

ADAPTING PORTUGAL'S CONTRACTS CODE TO MARKET REALITY - SÉRVULO

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Lino Torgal

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The new Portuguese Contracts Code of July 2008 was a landmark development in the regulation of public works projects and contracts with the central and local authorities. A year on, the project finance market has faced obvious challenges but the Code continues to face up and adapt to them, says Lino Torgal, partner at Sérvulo, a firm which played the lead role in its drafting.

'Legislation proves its validity when it meets the market reality. Amendments will inevitably be necessary but there is no way that the current situation could have been foreseen when the Code

was being drafted.' Certainly aspects of the Code have already however proved positive in the current economic situation, he says, evidenced by the Portuguese government's continuation of its tenders process for seven new highways, creating 2,000km of new roads.

'Previously, project bidders were selected on the strength of their best and final bid offers and required to have financing in place at the time of bidding. Under the new Code, only the two short-listed bidders have to finalise their financing. When liquidity is short, and money more expensive, this places the project, the bidders and the financiers in a much better position,' says Torgal.

The Code has seen amendments in the past year, notably with regard to the threshold levels above which tenders have to be put out to open competition.

'A strategic decision was taken by the administration that certain public contracts below the thresholds established by the relevant EU Directives (2004/18EC and 2004/17/EC) would not need to be put out to public bidding.

Torgal is open to further amendments, with changes likely to come in relation to public procurement processes and the execution of public contracts in order to guarantee the principle of efficiency.

'Legislation is a starting point and not a sacred book that can hold the economy prisoner.'