EUR 1250000, where the offender is a natural person;

- b) Where the offence is committed within the scope of activity of a non-financial entity, with the exception of lawyers and *solicitadores*:
 - i) By a fine from EUR 5000 to EUR 500000, where the offender is a legal person;
 - ii) By a fine from EUR 2500 to EUR 250000, where the offender is a natural person.

Article 55

Additional penalties

In addition to the fines, the responsible for any of the breaches of regulations referred to in Article 53, may be punished with the following additional penalties, depending on the seriousness of the offence and guilt of the offender:

- a) Prohibition, for a maximum period of up to three years, from exercising the profession or activity to which the breach of regulations relates;
- b) Prohibition, for a maximum period of up to three years, from being member of management or auditing boards as well as from holding chief executive, senior management, or management and supervisory posts in legal persons subject to this law, where the offender is a member of the management or auditing boards,

- holds chief executive, senior management, or management posts or legally or voluntarily acts on behalf of the legal person;
- c) Publicity of the final decision, at the expense of the offender, in one of the most widely read newspapers of the area where the offender has its head office or permanent establishment or, if the offender is a natural person, of the area of his/her residence.

SECTION III

Procedural provisions

Article 56

Competence of the administrative authorities

- 1- With regard to the breaches of regulations committed by financial entities, the competence to investigate the offences, the procedural investigation and the application of fines and ancillary sanctions shall fall under the responsibility of the Central Bank, the Securities Market Commission or the Portuguese Insurance Institute, depending on the financial sector in which the regulatory offence has occurred, and the Ministry of Finance and Public Administration, as far as the Treasury and Government Debt Agency (Public Institute) is concerned.
- 2- With regard to breaches of regulations committed by non-financial entities, without prejudice to the provisions of the following paragraph, the competence to investigate the breach of regulations , the procedural investigation and application of fines and ancillary sanctions responsibility for the inquiry into offences, fall under the responsibility of the monitoring authorities and professional self-regulatory organizations, referred to in subparagraphs a) to e) of Article 38, within the scope and in accordance with their functions.
- 3- In the cases where the investigations fall under the responsibility of the Economy and Food Safety Authority, the imposition of fines and additional penalties shall be the responsibility of the Economic and Advertising Penalties Application, pursuant to Decree-Law no. 208/2006 of 27 October.

Article 57

Judicial competence

- 1- The competent court to judge any appeal, to undertake a review or to execute

decisions in proceedings on breaches of regulations taken by a supervisory authority of financial entities shall be the Lisbon's lower Criminal Court.

- 2- In the case of application of the decisions referred to in paragraph 1 in proceedings on breaches of regulations where the defendant is a non-financial entity, the competent court shall be the Lisbon's district Court or the district court of the area of the head office or residence of that entity, at its choice.

CHAPTER VI

Disciplinary violations

Article 58

Breaches committed by lawyers

- 1- Any breach committed by a lawyer of the duties to which he/she is bound pursuant to this Law, shall entail disciplinary proceedings taken by the Bar Association, according to the general terms of the Bar Association's Statutes.
- 2- The disciplinary sanctions applicable are the following:
 - a) Fine between EUR 2500 and EUR 250000;
 - b) Suspension from activity of up to 2 years;
 - c) Suspension from activity of over 2 and up to 10 years;
 - d) Expulsion.
- 3- While applying these sanctions and their respective measure and degree, seriousness regarding the violation of the duties to which lawyers are bound pursuant to this law shall be taken into account based on the criteria set out in Article 126 of the Bar Association's Statutes.

Article 59

Breaches committed by *solicitadores*

- 1- Any offence committed by a *solicitador* of the duties to which he/she is bound pursuant to this law shall entail disciplinary proceedings by the Chamber of *Solicitadores* according to the general terms of the Statute of the Chamber of *Solicitadores*.
- 2- The disciplinary sanctions applicable are the following:

- a) Fine between EUR 2500 and EUR 250000;
- b) Suspension from activity of up to 2 years;
- c) Suspension from activity of over 2 and up to 10 years;
- d) Expulsion.

3- While applying these sanctions and their respective measure and degree, seriousness of the violation of the duties to which *solicitadores* are bound pursuant to this law shall be taken into account, based on the criteria set out in Article 145 of the Statute of the *Chamber of Solicitadores*.

CHAPTER VII

Final provisions

Article 60

Protection of rights of bona fide third parties

- 1- If the property which has been seized from defendants against whom criminal proceedings have been instituted for an offence related to the laundering of unlawful proceeds is recorded in a public register in the name of a third party, the persons whose property is entered in such registers are notified and given the opportunity to defend their rights and summarily submit evidence of their good faith. In such circumstances, the property may be immediately restored to them.
- 2- If there is no such register, third parties claiming that they purchased the seized property in good faith may defend their rights in the proceedings.
- 3- Third parties claiming to have acted in good faith may defend their rights by submitting a request to the judge until a confiscation order is made. The party concerned shall include all pieces of evidence in that request.
- 4- The request shall be attached to the proceedings and, after notifying the Public Prosecution Service that might want to oppose it, the court shall make a decision and, for that purpose, take all the steps it considers appropriate.
- 5- Where, by virtue of its complexity or the delay it would entail in the criminal proceedings, the case cannot be properly resolved by the judge, he may refer the case to the civil courts.

Article 61

Amendment to Law no. 52/2003 of 22 August

Articles 2, 4, and 8 of Law No 52/2003 of 22 August as amended by Law No 59/2007 of 4 September, shall be worded as follows:

“Article 2

[...]

- 1-
- 2- Whoever promotes or founds a terrorist group, organisation or association, or adheres to or supports them, including by supplying information or material resources, shall be punished with a penalty of 8 to 15 years' imprisonment.
- 3-
- 4-
- 5-

Article 4

[...]

- 1-
- 2- Whoever commits aggravated theft, extortion, on-line or communications fraud, computer forgery or forgery of administrative documents with the purpose to committing the acts set out in article 2, paragraph 1, shall be punished with the penalty that corresponds to the committed offence, with the respective minimum and maximum limits increased in one third.
- 3-

Article 8

[...]

- 1-:
 - a)
 - b) Where they constitute the crimes set out in Articles 3, 5 and 5-A, provided that the agent is found in Portugal and cannot be extradited or surrendered under the European arrest warrant.
- 2-”

Article 62

Amendment to Law no. 52/2003 of 22 August

A new Article 5-A shall be added to Law No 52/2003 of 22 August as amended by Law No 59/2007 of 4 September, to read as follows:

“Article 5-A

Terrorism financing

- 1- Whoever, by any means, directly or indirectly, provides, collects or holds funds or assets of any type, as well as products or rights liable of being transformed into funds, with the intention that they should be used or in the knowledge that they may to be used, in full or in part, in the planning, preparation or commission of the set out in paragraph 1 of Article 2, or whoever commits these facts with the intention referred to in paragraph 1 of Article 3 or in paragraph 1 of Article 4, shall be punishable with a penalty of 8 up to 15 years.
- 2- For an act to constitute the offence set forth in the preceding paragraph, it shall not be necessary that funds originate from a third party, or have been transferred to whom they were destined, or have actually been used to commit the facts therein mentioned.
- 3- The penalty shall be specially reduced or not take place where the offender voluntarily renounces his activity, prevents or mitigates the danger caused by him/her or actually helps in a concrete manner to collect conclusive evidence for the identification or arrest of other persons responsible.”

Article 63

Delegation of powers by the Attorney-General of the Republic

The Attorney-General of the Republic may delegate in another public prosecutor the powers entrusted upon him by this Law.

Article 64

Information to the European Commission and to the Member States

The Minister responsible for finance is the competent authority to transmit and receive the information, relating to third countries, set out in paragraph 4 of Article 11, paragraph 7 of

Article 28 and paragraph 2 of Article 31 of Directive 2005/60/EC of the European Parliament and of the Council of 26th October 2005.

Article 65

Revocation

- 1- Law No 11/2004 of 27 March 2004 is hereby repealed.
- 2- References in other legal instruments to the rules that have been revoked shall hereinafter considered made to this Law.

Approved on 3 April 2008

The President of the Assembly of the Republic, *Jaime Gama*.

Promulgated on 21 May 2008.

Let it be published.

The President of the Republic, ANÍBAL CAVACO SILVA.

Countersigned on 23 May 2008.

The Prime-Minister, *José Sócrates Carvalho Pinto de Sousa*.

