Brazil’s new basic sanitation legal framework

A pathway for the transformation of the sanitation sector in Brazil and for private investors to be part of the change

30 November 2020
By: Roberto Vianna do Rego Barros | Jorge Luiz Barbieri Gallo

In brief

In July 2020, Brazil’s New Sanitation Legal Framework was approved. It aims at the universalization of sanitation and water supply in Brazil by 2033 by attracting investment of USD128 billion. The new regulatory framework is expected to transform the nation’s water and sanitation sector, creating a business environment with more competition and legal certainty, and fostering domestic and foreign private investment in the sector.

Introduction

On July 15, 2020, Brazilian President, Jair Bolsonaro, sanctioned Federal Law No. 14.026/2020, also called as Brazil’s New Sanitation Legal Framework. This new regulation had been awaited with great anticipation and promises to change the way water and sanitation services are provided in the country by bringing more stability and legal certainty and enabling domestic and foreign private investment in the sector.

Main changes and goals

The New Sanitation Legal Framework aims to transform the sanitation sector in Brazil. The main changes brought by the new law are related to the universalization of services, the creation of bidding and awarding procedures and the standardization of the regulation.

Universalization

The main objective of the new regulation is the universalization of sanitation and water supply. The goal is that by March 2033, 99% of the population will be supplied with drinking water, and 90% of the population will be supplied with sewage collection and treatment. It is important to highlight that, according to the National Sanitation Information System’s (SNIS) 2018 database, half of the Brazilian population (more than 100 million people) did not have access to the sewage system, while 16% (almost 35 million people) had no access to treated water.

The Brazilian government estimates that to achieve this goal, investments – both public and private – of about USD128 billion will be required in the next ten years.

Bidding and awarding procedures

Aimed at attracting private investments to the sector, one of the key points of the new regulatory framework is the reform in the public concession of the sanitation and waters services. Currently, the concession for the supply of such services is

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com. This may qualify as “Attorney Advertising” requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome. Copyright © 2021 DLA Piper. All rights reserved.
carried out through called program agreements (contratos de programa), i.e. contracts entered into between the holders of such services (cities and states) and concessionaries (public or semi-public companies), without a competition and bidding process. The new legal framework has the goal of modifying this arrangement by prohibiting the provision of sanitation services through program agreements and establishing that the concession of the services must be carried out through a public bidding process with the participation of public and private companies.

The expectation is that, as a consequence of the institutionalization of the bidding and awarding processes for the concession agreements and the creation of a more transparent competition environment, local and foreign private investors will feel more encouraged to invest in the sector.

**Standardization of the regulation**

In addition to the reform in the procurement of water and sanitation services, the New Sanitation Legal Framework is also intended to establish new guidelines for the federal regulatory institution, the National Waters Agency (ANA). As for the changes brought by the new regulation, ANA shall have the competence to institute reference standards for the regulation of basic public sanitation services by their holders and their regulatory and supervisory entities, such as regarding standards of quality and efficiency in the provision, maintenance and operation of services, tariff regulation, standardization of contractual instruments and universalization goals.

This is an important change for the sector, since water and sanitation services were being regulated locally, which led to dispersed and unbalanced rules, creating inefficiencies and regulatory risks. The new sanitation law is expected to change that and create a more stable business environment.

**Expectations**

The New Sanitation Legal Framework and its goals are crucial from both social and economic standpoints. From the social perspective, there is no doubt that the universalization of access to sanitation and water services is pressing and that achieving this goal will dramatically change the public health landscape in Brazil, finally putting an end to a long-lasting problem that affects people’s quality of life, life expectancy, education and even productivity.

From an economic point of view, the new regulation paves the way for private investments and is being considered key by the Brazilian government to help the country’s economic recovery in the post-pandemic period. The expectation of the Ministry of Economy is that, in addition to attracting about USD128 billion in investments, the new legal framework will enable the creation of 700,000 direct and indirect jobs in the next 14 years.

It is also expected that the universalization of water and sewage services will reduce annual health costs by up to USD265 million and save millions of dollars spent on the prevention of diseases caused by the lack of such services.

Some say that this new regulatory framework is expected to trigger a transformation in Brazil’s water supply and sanitation sector similar to the one that led to the reorganization of the country’s telecom industry in the late 1990s through a wave of privatizations.

Some state-owned companies are already structuring their privatizations with the assistance of the National Bank for Economic and Social Development (BNDES), which is considered the main financing agent for development and infrastructure in Brazil. BNDES sees the water and sanitation sector as a priority on the Bank’s agenda for the coming years and has more than USD9 billion reserved for financing of sanitation projects.

The New Sanitation Legal Framework is expected to transform the water and sanitation sector in Brazil and to have a significant impact on the country’s economy and its recovery post-COVID-19. Domestic and foreign investors are sure to benefit from the great opportunities in the years to come.