INFORMATIVE NOTE

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PUBLIC & ADMINISTRATIVE LAW

CHANGES TO THE CONTRACTUAL RULES FOR INVESTMENT

Decree-Law 191/2014 was published on the last day of 2014. This new Decree-Law establishes a special legal framework on contracting support and incentives exclusively applicable to Large Investment Projects eligible for assistance from the Portuguese Agency for Foreign Investment and Trade - Agência para o Investment e Comércio Externo de Portugal, E.P.E. ("AICEP").

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Naturally, the aim of the support and incentives is to contribute to the development, competitiveness and dynamism of the Portuguese economy. Decree-Law 191/2014 defines Large Investment Projects as:

a) Projects with an investment value above 25 million euros, regardless of the sector, the size, or the nationality and legal nature of the promotor;

b) Projects which, although their value is below 25 million euros, are the initiative of a company whose annual invoicing, consolidated with the economic group of which they form part, exceeds 75 million euros, or of a non-business entity with an annual budget in excess of 40 million euros.

Under the RCI, AICEP will be the sole point of contact for investors and, on behalf of the Portuguese State, it may grant both financial incentives (repayable or non-repayable) and tax benefits. On an exceptional basis, AICEP may also grant specific amounts to mitigate red tape costs, namely:

a) Compensation for the costs of a shortage of professional specialists;

b) Compensation for the costs of distance from sources of know-how and innovation;

c) Investments made by the State and other public entities in infrastructures.

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Without prejudice to the fact that AICEP, as we have said, is the sole point of contact for investors, the law expressly provides that:

a) investments with a total eligible value in excess of 25 million euros are subject to approval by the Inter-ministerial Committee for Coordination of the Partnership Agreement, as provided for in Decree-Law 137/2014 of 12 September, which regulates the Governance Model for European Structural and Investment Funds 2014-2020;

b) any payments to be made in carrying out investments in infrastructures require prior demonstration of budget coverage.

Finally, the provisions of articles 6 and 8 of the new Decree-Law – addressing the renegotiation and termination of investment contracts respectively – are both significant and a welcome change.

Article 6 of the new law – in the wake of the Public Contracts Code, ("PCC"), but apparently even more broadly – allows renegotiation of investment contracts in the event of a change in circumstances or when required by the public interest. Article 8 governs the exercise of the right to terminate the contract. When it is terminated by the investor, following the PCC, this must be done through the courts or through arbitration. Importantly, the legal rules expressly allow the parties to agree to arbitration, except for issues relating to tax benefits.

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