CLIENT ALERT

JUNE/2019

SUPREME FEDERAL COURT ALLOWS THE SALE OF SUBSIDIARIES OF STATE-OWNED ENTERPRISES REGARDLESS OF SPECIFIC LEGISLATIVE AUTHORIZATION OR OF A FORMAL TENDER PROCESS

Yesterday (06.06.2019), a majority of the Supreme Federal Court rejected a challenge that had been presented against Federal Law nº 13.303/2016, which sets forth the legal framework of state-owned enterprises and their subsidiaries. The following conclusions were affirmed:

1.) Sale of state-owned enterprises directly controlled by the Federal Government – depends upon a previous legislative authorization and must be executed through a formal tender process, as set forth in Brazilian statutes;

2.) Sale of subsidiaries of state-owned enterprises – does not depend upon a specific legislative authorization and does not have to be executed through a formal tender process. Nevertheless, such sale must be carried out by means of a "*competitive procedure*" abiding by the "*principles applicable to the Public Administration*."

Specifically on the conditions that would have to be met so that subsidiaries of state-owned enterprises could be sold, the Ministers rendered the following votes:

	Whether a specific legislative authorization is necessary	Whether a formal tender process is necessary
Min. Ricardo Lewandowski	YES	YES
Min. Edson Fachin	YES	YES
Min. Alexandre de Moraes	NO	NO
Min. Roberto Barroso	NO	NO
Min. Cármen Lúcia	NO	Competitive procedure
Min. Rosa Weber	NO	Competitive procedure
Min. Luiz Fux	NO	NO
Min. Gilmar Mendes	NO	Competitive procedure
Min. Marco Aurélio	NO	YES
Min. Celso de Mello	NO	Competitive procedure
Min. Dias Toffoli	NO	NO

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The decision rendered by the Supreme Federal Court is aligned with the conclusions of the Brazilian Federal Audit Court and guarantees the correction of divestment procedures initiated by Brazilian state-owned enterprises. Further, it allows their divestment projects to be promptly resumed – especially those already announced by Petrobras and Eletrobras –, generating additional revenues to the Federal Government and allowing the Bolsonaro Administration to pursue one of its strategic objectives.

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