

INCENTIVISING PORTUGAL'S URBAN REHABILITATION - F CASTELO BRANCO

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As in many other countries, the older (and sometimes historical) areas of Portuguese cities and their real estate cultural heritage have been progressively abandoned in the past decades, while, at the same time, economic activities and population have moved out in search of new and more attractive urban facilities.

As such, local and central governments have been left to deal with the problems (and costs) arising from the decay of cities central areas and the deterioration of their buildings and infrastructures.

This was the context in which a new Portuguese legal regime of urban rehabilitation was approved on 23 October, through Decree-Law no. 307/2009. Although this is not the first law to address this issue in Portugal, the new provisions aim at facing the problem from a wider perspective, attracting private investors and granting several tax benefits to those who participate in the rehabilitation effort.

El nuevo Decreto Ley luso 307/2009, de 23 de octubre, introduce un marco jurídico relacionado con las necesidades de la rehabilitación urbana y con el fin de atraer nuevos inversores privados a través de varios incentivos fiscales. No obstante las entidades públicas mantienen su papel fundamental en la aplicación de las nuevas reglas. El autor, Miguel Lorena Brito, de F Castelo Branco, opina que, a pesar de la complejidad y burocracia introducidas por el nuevo régimen, esta ley podría facilitar la conciliación entre el interés público en tema general de rehabilitación y las nuevas oportunidades en el mercado inmobiliario.

The process starts with the definition of a given rehabilitation area by the municipality. This decision must not only set the perimeter of the area subject to rehabilitation, but also its goals and strategy, as well as the specific measures to be adopted.

The rehabilitation operation may be qualified as simple or systematic, depending on whether it only involves the recovery of buildings or if it includes an integrated requalification of buildings, infrastructures, public equipment and green belts. This distinction is relevant, as there are different effects from each one of the operations.

Public entities still play a central role under this new law, which attributes the development and management of the rehabilitation process to the municipalities and the approval of financial support or incentives to the central government.

Municipalities are also granted a wide range of instruments to enforce the rehabilitation when owners do not cooperate, including, among others, powers to order demolition, to expropriate and to make forced sales. Such forced sales have been widely discussed and even taken to the Constitutional Court, which, in August 2009, decided that such a process was not in breach of the Constitution.

On the other hand, this new regime opens the door to private investment, as the managing entities may enter into partnerships, not only with the owners of buildings subject to rehabilitation, but also with third entities who wish to participate in the rehabilitation for profit.

For this purpose, managing entities may award concessions or enter into rehabilitation contracts in which the contractor undertakes to plan and perform the rehabilitation, after which he may acquire

the buildings recovered or negotiate their sale (depending on what is foreseen in the contract). It should be noted that the award of such concessions and rehabilitation contracts must comply with the general law on public procurement (more precisely, the Public Contracts Code).

The law also allows real estate investment funds to be incorporated specifically for rehabilitation purposes in which participation units are subscribed (in kind) through the incorporation of assets subject to rehabilitation. These investment funds benefit from several incentives (including the exemption of corporate income tax when at least 75% of their assets are located within rehabilitation areas, applicable to funds incorporated until 31 December 2012).

The law also provides several other tax incentives, including deduction benefits for rehabilitation expenses from income tax, a five year exemption of Municipal Tax (IMI) for rehabilitated properties and exemption from Municipal Property Transfer Tax (IMT) for the first acquisition of rehabilitated residential properties.

Despite the complexity and bureaucratic nature of some of its solutions, this regime goes one step further as it tries to conciliate the public interest of rehabilitation with new opportunities in the real estate market.

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