

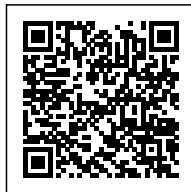
ENERGIAS DE PORTUGAL: GROWING UP GREEN

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The rapid growth and operational expansion of Energias de Portugal (EDP) has inevitably brought with it new challenges for the company's legal department, according to General Counsel, António Pedro Alfaia de Carvalho.

La rápida expansión y crecimiento de Energías de Portugal (EDP) inevitablemente ha traído consigo nuevos retos para la asesoría jurídica, afirma en la entrevista António Pedro Alfaia de Carvalho, director del Dpto. Jurídico. Estas circunstancias han provocado una mayor especialización de sus abogados y una sofisticación en cuanto a la forma de trabajar del equipo de la asesoría jurídica para con la contratación de abogados externos.

In a little over a decade Portugal's Energias de Portugal (EDP) has evolved from a largely domestic-focused electricity company to become one of Europe's leading energy companies, and a world leader in renewable energy.

In 2007, EDP's total turnover was in excess of €11bn, with over 13,000 employees across three continents, and profits in excess of €900 million. The General Counsel at EDP, and the person who has helped facilitate much of this transition for the past 25 years, is António Pedro Alfaia de Carvalho.

Throughout this time the company's legal departments within the group, he says, have had to respond to both the increasing sophistication of the energy sector and the company's growing business portfolio.

Pyramid

Founded in 1976 through the merger of 13 of Portugal's 14 existing energy companies, EDP has had to react to an evolving domestic market and has also gone on to succeed in the highly competitive international energy markets. It has, in addition, emerged at the forefront of international thinking in the renewables sector, capitalising on changes in the emphasis of both national energy policy and consumer demand.

"When I first arrived at EDP the legal department sat at the bottom of a very large decision-making pyramid. We were tasked with providing legal advice on any and all matters," says Alfaia de Carvalho. "The use of external counsel was unusual and predominantly restricted to academic opinions on specific legal issues. We had to operate this way as there was no market for energy sector legal advice – in fact, EDP was the market."

A notable effect of globalisation he adds therefore has been the introduction into Portugal of new players in the energy sector, greater competition, and thus the growing need – both in-house and in private practice – for specialised legal services.

"Now the situation is reversed, there is a strong use of external counsel at EDP and while the legal department still sits within a pyramid it is one with a much narrower base, and where we are much further up the decisionmaking chain."

Expansion

As well as being Portugal's largest electricity generation, distribution and supply company, EDP is among the four largest electricity companies in Iberia, it is also Portugal's second largest gas operator, and this is an area of operation in which it is increasingly active in Spain through its subsidiary Naturgas Energia. Last October the company reached an agreement with Algeria's Sonatrach – the world's second largest liquid natural gas (LNG) exporter – for the supply of LNG to its operations across Iberia.

In addition, EDP also now operates in Brazil, through São Paulo-listed Energias do Brasil (in which it has a 62% holding), and the company is active across France, Belgium, Poland and the US, through its renewables subsidiary EDP Renováveis – which this past month was partially floated on Euronext Lisbon.

Such developments have inevitably had an impact on the role and size of EDP's in-house legal resources.

"The change in the emphasis of the company's operations has inevitably prompted us to restructure and refocus the core skills of the legal team. At times it has meant that we have had to develop certain skills internally, for example an understanding of regulatory frameworks, but it has also meant an increase in emphasis on people who know the business operations well," he says.

Going green

Perhaps the most significant development in recent years has however been the increased

emphasis by EDP on renewable energy sources. The company's renewables subsidiary, EDP Renováveis, is now the world's fourth largest wind power operator and has set a target of increasing its installed capacity from the current 3.7GW to more than 10.5GW by 2012.

The relative impact of this strategy has however had a limited effect on the day-to-day work of the legal department, says Alfaia de Carvalho, both in terms of staff expansion or extra demand on the team's expertise. EDP's operations may now extend well beyond Portugal's borders but he is comfortable to outsource the company's legal needs where it is deemed necessary.

The past year alone has seen them acquire further wind and hydroelectric operations, led by the spring 2007 purchase of Houston-based Horizon Wind Energy for close to \$2bn (€1.5bn) – the third-largest wind farm operator in the US. The acquisition gave EDP operations across four US states with further projects under construction in another four.

Its legal advisers on the deal included long-standing domestic transactional counsel Morais Leitão Galvão Teles Soares da Silva & Associados (MLGTS) and US firm Skadden Arps Slate Meagher & Flom.

"The acquisition of a company, as in the case of Horizon in the US, obviously brings in some extra capacity as they have their own legal department. As a result, the total number of the Group's in-house lawyers has increased. But the policy has consistently been that for the acquisition of wind projects, we shall retain the services of external law firms."

In any event, NEO Energia, EDP's holding company for its European wind power operations, already has adequate expertise in the area, he explains. "Therefore, for the time being, international acquisitions are still manageable by existing legal staff, with the support of external lawyers when needed."

EDP's European renewables operations now encompass Portugal-based Enernova, NEO in Spain, Agrupación Eólica in Spain and France, a majority holding in Greenwind in Belgium, and it has also begun to capitalise on the growing energy needs of the newly expanded EU's accession states.

Last November EDP extended its operations to Poland through the €54m purchase of Relax Wind Parks, a portfolio of projects expected to begin to come into operation in 2009. The deal saw it instruct Lisbon-based Gonçalves Pereira Castelo Branco & Associados (Cuatrecasas), alongside local advisers Gleiss Lutz Pietrzak Siekierzynski in Poland.

December meanwhile saw EDP acquire a minority share (alongside Banco Espírito Santo de Investimento) in Babcock & Brown's €178m portfolio of 11 Portuguese mini-hydro power plants, Pebble Hydro. Full ownership of which will revert to EDP upon competition approval.

2008 has already seen EDP acquire a further portfolio of French wind farms, across Normandy and the Rhône-Alpes region, from EOLE76.

And, capitalising on international investor demand for renewables assets, it has successfully undertaken Portugal's largest ever IPO with the partial flotation of EDP Renováveis valuing the company at €7.2bn.

The in-house role

When it comes to the use of law firms Alfaia de Carvalho is clear as to the role expected of both his own lawyers and those outside. "The in-house lawyers must help the external lawyers, but the external advisers must also know the company, how it is structured, and how it operates. They must understand the company culture and who the right people are to get the right answers – which of course can be facilitated by the in-house legal team."

The in-house legal team can make the role of the external adviser much more focused, he believes. He is clear also that even though a relationship of trust may exist, it remains important for the in-house legal team to be involved in ongoing transactions.

"It is sometimes an inevitable issue that once the outside lawyers know the company structure and the right people, they have the temptation to avoid the legal department when dealing with issues. The legal department does not need to have direct control over every legal issue, but we do need to be aware of what the issues are, and of their status at any given moment," he says.

A reduction in communication between the external and internal legal teams brings with it the potential for the in-house legal department to lose track of what is being done, suggests Alfaia de Carvalho. "You can build processes, and build teams, but it needs both sides to agree to adhere to the rules of engagement and to avoid a lack of awareness."

Flexibility

Alfaia de Carvalho is nonetheless clear about the benefits and flexibility of thinking that external law firms can bring to companies' operations.

"At EDP, legal departments are expected to operate like a virtual law firm within the company, which of course has a tremendous variety of needs. But it is not viable to assume that in-house lawyers are able to cover all of the services required of every aspect of the business," he says.

"External law firms bring with them not only specific knowledge and expertise but also an attitude and agility that I believe is very useful."

When Alfaia de Carvalho first joined EDP the prevailing attitude among the company's lawyers was that they must first learn the law and then apply it to the company's business issues. Now, he says, the opposite is true.

"I have learnt that we need to be much more forward-thinking on the business side, and much less dogmatic on the legal side. We must approach the law as a tool to solve issues, rather than to raise issues."

