

## GENERAL INFORMATION

<b>Capital:</b> Praia	<b>Population:</b> 587,925 (2021)	<b>GDP (USD):</b> 1,936 Billion (2021)
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## LEGAL AND INSTITUTIONAL FRAMEWORK

### PPP Law and other applicable texts

- Decree-Law No. 63/2015, of 13 November, which defines the general rules applicable to the actions of the State in the prioritisation, design, preparation, hearing and public consultation, tendering, award, amendment, supervision, global monitoring, and termination of public-private partnerships (“PPP Law”)
- Resolution No. 104/2022, of 16 November, which approves the Agenda for Privatisation, Concessions, and Public-Private Partnerships
- Decree Law No. 57/2016 of 9 November extinguishing the Public-Private and Privatisations Unit created by the PPP Law
- Decree Order (“Portaria”) No. 25/2017 of 30 June setting up the new Unit for Monitoring the State Business Sector (*Unidade de Acompanhamento do Sector Empresarial do Estado – “UASE”*)

### Other applicable sectoral laws

- Law No. 88/VIII/2015, of 14 April, approves the Public Procurement Code (“PPC”)

### PPP Unit (Articles 4 PPP Law)

- UASE is the PPP Unit, although it has broader competences than just those connected to the implementation of PPPs
- The PPP Unit’s main responsibility is to be the technical body supporting the Ministry of Finance and Planning in PPPs. It is meant to lead and coordinate PPP processes from the public sector standpoint.

### Definition (Article 3 PPP Law)

- Public-Private Partnership is the legal relationship established by contract or union of contracts, whereby private entities, designated as private partners, undertake, on a long-term basis, to a public partner, to ensure the development of an activity tending to satisfy a collective need in which (i) the financing and responsibility for the investment and operation are incumbent, in whole or in part, on the private partner; (ii) in which there is a need for payment of periodic instalments by the public partner due to the absence or insufficiency of the fees and tariffs regime to generate attractiveness to the private partner in view of the risk and return profile of the project; or/and (iii) in which part or

all of the engineering, construction, maintenance, operation, integration of suppliers, demand and financing (via own and third-party capital) risks are allocated to the private partner (iv) which may involve the performance of works and services of a high degree of specialisation and technical complexity

## General Principles

### (Article 3 (2) and 7 PPP Law)

- Efficiency in the fulfilment of public missions and in the use of the public resources
- Respect for the interests and rights of the recipients of services and the private entities entrusted with their execution
- Non-delegate of regulatory and jurisdictional functions and exercise of police power
- Budgetary and fiscal responsibility in the conclusion and implementation of partnerships
- Transparency of procedures and decisions
- Allocation of risks according to the parties' ability to manage them more efficiently
- Financial sustainability and socio-economic benefits of the PPP project
- Effectiveness in the forms of control of the evaluation of the private partner by the public partner, citizens, and users

## Tendering and Contracting procedures/Choice of the private partnership

### (Article 6(2), 17 PPP Law

### Article 29-39 PPC)

- The choice of the procedure for the formation of the partnership contract must observe the regime in the Public Procurement Code
- The procedure is monitored by the PPP Unit “UASE”, which assumes the role of assisting the contracting authority in the procedure
- Five procedures are provided for and described in the Public Procurement Code: (i) Public Tender (Art. 29); (ii) Choice of Public Tender in two phases (Art. 36); (iii) Choice of the restricted tender procedure by prior qualification (Art. 37); (iv) Choice of the restricted tendering procedure (Art. 38); and (v) Choice of direct award (Art. 39). The law contemplates exemption from holding a public tender (Art. 35).

## Project Evaluation

### (Article 13 PPP Law)

- The PPP project evaluation comprises the following phases: (i) preliminary proposal and expression of interest from the private sector; (ii) pre-feasibility studies; (iii) feasibility studies; (iv) public hearing and consultation. The authorisation of the project is the responsibility of the Council of Ministers (Art. 13.25)

## Negotiation and Signature of

- The member of the Government responsible for the area of

<p><b>PPP Contracts</b> (Articles 23 PPP Law)</p>	<p>finance determines the constitution of a Negotiation Commission (23.4); The Government member may request members of the UASE to be part of the Negotiating Committee (23.4)</p> <ul style="list-style-type: none"> <li>- No specific provision in the PPP Law regarding the PPP contract's signature</li> </ul>
<p><b>Rights and Obligations of the public partner</b> (Article 10 PPP Law)</p>	<ul style="list-style-type: none"> <li>- The public partner has the right to redeem the contract based on ponderous reasons of public interest, defence of public interest, health, order, and security, duly founded in the terms of the law and of the contract</li> <li>- Under the PPP Law the risks allocated to the public partner are exhaustive</li> </ul>
<p><b>Rights and Obligations of the private partner</b> (Articles 5 and 10 PPP Law)</p>	<ul style="list-style-type: none"> <li>- The obligation of the private party to provide performance guarantees in an amount sufficient to and compatible with the risks and obligations it undertakes under the PPP (Art 5 (j))</li> <li>- Obligation to assume the risk of financial unsustainability of the partnership, for reasons not attributable to the public partner, or to a situation of force majeure, must be, as far as possible, transferred to the private party. (Art. 10 (c))</li> <li>- Under the PPP Law all risks not allocated to the public partner will be interpreted as explicitly and implicitly allocated to the private partner (Art. 10 (e))</li> </ul>
<p><b>Obligations of both public and private partners</b> (Article 8 and 10 PPP Law)</p>	<ul style="list-style-type: none"> <li>- Regarding the sharing of responsibilities in PPPs, the public partner is preferably responsible for monitoring, evaluating, and controlling the execution of the object of the partnership, to ensure that the underlying public interest goals are achieved (Art. 8 (a))</li> <li>- To the private partner the financing, in whole or in part, of the exercise and management of the contracted activity (Art. 8(b))</li> <li>- The sharing of risks between the public partner and the private partner must be identified in the contract and must comply with the principles set out in Article 10 of the PPP Law.</li> </ul>
<p><b>Applicable Law/Dispute Resolution</b> (Article 15.3 (e) and 5.2(e) PPP Law)</p>	<ul style="list-style-type: none"> <li>- No specific provision</li> <li>- The PPP Law establishes the possibility of adopting institutional arbitration to resolve conflicts arising from the execution of the contract (Art. 15.3 (e))</li> <li>- The PPP contract should include methods of dispute resolution and rules on arbitration (Art. 5.2 (e))</li> </ul>

## EXAMPLES OF PROJECTS STRUCTURED AS PPP

Electricity

Electra Cabeolica Wind Project