

PPP Projects - Portugal

A research report found that Public-Private Partnerships (PPP's) have proven to be an effective method for the procurement of infrastructure projects globally over the last ten years and the trend is continuing. As more public spending cuts are introduced by many governments and with an estimated annual spend of US\$500 trillion needed until 2030 to meet global infrastructure demands, PPP's will play a fundamental role in providing the finance needed to help restore the finance issues in the infrastructure industry. To glean more information about PPPs in Portugal in particular, we speak to José Luís Moreira da Silva, partner at Portuguese law firm, SRS Legal, about his work on PPPs, and the issues that arise.

Q Can you give me any details of any Public-Private Partnership projects you have been involved with recently?

Just before the Government suspended all PPP projects at the end of the first quarter Of 2011, our Firm was involved in several projects, mainly on roads and hospitals. Because of the financial crisis, we advised the Government on the renegotiation of five road contracts with the concessionaire and the banks, some €2 billion. We also advised the Government on the new major Lisbon Hospital, among several others.

Q What seems to be the current trend in Portugal, are there more PPPs or PFIs at the moment?

The recession, as well as the need to call the EU and the IMF for help has impacted severely in PPP deals.

In Portugal, we saw the previous Government postponing all the major projects, like hospitals, roads, airport and high-speed trains. All were projects announced by the Government and were prepared to go ahead by 2010. We were talking about projects of more than €20 billion that now are going to wait for better days. The new Government

is reviewing all major projects in order to access its continuity.

Portugal signed a MoU with the EU, ECB and the IMF, in May, in order to get access to funding. In that MoU, Portugal obliged itself to review all PPPs and to suspend any negotiations until the final assessment of liabilities and contingencies.

As it is said in the MoU, the most needed progress regarding PPP, is a major revision of the Portuguese legal regimen of transfer of the project risks in order to establish the right balance between public and private. Another public intervention is needed in the creation of a unique public body to manage all the PPP thus creating know-how and experience.

Q What is the most common type of litigation to arise within PPP projects?

We can talk about two distinctive type of litigation arising from PPP projects: (i) the first one may appear at the tender stage - competitors challenging each other to win the tender; (ii) but the most complex litigation normally arises when a change in contract is needed due to a modification of the circumstances, may it be financial or technical.

A litigious matter is resolved in arbitration and it can be of high complexity when involving financial matters, namely a reschedule of the debt.

Q What, in your opinion, are the advantages of PPPs?

PPP Projects made a serious impact in almost all European countries and Portugal is no exception. The EU even encouraged all member states to engage in PPP as a way to more speedily get around the financial crises of 2008.

The major Portuguese public projects and investments of the last decade, such as bridges, highways, defence and schools were not possible without these kind of contracts. Governments, investment banks and private investors soon learned the advantages of participating in a PPP project and of carrying on such kind of projects; most of them would never be possible in a traditional mode.

Q What challenges are faced when dealing with PPP projects? How do you assist your clients to overcome these challenges?

Anyone who wants to establish a profitable partnership with a public body has to be aware of the legal and financial constraints normally surrounding these bodies. Additionally, they need to be aware of the complex decision-making process, as well as the lengthy decision timeframe.

With the correct expert advisors it is possible to profit from a partnership with a public body.

Our firm has an important track record on PPP projects in Portugal on health and road sectors, being advisors for public bodies, private investors and banks on most of the major PPP projects in Portugal for the last decade. We are used to advising international investors and banks and we work in several languages.

Our PPP team has both experience and dimension, and is ready to advise on all major projects. The team comprises specialists in PPP, public law, environment law, public procurement, financial markets, project finance, tax, and corporate finance, plus others that are all nominated as leaders within their practice in Chambers, Legal 500 and IFLR.

Q How can your clients avoid litigation when entering into PPP projects?

By preparing the project with great care and being advised by lawyers at an early stage. We can never put aside the legal counsel when talking of entering into a PPP project. The lawyers need to be part of the team from the first contact with the banks and

at the first stage of preparing the proposal to the tender.

The risks of the project have to be well-defined and the relationship between the members of the project, the lenders, the builder and the operator, have to be well-established so that they all know exactly what is expected of one another.

The negotiations of the contracts have to be dealt with by someone with great experience and know-how. That is part of the success of a PPP project. **LM**



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