

Portugals Hospital PPP Programme: Challenges and Difficulties in Coordinating Clinical Services with Infrastructure

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In the search for the modernisation and revitalisation of the Portuguese National Health Service as a public health system created to reach all the population, ending the traditional character of the public health system, the Portuguese Government found what seems to be the key strategy to provide affordable infrastructure that meets the public needs – public-private partnership in the hospital sector.

The public-private partnership, also known as PPP or P3, can be described, broadly, as a government service which is funded and operated through a partnership between the government with one or more private sector companies – chosen by the government through a fair and competitive tender – in which the government remains actively involved throughout the project's life cycle, but where the responsibilities and the business risks – financial, technical and operational risks in the project – are transferred from the public to the private sector. The goal is to combine the best capacities of the public and private sectors for mutual benefit.

With the purpose of creating a public health system oriented to patients' needs, the Portuguese Government issued an ambitious initiative in the public-private partnership domain by creating, through Decree-Law no. 185/2002, of 20 August, the legal system for public-private partnerships in health projects and by defining the first Government Programme for the development of a set of modern hospital units under the public-private partnership regime.

This Decree-Law was in fact the first government legislative initiative in respect of PPPs. Only one year later was published Decree-Law no. 86/2003, of 26 April, the purpose of which is the definition of the general provisions applicable to government intervention in the conception, preparation, tender, award, amendment and supervision in general of PPPs.

As mentioned, the main goal of a PPP is to share the project risks between the public and the private sector companies, which in the specific case of the PPPs for the development of hospital units implies the challenges and difficulties in coordinating clinical services with infrastructure.

The development of a specific hospital unit is awarded through a Management Contract, foreseen in the Health Bases Law, approved by Law no 48/90, of 24 August. This contract's different denomination, by reference to the more usual concession contract, is intentional with the purpose of clarifying that, in the health area, the government must maintain a superior liability, despite the concurrence of other entities in the management of the National Health Service.

Taking the above into consideration, namely the assumption by the private party of the infrastructure and clinical services risks, the Management Contract includes the promotion of health care in the National Health System vis-a-vis the management of the Hospital Building, which includes the conception, design, construction, financing and maintenance.

The main challenge of the execution of the Management Contract lies on its financing and risk allocation, which requires extensive negotiation, due diligence, legal drafting and extra documentation, not only to make the sponsors and banks comfortable but to enable insurance to be underwritten.

The more adequate solution found to make the execution of the Management Agreement viable for all parties – mainly, to the private party entrusted with its execution and to the banks invited for its financing – is to proceed with two types of financing: (i) a project finance and (ii) a corporate financing allocated, respectively, to two separate management entities: (i) a Management Entity of the Hospital Building (“InfraCo”) and (ii) a Management Entity of the Hospital (“CliniCo”).

The InfraCo shall be liable for the conception, design, construction, financing and maintenance of the Hospital Building and the CliniCo for the execution of promoting preventive or therapeutic health care in the National Health System. With two separate entities, two separate financings, the aimed separation between infrastructure risks and clinical services risks is achieved.

Although the InfraCo does not assume any liability for the rendering of clinical services, and therefore for the clinical service risk (and vice-versa), each Managing Entity is bound to comply with its obligations before the government and the other Managing Entity as well.

The above mentioned obligations are object of a new project document, the interface management entities agreement, the goal of which is to regulate the exercise of the rights and obligations of each management entity before the grantor, under the terms established in the tender document and/or in the Management Agreement.

The financing structure of the Management Entities is based upon two different criteria: on one hand (i) the debt financing of the infrastructure concession shall be focused exclusively on the infrastructure project, i.e., the viability of the project based essentially on its expected cash flows and shall be secured by the project assets; on the other hand (ii) the debt financing of the clinical service concession, attributed to CliniCo, shall be based upon the balance sheet of the equity sponsors and be secured by the general assets or creditworthiness of the equity sponsor. This type of financing usually comprehends a credit facility as well as leasing facilities for the acquisition of medical equipment.

That being said, the infrastructure lenders do not take any clinical service risks, which are absorbed by the CliniCo, although there are some pass-through penalties to InfraCo for predefined failures. The infrastructure concession is based on a traditional hospital PPP availability mechanism, and the clinical concession is based on a detailed performance grid detailing penalties and deductions to the availability payment, with a performance guarantee from the sponsors.

As a forerunner in the first infrastructure financing operations under the project finance regime, MLGTS has been continuously involved in the implementation of this type of project, both from the perspective of the financing entities and of the promoters.

MLGTS has recently been invited by the commercial banks to assist them in the development and execution of a PPP, in the health area, for the conception, design, construction, financing, maintenance and exploration of the new hospital building in the

Loures area, near Lisbon, to be incorporated in the National Health Service and in the Health Care Delivery System, awarded through a public tender launched in 2007.

This new hospital is one of the 10 hospital units the development of which was foreseen in the Government Program of Public-private Partnerships, being the remaining units situated in the following areas: Cascais, Braga, Algarve, Vila Franca de Xira, Sintra, Vila Nova de Gaia, Póvoa de Varzim/Vila do Conde, Guarda and Évora.

Of the above mentioned hospital units, only three PPP hospital projects with a clinical services concession have already been completed – Cascais, Braga and Loures which reached, respectively, financial close in February 2008, February 2009 and December 2009.

The new hospital in the Loures area required a project financing of €82,026,000 and corporate financing of €32,500,000 comprehending a credit facility of a maximum of €2,500,000 and leasing facilities for the acquisition of medical equipment of a maximum of €30,000,000, all together in a total amount of €114,526,000. The bank syndicate was composed by BES, BBVA, BANIF, BARCLAYS and CGD.

The InfraCo liable for the hospital building, led by Mota-Engil, is composed of Opway, BES, Espírito Santo Saúde and Dalkia, having the responsibility of constructing, financing, operating and maintaining the hospital building for 30 years. On the CliniCo side, liable for the assurance of the clinical services of the hospital for a period of 10 years, is the company led by Espírito Santo Saúde and composed of Hospital da Arrábida, Clíria, BES and Opway.

The hospital, which will be named “Hospital Carolina Beatriz Angelo”, will have a 424 bed capacity and around 1,200 employees, and its construction started on the 12 January 2010, with conclusion scheduled for 2012.