

# Brazil Gas Law Updates

## Client Alert

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### **GAS LAW – Presidential sanction expected for February, 2009**

In mid-December 2008, the Brazilian Congress has finally approved the Bill of Law No. 6,673 of 2006 ("Bill of Law"), which will be converted into law, namely the Gas Law. After the Legislative Power approval, the Bill of Law now waits for presidential sanction.

If the President considers the Bill of Law unconstitutional or contrary to the public interest, he may use his veto power, partially or in full, within the period of 15 (fifteen) business days, counted from the receipt date, and shall inform the Senate's President, within 48 (forty-eight) hours thereafter, the reasons for his veto.

However, the press announced that, last December, the Presidential Staff Office returned the Bill of Law to the House of Representatives' Special Committee which deals with this subject aiming at rectifying the text of the Bill of Law. It is expected that the Bill of Law be sent back for presidential sanction by February this year.

In case the Bill of Law is sanctioned by the Brazilian President, it will be converted into law and will enter into force on the date of its publication.

Once sanctioned, the Gas Law will establish rules regarding transportation, import, export, treatment, processing, storage, liquefaction, regasification, and commercialization of natural gas, and, furthermore, will also amend and provide new wording to Law No. 9,478 of 1997 ("Petroleum Law").

The Gas Law shall, therefore, discipline important tiers of the natural gas industry, which are nowadays inaccurately and incompletely regulated by the Petroleum Law and by resolutions and ordinances issued by the National Agency of Petroleum, Natural Gas and Biofuels ("ANP").

Due to the physical properties at which the natural gas is found, the industry of natural gas has some peculiarities, among which we can detach the special logistics and the need for significant investment in transportation infrastructure.

The Bill of Law aims primarily at stimulating the construction of new gas pipelines, the enlargement of the existing ones and the reduction of transportation tariffs. To achieve these goals, the bill creates specific procedures for public calls (chamadas

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públicas) which envision identifying potential carriers and dimensioning the effective demand, and establishes that the construction of new pipelines and the enlargement of the existing ones will be accomplished by public biddings, in which the winning proposal will be the one that offers the lower annual revenue for the transportation agent.

Regarding the construction of new gas pipelines, for instance, the Bill of Law allows that gas pipelines considered as of relevant public interest by the Ministry of Mines and Energy may be constructed with public resources (deriving from the collection of the Contribution for Intervention in the Economic Domain – CIDE and from the Energy Development Account – CDE) or through public-private partnerships ventures.

It is important to highlight that, pursuant to the Bill of Law, there will be two granting regimes for the exercise of natural gas transportation activities. According to the text submitted to presidential sanction, the concession regime will apply to pipelines of general interest, except for cases in which the transportation pipelines are referred to international agreements (e.g., Bolivia-Brazil gas pipeline). In such cases, the transportation activity shall be granted by means of specific authorizations.

The Bill of Law foresees that both regimes shall have the maximum duration of 30 (thirty) years, subject to renewal for an equal period upon satisfaction of the conditions set forth under the applicable regulation. However, it is worth noting that both the authorizations and the concessions are only granted to consortia or companies incorporated under Brazilian laws, with head office and administration in Brazil.

Moreover, the Bill of Law introduces the following innovations:

**(a) Access to gas pipelines**

The Bill of Law grants the access of third parties to transportation pipelines. Transportation pipelines are defined as the pipelines used for movement of natural gas from processing or storage facilities, or even other transportation pipelines, to the delivery points for state distribution concessionaires.

However, in regard to outflow pipelines, treatment or processing facilities and liquefaction and regasification units, the Bill of Law defines that the authorized agents are not obliged to allow third parties access to such infrastructure.

**(b) Distribution and commercialization**

The Bill of Law states that the independent consumers, self-producers and self-importers may construct, by their own means, facilities and pipelines for their own use. At a first glance, the law could be challenged for allowing companies to receive natural gas by-passing state distributors. Pursuant to article 25, 2nd paragraph, of the Constitution, the competence to distribute piped gas is granted to State-members, meaning that a federal law could not regulate the subject.

However, it is important to note that the federal legislator was diligent while regulating such matter in the Bill of Law, having only allowed independent consumers, self-producers and self-importers whose needs for natural gas could not be satisfied by the state distributor, to construct and implement facilities and pipelines for their own specific use. In such cases, the agents will be allowed to build

the infrastructure, but they will be obliged to celebrate agreements allocating the operation and maintenance of the pipelines to state distributors. Also, the title to the infrastructure will be transferred to the state by the time it is fully used.

**(c) Contingency Plan**

Another novelty created by the Bill of Law is the elaboration of a Contingency Plan for situations arising out of supervening, unexpected and involuntary fact that causes incapacity of fully attending the natural gas demand in the country, engendering significant impact on this market.

In such circumstances, after proposal made by the Ministry of Mines and Energy, the President of the Republic, through a decree, shall suspend the obligations of gas supplying and rendering of transportation services, temporarily interrupting the contracted volumes and the agreements entered between private parties.

A Committee of Contingency will be created and co-ordinated by the Ministry of Mines and Energy in order to elaborate, implement and accompany the execution of the Contingency Plan. This plan shall establish initial measures to be taken, measures to mitigate the reduction of the gas offering, priority consumptions and isonomic distribution of eventual reductions of the gas offering.

Notwithstanding, it is important to stress that the transporters, although under coordination of the ANP, shall remain responsible for the operation of their own pipelines during this extraordinary period.

**(d) Arbitration**

As to arbitration matters, the legislator has expressly adopted vast jurisprudence by establishing as an option, the adoption of an arbitration convention in cases which state-owned and mixed-capital companies (including its subsidiaries, controlled entities, being, concessionaires or authorization holders) are involved with. However, the innovation relies on the definition of disposable rights, which, pursuant to the Bill of Law, are those relative to credits and debts arisen from natural gas commercialization agreements in which state-owned and mixed-capital companies are signatory parties.

Beside the issues described above, the Bill of Law establishes that new concession agreements or authorizations shall not hamper already existing rights of transporters and carriers, being ratified the authorizations already issued by the ANP until the publication date of the Gas Law, and remaining unchanged the transport tariffs currently charged and their revision criteria defined so far.

At last, it is important to remember that, currently, the natural gas industry became more important, since the recently announced gas reserves discoveries will, for sure, increase the participation of the natural gas in the Brazilian energetic matrix.

Therefore, it is expected that the Gas Law will represent a decisive step for the new regulatory framework of the Brazilian natural gas industry, being duly regulated by the Ministry of Mines and Energy and by the ANP.

Anyway, one cannot disregard the fact that there is still uncertainty as to how this new regulation will be interpreted and applied. Only time will allow a better evaluation of the positive and negative effects arisen from such innovations.