

# The experts' point of view



Public Law

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## Pipeline of auctions and new sources of project financing promise to boost the infrastructure sector

The sanitation, highways and energy segments are expected to be the biggest business bets in the coming years, with projects boosted by the use of precatories (government debt bonds) for grant payments and infrastructure debentures

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**Exclusive interview with our partners on the panorama of the sector**

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**Business Barometer: opportunities and points of attention in the market**

Lefosse

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### INTRODUCTION

The main prospects for the infrastructure sector in Brazil for those who want to stay ahead in the market.



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### STORY

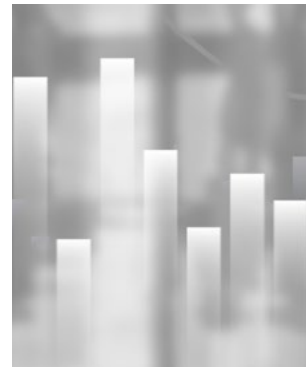
Pipeline of auctions and new sources of project financing promise to boost the infrastructure sector

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### INTERVIEW

What do our experts say about the main innovations in the sector?



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### BUSINESS BAROMETER

Stay ahead in the market: check out the opportunities and points of attention in the infrastructure sector



## INTRODUCTION

### The main prospects for the infrastructure sector in Brazil for those who want to stay ahead in the market.

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The review **The experts' point of view: Public Law - Infrastructure** offers a complete overview of the sector, with analysis and insights from our experts on the viability of infrastructure projects in different segments, such as sanitation, highways and energy.

In the **cover story**, partners Eduardo Carvalhaes, Miriam Signor and Raphael Gomes share regulatory advances to diversify sources of financing for infrastructure projects.

In a **full interview with our partners**, you will understand the impacts of the main regulatory developments, such as the application of the new Public Procurement Law and the law creating infrastructure debentures. In contentious matters, you will discover how the Secex Consensus, set up by the Federal Court of Auditors (TCU), has been used to settle conflicts with the public administration. Our partners also share information on the segments that will be the focus of investment in the coming years and the project and financing models that lie ahead.

In the **business barometer**, you'll find the main opportunities and points of attention in the infrastructure sector so you can prepare for what's to come.

Happy reading.



## COVER STORY

# Pipeline of auctions and new sources of project financing promise **to boost the infrastructure sector**



**The sanitation, highways and energy segments are expected to be the biggest business bets in the coming years, with projects boosted by the use of precatories (government debt bonds) for grant payments and infrastructure debentures**

With auctions planned and new sources open for project financing, the infrastructure sector has positive prospects for growth in the coming years, according to an analysis by Lefosse's lawyers. The biggest business bets, according to the experts, are in the sanitation, highways and energy segments.

"There are objective reasons to believe that all sectors will grow in the coming years. The largest number of auctions planned over the next two years is on highways. The sanitation sector has bold universalization targets, with important *Greenfield* and privatization projects about to take place," says Eduardo Carvalhaes, a partner in the Public Law and Regulation practice.



## COVER STORY

According to lawyers specializing in this market, the sources of funds for financing projects remain on the agenda for debate in the sector. One of the points up for discussion is the expansion of the possibility of using precatories (government debt bonds) to pay for concession grants, which is currently restricted to certain situations. According to Lefosse's partners, opening up the possibilities of using these bonds would be an important vector for making projects viable.



**There are objective reasons to believe that all sectors will grow in the coming years. The largest number of auctions planned over the next two years is on highways. The sanitation sector has bold universalization targets, with important Greenfield and privatization projects about to take place.”**

**Eduardo Carvalhaes,**  
partner in Public Law and Regulation.

**The possibility of using precatories (government debt bonds) to pay for concession grants could be an important vector for making infrastructure projects viable.**

Miriam Signor, a partner in the Project Development and Financing practice, also draws attention to the fact that the government is looking for sources of funding, such as the capitalization of the Climate Fund<sup>1</sup> and the processing of the regulation of development bills of credit, which will allow development banks, such as the National Bank for Economic and Social Development (Nacional do Desenvolvimento Econômico e Social - BNDES), to raise funds.

The lawyer classifies Law 14.801, published on January 10, 2024, which established infrastructure debentures, as positive. These should complement the incentivized debentures, which guarantee exemption from Income Tax (IR) for individual investors and foreigners, already issued by companies to raise funds for infrastructure projects.

**With the publication of Law 14.801/2024, infrastructure debentures should complement the incentivized debentures already issued to raise funds for infrastructure projects.**

Under the new rule, the tax benefit will fall on the issuer of the infrastructure debenture, i.e. sanitation, telecommunications and highway companies, among others. Companies will be able to deduct interest expenses paid to investors from the basis for calculating net

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1

This is a fund of an accounting nature to guarantee resources to support projects or studies and to finance projects aimed at mitigating climate change. It is linked to the Ministry of the Environment.

Source: <https://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/fundo-clima>



## COVER STORY

profit, thus reducing the amount of Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL). The rule also allows the amount corresponding to 30% (thirty percent) of the sum of the interest on such debentures to be excluded when determining the real profit and the CSLL calculation base.

“It will be a new source of funding for investment in infrastructure that could attract other investor profiles, such as pension funds and insurance companies. But the rule still raises many doubts because it was recently regulated (Decree 11,964 of March 27, 2024),” says Miriam.

In the energy sector, business should be on the renewal of distribution and transmission concessions. Specifically in the latter segment, the government has signaled that there will be a re-bidding process or an opportunity to change corporate control in order to bring in a new investor in contracts where the established conditions are not being met.

“There is therefore a potential for interesting capital inflows,” says Raphael Gomes, a partner in the Energy practice. “But that can become a problem if the re-bidding is not done on the basis of careful and well-founded analysis and in advance. Current investors need to know if they are going to continue with the concession and those who intend to take over the contract must prepare to make good investments in Brazil,” he warns.



**There is therefore a potential for interesting capital inflows, but that can become a problem if the re-bidding is not done on the basis of careful and well-founded analysis and in advance. Current investors need to know if they are going to continue with the concession and those who intend to take over the contract must prepare to make good investments in Brazil.”**

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**Raphael Gomes,**  
partner in Energy.



## INTERVIEW

# What do **our experts** say about the main **innovations in the sector?**

In the interview below, partners **Eduardo Carvalhaes**, from the Public Law and Regulation practice, **Miriam Signor**, from the Project Development and Financing practice, and **Raphael Gomes**, from the Energy practice, share their analysis of the sector's current scenario, the main regulatory developments - including the application of the new Bidding Law and the law creating infrastructure debentures -, the segments that will be the focus of investment in the coming years and the project and financing models that lie ahead.



### How do you analyze the scenario for the infrastructure sector in 2024 and 2025? Which regulated sectors will be the focus of investment?

**Miriam Signor:** The infrastructure sector is a priority; the lack of adequate infrastructure demands investment. Project modeling is better and there is a schedule of auctions planned. If all this continues, lenders and project developers will be more encouraged to invest. There are new laws to diversify sources of funding and regulations that bring greater security to the financier, such as the Legal Framework for Guarantees. So the outlook is positive.

#### QUICK MENU

 **Quickly access topics of interest:**

**SECTORS THAT WILL BE THE FOCUS OF INVESTMENT IN THE COMING YEARS**

**IMPACT OF INFRASTRUCTURE DEBENTURES (LAW 14.801/2024) ON THE MARKET**

**HOW SECEX CONSENSUS HAS BEEN USED TO RESOLVE CONFLICTS WITH THE PUBLIC ADMINISTRATION**

**APPLICATION OF THE NEW BIDDING LAW (LAW 14.133/2021) TO PUBLIC PROCUREMENT**

**OPPORTUNITIES AND POINTS OF ATTENTION IN THE SECTOR**



**Miriam Signor**

Partner in  
**Project Development  
and Finance**



## INTERVIEW

**Eduardo Carvalhaes:** From the point of view of sources of financing, the scenario is challenging with high interest rates. Debt is more expensive, which ends up making it a little more difficult to make certain long-term projects viable. On the other hand, the government has signaled that the BNDES may once again be a source of financing for infrastructure projects considered to be priorities.

It is correct to say that all infrastructure sectors will need to grow in the coming years. They all have their own deficits, but the situations with the most potential for growth are in the sanitation and highways markets.



**Eduardo  
Carvalhaes**

Partner in **Public Law  
and Regulation**

Basic sanitation, for example, has bold universalization targets that must be met by 2033. It will be challenging to reach the targets set by 2033, which establish that 99% of Brazilians should have treated water and 90% of them should have access to sewage collection and treatment. Currently, estimates are that just over 60% of the population has access to sanitary sewage and that just over 80% of the population has access to treated water. The sector is developing, but not at the speed needed to achieve these goals in the ideal timeframe. It's a sector with a lot of potential.

There are important *Greenfield* and privatization projects coming up and this is what should permeate the agendas of federal, state and municipal governments in the coming years.

Another market that I consider a priority is highways. This is the sector in which there will be the largest number of auctions over the next two years. We have projects to expand or restore existing infrastructure, as well as expanding and building major roads.



**It's a sector with a lot of potential. There are important *Greenfield* and privatization projects coming up and this is what should permeate the agendas of federal, state and municipal governments in the coming years."**

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**Eduardo Carvalhaes**





## INTERVIEW

**Raphael Gomes:** In the energy market, there is a very optimistic scenario in transmission, where there is a natural bottleneck due to the size of Brazil and the pending investments of recent decades. An example of this movement is that we're going to have a big auction this year. In general, we have an anomalous situation of generation projects being granted but with restricted access. There is the environmental license and the regulator's permission to build and invest, but not to export energy.

We also have a long way to go to invest in offshore wind, which depends on legal certainty, predictability and regulatory stability. What do we need in terms of infrastructure to connect the energy generated on the continental shelf to the continent? These are very significant investment opportunities.



**Raphael Gomes**

Partner in Energy



**What do we need in terms of infrastructure to connect the energy that will be generated on the continental shelf to the continent? These are very significant investment opportunities.”**

**Raphael Gomes**

In the electrification of the vehicle fleet, we will have to change the entire infrastructure and logistics for refueling these cars, with filling stations entering this field. It's going to change the way we do business. On a highway, for example, there will have to be a filling station at every corner, which requires massive investment.

The horizon is fruitful, but all this depends on a good, stable regulatory environment and legislation, which we don't yet have full visibility of.

**What is your view of Law 14.801/2024, which established infrastructure debentures? What impact should the new standard have on the market?**

**Signor:** The law brought new features that could be interesting for diversifying fundraising, such as the possibility of the debenture having an exchange variation clause and exemption from Withholding Income Tax (IRRF) on interest paid to investors in infrastructure bonds. It's something that can attract foreign investors, which was more restricted with the incentivized debenture.

## INTERVIEW

The rule also simplified the process of classifying projects, which are considered to be classified on the date of submission of the application for registration of the public offering of debentures, which must meet the criteria and general conditions established in the Decree and the sectoral ministerial ordinance, if any. There is also an increase in the progressive term for using the ballast, which can be up to 60 months. The market demanded that the period for using the ballast be increased.



### **The law on infrastructure debentures brought new innovations for diversification in fundraising that could attract foreign investors.”**

**Miriam Signor**

We have analyzed in depth the points of attention in the standard, such as the package that must be submitted to the ministries with the information for the projects for monitoring purposes. There is also doubt about the calculation for tax purposes. In incentivized debentures, the IRRF exemption is on the debenture's "income", which would include interest and the price index. Law 14.801, in turn, states that "interest on debentures" is deductible from the tax base. In addition, there is doubt as to whether the exchange rate variation would be deductible as remuneration.

Another thing that is under discussion, and it is not known whether it will be regulated, is the infrastructure bond. Today there are no restrictions on issuing bonds. When we talk about the infrastructure bond, will the same restrictions apply as for debentures, such as a weighted average term of more than 4 years and a minimum interest payment interval? The expectation is that this doubt will be clarified by Central Bank regulations.

### **Does the law encourage new investors to enter the market?**

**Signor:** Yes. Pension funds, insurance companies and other investors can benefit from a more attractive rate offered by the debenture issuer, due to the advantage arising from the deductibility of interest on IRPJ and CSLL.

Law 14.801 also increased to 85% the reference value for infrastructure funds to invest in the assets of Law 12.431/2011, which deals with incentivized debentures. Before, it was 67%. However, the new law does not specify whether infrastructure debentures could make up the 85%. The only thing is that if the fund invests in infrastructure debentures, since it is already exempt, it would have to pay withholding income tax of 10% on the income.

### **What weight do debentures currently carry for infrastructure projects?**

**Signor:** In 2023, debentures were not so relevant because of the very high interest rates. In 2021, the market financed itself more with incentivized debentures than with resources from public banks and government funds, which in Brazil have traditionally financed infrastructure projects. There was a peak and then it fell due to market conditions.

## INTERVIEW

### **From the point of view of disputes with the public administration, how has the new conflict resolution method set up by the Federal Court of Auditors (TCU), Secex Consenso, worked? Is it an interesting way of settling disputes?**

**Carvalhoes:** Historically, the TCU adopted a view based on being bound by the bidding documents, which did not allow for review during the execution of a contract signed with the public administration. Concession contracts and Public-Private Partnerships (PPPs) have a very long duration, more than 20 years in most cases. It's impossible to predict in advance everything that will happen in decades of contracts. As a result, the procedure for mediating potential conflicts between private investors and the public administration was created in 2022. There are already precedents for successful mediations in the energy and highway sectors, and there are other procedures underway involving companies from various other sectors.

The positive point is that you have a way of renegotiating contracts in the event of a risk or situation that was not initially foreseen. If there is room for agreement, the law sets a relatively short deadline



**If there is room for agreement, the legislation establishes a relatively short deadline for conclusion, compared to the judicial or arbitration channels.”**

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**Eduardo Carvalhoes**

for conclusion, compared to the judicial or arbitration channels. It lasts 120 days, which can be extended by another 60. In a maximum of six months, we either have the agreement ratified or we go back to dispute.

On the other hand, there is still no complete clarity on what can or cannot be reviewed in each case. Every concession contract has points for improvement, especially when you look at it after it has been concluded. The TCU's challenge is to create objective criteria to delimit what can be reviewed. Otherwise, they'll be swamped with requests from people who don't have a serious problem, but see this as an opportunity to improve their contract.

### **Who can request a contract review?**

**Carvalhoes:** Companies cannot apply directly, only public authorities - Ministers of State, Presidents of regulatory agencies and Ministers of the Supreme Courts and the TCU. But in practice, it turns out that the private agent provokes a statement from the competent authority. Although individuals cannot make the request directly to the TCU, there are mechanisms for provoking the competent authorities to do so.

### **The new Bidding Law (Law 14.133/2021) came into force for public purchases in January 2024. What opportunities will the new rules open up and what challenges will the application of the new law bring?**

**Carvalhoes:** The new law is still in its infancy. There are doubts that arise in the application of the legislation and the first precedents will be important. However, the rule now provides for new, more dynamic forms of contracting. It came after the Statute of State-Owned Companies (Law 13.303/2016) and this law brought in an intermediate contracting regime for state-owned and mixed-capital companies.



## INTERVIEW

At the moment we are living in a new reality with the new law and the more flexible TCU, which brings opportunities for building ideas and streamlining processes. The truth is that the bureaucratic and slow process of the previous law ended up resulting in companies not being interested in supplying the government or doing so on a more costly basis. It had been more costly to supply the government because there's the whole contracting procedure; when something goes wrong, you have to spend on a lawyer and when the government doesn't pay, the contractor gets paid after years through a precatory (government debt bonds). It turned out that whoever submitted the most advantageous bid was later held accountable by the Court of Auditors because they charged prices above the private market. It's time to reassess, return to supplying products and services to the government and use new bases.



**The new Bidding Law now provides, in a positive way, for more dynamic contracting modalities."**

**Eduardo Carvalhaes**

**What opportunities and points of attention do you see for the sector?**

**Signor:** There is a window of opportunity with the auctions planned for 2024 and the coming years. As a result, project modeling must be a point of attention. There's no point in having an auction without legal certainty. Another point of attention is that the government will need to attract a lot of investment to sustain the projects. The government has capitalized the

Climate Fund and intends to approve a new form of fundraising to capitalize the BNDES and public banks. However, we must be careful not to go back to the past when many projects were financed with a line of credit subsidized by the government.

**Gomes:** On the energy side, there are good prospects with the renewal of the energy distribution and transmission concessions. In the case of the latter, the government is signaling a re-bid, not an extension. It wouldn't make much sense to have the opposite situation, since they are natural monopolies and are two concessions that could be treated in the same way.

Even if the path is one of extension, the government has indicated that those who do not comply with the conditions will be re-bid or have the opportunity to change corporate control so that a new investor can come in. There is the prospect of interesting capital inflows, but that could become a problem. Re-bidding must be done in advance and with analysis. You can't arrive on the eve of the expiry of the concessions and not know what to do: neither the current investor knowing whether he will continue with the concession, nor the next one who needs to prepare to make good investments in Brazil.



**We must be careful not to go back to the past when many projects were financed with a line of credit subsidized by the government."**

**Miriam Signor**



## INTERVIEW

**Carvalhoes:** We must be aware of two points. On one hand, all infrastructure projects require a lot of money. We therefore need sources of funding and stability. Without this, money becomes expensive, so there's no point in having a project. There is discussion about changes in the vectors and interpretation of the control bodies responsible for infrastructure projects, especially the Public Prosecutor's Office and the TCU.

On the other hand, there are a number of precatories (government debt bonds) available on the market. In 2021, a constitutional amendment allowed the use precatories (government debt bonds) to pay for concession grants. With the regulation by the Federal Attorney General's Office (AGU), the opportunities have been restricted, but it remains a relevant issue, so that it is possible to use public debt securities negotiated on the market to pay for grants, which are one of the most significant costs in infrastructure projects.



**In the energy sector, there are good prospects with the renewal of the energy distribution and transmission concessions.”**

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**Raphael Gomes**





**Stay ahead in the market:**  
check out the opportunities  
and points of attention in the  
infrastructure sector



**Main  
opportunities**

- \_ Auction pipeline;
- \_ Renewal of energy distribution and transmission concessions;
- \_ Use of precatories (government debt bonds) to pay grants.



**Points of  
attention**

- \_ Lack of good, predictable modeling;
- \_ Avoiding government-subsidized funding for projects.

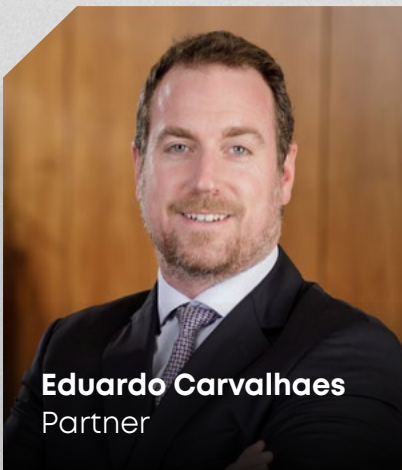


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Lefosse is a full-service law firm of excellence, with experience and a track record in emblematic cases in the most varied segments. Our partners and lawyers have in-depth knowledge of our clients' contexts, which makes us an innovative, dynamic and multidisciplinary ally for your business challenges.

With sector specialists, we converge all fronts of the law, be they contentious, regulatory, advisory or transactional, in favor of demands and solutions for companies. Our proximity, dynamism and vision of the future make us business partners, offering solutions to complex cases and celebrating our clients' achievements together.

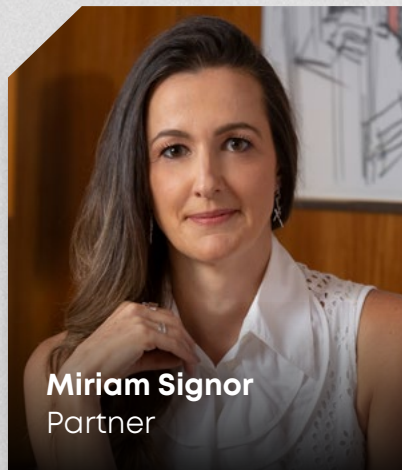


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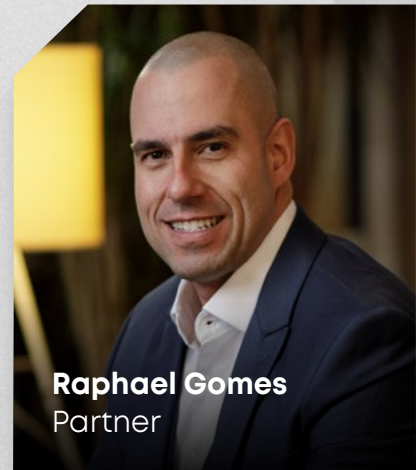


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