

Brazil Announces Tenders for 34 Infrastructure Projects for 2016/2017

On September 13, Brazil's President Michel Temer announced the main guidelines and projects of the Investment Partnership Plan (the "Plan"). The Plan aims at attracting local and international investors to acquire state-owned companies and to develop major infrastructure projects in Brazil.

The Government announced 34 projects and privatizations, including airports, power generation and distribution companies and railways, one lottery company, mining, oil and gas bid rounds, ports and water treatment companies. The requests for proposals will be launched as of the last quarter of 2016 (see complete time schedule attached).

On September 14, the Board of the Plan announced its first 6 resolutions (details ahead). This E-Alert analyzes the main guidelines and regulations announced to date, with focus on investors' standpoint.

Guidelines

Public hearing; prior submission to the Federal Auditing Court: the request for proposals will only be launched after a public hearing process and the approval from the Federal Public Auditing Court ("Auditing Court"). These measures may mitigate risks of legal challenges and should bring legal certainty to the public tender process.

The public hearing (which should last at least 45 days) will give to interested investors an opportunity to discuss technical and legal aspects of the projects, and to suggest improvements before the tender documentation is published

Tender documentation published in English, which is meant to attract international investors. For more details click to see the [overview of the Plan](#) and the [Plan's map](#) published in English language by the government.

Antitrust: Brazilian watchdog CADE will be involved to ensure free competition and to curb illegal practices such as cartels in the public bids.

Extended time to deliver bids: timeline to deliver the bids was extended to a minimum of 100 days after publication of the request for proposals (current timelines vary from 45-60 days only). The extension is meant to help investors (particularly international players) to better prepare for the public tenders.

Although the extension is a positive measure, 100 days may not be enough depending on the time required or the investors to secure long-term financing (see topic on "Financing" below).

Environmental licensing: before offering any project to investors, the Government must procure the respective prior environmental license, or, at least, the licensing guidelines, in either case, issued by the relevant environmental agency.

One expects the Government to further clarify how it will allocate

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the licensing costs and risks. In the current model, several projects have their construction schedule severely impacted by licensing issues.

Long-term financing: in the current model, the winning bidder is unable to secure long-term financing before commencing the construction work. As a result, the investor has to take expensive short-term bridge loans.

The government banks participating in the Plan (BNDES, which has voting right at the Board, as well as Caixa Econômica Federal and Banco do Brasil) have stated their intention to make it possible for investors to obtain long-term financing prior to commencement of construction. They also announced their intention to develop models based on bank guarantees as collateral for the financing during the construction phase (instead of corporate guarantees and other collaterals that are currently required).

Moreover, the government banks stated their intention to phase out the TJLP (low interest rate) financing, which would be gradually replaced by long-term notes called *debentures*. While the 20%/80% equity/debt ratio would still be sought, TJLP-financing portion would not exceed 40% to 50% of the project. The remaining debt would be raised with the issuance of debentures. The banks could initially acquire the notes and then sell them in the secondary market.

The measures show that the Government wishes to transition the current model, based on government financing, to private financing (private lenders and/or capital markets). If implemented, the measures may indeed help projects to fly. Conversely, considering the extremely high basic rates (14.25% per year, nominal) and the lack of further details on this matter, investors should stay cautious.

Regulations Published

The Board of the Plan published 6 resolutions:

Resolution No. 1/2016: set out general guidelines and strategies to be adopted for the tender of projects, such as:

- designation of a single public agent to be in charge of the relevant tender process;
- requirement of prior environmental licensing or licensing guidelines, when applicable;
- project contracts must contain a risk allocation matrix to mitigate future amendments and revisions;
- project contracts must contain rules on governance, transparency and monitoring of related-party contracts;
- the projects must be backed by technical and environmental feasibility studies, which will be submitted for public hearings and analysis of the Auditing Court; and
- the regulatory agencies will most likely not be in charge of preparing the tender documentation. They will remain responsible for regulating, monitoring, inspecting and following up the construction of the projects.

Resolution No. 6/2016: recommends the inclusion of the following port terminal projects in the Plan: Terminal de Fertilizantes do Porto de Paranaguá - FOSPAR S.A., and TECON Salvador. This resolution was based on an opinion from the Ministry of Transports, Ports and Civil Aviation, which has recommended that the existing terminal leases be extended (rather than tender offered). For this reason, we have not included these projects in the list below. In any event, Resolution No. 6 has led one to speculate whether the Plan may include, in the future, other operating, ongoing projects that may not have their concessions extended.

Resolution No. 7/2016: resolves that the privatization of power distribution company Celg should be resumed, and sets a new minimum price for the auction. A few weeks ago, Celg shares were offered for sale, but no bids were submitted. This resolution also determines that a new public hearing takes place before the auction.

Resolution No. 8/2016: resolves that the privatization of lottery company Loteria Instantânea Exclusiva - Lotex e da Caixa Instantânea S.A. be resumed.

Conclusion

If the Government implements the announced guidelines, we anticipate tender processes of better quality, which should offer concrete opportunities to investors.

To succeed, however, the Plan must address at least two critical matters:

- develop a clear, feasible, and accessible long-term financing model to replace the current, exhausted government-financing model. It is not clear how the Government will carry out such transition plan; and

- reconcile the intention of improving the quality of the public tenders (better feasibility studies, public hearings, risk matrix, prior environmental license etc.) with a tight time schedule (all tenders must be concluded by the first half of 2018). President Temer's mandate ends in December 2018.

Recommendation to our Clients

Investors should closely follow up on the rules and regulations to be announced in the following weeks. They should not wait for the publication of the tender documentation; rather, they should start working earlier, as soon as the project public hearings are announced.

Guidelines for Airports' Concession

On September 16, the Board of the Investment Partnership Plan (the "Plan") published its Resolution No. 5, setting out general guidelines to the concession of the operation and exploration of four international airports, located in the cities of Florianópolis, Fortaleza, Porto Alegre and Salvador.

The Resolution is the first normative act of the Board that contains specific rules regarding the concessions included in the Plan, which may provide some insights about general guidelines that may be adopted in other infrastructure areas.

Among the published guidelines, we highlight the following:

Auction Rules

- Modality and selection criteria: The adopted modality is the simultaneous auctions to be held in a public session. The proposals' selection criteria will be the "highest offered Initial Fixed Contribution" (which is defined below in item "Payment of the Offered Amount");
- Restrictions to Competition: Airports located in the same "geographical area" should be granted to competitors of different economic groups;
- The requests for proposals will further detail such concept. The Resolution also sets forth that the Civil Aviation

Agency - ANAC (or Agência Nacional de Aviação Civil) may establish other restrictions related to regulatory and competition matters for the participation in the public tenders;

- Mandatory Participation of the Airport Operator in the Consortium: The airport operator must hold at least 15% of the bidding consortium's equity;
- Airport Operator's Previous Experience: The airport operator must evidence its previous passenger transport experience, within the last five years, of, at least 9 million passengers/year in Salvador, 9 million passengers/year in Porto Alegre, 7 million passengers/year in Fortaleza and 4 million passengers/year in Florianópolis;
- Minimum Bid: The minimum amount of the Fixed Contribution to the System will be determined based on the amount resulting from the Technical, Economic and Environmental Feasibility Studies (Estudos de Viabilidade Técnica, Econômica e Ambiental - EVTEA);
- Payment of the Offered Amount: The awarded consortium shall pay, at the moment of signing the concession contract, an amount called "Initial Fixed Contribution" which corresponds to: (a) 25% of the minimum amount determined for the Fixed Contribution to the System (as provided for in the above item " Minimum Bid "), in addition to (b) the total premium offered, if any;
- The advanced payment of the premium (which means, at the time the contract gets signed) is an innovation that should be adopted in bids for other enterprises provided in the schedule of the Plan.

Concession Terms and Conditions

- Concession period: 25 years for Porto Alegre airport, and 30 years to the other airports;
- Annual Fixed Contribution: During the concession period, the concessionaire will pay an "Annual Fixed Contribution", that corresponds to 75% of the minimum amount of the Fixed Contribution to the System (as provided in the above item "Minimum Bid");
- During the first five years of concession, the concessionaire will be exempted from such payment. As of the sixth year, the Annual Fixed Contribution will increase progressively each year, from 20% of the minimum amount of the Fixed Contribution, until reaching 100% from the tenth year until the end of the concession period;
- Payment of Annual Variable Contribution: The concessionaire shall also pay a Variable Contribution to the System, that corresponds to 5% of the concessionaire's total gross revenue and of its wholly owned subsidiaries, if any;

The EMI/Public Law, Government Relations, Regulatory and Infrastructure group of Trench, Rossi e Watanabe Advogados will be glad to provide any clarification.

Attachment

Airports

Project	RFP estimate	Auction estimate
Porto Alegre Airport	4th quarter/2016	1st quarter/2017
Salvador Airport	4th quarter/2016	1st quarter/2017
Florianópolis Airport	4th quarter/2016	1st quarter/2017

Fortaleza Airport	4th quarter/2016	1st quarter/2017
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Ports

Project	RFP estimate	Auction estimate
Santarém Combustibles Terminal (STM 04 e 05)	4th quarter/2016	2nd quarter/2017
Rio de Janeiro Wheat Terminal	4th quarter/2016	2nd quarter/2017

Toll roads

Project	RFP estimate	Auction estimate
BR-364/365/GO/MG	1st half /2017	2nd half /2017
BR-101/116/290/386/RS	1st half /2017	2nd half /2017

Railways

Project	RFP estimate	Auction estimate
EF-151 SP/MG/GO/TO – Norte-Sul	2nd half /2017	2nd half /2017
EF-170 MT/PA – Ferrogrão	2nd half /2017	2nd half /2017
EF-334/BA – FIOLE	2nd half /2017	2nd half /2017

Mining/ Energy

Project	RFP estimate	Auction estimate
Companhia Energética de Goiás - CELG	2nd half /2016	2nd half /2016
Fourth bidding round for marginal oil and natural gas fields (onshore) under concession regime	2nd half /2016	1st half /2017
Fourteenth bidding round for oil and natural gas exploration blocks under concession regime	1st half /2017	2nd half /2017
Second bidding round under production sharing regime (areas that can be unitized)	1st half /2017	2nd half /2017
Phosphate mineral rights in Miriri (PB/PE)	1st half /2017	2nd half /2017
Copper, lead and zinc mineral rights in Palmeirópolis (TO)	1st half /2017	2nd half /2017
Coal mineral rights in Candiota (RS)	1st half /2017	2nd half /2017
Copper mineral rights in Bom Jardim (GO)	1st half /2017	2nd half /2017
Amazonas Distribuidora de Energia S.A.	2nd half /2017	2nd half /2017
Boa Vista Energia S.A.	2nd half /2017	2nd half /2017
Companhia de Eletricidade do Acre	2nd half /2017	2nd half /2017
Companhia Energética		

de Alagoas	2nd half /2017	2nd half /2017
Companhia de Energia do Piauí	2nd half /2017	2nd half /2017
São Simão (GO) Hydroelectric Plant	2nd half /2017	2nd half /2017
Miranda (MG) Hydroelectric Plant	2nd half /2017	2nd half /2017
Volta Grande (MG) Hydroelectric Plant	2nd half /2017	2nd half /2017
Pery (SC) Hydroelectric Plant	2nd half /2017	2nd half /2017
Agro Trafo (SC) Hydroelectric Plant	2nd half /2017	2nd half /2017
Centrais Elétricas de Rondônia S.A.	2nd half /2017	1st half /2018

Water Treatment

Project	RFP estimate	Auction estimate
Water distribution, sewage collection and treatment - CEDAE	2nd half /2017	1st half /2018
Water distribution, sewage collection and treatment – CAERD	2nd half /2017	1st half /2018
Water distribution, sewage collection and treatment – COSANPA	2nd half /2017	1st half /2018

Lottery

Project	RFP estimate	Auction estimate
LOTEX	Not disclosed	Not disclosed

WARNING

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