



PRESIDÊNCIA DA REPÚBLICA
Governo Fernando Henrique Cardoso

PUBLIC SERVICE CONCESSIONS IN BRAZIL

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SUMMARY

Foreword • 5

State Reform • 7

Brazil's International Role • 7

Restructuring Brazilian Public Services • 8

The Current Scene • 10

Objectives of the Concessions Law • 11

Investor Guarantees • 12

Prospects for Public/Private Associations • 12

Electric Energy • 15

 Generation, Transmission and Distribution • 15

 Industrial Opportunities • 19

Transportation • 21

 Railroads • 21

 Highways • 22

 Urban Transport • 23

 Ports • 24

 The Aerospace Infrastructure • 24

Telecommunications • 27

Sanitations • 29

Treatment of Foreign Investment in Brazil • 31

Annex — Constitutional Amendments • 33

 Telecommunications, Pipeline Gas and Mining • 33

FOREWORD

This publication provides information on the new Law of Concessions which I recently signed. The Law of Concessions inaugurates a new form of partnership between the private sector and the Brazilian government. During the last decade, we witnessed the progressive deterioration of the State's ability to invest in the country's infrastructure. This trend damaged not only the quality of public services, but also the productive capacity of the entire economy. Transportation, communications, energy and sanitation deficiencies undermined our ability to produce quality goods at competitive prices.

Budget resources, as we all know, are scarce and should be directed first to address social issues, the area for which the state has an irreplaceable responsibility that cannot be postponed. We must correct the intolerable injustices that afflict a large portion of the population. To remedy the significant shortfall in infrastructure investments, and to put Brazil back on the path of sustained economic development, it is necessary to have the active participation of the private sector.

In this new model of development, the State's regulatory responsibility must be strengthened. The government will evaluate, independently and rigorously, the services provided to the population. By participating in infrastructure investment, the private sector will make more than a financial contribution. It will also bring new technologies and, more important, modern management techniques that are fundamental for effective and inexpensive public services.

With the Law of Concessions, Brazil gained a modern legal instrument which will permit it to expand and to improve public services. Investors gained an equitable system of rights and guarantees. It will be possible to increase our economic competitiveness, both nationally and internationally; to contribute to the stabilization of the economy; and, above all, to create better conditions for a balanced growth that is both socially just and environmentally sound.

Today, we understand that development is not just a government effort. It is a mission that encompasses all of society. In this sense, I am confident that private initiative will respond to our call to participate in the financing of our development, and will accept the task of improving and modernizing the country's public services.

Fernando Henrique Cardoso

State Reform

Brazil, like many other countries, believes it must "re-invent government." Its current development strategy is to make the State more effective in its traditional functions and to strengthen the private sector. It wishes to privatize a number of activities, to strengthen individual participation in government, to decentralize functions, and to reduce bureaucracy. A key element of this strategy is the February 13, 1995, Law of Concessions.

Important changes are taking place in the world's economic systems, and these changes are accompanied by major cultural and political transformations. Scholars are re-examining the relationship between State and society, particularly as to the government's ability to generate well-being and to promote development. Even in industrialized countries, there is a growing demand for tax revenues to finance ever larger social programs. Yet the state bureaucracy adds to the cost of public services at the same time society is pressing for less expensive, though better, services. Given these pressures, it is sensible and practical to transfer more responsibility to the private sector.

Brazil's International Role

Brazil has the basic legislative elements needed to compete globally. Its international policy is defined by the opening of its economy, the results of the Uruguay Round, the establishment of the World Trade Organization, the creation and consolidation of

Mercosul, and other relevant economic and commercial initiatives. Nevertheless, while the strengthening of the multilateral trading system, the resolution of the foreign debt problem, the expansion of economic influence and the stabilization plan are important, they are not sufficient to make Brazil competitive over the longer term. There must be a new relationship between the State and the private sector, one that would redefine Brazil's approach to the new globalized opportunities and risks.

Consequently, Brazil's economic reform takes into account the changing relationship between government and private industry, nationally as well as internationally. It should be emphasized that foreign investment, be it in terms of capital or technology, has taken on new forms and is attracted by new incentives. The international financial system has become unstable and truly global; no international institution controls or directs it. In this context, a country's innovative ability constitutes an essential competitive factor in the international market, where trade in services is already worth far more than the trade in primary products. The Law of Concessions enables the State to pass to the private sector those activities which the latter is better equipped to manage. This transfer allows the government to exercise more efficiently its planning, coordinating, regulating and monitoring functions.

Restructuring Brazilian Public Services

Through the 1970s, Brazil's public sector made major infrastructure investments needed for the country's industrialization. State companies became general concessionaires in order to offer numerous public services. Extensive state participation in infrastructure development also made the private sector dependent on these state-supplied services. However, the drastic reduction in public sector savings during the last 15 years, combined with government tariff policies that limited the generation of resources in state industries, inhibited the expansion and improvement of public services. Whereas countries similar to Brazil invest close to

20% of their GDP each year, Brazil invests about 15%. Of that, the public sector accounts for little more than 6%. This situation has produced great infrastructure deficiencies.

The state companies constituted an indirect form of government management. Such companies, created originally to give the government more administrative flexibility, were gradually burdened with excessive controls and bureaucratic requirements, making it difficult for them to keep up with technological and managerial innovations. On the other hand, during that period many government agencies deteriorated. The public sector's dysfunctionality, aggravated by its growing indebtedness, caused a chronic fiscal crisis. Unable to set priorities or to implement policies, successive administrations became paralyzed. As a result, the state apparatus cannot exercise its duties effectively.

The most pressing reason for reforming the State is not only administrative efficiency, but also the impoverished condition of public finances. The Federal Treasury, with direct and indirect debts of more than \$200 billion, cannot undertake large public investments. With state investments stagnant, dynamic private companies that want to diversify and to modernize operations have shown their ability to perform activities heretofore dominated by the State.

Brazil spends an estimated one billion dollars per year, in addition to large finance costs, for projects that are either behind schedule or paralyzed. The reinitiation of these projects, besides generating increased orders for industry, will create jobs. Thus, the improvement of legislation governing public service concessions became imperative, especially for electrical energy (generation, transmission and distribution), transportation, highway construction, ports and airports, sanitation, and potable water. The objective is to reduce the State's presence in the economy and to mobilize private resources and talents.

The Current Scene

The present environment is favorable, both internally and externally, to restructuring the public sector. Externally, the challenges and opportunities of a fast-changing world enable Brazil to form new economic relationships. These new relations will contribute resources and technology that will broaden and modernize national production. Internally, the restored credibility of the national currency fosters the prospect of sustained development.

The Federal Government controls, directly or indirectly, 147 companies operating in three areas: the state productive sector (comprising a vast majority of the companies and all of the investments in infrastructure), the typical governmental companies, and the financial sector companies. The state companies at the end of 1993 had total assets and net value of, respectively, \$318 billion and \$120 billion. Excluding the federal financial institutions, these companies had total assets and net value of, respectively, \$166 billion and \$96 billion. The most important state firms are the Companhia Vale do Rio Doce (CVRD), Eletrobrás, Petrobrás, Telebrás and Itaipu.

It is important to note that from 1990 to 1992 the aggregate investment of state productive sector companies increased. However, it has since been decreasing notably, going from \$12 billion in 1992 to \$6.9 billion in 1994, a level that will probably be maintained in 1995. The inability of these companies to generate adequate savings explains the declining investment trend. On the other hand, investments of about \$71.7 billion must be made in the next four or five years in order to conclude infrastructure projects (electricity, transportation, communication, mining and metallurgy, oil and derivatives) undertaken by companies linked to the Mining and Energy, Transportation, and Communications Ministries. Annual outlays should approximate between \$14.3 and \$17.9 billion. However, the government has only \$7.3 billion available for 1995. These data indicate the investment opportunities available to private investors.

The government's priority agenda includes improvements in the privatization process, and new goals and criteria for restructuring the State's assets. It includes also constitutional reforms that will make national structures more agile and efficient. The government's determination to implement programs that will reinstate development, on a more equitable social basis and with due regard for the environment, is perfectly in tune with national aspirations.

Objectives of the Concessions Law

The basic legal authority for granting public service concessions in Brazil rests on provisions in the federal constitution. The Concessions Law, which regulates implementation of article 175 of the constitution, establishes the general rules by which the government authorizes third parties to perform public services. The law requires that specific rules and regulations be set for each sector in which concessions will be granted. The concessionaire, investing for his own account and at his own risk, will act on behalf of the State and will be compensated by collecting tariff charges from the public. The Concessions Law will be used also to introduce competition into sectors that are overly protected and excessively regulated.

The Concessions Law requires that: a) the authority granting a concession must be a public sector legal entity (federal government, state, Federal District or municipality) and, b) any partnership or legal entity can be a concessionaire, including state-owned companies. It is possible to create a partnership for the purpose of an auction, especially since that is one way for foreign capital to participate immediately in those public service sectors where such capital is still restricted.

The legal system for granting a permit is similar to that of a concession, except for the following: a) permits are granted for an indefinite period, on the basis of a contract or agreement, and can be revoked by the granting power at any time; b) obtaining a permit does not require competitive bidding; and c) only an individual can receive a permit.

The Concessions Law introduces four important points. First, all concessions will last for a specific period and be offered through public bidding. Second, there are no government subsidies; the concessionaire bears the risk of the concession. Third, users participate officially in monitoring the services rendered. Fourth, the concessionaire will no longer be guaranteed a fixed return based on his total costs — a system that promoted inefficiency. From now on, pricing criteria will be defined in the contract.

Investor Guarantees

Public service concessions will be granted through competitive bids or auctions, following procedures that will assure the investor of the transparency and competitiveness of the process. Whoever offers the lowest price, and guarantees that the pre-established conditions of service will be met, wins the concession. The Law of Concessions requires that the procedures for granting a concession must include: a) a bid announcement, which will include previously and publicly established sales conditions, requirements and parameters, and b) a contract which will set out the guarantees and obligations of each party. The investor's guarantee will be clearly set forth in the contract along with the conditions of operations and the parameters defining service requirements. The tariff to be charged by the concessionaire will be determined in the contract, establishing therein the process for tariff review and adjustment. Finally, the contract will establish objective and clear management criteria.

Prospects for Public/Private Associations

The new legislation facilitates the public sector's political, economic and administrative control of the concession procedures, and its achievement of the following objectives:

- convince concessionaires to modernize in order to improve productivity;

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- assure the entrance of new firms into the affected sectors by establishing a competitive environment; and
 - stimulate direct and indirect competition among the concessionaires in order to promote better services.

Achieving these objectives requires the public sector to take the following actions:

- formulate sectoral policies that promote regional and national development;
- establish specific regulations to protect the interests of society;
- prevent the formation of private monopolies and cartels;
- verify that the companies provide the quality of service promised;
- ensure that concessionaires comply with environmental policies; and
- induce the companies to make their technologies compatible with the development needs of the country.

Electric energy, transportation, highway construction, ports and airports, sanitation and potable water are the largest, most dynamic and strategically important project areas for national development. These sectors offer major opportunities for private investment. The Concessions Law seeks to promote these initiatives by encouraging competitive cooperation between government and private companies, and between domestic and foreign firms.

Electric Energy

Generation, Transmission and Distribution

The implementing legislation for the Concessions Law lists the economic sectors that can immediately use the concessions procedures. This proposal is directed specifically towards electric energy service concessions.

The Law of Waters (Código de Águas) would normally be adequate to govern the activities of private companies in the electrical sector. However, subsequent legislation adopted in the 1970s created impediments for the private sector. The new Concessions Law is an important step in reversing the statist orientation of that legislation. The regulatory agency in the sector is the National Department of Waters and Electrical Energy (DNAEE - Departamento Nacional de Águas e Energia Elétrica). Eletrobrás, the federal government's holding company, has played an important role in coordinating the expansion and operation of the network.

Electrical service is generally good in the cities. However, in the northern part of the country, where isolated systems are common, only 50% of the cities have 24 hour service. Some interior regions of the country have no service. During recent years the quality of service and management has deteriorated, e.g., the present rate of current loss is 16% whereas it could be as low as 8%. Moreover, the system is subject to frequent and long interruptions.

Brazil's installed capacity is 54000 MW, including its share of Itaipu (6300 MW). The system encompasses 142 plants of more than 10 MW each, of which 103 are hydroelectric, generating 93% of the electricity, and 39 are thermoelectric. The thermoelectric plants serving the public are usually located in remote areas (small units in the North) or serve as seasonal backups (large units in the South and Southeast). Most of the 62 companies in the sector belong to the government. The 23 private electrical firms provide distribution services in small markets that account for only 2% of total sales. Electricity production for internal use makes up only 3% of the total, but recently its output has been increasing rapidly.

The long distances between the hydroelectric plants and the major markets required the development of a complex transmission network that has more than 150,000 km of lines. The distribution network has 1.6 million km of lines. The new law says that both the transmission and the distribution network can be leased to third parties.

The electrical system has a book value of some \$100 billion. During each of the next ten years, the system will need investments of about \$6 billion to meet market demand. This investment is required to provide an annual increase of 3000 MW, plus the related transmission and distribution systems.

Electrical consumption in Brazil totaled 226 TWh in 1994. The average consumption per household was 1800 KWh per year, which should grow to 2000 KWh in the next six years. Eletrobrás' annual report (The Ten Year Expansion Plan) projects consumption growth of 4.4% per year during 1995-1999 and 4.9% annually from 2000 to

2004, at which point consumption should total 353 TWh. These projections do not take into account the accelerated economic growth of the last twelve months.

In accordance with recent legislation, concessions granted to state companies for 14 hydroelectric plants (See Table I for a listing) will soon be revoked because construction has not yet begun. The projects represent more than 6700 MW of power and investments of some \$9.8 billion. The concessions will gradually be reopened for bid. In addition, the concessions for another group of 17 plants representing 11000 MW of power will be revoked and, over time, reopened for bids (See Table II).

TABLE I
CONCESSIONS TO BE REVOKED AND REOPENED FOR BIDS

Hydroelectric plants	Power (MW)	Investment⁽¹⁾ (US\$ million)	Location
Apiacás	19,0	35	Mato Grosso
Caiabís	30,0	50	Mato Grosso
Capim Branco	210,0	780	Minas Gerais
Rosal	55,0	70	Rio/Espírito Santo
Itapebí	375,0	575	Bahia
Pedra do Cavalo	300,0	500	Bahia
Salto da Divisa	541,5	800	Bahia/Minas Gerais
Serra Quebrada	1.328,0	1.500	Tocantins/Maranhão
Cachoeira Porteira	714,0	1.200	Pará
Santa Isabel	2.200,0	2.900	Tocantins/Pará
Anta	16,0	30	Rio/MinasGerais
Sapucaia	300,0	470	Rio/MinasGerais
Simplicio	180,0	390	Rio/MinasGerais
Cana Brava	495,0	500	Goiás
Total	6.763,5	9.800	

(1) Preliminary Estimative

Work on another hydroelectric plant and three thermoelectric plants, representing 960 MW, has also been suspended. Some \$1.4 million will be needed to complete these projects. Using the

new legislation, plans should be concluded this year to open these projects to private capital (See Table III).

Table II
CONCESSIONS TO BE REVOKED
AND REOPENED FOR BIDS OVER TIME

Hydroelectric plants	Power (MW)	Investment ⁽¹⁾ (US\$ million)	Location
Foz de Bézerra	300,0	444	Goiás
São Domingos	200,0	326	Goiás
Peixe	1.106,0	805	Goiás
Pueiras	600,0	697	Tocantins
Lajeado	800,0	722	Tocantins
Estreito	1.328,0	1.039	Tocantins/Maranhão
Marabá	2.070,0	2.296	Pará
Pedra Branca	768,0	970	Bahia/Pernambuco
Belém	477,0	590	Bahia/Pernambuco
Itamotinga	288,0	515	Bahia/Pernambuco
Itaocara	210,0	280	Rio de Janeiro
São Fidelis	123,0	153	Rio de Janeiro
Piraju	119,0	150	São Paulo
Ourinhos	48,4	151	São Paulo/Paraná
Ilha Grande	1.320,0	2.378	Paraná/Mato G. do Sul
Capaneira	1.200,0	484	Paraná
Franca Amaral	33,0	40	Rio de Janeiro
Total	10.990,4	12.040	

(1) Preliminary Estimative

There are three more plants, beyond those mentioned above, (Igarapava, Serra da Mesa, and Itá) for which the public companies holding the concessions have found private sector partners and will begin, or will reinstitute, construction work this year.

There are still eight other thermoelectric plants under study totaling 4000 MW and investments of \$4 billion. These projects will require private capital to be completed (See Table IV).

In addition to the many projects already cited, studies at DNAEE propose hydroelectric projects of some 23000 MW (40% of the country's present operating capacity) and investment of about

\$35 billion. Since the annual increase in consumption will approximate 5% in the coming years, work on these projects should begin in the next nine to ten years.

Table III
PROJECTS TO BE OPEN TO PRIVATE
CAPITAL PARTICIPATION

Hydroelectric plants	Company	Power (MW)	Investment ⁽¹⁾ (US\$ million)	Location
Manso	Elettronorte	210	380	M. Grosso
Candiota III	CEEE	350	605	R.G. Sul
Mauá 5 E 6	Elettronorte	50	100	Amazonas
Jacuí I	Eletrosul	350	290	R.G. Sul
Total		960	1.375	

(1) Preliminary Estimative

Table IV
THERMOELECTRIC PLANTS UNDER STUDY

Plant	Power (MW)	Investment (US\$ million)	Location
Igarapé II	125,0	125	Minas Gerais
Carioba	350,0	350	São Paulo
Caiari	1.440,0	1.440	Rondônia
Mauá 7,8 e 9	240,0	240	Amazonas
Rio Negro	1.440,0	1.440	Amazonas
Piratininga	700,0	700	São Paulo
Camp. Grande	90,0	77,0	Mato Grosso do Sul
Corumbá	30,0	34,0	Amazonas
Total	4.415,0	4.406	

Industrial Opportunities

Private capital has many possibilities for participating in electrical sector projects. One form frequently used by large consumers is to build their own generating plants, i.e., self-producers. In this case, the energy is consumed internally and the occasional surplus

is sold to electric concessionaires. Another possibility, being created by legislative bill No. 040 of February 13, 1995, are the independent producers who will generate electricity and sell it to concessionaires and to large consumers. A group of self-producers, independent producers and/or concessionaires can also form a consortium to generate electricity. In any of these cases, the producers are guaranteed access to the transmission and distribution grid.

Beyond the modalities mentioned above, any qualified legal entity can bid for a concession. The basic difference between an independent producer and a concessionaire is that the former competes freely for his account and at his risk while the latter is subject to the regulations of public service.

Transportation

The new legislation expands significantly private sector opportunities in Brazil's transportation systems.

Railroads

Three large railroad companies operate in Brazil: the Federal Railroad Network (RFFSA), the Paulista Railways (FEPASA), and the Cia. Vale do Rio Doce (CVRD). The RFFSA belongs to the federal government, operates a 22,000 km network, employs 46,000 workers, transports 86 million tons of cargo a year, and has annual gross receipts of \$800 million. Its rails run along the coast from Rio Grande do Sul to Maranhão, with a break in São Paulo; to the center of the country via Minas Gerais, Goiás and Brasília; and from São Paulo to Bolívia via Mato Grosso do Sul. The company's studies indicate that demand for cargo services will increase 50% by the year 2001, necessitating investments on the order of \$736 million just in the trunk lines. RFFSA is considering dividing itself into six busi-

ness groups corresponding to its six regional rail networks. (See Table V)

TABLE V
INVESTMENTS ON REGIONAL RAIL NETWORKS

Rail networks	Investment (US\$ million)
Rio de Janeiro/Belo Horizonte	324
Rio de Janeiro/São Paulo	186
Paranaguá	111
São Paulo/ Porto Alegre/Uruguaiana	115
Total	736

The FEPASA, which inter-lines with the RFFSA, belongs to the São Paulo state government. The state is studying the possibility of privatizing it.

The CVRD operates two lines: the Vitória/Minas Railway linking Belo Horizonte to the port of Vitória, and the Carajás Railway linking the port of Itaquí to the Carajás project in Serra Norte. The Brazilian government owns a majority of CVRD, but the company's shares are traded on the stock exchange. The process for privatizing CVRD has been initiated.

Three other rail lines are under construction as concessions. A Paraná state enterprise is building the FERROESTE in order to attract more cargo to the port of Paranaguá. The federal government company VALEC is building the North-South Railway to link Brasília with the port of Itaquí. A private group is building the FERRONORTE to link São Paulo with Rondônia. The national government would welcome proposals for concessions to build additional railways.

Highways

This concession program (PROCROFE) dealt first with highway segments that were technically and economically able to func-

tion as toll roads. The first phase of the program, encompassing close to 840 km, is already in its final bidding stage, with private investments reaching about \$1.2 billion (See Table VI).

TABLE VI
FIRST PHASE OF THE CONCESSION PROGRAM

Road	Extension (km)	Term (years)	Tariff (R\$)	Investment (R\$ million)
• Ponte Rio-Niterói	15	20	0,78	55
• Osório/Porto Alegre)	120	20	0,90	80
• Rio de Janeiro/ Petrópolis/Juiz de Fora	150	25	6,00	235
• Rio de Janeiro/ Teresópolis/Além Paraíba	150	25	3,75	150
• Rio de Janeiro/São Paulo	406	25	10,00	600
Total	841			1.120

The second phase of PROCROFE, covering close to 15,000 km of highways (30% of the federal network) will include road repairs, construction, improvements and equipment purchases. This phase projects private investments of about \$6.7 billion.

Urban Transport

Municipalities have the right to operate urban transport services or to give that right to third parties. Approximately 400 cities, each with more than 50,000 inhabitants, have reasonably large, organized transportation systems. It is estimated that some 54 million daily passengers ride the mass transportation systems in Brazil. Fifty million of them use buses and four million use railways. The utilization rate of these buses during peak hours is approximately 30% higher than their rated capacity. The bus systems are operated by about 2,000 private companies and a small number of publicly-owned companies. The railways are the responsibility of

the state governments. The metropolitan trains are operated by the state and by the federal government, which is trying to give the states full responsibility for them.

The infusion of national or foreign private capital, in partnership with the public sector, is crucial if the systems are to modernize and meet growing demand.

Ports

The port system requires an estimated \$1 billion of investments in the next four years, \$500 million for infrastructure and the rest for equipment. In recent years, the Brazilian government has invested \$200 million in the ports and expects to invest \$50 million this year. The combination of last year's Port Modernization Law, the new Concessions Law and the proposed constitutional amendments will enable national and foreign capital to invest in all phases of the port sector.

The Aerospace Infrastructure

The aerospace infrastructure encompasses the entire complex of installations and services designed to support the country's aviation and space activities. Given the adoption of the Concessions Law, it is worth looking at two segments of the aerospace sector.

The National Policy on Space Activities (PNDAE) made the establishment of space systems, and the infrastructure necessary to support them, a priority objective. In this regard, installation of the Alcântara Launch Sight (CLA) is almost complete. The geographic location of Alcântara is so advantageous that launches from this base use approximately 25% less fuel than similar launches from Cape Canaveral. The government's principal reasons for opening the development of CLA to national and foreign private capital are the large amount of investment required, the high cost of operating the facility and, especially, the excellent market opportunity for launching rockets. Private firms will be able to gain concessions to

launch space vehicles and/or to install any number of support facilities.

As regards air transport, Brazil's aviation laws permit private companies to build, maintain and operate airports, under either concessions or permits. The Ministry of Aviation is seeking to encourage private companies to share, through concessions, in the operation and administration of passenger and cargo installations.

Telecommunications

Public telecommunication services are operated by the Telebrás system and by four independent companies, only one of which is owned by private capital. The Telebrás system serves about 90% of the country's telephones. The federal government has about 24% of Telebrás' capital and 56% of the voting shares. Telebrás also owns at least 70% of the capital of the state long-lines enterprises and of Embratel.

The Brazilian market can be divided into two large segments, each with different characteristics and requirements. One segment is comprised of large companies, high income families and technologically-advanced firms that demand the most modern services available. The second segment encompasses the small firms and the large majority of the population that require only basic telecommunications services. Future investments should increase the present 12.4 million telephone lines to 23 million by 1998. Similarly, rural services should be tripled from 230,000 to 700,000 lines by

1998. Public telephones should also become a priority, increasing from a little more than 300,000 phones to 600,000. The mobile telephone network should expand from the current 500,000 phones to six million by 1998.

Some \$30 billion of investments will be needed to achieve these goals, but the Telebrás system will likely provide only 50% of this capital. Recognizing that these objectives can be achieved only with the cooperation of the private sector, the government sent Congress a constitutional amendment that would permit private firms, operating under concessions, to offer public telecommunications services. This change is part of a larger effort to strengthen the government's ability to regulate the sector.

Sanitation

It is essential to create modern service structures in order to resolve Brazil's sanitation problems. To date, Brazil has basically utilized three distinct structures to provide sanitation services:

- municipalities give concessions to state government sanitation companies to provide the services for 25 to 50 years;
- municipalities, through one or another of their departments, operate their own sanitation services; and
- municipalities, using one of their autonomous organizations outside of their normal organizational structures, operate their sanitation services with technical support from the Ministry of Health.

Currently, twenty-seven state government companies provide water services for approximately 78% of the urban population (97 million people) and sewage services for 64%. They offer water services in 4,753 localities and sewage services in 686 localities.

Municipalities offer water services in 2,308 localities and sewage services in 768 localities. Brazil has little experience with private companies operating sanitation services. Its experience at the municipal level has been essentially with private companies providing support services.

As for garbage collection services, they are traditionally carried out by the municipalities, sometimes directly and sometimes through private sector concessions. Approximately 63% of Brazilian homes have garbage collection service, 80% in the case of urban homes.

Total investment needed to eliminate service deficiencies is estimated to be \$21 billion (\$6 billion for water supply and \$15 billion for sanitation). The average annual investment necessary to meet the growth in urban population for the next 15 years is \$880 million (\$390 million for water supply and \$490 million for sewage).

The sector's priority objectives are:

- increase service area coverage;
- improve the efficiency of present service providers;
- induce the present companies to become more professional and financially self-sufficient; and
- upgrade the management of service providers.

In modernizing the sector, tariff policy stands out as a central element for guaranteeing the service companies' self-sufficiency and debt capacity. The new financing scheme for the sector foresees a partnership between the public and private sectors, the success of which has been proved in a number of countries.

Treatment of Foreign Investment in Brazil

Law no. 4,131, September 3, 1962, as amended by Law no. 4,390, August 29, 1964, ensures foreign capital the same legal treatment as domestic capital, and prohibits all discrimination other than what is established in the law. It requires that foreign investments be registered with Brazil's Central Bank.

The issuance of a Certificate of Registry means that the investment is officially recognized and allows the remittance of profits and of the initial invested capital at any time. No additional authorization is needed as long as corporate, tax and other pertinent laws are satisfied. Specific authorization from the Brazilian Central Bank is necessary to remit capital gains. Note that there is no requirement for prior authorization for investment. Registration with the Central Bank must be done no later than thirty days from the time the capital enters the country.

Direct foreign investment can enter the country as currency, tangible goods or even intangible goods as long as they are committed to economic activities. It may be done through foreign companies' branches that are authorized to operate in Brazil; through the acquisition of capital positions in companies that already operate in Brazil; or through the establishment of a new company, usually a corporation or a limited liability partnership.

The tax treatment given to foreign capital companies is the same as that given to companies without foreign ownership. However, profits or dividends distributed to foreign investors pay an income tax of 15%. In order to avoid double taxation, Brazil has signed treaties with 23 countries, including Germany, Argentina, Austria, Belgium, Canada, China, Korea, Denmark, Ecuador, Spain, Philippines, Finland, France, Hungary, India, Italy, Japan, Luxembourg, Norway, Portugal, Holland and Sweden. As a sign of its political desire and interest in attracting new foreign investment, the Brazilian government has been negotiating Agreements for Reciprocal Promotion and Protection of Investments with several countries. Brazil also has an investment agreement with the United States and is a member of the Multilateral Investment Guarantee Agency (MIGA).

ANNEX

Constitutional Amendments

Telecommunications, Pipeline Gas and Mining

As part of the effort to improve the federal constitution, in February the President submitted to Congress several amendments deemed necessary to reinitiate the country's economic and social development.

The Concessions Law may become an even more efficient tool as the constitution is improved, and the federal government is no longer obliged to use a public sector company to provide public telecommunications services. The same is true as regards the state governments' current obligation to distribute pipeline gas directly or through a public company (paragraph XI of article 21 and subparagraph 2 of article 25). Private capital will then be able to participate actively in such enterprises.

The Executive branch wants also to eliminate the distinction between national companies and national companies of Brazilian capital, and the different treatment they receive (paragraph IX of article 170, article 171 and subparagraph 1 of article 176). Thus, any company constituted under Brazilian law, with headquarters and administration in Brazil, would be considered Brazilian. There would no longer be preferential treatment for products or services produced by companies classified according to the origin of their capital. This change would permit all Brazilian companies to explore and to exploit mineral and hydraulic energy resources.

These proposed constitutional amendments maintain the State's role as coordinator and regulator, but create private sector opportunities that are more compatible with the creation of a modern, dynamic and competitive economy.

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