Brazil opens healthcare sector to private ownership

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Brazil has passed a new law allowing foreign companies to invest capital in private hospitals for the first time, a move expected to appeal to those eager to capitalise on high demand for private healthcare in the country, and bring much-needed funding to the sector.

The law came into effect last Tuesday, ending a federal constitutional restriction that kept foreign investors from owning private hospitals or investing capital in them. From now on, international investors will be able to have controlling shares.

Although Brazil has had a system of universal healthcare, called Sistema Único de Saúde (SUS), since 1988, many Brazilians prefer to pay for private healthcare due to the widespread perception that the public system is poorly funded and ill-equipped to deal with the demands of a 200 million-strong population. In the run-up to the FIFA World Cup last year, widespread protests erupted across the country in part due to the view the event was diverting public funds away from services such as healthcare. “The sector has deteriorated in recent years with the lack of investment causing hospitals to close their doors and overwhelming those still operating – the demand for health-care services in Brazil requires additional investment,” says Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados partner Maria Fernanda de Almeida Prado e Silva.

Following the Central Bank’s increase in interest rates last week to the highest level in three years in a bid to combat inflation, some lawyers note the new rules could allow private healthcare providers to access another form of financing at a time when loans from more conventional lenders are becoming costly, or difficult, to obtain. With foreign companies now allowed to enter the sector and compete with Brazilian private healthcare providers, Trench, Rossi e Watanabe Advogados (in cooperation with Baker & McKenzie) partner Henrique Frizzo says the reforms could benefit ordinary users, by driving down the cost of healthcare at private hospitals and meaning more middle-class Brazilians can afford to shift over to private care.

Growing demand for private healthcare has helped fuel a boom in the sector, which remains dominated by local players and has recently witnessed a number of mergers as many seek to capitalise on higher demand and consolidate their positions. In December, Alliar was the latest major provider to make its move, turning to Mattos Filho and Lefosse Advogados to buy a controlling stake in counterpart Centro de Diagnósticos Brasil for US$515 million, three months after health insurer Qualicorp (which also employed Mattos Filho) increased its shareholding in two companies controlled by healthcare provider Grupo Aliança, assisted by Demarest Advogados. “There are no big foreign players in healthcare in Brazil right now, and they see that as an opportunity to invest in the types of services and technology that are currently not available in the country,” notes Eduardo Carvalhaes of Barbosa Müssnich & Aragão.

Other lawyers, however, question the extent of the impact the rule changes are likely to have on the sector. While welcoming the new law as a step in the right direction, Carvalhaes says some of the reforms simply “qualified an understanding of the law that was already in place”, rather than introducing new elements into the system. In particular, he points to new rules allowing foreigners to also invest in accessory and ancillary healthcare activities, such as manufacturing pharmaceuticals, which he claims were already the status quo. “There was no need to clarify this because those activities were never included in the federal prohibition – it resulted in more confusion than clarification,” he adds.

There are predictions that changes in the law could also have a knock-on effect on public private partnerships (PPPs), whereby private companies are allowed to enter into joint ventures with the government to manage hospitals. At the moment, investors in PPPs cannot influence healthcare decisions at hospitals and are restricted to managing back office work, but the recent law change could affect this model, he explains, and encourage private investors in PPP arrangements to take on greater control of the running of hospitals.

For Almeida Prado e Silva, the removal of the restriction will correct an imbalance that previously existed whereby some health plan operators were able to raise funds through the capital markets, “while other hospitals were losing competitiveness and efficiency due to lack of investment.”

In the past foreign companies got around the restriction on capital purchases by either buying up debt belonging to hospitals or by acquiring healthcare operators, which could then acquire hospitals. Although this allowed them to make investments, investors were kept out of the management of hospitals and were not responsible for directly providing services.

Under the previous rules, loopholes existed for investors involved in not-for-profit deals and for the insurance sector, while banks with foreign capital have been able to provide hospitals with loans. Last year, US asset management company Bain Capital turned to Kirkland & Ellis LLP and Barbosa Müssnich when it bought one of Brazil’s largest healthcare providers, Intermédica, whose owners hired Mattos Filho. Back in 2012 the US’ biggest health insurance company, UnitedHealth Group, bought Brazilian insurer and hospital operator Amil Participações for US$4.9 billion in a deal that featured Pinheiro Neto Advogados, Lefosse, Sullivan & Cromwell LLP and Linklaters.

“It is a great start,” says Carvalhaes, who adds that clients have already been expressing an interest in investing in the sector. “Private equity funds and other types of investors have been studying the market and trying to invest in healthcare for years.”

Comments

There are currently no comments.

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