
THE
PROJECTS AND
CONSTRUCTION
REVIEW

EDITOR
JÚLIO CÉSAR BUENO

LAW BUSINESS RESEARCH

THE PROJECTS AND CONSTRUCTION REVIEW

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THE
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REVIEW

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JÚLIO CÉSAR BUENO

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EDITOR'S PREFACE

La meilleure façon d'être actuel, disait mon frère Daniel Villey, est de résister et de réagir contre les vices de son époque. Michel Villey, *Critique de la pensée juridique moderne* (Dalloz (Paris), 1976).

In this preface I would like to recognise the great contributions of Robert S Peckar and Douglas S Jones, two leading professionals and lecturers, to the area of projects and construction law. Despite living miles away from each other – in the heartlands of the United States of America and Australia – they have equally influenced generations of lawyers, owners, contractors, engineers, designers, lenders and public authorities in dealing with the complex issues related to the development and implementation of projects, the negotiation of construction and engineering contracts and the challenges of crafting the perfect financing package.

But Bob and Doug's long-celebrated experience has never prevented them from being generous enough to share their knowledge; and we are happy to have two chapters they have specifically prepared for the introductory part of this book, discussing new trends in dispute resolution and relationship contracts. These chapters have been included alongside another from the prestigious law firm Milbank, Tweed, Hadley & McCloy LLP, which offers us a clear and instructive view on the international aspects of project finance and construction.

I would also like to thank all the law firms and their members who graciously agreed to contribute their countries' chapters. Although there is an increased perception that project financing and construction law are global issues, the local flavour offered by these leading experts in 26 countries has shown us that in order to understand the world we must first comprehend what happens in our own communities; to further advance our understanding of the law, we must resist the modern view that all that matters is global and what is local is of no importance.

Finally, I would like to note that this book has been structured following years of debates and lectures promoted by the International Construction Law Committee of the International Bar Association (ICP-IBA), the American College of Construction

Lawyers (ACCL), the Society of Construction Law (SCL) and the Forum Committee on the Construction Industry of the American Bar Association (ABA). Those institutions and associations have dedicated themselves to promoting an in-depth analysis of the most important issues related to projects and construction law practice. I would like to thank their leaders and members for their important support in the preparation of this book.

I hope you enjoy the book and we look forward to your comments and contributions for the forthcoming editions.

Júlio César Bueno

Pinheiro Neto Advogados

São Paulo

September 2011

Chapter 20

PORTUGAL

*Teresa Empis Falcão and Frederico Quintela**

I INTRODUCTION

For the past five years, the Portuguese infrastructure market has proved remarkably resilient despite the difficult market conditions and liquidity constraints, with a significant number of deals reaching financial close in 2008, 2009 and beginning of 2010, particularly in the road, rail and health-care sectors; most of those deals had the benefit of a heavy involvement from the European Investment Bank (‘the EIB’). From the commercial banks’ perspective, soft mini-perms were the structure of choice, with strong incentives for the sponsors to refinance because of cash sweeps and punitive margin step-ups.

The drop-off in government funding for investment in major infrastructures programmes was significant from early 2010 and only a few PPP infrastructure projects had been shelved by the austerity state budget approved in October 2010.

Although also affected by the lack of liquidity in the banking system, the renewable energy sector remained relatively immune to the financial crisis and has supported project-financed structures by virtue of attractive Portuguese feed-in tariffs paid by the public grid for energy produced from renewable sources.

II THE YEAR IN REVIEW

The activity in the project finance market in Portugal is currently low. Many development projects are on hold or may be cancelled because of the economic crisis and the guidelines set out in the memorandum of understanding signed by the Portuguese state, the EU and the IMF in May 2011 as conditions for the bailout to be advanced to Portugal. The new government empowered in June 2011 will be required to implement an austerity

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programme consistent with said guidelines. As part of those guidelines, Portugal has been instructed to review the country's 20 most significant PPP contracts, including its major road PPPs, by the third quarter of 2011, with a view to assessing the feasibility to renegotiate any contracts to reduce the government's financial obligations.

The document also urges the Portuguese government to avoid engaging in any new PPP agreements before the completion of the review on existing PPPs and the relevant legal and institutional reforms are proposed.

III DOCUMENTS AND TRANSACTIONAL STRUCTURES

i Transactional structures

Other than the power projects (where one can come across with the BOOT model), most project finance deals closed to date in Portugal are based on concessions granted by a governmental authority or a municipality and typically follow a BOT/DBFO structure. There is no precedent in Portugal of project financings making use of a BOL structure.

The Companies Code contemplates two forms of limited liability companies that may be used for the purpose of developing projects in Portugal. Those corporate forms are the *sociedade anónima* ('SA') and the *sociedade por quotas*.

The SA is the type of company typically chosen, the rationale being the fact that an SA has a more complex management structure and decision-making mechanism (when comparing with a *sociedade por quotas*) and is generally subject to more stringent corporate governance requirements – both as to management and auditing of their activities – which is generally seen as ensuring a higher level of transparency and allowing a stronger degree of control of the activities of the project company by the stakeholders.

Other important features of SAs are the perceived higher liquidity of their equity participations (shares) when compared to that of *sociedades por quotas*, due to the less restrictive transfer formalities to which they are subject and their ability to raise funds in the capital markets.

With respect to the construction contractor, the corporate form generally used where the same is formed by a group of construction companies is the *agrupamento complementar de empresas* ('ACE'). The ACE is a joint and several joint venture incorporated and registered with the commercial registry and subject to a specific legal regime.

ii Documentation

The underlying contractual framework of a project finance transaction in Portugal traditionally includes a concession contract or a licence giving the project company the right to carry out the project, a shareholders' agreement to regulate the relationship between the sponsors/project company's shareholders and an equity subscription agreement, a set of finance documents and certain major commercial contracts.

The finance package usually comprises a commercial bank credit agreement (as well as an EIB credit agreement and an intercreditor agreement whenever the EIB is also providing finance to the project), an accounts agreement, a forecasting agreement, security documents and direct agreements between the lenders and the contracting

authority and/or the major project parties, all in a form consistent with international market standards.

Among the major commercial contracts, there is typically a construction contract and an operation and maintenance contract. Supply agreements and/or sales agreements may also be entered into in connection with the project.

In relation to the project financings closed in Portugal in the 1990s and early 2000s, it was generally accepted that, given the need to adapt the legal structure of the facility agreements to international syndication, the whole financing package other than the security documents had to be governed by English law, while the project documents, notably the concession contract, were subject to Portuguese law. That ceased to be the case from the mid-2000s onwards, at which point the project financiers active in Portugal had become sufficiently comfortable with the Portuguese law and, therefore, most finance documents executed thereafter are governed by Portuguese law, notwithstanding closely following the structure of a typical English law project finance documentation package.

iii Delivery methods and standard forms

In the vast majority of the Portuguese project finance transactions closed to date, the concession-based construction contracts used do not follow any standard form, such as those issued by the FIDIC, the JCT or the ICE. Hence, the form of construction contract used in each case has varied depending on the sector of industry at stake or the sponsors involved.

The standard forms of construction contracts issued by the FIDIC or adjusted FIDIC-based contracts have, however, been used in Portugal for large power and renewable project deals where the contractor is a foreign entity.

IV RISK ALLOCATION AND MANAGEMENT

i Management of risks

The concession contract allocates the relevant project risks between the contracting authority and the project company. The risks which remain with the contracting authority are covered by the so-called financial balance mechanism which is a key concept in all concession-based project finance transactions in Portugal.

If a financial balance event arises causing a deterioration in the levels of the project ratios, the contracting authority agrees to compensate the project company with a view to restore the financial balance of the concession. Typical financial balance events include unilateral variations by the contracting authority, *force majeure* events, specific change of law and construction delays caused by the contracting authority.

Traditionally, archaeological and ground risks were borne by the contracting authority. That was however not the case in the PPP1 Póceirão-Caia high-speed rail project closed in May 2010 where that risk was partially assumed by the project company and transferred by the latter to the contractor.

The project company generally passes on to the contractor all design and construction obligations, liabilities and risks under a construction contract which is fully back-to-back with the concession contract.

The contractor usually undertakes to perform the design and construction obligations on a turnkey and fixed-price basis and, hence, it bears the risk of price escalation of the material, equipment or workers. In some cases, the contractor is allowed to revise the price annually to reflect inflation.

Other risks that are transferred by the project company to the contractor under a classic concession-based construction contract include the delay and completion of the works, approval risk, expropriation (where the cost and delivery risk is passed on to the project company by the contracting authority), the risk of damage to the works and defects during the defects liability period.

The risks generally covered by the financial balance under the concession contract do not entitle the contractor to suspend the works or in any way relieve the contractor of its obligations under the construction contract. The contractor shall, however, be entitled to compensation in accordance with the 'back-to-back, if and when' principle, (i.e., the contractor will only receive compensation for any of the relevant events to the extent the project company is compensated for those same events under the concession contract).

ii Limitation of liability

Under general Portuguese law, the contractor is liable to the project company for the breach of its obligations under the construction contract. All damages caused by such breach must be compensated, including all direct damages and loss of profit but excluding indirect or consequential damages.

Portuguese law expressly forbids prior general waivers of the right to compensation (although specific waivers after the occurrence of the fact giving rise to the right to compensation are permitted). It is possible, however, for the parties to agree an amount of liquidated damages for breach of obligations, provided that it represents a reasonable estimate of the damages that may result of such breach. Caps on liability are also generally admitted by most Portuguese scholars.

Portuguese project contractors historically have had unlimited liability under the respective contracts. In recent years, liability caps have been introduced in construction contracts in line with the commercial practices in other countries.

In contracts where a liability cap is foreseen, the same is often equivalent to the contract price and, since no restrictions are made to the type of damages that are considered for compensation purposes, the relevant legal provisions will apply. In recent projects, contractors have successfully demanded the introduction of tighter liability caps and the exclusion of loss of profit suffered by the project company.

iii Political risks

The protection of private property is upheld by the Constitution. Accordingly, the nationalisation, expropriation or requisition of private property can only take place on the grounds of public interest and provided that private entities are duly compensated.

Public interest may also constitute grounds for termination of the concession contract by the contracting authority, in which case the contracting authority shall compensate the project company for all the damages caused (which may include loss of profit). The construction contractor may also be compensated under the back-to-back

principle. Some concession contracts set out the method for calculating the damages incurred by the project company in case of termination by reason of public interest. Such calculation usually takes into account the status of construction.

Other political risks, such as war, civil disturbance or strikes may be considered as events of *force majeure* and, therefore, the project company shall be relieved from its obligations under the concession contract to the extent affected by the relevant event of *force majeure*. *Force majeure* events may trigger the financial balance mechanism and, hence, the project company (and consequently, the construction contractor) shall be compensated. In case of prolonged *force majeure* or if the restoration of the financial balance of the concession proves too onerous, the concession contract may be terminated.

Changes in law may also be treated as a political risk. Only a specific change in law entitles the project company to financial balance. The risk of change in general law is typically assumed by the project company.

V SECURITY AND COLLATERAL

The two main types of security that can be created under Portuguese law are mortgages and pledges. Mortgages will entitle the beneficiary, in the event of a default, to be paid with preference to non-secured creditors from the proceeds of the sale of immovable assets or rights relating thereto or of moveable assets subject to registration (such as automobiles, ships, planes). Pledges will confer similar rights to those created by the mortgages but are created in respect of moveable (non-registered) assets or credits. Portuguese law does not recognise the concept of a floating charge.

Portuguese law does not permit the creation of security over future assets and, therefore, promissory agreements and assignments in security are entered into to overcome this hurdle. However, since Portuguese law does not recognise the concept of assignment by way of security as existing in most (if not all) common law jurisdictions, the instrument used is a true assignment of rights, with the occurrence of an event of default being either a condition precedent or a termination event, depending on the bargaining power of the borrower and sponsors (as applicable).

Also, Portuguese law does not allow for remedies other than outright sale, other than in the case of financial pledges where appropriation of financial collateral is permitted on enforcement of the pledge, provided that the parties have agreed a commercially reasonable mechanism for evaluating the price. Financial pledges may be granted over cash on bank accounts or financial instruments (including shares but not quotas in Portuguese limited liability companies) and, more recently, credits over third parties.

Portuguese project finance documentation generally includes direct agreements between the lenders and the contracting authority and the lenders and any major contractors. All direct agreements contemplate step-in rights in favour of lenders, which may be exercised upon the occurrence of certain events: default of the concessionaire under the underlying contracts and, in certain cases, default of the concessionaire under the finance documents.

The creation of security interests over assets located in Portugal (including share pledges) attracts stamp duty, levied on the secured amount. Stamp duty shall not be

payable in the case of security interests that are ancillary and created simultaneously (even if contained in a separate notarial deed or agreement) to a loan provided that the loan has already been subject to a similar taxation (no duplication of tax applies).

Shareholders are generally required to provide on-demand bank guarantees in order to guarantee their equity subscription and other funding obligations. Standby equity commitments to fund general investment, operational costs overruns or loss of revenues are often also supported by on-demand bank guarantees.

In recent health sector PPPs, the shareholders have been requested to provide a corporate guarantee to guarantee, in the proportion of their shareholding in each project company (the ClinicCo and the InfraCo) and up to a certain amount, any lack of funds in the project and breach of the obligations of the project company.

VI BONDS AND INSURANCE

In Portuguese projects, the contractor is usually required to provide a performance bond to ensure the fulfilment of its obligations. In concession-based projects, not only the concessionaire has to provide such performance bond under the concession contract but also the construction contractor and the O&M contractor have to deliver performance bonds under the respective agreements. Most frequently, performance bonds are provided by means of irrevocable on-demand bank guarantees.

In addition, concession contracts foresee the obligation of the project company to insure the works for their reinstatement value. That insurance obligation is commonly transferred to the contractor under the construction contract to the extent that the insurance relates to the activities performed thereunder. Alternatively, the contractor may partially bear the costs of the insurance policies taken out by the project company.

Any parties who are responsible for the design of the works (including contractors who are engaged under design contracts) will be expected to maintain professional indemnity insurance in respect of their design liabilities.

The use of project bonds or monoline structures to finance projects in Portugal is not common practice and the bond refinancing of SCUT do Algarve shadow toll road project, in 2001, is the only known successful precedent.

VII ENFORCEMENT OF SECURITY AND BANKRUPTCY PROCEEDINGS

The enforcement of mortgages shall be made through court proceedings and the proceeds of the relevant sale shall be paid to the mortgagee (after payment of any preferred credits). The enforcement of pledges may be made through court or out-of-court proceedings and the proceeds of the relevant sale shall be paid to the pledgee. Alternatively, the financial pledges may also be enforced by appropriation of the relevant assets.

Appropriation or foreclosure of the asset is not available to mortgagees or pledgees under pledges that are not financial pledges. Should the lenders be willing to acquire the actual assets, they will need to bid in the judicial sale along with, and with no preference above, any other parties interested in the purchase of such property.

Court procedures usually take several months or even more than a year if the complexity of the legal arguments at stake leads to court appeals.

Insolvency of the Portuguese companies is governed by the Portuguese Insolvency Code, which defines insolvency as a debtor's inability to meet its obligations as they fall due. Insolvency proceedings may be filed by the debtor or by any of its creditors. However, the directors of a company have an obligation to file for insolvency within 60 days of the date on which they become aware or should have become aware of the insolvency and failure to do so may give rise to criminal and/or civil liability.

The court assumes the key role of ensuring compliance with the legal rules governing the insolvency proceedings, with particular responsibility for making an initial evaluation of the insolvency petition and an assessment of whether the insolvency and payment plans approved by creditors are legal and should be ratified. It is also required to assess a debtor's alleged insolvency in light of the facts emerging during the proceedings and, if it considers that the facts justify it, to issue a declaration of insolvency. The court's declaration of the debtor's insolvency and the appointment of the insolvency administrator must be published in the Official Gazette and registered at the debtor's commercial registry.

Unsecured creditors have to claim for their rights in the insolvency proceeding within 30 days from the declaration of the debtor's insolvency issued by the court. They may, however, still claim their credits in separate proceedings subject to certain conditions. Claims submitted by unsecured creditors, whose rights have been acknowledged by the court, will be paid on a pro rata basis, depending on the value of the insolvent assets, and provided that all other debt of the insolvent estate has been paid.

Secured creditors are usually notified of the declaration of insolvency since their credits are, in principle, registered at the relevant registry offices. Accordingly, secured creditors shall only be entitled to claim for the amounts owed to them in the insolvency proceedings within thirty days from that declaration. Creditors with security over real property owned by the debtor are firstly paid by the proceeds that result from the sale of such assets. In the event those proceeds are not sufficient to pay the full amount owed to the creditor, the outstanding amount will be treated as an unsecured claim. Even where a security was granted in favour of the creditor, 10 per cent of the proceeds arising from the sale of the respective assets shall be used to pay the debts of the insolvent estate.

After the declaration of insolvency, the company is controlled by the insolvency administrator. The administrator can perform all acts and carry out all transactions within the ordinary course of business in order to allow the continuation of the company's trading. The directors and the shareholders of the company will maintain their functions and competences; however, directors may not receive any remuneration, and are entitled to resign from their offices.

VIII SOCIO-ENVIRONMENTAL ISSUES

i Licensing and permits

Environmental approvals for each project are generally required under Decree Law 69/2000, of 3 May 2000, pursuant to which any application for an environmental approval must enclose a detailed EIA together with details of mitigation measures and

possible alternatives. As referred to below with respect to the PPP legal framework, the PPP Decree-Law (see *infra*) establishes that any procurement procedure shall only be launched after approval of the relevant environmental impact declaration (“DIA”).

Depending on the sector of industry in question, a project may also be subject to environmental licensing under the integrated pollution prevention and control legal framework. The environmental licence (which is required, in particular, for industrial projects) must be obtained before operation commences and must be successively renewed during the entire period of operation of the plant.

Furthermore, in the context of the EU emissions trading system, for projects in certain industrial sectors and meeting certain conditions and/or thresholds, the operators must be entitled to emit the greenhouse gases, and be the holder of emission allowances (one allowance corresponding to 1 tonne of carbon dioxide equivalent).

Other industrial and construction licences and permits may be required depending on the type and specific conditions of each project to be implemented.

ii Equator principles

Most financial institutions operating in the Portuguese project finance market have already subscribed Equator Principles, reflecting the growing importance of environmental issues in Portuguese project finance deals.

iii Responsibility of financial institutions

In general terms, financial institutions are not responsible for any socio-environmental issues arising in connection with a project transaction. Nevertheless, such liability issues may apply to the lenders in a step-in scenario, particularly if the concession contract is transferred to them.

IX PPP AND OTHER PUBLIC PROCUREMENT METHODS

i PPP

Decree-Law 86/2003, of 26 April 2003, as amended (“the PPP Decree-Law”), defines the general rules applicable to any PPP in Portugal. It provides the legal framework and sets out general guidance for the creation of PPPs; however the PPP Decree-Law does not contemplate the substantive rules applicable to PPP contracts but rather focuses almost exclusively on procedural aspects.

Such legal framework takes into account the need to accommodate the type of expenditure within budgetary regulations and requires the preparation of economical and financial surveys to confirm the figures for the public sector comparator (i.e., the cost that would be borne by the public entity if the project were developed by itself under a traditional procurement methods). According to this Decree-Law, a PPP can only be implemented and, consequently, the concession contract awarded if the respective global cost is lower than the public sector comparator.

The PPP Decree-Law requires that any procurement procedure to award a PPP agreement may only be launched after the issue of the DIA, if required in accordance with the environmental legal framework. Such requirement significantly reduces the

environmental risk resulting from the project, since the restrictions imposed by the environmental authorities are already known when the concession contract is executed.

This legal framework foresees six legal instruments for the establishment of a PPP: public works concession contracts, public services concession contracts, continuous supply agreements, service agreements, management agreements and cooperation agreements.

The general PPP regime was preceded by a more specific framework for PPPs in health sector, by means of Decree-Law 185/2002 of 20 August 2002. That piece of legislation, as amended, governs the development of PPPs for the construction, financing, operation and maintenance of health-care units forming part of the National Health Service. An important feature of these PPPs is that they may envisage the private partner not only managing the hospital facilities but also providing clinical services as part of the National Health Service. When both managing facilities and clinical services provision are foreseen, two separate project companies must be incorporated.

More recently, Decree-Law 90/2009 of 9 April 2009 and Decree-Law 194/2009 of 20 August 2009 established the rules applicable to PPPs in connection with municipal water supplies and water and wastewater treatment.

Among the PPP transactions closed in the past five years, there were six availability-based concession projects under the new road programme procured by the state-owned concessionaire Estradas de Portugal and the PPP1 Poceirão-Caia high-speed rail project. The closing of the Hospital de Braga and Vila Franca projects also involved the challenge of successfully separating and allocating risks between two project companies (the ClinicCo and the InfraCo) and concessions in order to build a bankable deal.

ii Public procurement

The Public Contracts Code ('the PCC') was published on 29 January 2008 by means of Decree-Law 18/2008 and revoked, among other pieces of legislation, Decree-Law 59/99 of 2 March 1999, which applied to public works and to public works concessions.

The PCC entered into force six months after its publication, and applies to every public tender procedure launched after that moment; it implemented the public procurement Directives 2004/17/EC and 2004/18/EC of 31 March 2004.

The PCC sets out different procedures for the procurement process applicable to administrative contracts, including those to be entered into in connection with PPP projects: the direct agreement, the public tender, the limited tender by pre-qualification, the negotiation procedure and the competitive dialogue. Differently from the previous legal framework, the PCC does not automatically require a public tender for public works concessions or public services concession, being the awarding entity entitled to choose between the launch of a public tender, limited tender by pre-qualification or a negotiated procedure.

In each procedure allowed by PCC, administrative principles of equal treatment, legality, transparency and competition are duly reflected in the respective regulation. Moreover, such principles are directly applicable to each procedure and may be invoked by any interested party. If an interested party considers that an act under the procurement procedure does not comply with applicable regulation and principles, it may claim directly to the awarding entity but also to a court. In such case, the interested party may ask the court to declare the suspension of all subsequent acts in the procurement procedure by

means of a temporary injunction, in order to ensure that its rights are not irreversibly threatened.

Substantive provisions dealing with public works and the public services concessions are included in the PCC, some of which are mandatory in nature. These mandatory provisions refer to relevant features of a PPP, such as termination by the contracting authority and sequestration/step in. Other substantive provisions of the PCC will only apply in the absence of express provision in the relevant contract.

Compliance with all legal conditions and procedures is subject to validation by the Court of Auditors. After the execution of a PPP agreement by any public entity, the Court of Auditors will verify and confirm whether all legal requirements are fulfilled. The granting of the approval by the Court of Auditors is a condition for the contracting authority to make any payments under the contract; the contract may, however, enter into force prior to the validation and all rights and obligations contained therein may be performed, except for public payments.

X FOREIGN INVESTMENT AND CROSS-BORDER ISSUES

Foreign direct investment is not restricted under general Portuguese law. However, authorisation from the regulator is required in relation to regulated sectors such as energy, water and waste management, telecoms, postal services, railways, commercial aviation and financial services.

Restrictions may apply under the Law of Money Laundering and Terrorism financing, which transposed the EU Money Laundering regulations into Portuguese Law. There may also be temporary embargo situations applying to persons or entities residing in non-EU states.

i Removal of profits and investment

There are no currency controls under Portuguese law and money can be freely transferred into or out of Portugal. Also, there are no restrictions on the remittance of profits or investments abroad.

Under Portuguese tax law, any income obtained in Portugal by non-resident entities, including dividends of shares in a Portuguese company or interest on loans advanced to a Portuguese borrower, will be subject to withholding tax at the applicable rate. The applicable rate is either the general withholding tax rate for dividends and interest payable to non-resident entities (currently 20 per cent) or the rate otherwise applicable under any relevant double-taxation agreement.

XI DISPUTE RESOLUTION

i Special jurisdiction

The Portuguese judicial system is essentially divided into the ordinary and the administrative jurisdictions, the first being formed by the judicial courts, which cover all civil and criminal matters and the latter by the administrative and tax courts, responsible for resolving any administrative or tax matters.

There are no specific courts or tribunals in Portugal when dealing with project finance transactions or construction contracts and, therefore, any disputes arising therefrom will be resolved by the judicial courts or the administrative courts, depending on the nature of the matter in question.

Under Portuguese law, parties may generally elect the jurisdiction that will apply to their contracts or to resolve a particular dispute, provided that, *inter alia*, the contract or the dispute involves rights that can be freely determined by the parties and does not relate to a matter within the exclusive jurisdiction of a court other than the chosen court. There are no other specific jurisdictional issues that need to be considered by foreign project investors.

ii Arbitration and ADR

Major project contracts typically provide that the parties may resort to arbitration for the resolution of any disputes under the same. Standard arbitration clauses refer to the Portuguese Law on Arbitration for the definition of the rules relating to the composition of the arbitration court and the conduction of arbitration proceedings. Where international contractors are involved, the parties often chose to apply the rules of international centres such as ICC, LCIA and UNCITRAL.

Portugal adhered to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (‘the New York Convention’) in 1994. Arbitration awards that are not covered by the New York Convention may still be recognised and enforced in Portugal provided that they comply with certain legal requirements and have been submitted to a Portuguese court for review and confirmation.

In line with international market practice, finance contracts generally refer the disputes arising thereunder to the jurisdiction of the judicial courts.

XII OUTLOOK AND CONCLUSIONS

In light of the adverse economic environment and the stringent guidelines imposed by the EU and IMF for the coming years, the prospects of major new PPP or project finance deals, including the remaining high-speed rail stretches and the new Lisbon airport, coming to the market in the very near future are not strong.

However, the review of the PPPs by the current government and the legal reforms to be adopted as a result will be crucial to enhancing the reliability of the PPP model and the importance of the same to the Portuguese economy, provided that a well-structured risk allocation is established and agreed between the private and public sectors.

The current economic conditions and, in particular the constraints of the lending capacity of the banks, should be seen as an opportunity to stimulate the tapped and untapped capital markets and mini-term lending structures. An increasing appetite for second market acquisitions is also expected.

Appendix 2

ABOUT THE AUTHORS

TERESA EMPIS FALCÃO

Vieira de Almeida & Associados, Sociedade de Advogados, RL

Teresa Empis Falcão was born and raised in Lisbon and graduated in law in 1995 from the College of Law of the Portuguese Catholic University, in Lisbon.

While doing her 18-month articles at Grupo Legal Português (later integrated into Simmons & Simmons LLP), she post-graduated in communication law in 1997 from the Legal Institute of Communication of the College of Law of Coimbra University. A year later, she took an LLM in banking and finance law at the London School of Economics and Political Science. After a nine-month secondment to the London office of Simmons & Simmons LLP, she joined the London office of Allen & Overy LLP as a member of the projects group in September 1999, where she held a variety of positions (from junior to senior associate) until November 2008. In such capacity, she participated in various banking and project finance transactions, both in Portugal and worldwide.

During her time at Allen & Overy LLP, she was seconded to Vieira de Almeida & Associados, RL, from November 2004 to November 2008.

Ms Falcão joined Vieira de Almeida & Associados, RL, in December 2008 and currently is a managing associate in the projects – energy, infrastructure and natural resources practice group. At Vieira de Almeida & Associados, RL, she has been actively involved in or led several transactions, mainly focusing on the infrastructure and energy sectors and acting either as legal adviser to the sponsors or the lenders.

She is admitted to the Portuguese Bar Association, to the Law Society of England and Wales, as solicitor, and to the Brazilian Bar Association.

FREDERICO QUINTELA

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Frederico Quintela was born and raised in Lisbon and graduated in law in 2001 from the College of Law of Lisbon University.

He became a postgraduate in corporate law in 2004 from the College of Law of the Portuguese Catholic University, in Lisbon.

He joined Vieira de Almeida & Associados, RL as a trainee in September 2001 and currently he is a senior associate in the projects – energy, infrastructure and natural resources practice group. At Vieira de Almeida & Associados, RL, he has been actively involved in or led several transactions, mainly focused on the infrastructure, health-care or energy sectors and acting either as legal adviser to the grantor, the sponsors or the lenders.

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