

# REASSESSING PUBLIC LAW IN AN ERA OF AUSTERITY - ESQUÍVEL ADVOGADOS

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## **The implementation of austerity plans by the Portuguese Government has led to the cutting back of public spending and infrastructure projects and will inevitably prompt greater analysis of public law issues, says José Luís Esquível, of Lisbon boutique Esquível Advogados**

La implementación de planes de austeridad por el Gobierno portugués ha conllevado el recorte en el gasto público y en proyectos de infraestructuras, y sin duda implicará un mayor análisis de las cuestiones de Derecho Público, opina José Luís Esquível, de Esquível Advogados de Lisboa.

"Public deals are subject to a more demanding control in terms of the risk matrix and financial effects which means, from a public law perspective, that both the preparation of deals and their execution requires new contractual models and legal solutions in order to be accepted by both the Government and the Portuguese Audit Court."

Clients need to be flexible in terms of public deals with the main challenge being the capacity to create structures according to law that also give the necessary comfort to invest in public deals, and which allow the flexibility to accommodate public concerns in terms of public financial cost of the projects.

As regards those projects or concessions that are now subject to cancellation or delay, three main scenarios need to be considered.

If there is no definitive awarding decision, bidders may be entitled to receive compensation relating to direct costs involved on the preparation of the bids.

"But in certain cases this does not happen, if there is an award decision the winning bidder has the right to enter into the contract and if the project is cancelled they are entitled to compensation arising from the non-execution of the contract. Or if the contract is running the contractor is also entitled to compensation according to the contractual terms."

As regards the general outlook in Portugal for new projects he advises that companies need to be alive to the possibility that initial conditions may be changed. "In relation to running projects, clients should also anticipate the needs of the public body involved in order to have time to prepare adjustments whenever it may be necessary."

Despite the financial crisis, Portugal needs private investment and public-private partnerships have been the solution over the past 15 years to the development needs of Portugal in crucial sectors, says Esquível.

"Maybe we need to revise some details of this legal instrument but it remains essential for the development and modernisation of Portugal."