

REGULATORS MUST ENSURE COMPANIES MEET OBLIGATIONS - AVM ADVOGADOS

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✘ With international investors being drawn to Portugal, there is a concern that recent allegations regarding financial irregularities could affect economic confidence

Confidence in the Portuguese transactional market has been growing recently, with trophy assets such as postal service CTT, REN, Energias de Portugal and TAP Portugal all attracting interest from international investors and potentially millions of euros into the flagging economy. However, António Vicente Marques, founding partner of AVM Advogados warns that allegations regarding high-profile financial irregularities involving large publicly-traded companies, and some politicians, may create doubts in the minds of investors – specifically, doubts about the efficiency of the country's capital markets as well as the ability of banking regulators to detect irregularities. He says: "When Portugal received a €78 billion bailout, the country was obliged to privatise assets and make reforms to encourage investment. While it was a difficult process to go through it did promise

great benefits in the long-term. This confidence is now looking fragile as the Portuguese institutions fend off serious allegations that may make companies think twice before investing in the country." A series of alleged irregularities have recently engulfed the country's establishment and senior figures. The most high-profile incident came with the arrest of a former prime minister as well as the resignation of the interior minister after claims of corruption in relation to Portugal's 'golden visa' programme, which grants non-EU citizens a Portuguese passport if, for example, they buy property valued at over €500,000. The collapse of the near €5 billion bailout package for Banco Espírito Santo (BES) has also resulted in glut of allegations of wrongdoing.

"If you are an investor looking at buying assets in Portugal, you may well be questioning the state of the country," says AVM partner Claudia Santos Cruz. "In particular, one begins to question a whole range of regulatory issues relating to the current state of corporate governance, audit standards, market regulation, transparency and the role and responsibilities of regulators. On the other hand the fact that these issues are being investigated and brought to court also suggests that the judicial authorities, police and courts, are becoming more proactive in pursuing white collar crimes."

While Portugal is not the only European country facing corruption allegations – Spain has also recently seen corruption claims, including the arrest of 51 individuals from prime minister Mariano Rajoy's People's Party and the resignation of the health minister over allegations of 'inappropriate' payments – Vicente Marques says that the impact of such assertions can be widespread. He gives the example of Portugal Telecom's tie-up with Brazil's Oi Group, which has run into difficulties because of loans related to BES.

"The current situation is causing problems around the world," Santos Cruz says. "A good example is Credit Agricole, which was one of the biggest foreign investors in BES. The bank recently had to write-off its stake in BES because of the problems, which equated to a €700 million haircut. That does not do much for confidence levels."

Cross-border cooperation is vital

Santos Cruz believes that the issue of cooperation on cross-border enforcement is important. "In modern capital markets, where capital flows easily across national borders and with the growing integration of financial markets, cross-border enforcement cooperation is perhaps the single most powerful tool securities regulators and law enforcement authorities have at their disposal," she says. Financial regulators and law enforcement agencies still appear limited in their powers and efforts to take effective enforcement action, to share enforcement-related information, and coordinate investigations.

Regulators in Portugal need to ensure that companies are meeting their obligations or the country may well end up falling back to pre-bailout levels of disillusion. The purpose of supervision is to ensure the financial stability of institutions and the safety of the funds entrusted to them. However, this does not replace the effective internal controls of credit institutions and financial companies, nor the important role played by institutions' internal and external auditors.