Privatization initiatives to provide opportunities for foreign investment in Brazil

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On the heels of one of the worst recessions in Brazil in years, stemming from a number of political crises involving widespread corruption and related investigations (most notably, the highly publicized Lava Jato investigations), Brazil has been showing signs of economic recovery. In January 2019 Jair Bolsonaro took office as the new president of Brazil and assembled an economic team that may be best characterized as pro-market. Mr. Bolsonaro named investment banker and noted free market economist Paulo Guedes as the minister of the economy, a role in which Mr. Guedes will be responsible for formulating and implementing economic and fiscal policy on behalf of the Brazilian federal government. The new administration has indicated that privatizations will be a strategic priority in the rebuilding of Brazil's economy in the wake of the systemwide corruption investigations that resulted in the bankruptcy or near-insolvency of several key Brazilian companies, particularly in the construction and oil and gas services sectors.

To achieve its desired goals, the Brazilian federal government is revamping its Investment Partnership Program (IPP), a federal government initiative created for purposes of coordinating and supervising concessions and privatizations of infrastructure projects in Brazil, to foster competitiveness and facilitate the participation of foreign investors. The Special Secretariat of the IPP, which is part of the Office of the Presidency of Brazil, has sought input from foreign investors, financial institutions, and legal advisers to understand their concerns and discuss viable solutions.

Investment Partnership Program

The Investment Partnership Program was created by Brazilian Law No. 13,344/2016 (the IPP law) to expand and strengthen the interaction between the Brazilian federal government and the private sector through partnership contracts for the execution of public infrastructure projects and other privatization measures.

The IPP's main goals are to:

- Expand investment and employment opportunities and technological and industrial development.

- Ensure the expansion of public infrastructure in a manner that promotes quality and adequate tariff levels.
- Promote ample and fair competition in executing partnership agreements and in providing services.
- Ensure predictability and legal certainty, guaranteeing minimal intervention in business and investment.
- Strengthen the regulatory role of the Brazilian federal government and the autonomy of state regulatory entities.

The IPP is administered by the IPP Council of the Office of the President of Brazil, which holds meetings that are chaired by the president of Brazil. The IPP Council is formed by presidential cabinet ministers (including the ministers of the economy, infrastructure, mines, and energy and environment) and the presidents of the Brazilian National Bank for Economic and Social Development Bank (BNDES), Caixa Econômica Federal, and Banco do Brasil. The IPP Council is an advisory body generally responsible for the analysis and oversight of IPP projects. The IPP Council is supported by the Special Secretariat of the IPP, which is responsible for, among other things, supporting ministers and other government entities in qualifying infrastructure projects for private investment under the IPP law. The BNDES also plays an important role in the IPP, assessing the financial feasibility of projects, coordinating privatization efforts, and offering financing to qualifying projects.

The IPP law does not create a new type of contractual arrangement, but rather allows certain types of contracts/projects (e.g., concession contracts, public service permits, leases of public property, and the other public-private arrangements that, due to their strategic nature and complexity, specificity, volume of investments, long-term risks, or uncertainties involved, adopt a similar legal structure) to qualify as national priority projects and, therefore receive preferential treatment by government entities to ensure their execution in a timely and economically prudent manner. The specific characteristics and applicable rules to each IPP project are set out in the relevant request for proposal (edital).

Since its inception in 2016 under the previous administration, the IPP has resulted in the privatization of 124 infrastructure projects encompassing the energy, highway, airport, port, telecommunications, and oil and gas sectors, totaling US$67 billion in investments from nongovernmental sources. Of these 124 projects, 47 were awarded to non-Brazilian companies (either alone or in consortium with Brazilian companies). An additional 69 projects (with an estimated capex of over US$30 billion) have already been approved by the Brazilian federal government and are expected to be concluded in the next few years, covering, but not limited to, railways, ports, energy, oil and gas, mining, airports, highways, and telecommunications. A further 94 potential projects have been identified and are in the process of being analyzed by the Brazilian government.

How we can help you

Hogan Lovells has an established global Privatization practice with deep sector knowledge. Our large network of highly capable lawyers has significant experience advising government and commercial entities on privatizations throughout Latin America, North America, Europe, the Middle East, and Asia. Our team regularly acts for governments and procuring authorities in relation to complex privatizations and public-private transactions, understanding the need to balance achieving policy objectives and optimal commercial outcomes. Our track record of acting for investors and sponsors means that we also understand the requirements of counterparties when acting for governments. We have also been actively engaged in discussions with key players with respect to Brazilian privatization efforts to understand and find possible solutions to some of the principal issues faced by foreign investors (such as asset-liability mismatches when financing local assets in foreign currencies).

Please reach out to one of the listed contacts or your usual contact at Hogan Lovells for more information and any questions.

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