PORTUGAL'S NEW STATE-OWNED PROPERTY REGIME - PLMJ

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The reform of the legal framework for state-owned property, driven by objectives of simplification, financial rigour and greater administrative efficiency, was enacted by Decree-Law 280/2007 of 7 August, which came into force last September. The significance of this instrument should not be underestimated, since state-owned property has a significant impact on all state finance and, consequently, requires legislation enabling ever more rigorous and efficient management. It is a long document – 128 articles spread over five chapters – so we will briefly highlight just a few key features of the new regime.

The new law expressly repealed a vast number of legislative instruments – some enacted as far back as 1863 – and brought together, in a single instrument, provisions regarding the management of, first, public property owned by the state, the autonomous regions and local governments, and second, private property held by the state and state bodies. It also created a number of new duties regarding asset coordination, management and information in respect of real property belonging to

the administrative and business sectors of the state.

The management of state-owned property must of course follow the fundamental principles that govern state activity in general. The legislative assembly also opted, however, to develop more specific principles applicable to state-owned property, such as those of good management, equity, funds allocation, competition, transparency, protection, cooperation, responsibility and control. It is particularly worth highlighting the charge principle, which allows the area occupied by the real property to be subject to some kind of charge, for example in the form of a monetary payment to be made by the department or body using the property.

Rogério M. Fernandes Ferreira y Olívio Mota Amador, abogados del bufete portugués PLMJ, discuten en este artículo las características claves del decreto-ley 280/2007, de 7 de agosto, en el que el marco jurídico para el sector inmobiliario del patrimonio nacional ha sido puesto al día. La nueva ley, que entró en vigor el pasado mes de septiembre, combina, en un solo documento, las disposiciones con respecto a la gestión de la inmobiliaria pí°blica y privada que pertenece o es guardada por el Estado o cuerpos del Estado, con el fin de simplificar el régimen e introducir una mayor eficacia administrativa.

Under the new regime, public property is deemed to be property classified as such by law or by the Constitution, whether by name or by category. Title is held either by the state, autonomous regions or local government, and includes the powers of use, administration, authority, protection and disposal. Such property falls outside the scope of legal transactions and is not subject to private law rights nor transferable by means of private law instruments, nor may it be acquired under the law of adverse possession (usucapion) or subject to a pledge. It may, however, be assigned on a provisional basis for use by other state bodies and title may be transferred to another national state body to allow the property to be used for its allocated purposes. The new law also expressly provides that the state and state bodies, for the purpose of implementing or operating public services, or achieving other public interest goals, may acquire the right to property or other property rights gratuitously or for valuable consideration, and may rent properties or enter into financial leasing contracts.

The sale of state-owned property will now ideally be carried out by negotiations following a published advertisement and may be subject to contractual conditions, including the right to reserve the use of the property for the state or state institutions. We note the establishment of, first, legal criteria for the valuation of state-owned real property and, second, a nucleus of expert valuers who, as well as determining the market value of the property, will investigate the existence of public sector interests in the valued properties which may give rise to charges or encumbrances.

The reform has established a set of innovative coordination procedures for administering real property, aimed at ensuring the compatibility of administrative orders with economic, financial and policy guidelines (defined both generally and according to sector) and adapting these orders to the circumstances and development prospects of the real property market. The idea is to achieve a more efficient use of assets taking into account their value, rate of occupation and the way in which they are used by the respective departments or bodies. The pursuit of these objectives will now be centred on a programme which establishes the coordination measures to be applied in both public and private state-owned property management without losing sight of the key economic, financial and policy guidelines.

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