

OPORTUNITIES IN BRAZILIAN WATER SUPPLY AND SEWAGE SECTOR

January, 2021

Sectorial Deficit

Brazil has a deficit in both Water and Sewage coverage:



Water Supply coverage: **83,3%**.



Sewage collection coverage: **50,3%** and only **42,7%** of Sewage treatment.

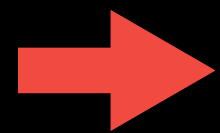


There are over **1,5 million** houses in Brazil without any sanitation.

Investments Needed



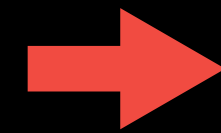
Currently, over **96%** of the sector is State-Owned.



Delicate fiscal condition of many Brazilian states prevent them from making the necessary investments.



Over **R\$ 750 billion** must be invested up to **2033** in order to comply with legislation goals.



With current investments only **3** of the **27 states** would be able to comply with legislation goals.

Privatization and New Regulatory Model

Privatization

The current scenario has led to talks about privatization of the State-Owned Water and Sewage Companies. **Each of the 27 States has its own company.**

New legal framework

In 2020 Congress has passed **Law n° 14.026/2020**, which has updated the Sector's legal framework (Law n° 11.445/2007).

Concessions and PPPs

The new framework provides for **public bids** regarding **concessions of the services** in specific areas and **PPPs** (public-private partnership).

Legal Framework - Law n° 14.026/2020

Law n° 14.026/2020 Highlights:

- New set of goals to 2033: **99%** of Water coverage and **90%** of Sewage coverage and treatment.
- Companies must prove their economic capacity to achieve these goals in order to renew or have new concessions authorized. **State Owned companies running deficits are expected to search for private partners.**
- Concessions **may be granted over a group of municipalities**, especially in metropolitan regions. Even municipalities that do not share borders may form groups.
- The Deadline of a concession contract must be compatible with the time needed for the company to setoff its investments.

Legal Framework - Law n° 14.026/2020

Law n° 14.026/2020 Highlights:

- States **may sell their control of State-Owned Companies**. The municipalities that have already a contract with Companies sold may only object if it results in alterations in the contract already signed by the municipalities.
- Concessions and PPPs **may sub-contract services up to 25% of the value of their contract with the State**.
- Tariffs **may be adjusted in 12 month intervals** in observation to the law and the concession contract. **Extraordinary adjustments may occur** in case of unforeseeable events that alter the economic balance of the contract.
- Concession contracts **may choose arbitration as a conflict resolution method**. Said arbitration must happen in Brazil and be carried in Portuguese.

2020 Bids

- Alagoas: bid regarding Water Supply and Sewage services in the metropolitan region of its capital, Maceió. **The final amount of the bid was over R\$ 2 billion.** The concession contract has a **deadline of 35 Years** and foresees R\$ 2,6 billion worth of investments.
- Espírito Santo: bid for the concession of Water Supply and Sewage services of two municipalities in the metropolitan region of its capital. **The total amount of investments is up to R\$ 580 million.**
- Mato Grosso do Sul: bid regarding Sewage services for the whole state, aiming to achieve universal access. The contract has a **deadline of 30 Years** and **investments worth R\$ 3,6 billion.**

Upcoming Opportunities

- Rio de Janeiro (CEDAE): the bid involves concession of Water Supply and Sewage Services for **35 municipalities in Rio's metropolitan area**. It has been divided in 4 groups and the **minimum expected value of the bid is R\$ 10,6 billion**. The concession will last **35 Years** and investments are expected in an amount of over **R\$ 40 billion**. **The bid will occur in April, 30.**
- Porto Alegre (DMAE): the concession of Water Supply and Sewage Services in the city of Porto Alegre is currently under public consultation. **Foreseen investments are worth R\$ 2,17 billion.**
- Several Other concessions are under discussions in the states of Ceará, Acre, Pará, Pernambuco, Amapá and Sergipe.

Souto Correa's Legal Team

- Souto Correa has a specialized team in issues involving basic sanitation, formed by professionals with vast experience in matters related to **regulatory, administrative, environmental, corporate, contractual, and tax law**. The team of professionals provides interdisciplinary advice on both advisory and litigation aspects matters involving the **water supply services, sanitary sewer, urban drainage, urban cleaning and solid waste management**.
- We advise private companies in the **participation of bidding process** for the provision of sanitation services through PPPs and other models in several regions of the country. We also have advised investment funds in **investments in companies controlling concessions of sanitation services**.

Souto Correa's Legal Team

- We provide litigation services **both in lawsuits and arbitrations**, acting in the defense of private companies against sanitation companies in matters such as dispute between shareholders regarding the control of the companies and also in the **defense of private companies** in public-interest civil action, civil investigations and proceedings before the Accounting Court discussing possible environmental and regulatory irregularities in the model of providing water and sewage treatment services.

Souto Correa's Legal Team – our professionals

- **Luiz Gustavo Kaercher Loureiro**

Ph.D in Law at the Federal University of Rio Grande do Sul (UFRGS), Luiz Gustavo Kaercher Loureiro has renowned academic actuation, being an associate professor and coordinator of the study group of Natural Resources Law at the Federal University of Brasília (UnB). He has a postdoctoral degree in Turin, Italy, where he worked on the federal distribution of oil royalties. Besides several articles published in national journals, Kaercher Loureiro is the author of four books on the area of natural resources.

He is a member of CERI-FGV team that is currently advising the regulatory agency (ANA) on legal and economic issues involved in the making of the new regulatory framework expected to be in place in 2021 and 2022.

Souto Correa's Legal Team – our professionals

- **Pedro Henrique Poli de Figueiredo**

Pedro was Vice-President of the State of Rio Grande do Sul Accounting Court. Performed the activities of Councilor of the State of Rio Grande do Sul Accounting Court in the vacancy of the Substitute Councilor. He Currently is Administrative and Regulatory Professor at UNISINOS University. Formely he was Lawyer, Advisor and General Counsel of important public and private institutions, such as ICOPLAN and Gerdau Group, with employment relationship for COSIGUA, until his approval in public tender for State Attorney.

Pedro was State Attorney of Rio Grande do Sul, where performed the function of Public Goods Coordinator. Held the position of Deputy Chief of Staff for Administrative Subjects related to the cabinet of the Governor of the State of Rio Grande do Sul.

Souto Correa's Legal Team – our professionals

■ Lívia Amorin

Graduated in Law at University of Brasilia (UnB), holds a LLM in Petroleum and Gas Taxation and Finance by the CEPMLP – University of Dundee. Worked in Law Firms specialized in regulatory matters in Brazil. Also worked as a foreign associate of CMS Cameron Mckenna in Aberdeen, in the United Kingdom.

In the last years, has been working with national and international clients, providing legal advice on regulatory issues, sales of infrastructure assets and contracts both in the sanitation, power, oil, and gas sectors. Currently, is a researcher at the Center for Regulation of Infrastructure at Fundação Getulio Vargas (FGV CERI) and a Lecturer at Instituto Brasiliense de Direito Público – IDP.

Souto Correa's Legal Team – our professionals

■ **Rafaela Kern**

Rafaela has wide experience in contract, corporate and rural real estate law, including foreign investment in general, forestry investments, basic sanitation, and real estate transactions. Worked with Japanese and American multinationals in the infrastructure and construction sector, assisting in EPC contract management.

Rafaela lived in China, including Beijing, Macau and Hong Kong, for approximately 3 years, where studied Mandarin and government studies. Her dynamic profile and exposure to different cultures and market segments, allows her to work closely with both national and international clients.

Souto Correa's Legal Team – our professionals

- **Fabiana Figueiró**

Fabiana Figueiró has wide experience in issues involving environmental licensing in the area of sanitation, water resources management, solid waste management and contaminated areas; analysis of regulatory and environmental feasibility and projects and enterprises; analysis of risks related to issues in the area of sanitation and assessment of environmental and regulatory compliance.

It also has a highlighted performance in lawsuits and civil inquiries involving the subject, including discussions with public authorities for the elaboration of consented decrees. It also stands out for its performance in entities representing business sectors, with participation in councils and committees responsible for formulating public policies in the sanitation area.

Souto Correa's Legal Team – our professionals

- **Fernando Ayres:**

Acting in tax litigation (judicial and administrative) and advisory (preparation of legal opinions and opinions regarding tax issues); tax and infrastructure incentives, including negotiation and preparation of agreements (Protocols of Intent) to be signed with States and Municipalities; customs and foreign trade issues (advisory and litigation); acting on issues related to Third Sector entities.

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