

# Brazil's new sanitation legal framework expected to attract private investment in the sector

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A new regulatory framework for basic sanitation in Brazil was approved by the Brazilian National Congress on 24 June 2020. Bill No. 4,162/2019, labeled the "sanitation legal framework," is expected to be approved by President Bolsonaro in the next few days. The new regulation promises to bring greater stability and legal certainty to the development and expansion of Brazil's water and sanitation sector through the promotion and safeguarding of market competition, the removal of barriers to entry, and the standardization of regulations governing the sector, all of which are expected to encourage greater investment, both domestic and foreign, in this critical infrastructure sector.

The legal reforms come amid growing concerns over the country's underdeveloped water and sanitation infrastructure. Today, almost 35 million Brazilians do not have access to clean water, and over 100 million people in the country (roughly half of Brazil's total population) do not have access to sanitation and sewage systems. In seeking to address this issue, the sanitation legal framework lays out a plan to develop water and sanitation infrastructure and expand sanitation services throughout the country, with the goal of providing at least 90% of all Brazilian households with water and sanitation services by the year 2033. The Brazilian government estimates that about R\$700 billion (approximately US\$130 billion) in capital investments will be required to achieve this goal, the majority of which would need to come from the private sector. Currently, private investors account for only about 6% of all market players in Brazil's water and sanitation sector, although they are responsible for 20% of all direct investments.

With the new changes to the legal framework, both domestic and foreign investment in Brazil's water and sanitation sector are expected to increase significantly. Private investors are likely to be incentivized by changes in market conditions and the bolstering of competition through the institutionalization of a mandatory and more robust bidding and awarding process for government concession contracts. In particular, the new regulatory framework prohibits so-called "program contracts" – contracts that can be signed directly between state-owned sanitation companies and municipalities without a bidding process. Moreover, under the sanitation legal framework, bids for concessions must be evaluated based on clearly defined and more objective investment and service quality criteria.

The sanitation legal framework also simplifies the privatization of state-owned sanitation companies. The previous legislation made it difficult to sell or transfer a controlling interest in public or mixed-capital companies. The new legal framework removes obstacles to the privatization of state-owned companies that currently manage sanitation services at state and municipal levels. Privatization of companies such as Companhia Estadual de Aguas e Esgotos (Rio de Janeiro), Companhia De Saneamento Do Pará (Pará), and Companhia de Saneamento de Alagoas (Alagoas) are already being structured by the National Bank for Economic and Social Development, which has itself reserved R\$45 billion for financing new sanitation projects, and bidding processes for these privatizations are scheduled to begin as soon as 2021. The adoption of the sanitation legal framework has had an impact on the private sector as well, with the recent announcement after adoption of the legal framework that privately held water utility Iguá Saneamento, which had planned an initial public offering (IPO) for late 2019 but then indefinitely postponed it in March 2020 due to market conditions, had resumed active preparations for an IPO in late 2020.

The sanitation legal framework standardizes regulations governing sanitation services at the federal level, and provides for the possibility of "regionalizing" the rendering of sanitation services to groups of municipalities. Today, large cities help finance the expansion of water supply and sewage collection services in smaller and more remote municipalities. The new framework determines that states may establish groups of municipalities that can choose to contract services collectively.

Once the new law is approved by President Bolsonaro, the National Water Agency (ANA) will create federal guidelines for municipal sanitation regulations and will have authority over the implementation of the development plans by the municipalities to achieve these goals. Today, regulations are issued by local agencies without any national guidelines, but because these local regulations are not aligned with federal requirements, the fear of conflicting regulatory decisions has led to insecurity for investors. The new framework creates greater legal certainty by requiring municipalities and blocks of municipalities to implement sanitation plans in accordance with ANA's federal guidelines.

The sanitation legal framework is expected to significantly impact the Brazilian economy in the years following the COVID-19 crisis and private investors should expect to benefit from substantial new opportunities in the water and sanitation sector.

*Please do not hesitate to contact us for more information about the sanitation legal framework and opportunities in the Brazilian water and sanitation sector. Washington, D.C. Project Finance partner Wylie Levone and Miami associate Dana Turjman recently advised the Inter-American Development Bank and IDB Invest on the approximately R\$440 million project financing for the expansion and improvement of wastewater infrastructure in the Brazilian municipalities of Recife and Goiana by the Brazilian private company BRK Ambiental, a deal that was recognized by IJGlobal as the "Best Water Deal" of 2019 and by LatinFinance as the "Water Treatment Financing of the Year." Washington, D.C. associate Mariana Amaral, who is qualified as a lawyer in both Brazil and Washington, D.C., recently joined the Hogan Lovells Project Finance team.*

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