

New Regulations for Issuing Infrastructure Bonds

Brazil's new law (12.431 of June 24, 2011) has reduced the Income Tax rate on long-term infrastructure bonds to zero for individuals and to 15% for corporations, for bonds supporting priority projects. Pursuant to the law, Brazil's Federal Government has recently determined the criteria for designating priority projects.

On November 10, 2011, the government published these regulations, much awaited by the market and those involved in infrastructure development and construction who have hoped that their projects will benefit from the new tax rate.

Decree 7.603/11, implements Article 2 of Brazil's new law, establishes the criteria for approving priority projects in the following areas: (i) physical infrastructure and (ii) economic infrastructure including research, development, and technological innovation.

The Decree delegated the authority to determine relevant criteria for priority projects to the government ministry that oversees the relevant project area. Priority areas include: transportation & logistics; urban mass transit & traffic; energy; telecommunications & broadcasting; sanitation; and water management & irrigation.

Investors and project sponsors are now waiting for each government ministry to establish minimum requirements for approving priority projects. In regard to projects investing in economic infrastructure related to research, development, and technological innovation that are not also physical infrastructure projects, the lead ministry will be the Ministry of Science, Technology and Innovation.

It has already been determined that priority projects must be undertaken by a special purpose entity (SPE) in the form of a corporation, which may be publicly held. In addition, among other requirements for project approval contained in the Decree shareholders of the SPE that are legal entities must be identified and the SPE must demonstrate compliance with all federal tax laws. Finally, the Decree establishes December 15, 2015 as the deadline for the SPE to issue such bonds in relation to such an approved priority project.

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