



## Portugal

### Recent developments in privatisations

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The agreement of a Financial Assistance Program to Portugal sponsored by the IMF, the EU and the ECB triggered an ambitious plan of privatisations, with expected proceeds of €4 billion in 2012 and €1 billion in 2013. The state's holdings in the national power grid (REN) and in the most important power supplier (EDP) were already privatised, and some other important companies are in the pipeline for the end of 2012 and 2013 (*inter alia* TAP, the main air carrier, ANA, the airport and infrastructure company and CTT, the postal company).

In order to streamline the process, the legal framework for privatisations was reviewed and updated and Law 50/2011 of September 13 (amending Law 11/1990 of April 5) was enacted. This article discusses the principal features of the amended legal regime and its implementation.

#### Objectives assigned to privatisations

The review of the legislation greatly simplified the decision making process by setting simpler and more realistic objectives for privatisations. The contribution for the development of capital markets and for dispersion of ownership (the so called 'popular capitalism') is no longer a criterion constraining policy makers when implementing a State Owned Enterprise (SOE) or a State shareholding's privatisation, as reference to these goals was deleted in the current version of the law. From now on, reducing public indebtedness and the weight of the state in the economy, as well as modernising and increasing the competitiveness of the privatised companies, are the paramount objectives of a privatisation.

#### Processes to privatise state ownership

Privatisations are necessarily preceded by an independent appraisal of the relevant company and may be implemented either by increasing its share capital or by selling the shares held by the State to private entities.

There are two preferable ways to sell or increase the share capital: public auctions and public offers. However, the law also foresees two other alternatives to implement a privatisation process: direct sales and limited auctions. These could better suit the financial and economic profile of the company and the public interest in the current context. In case one of the latter alternatives is adopted, it is expected that the rationale for such choice is explained in the recitals of the implementing legislation, thus ensuring transparency and accountability.

No matter the alternative chosen by the government, the law allows the company's workers to participate in the process by acquiring or subscribing a certain amount of shares in the privatisation process, as specified in the implementing legislation to be passed for each SOE. However, as privatisation processes are typically phased in, this could be satisfied by allotting a minority stake to workers in one (and not in all) of the phases of the privatisation process.

#### The use of private sales in the recent privatisations

As current circumstances in financial markets do not favour privatisations implemented via market operations, such as public auctions, the first choice for privatising the state's holdings in REN and EDP was to opt for non-market operations, in order to maximize proceeds and attract long term investors committed to the development of the companies. The Decree-Laws implementing the privatisation of REN and EDP also considered possible market operations, but only in case the outcome of the direct sale was not satisfactory.

The great bulk of the State-owned stakes in REN and EDP have been placed via direct sales, comprising one or more 'reference sales' aimed at investors with an industrial or financial profile, which can contribute to the companies' sustainable growth. The Public Agency in charge of the process was mandated to target investors with such a profile, in order to organise a preliminary phase to the sale, in order to gather intentions to participate in the privatisation and proposals for the acquisition of a designated stake. This process combines the features of a restricted auction with those of a direct sale, allowing for an optimal allocation of the stakes to be privatised despite adverse market conditions.

In order to avoid short-termism and speculative investment, the Decree-Laws implementing individual privatisations provided for a lock-up period of up to five years. Any disposal of shares in breach of the lock-up is deemed void. It is also forbidden to enter into options or other derivative agreements with the privatised stake as underlying asset or the constitution of liens and other encumbrances over the shares.