

# CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | PUBLIC LAW

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I Highlights	2
II National Legislation	3
III National Case Law	6

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## NEWSLETTER PUBLIC LAW

### I HIGHLIGHTS

#### **Decree-Law No. 129/2013 of 6<sup>th</sup> September**

Following the commitment assumed by the European Union, the International Monetary Fund and the European Central Bank, the Government decided, among other measures adopted towards promoting national macroeconomic adjustment, to approve the privatisation of the company CTT — Correios de Portugal, S. A. (CTT, S. A.), thereby creating the conditions to improve the functioning of the market, in particular by increasing competition, to the benefit of consumers and of society as a whole.

In this context, the privatisation approved by the Ministry of Finance, through Decree-Law No. 129/2013 of 6<sup>th</sup> September, is sought to take effect by the disposal of shares representing up to 100 % (total) of its share capital.

The case under consideration is primarily subjected to Law No. 71/88 of 24<sup>th</sup> May, without prejudice to the procedure being subjected to the fulfilling of requirements to ensure greater transparency and competition, in line with European good practices that are being applied under the Framework Law of Privatisations, approved by Law No. 11/90 (that was later slightly amended).

To begin with, the disposal must take place by means of sale through direct negotiation, the “direct sale by reference”, provision being also made for the disposal through public offering, which can be combined with a direct sale to one or several financial institutions and, without prejudice to the right of the employees of CTT, S. A., and of the companies that control, or are controlled by, or that belong to the same group of CTT, S. A., acquiring a block of shares earmarked for that purpose in an offer addressed to the general public of up to 5% of the share capital.

The final and concrete conditions of the necessary transactions to materialize the direct sale by reference, the public offering and of the direct institutional sale – that is, all types of sales – of shares representing the capital of CTT, S. A., are established by resolution of the Council of Ministers.

Finally, the Government, through PARPÚBLICA — Participações Públicas (SGPS), S. A. -, has provided the court of auditors (*Tribunal de Contas*) and, when applicable, the Securities’ Market Commission, all the information relating thereto.

**Decree-Law No. 127/2013, of 30<sup>th</sup> August**

This legislation establishes the legal framework of industrial emissions applicable to integrated pollution prevention and control, as well as the rules designed to avoid or reduce emissions in air, water and soil and the production of residues, transposing Directive 2010/75/EU of the European Parliament and the Council of 24<sup>th</sup> November 2010 on industrial emissions (integrated pollution prevention and control).

The Directive 2010/75/EU of the European Parliament and the Council of 24<sup>th</sup> November 2010 acknowledges the need for a legal framework designed to protect the environment as a whole, thus overcoming the problems caused by the fact that there are different methods of controlling emissions into the air, water and soils.

Decree-Law No. 127/2013 of 30<sup>th</sup> August, which transposes this directive, seeks to promote a situation which, in addition to the increasing of the investment and sustainable development – by introducing typically fast procedures and making environment-relating licensing and granting of permits easier – also encourages all parties to adopt methods to enhance accountability.

This legislation also aims for the issuing of a single licence incorporating the facilities' operating conditions concerning different environmental areas. Considering that the rules regarding licensing are related with other rules (e.g. *Sistema de Indústria Responsável*), this Decree-Law sought to safeguard the harmonisation of the different procedures.

In connection with the application for a licence or permit, it is established the obligation to provide information enabling a quantitative comparison regarding the situation of the site between a time prior to the beginning of the activities and after the complete cessation of those activities.

Finally, this Decree-Law also sets out guidelines concerning *e-government* and seeks to contribute towards good practices when it comes to the relation between economic players and the Public Administration.

## II NATIONAL LEGISLATION

### **Energy**

***Portaria (Ordinance) No. 237/2013 of 24th July***

It establishes the legal framework for the prior notification procedure regarding the activity of production of electricity under a special scheme, as well as the rules applicable to the issuing, modification, transfer and expiry of the decision of admission of the prior notification.

**Portaria (Ordinance) No. 215-A/2013 of 1<sup>st</sup> July**

Seventh amendment to *Portaria* No. 592/2010, of 29<sup>th</sup> July setting out the conditions applicable to interruptibility services to be provided by an electricity consumer to the transport network operator, as well as the rules governing the retribution for such services and the penalties imposed for possible breaches, aiming to harmonise interruptibility conditions in the Iberian market.

**Portaria (Ordinance) No. 243/2013 of 2<sup>nd</sup> August**

It sets out the terms, conditions and criteria concerning allocation of capacity for injection into the public service's electricity grid and the acquisition of production licences and the corresponding operating licence.

**Law No. 58/2013 of 20<sup>th</sup> August**

Approves the requirements to take up and pursue the activity of qualified expert for energy certification and as buildings and systems installation and maintenance technician, bringing them in line with the provisions of Law No. 9/2009, of 4 March transposing Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005, on the recognition of professional qualifications.

**Decree-Law No. 118/2013, of 20<sup>th</sup> August**

Approves the Buildings' Energetic Certification System, the Regulation on Energy Performance of Residential Buildings and the Regulation on the Energy Performance of Commercial and Services Buildings, and transposes Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010, on the energy performance of buildings.

**Portaria (Ordinance) No. 288/2013 of 20<sup>th</sup> September**

Establishes the procedure for the elaboration of studies on the impacts of out-of-market measures and events recorded at the European Union level and their redistributive effects on the various gains that influence electricity tariffs, and the cost sharing mechanism for costs of general economic interest supported by power producers under the ordinary regime and other producers that do not fall within the guaranteed remuneration regime.

**Town planning**

**Law No. 47/2013 of 10<sup>th</sup> July**

It represents the second amendment to the Decree-Law No. 123/2009 of 21<sup>st</sup> May, by laying down the legal framework for construction, access and installation of electronic communications networks and infrastructures.

## **Public Contracts and Privatisation**

### **Contract (abstract) No. 545/2013 of 19<sup>th</sup> August**

Publishes the abstract of the addendum to the concession contract for the exploration of feldspar and quartz mineral ores No. C-64 with the designation Bajoca, entered into with FELMICA - Sociedade Mineira da Carrasqueira, S. A.

### **Resolution of the Council of Ministers No. 57-C/2013 of 6<sup>th</sup> September**

It determines the admission of potential reference investors that have submitted acquisition intentions to participate in the following stage of the direct reference sale process in connection with the reprivatisation process of insurance companies of the Caixa Geral de Depósitos group.

### **Resolution of the Council of Ministers No. 60/2013 of 20<sup>th</sup> September**

Specifies the unit value of the shares included in the block earmarked for ANA's - Aeroportos de Portugal, S.A. - employees in accordance with No. 1 of the Resolution of the Council of Ministers No. 101/2012 of 7<sup>th</sup> December, and determining the period of the public offering and other formal requirements.

## **Regulatory**

### **Regional Legislative Decree No. 9/2013/A of 1<sup>st</sup> August**

First amendment to the Regional Legislative Decree No. 19/2011/A of 16<sup>th</sup> June, which regulates the practice of tourist information activity by professionals in the Autonomous Region of Azores.

### **Regional Regulatory Decree No. 9/2013/A of 1<sup>st</sup> August**

It represents the first amendment to the Regional Regulatory Decree No. 14/2012/A of 22<sup>nd</sup> May, which adopts the Regulation on the practice of Industrial Activity in the Autonomous Region of the Azores.

## **Environment**

### **Decree-Law No. 96/2013 of 19<sup>th</sup> July**

It establishes the legal framework that regulates, in mainland Portugal, forestation and reforestation actions using forestry species.

### **Decree-Law No. 110/2013 of 2<sup>nd</sup> August**

Fifth amendment to the Decree-Law No. 366-A/97 of 20<sup>th</sup> December, and transposing the Commission Directive No. 2013/2/EU of 7<sup>th</sup> February, altering Annex I to Directive 94/62/EC of the European Parliament and of the Council on packaging and packaging waste.

**Decree-Law No. 120/2013 of 21<sup>st</sup> August**

It approves the exceptional provisions for the extension of the deadlines for the performance of works, the expiry of the licence or the admission of a prior notification and the submission of an application for the corresponding permit or authorisation for use, provided for in articles 58, 59, 71 and 76 of Decree-Law No. 555/99 of 16<sup>th</sup> December.

III NATIONAL CASE LAW

**Judgment of the Constitutional Court No. 474/2013, Case No. 754/13**

Holding unconstitutional the rule set out in article 18(2) of Decree No. 177/XII, which lays down the legal framework of the requalification of employees, in conjunction with the second, third and fourth parts of article 4(2) of the same Decree.

The Constitutional Court emphasises that, being solely dependent on the reduction of the State budget, the requalification process is seriously lacking in terms of legal basis justifying the limitation of certain rights, thereby breaching the principle of job guarantee and security and the principle of proportionality. The Government can only take the intended measure (through the approved Decree) if it sets out unquestionably clear and exact criteria that make possible and lawful the intervention of the Government in the restriction of rights, freedoms and guarantees on which the principles above are based. These criteria have not been presented.

The court also held unconstitutional the rules established in articles 4(1) and 47(b) of the same Decree. This decision of unconstitutionality is based on the breach of the principle of the protection of trust, considering that according to both provisions this requalification process (article 4(2) of Decree 177/XII) is also mandatorily applicable to public servants who, up to the effective date of the Decree were employed under a definitive appointment scheme (*regime de nomeação definitiva*).

## **CONTACT**

### **CUATRECASAS, GONÇALVES PEREIRA & ASSOCIADOS, RL**

Sociedade de Advogados de Responsabilidade Limitada

#### **LISBOA**

Praça Marquês de Pombal, 2 (e 1-8º) | 1250-160 Lisboa | Portugal

Tel. (351) 21 355 3800 | Fax (351) 21 353 2362

lisboa@cuatrecasasgoncalvespereira.com | [www.cuatrecasasgoncalvespereira.com](http://www.cuatrecasasgoncalvespereira.com)

#### **PORTO**

Avenida da Boavista, 3265-7º | 4100-137 Porto | Portugal

Tel. (351) 22 616 6920 | Fax (351) 22 616 6949

porto@cuatrecasasgoncalvespereira.com | [www.cuatrecasasgoncalvespereira.com](http://www.cuatrecasasgoncalvespereira.com)

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