



Lease of Assets and Infrastructure Financing

Em caso de dúvidas sobre os temas discutidos nessa publicação, favor contatar o escritório.

If you have any questions regarding the matters discussed in this publication, please contact the office.

Antonio Araldo Ferraz Dal Pozzo
Sócio Fundador | Founding Partner
araldo@dalpozzo.com.br

Augusto Neves Dal Pozzo
Sócio Fundador | Founding Partner
augusto@dalpozzo.com.br

João Negrini Neto
Sócio | Partner
joao@dalpozzo.com.br

Percival José Bariani Junior
Sócio | Partner | CLO
percival@dalpozzo.com.br

Beatriz Neves Dal Pozzo
Sócia | Partner | CEO
beatriz@dalpozzo.com.br

André Paulani Paschoa
Advogado | Lawyer
Autor | Author
andre@dalpozzo.com.br

A presente publicação é produzida pelo corpo técnico do escritório Dal Pozzo Advogados e se destina a fins meramente informativos. Ela não constitui e tampouco deve ser utilizada como aconselhamento advocatício. O texto reflete a opinião pessoal de seus autores.

This text is published by Dal Pozzo Advogados for informational purposes only. It is not intended and it should not be interpreted, or construed, as legal advice. The text expresses the opinion of the authors.

© Dal Pozzo Advogados. All rights reserved 2018.

DALPOZZO
ADVOGADOS

SÃO PAULO
Rua Gomes de Carvalho, 1510 - 9º andar
04547-005 - Vila Olímpia - São Paulo
Office +55 11 3058-7800

BRASÍLIA
SHS Quadra 06 - Conjunto A - Bloco E - Sala 1411
70316-000 - Edifício Brasil 21 - Brasília DF
Office +55 61 3033-1760

dalpozzo.com.br

These days, several studies demonstrate the need to increase investment in infrastructure in the country, given the common sense that lack of adequate infrastructure is one of the barriers to national development. The search for solutions is hindered by the ongoing financial crisis and the consequent absence of public resources intended for the sectors lacking in infrastructure. One of the sectors cited every day as an example where such investments should be made is the basic sanitation sector.

Government-owned companies at the state level engaged in basic sanitation have tested a system of hiring originated under Private Law to leverage investments in works necessary for the continuity of the sector's development, without this requiring the costing and commitment of resources in the short term: the lease of assets.

The borrowing of the asset lease system into the public contracting sector has the potential to allow the Administration to schedule, monthly, after receiving the asset, to pay the private partner. There is no commitment to the treasury in the short term and the installments can be diluted along several years.

The private sector is then obliged to finance, including through all project finance techniques, the construction of the asset, and is responsible for both the financing and construction risks. On the other hand, the private party will not have to worry about managing the risk of operating the asset and will not be even subject to the risk of demand variation, since the revenue will be guaranteed monthly from the delivery of the asset for operation by the Government. In addition, it is clear that the private party will unquestionably count on the incentive to deliver the works to the public authority in the shortest possible time.

Although some controlling agencies have already endorsed such an unusual contracting method, it is clear that the absence of normative regulations may hinder their use by the Public Authorities. It is also worth mentioning that a correct modeling of contracts for the lease of assets must guarantee the quality of the works that will be leased to the public authority and, as to the private party, this latter may count on the easy enforcement of occasional defaulted amounts owed by the Administration.





Lease of Assets and Infrastructure Financing

The legal rules on the lease of assets can allow even the governmental entities to hire through this method and to have the possibility of constructing public works by paying for them only after it starts operating. Even if this may bind the state budget for a few years, the installments will be lower than the payments made during a contract under conventional means.

As the lease of assets transfers the operation of the asset to the Public Authority, unlike concessions (common, administrative, sponsored), it is a means of contracting that, if duly regulated, will have the potential to be used for the construction of works for such sectors as education and health. Also, it should be mentioned that leasing assets is a method that can be used to create infrastructure in greenfield projects, especially when future demand is difficult to assess, as for example with the railroad industry.

Allowing for private parties to carry out the search for the investments needed for the national development to be promoted by the Public Authority strengthens the ties of partnerships between the public and private sectors, which has been sought to overcome the obstacles imposed by the absence of public resources and by the current financial crisis.