

THE STEPS REQUIRED FOR PORTUGUESE PRIVATISATIONS - ABREU ADVOGADOS

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The Portuguese Stability and Development Plan (PEC) puts on the agenda the privatisation of state owned companies. The targets include companies within various sectors, such as energy, paper, transport, postal services, and companies likely to be privatised in the near future, include TAP, ANA

and REN.

The structure of the sale, timescale and other terms of each of the deals are subject to Government decision. But any privatisation of a state owned company must follow a step plan. The first step is a preliminary evaluation of the target by two independent entities. Subsequently, the state owned company must change into a joint stock company type and adopt new Articles of Association. The third step is the definition of the sale procedure, either by capital increase or share sale and in the form of a public tender, IPO or public subscription.

In the context of the globalisation of the economic crisis, the Portuguese Government has enacted the Stability and Development Plan for 2010-2013¹, hereinafter referred as "PEC", which foresees the privatisation of several State owned companies (wholly or partially).

By selling parts of State-run businesses or whole enterprises, the Government will receive income from the sale and, to a certain extent, deal with the national public deficit (however the funds provided by the enterprise to government through an indirect sale may take various forms other than cash). This goal is both necessary and vital to the Portuguese Economy, since 2011 will clearly be a challenging year, with the country facing tougher austerity measures as a result of the EU and IMF's intervention.

According to PEC, close to twenty listed companies are to be privatised, ranging from bottleneck sectors to those which are more profit oriented; encompassing the energy, transportation, defence and finance sectors. TAP – the Portuguese airline company, ANA - the Portuguese company for the development and management of airports, REN - the Portuguese gas and electricity Network Company and the insurance area of bank Caixa Geral de Depósitos are some of the enterprises that the Government intends to privatise in the short term.

The material issue remains however in establishing how these companies and utilities are to be made attractive to outside private investors.

In fact, although there is a framework law on privatisations, the scenario is to be carried out individually on a case-by-case basis. This flexibility is intended to allow the Government to adapt the privatisation procedure to the market offer and the players at stake.

The procedure is to be assisted and monitored by a Privatisation Committee, which will provide technical support and monitor every stage of the privatisation process.

The first step is related to the assessment of the target enterprise: accounts, business plans, management reports and net asset value, are some of the topics to be taken into account. This task has to be carried out by two independent entities.

In light of these reports, it is hoped that it will be easier to evaluate the scope of the privatisation as well as the success of the market offer.

Secondly, the enterprises to be privatised are to be turned into joint stock companies and subject to new articles of association. The company emerging from the transformation will however inherit every aspect of the former public company, including its rights and obligations.

The third step is the definition of the sale procedure, either by capital increase or share sale, which can be performed through public tender, initial public offer (IPO) or public subscription. In any of these offers, no single entity may acquire the whole of the shares on sale and a percentage of the

share capital will also be reserved for small subscribers, such as workers of the privatised company or emigrants.

In addition, it should be noted that a privatisation may also address the selling of shares or other equity in government enterprises, where the government does not necessarily give up control of them. In fact and in order to ensure the protection of certain national interests, it should be mentioned that (i) the Government has the right to appoint a member of the company and has a veto right for specific resolutions (ii) the Government is entitled to hold golden shares, although this entitlement has been recently questioned by the European Commission.

Based on national interest or economic reasons related to the target enterprise, the Government may decide to privatise it through a closed tender, limited to specially qualified bidders or through a direct sale. In such scenarios, it is common to apply for some restrictions on the future assignment of the purchased shares.

Regardless of the adopted procedure, privatisation proceeds are foreseen to be a breath of fresh air softening the public accounts.

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