

Report on Water and Sanitation in Brazil



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Index | **1. Fact book**

1.1. Brazil

Territory: 8.510.345 km², with about 20% of the world's water supply¹

Population: 213.3 million people in 2021²

GDP: USD 1.61 trillion in 2021³

Currency: Real/BRL (R\$) | 1 EUR = 5,4746 BRL / 1 BRL = 0,1826 EUR⁴

Political structure: the Federation Republic of Brazil is organized as 1 Federal Union, with 26 Federation State Unit and 1 Federal District (Brasilia), with more than 5.500 municipalities. Executive: 1 President, 27 Governors and the city mayors; Legislative: 513 Deputies and 81 Senators in the Federal level, existing 1 legislative house for each Federation State and municipality; Judiciary: about 18.000 judges⁵, existing also non-judicial methods, like arbitration, for the solution of conflicts. Many sectors are regulated by Regulatory Agencies, such as the National Water and Sanitation Agency.

1.2. Water in Brazil

Use of water by families per capita = 116 liters/day

Total water taken for economy = 3,7 millions of cubic hectometer

Value of the production of water and sewage: R\$ 56,5 billions

Average cost by volume of water and sewage of the Economy: R\$ 3,06 R\$/cubic meter⁶

1 World Bank, “<https://www.worldbank.org/en/news/feature/2016/07/27/how-brazil-managing-water-resources-new-report-scd>”

2 Brazilian Institute of Geography and Statistics (IBGE), “<https://cidades.ibge.gov.br/brasil/panorama>”

3 World Bank, “<https://data.worldbank.org/country/BR>” / IBGE, “<https://www.ibge.gov.br/explica/pib.php>”

4 Brazilian Central Bank, exchange rate at 16th November 2022, “<https://www.bcb.gov.br/conversao>”

5 National Council of Justice (CNJ), “<https://www.cnj.jus.br/ha-deficit-de-19-8-de-juizes-no-brasil/>”

6 Contas Nacionais n. 72 ISSN 1415-9813, ANA, IBGE – 2013-2017, check for the 2018-2022 in a Second Report

Water use by big geographic regions:

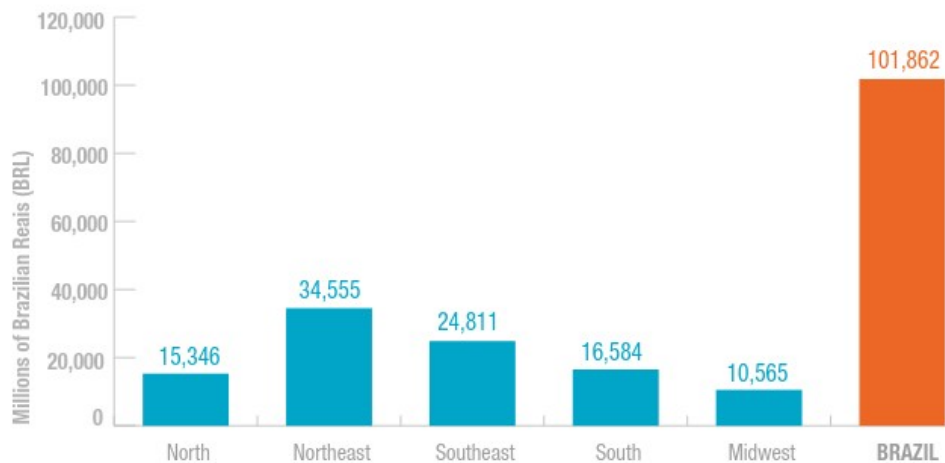
hm ³ (hectometer cubic)	North	Northeast	Southeast	South	Center-West
Total water use	336.211	199.169	1.880.214	741.736	586.550
Total economic activities					
Electricity and gas	290.373	116.406	1.712.246	583.560	402.074
Agriculture, livestock, forest production, fishing and aquaculture	40.322	69.408	138.775	147.022	178.605
Water and Sewage	4.898	11.677	24.654	9.697	5.025
Manufacturing and construction industries	172	1.351	2.927	1.124	679
Extractive industries	335	20	587	69	34

Water use and sewage:

	North	Northeast	Southeast	South	Center-West
Total water use by households per capita per day (liters/inhabitant/day)	84	83	143	121	114
Index of sewage collected from Families in relation to water use (%)	14,3	38,1	71,1	54,4	53,8 ⁷

Necessary investments in sewage treatment for Brazil until 2035, according to the Sewage Atlas

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⁷ *Idem supra*. Page 11, ANA, IBGE

⁸ National Water Agency (Brazil). SDG 6 in Brazil: ANA's Vision of the Indicators. Brasília: ANA, 2019. ISBN: 978-85-8210-061-5

According to the World Bank analyses on water in Brazil, about six years ago:

“Many water companies suffer significant water losses (more than a third of the supply, on average), have excess staff and high operating costs. The financing of the sector is based on crossed tariffs and subsidies, with an obsolete tariff structure incapable of generating more efficient, sustainable services. The result: the companies have insufficient capital to increase coverage and to make the infrastructure more resilient to extreme climate events (droughts and floods)”⁹.

Index | 2. Brazilian Legal Framework

2.0. Brazilian Federal Constitution. The juridical nature of the water remains in the constitutional agreement by which the territorial sea, every lake, river and any water flow, as well as the potentials of hydraulic energy, are all of these water goods of the Federal Union (Article 20), being the water, for some jurists¹⁰, part of the Environment protected in the Article 225 as a good of public use. Are included among the assets of Federation State Units the “*surface or underground waters, flowing, emerging and in deposit, except, in this case, in accordance with the law, those arising from Union works*” (Article 26). Is there life without water? But for other jurists, there are private water, because, for example, the Brazilian Constitution do not denied the rule of the old Water Code (Law Decree 24643/1934) by which “*springs and all water located on land that is also private are private, when they are not classified among the common waters of all, public waters or common waters*” (Article 8). It is possible the existence of an environmental resource that is a private good at the same time that is a good of public interest, such as some environmental reserves on private properties^{11 12}.

2.1. Federal Law n° 9.433/1997, the Brazilian Law of Waters, which one will establish the water as a good of public domain, with economical value, being the watershed the territorial unit for policy on water (Article 1, Law 9433). Brazil has 12 Hydrographic Regions which were divided and named by the Resolution n° 32/2003, of the Environment’s Ministry - National Council of Water Resources, considering natural, social and economic aspects, such as bellow:

9 World Bank, “<https://www.worldbank.org/en/news/feature/2016/07/27/how-brazil-managing-water-resources-new-report-scd>”

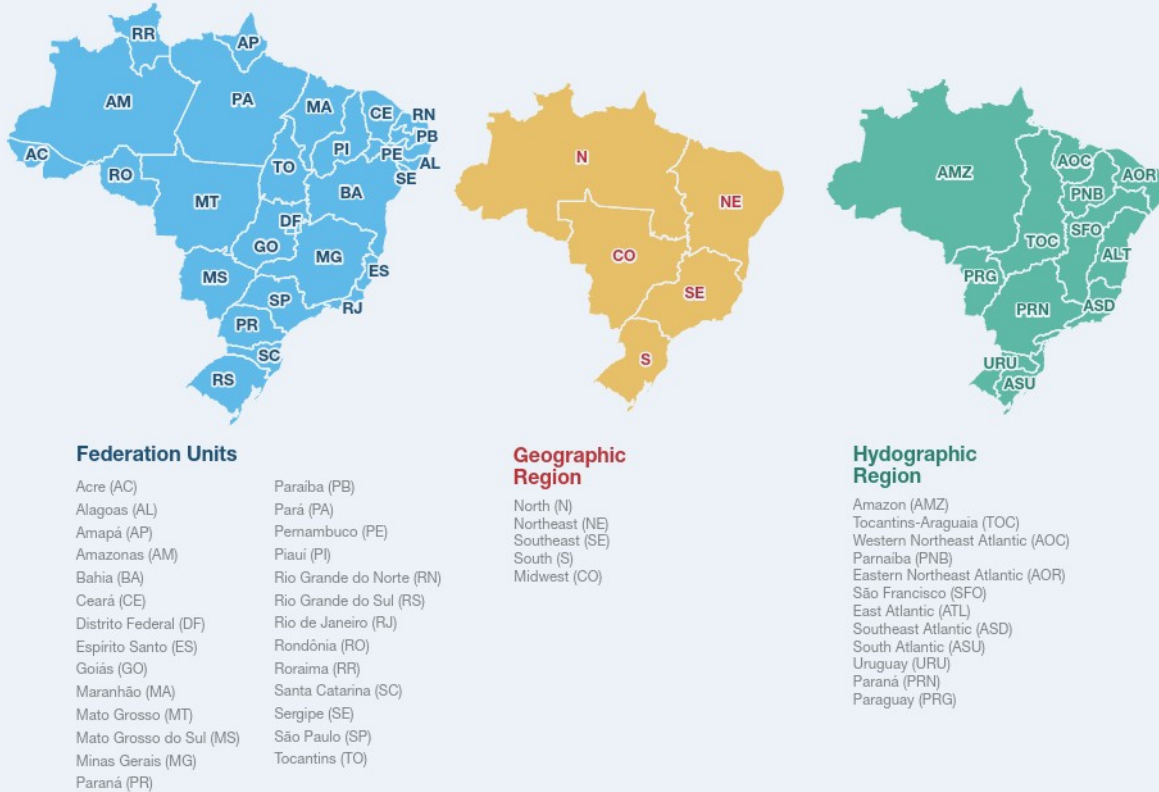
10 MILARÉ, Édis. *Direito do ambiente: A gestão ambiental em foco: doutrina, jurisprudência, glossário*. São Paulo: Editora Revista dos Tribunais, 2011.

11 “*Water is a good that cannot be privately appropriated, as it is, as we said, indispensable to life, even though legislation and doctrine often speak of water in the private domain and water in the public domain.*” (SILVA, José Affonso da. *Direito ambiental constitucional*. São Paulo: Malheiros, 2002)

12 “*The water formed in private areas – tanks, small dams and lakes, places where rainwater is stored – are private goods, even if they were eventually collected from public waters. Therefore, we agree that most waters are public goods, but this does not rule out the possibility of the existence of private waters.*” (CARVALHO FILHO, José dos Santos. *Manual de direito administrativo*. Rio de Janeiro: Lumen Juris Editora, 2009)



Territorial groups adopted in the breakdown of the national indicators results



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A key instrument is the Water Resources Plan, an instrument of long term, ruled by the Law 9433, Article 7º, in which will be established a diagnosis of the water in Brazil, including an analysis on alternatives to demographic growing, the evolution of production activities, modifications of the land, the balance among availability and future demands, rationalization targets, projects and programs to be taken, priorities on the granting to the water's right of use, criteria to charge by the use of water resource. The present plan is the PNRH 2022-2040 (Resolution 232/2022, Ministry of Regional Development - National Council of Water Resources, <https://conjuntura.ana.gov.br>). According to this Law 9433, Article 5º, is part of the Brazilian Policy for Water the granting of rights to use water resources as well as the charging for the use of water resources. Article 11: *“The rights of the following uses of water resources are subject to grant by the Government: I - derivation or abstraction of a portion of the water existing in a body of water for final consumption, including public supply, or input for the production process; II - extraction of water from an underground aquifer for final consumption or as input for the production process; III - discharge of sewage and other liquid or gaseous waste, whether treated or not, into bodies of water, for the purpose of dilution, transportation or final disposal; IV - use of hydroelectric potential; V - other uses*

13 National Water Agency (Brazil). SDG 6 in Brazil: ANA's Vision of the Indicators. Brasília: ANA, 2019. ISBN: 978-85-8210-061-5

that alter the regime, quantity or quality of water existing in a body of water.”; Article 20: “The use of water resources subject to a grant will be charged”. Penalties related to this Law can be up to R\$ 50.000.000,00 million of reais (Article 50).

2.3. Federal Law nº 9.984/2000, the law of the Water and Sanitation National Agency¹⁴ (“ANA”), being the basic structure:

I - Collegiate Board*

II – Superintendencies

III - Direct Advisory Units

* Article 5, of the ANA’s Regulation. “ANA will be directed by a Collegiate Board composed of five members, four Directors and one Chief Executive Officer, so appointed by the President of the Republic, with non-coinciding terms of five years, reappointment is prohibited. Art. 6 The former director is prevented from carrying out activities or providing any services in the sector regulated by ANA, for a period of six months, counted from the dismissal from office or term of office”¹⁵.

CEO	Veronica Sánchez da Cruz Rios
Director	Ana Carolina Argolo Nascimento de Castro
Director	Filipe de Mello Sampaio Cunha
Director	Mauricio Abijaodi Lopes de Vasconcellos
Director	Vitor Eduardo de Almeida Saback

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The Law 9.984 establish that “In granting the right to use water resources under the Union's domain, the following time limits will be respected, counting from the date of publication of the respective administrative acts of authorization: I – up to two years, for the beginning of the implementation of the undertaking object of the grant; II – up to six years, for completion of the implementation of the projected enterprise; III – up to thirty-five years, for the validity of the grant of right of use...§ 2 The deadlines referred to in items I and II may be extended, when the size and social and economic importance of the enterprise justifies it, after hearing the National Council of Water Resources. § 3 The period referred to in item III may be extended by the ANA, respecting the priorities established in the Water Resources Plans.” (Article 5).

“ANA may issue preventive grants for the use of water resources, with the purpose of declaring the availability of water for the required uses, observing the provisions of art. 13

14 See also the Law Decree 10.639/2021

15 RESOLUÇÃO ANA Nº 104, DE 8 DE OUTUBRO DE 2021. Documento nº 02500.047028/2021-38, “https://www.gov.br/ana/pt-br/aceso-a-informacao/institucional/base-juridica/copy_of_Resolucao104.pdf”

16 Check for a complete list, with e-mails and phones, dated from 7/27/2022: “<https://www.gov.br/ana/pt-br/aceso-a-informacao/institucional/cargos-ate-5-nivel/RelaoservidoresocupantesdeCargoComissionadoCCTVacimaWEB27.7.2022.xlsx>”

of Law No. 9,433 of 1997. § 1 The preventive grant does not grant the right to use water resources and is intended to reserve the flow that can be granted, allowing investors to plan projects that need these resources.” (Law 9.984, Article 6)

2.4. Federal Law nº 11.445/2007. The Rule of Basic Sanitation. Article 3º: “I - basic sanitation: set of public services, infrastructure and operational facilities of: (Writing by Law No. 14,026, of 2020) a) supply of drinking water: consisting of activities and the provision and maintenance of infrastructure and operational facilities necessary for the public supply of drinking water, from collection to building connections and their measuring instruments; b) sanitary sewage: constituted by the activities and provision and maintenance of infrastructure and operational facilities necessary for the proper collection, transport, treatment and final disposal of sanitary sewage, from building connections to its final destination for the production of reuse water or its proper release into the environment; c) urban cleaning and solid waste management: consisting of activities and provision and maintenance of infrastructure and operational installations for collection, manual and mechanized sweeping, cleanliness and urban conservation, transport, transshipment, treatment and environmentally appropriate final disposal of household solid waste and urban cleaning waste; and d) drainage and management of urban rainwater: consisting of activities, infrastructure and operational installations for rainwater drainage, transport, detention or retention to dampen flood flows, treatment and final disposal of drained rainwater, covered by cleaning and preventive inspection of networks”. Remuneration: “Public basic sanitation services will have their economic and financial sustainability ensured through remuneration for the collection of services, and, when necessary, through other additional forms, such as subsidies or subventions” (Article 29). “The structure of remuneration and collection of public basic sanitation services will consider the following factors: I - categories of users, distributed by ranges or increasing amounts of use or consumption; II - required use or quality standards; III - minimum amount of consumption or use of the service, aiming at guaranteeing social objectives, such as the preservation of public health, adequate assistance to low-income users and protection of the environment; IV - minimum cost necessary for availability of the service in adequate quantity and quality; V - significant cycles of increased demand for services, in different periods; and VI - consumers' ability to pay.” (Article 30)

2.5. Federal Law nº 12.334/2010. “This Law applies to dams intended for the accumulation of water for any use, for the final or temporary disposal of tailings and for the accumulation of industrial waste that have at least one of the following characteristics: I - height of the massif, measured from the meeting of the foot of the downstream slope with the ground level to the dam crest, greater than or equal to 15 (fifteen) meters; II - total capacity of the reservoir greater than or equal to 3,000,000m³ (three million cubic meters); III - reservoir containing hazardous waste according to applicable technical standards; IV - medium or high associated potential damage category, in economic, social, environmental terms or loss of human life, as defined in art. 7 of this Law; V - high risk category, at the discretion of the

supervisory body” (Article 1).

2.6. Federal Law n° 14.026/2020, an update of the Sanitation legal framework (with amendments to the Federal Laws 9984/2000, 10.768/2003, 11.445/2007, 13.529/2017, 11.107/2005, 13.089/2015, 12.305/2010), by which now, in opposition to the past, it is necessary concession contracts, making it mandatory to open a bidding process, where public and private companies can participate. Open market for private companies, with juridical security, since 2020 (Article 10, Law 14.026/2020). Goals for Universalization: 99% of population with access to water and 90% of the population with sewage up to December, 2033. More on item 4 bellow (the Doing Business in Brazil).

2.7. Federal Law n° 14.133/2021, impossible not mention this law that will get enforcement in April 1, 2023 (Article 194), revoking the past law on tenders and administrative law in Brazil that had a life of almost 3 decades. The grant/concession and the private public partnership are the structures that can be used in this sector. As a rule, that has exception, “*The bidding process will observe the following phases, in sequence: I – preparatory; II - disclosure of the bidding notice; III - presentation of proposals and bids, when applicable; IV – judgment; V – qualification; VI – appeal; VII – homologation*” (Article 17). “*What arrangements have to be made in order to be able to participate indirectly in tenders for urban development?*” First it is necessary understand that a Brazilian legal entity, a business legal entity, such as a limited liability company (Ltda) or a Corporation (S.A.), will be considered as a Brazilian company when the headquarters is in Brazil, do not matter if the sole quotaholder, in the case of a Ltda, is a foreign company, or a foreign natural person. Then, one possibility is to incorporate in Brazil a company or acquirer quotas/shares from already exiting corporate vehicles. How we are in a regulated market, it is necessary observes clauses like this: “*The transfer of the concession or corporate control of the concessionaire without prior consent from the granting authority will result in the forfeiture of the concession*”. (Law 8.987/1995, Article 27). Very usual is the formation of consortium, a group of companies, to close the deal with the Public Administration. Then, one important question to be solved is: a consortium with Brazilian companies and foreign companies is possible? Other important rules: “*In equal conditions, preference will be given to the proposal submitted by a Brazilian company*” (Law 8.987/1995, Article 15, § 4). “*The public agent appointed to act in the area of bidding and contracts is prohibited, except in the cases provided for by law: II - establish differentiated treatment of a commercial, legal, labor, social security or any other nature between Brazilian and foreign companies, including with regard to currency, modality and place of payment, even when financing from an international agency is involved*” (Law 14.133/2021, Article 9, incise II). Also important remember that in the Brazilian legal framework exist the *international bidding*: “*international bidding: bidding processed in the national territory in which the participation of foreign bidders is admitted, with the possibility of quotation of prices in foreign currency, or bidding in which the contractual object can or must be executed in whole or in part in the territory abroad*” (Law 14.133/2021, Article 6º, incise XXXV). The risks concerning to

tenders/concessions: how we are in the field of Administrative Agreements, the premise is that in one side is the State, that is stronger than any other potential part. In these terms, it is a fact that the contractual part of the State has some advantages. But the juridical security in Brazil can be considered enough considering the constitutional and legal framework, in which we can find the substantive due process of law. It is a rule for the Administration in Brazil: “*The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities will obey the principles of legality, impersonality, morality, publicity and efficiency*” (Brazilian Constitution, Article 37). Also: “*Frustration of the competitive nature of bidding. Art. 337-F. Frustrating or defrauding, with the aim of obtaining for oneself or for others an advantage arising from the award of the object of the bidding process, the competitive nature of the bidding process: Penalty - imprisonment, from 4 (four) to 8 (eight) years, and a fine*”; among other criminal species in the Brazilian Criminal Code. More specifically, in the Allocation of Risks in the Agreements of Concession, it is important observes: “*The contract may identify foreseen and presumed contractual risks and provide for a risk allocation matrix, allocating them between contracting party and contracted party, by indicating those to be assumed by the public sector or the private sector or those to be shared.*” (Law 14.133, Article 103). The financial and economic equilibrium of the agreement can be preserved with legal mechanisms. The mitigation of the risks is done with a strong compliance strategy, that can be organized considering a research of the problems of the players in the Brazilian Courts. In the case of public private partnership (that is a special kind of concession) in 2012 was found a fund of 6 billions reais that works as guarantee for the payment of the State to the private entities (Law 11.079/200, Article 16).

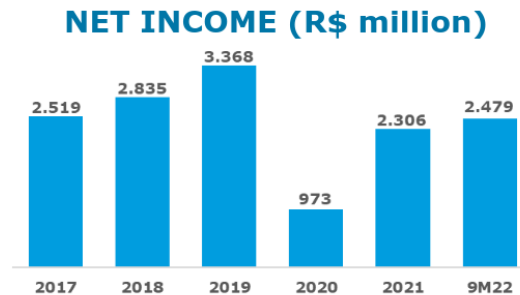
2.7.1. The above mentioned Law changed the Federal Law 8.987/1995, which is related with the concession in Brazil. According to the Article 2º, incise III: “*public service concession preceded by the execution of a public work: the total or partial construction, conservation, reform, expansion or improvement of any works of public interest, delegated by the granting authority, through bidding, in the form of competition or competitive dialogue, the legal entity or a consortium of companies that demonstrate the capacity to carry it out, at their own expense and risk, so that the concessionaire's investment is remunerated and amortized through the exploitation of the service or work for a specified period*”.

2.7.2. Federal Law 11.079/2004, related to the private public partnership in Brazil. Article 2º, § 4º: “*The execution of a public-private partnership agreement is prohibited: I – when the contract value is less than R\$ 10,000,000.00 (ten million reais); II – whose service provision period is less than 5 (five) years; or III – whose sole purpose is the supply of labor, or the supply and installation of equipment or the execution of public works*”

Index | 3. The Players and Identifying Opportunities

3.1. Understanding some Players of the Market in Brazil

3.1.1. SOUTHEAST REGION. **Sabesp** (SBSP3 na B3, SBS ADR III na NYSE)
¹⁷: “one of the largest water and sewage service providers... based on the number of customers. Serves the City of São Paulo and 374 out of 645 municipalities in the State, covering around 70% of State’s urban population. Number of employees: 12,372. Market Cap: R\$ 33.9 billion (Bloomberg - Data base: September 30, 2022)...Sabesp is responsible for around 30% of the investment in basic sanitation made in Brazil. For the 2022-2026 period, it plans to invest approximately BRL 23.8 billion, focusing on expanding water availability and security, without prejudice to the advances achieved in sewage collection and treatment rates¹⁸”.



MAIN OPERATIONAL INDICATORS⁽¹⁾

	Water	Sewage
Connections (million) ⁽²⁾	10.1	8.6
Coverage (%) ⁽³⁾	98	92
Treatment (%) ⁽⁴⁾	-	81
Retail (in million inhabitants)	27.9	24.7
Wholesale (in million inhabitants) ⁽⁵⁾	0.6	0.6
Network (thousand km) ⁽⁶⁾	91.2	63.2

(1) As of September 30, 2022

(2) Active and inactive connections

(3) Services available. Margin of ± 2 b.p.

(4) Consumer units connected to the sewage treatment

(5) Mogi das Cruzes and São Caetano do Sul

(6) Water: includes water mains / Sewage - includes ocean outfall and trunk collectors

17 Presentation 3Q22, “<https://api.mziq.com/mzfilemanager/v2/d/9e47ee51-f833-4a23-af98-2bac9e54e0b3/adc4e25e-bf30-b734-58ae-ba5cb3c5aab7?origin=1>”

18 Profile, “<https://ri.sabesp.com.br/a-companhia/perfil/>”

Administrative Council (It is composed of a minimum of 7 and a maximum of 11 members with a unified term of office (mandate) of two years, with a maximum of three consecutive reappointments allowed. Among the directors, at least 2 or 25%, whichever is greater, must be independent – Articles of Association, Article 8¹⁹):

Name / Function

Mário Engler Pinto Júnior / President

Benedito Pinto Ferreira Braga Junior / Member

Claudia Polto da Cunha / Member

Eduardo de Freitas Teixeira / Independent Member

...

Fiscal Council

...

Audit Committee

...

Executive Board:

Benedito Pinto Ferreira Braga Junior / CEO

Alceu Segamarchi Junior / Technology, Enterprises and Environment

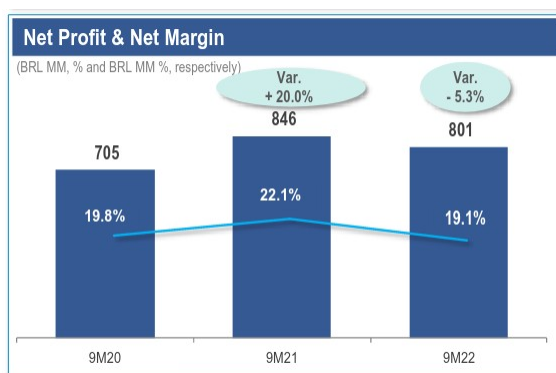
Antonio Carlos Teixeira / Regional Systems Officer²⁰

...

19 Articles of Association – Sabesp, “<https://api.mziq.com/mzfilemanager/v2/d/9e47ee51-f833-4a23-af98-2bac9e54e0b3/2d21bfc4-5095-4c97-ab29-2b10432c03fc?origin=2>”

20 From “<https://ri.sabesp.com.br/governanca-corporativa/conselhos-comites-do-conselho-e-diretoria/>” / can be done in the level of corporate documents and social media

3.1.2. SOUTH REGION. **Sanepar** (SAPR3 – ON; SAPR4 – PN; SAPR11 – UNITS)²¹. “It is responsible for providing basic sanitation services to 345 cities in Paraná and Porto União, in Santa Catarina, in addition to 297 smaller locations. In terms of sewage collection and treatment, the Company is in a process of rapid growth, with rates of approximately 1.5% per year over the last ten years. In the area of solid waste, the company operates sanitary landfills in Apucarana, Cornélio Procópio and Cianorte, serving a total of seven municipalities....In 2021, Sanepar invested BRL 1.3 billion in various works and projects. In the last five years, the accumulated investment was R\$ 5.2 billion and until 2026, it plans to carry out investments of R\$ 9.07 billion, of which R\$ 5.07 billion will be destined to sewage operations, R\$ 3.63 to water systems and R\$379.5 million for other services²².”



Operating Result



	9M20	9M21	Var %	9M22	Var %
WATER					
Measured Volume ('000)	376,007	371,005	(1.3)	379,742	2.4
Billed Volume ('000)	393,155	388,337	(1.2)	399,000	2.8
Connections Increase	53,335	56,587	6.1	49,093	(13.2)
Total Connections	3,247,872	3,330,398	2.5	3,397,534	2.0
Economic Units Increase	57,977	62,211	7.3	52,278	(16.0)
Total Economic Units	4,059,051	4,149,930	2.2	4,222,691	1.8
SEWAGE					
Measured Volume ('000)	282,632	279,301	(1.2)	290,821	4.1
Billed Volume ('000)	296,818	294,973	(0.6)	307,500	4.2
Connections Increase	47,331	53,316	12.6	46,004	(13.7)
Total Connections	2,278,458	2,361,454	3.6	2,425,700	2.7
Economic Units Increase	60,723	73,497	21.0	62,892	(14.4)
Total Economic Units	3,080,026	3,188,247	3.5	3,272,951	2.7
DEFAULT					
	2.9%	3.5%	0.6 p.p	4.1%	0.6 p.p
OP. EFFICIENCY (Liters/Connections/Day)					
	224.7	212.1	(5.6)	219.9	3.7

21 Results Presentation. 3Q22, “<https://ri.sanepar.com.br/docs/Sanepar-2022-06-30-Wtg6chc9.pdf>”

22 Profile, “<https://site.sanepar.com.br/a-sanepar/perfil>”

3.1.3. Other players to be analyzed in other Reports:

Casan (CASN3/CASN4);

Copasa (CSMG3);

Casal;

Aegea Saneamento;

Iguá Saneamento;

Saneamento Ambiental Águas do Brasil (SAAB);

BRK Ambiental;

consórcio Águas do Sertão (composto pelas empresas Allonda e Conasa);

consórcio Verde Ambiental (grupos Cymi e Aviva Ambiental);

Investment Funds²³ (Itaú Index ESG Água Ações FX IE FICFI, Vitreo Água FIA, Trend Água Tech FIM);

APECS-SP, Associação Paulista de Empresas de Consultoria e Serviços em Saneamento e Meio Ambiente (and its 27 associated companies: Acthon, AGM, Arcadis, Argos, Cobrape, Hydroconsult, Sondotécnica, ...)

3.2. Identifying Opportunities

3.2.1. SOUTHEAST REGION. Understanding the game: “Congress approved, in 2020, a law to improve legal security, which generated large auctions of concessions. This increase in private participation is expected to help inject BRL 753 billion into the sector, to guarantee access to adequate sanitation facilities for the entire population by 2033. However, state-owned companies still dominate, as the market share of private companies only reaches around 10%. So far, the main private operators are Aegea Saneamento, Iguá Saneamento, Saneamento Ambiental Águas do Brasil (SAAB) and BRK Ambiental. The largest sanitation concession in the country, granted by the state of Rio de Janeiro, generated BRL 25 billion in tariffs last year and will result in an investment of BRL 80 billion in the coming years, according to the state. In April 2021, Rio de Janeiro auctioned its first sanitation concessions, divided into four blocks. Aegea Saneamento won blocks 1 and 4. The first covers the south zone of the city of Rio de Janeiro, in addition to 18 other areas, with a total of 2.8 million residents. Block 4 comprises the center and north of Rio de Janeiro and the municipalities of

23 Investment Funds on the Water Sector, “<https://www.infomoney.com.br/onde-investir/com-escassez-no-horizonte-agua-e-opcao-de-investimento-no-mercado-financieiro/>”

Belford Roxo, Duque de Caxias, Japeri, Mesquita, Nilópolis, Nova Iguaçu, Queimados and São João de Meriti. A consortium led by Iguá Saneamento won block 2, comprising the Barra da Tijuca and Jacarepaguá neighborhoods and the municipalities of Miguel Pereira and Paty do Alferes, with 1.2 million residents.”^{24 25 26 27}

3.2.2. NORTH EAST REGION. “As, at the end of 2021, the auction for the concession of the other regional blocks was held (Block B and Block C, respectively). Block B won the Consortium Águas do Sertão (comprised of the companies Allonda and Conasa), presenting a proposal of R\$ 1.215 billion, a premium/agio of 37.551% in relation to that stipulated in the concession notice, for a contract of thirty-five-year term. As Block C was purchased by the Verde Ambiental consortium (formed by the Cymi and Aviva Ambiental groups) with a proposal of R\$ 430 million and a premium/agio of 1.227% in relation to the minimum grant of the public notice, also for a contract of thirty and five years of validity”²⁸.

3.2.3. NORTHEAST REGION. From billions to millions, we can find water and sanitation’s bidding, for example, of the Municipality of Eunápolis, in the State Unit of Bahia, with a population of 115.360 inhabitants. According to the Bidding Invitation, the estimated value, to the concession of public water supply and sewage services, is BRL 274,488,285.68 (two hundred and

24 Published: Thursday, May 05, 2022, from “<https://www.bnamericas.com/pt/analise/maiores-empresas-de-saneamento-do-brasil-investirao-r-40-bilhoes>”

25 Bidding process: <http://www.concessaosaneamento.rj.gov.br/>

26 “The STATE OF RIO DE JANEIRO, as a delegate of the administrative roles of organizing and promoting this bid process, as well as the role of contract management, based on Article 175 of the Constitution of the Brazil, Federal Law no. 8,987/1995, Federal Law no. 9,074/1995, Federal Law no. 8,666/1993, Federal Law no. 11,445/2007, Federal Decree no. 7,217/2010, Federal Law no. 14,026/2020, State Law no. 6,398/2013 and State Law no. 4.556/2005, announces the present INVITATION TO BID, classified as international competitive bid, to be judged by the highest bid criterion, in order to select the highest bidder for the CONCESSION of the public services of water supply and sanitation in the CONCESSION AREA, divided into blocks of Municipalities, according to the specifications set out in this ITB.” INTERNATIONAL INVITATION TO BIDS no. 01/2020. CONCESSION OF THE REGIONALIZED PROVISION OF PUBLIC SERVICES OF WATER SUPPLY AND SANITATION AND COMPLEMENTARY SERVICES OF THE MUNICIPALITIES OF THE STATE OF RIO DE JANEIRO.

27 Idem supra. “6. ESTIMATED CONTRACT VALUE. 6.1. The estimated value of the AGREEMENT for the purpose of this bidding process, corresponds to the present value of the sum of the revenues earned with the rendering of the SERVICES over the contractual term, on the base date of December 2019: 6.1.1. BLOCK 1: R\$ 25,540,646,800.18 (twenty-five billion, five hundred and forty million, six hundred and forty-six thousand, eight hundred reais and eighteen cents); 6.1.2. BLOCK 2: R\$ 14,542,689,046.35 (fourteen billion, five hundred and forty-two million, six hundred and eighty-nine thousand, forty-six reais and thirty-five cents); 6.1.3. BLOCK 4: R\$ 56,581,843,610.53 (fifty-six billion, five hundred and eighty-one million, eight hundred and forty-three thousand, six hundred and ten reais and fifty-three cents); 6.1.4. BLOCK 3: R\$ 13,837,160,493.84 (thirteen billion, eight hundred and thirty-seven million, one hundred and sixty thousand, four hundred and ninety-three reais and eighty-four cents);”

28 “<https://parcerias.al.gov.br/projeto-saneamento-basico/>”

seventy-four million, four hundred and eighty-eight thousand, two hundred and eighty-five reais and sixty-eight cents) corresponding to the total estimated investments for the contractual period... “*The term of the CONCESSION is 30 (thirty) years*”. “*The bidding process was preceded by a Public Consultation and Hearing, pursuant to article 39 of the Law Federal No. 8.666/93, and Article 11, item IV, of Federal Law No. 11.445, of January 5, 2007. 4. The Public Consultation was published in the February 7, 2020 edition of the Diário Oficial of the Municipality, the Public Consultation being open for the period from February 7, 2020 to 9 March 2020. 5. The Call for Participation in the Public Hearing was published in the edition of the 7th of February 2020 of the Official Gazette of the Municipality, having been, the Public Hearing, held on the day March 10, 2020 and the respective Minutes, published in the April 16, 2020 edition of the Diário City official 6. Envelopes will be received by 9:00 am on November 21, 2022, at the of Office Meetings located at Rua do CEASA, nº. 30, Bairro Centauro, Eunápolis, State of Bahia*”²⁹

3.3.4. Such as we can see in the items above, the bidding process is now a key element in Brazil in the Water and Sanitation sector. The first recommendation is to create a business intelligence’s monitor for bidding.

3.3.5. SOUTHEAST REGION. Privatizations. The above mentioned water and sanitation company at item 3.1.1., **Sabesp** (SBSP3 na B3, SBS ADR III na NYSE), with a Capital Ownership being 50.3% São Paulo State Government, 12.4% NYSE, 36.3% B3 (free float), is object of constant news on privatization³⁰. As usual, the Political Environment is a surprise. But the now Governor of the São Paulo’s State, the most rich Federation State Unit in Brazil, where is the operation of Sabesp, the now Governor Tarcísio de Freitas came from Bolsonaro’s Government, with a liberal approach. For some analysts, “*the company could carry out a share offering and the state of São Paulo would not follow up. With that, the capital would be diluted and its slice of just over 50% would fall, losing control. In Freitas’ view, this would be a “non-abrupt” solution, which could be accompanied by the maintenance of a golden share by the State, which in practice gives the right of veto in*

29 “https://www.eunapolis.ba.gov.br/Handler.ashx?f=f&query=7043264d-ca2e-447e-b85c-b56e7fcc2296.pdf&name=Edital_CP008.pdf”

30 1. “<https://www.estadao.com.br/economia/negocios/eleicao-de-tarcisio-faz-aumentar-aposta-do-mercado-em-privatizacao-da-sabesp/>”; 2. “<https://valor.globo.com/empresas/noticia/2022/10/31/eleicao-de-tarcisio-pode-retomar-estudos-sobre-privatizacao-da-sabesp-diz-credit-suisse.ghtml>”; 3. “<https://www1.folha.uol.com.br/mercado/2022/10/privatizacao-da-sabesp-acirra-debate-do-segundo-turno-em-sp.shtml>”; 4. “<https://exame.com/brasil/tarcisio-afirma-que-ira-estudar-privatizacao-da-sabesp-desde-o-primeiro-dia/>”

some strategic decisions.”³¹ . Even if the privatization is not made, investments against inefficiency shall be done, what will demand services and products for the water and sanitation sector.

3.3.6. SOUTH REGION. The demands of the company **Sanepar** can be found here: “<http://licitacoes.sanepar.com.br/>”. For example: “*Extension of work to expand the water supply system in the district of bairro catarinense, in the municipality of Francisco Alves, with the supply of materials, as detailed in the annexes to the bid notice.*”; or “*Preparation of basic hydraulic project with basic additional complements for expanding the sanitary sewage system in the municipality of Umarama, as detailed in the annexes to the bid notice*”.

Index | 4. The Doing Business in Brazil

Two perspectives in the doing business in Brazil: (i) Foreign Trade of machines, goods and services related with the sector of water and sanitation; (ii) Foreign Direct Investment, with the acquisition of shares/quotas of companies already in operation or setting up of new companies.

Concerning to the Foreign Trade, all the process for goods is done in the Siscomex System, with the following general steps: Registration of Declaration, Distribution, Parameterization, Delivery of Documents, Customs Conference, Customs Clearance, Delivery of Goods. The importation process can be done on behalf of third parties, by order, on its own, being important to avoid irregularities in formal aspects, and be aware of taxation in special cases, such as goods without similar national.

To underline an important legislative change, we quote the Law 14.286/2021: “*Art. 13. The stipulation of payment in foreign currency of obligations enforceable in the national territory is admitted in the following situations: I - in contracts and securities relating to the foreign trade of goods and services, their financing and guarantees;...VII - in contracts entered into by exporters in which the counterparty is a concessionaire, permit holder, authoritative holder or lessee in the infrastructure sectors.*”

Concerning to the Foreign Direct Investment, we have the following numbers, if we take as example The Netherlands as the country of source of FDI:

31 “<https://trademap.com.br/agencia/analises-e-relatorios/sabesp-sbsp3-privatizacao-tarcisio-governo-sao-paulo>”

from the Netherlands (US\$ millions):

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
1 892	3 372	1 444	7 705	3 208	3 506	8 129	4 639	6 515	6 702	17 582	12 213	10 511	8 791	11 573	10 540	10 894	9 230

in the sector of Infrastructure Works (US\$ millions)³²:

2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
37	9	7	2	5	500	163	208	14	852	14	41	15

The Foreign Direct Investment in Brazil can be done through a business vehicle that shall have the headquarter in Brazil, being possible the setting up of a new legal entity, or the acquisition of shares/quotas of already existing companies in a M&A process. Here we are talking about the necessity of Corporate Law and Contracts services.

In the case of setting up a new company in Brazil with foreign partners: “Many times, it is recommended to choose the Ltda. option. Thus, in order to set up a Brazilian Ltda., these are the mainly requirements: 1) Articles of Association/By-laws: the owners must inform the name of the company, the [headquarters], the main activity and the structure of the partnership (who will be the manager?). 2) The articles of Association will be registered by the Brazilian Board of Trade; 3) After that, it will be registered in the Brazilian tax entity in order to obtain the company tax number called CNPJ. It is the number that the Company will use to pay Brazilian Taxes like Income Tax 4) The legal representatives also need to register the company in the State and Municipality entities to obtain the business license (a document authorizing business activities in the country) and other tax numbers, called IE, for the [Federation State Units], and CCM for Municipalities. 5) Finally, the company must be authorized by the Brazilian tax authorities to issue invoices. Regarding the number of employees, it is not a problem. The employees must have a work permit and the company will pay all taxes and other incomes of the Brazilian office”. “Of course, there are also other important points such as, but not limited to, the bank account, the need to make the Registry of Foreign Capital into the Brazilian Central Bank, the specific bureaucratic process in the Regulatory Agencies according the economic activities, negotiation of agreements with third service providers, and many other details according to each kind of business.”³³

In the case of a M&A process, we will have: (i) Due Diligence: Establish the current juridical situation of Projects/Companies through the measuring of risks in the following legal areas: (i) Corporate Law; (ii) Contracts (with Banks, Suppliers, Clients and Others Important Agreements); (iii) Real Estate; (iv) Labor Law; (v) Commercial Litigation; (vi) Tax Law; (vii) Sanitation / Environmental Law; (viii) Intellectual and Industry Property; (ix) Tenders, Administrative Law; among other areas, according each case; (ii) Structuring and Contract

32 Brazilian Central Bank, “<https://www.bcb.gov.br/htms/infecon/seriehistfluxoinvdir.asp?frame=1>”

33 Doing Business in Brazil. The best legal form for a new company in Brazil, “https://globobroking.com/brazil/Doing-Business-in-Brazil-The_best_legal_form_for_a_new_company_in_Brazil-globobroking.com.pdf”

Negotiation: Development /Analysis /Negotiation of the Agreement of Sale and Acquisition of Business, aiming acquire the best juridical conditions to the Client, by a complete juridical perspective of the Business, which considers, as parts of the Agreement, juridical Mechanisms of protection concerning to: (a) clause of non-competition; (b) debts with suppliers and third service; (c) issues related to clients; (d) employees; (e) tax liabilities; (f) impacts, engendered by the Sale and Acquisition; (g) declarations of the parts about the accounting data of the Company(ies) which were audited; (h) conditions of Closing and of Payment; and other issues.

In the Regulated sector of Water and Sanitation, we can highlight the Law 11.107/2005, Article 1: “§ 1. *The public consortium shall constitute a public association or legal entity governed by private law.* Art. 2, § 2. *Public consortia may issue billing documents and carry out activities to collect tariffs and other public prices for the provision of services or for the use or grant of use of public goods managed by them or, upon specific authorization, by the consortium entity of the Federation*”.

In relation to the Contracts in the Regulated Sector of Water and Sanitation, the Law 11.445/2007, with text given by the Law 14.026/2020, will establish some essential clauses, among others:

“Art. 10-A. Contracts relating to the provision of public basic sanitation services must expressly contain, under penalty of nullity, the essential clauses provided for in art. 23 of Law No. 8987, of February 13, 1995, in addition to the following provisions: I - service expansion goals, reduction of losses in the distribution of treated water, quality in the provision of services, efficiency and rational use of water, energy and other natural resources, reuse of sanitary effluents and use rainwater, in accordance with the services to be provided; II - possible sources of alternative, complementary or ancillary revenues, as well as those arising from associated projects, including, among others, the sale and use of sanitary effluents for the production of reuse water, with the possibility of revenues being shared between the contractor and the contractor, if applicable; III - methodology for calculating any indemnity related to reversible assets not amortized upon termination of the contract; and IV - distribution of risks between the parties, including those referring to fortuitous event, force majeure, princely fact and extraordinary economic hazard. § 1 The contracts involving the provision of public basic sanitation services may provide for private mechanisms for the resolution of disputes arising from the contract or related to it, including arbitration, to be carried out in Brazil and in Portuguese, under the terms of Law No. 9,307 , dated September 23 , 1996. § 2 The grants of water resources currently held by state companies may be segregated or transferred from the operation to be granted, allowing the continuity of the provision of the public service of water production by the company holding the grant of water resources and the signing of a long-term contract term between this water producing company and the company operating the water distribution to the end user, with the purpose of buying and selling water.”

It is important remember that when we are talking about concessions and public private

partnerships we are in the field of Public Law, Administrative Law, Tenders. As it is possible to see in already referred bidding documentation, there are a specific administrative process, which one start with an Invitation to Bid. In this document it is possible to find the purpose of the bidding process, judgment criterion, estimated contract value, reference studies, bidding procedure, bidders's costs, bid guarantee and qualification documents, among other issues. Each bid process demands a specific study. The systematic interpretation of the Laws 8.987/1995 (concessions), 11.079/2004 (public private partnerships) and the new Law 14.133/2021 (bidding and administrative agreements) is key.

Tax Law: a need for any doing business in Brazil is to understand, the taxes on the economical activities, the taxes on the corporate structure as well as the taxes related with the employees, the taxes in dividends, interest, capital gain among other taxed facts, observing that Brazil and the Netherlands have a Tax Treaty against the Double Taxation (Decree 355/1991). Will be some taxes related with the business in water and sanitation the IRPJ (Corporate Income Tax)³⁴, CSLL (Social Contribution on Net Profits), PIS/PASEP (Contribution to the Program of Social Integration/Patrimony Formation of the Public Employee), COFINS (Contribution for the Funding of the Social Security), INSS/CPP (Contribution of the Employer for the Social Security). But always will be necessary a Tax Legal Opinion for each case. Here it is good to remember that already was a case in the Brazilian Supreme Court by which was under judgment the issue of taxation by ICMS (Impost on the Circulation of Goods and Some Services) on the services of piped water³⁵.

For sure other legal sectors will be need in the Doing Business in Brazil, such as Labor Law, Real Estate Law, Environmental Law, Intellectual and Industrial Property, Privacy and Data Protection³⁶, Litigation/Arbitration³⁷, maybe Funds Law, among others.

01th January 2023

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34 DE CONTI, Rafael. Course on Brazilian Tax Law, "<https://rdc.pro.br/tax>"

35 Brazilian Supreme Court, STF, RE 607.056, Does the Constitution authorize the levy of ICMS on water supply? 1. The supply of drinking water by concessionaires of this public service is not taxable through ICMS. 2. Water in its natural state is public property and can only be exploited by private individuals through a concession, permission or authorization. 3. The supply of treated water to the population by concessionaires, permit holders or authorized companies does not characterize an operation of merchandise circulation.

36 Assessment of Data Protection in Brazil (EU GDPR, Art. 45, 2), "<https://rdc.pro.br/brazilianadataprotection/>"; "<https://rdc.pro.br/cyberlaw/>"

37 DE CONTI, Rafael. Interview. When the conflict happens: general issues about Arbitration in Brazil, "https://globobroking.com/brazil/Doing-Business-in-Brazil-When_the_conflict_happens-General_issues_about_Arbitration_in_Brazil-globobroking.com.pdf"; "https://globobroking.com/brazil/Doing-Business-in-Brazil-When_the_conflict_happens-II-Specific_issues_about_Arbitration_in_Brazil-globobroking.com.pdf"

Is there life without water?

Is there health without sanitation?

