

Opportunities in Brazil's New Infrastructure Program

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In the last two decades Brazil made some progress in its infrastructure. New roads were built and existing ones repaired, new ports were created, the power grid was expanded and major airports were modernized, among other advancements. But it is still far from ideal. As a developing country with a population of more than 200 million and the 5th largest territory in the planet, the nation's infrastructure continues to be in dire need of improvement. The economic and political crisis in Brazil unfortunately put a halt to many infrastructure projects. In an attempt to address this need and also try to revive the country's economy, Brazil's new government has launched the Programa de Parceria de Investimentos (PPI), a new infrastructure program.

Structured under Federal Law 13,334/2016, the new program endeavors to promote a more attractive environment for investments in the infrastructure sector. While trying to strengthen the bonds between public entities and private enterprise, the PPI encourages private investments in infrastructure and the privatization of state-owned assets.

The new law touches on important issues that have been a point of concern of many companies in their dealings with the Brazilian government. First of all, the PPI recognizes the need for secure and stable policies and establishes that the federal government must set long-term policies and strategic guidelines for investment, privatization and public bids. It also determines that infrastructure projects be considered of national priority by all public authorities (from the federal, state and local levels), requiring an efficient, consistent and timely performance by all public entities involved in the development and approval of PPI projects.

Additionally, all public entities involved in PPI projects must propose regulations to reduce bureaucracy and ensure a higher transparency level in their actions. Such measures will be supervised by the program's Council formed by members of the federal cabinet, the CEO of Brazil's development bank (BNDES) and the CEO of the Federal Savings Bank (Caixa Econômica Federal).

Infrastructure projects can be part of the program if they are executed through partnership agreements or are included in the Brazilian National Privatization Program (Federal Law No. 9,491/97).

The public authorities in charge of creating a project may grant interested third parties the opportunity to present suggestions and proposals. The actual structuring of the project may be carried forth directly by the public authority or through a contract entered into with the Fundo de Apoio à Estruturação de Parcerias – FAEP, designed to provide funding for project development costs and managed by BNDES. FAEP's outline is based on Project Development Funds (PDFs) developed by many governments around the globe, such as South Africa, India and members of the European Union. These funds, just as FAEP, intend to lower transaction costs related to advisory services, feasibility studies, financial and commercial structuring and implementation of good practices.

In one more step to make the PPI effective, the government sanctioned Provisional Measure 752/2016, setting forth that agreements executed under the PPI's scope may be renewed upon evidence that the renewal will be more advantageous than a new bid. The Provisional Measure establishes, on the other hand, that the public entity may negotiate the termination of agreements if it deems that the counterparty to the agreement is unable to carry out its obligations. In this case, the public entity must launch a new public bid. Additionally, the Provisional Measure allows the resolution of conflicts by means of arbitration on matters pertaining to the contract's economic balance, indemnification, and breach of contractual obligations.

There will be bids involving PPI projects in airports and in the sanitation sector in the first half of this year. Bids relating to ports, railways, highways, mining and electricity should follow in the second half of this year.

Government bids involving infrastructure projects in Brazil have frequently been won by consortiums formed by traditional Brazilian contractors. Many believe, though, that the involvement of several of those contractors in Operation Car Wash will open this market for new investors. As Venilton Tadini, CEO of the Brazilian Infrastructure and Base Industry Association, recently stated to the press¹, the importance of investment and private equity funds in infrastructure projects is growing and some of them have already started to plan investments.

The effectiveness of the PPI is yet to be seen. But if the great expectations involving the program are confirmed, it will unlock many new investment opportunities and put Brazil back on track of developing its infrastructure.

¹ *O Globo* newspaper of June 13, 2016. Link: <http://oglobo.globo.com/economia/fundos-de-investimento-se-preparam-para-disputar-leiloes-de-infraestrutura-19491339>