
AGREEMENTS WITH THE GOVERNMENT IN BRAZIL: OVERVIEW AND EVOLUTION OF THE WAYS TO DEVELOP PUBLIC INVESTMENTS AND CONTROL PROJECTS

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I) INTRODUCTION

Investments in Brazil have grown as the country presents itself as one of the most important economies in the world.

Additionally, it is not recent news that the Government is the largest contractor of this expanding market, nor that its lines of credit enhances improvement in road transport, in the naval defense, in urban infrastructure, sewage and water treatment, water resources and hospital care.

In this context, there are several ways in the country to explore such projects. In this article, special emphasis will be given to the following mechanisms, in which the State relies on to contract with individuals: (i) concessions (which can be divided into ordinary concessions and public-private partnerships), (ii) convention, and (iii) cooperation agreements.

II) CONCESSIONS

As noted above, this model of contracting with the Brazilian Government can be

divided into two modalities, which are best explored below:

II.1) Ordinary Concessions

As set in Article 2 of Law No. 8987 of February 13, 1995, such model is the administrative contract by which the Government transfers to others the execution of public service for them to run on behalf and at the sole risk of the company contracted (even if under the siege of Public Administration), being the proper remuneration assured.

Some of the great operational examples are the companies operating electric utilities, the highway administrators and companies that operate public transport services on land.

In this genre of agreement with the government, the private entity will be responsible for every investment, being reimbursed and adequately remunerated through fees charged directly to end-user of the services. Moreover, it will be of responsibility of the government itself to provide guarantees for agreement

enforcement, given that the risks of the undertaking are borne entirely by the concessionaire.

II.2) Public-Private Partnerships (PPP)

This sort of agreement is established in Article 2 of Law No. 11079, dated as of 30 December 2004, and they are the legal relation used for implementation of major agreements and relevant amounts.

It has two modalities: administrative and sponsored.

The sponsored concession is the administrative agreement used by the Brazilian Government to transfer to private parties, under its control and standards, the execution of public service, followed or not by a public construction. In such case, the companies contracted by the Government will have to run in their own name, at their expense and risk, assured proper compensation arisen from the fee charged plus and pecuniary compensation paid by the Government. This is the case of the concession of the construction and operation of the Yellow Line of the São Paulo Subway, where the end user pays a fee to the private company, which is responsible for providing the services tendered.

On the other hand, in the administrative concession, the Brazilian Government will be the direct or indirect user of the services provided by the private partner, being responsible for the payment of a fee. So to this purpose, the government may charge end users a fee for services provided by private partners, as it can be

seen with the tribute set in the city of São Paulo for the collection of waste.

It is possible to highlight as the most important advantage of using PPP the good use of public resources, generating great opportunities for the private sector, which can become responsible for multimillionaires and extremely lucrative business, and, finally, for direct benefits to society, which gain access to a better quality service.

However, the PPP also presents some disadvantages to the private partner, such as: the high initial costs of development, since the State has not injected the initial funding in projects; the fact that the deadline for implementation of the object of the bid is longer than the ones presented in smaller projects, and the high interest charged on loans by the private partner to raise funds for the project implementation, which implies more time for the venture to become fully profitable.

Even so, the PPP model presents itself as an extremely attractive modality to private initiative, since there is the risks are shared with the State, not to mention the chance given to companies to be in a leadership role in huge projects which are highly relevant to the entire country.

III) CONVENTIONS

Administrative conventions are agreements signed by public entities of any sort, or between these organizations and individuals in order to achieve goals of common interest to the parties.

According to the Brazilian Constitution, the Federal Government, each State, the

Federal District and the Municipalities must discipline, through the approval of a specific law, rules of conventions for the cooperation, and they must allow the management of public services for the parties that enter into this agreement, as well as full or partial transfer of obligations, services, personnel and assets essential to the continuity in the same way of the services transferred.

The constitutional text also presents the convention as a form of private participation in the Unified Health System.

IV) COOPERATION AGREEMENTS

Cooperation Agreements are instruments of development celebrated between two countries and that intend to promote structural improvements in productive systems, in order to overcome obstacles to their growth.

Such agreements consist in the transfer of know-how, equipments and eventually, end up contributing to staff training and, consequently, in the strengthening of the institutions of the country that receives technology, culminating with its natural internal development. The Brazilian projects, for example, are all over several sectors including energy, mining, agriculture, transport and environment.

Currently, it is possible to point out two aspects of cooperation involving the Brazilian Government, namely: horizontal and international.

In the first aspect, we observe cooperation in which Brazil implements projects of development in countries seeking to

improve production techniques. With this, there is the promotion of intense political and economic relations between the two nations, as we can see in projects of the Economic Commission for Latin America and the Caribbean (ECLAC), on which Brazil is working on several initiatives.

On the other hand, in the second type of cooperation agreements, there are bilateral and multilateral agreements. The purpose of these agreements is the internalization of the shared content, information and know-how by international organizations (and also their members) like the Inter-American Development Bank (IDB), the Organization of American States (OAS) and other domestic programs of the UN such as the United Nations Development Programme (UNDP).

V) CONCLUSIONS

Therefore, as thoroughly described above, the possibilities of establishing relations with the Brazilian government are numerous and the country currently represents a great potential for investments, particularly in infrastructure, transportation and sanitation, arisen from the needs presented by the choice of Brazil as the host of the 2014 FIFA World Cup and the Olympics Summer 2016.

In this sense, Almeida Advogados has a specialized team with extensive experience in Infrastructure Projects, which has already helped many clients to build relevant operations, during the last five years. Thus, our professionals will be at your entire disposal in order to provide any clarification or assistance regarding the subject matter.