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**Administrative Law and
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BRAZIL'S FEDERAL GOVERNMENT ANNOUNCES A SET OF NEW POLICIES TO BOOST PUBLIC-PRIVATE PARTNERSHIPS

On April 20, 2023, the Brazilian Federal Government announced a set of policies to develop and expand public-private partnerships (PPPs) in the country, especially at the state and municipal levels. In the Executive Branch, the Ministry of Finance (*Ministério da Fazenda*) stated that it will immediately adopt four policies:

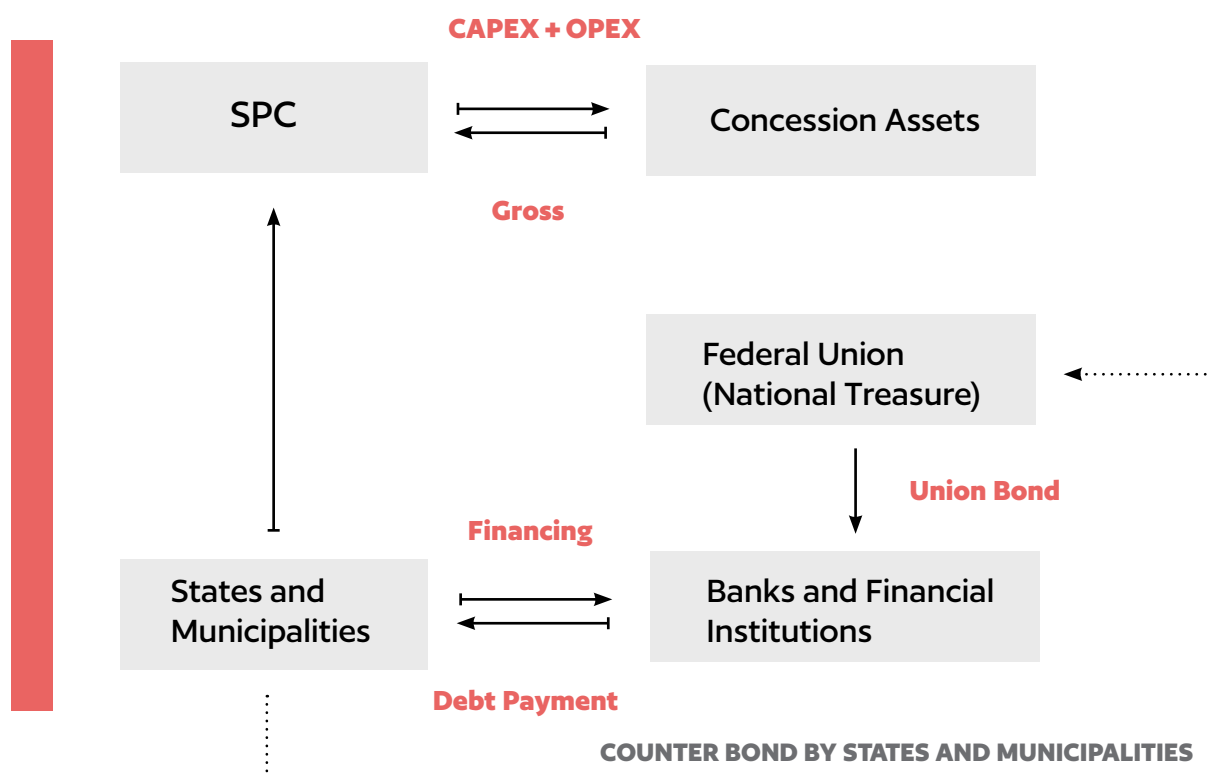
- Union Bonds for Investment Financing.
- Union Bonds for Continued Counterparty Financing.
- Flexibilization of PPP Expenses Accounting.
- Debentures Decree with Incentives for Social and Environmental Infrastructure.

Find below the description of each policy and how they can impact the PPPs scenario in Brazil.

(I) UNION BONDS FOR INVESTMENT FINANCING

The Ministry of Finance intends to enable a larger range of credit operations for the financing of the construction phase of PPPs.

The Union will offer guarantee bonds to banks and financial institutions that support the financing of PPP projects of states and municipalities. The structure below illustrates the proposed model:



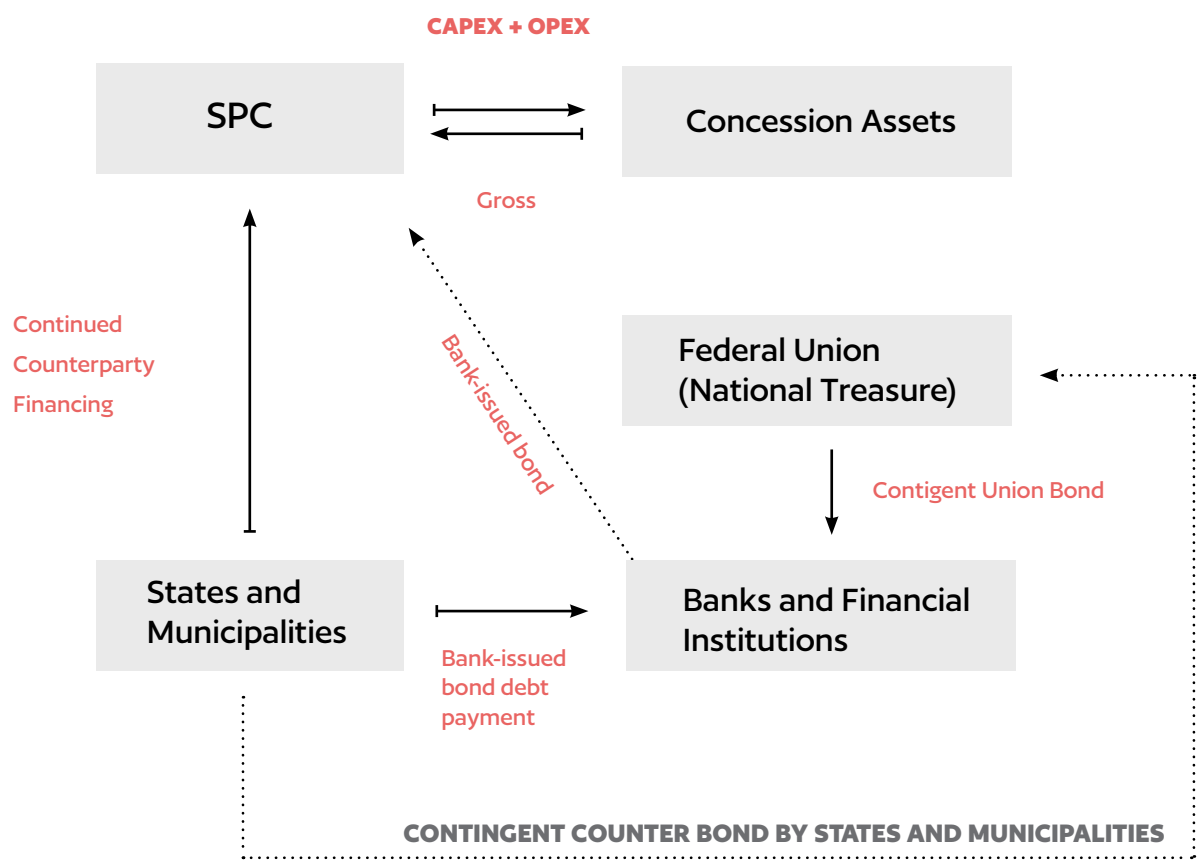
As a result, the Federal Government expects to reduce the need for financial leveraging in the financing of PPP projects.

(II) UNION BONDS FOR CONTINUED COUNTERPARTY FINANCING

This policy aims to enable Union bonds against the risk of default on the counterparty financing owed by states and municipalities in the PPP projects. This was a demand from investors, given the higher risks involved with projects at the local levels.

States and municipalities, when structuring a PPP with the guarantee of a bank-issued bond to their owed continued counterparty financing, will be able to count on the Union Bond. If executed, this Union bond will automatically convert itself into a credit operation guaranteed by the Union:





Hence, the government aims to significantly reduce risks for the private partners and provide greater ease of credit access in the market, which will also help increase the attractiveness of PPP projects for subnational entities.

(III) FLEXIBILIZATION OF PPP EXPENSES ACCOUNTING

On April 20, 2023, the Federal Government published STN/MF (Secretariat of the National Treasury of the Ministry of Finance) Ordinance No. 138/2023, which establishes rules for the consolidation of public accounts related to PPP contracts.

The Ordinance seeks to encourage the development of PPPs by states and municipalities, by rationalizing the accounting restriction imposed by the Federal Law of PPPs (Law No. 11,079/2004). According to the law, states and municipalities are subject to a cap of commitment with PPP projects financing based on the RCL (Net Current Revenue).

The Federal Law of PPP prohibits the granting of bonds and financing support by the Union in favor of subnational entities when the commitment exceeds the limit of 5% of the RCL in PPP contracts – i.e., the law provides a spending cap on the partnerships developed by states and municipalities.





The Ordinance removes the following items from the RCL commitment calculation:

- Expenses already incurred on a recurring basis in services and goods granted that will be subject to the PPP (“replacement of pre-existing expenses”).
- The allocation of resources in favor of the private partner for the execution of works and acquisition of reversible assets (those assets which ownership will be transferred to the government by the end of the contract).

In line with other measures announced by the Federal Government, the Ordinance is a great incentive for states and municipalities to enter PPPs. After all, both existing expenses and investments in reversible assets would occur regardless of the existence of a PPP, and these are two items that strongly contributed to limiting public spending on PPPs in the subnational level.

(IV) DEBENTURE DECREE WITH INCENTIVES FOR SOCIAL AND ENVIRONMENTAL INFRASTRUCTURE

On April 26, 2023, the Federal Government published Decree No. 11,498/2023, which establishes incentives for financing social and environmental infrastructure projects

through debentures.

Decree No. 11,498/2023 amends Decree No. 8,874/2016 to include in the list of priorities, for the purposes of issuing incentivized debentures, investment projects in the areas of basic sanitation, irrigation, education, health, prison security, urban parks and conservation units, cultural and sports facilities, and social housing and urban revitalization.

This measure aims to encourage the private sector to raise funds for projects involving the construction and development of social and environmental infrastructure. According to the Brazilian legislation, incentivized debentures are subject to different income tax rates, which represents an attractive opportunity for private investors.





CONCLUSION

With this set of measures, the Federal Government expects to boost numerous PPPs in Brazil. It is expected an increase by the amount of BRL 100 billion in the federal investments to subnational entities, which should drive the PPP projects forward.

Multilateral banks have shown interest in the announced policies and are potential partners for this growth, including providing technical assistance for modeling and bidding, as well as offering AAA credit risk guarantees.

The government's projection also indicates that 150 PPP projects currently under development by states and municipalities will benefit immediately from the announced measures.

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