BMA ADVOGADOS

Basic sanitation and climate change

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The new version (AR6) of the report by the IPCC (Intergovernmental Panel on Climate Change), released in September 2021, confirmed the challenges and commitments that still need to be addressed by countries to avoid or mitigate the adverse effects of climate-related events expected in the coming years.

Despite the rather blurred scenario, the lines for global action have been laid out for the interested parties. In addition to the implementation of Sustainable Development Goals, which encompass improved supply of clean water and sanitation (SDG 6) and protection of the oceans (SDG 15), countries must fulfill, and revise, their Nationally Determined Contributions (NDCs) under the Paris Agreement.

Similarly, market mechanisms have begun to answer the call for rethinking business as usual models, based on Environmental, Social and Governance (ESG) standards, where Governance is the element that pushes the market´s way of operating and requires transparency to the necessary actions of Environmental and Social initiatives, based on the principle of full and fair disclosure.

In the basic sanitation sector, the challenges facing public managers and concessionaires (services providers) encompass the need to ensure resilience and regularity in the potable water supply systems in overpopulated metropolitan regions that are directly dependent on increasingly unforeseeable water regimes, with heightened risks of scarcity.

On the other side of the coin, the increased frequency and intensity of rainfall is also a potential complicating potential factor, since it can jeopardize urban stormwater systems, besides favoring sewer overflow in open gutters and combined sewer systems (where the same system collects stormwater runoff and wastewater), which are still present throughout Brazil.

In this context, Brazil's New Basic Sanitation Framework Law (Federal Law 14.026/2020), as well as some of the most recent bid tender documents for basic sanitation concessions, have begun to incorporate aspects related to climate risk, by including climate-related uncertainties in contractual risk matrices, along with contractual provisions that, in some cases, allow for revision of the contract, in order to re-establish the financial and economic balance of the agreement when certain climate risk-related events occur.

The Basic Sanitation Framework Law's bold goal of achieving universal access to water and sewage services in Brazil by 2033 depends on participation and investment by the private sector, and in fact, private investors have shown their enthusiasm for investments in the most recent basic sanitation concession bids in Brazil, such as the concessions for Rio de Janeiro and Amapá systems in 2021.

Improvements in basic sanitation can make a significant contribution to

SDGs, NDCs, and reduction of greenhouse gas emissions, through reduced untreated and treated water loss, proper treatment of municipal solid waste resulting in decreased methane emissions, protection of natural water bodies, and reduced raw sewage discharge, and improved quality of life for the communities that currently live in areas without proper sanitation services.

Over the next two years, consolidation of the regional sanitation services model is expected to be seen, along with new rounds of bid tenders for basic sanitation services. Alagoas, Ceará, and other states are showing signs of interest and have begun work on the legislation and studies needed to implement the statewide sanitation services model and concession.

In the upcoming sanitation tenders, the big challenge will be to draft bid documents and concession contracts that achieve a balance between the need for fast improvements in infrastructure, while also managing hard to measure risks such as climate change, all in a way that is fair and appealing to the private sector.

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