

Legal Update 2nd Quarter 2024

Banking, Finance and Capital Markets Newsletter
Portugal





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1.

The new Bank of Portugal reporting model for money laundering and terrorist financing

On June 5, 2024, the Bank of Portugal (the “**BoP**”) published Instruction 8/2024, approving the annual reporting model for the prevention of money laundering and terrorist financing (the “**Instruction**”), and BoP Notice 3/2024, amending article 83 of BoP Notice 1/2022 of June 6 (the “**Notice**”). Essentially, the Instruction stipulates the information to be reported annually to the Bank of Portugal by the financial entities subject to its supervision, regarding the prevention of money laundering and terrorist financing (“**MLTF**”), the respective model, and other submission requirements. The Notice establishes the deadline for its submission.

The Instruction and Notice entered into force on June 6, 2024. However, the entities concerned have an exceptional period for submitting the first report in line with the new model: the report for the period between January 1, 2023, and December 1, 2023, can be submitted to the BoP by September 30, 2024.

In this publication, we have primarily sought to highlight the main amendments the Instruction and the Notice introduce regarding the information reporting duties of financial entities subject to BoP supervision, in terms of MLTF prevention.

The new MLTF prevention reporting model: key elements

Article 83 of BoP Notice 1/2022 of June 6 establishes an obligation for financial entities subject to BoP supervision in the area of MLTF prevention to send to the BoP each year, “*a specific report on their internal control system and other information*” for the prevention of MLTF, under the terms of and in line with the model to be established by means of an instruction (the “**Report**”).

1) New deadline for sending the Report to the BoP

The first report under the new model, for the period between January 1, 2023, and December 31, 2024, must be submitted to the BoP by September 30, 2024. In following years, the Report for the period between January 1 and December 31 of the previous year must be submitted to the BoP by March 31 of each year.

2) Composition and procedure for sending the Report

The Report must contain the information listed in the Annex to the Instruction, structured in six parts and two annexes, as follows:

- Part 1 - Main body
- Part 2 - Intrinsic risk
- Part 3 - MLTF prevention policies, procedures, and checks



- Part 4 - Identified MLTF prevention shortcomings
- Part 5 - Criminal and administrative offenses
- Part 6 - Self-assessment
- Annex I - Overall opinion of the financial entity's management body
- Annex II - Supervisory board's opinion

The Report is sent using the *BPnet* system—regulated by Bank of Portugal Instruction 16/2023 of July 11—by filling out the corresponding electronic form.

Entities must use the model established in the Instruction and send the Report in the manner indicated above (article 3(3) of the Instruction).

3) Supervening changes

Financial institutions must also report any changes to the following details to the BoP by sending an email to averiguacao.accao.sancionatoria@bportugal.pt:

- a) Executive member of the management body appointed under article 13(4) of Law 83/2017 of August 18, and article 4 of BoP Notice 1/2022 of June 6:
 - (i) name
 - (ii) email address

- b) The person responsible for general compliance and the person responsible for monitoring compliance with the regulatory framework for the prevention of MLTF (“compliance officer”), and their substitute:
 - (i) name
 - (ii) position
 - (iii) hierarchical structure
 - (iv) duties commencement date
 - (v) duties termination date if the compliance officer or their substitute changes
 - (vi) direct telephone contact details
 - (vii) email address

4) Specific features of the Integrated Mutual Agricultural Credit System

Article 5 of the Instruction establishes the specific details of the Report with aggregate information about the Integrated Mutual Agricultural Credit System (SICAM), for which Caixa Central de Crédito Agrícola Mútuo is responsible.

5) Revoking rule

BoP Instruction 5/2019 of January 30 and BoP Instruction 6/2020 of March 6 are revoked.



The BoP makes the “Risk assessment and supervisory measures” service available in the “MLTF Prevention” area of the BPNNet System, through which requests for information or clarification relating to the application of the Instruction can be sent to the BoP.



2. The new European rules on MLTF prevention (the “AML Package”)

In the second quarter of 2024, new rules on MLTF prevention were also published for Europe. On May 31, 2024, two regulations and a directive were published, which are commonly referred to together as the “AML Package”. **The first amendments introduced by the AML Package have applied since June 26, 2024.**

The AML Package comprises:

- 1) **Regulation (EU) 2024/1624 of the European Parliament and of the Council of May 31, 2024**, on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (“**Regulation (EU) 2024/1624**”);
- 2) **Directive (EU) 2024/1640 of the European Parliament and of the Council of May 31, 2024**, on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and revoking Directive (EU) 2015/849 (“**Directive (EU) 2024/1640**”); and
- 3) **Regulation (EU) 2024/1620 of the European Parliament and of the Council of May 31, 2024**, establishing the Authority for anti-money laundering and countering the financing of terrorism and amending Regulations (EU) 1093/2010, (EU) 1094/2010 and (EU) 1095/2010 (“**Regulation (EU) 2024/1620**”).

Regulation (EU) 2024/1620 entered into force on June 7, 2024, while Regulation (EU) 2024/1624 and Directive (EU) 2024/1640 both entered into force on June 20, 2024. However, the application of the AML Package is subject to the following conditions:

- **Regulation (EU) 2024/1620** will apply from July 1, 2025, except for (i) articles 1, 4, 49, 53, 54, 55, 57–66, 68–70, 71, 100, 101 and 107, which were applicable from **June 26, 2024**, and (ii) article 103, which will be applicable from December 31, 2025,
- **Regulation (EU) 2024/1624** will apply from July 10, 2027, except for obligated entities that are soccer agents or professional soccer clubs—for the latter, regarding (i) transactions with an investor, (ii) transactions with a sponsor, (iii) transactions with soccer agents or other intermediaries, and (iv) transactions for the purposes of transferring a player—to whom the regulation will apply from July 10, 2029.



- Member States must transpose **Directive (EU) 2024/1640** by July 10, 2027, except for (i) article 74, to be transposed by July 10, 2025, (ii) articles 11, 12, 13, and 15, to be transposed by July 10, 2026, and (iii) article 18, to be transposed by July 10, 2029.



3.

Legislation: Banking and finance law

EU law

Regulation (EU) 2024/1624 of the European Parliament and of the Council of 31 May 2024 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Directive (EU) 2024/1640 of the European Parliament and of the Council of 31 May 2024 on the mechanisms to be put in place by Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Directive (EU) 2019/1937, and amending and repealing Directive (EU) 2015/849.

Regulation (EU) 2024/1620 of the European Parliament and of the Council of 31 May 2024 establishing the Authority for anti-money laundering and countering the financing of terrorism and amending Regulations (EU) 1093/2010, (EU) 1094/2010 and (EU) 1095/2010.

Commission Delegated Regulation (EU) 2024/1507 of 22 February 2024 - OJEU L of 30 May 2024 -supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying the criteria and factors to be taken into account by the European Securities Markets Authority, the European Banking Authority and competent authorities in relation to their intervention powers.

Commission Delegated Regulation (EU) 2024/1506 of 22 February 2024 - OJEU L of 30 May 2024 -supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying certain criteria for classifying asset-referenced cryptocurrencies and e-money tokens as significant.

Commission Delegated Regulation (EU) 2024/1504 of 22 February 2024 - OJEU L of May 30, 2024 -supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying the procedural rules for the exercise of the power to impose fines or periodic penalty payments by the European Banking Authority on issuers of significant asset-referenced tokens and issuers of significant e-money tokens.

Commission Delegated Regulation (EU) 2024/1503 of 22 February 2024 - OJEU L of May 30, 2024 -supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying the fees charged by the European Banking Authority to issuers of significant asset-referenced tokens and issuers of significant e-money tokens.

Commission Delegated Regulation (EU) 2024/1502 of 22 February 2024 - OJEU L of May 30, 2024 -supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council by specifying the criteria for the designation of ICT third-party service providers as critical for financial entities.



Bank of Portugal notices

Notice 3/2024 of June 5, 2024 - Official Gazette of the Republic of Portugal 108/2024, Series II, Part E of June 5, 2024

Amending Bank of Portugal Notice 1/2022 of June 6 on the maximum deadline for submitting the annual report on the internal control system and other information for the prevention of MLTF.

Bank of Portugal instructions

Instruction 12/2024 of June 18, 2024

Revoking Instruction 33/2018, which establishes that credit institutions and financial companies must report to the Bank of Portugal information regarding the characteristics of credit agreements regulated by Decree-Law 74-A/2017 of June 23, the respective collateral and income of the borrower(s), as well as information about early repayments, whether in full or partial, and about any renegotiations of these credit agreements.

Instruction 11/2024 of June 17, 2024

Amending Instruction 17/2018, which regulates the reporting of actual or potential liabilities arising from credit transactions to the Bank of Portugal.

Instruction 10/2024 of June 6, 2024

Revoking Instruction 34/2018, which establishes the reporting of the exposure to the interest rate risk arising from activities not included in the trading portfolio and the results of the standard shock assessed by the supervisor.

Instruction 9/2024 of June 6, 2024

Disclosing the maximum rates to be applied to consumer credit agreements under Decree-Law 133/2009 of June 2 for the third quarter of 2024.

Instruction 8/2024 of June 5, 2024

Establishing the information to be reported annually to the Bank of Portugal, by the financial entities subject to its supervision, regarding the prevention of money laundering and terrorist financing, the respective model, and the other requirements for sending this information. Revokes Instructions 5/2019 and 6/2020.

Instruction 7/2024 of May 2, 2024

Amending Instruction 3/2015, which establishes uniform rules for the implementation of the single monetary policy by the Eurosystem.

Instruction 6/2024 of May 2, 2024

Amending Instruction 7/2012, which establishes temporary measures relating to the eligibility criteria for collateral for Eurosystem credit operations.

Instruction 5/2024 of April 4, 2024

Amending Instruction 11/2023, which regulates the conditions for joining and using the Relevant Information System for Supervised Entities (SIREs) service.



European Banking Authority (EBA) acts

Joint EBA and ESMA Guidelines of June 27, 2024

Guidelines on the assessment of the suitability of members of the management body of asset-backed token issuers and crypto asset service providers (EBA/GL/2024/09).

Joint EBA and ESMA Guidelines of May 27, 2024

Guidelines on the simple, transparent and standardized (STS) criteria for asset-backed securitization and amending Guidelines EBA/GL/2018/08 and EBA/GL/2018/09 on STS criteria for asset-backed commercial paper (ABCP) and non-ABCP securitization (EBA/GL/2024/09) (EBA/GL/2024/05).

EBA Guidelines of April 11, 2024

Guidelines on the application of the group capital test for investment firm groups in accordance with article 8 of Regulation (EU) 2019/2033 of the European Parliament and of the Council of November 27, 2019 (EBA/GL/2024/03).

EBA Guidelines of April 8, 2024

Guidelines on resubmission of historical data under the EBA reporting framework (EBA/GL/2024/04).



4.

Legislation: Insurance and pension funds law

EU law

Commission Implementing Regulation (EU) 2024/1289 of 13 May 2024 - OJEU L of 14 May 2024 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2024 until 29 June 2024 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance.

Insurance and Pension Funds Supervisory Authority (ASF) regulatory standards

Regulatory Standard 4/2024-R of June 25

Notifications regarding the clearing obligation and notifications and requests for exemption of intra-group transactions under Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”). Awaiting publication in the Official Gazette of the Republic of Portugal.

Regulatory Standard 3/2024-R of May 15 - Official Gazette of the Republic of Portugal 94/2024, Series II, Part E of May 15, 2024



Establishing the quarterly capital update indices for “Fire and natural elements” policies starting or maturing in the third quarter of 2024.

European Insurance and Occupational Pensions Authority (EIOPA) acts

EIOPA - Final Report and Opinion on Greenwashing of May 31, 2024

EIOPA establishes four key principles that national supervisory authorities should consider when probing companies’ sustainability claims and practical guidelines that must be followed when applying these principles.

EIOPA - Draft Regulatory Standards of May 2, 2024

EIOPA has published draft regulatory standards adapting the euro amounts for professional liability insurance and for the financial capacity of intermediaries under Directive (EU) 2016/97—The Insurance Distribution Directive.

EIOPA - Report on the digitalization of the European insurance sector, April 30, 2024

The report brings together the findings of the survey EIOPA launched in 2023, aimed at understanding the dynamics, opportunities, and risks associated with digitalization projects in the European insurance sector. These findings are supplemented by the perspectives of European customers on digitalization.

EIOPA - Report on the implementation of IFRS 17 - Insurance Contracts, April 15, 2024

The report presents the findings of EIOPA’s analysis of how insurance companies in the European Union have been implementing the new IFRS 17 accounting standard.



5. Legislation: Securities and capital markets law

EU law

Commission Delegated Regulation (EU) 2024/1706 of 11 March 2024 - OJEU L Series of 18 June 2024, amending Delegated Regulation (EU) 272/2012 as regards harmonization of certain aspects of fees charged by the European Securities and Markets Authority to credit rating agencies.

Commission Delegated Regulation (EU) 2024/1705 of 11 March 2024 - OJEU L Series of 18 June 2024, amending Delegated Regulation (EU) 2022/805 as regards harmonization of certain aspects of fees charged by the European Securities and Markets Authority to certain benchmark administrators.

Commission Delegated Regulation (EU) 2024/1704 of 11 March 2024 - OJEU L Series of 18 June 2024, amending Delegated Regulation (EU) 2019/360 as regards harmonization of certain aspects of fees charged by the European Securities and Markets Authority to trade repositories.

Commission Delegated Regulation (EU) 2024/1703 of 11 March 2024 - OJEU L Series of 18 June 2024, amending Delegated Regulation (EU) 2020/1732 as regards harmonization of certain aspects of fees charged by the European Securities and Markets Authority to securitization repositories, as well as their payment modalities.



Commission Delegated Regulation (EU) 2024/1702 of 11 March 2024 - OJEU L Series of 18 June 2024, amending Delegated Regulation (EU) 1003/2013 as regards harmonization of certain aspects of fees charged by the European Securities and Markets Authority to trade repositories.

Commission Delegated Regulation (EU) 2024/1507 of 22 February 2024 - OJEU L Series of 30 May 2024, supplementing Regulation (EU) 2023/1114 of the European Parliament and of the Council by specifying the criteria and factors to be taken into account by the European Securities Markets Authority, the European Banking Authority and the competent authorities in relation to their intervention powers.

Portuguese law

Law 31/2024 of June 28

Approving tax measures to boost the capital market by amending the Personal Income Tax Code, the Stamp Duty Code and the Tax Benefits Statute.

CMVM circulars

Circular 008/2024 of May 21, 2024

Circular on the audit archiving process.

Circular 007/2024 of May 15, 2024

Circular on the costs and charges applicable to undertakings for collective investment in transferable securities.

Circular 006/2024 of April 4, 2024

FATF release on preventing and combating money laundering and terrorist financing.

European Securities and Markets Authority (ESMA) acts

EBA and ESMA published guidelines on the suitability of members of the management bodies and shareholders of entities covered by the Directive on markets in financial instruments, dated June 27, 2024.

Joint guidelines on the suitability of members of the management body and on the assessment of shareholders and members with qualifying holdings for issuers of asset reference tokens (ARTs) and crypto asset service providers (CASPs) under the Markets in Crypto Assets Regulation (MiCA).

European supervisory authorities publish an opinion on the sustainable finance disclosure regulation, dated June 18, 2024

The three European supervisory authorities (EBA, EIOPA and ESMA (“ESAs”)) have published a joint opinion on the assessment of the Sustainable Finance Disclosure Regulation (“SFDR”).

Among other things, the ESAs call for a coherent framework for sustainable finance that considers both the green transition and boosting consumer protection, considering the lessons learned from the functioning of the SFDR.

ESAs and the European Union Agency for Cybersecurity (“ENISA”) sign a memorandum of understanding to strengthen cooperation and information exchange, dated June 5, 2024

The ESAs have signed a multilateral memorandum of understanding (MoU) to strengthen cooperation and information exchange with ENISA.



ESAs publish reports on greenwashing in the financial sector, dated June 4, 2024

In the reports, the ESAs call for greater supervision and improved market practices with regard to sustainability-related damages claims.

EBA and ESMA invite comments on the review of the prudential framework for investment firms, dated June 3, 2024

The public consultation runs until September 3, 2024.

ESAs publish templates and tools for a voluntary simulation exercise to support the implementation of the Digital Operation Resilience Act (“DORA”), dated May 31, 2024

The ESAs have published templates, technical documents, and tools for the simulation exercise on the communication of information records in the context of the DORA announced in April 2024.

Publication of the final MiCA rules on conflict of interest of crypto assets providers, dated May 31, 2024

ESMA has published the final report on the rules on conflicts of interest of crypto assets service providers (CASP) under the Markets in Crypto Assets Regulation (MiCA).

ESMA provides guidance to companies using artificial intelligence in investment services, dated May 30, 2024

ESMA has issued a statement providing initial guidance to firms using artificial intelligence (AI) technologies when providing investment services to retail clients.

New questions and answers available from May 28, 2024

ESMA has updated the questions and answers relating to: AIFMD, ECSPR, EMIR, MiCA, MiFIR and UCITS.

ESMA reports on the application of the MiFID II Directive marketing requirements, dated May 27, 2024

ESMA has published a combined report on its 2023 Common Supervisory Action (CSA) and the accompanying Mystery Shopping Exercise (MSE) on marketing disclosure rules under MiFID II.

ESMA is consulting on commodity derivatives as part of the review of the MIFID Directive, dated May 23, 2024

The public consultation runs until August 23, 2024.

MiFIR review: ESMA consults consolidated tape providers (CTP) and data communication service providers (DRSP), dated May 23, 2024

The public consultation runs until August 28, 2024.

ESMA makes recommendations to make capital markets more effective and attractive in the EU, dated May 22, 2024

ESMA has published a position paper on “Building more effective and attractive capital markets in the EU”. The paper includes 20 recommendations aimed at strengthening EU capital markets and addressing the needs of European citizens and businesses.

MiFIR review: ESMA consults on three new technical standards, dated May 21, 2024

ESMA has launched a public consultation on non-equity trade transparency, reasonable commercial basis, and reference data as part of the review of the Markets in Financial Instruments Regulation (MiFIR). The public consultation runs until August 28, 2024.



ESMA guidelines establish harmonized criteria for the use of ESG and sustainability terms in fund names, dated May 14, 2024

ESMA has published the final report containing guidelines on fund names that use ESG or sustainability-related terms.

ESMA calls for input on eligible assets for UCITS, dated May 7, 2024

ESMA has published a call for evidence on the review of the Directive on eligible assets of undertakings for collective investment in transferable securities (UCITS). The aim of this call is to gather information from interested parties to assess the possible risks and benefits of UCITS's exposure to various asset classes. The public consultation runs until August 7, 2024.

ESMA proposes amendments to the technical standards for collective investment funds in transferable securities, April 22, 2024

ESMA has responded to the European Commission's request for amendments to the technical standards (RTS) for European long-term investment funds (ELTIF). ESMA suggests in the letter that there should be a limited number of amendments to strike the right balance between protecting retail investors and contributing to the capital markets union objectives.



6. **Selected case law**

European case law

Judgment of the Court of Justice of 16 May 2024 (Case C-695/22)

This judgment concerns a dispute between Fondee, an investment intermediary company, and the Czech National Bank, which imposed a fine on Fondee for transmitting client orders to an investment firm established in another Member State.

In this context, the Court of Justice of the European Union (the "CJEU") ruled on the compatibility between Czech law, which prohibited investment intermediaries—exempt from the application of Directive 2014/65 EU on markets in financial instruments (the "Directive")—from transferring client orders to investment firms in other Member States, and article 3(1) and (3) of the Directive.

The CJEU interpreted article 3(1)(c)(i) of the Directive as allowing entities exempted under that rule to transfer the orders of clients resident or established in that Member State, for execution, to investment firms established in another Member State and authorized for that purpose.

Consequently, the CJEU concluded that national legislation prohibiting these transfers is contrary to the Directive. The CJEU also reinforced the principle of freedom to provide services in the internal market, emphasizing that national regulations must not prevent the crossborder activities of investment intermediaries exempted under the Directive.



Portuguese case law

Judgment of the Supreme Court of Justice of June 18, 2024 (Case 4846/22.0T8BRG.G1.S1)

In this judgment, the Supreme Court of Justice (STJ) ruled on the content of an insurance contract. The plaintiff entered into an insurance contract with the defendant for civil liability for all construction risks, including the work on drawing up the plan, and rehabilitating and expanding a wastewater treatment plant for which the plaintiff was the contractor. During the work, an error in the topographical survey conducted by one of the plaintiff's employees caused the water to overflow and the plaintiff had to carry out costly repairs, for which it wished to be reimbursed. The court had to decide, among other things, whether the claim was covered by the insurance contract entered into by the plaintiff and the defendant, as the plaintiff claimed that the damage was covered by a particular condition of the insurance contract that included “defective work due to the lack of skill or negligence of the plaintiff’s employees.”

The STJ noted that an insurance contract in which the insured only has the option of accepting or rejecting the entire contractual content proposed to it, within the contractual type desired by the parties, is a standard form contract. Therefore, these insurance contracts must be subject to judicial oversight not only in terms of the content of the general contract conditions—and, to that end, the public order rules (article 280 of the Civil Code) and the general good faith clauses (articles 227(1) and 762(2) of the Civil Code) are relevant—but also in terms of protecting the insured’s intention, considering the interpretative criteria of articles 236 and 237 of the Civil Code. In this analysis, individual justice should prevail, as article 10 of Decree-Law 446/85 of October 25 (the “Legal Regime for General Contractual Clauses”) refers to the “context of each individual contract.”

Moreover, the STJ considered that, when interpreting insurance contract clauses, the normal meaning of the declaration must be ascertained, considering the insured’s perspective and, in the event of ambiguity, the most favorable meaning for the insured must prevail. The court also took the view that specific conditions prevail over general conditions as they are specific to each insurance contract, adapting it to the specific circumstances of the risk.

Therefore, the STJ decided that the damage suffered by the plaintiff must be considered to be covered by the insurance contract.

Judgment of the Supreme Court of Justice of March 12, 2024 (Case 20914/21.3T8LSB.L1.S1)

In this judgment, the STJ ruled on the refusal of Caixa Económica Montepio Geral, Caixa Económica Bancária, S.A. (the “Guarantor”) to pay an independent (first demand) bank guarantee. The plaintiff and beneficiary of the guarantee (the “Beneficiary”) entered into a contract with a company (the “Guaranteed Company”) for the subconcession of the private use of a parking lot and, to secure full and prompt compliance with the obligations it had undertaken in that contract, the Guaranteed Company provided a guarantee of €70,500, by means of an independent and irrevocable (first demand) bank guarantee, in favor of the Beneficiary, which the Guarantor agreed to pay. The Guaranteed Company failed to perform its obligations under that contract. After the Beneficiary formally demanded payment of the outstanding amounts, it sent a letter to the guarantor terminating the subconcession contract. Later on, the Beneficiary notified the Guarantor for the purpose of executing the bank guarantee. However, the Guarantor refused to pay the guarantee, contending that the execution of the guarantee was untimely, since it came after the letter terminating the subconcession contract.

The STJ pointed out that, when “an independent (first demand) bank guarantee is executed, the guarantor cannot refuse to pay it based on the fact that the relationship between the parties no longer exists because the contract that led to the provision of the guarantee has terminated. This is because this relationship is totally unrelated to the guarantor; the guarantee is independent of this basic contract. The parties must discuss the contract, even if it has been terminated and



there are adjustments to be made to the relationship between the parties as a result of the termination or the length of time it has been in effect.” Moreover, the guarantee contract stipulated that the Guarantor must pay, on first demand, up to the maximum guaranteed amount, and the Beneficiary does not have to justify the request, nor could the Guarantor refuse to pay on the grounds of termination of the basic contract, to which the Guarantor was not a party.

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