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Project for Change of the Regulatory Framework for Sanitation

According to data released in 2018 by the National Information System on Sanitation (SNIS), in the last Diagnosis of Water and Sewage Services, currently 35 million Brazilians do not have access to drinking water and only 53.2% of the population has access to sewage collection.

In view of this scenario, Bill of Law 4162/2019 (PL 4162/19) intends to change and update the Regulatory Framework for Basic Sanitation. This project stands as an important promise to change the rules established for basic sanitation services, which include water supply, sewage treatment, the destination of rainwater in cities, and urban waste. PL 4162/19 was approved by the Chamber of Deputies and is currently under analysis by the Federal Senate.

One of the main implementations proposed with the new regulatory framework is the incentive to private investment in this sector, which today is highly monopolized (state-owned companies, as a rule owned by the respective states, have a strong predominance and private initiative is present in few municipalities). PL 4162/19 intends to include provisions that encourage the privatization and capitalization of state-owned companies in the sector, including making it possible to increase the participation of the capital market to finance sanitation projects.

Additionally, in order to overcome the current basic sanitation model in the country, PL 4162/19 intends to guarantee the progressive expansion of access to drinking water supply and sewage collection services for all households in the country. To make such universalization possible, PL 4162/19 reinforces the need for the government to establish solid partnerships with the private sector, with the support of states and municipalities.

If PL 4162/19 is approved, the states would be able to create blocks of municipalities. This measure aims to promote the meeting, in blocks, of municipalities with different financial resources, promoting the regionalization of basic sanitation and aiming to make smaller cities more attractive for investments by the private sector. The states will organize the blocks based on the analysis of their economic and financial sustainability, and the municipalities will be able to join this modality, voluntarily. The federal government will intervene only if the states failed in the organization.



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One of the strong characteristics of this proposal to change the regulatory framework is the concern with the economic and financial sustainability of the municipalities. For this purpose, there is provision in PL 4162/19 in the sense that public water supply, sewage, drainage, solid waste management, and urban rainwater management services may be remunerated by the collection of fees, tariffs and other public prices, according to the service provision regime or their activities.

In this same sense, it is important to highlight that PL 4162/19 intends to eliminate the so-called “Program Contracts”, which are contracts executed between municipalities and state-owned sanitation companies and that neither follow the formal administrative bidding procedure, nor provide for targets. This is intended to facilitate partnerships with the private sector and favor Concession Contracts through competition, which are generally more efficient in financial terms for all parties involved.

To provide investors with greater legal certainty, the Concession Agreements must observe the reference standards for the regulation of basic sanitation to promote the adequate provision of services, with full service to users, complying with the principles of regularity, continuity, efficiency, security, timeliness, generality, courtesy, low tariffs, rational use of water resources, and universal service.

It should also be noted that, regarding the resolution of disputes in the scope of the Concession Contracts mentioned, PL 4162/19 establishes that the contracts that involve the provision of basic sanitation services may provide for private mechanisms to resolve disputes arising from or related to the contract, including arbitration, so that *“National Water Agency (ANA) will make available, on a voluntary basis and subject to agreement between the parties, mediation or arbitration action in conflicts involving titleholders, regulatory agencies, or providers of basic sanitation services”* (article 4-E, Paragraph 5 of the Bill). However, the Agency is far from acting as a dispute resolution forum.

It is also intended to give the ANA the competence to edit reference standards on the service, to provide guidelines to local agencies and municipalities, with due regard for the plurality and geographic extent of the country, which holds 12% of the fresh water on the planet. As per PL 4162/19, ANA would be entrusted with the functions of promoting studies and research to reduce water losses that cause huge damage to basic sanitation operators, as well as establishing methods to calculate indemnities in situations of sale and regulating rules for reuse of effluents, among other attributions.

Finally, it should be highlighted that the current wording of PL 4162/19 also intends to (i) abolish the current limit of R\$ 180 million of participation of the federal government in funds to support the structuring of public-private partnerships, in order to mitigate risks imminent to public-private partnership projects in Brazil; and (ii) establish deadlines for municipalities to close open dump yards by 2024, depending on the location and size of the municipality.

In summary, although the challenges are many, the New Sanitation Regulatory Framework is not only an attempt to expand water and sewage coverage throughout the national territory, but also imposes itself as a public health issue and a way to bring private initiative closer to this line of business, ensuring more security to activities and enabling better service to the population.

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