



# PORTUGUESE HOSPITAL PPP'S UPDATE

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# Background

PPP have allowed in the past Portuguese and foreign private entities to invest and operate healthcare infrastructures and facilities in Portugal, reducing public spending in new hospitals and improving the service and management levels of the Portuguese healthcare system.

The healthcare sector played a relevant role in the establishment of Public/Private Partnerships (“PPPs”) in Portugal. It promoted new ways of sharing risk for healthcare care investments and new management experiences. It allowed private investors participation in the design, construction, financing and operation of hospital units within the National Healthcare Service (“SNS”).

Although the investment and operation of these units was undertaken by a private partner, SNS beneficiaries maintained the same access rights and privileges to clinical services as in any other public hospital.

On the other hand, PPP also had a positive impact on the running of the SNS by providing a benchmark for the operation of public hospitals.

All started with Amadora Sintra hospital, back in 1996. Unlike the other PPP's that followed, all derived from the design, build, finance and operate model, the Amadora-Sintra hospital was built and financed by the SNS to be operated by a private company, José de Mello Saúde S.A., under a management and operation agreement.

The other Portuguese hospitals currently under a PPP regime are: (i) Loures Hospital (serving approximately 278,000 inhabitants), (ii) Braga Hospital (serving approximately 365,000 inhabitants), (iii) Cascais Hospital (serving approximately 285,000 inhabitants), and (iv) Vila Franca de Xira Hospital (serving approximately 245,000 inhabitants).

According to the Portuguese healthcare Regulatory Authority (*Entidade Reguladora da Saúde*), PPP hospitals have shown a high level of quality regarding to the services provided, with a special mention of the Hospital of Braga and the Hospital of Vila Franca de Xira.

On 1 August 2017, the Portuguese healthcare Secretary of State announced a new hospital in Lisbon, to be built as a PPP, establishing a possible new opportunity to interested healthcare industry private investors. The public tender for its construction is expected to be announced soon.

# Portuguese public hospitals

## Hospitals under SNS direct management

Hospitals under SNS direct management are owned, managed and operated by public bodies within the SNS, which are responsible for commissioning the construction of the facility. Hospitals under public management are financed by the Government budget, although each hospital may enter into contracts with equipment and medical supplies.

The public employment law is applicable to the employees working at these hospitals.

## Public Enterprise Hospitals

Public enterprises (EPE – *Entidades Públicas Empresariais*) are business organizations incorporated as limited liability companies in which the State, or other public entities, may, individually or jointly, exercise, directly or indirectly, a dominant influence.

Therefore, public enterprise hospitals are a part of SNS and are legal entities governed by public law, with a corporate nature and administrative, financial and patrimonial autonomy.

Under Decree-Law no. 93/2005, of 7 June, thirty-one Portuguese hospitals, that were State owned private companies, were transformed in public enterprises.

## Public/Private Partnerships

Given the distinct nature of the scope of PPP in the healthcare sector, the projects are usually divided between two management entities, with different responsibilities, within a close conjunction and complementary framework. Thus, each aspect of the PPP is usually carried out by:

- A building management entity, responsible for the design, construction, financing and maintenance of the hospital's building; and
- A facility management entity, responsible for the acquisition and financing of medical equipment and the maintenance of the clinical services.

The chosen method of establishing partnerships for the private management and financing is through a management agreement that works as a public service concession agreement (please see below more in detail).

This way, the State maintains a greater degree of responsibility, in particular due to the need to ensure that all citizens, without exception, have access to healthcare care through an universal National healthcare Service.

# Portuguese hospital PPP in numbers

Hospital	Investment (000')	Beds	Operating Rooms	Consultation Rooms	Delivery Rooms	Parking Lots
Loures	€84,620	424	8	44	5	684
Braga	€119,500	705	9	60	8	2194
Cascais	€52,657	277	6	33	10	873
Vila Franca de Xira	€76,000	233	9	33	5	844

# A new hospital in Lisbon

On 1 August 2017, the Portuguese healthcare Secretary of State announced a project for the establishment of a new hospital in Lisbon, to be built as a PPP.

Lisbon will have a new Hospital Centre, the Lisbon Eastern Hospital (*Hospital Oriental de Lisboa*, the "Hospital" or "HLO"), which shall be located in the parish of Marvila, an historic district that benefited considerably with the holding of the great event that was the Expo 98.

The plan for the development of the HLO project goes back to 2007, and a public tender for its construction under a PPP has even been launched in 2010. It was awarded to the Solveo consortium formed by Soares da Costa, MSF and Alves Ribeiro

The tender was eventually canceled in 2013, due to the budgetary restrictions Portugal was facing that period and because the State would have to issue 130 million euros guarantee to the EIB. In fact, the Portuguese State would not be transferring the risk of the project, which is one of the main advantages of the PPP.

The Portuguese government announced a possible new public tender for the construction of the Hospital in 2014, which has been successively postponed. On 1 August 2017, the healthcare Secretary of State has officially announced the general terms of the project for the development of the all new HLO, having already been authorized by Council of Ministers the launch of the public tender.

The HLO project shall be implemented as a PPP with the Portuguese State, following an international public tender procedure, that is expected to be published in the last quarter of 2017, without any guarantee being provided by the Portuguese State.

The new Hospital will replace six hospital units that currently are part of the Central Hospital of Lisbon ("CHL"), presumably the (i) Santa Marta Hospital, (ii) Dona Estefânia Hospital, (iii) Santo António dos Capuchos Hospital, (iv) Curry Cabral Hospital, (v) São José Hospital, and (vi) Alfredo da Costa Maternity.

The Hospital will be the largest public hospital investment in the last decades, with a total cost for the State and private partner of around €532 million euros. The construction of the Hospital is expected to start in early 2020, and it shall start operating by the end of the first quarter of 2023.

# The HLO project

**Scope** - The private partner will be responsible for the design, financing, construction, and maintenance of the Hospital's infrastructures, as well as the construction and maintenance of a parking lot with a minimum of 2,945 parking spaces, of which at least 1,450 spaces shall be built on an underground park. The PPP does not include clinical healthcare services, nor the provision of heavy medical equipment that shall be borne by the State.

**Duration** - The PPP will remain in force for 30 years, which includes a 3-year term for the construction of the Hospital and a 27-year term for the maintenance and operation of the infrastructure.

**The Project** - The Hospital will be built in the parish of Marvila, covering an area of 130,412.00m<sup>2</sup>, with a gross construction area of approximately 180,000.00m<sup>2</sup>, comprising most of the clinical activity currently provided through the six hospital units part of the CHL. It must be designed for a total of 875 beds and be prepared for the expansion of such number without requiring additional works. The Hospital must also have an heliport.

**Costs and Remuneration** - The PPP is expected to represent an investment of around €300 million for the private partner. However, the Portuguese State will guarantee an income of €15,3 million per year to the private partner for 27 years starting from 2023 and ending in 2049.

**Financing** - The financing of the project will be the sole responsibility of the private partner, with no guarantee being provided by the State. However, the EIB has informally expressed its willingness to co-finance the project, either directly or through the Juncker Plan. Financing models that offer longer maturities will be privileged.

**Schedule** - It is expected for the procedure to be carried out according to the following timetable:

- Launch of the international public tender: second half of 2017;
- Tender proposals by the bidders: first quarter of 2018;
- Negotiation phase: May 2019;
- Selection of the winning bidder: August 2019;
- Signing of the PPP agreement: November 2019;
- Start of the Hospital's construction: last quarter of 2019;
- Construction conclusion: first quarter of 2022; and
- Start of operation of the Hospital: first quarter of 2023.

# The applicable regulations

The 2012 Public/Private Partnerships Law regulates the State's intervention in the definition, planning, preparation, tendering, awarding, alteration, supervision and global monitoring of PPPs.

Decree-Law no. 111/2012, of 23 May ("Public/Private Partnerships Law") defines PPP as the agreement through which private entities commit themselves before a public partner, to ensure, against consideration, the development of an activity aimed at satisfying a public interest, in which the responsibility for the investment, financing, exploration, and associated risks, belongs, in whole or in part, to the private partner.

Under the PPP, the public partner shall monitor, evaluate and control the implementation of the partnership, to guarantee that the public interest is fulfilled.

On the other hand, the exercise and management of the contracted activity is the private partner's responsibility in whole or in part, according to the agreed terms as well as its financing.

When a public entity plans to prepare the launching of a PPP, a duly substantiated proposal must present to the member of the Government responsible for the respective area (in this case, the healthcare minister). If the relevant Government member decides to initiate the preparation of the PPP, he shall request the Finance Minister to create a joint project team for that purpose.

The project team shall submit a reasoned report with a decision proposal addressed to the Finance Minister and the other members of the Government responsible for the concerned area.

In case of appositive decision, the choice of procedure for the formation of the partnership agreement must follow the Public Contracts Code ("CCP"). The procedure for entering into a partnership contract is conducted by a committee, again designated jointly by the Finance Minister and the other concerned Cabinet members. The concession award must follow within thirty days after receiving the report drafted by the committee of the procedure.

The process is supported by a Technical Unit for Project Monitoring, an autonomous administrative entity responsible for the overall monitoring of the PPP processes and to ensure specialized financial and legal support to the relevant public entities.



# The tendering rules

The procedure will be carried out through an international public tender, without any restrictions on the composition of the competitors groups. Once this tender is published, competitors will have a six-month deadline to submit their tender proposals. The selection of the candidates will be based on two main criteria:

- Price: corresponding to the net present value, as at December 2019, of the private partner's consideration provided at the tender proposal; and
- Technical quality of the project's: with 13 valuation factors and a total of 88 specific features, assuming a greater value than the price criteria.

The two or three best proposals shall be selected for a negotiation phase.

The CCP provides four phases for public tenders (i) the invitation to tender; (ii) the qualification phase; (iii) the negotiation phase; and (iv) the award of the contract.

**Invitation to tender** - The procedure shall start with an invitation to tender published in the Portuguese official Journal and in the official Journal of the European Union to which all interested companies or consortia must submit the tender documents, within the timeframe set by the tender notice, which must be of at least 47 days.

**Qualification phase** - After conducting a formal review of the tender documents, an evaluation committee appointed by the Minister of healthcare and the Minister of Finance shall give a global score to the bids, equal to the result of the sum of the partial scores obtained in each elementary factor or subfactor, multiplied by the values of the respective weighting coefficients.

**Negotiation phase** - The negotiation stage is a phase during which the evaluation committee will entertain separate negotiations with each of the bidders in order to improve the tender and agree on a preliminary draft of the contract. Bidders shall be represented at the negotiation sessions by their legal representatives and may be accompanied by technicians nominated by them. Once the final versions of the tenders have been delivered, no changes will be allowed. The negotiation phase of the tender may be restricted to those bidders whose proposals were ranked first or open to all bidders whose proposals were not excluded.

**Award of the contract** - At the end of the negotiations, the evaluation committee shall draft a final report selecting the best bid, to be approved by the Ministries of healthcare and of Finance. The award decision shall be notified simultaneously to all tenderers. Therefore, the award decision may be challenged within three months from its notification.

# Contractual framework

Decree-Law no. 185/2002, of 20 August (the “SNS Public/Private Partnerships Law”) sets the principles and instruments for the establishment of partnerships in the healthcare sector under private management and financing, between the Ministry of healthcare, or institutions and services integrating the SNS, and private entities.

## Management Agreement

The concession of the public healthcare services to private partners usually takes the form of a management agreement. The main purpose of such management agreement is to provide preventive or therapeutic healthcare services, corresponding to the public healthcare service, through a healthcare care institution integrated or to be integrated into the SNS. The management agreement may also have as a scope the design, construction, and conservation of the SNS hospitals.

The management entity must be a company with its head office and main management located in Portugal and whose exclusive corporate purposes are the same as the scope of the management agreement to be entered into.

The private management partner must offer guarantees of suitability, technical qualification and financial capacity that meet the requirements of the tender procedure.

## Service Agreement

A PPP on the healthcare sector may also take the form of service agreement or collaboration agreement.

Services agreements are entered into by a public authority and a private entity for the provision of services to a public hospital. Service agreements are similar to management and operation agreements and may involve a public service concession or the construction and financing of the hospital.

## Collaboration Agreement

Through collaboration agreements, hospitals that are owned by private operators will provide services to the SNS under a Government concession. The private operators will build, finance and operate the hospital, bearing the financing risks associated with the operation of the hospital. Under collaboration agreements, such private hospitals will also treat beneficiaries of the SNS, under SNS rates for medical treatments provided by other SNS hospitals, thus compensating shortfalls of the SNS without involving any Government investment in increasing the capacity of other hospitals or building new hospitals unless absolutely necessary. For the private operators this creates an additional revenue source.

# The management agreement in detail

Among other matters, the following are some of the key points of the management agreement:

**Scope** - The management agreement shall have as scope: the design, build and manage of the hospital facilities, or the provision of preventive or therapeutic healthcare services, corresponding to the public healthcare service, through a healthcare care institution integrated or to be integrated into the SNS.

**Duration** - According to the CCP, the agreement's duration is thirty years, including the duration of any contractual renewals, except when the agreement provides otherwise. Thirty-year concessions have revealed to be sufficient to attract investors and lenders to fund the construction of massive projects such as the second Tagus Bridge and the Portuguese DBFO (design, build, finance and operate) road program.

**Funding requirements** - The management agreement may establish certain requirements with respect to the financing of the project. Among other things, the authority will have the right to approve the financing arrangements and require a pledge of cash or bonds from the project company guaranteeing the construction of the hospital as well as bank guarantees from the project company's shareholders guaranteeing their funding obligations under the project company's subscription agreement.

**Project company** - The tender document may set out certain requirements as to the legal nature of the project company, typically a limited liability company, lockup period, permitted transfers of shares, equity requirements and issuance of debt or equity instruments.

**Financial provisions** - These include provisions regarding the consideration for the services provided under the concession, payment terms and price revision conditions.

**Changes to the agreement** - The management agreement's content other than the scope may be modified by court or arbitration decision or unilaterally by the public partner based on the public interest (in this last case, the private partner shall be entitled to a restoration of the financial balance of the agreement). The performance of the contract may be suspended in case of: temporary impossibility of fulfilling the contract, namely due to the delay of the public partner in the delivery or availability of necessary means or assets; or non-compliance exception.

The assignment and subcontracting is usually allowed, but they require the authorization of the public partner. In the event of breach of the obligations that may affect the running of the concession, the Government may suspend the concession, taking over the project. The Government also retains the power to cancel the concession prior to its term provided that it compensates the project company.

# New prospects

Until 2010, Portuguese public authorities launched and widely used the PPP model to provide the country with modern infrastructures and services. PPPs were deployed particularly in the road infrastructure sector, as well as in the healthcare sector, placing clinical SNS hospitals under private management with the risk allocation to the private sector.

In recent years there have not been many new projects developed under PPP's, except for the renegotiation process of the already existing road PPP.

However, this background may change, since in August 2017, the Government decided to launch a new public tender to enter into a PPP with a new facility management operator for the Braga Hospital, since the agreement that is now in force shall terminate on 31 August 2019.

The HLO PPP creates a new opportunity in the Portuguese healthcare sector.

Although there are no risk free opportunities, two main factors give comfort to investors in pursuing these opportunities:

- On the one hand, Portugal has an extensive experience in developing projects under design, build, finance and operate schemes since the nineties with the second Tagus crossing, the Pego and Tapada do Outeiro power plants and the DBFO road program; and
- On the other hand, the success of the Loures, Braga, Cascais and Vila Franca de Xira Hospitals, serves as a good example to both Government and private investors as to the costs and benefits associate with public/private partnerships in the healthcare sector, and provides a valuable experience in developing the Government's ambition for the healthcare sector.

It is expected that the launch of the public tender for the HLO PPP is due to be announced soon, taking into account the recent approval by the Government of the launch of the public tender as well as the public expenditure within the PPP.



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# Our Projects & Infrastructures Group

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