

BRISA: THE LEGAL ISSUES DRIVING INTERNATIONAL CONCESSIONS

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Brisa, one of the world's leading motorway concession companies with operations across Europe, North and Latin America, is continuing to face new legal issues

La expansión internacional de la empresa de concesiones portuguesa Brisa durante la última década, ha traído consigo desafíos inevitables para su departamento legal pero también ha

presentado muchas oportunidades para exportar la experiencia y el conocimiento del departamento legal, comenta Tiago Severim Melo.

The international expansion of Portuguese road concession operator Brisa over the past decade has brought with it inevitable challenges for the legal department but also presented opportunities to export the legal departments' own established expertise and know how, says Company Secretary Tiago Severim Melo.

"There is no denying that the change in Brisa has been dramatic, in many respects it is virtually unrecognisable.

But over the same period the nature of road concessions has also changed significantly. In terms of legal work it has meant that we now face considerably more regulatory, environmental and finance issues."

Originally established as Brisa - Auto-estradas de Portugal in 1972, the company has grown to become one of the largest tolled motorway operators in the world and the largest transport infrastructure company in Portugal.

Brisa now operates concessions across Portugal, as well as the US – where it holds the €375m Denver Northwest Parkway concession – and Brazil, where in 2002 it acquired 20% of Companhia de Concessões Rodoviárias (CCR), the largest motorway operator in Latin America.

Such growth has inevitably meant that the legal department has had to learn new legal concepts and embrace new styles of doing business, says Severim Melo.

"The way in which motorway concessions are now tendered and the nature of the relationships concessionaires have with States are now much more complex, often with significant variations between countries.

It means our work is often quite schizophrenic, with us working on many different models."

Brisa's operations also now extend to project management, roadside assistance, and vehicle maintenance.

One of the most successful areas of growth has been its move into electronic toll collection systems. The company has an interest in toll operations in The Netherlands but has also pioneered its own Via Verde payment system, with over 2.1 million users across its concession network.

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"The efficiency of the technology obviously places us in a commercially advantageous position but from a legal perspective it has brought many challenges – our expansion into the US has notably placed us ahead of much of the relevant existing regulation," says Severim Melo.

International growth has though enabled the Brisa legal department to export its own expertise, he says. "We have established a clear set of skills including an awareness of the potential difficulties and problems that may arise in concession agreements. We have solid processes and tried and tested solutions to help resolve issues perhaps even before they arise."

It has been important for the department to share these approaches with partner organisations in the various countries in which Brisa now works, he adds. "We have been able to extend our own expertise through exchanges of personnel and training, notably with CCR across Latin America, which has proved extremely useful to help facilitate processes."

New challenges continue however to arise, with Severim Melo particularly highlighting the environmental concerns that surround new concessions – environmental impact assessments are now a requisite part of the planning process, he says.

Another important area of emphasis is Corporate Social Responsibility (CSR) notably in relation to procurement.

Brisa's entire contract negotiation mechanism has to now take the companies' CSR principles into account.

"Brisa is not using the idea of CSR only for good public relations, it is a conscious part of the way we do business. But it is important that the principles we support are not only adhered to by our own operations but that they extend to our partners, suppliers and sub-contractors," he says.

Brisa places reliance on dedicated outside specialist expertise, as Severim de Melo admits: "The focus of the legal team is very much towards the mainstream issues we most regularly encounter, particularly regulatory issues. It means that we regularly have to go to outside law firms for dedicated expertise, which as the company expands becomes more important."

Tiago Severim Melo is Company Secretary of Brisa - Auto-estradas de Portugal.