PORTUGAL EXAMINING PPP PAYMENTS - ESQUIVEL

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The renegotiation of existing contracts may mean a potential change in the next generation of PPPs

El rescate de €78bn en el 2011 de la Troika incluye provisiones que obligan al Gobierno a revisar sus mayores contratos de PPP y a renegociarlos, afirma José Luís Esquível, de Esquível Advogados, lo que significa que el mercado tiende hacia las privatizaciones o hacia el modelo tradicional de concesiones.

The Troika's 2011 €78bn bailout package includes provisions that the Government must go back to the major existing PPP contracts and look at renegotiating them, says José Luís Esquível, Managing Partner at Esquível Advogados.

"To help ease the debt crisis, one of the main aims is to reduce the amount of concession payments made by the Government," says Esquível. To this end, contractors are being asked to see if they can operate projects more efficiently too.

Concession companies enjoyed a strong run of Portuguese public-private partnership (PPP) projects in the mid-2000s. Transport projects and some social infrastructure schemes, such as hospitals and roads, were tendered to private sector developers and investors after the structure was first passed into law in 2003.

The PPP mechanism allows companies to design, build, maintain and – crucially – finance projects directly. The local authorities then offer regular payments for use of the project or payments based on certain performance targets in terms of the operation of the project.

Portugal has truly embraced the PPP model, says Esquível. Some sources, such as PriceWaterhouseCoopers, estimated that at its peak Portuguese PPP activity was the highest in the world in terms of GDP.

Roads and railways were especially active with around 30 deals signed over a five-year period, plus a number of existing concession contracts – such as the Alcântara port, the Oporto Light Rail System and the Vasco da Gama bridge – shifted to a PPP model once the original contract had expired.

One of the key benefits of PPPs, at least for the Government, he adds, is to shift the responsibility for coming up with the billions of Euros needed to fund such programmes from the State to the private sector.

He points out, however, that the Portuguese PPP sector is now entering a crucial time following the bailout.

The Government has also undertaken a thorough review of Portugal's largest PPP contracts and, in August 2012, the first renegotiation was concluded. That deal saw Ascendi, owned by Banco Espírito Santo, and Mota Engil agree to cut the amount they receive from the Government for the Pinhal Interior motorway scheme. Last year also saw other motorway contracts shifted from shadow toll payments (where payment is based on the amount of vehicles using the road) to availability payments (where payment is based on the use of the road only).

It is hoped similar renegotiations could slice payments across the PPP programme by up to a third, says Esquível, saving billions but also putting concession companies in a complicated position.

While they are renegotiating state payments, the financings for the projects – usually in the form of non-recourse debt to banks – is often tied to levels of payments and this could cause a disconnect.

"I don't think this initiative will result in many refinancings because the banks would ask for higher pricing on any new debt, which will make it hard to operate some projects," he adds. "I think the financings will remain as they are and it will be down to the concession companies to handle the lower revenue."

The renegotiations have raised questions over the future of PPPs in Portugal, says Esquível. The Troika, for instance, included a clause excluding new PPPs until the process is finalised as well as provisions for legislation to tighten up the risk profile of such projects.

In essence, this means that the Ministry of Finance will have to scrutinise future PPPs a lot more closely to assess the risks before agreeing any deals.

As such, projects – such as the new Lisbon Airport or the Lisbon-Madrid High Speed Rail Link – remain where they have been for the last decade – at the planning stages.

There could instead be new solutions put forward, adds Esquível, although Portugal is awaiting its latest state budget before a clearer idea of priorities can been established.

"We have to be realistic about the next generation of PPPs and wait to see what happens with the renegotiations. I think the market may shift towards privatisations," he says, "or a more traditional concession model with a different risk matrix."