

new brazil gas law

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the new Brazilian Gas Law
and what it represents
for the industry.*



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In March 2009, Brazil adopted the much awaited Gas Law (Law 11,909), which represented a historic development for the gas sector in Latin America's largest country.

This new law regulates the transportation of natural gas, as well as its treatment, processing, storage, liquefaction, re-gasification, and marketing. However, the Brazilian Petroleum Law (Law 9,478) will continue to regulate the exploration, development and production of natural gas, among other matters. In particular, certain activities such as the production, exploration and distribution of natural gas, already had their own rules, enacted by the Department of Mines and Energy, the Petroleum, Natural Gas and Biofuels Regulatory Agency (ANP), or the regulatory arm of a respective state, as the case may be.

Some of the most important aspects of the new law are discussed below.

Concession and authorisation regime

The Gas Law brings enhanced security for private companies to enter the market for transportation and storage of natural gas, with

rules that provide greater certainty for investors. To this effect, the law establishes a concession regime, with a 30 year term (with the possibility of one extension for the same period), for gas pipelines considered to be of "general interest" and for the storage of natural gas for assets that belong to the Federal Government. Concessions require a prior public bid.

The Gas Law also provides that the concession regime is to co-exist with the prior authorisation regime, the latter which is applicable for gas pipelines that involve international agreements. Such permit shall also have the same 30 year period with the possibility of one extension for the same period.

Import, export and distribution

One important innovation under the Gas Law is the possibility for commercial purchasers to import gas directly from foreign producers via pipelines built by the commercial purchasers, transporting the product to a pipeline network or paying for the use of the State's pipeline network. This may eliminate or reduce the problem of lack of pipeline capacity or even the

absence of a pipeline network, problems that today affect many commercial purchasers.

However, the Federal Constitution provides that only the states may legislate the distribution of natural gas within its borders and the federal government may only regulate the distribution of natural gas for inter-state matters, as well as gas imports and exports. Therefore, it is possible that constitutional challenges to the new law could arise.

Contingencies committee

Another important aspect of the Gas Law relates to the temporary unavailability (actual or imminent) of natural gas, authorising the creation of a Contingencies Committee, with authority to draft and implement contingencies plans, including but not limited to rationing.

Such a committee may be a consequence of the recent drought in Brazil that resulted in power shortages, the need to reduce the use of electricity, and ultimately diminished economic activity. This crisis prompted the government to focus on diversifying the energy matrix, moving away from the predominant hydroelectric power, and towards natural gas and renewable sources of energy (the latter promoted via the Proinfa Program).

Public-private partnerships

The Gas Law also provides that the Department of Mines and Energy may use public-private partnerships, established under Law 11,079 (2004), to develop a new pipeline project or increase capacity of an existing one to make it economically feasible.

Arbitration

Finally, the Gas Law authorises state owned companies (“empresas públicas”) and joint ventures between state entities and private shareholders (“sociedades de economia mista”), its subsidiaries or related parties holding concessions or authorisations, to agree to binding arbitration, an important consideration for private investors.

Regulations/decrees implementing the Gas Law

The Gas Law is not a comprehensive reform package, and a number of important aspects remain subject to regulatory implementation. To this effect, implementing regulations will be required before the legal framework is complete and fully functioning as intended. It had initially been hoped that these rules would have been published for comment by June 2009, but to date such rules have not been released. **WP**

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