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CHALLENGES CONCERNING SÃO PAULO´S NEW URBAN MASTER PLAN, by Maria Flavia Seabra Gemperli and Marina Rosa Cavalli

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São Paulo's new Urban Master Plan may impose significant changes upon the city and its residents, especially from 2016. This is because the development, project approval, construction and final delivery shall take at least two years. The question that arises is whether or not the city will possess the developments in urban infrastructure necessary and compatible with modernity and the goals of the new Urban Master Plan.

Projects that are submitted for approval after the new Urban Master Plan is sanctioned by Mayor Haddad and subsequently published, will be analyzed within the framework of the new law. However, those pending approval and whose preprocessing had been conducted prior to the publication of the new text included in the law, will be reviewed in accordance with the previous legislation, unless expressly stated otherwise by the concerned party. For this reason, we will still be dealing, in the initial stages, with the "leftovers", that is, launchings of real estate and building projects conceived in accordance with the previous Urban Master Plan.

The Urban Master Plan provided for in the City Statute is the urban development and guidance policy for all agents who work in the city. It should be drawn up with the objective of guaranteeing the fulfillment of the social function of property, ensuring that the needs of citizens are met, particularly those relating to quality of life, social justice and economic development. The Plan should be reviewed at least every 10 years. In this respect, the Urban Master Plan in effect in the City of São Paulo has been pending review since 2012.

In order to overcome imbalances created by underutilized areas of the city, the new Urban Master Plan seeks to improve infrastructure in areas considered strategically important in terms of urban structuring, encouraging investment, which will facilitate residents' access to their places of employment and further reduce housing deficit.

The idea is that, within these areas of importance are the city's highest population densities and highest concentrations of economic activity, with public transport playing the vital role of connecting São Paulo residents to their work and their homes. Thus, the Urban Master Plan seeks to insert public housing into neighborhoods that have a higher density of jobs and public services.

In its final version, still pending sanction by the Mayor, stimulus for the construction of new houses is worth mentioning. These new houses will have one parking space per residential unit and will be located near transport routes. Construction of new buildings will be more restricted in more inlying, far-from-main-avenue neighborhoods, in which buildings will be limited to eight stories.

There is no doubt that this is all part of a global societal development, which includes concern with placing value on public transportation, making it easier for residents to get to and from work and other daily activities.

In other countries there is growing consideration, within a context of city growth, for the safety and comfort of pedestrians and for those who utilize public transportation or other sustainable means of transport, such as bicycles.

Traffic and distance between residents and their places of employment are two of the largest problems which the City of São Paulo faces, and the need to improve upon these issues has been frequently addressed in recent years. The new Urban Master Plan has been designed in such a way that, providing that adequate public policies are developed, it would be possible to materialize some improvement in these areas.

INFRASTRUCTURE - Isabella Carvalho de Barros and André Gribel de Castro Minervino

Timeline extention and liability exceptions from ANEEL perspective

ANEEL has recently announced new decisions concerning project timeline extensions based on liability exceptions, confirming the agency's prior understanding on the subject.

Existing precedents show that ANEEL has only accepted as liability exceptions those events which are demonstrably beyond the agents' control. The agents must provide proof that they have not caused or contributed to the failure to meet the scheduled timeline, and furthermore, that they have acted diligently in circumventing the cause for the relevant delay.

In its recent decisions, ANEEL has decided favorably to agents when even though there were delays higher than the usual related to the environmental licensing, the granting of concessions or the execution of contracts due to actions of public authorities, the agent has acted diligently.

On the other hand, whenever there is no actual evidence of an event justifying the exclusion of liability, the agency has tended to be less favorable to the agents, as it understands such situations to be business risks. This type of decision occurs, for example, in cases where it is difficult to obtain financing and where there is regular delay in the issuance of a decision relative to changes in the original conditions of the project.

Precedents have been consolidated over recent years, and a trend has become apparent. However, one of the decisive factors in the approval of these claims is their preparation, requiring precise identification of the primary reasons and the adjustment of facts to the claimed right.

CIVIL LITIGATION – Luciana Souza and Carolina Vieira

Free distribution of awards by contest: need for prior authorization

The free distribution of awards by way of advertising is a marketing strategy commonly used by corporations aimed at leveraging the sale of products or services, and/or promoting brands and images.

With contests of an exclusively artistic, sports or recreational nature, the legislation waives the need for prior authorization by competent government bodies.
However, many companies are still unaware of the fact that with the advent of Ordinance No. 422, issued by the Ministry of Finance, some contests have come to be mischaracterized as exclusively artistic, cultural, sports or recreational, in turn, requiring them to seek authorization from competent bodies.

This new legislation makes clear, among other things, that to be exempt from authorization, companies cannot reward contest participants with their own products and/or services, and may neither be organized nor judged via social networking. Under this legislation, contests may only be advertised through such means.

When the contest is mischaracterized as solely cultural or similar, the free distribution of awards shall be subject to authorization by competent bodies. If such authorization is not required, the promoting company is subject to penalties that include, among others, a fine of up to 100% of the total value of awards distributed plus the inability to hold other contests for a period of up to 2 years.

PUBLIC LAW – Lucas Sant'Anna

Arrangements for publicprivate partnerships in election years

The rule expressed in Article 42 of Complementary Law No. 101/2000 - the Tax Liability Act - is usually confused with an absolute prohibition, imposed on public bodies, involving the execution of long-term contracts, especially arrangements for public-private partnerships. Hence, it is common to mistakenly attribute deceleration of public contracts in the final year of a political term, to legislation.

According to Article 42 of the Tax Liability Act, during the last two quarters of a political term, government agents may not undertake spending obligations that may not be fully performed within the term itself. Or, should such obligations be undertaken, the same government agents must leave sufficient funds available for the payment of expenses during the next term.

Therefore, the rule at no time prohibits, and should not prohibit, the execution of long-term contracts deemed essential for the continuity of public services under the jurisdiction of federal bodies. The rule is aimed at prohibiting the undertaking of spending obligations, and not of a set of rights and obligations arising from a contract.

Indeed, the purpose of the rule is not to prevent new long-term public contracting, such as public-private partnership contracts, but rather prevent the government agent, who is leaving office, from leaving behind expenditures in an Accrued Liability account. The expenditures placed in this account are those whose requirements have already been met, i.e., the obligation has been fulfilled by the contractor, but payment, for whatever reason, such as time or delay due to internal processing by the government, will be effected only in the following term.

In public-private partnership contracts, what is observed is the periodic compliance with the obligation on the part of the contractor, coinciding with the government's obligation to effect payment. Thus, any arrangement for a PPP will oblige future government agents to pay only when and if the contractor completes the work and services agreed upon. This system will be observed in all PPP contracts, whether they are signed before or during the last two quarters of an election year. With this specification, expenditures concerning these contracts will not be placed in an Accrued Liability account.

Thus, the prohibition regarding arrangements for public-private partnerships is not within the scope of the prohibition set forth in Article 42 of the Tax Liability Act. If the prohibition were to reach this far, the law would be contrary to the continuity of the longterm essence of PPP contracts.