The International Investigations Review

Fifth Edition

Editor
Nicolas Bourtin

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EDITOR'S PREFACE

In the United States, it continues to be a rare day when newspaper headlines do not announce criminal or regulatory investigations or prosecutions of major financial institutions and other corporations. Foreign corruption. Financial fraud. Tax evasion. Price fixing. Manipulation of benchmark interest rates and foreign exchange trading. Export controls and other trade sanctions. US and non-US corporations alike, for the past several years, have faced increasing scrutiny from US authorities, and their conduct, when deemed to run afoul of the law, continues to be punished severely by ever-increasing, record-breaking fines and the prosecution of corporate employees. And while in past years many corporate criminal investigations were resolved through deferred or non-prosecution agreements, 2014 saw a significant increase in the number of guilty pleas sought and obtained by the US Department of Justice.

This trend has by no means been limited to the United States; while the US government continues to lead the movement to globalise the prosecution of corporations, a number of non-US authorities appear determined to adopt the US model. Parallel corporate investigations in multiple countries increasingly compound the problems for companies, as conflicting statutes, regulations and rules of procedure and evidence make the path to compliance a treacherous one. What is more, government authorities forge their own prosecutorial alliances and share evidence, further complicating a company's defence. These trends show no sign of abating.

As a result, corporate counsel around the world are increasingly called upon to advise their clients on the implications of criminal and regulatory investigations outside their own jurisdictions. This can be a daunting task, as the practice of criminal law – particularly corporate criminal law – is notorious for following unwritten rules and practices that cannot be gleaned from a simple review of a country's criminal code. And while nothing can replace the considered advice of an expert local practitioner, a comprehensive review of the corporate investigation practices around the world will find a wide and grateful readership.

The authors of this volume are acknowledged experts in the field of corporate investigations and leaders of the bars of their respective countries. We have attempted

to distil their wisdom, experience and insight around the most common questions and concerns that corporate counsel face in guiding their clients through criminal or regulatory investigations. Under what circumstances can the corporate entity itself be charged with a crime? What are the possible penalties? Under what circumstances should a corporation voluntarily self-report potential misconduct on the part of its employees? Is it a realistic option for a corporation to defend itself at trial against a government agency? And how does a corporation manage the delicate interactions with the employees whose conduct is at issue? *The International Investigations Review* answers these questions and many more and will serve as an indispensable guide when your clients face criminal or regulatory scrutiny in a country other than your own. And while it will not qualify you to practise criminal law in a foreign country, it will highlight the major issues and critical characteristics of a given country's legal system and will serve as an invaluable aid in engaging, advising and directing local counsel in that jurisdiction. We are proud that, in its fifth edition, this volume covers 24 jurisdictions.

This volume is the product of exceptional collaboration. I wish to commend and thank our publisher and all the contributors for their extraordinary gift of time and thought. The subject matter is broad and the issues raised deep, and a concise synthesis of a country's legal framework and practice was in each case challenging.

Nicolas Bourtin
Sullivan & Cromwell LLP
New York
July 2015

Chapter 18

PORTUGAL

José Lobo Moutinho, Teresa Serra and Raul Taborda[1]

I INTRODUCTION

In Portugal, corporate entities may be subject to liability pursuant to private as well as public law. Civil liability is assessed in civil proceedings carried out in civil courts. Additionally, corporate conduct often falls under public law, an area in which there are two possible liability outcomes: criminal liability or administrative liability. The most serious offences are regulated by criminal law, primarily the Portuguese Criminal Code, and conduct considered less serious is punished by public law through administrative sanctions.[2]

Not every criminal offence established in the Criminal Code may be committed by a company,[3] as most of the offences provided for involve individual conduct. This means that the lack of opportunities to pursue criminal offences is often compensated for by a vast number of possible administrative penalties.

In general, criminal investigations are conducted by the public prosecutors, a special type of magistrate – distinct in nature from the judicial judges – assigned by law to investigate alleged crime and conducting all sorts of investigations. However, in some

1 José Lobo Moutinho is a partner, Teresa Serra is of counsel and Raul Taborda is a lawyer at Sérvulo & Associados – Sociedade de Advogados, RL.

2 Although administrative liability is very similar to what we in Portugal call '*contraordenações*', it is not the same thing. However, for clarification purposes we will refer to '*contraordenações*' and '*responsabilidade contraordenacional*', respectively, as administrative sanctions and administrative liability.

3 Prior to Law No. 30/2015, which amended Article 11(2) of the Criminal Code, criminal liability of legal persons governed by public law, including corporate public entities and criminal liability of public services concessionaries, was excluded. However, Law No. 30/2015 of 22 April amended Article 11 No. 2 and 3 of the Criminal Code, stipulating that these entities are now subject to criminal liability.

circumstances, such as in matters concerning fundamental rights, the intervention of a judge is needed.

Also, some administrative authorities have the power to investigate certain crimes. For instance, the Portuguese Securities Market Commission (CMVM), the tax authorities and the Food Safety and Economic Authority (ASAE) have been granted, either by law or by delegation of the public prosecutors, the power to investigate some crimes committed in the areas of their competence.

It is not possible, because of their number and variety, to indicate all the authorities empowered to investigate and prosecute administrative offences; these bodies include, in their respective areas, the tax authorities and the most important regulation and supervision authorities, such as the CMVM, Banco de Portugal, the ASAE, the Competition Authority and the Authority for Insurance and Pension Funds. Normally, these authorities have special powers of investigation (such as conducting interviews, and requesting documents and other information). Dawn raids are normally not permitted, although similar results may be achieved through the exercise of other powers of inspection. The Competition Authority has the power to undertake dawn raids (with the authorisation of a Public Prosecutor or judge), and the Competition Law extends that power to searches of the houses of board members and employees, law firms, medical clinics, banks and other credit institutions.

One of the fundamental and constitutional principles of Portuguese criminal law is the privilege against self-incrimination, which applies both to criminal and administrative procedures. This means that the defendant is under no obligation to assist investigations, or to provide any elements that may lead to self-incrimination (i.e., the defendant may remain silent with minimal intervention, awaiting the final decision).

However, Portuguese law includes a number of provisions that force companies to cooperate with the authorities before any formal charges are even made. For instance, Article 361 of the Portuguese Securities Code states that credit institutions are obliged to provide the competent authority with all requested elements and documents. Refusal to cooperate may lead to criminal liability.[4] Despite discussion on the subject, it could be said that there is a tendency to force companies to cooperate in investigations on administrative offences.

II CONDUCT

i Self-reporting

As already mentioned, the Portuguese Constitution recognises the privilege against self-incrimination. The majority of academic authors infer that there generally is no obligation upon companies to self-report when they discover internal wrongdoing, especially private companies. But every rule has its own exception: in fact, the Criminal Procedure Code establishes that civil servants who become aware of any crime while in the exercise of their duties, and because of their duties, must make a criminal complaint.

4 Article 381 of the Securities Code (Decree-Law No. 486/99 of 13 November, last amended by Law No. 23-A/2015 of 26 March).

This immediately creates the distinction that, in criminal matters, the reality for private companies is different from that for state-owned enterprises.

Portuguese criminal law does not, however, punish public employees for failing to report offences noted in the exercise of their duties, although they can be held liable for disciplinary action.

In any event, a private company that confesses an offence fully and without reservation may benefit from a reduction in penalties when, after criminal liability has been established, the court determines the penalty to be applied to the company in question.

In the area of administrative infringements, only the Competition Law contains a formal leniency programme based on self-reporting and cooperation with the Competition Authority, which ranges from complete exemption (for the first enterprise to reveal valuable information on the malpractice) to a variable reduction of the applicable fines (from 30 per cent to 50 per cent). In other cases, self-reporting and cooperation can be large factors in reducing the severity of the sanctions.

ii Internal investigations

Portuguese law does not establish a general obligation for companies to run investigations for any internal wrongdoing. Furthermore, if a company decides to run an investigation, there is no express obligation to share its results with the authorities, apart from the general duty to testify.

There are exceptions. For instance, financial institutions are obliged to undertake compliance programmes and perform internal audits. Any suspicious activity shall be duly reported to the Attorney General. If the financial institution fails to comply, it will be held liable and charged with an administrative fine.[5]

Internal investigations are often undertaken, especially in medium or large companies, as a preliminary step before disciplinary proceedings against the persons responsible. They typically include document analysis and witness interviews.

Despite this, companies – as well as non-legal entities – have limited powers to conduct investigations; this role is best played by public prosecutors. For instance, witness interviews conducted by a company are not valid in a criminal or an administrative investigation. Only the police authorities, under the direction of the public prosecutor, can conduct this type of investigation.

When a company, after conducting an internal investigation, finds itself harmed by an internal wrongdoing, the Criminal Procedure Code establishes that the injured party can play an active role in the criminal proceeding, offering evidence and requesting the necessary inquiries.[6] In this case, it must be represented by a lawyer and pay the corresponding judicial fee (which is currently €102).[7]

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5 Article 54 of the Law to fight money laundering and funding of terrorism (Law No. 25/2008 of 5 June, last amended by Decree-Law No. 157/2014 of 24 October).

6 Articles 68 and 69(a) of the Criminal Procedure Code.

7 Article 70 of the Criminal Procedure Code and Article 8(1) of Decree-Law No. 34/2008 of 26 February, last amended by Law No. 72/2014 of 2 September.

iii Whistle-blowers

According to P Janet Near and P Márcia Miceli,[8] whistle-blowing can be defined as the act of revelation of illicit activities by members of an organisation, within the employer's sphere of control. In Portugal, the company's supervisory body is obliged to file a complaint with the Public Prosecutor's Office in relation to any crimes of which it becomes aware, as long as they do not depend on a criminal complaint by the injured party (known in Portugal as 'public crimes').[9]

Besides this, the company's supervisory body must inform the board of directors of any investigations that have taken place, and also inform the shareholders of all known irregularities at the first available general meeting.

As for a company's employees, there is no explicit legal obligation on them to disclose suspected or actual criminal offences or other detected irregularities. Nevertheless, on a facultative basis, employees can always file a criminal complaint, as long as the crime in question is a public crime.[10] Of note is the fact that according to Law No. 19/2008 of 21 April, public officials and private employees that report any illegality may not suffer any retaliation (for instance, by transferring them to a different workplace against their will).[11]

Also, Article 375-B of the Criminal Code, last amended by Law No. 30/2015 of 22 April, stipulates that the perpetrator can be exempted from the application of a legal penalty assuming he or she is willing to file a complaint within a 30 day period after committing the crime.

It is safe to say that whistle-blowing is not yet part of the corporate culture in Portugal. So, notwithstanding the foregoing, companies do not generally have specific provisions regarding responding to employees who report suspicious or illegal activities.

III ENFORCEMENT

i Corporate liability

As previously mentioned, corporate conduct may lead to civil, administrative or criminal liability.

Civil corporate liability

There are two types of civil corporate liability: contractual liability, which arises out of contractual obligations; and non-contractual liability, whereby the company can be held liable for damages caused by the company itself or by its employees when the requirements

8 Quotation by Mathias Schmidt, '"Whistle-Blowing" Regulation and Accounting Standards Enforcement in Germany and Europe – an Economic Perspective', available at Social Science Research Network's site, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=438480.

9 Articles 420(1(b)) and 422(3) of the Portuguese Companies Code.

10 Article 244 of the Criminal Procedure Code, and Article 54 of the law on the general regime of administrative offences (Decree-Law No. 433/82 of 27 October, last amended by Law No. 109/2001 of 24 December).

11 Article 4 of Law No. 19/2008 of 21 April, last amended by Law No. 30/2015 of 22 April.

of Articles 483 and 500 of the Civil Code are met. In cases of non-contractual liability, the company may be held liable for damages caused by its employees, based on a strict or non-fault liability. The purpose of the law is to guarantee that an injured individual has an effective possibility of recovering from the damages suffered; the company also has the right of recourse against its employees. The Supreme Court has stated that a company cannot be held liable for theft committed by one of its employees, as that crime has no relation to the activities developed by the company.

Damages arising out of criminal offences have their own special legal regime under the Criminal Procedure Code. As a general rule, if the damages arise from criminal offences the plea shall be presented before the criminal courts in the criminal procedure.

Administrative corporate liability

Although the provisions are not always exactly the same, companies can, as a general rule, be held liable if an administrative offence is committed by its representative bodies or employees acting under its orders.

Criminal corporate liability

The Portuguese Criminal Code of 1982 did not provide for criminal corporate liability. Criminal corporate liability was first provided for offences against food safety and public health, tax offences and computer-related crimes.

It was only with Law No. 59/2007 of 4 September that the Criminal Code included criminal corporate liability, in its Article 11. As a general rule, Article 11(1) provides that usually only individuals may be held liable for criminal offences; however, companies may be held liable in certain cases – those stipulated in Article 11(2) of the aforementioned Code – that include sexual abuse of children, racial, religious or sexual discrimination, corruption, etc. This means that not all criminal offences may give rise to corporate liability. For instance, a company cannot be held liable if an employee, under direct orders from a company's director, intentionally injures someone, as such a crime against physical integrity is not established within the cases stipulated in Article 11(2). Furthermore, a company may only be held liable if the criminal offence is committed (1) in its name and by those who possesses a leadership position within the organisation; or (2) by those who act under the authority of the persons mentioned in (1), in the context of a violation of their duties of due diligence and control.

Also, not every legal person can be subject to criminal liability. According to Article 11(2) of the Criminal Code, last amended by Law No. 30/2015 of 22 April, every legal person – excluding the Portuguese state, public bodies exercising state authority and public international organisations – are subject to criminal liability regarding the crimes stipulated in Article 11(2). As result of the 2015 amendments, legal persons governed by public law, including corporate public entities and public services concessionaries, can now be subject to criminal liability.

Article 11(7) of the Portuguese Criminal Code also provides that the company's criminal liability does not exclude the liability of the individuals who acted on its behalf.

Article 65 of the Criminal Procedure Code establishes that in a case of multiple defendants, they can all be represented by a single attorney, as long as this does not contradict their defence as a whole.

Tax liability

Companies can also be held liable if they do not comply with certain tax obligations. The tax authorities grant the liable company one final opportunity to make the payment before seizing its assets.

If the tax authorities demonstrate that the company has insufficient assets to perform the tax payment, the tax authorities will hold the company's directors liable, unless it is demonstrated they did not act negligently.[12]

ii Penalties

The legality principle, applicable both in administrative and criminal proceedings, establishes that one cannot be punished with a penalty that was not previously provided for by law. Portuguese law establishes different types of penalties according to the specific sector of regulation, both in criminal and administrative liability.

The following penalties against companies are foreseen for administrative offences:

a administrative fine;
b loss of property;
c prohibition on continuation of business (up to a maximum of two years);
d deprivation of the right to benefit from certain subsidies granted by any entity or public service;
e deprivation of the right to participate in any fairs or markets;
f deprivation of the right to participate in certain tender offers, which concern the adjudication of building contracts or of public works, of provision of services and goods, the concession of public services and the granting of licences or authorisations;
g closure of an establishment whose functioning is subject to administrative licence or authorisation; or
h suspension of authorisations and licences.

As for the criminal law, the catalogue of criminal penalties against companies includes the following:

a daily fines (up to 360 days and €10,000 per day);
b liquidation of the company;
c court order to force the company to act in a certain manner, so as to ensure cessation of the misconduct;
d prohibition against continuation of business;
e prohibition against concluding certain contracts or contracts with certain entities;
f deprivation of the right to obtain public subsidies;
g closure of the establishment; and
h publishing of the court decision.

12 Articles 23(2) and 24 of the General Tax Law (Decree-Law No. 398/98 of 17 December, last amended by Law No. 82-E/2014 of 31 December).

Many authors argue that fines should be proportionate to the turnover generated by a company as, otherwise, it could effectively liquidate the company by making it impossible for it to continue its business.

iii Compliance programmes

Regulatory compliance rules describe in general the goal of companies to perfect their practice, to comply with relevant laws and regulations.

As a general rule, there is no express obligation for companies in Portugal to adopt compliance programmes, but the existence of a compliance programme may well serve as a defence against criminal charges or mitigate the penalties, especially if it helps to demonstrate that the company did everything in its power to comply with the obligations provided by the law. The main idea is to show that the company had previously manifested concern over compliance with the law, but, for some reason – regardless of all its efforts – something escaped from its control.

In some cases, however, compliance is not only recommended, but also mandatory. For instance, financial intermediaries are obliged to adopt internal policies and proceedings that allow them to comply with the law, and to prevent any flaws that may be encountered.[13] For example, financial intermediaries must:

a evaluate the adequacy and efficiency of the measures and the proceedings selected to detect any risk of transgression; and

b report both to the administrative board and to the surveillance body any detected defaults, alerting them as to the measures that need to be undertaken.

More importantly, the financial intermediary must establish numerous internal protocols to control and evaluate the risks involved in the financial activity.[14]

Compliance programmes are also mandatory in terms of measures to fight money laundering and financing of terrorism. According to Law No. 25/2008 of 5 June, entities under this provision are obliged to adopt internal policies and establish compliance programmes in order to prevent money laundering and financing of terrorism.[15]

iv Prosecution of individuals

One of the most basic principles, both in the Constitution and in the Criminal Code, is the defendant's presumption of innocence. This means that the defendant is considered innocent until proven otherwise by the court's final decision. Therefore, companies cannot dismiss their employees just because they are suspects in an investigation, unless internal investigations or the data obtained in criminal procedures can lead to disciplinary measures; in the latter case, the company has 60 days to initiate corresponding

13 Article 305-A of the Securities Code.

14 Article 305-C of the Securities Code.

15 Article 21 of Law No. 25/2008 of 5 June and Article 43 of Regulation No. 5/2013 of the Bank of Portugal, last amended by Regulation No. 1/2014.

disciplinary proceedings.[16] It is open to debate whether, in general, companies can suspend a disciplinary procedure while a criminal procedure regarding the same facts is being pursued.

A company is allowed to coordinate its defence with the defence of the individuals subject to the same investigations. They can even share the same lawyer unless a conflict of interest arises. Despite this, it is also common for a company to appoint or provide a lawyer for its employees and pay their legal fees.

Cooperation with an investigation, therefore, does not usually imply an adversarial stance between companies and individuals. If the facts underlying a criminal investigation do not have any connection with the existing relationship between the company and the individuals, it is perfectly natural that no conflict should arise that would (or should) oppose either party.

IV INTERNATIONAL

i Extraterritorial jurisdiction

As a general rule, the territoriality principle governs ordinary jurisdiction (i.e., Article 4 of the Portuguese Criminal Code, establishing that the Portuguese courts have jurisdiction whenever a crime is committed on Portuguese soil, regardless of the suspect's nationality).

There are, however, some exceptions. According to Article 5 of the aforementioned Code, in some cases Portuguese courts have jurisdiction regardless of the territory in which the crime is committed. This merges the following principles: national interest, universal enforcement of penal law, and nationality. Article 5(1(g)) of the Portuguese Criminal Code states that the Portuguese courts have jurisdiction whenever the crime is committed by or against a company that has its registered office in Portuguese territory.

Also, Law No. 20/2008 of 21 April, which provides certain rules in the context of fighting corruption in international trade and in the private sector, also extends the jurisdiction of the Portuguese courts to certain crimes beyond the territoriality principle.

ii International cooperation

International judicial assistance

In criminal matters, police and judicial cooperation is usually realised in the form of bilateral agreements between Member States. Within the EU, international judicial assistance was introduced with the Maastricht Treaty in 1993. From that moment, Member States undertook several legal instruments to assure union in criminal matters. This cooperation gained expression with the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters.

Law No. 144/99 of 31 August establishes the object, scope and general principles of international judicial assistance in criminal matters. This cooperation deals with matters that include extradition, exchange of criminal cases, enforcement of criminal sentences, surveillance of individuals convicted or on probation and exchange of information.

16 Article 329(2) of the Labour Code (Law No. 7/2009 of 12 February, last amended by Law No. 28/2015 of 14 April).

Extradition

Extradition is commonly understood as the official process whereby a state surrenders an individual – a suspected or a convicted criminal – to another state.

The use of this process is not without certain limitations. According to Law No. 144/99 of 31 August, the basic principle is that the extradition cannot occur in the case of Portuguese nationals. Nevertheless, there are cases in which the law allows for extradition of a Portuguese national: if the extradition is provided in a treaty; if it is a case of terrorism or international organised crime; or if the other state guarantees a fair trial.

There are various examples of treaties in matters of extradition: the treaty signed between the EU and the United States; the treaty signed between EU Member States; and the treaty signed between Portuguese-speaking countries.

iii Local law considerations

Foreign authorities can request the cooperation of Portuguese authorities. The Portuguese Supreme Court has stated that in the absence of a treaty between the countries, when a formal request is issued, authorities should apply the legal regime established in Law No. 144/99 of 31 August (on international judicial assistance in criminal matters).

One particular aspect of international judicial assistance is the respect for data privacy. In the EU, Article 6(3) and (4) of the Multilateral Memorandum of Understanding of the Committee of European Securities Regulators states that:

> *3 – To the extent permitted by law, each Authority will keep confidential any request for assistance made under this Multilateral Memorandum of Understanding, the contents of such requests and the information received under this Multilateral Memorandum of Understanding as well as the matter arising in the course of its operation, in particular consultations between Authorities;*
> *4 – If an Authority intends to use or disclose information furnished under this Memorandum for any purpose other than those stated in this Article, it must obtain the prior consent of the Authority which provided the information. If the Requested Authority consents to the use of the information for purposes other than those stated, it may subject it to certain conditions.*

Also, Article 6.6 of the Objectives and Principles of Securities Regulation of the International Organization of Securities Commissions states that 'Staff of the regulator should observe the highest professional standards and be given clear guidance on conduct matters: […] the proper observance of confidentiality and secrecy provisions and the protection of personal data'.

In the context of Portuguese law and as previously mentioned, the Legal Framework of Credit Institutions and Financial Companies establishes in Article 81 the secrecy of the exchange of information among regulatory entities. In fact, this is absolutely necessary to maintain a reliable system of international judicial assistance in criminal matters. Also, this type of banking secrecy law preserves the Constitutional protection of clients as a fundamental right.

Another matter for debate relates to the confidentiality of information exchanged between the authorities of different Member States. For instance, the aforementioned Article 81(5) of the Legal Framework of Credit Institutions and Financial Companies

establishes that every individual, institution or authority that participates in the exchange of information is subject to a duty of confidentiality.

Another matter of extreme importance is attorney–client privilege. This particular concept protects certain communications between the client and the attorney, keeping these communications confidential. Article 179(2) of the Criminal Procedure Code states that the seizure of correspondence exchanged between the defendant and his or her attorney is forbidden unless the judge has reasons to believe that this, on its own, constitutes a crime. Also, Article 108(2) of the Statutes of the Portuguese Bar Association establishes that confidential communications cannot be, in any case, the object of disclosure.

V YEAR IN REVIEW

A major case is still pending, known as *Face Oculta* ('hidden face'). *Face Oculta* is the name used to refer to a web of contacts that allegedly carried out crimes such as corruption, money laundering and trading in influence. The case involves several major Portuguese companies, whose directors and employees are being tried.

Public interest has also been particularly focused on the following high-profile cases known as:

a *Operação Furacão* – this is a major criminal proceeding for fraud and tax evasion; in June of 2013 the Public Prosecutor's Office made charges against 30 defendants;

b *Remédio Santo* – this is a major criminal proceeding for criminal association, forgery of documents and qualified swindling;

c *Operação Marquês* – this is a major criminal proceeding for corruption, tax fraud, and money laundering, which led to the provisional detention of a former Portuguese prime minister;

d *Vistos Gold* – this is a major criminal proceeding for corruption, money laundering, trading in influence and embezzlement, involving high-profile figures of the Portuguese state; and

e *Caso BES* – this is a major criminal proceeding for fraud involving several high-profile figures of the banking sector.

Criminal law tends to develop as a result of notorious cases of this kind, as it aims to deal with behaviour that, if left unchecked, would ultimately consume the system from within. It is for this reason that anti-corruption laws are subject to constant modification. Regarding corruption, the Portuguese parliament approved the criminalisation of 'illicit enrichment', with the intent of punishing public officials or other persons who fail to prove the legal origin of certain assets (i.e., an inversion of the burden of proof). However, this did not enter into effect since it was found to be unconstitutional by the Constitutional Court after the President requested an opinion.

VI CONCLUSIONS AND OUTLOOK

Both the Criminal Code and the Criminal Procedural Code were subject to significant amendments.

i The most significant amendments to the Criminal Code and other criminal legislation

Increase of the penal framework

To begin with, crimes such as improper influence (Article 335 of the Criminal Code), embezzlement (Article 21 of Law No. 34/87 of 16 July, last amended by Law No. 30/2015 of 22 April) and active and passive corruption within the private sector (Articles 8 and 9 of Law No. 20/2008 of 21 April, last amended by Law No. 35/2015 of 22 April) suffered an increase of the respective penal framework.

Increase of the terms of limitation of criminal procedure

Moreover, the limitation period for crimes such as improper influence and active and passive corruption was increased in response to several delays in these legal proceedings that ultimately led to their premature extinction (i.e., the extinction of the legal proceeding before a final ruling was even issued).

Once again the Portuguese legislator had to respond firmly to persistent behaviours that, as already mentioned, if left unchecked would ultimately consume the system from within. Activities related to bribery and corruption are a problem that should concern everyone in the judiciary (judges, public prosecutors, lawyers, etc.).

A wider scope of legal persons that can be subject to criminal liability

As previously mentioned, legal persons governed by public law, including corporate public entities and public services concessionaries, may now be subject to criminal liability according to the conditions stipulated in Article 11(2) of the Criminal Code.

ii Criminal Procedure Code

Prior to Law No. 27/2015 of 14 April, which amended the Criminal Procedure Code, when a court hearing session was delayed for more than 30 days, all the evidence that was provided in the hearing would be lost. However, this is no longer the case. With Law No. 27/2015 of 14 April, delays no longer have an impact on the validity of evidence provided in the court hearing.

Appendix 1

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