

RESPONDING TO THE GOVERNMENT'S PROJECTS RETHINKING - SÉRVULO

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Consortia members who had successfully bid for now cancelled or postponed projects have to consider all the options available to them

The Portuguese Government's decision to reassess the viability of planned infrastructure projects has inevitably left some investors, constructors and financiers disappointed. The issue for them now is how to plan their response while also looking to new opportunities, says Lino Torgal, public law partner with Sérvulo.

"A number of consortia have clearly lost out as a result of the Government's austerity plans, having already made investments, arranged financing, and anticipated a certain level of profit on the projects they had successfully bid for."

A number of road projects have been cancelled, the proposed new Lisbon airport is still an uncertainty, while a planned connecting bridge across the River Targus has been postponed – although with an expectation of a new tender process within the year. The final stages of the high speed rail service connecting Lisbon to the border with Spain will go ahead although the line to Porto has now been postponed.

"The Government has strong political and public support for its decisions but this is no comfort for consortia that had consistent expectations of winning tenders. The preference is clearly to pay the costs associated with halting schemes rather than committing to the expense of construction."

Questions inevitably surround what remedies are available to previously "successful" consortia, including the option of making claims against the government or public authorities.

"Litigation remains an option but many tender proposals were very explicit on the compensation available in the event of cancellation – limited to the actual and management costs associated with the bid process," says Torgal.

In addition, parties also have to consider whether litigation may prejudice their chances of success in bidding for any resurrected projects, or even those still ongoing. Notable, he says, has been the decision to convert a number of "shadow" toll road schemes into real toll motorways to substantially decrease the Government's level of operation expenditure.

"Many schemes, particularly those with a large proportion of private finance, remain on track, so long as they can of course secure the necessary funds. In the purely public sphere however, the bigger the project the bigger the question mark now surrounding it."