

ORDINANCE N. 517/2018 OF THE MINISTRY OF TRANSPORTATION, PORTS AND CIVIL AVIATION – MTPA

It provides procedures and requirements for approval by the Ministry of Transport, Ports and Civil Aviation of investment projects as priority for the issuance of boosted debentures

On October 8th, 2018, the Ministry of Transportation, Ports and Civil Aviation ("MTPA") enacted Ordinance N. 517/2018 ("Ordinance"), which provides procedures and requirements for the approval of investment projects as priority for purposes of the issuance of infrastructure debentures (*debentures incentivadas*), pursuant to the provisions of Federal Law N. 12,431/2011.

The Ordinance unified the procedures for approving priority projects previously established by each the former Secretariat of Ports and of Civil Aviation, both of the Presidency of the Republic. From now on there is a single procedure for infrastructure projects in the logistics and transportation sectors under the competence of MTPA.

• PROJECTS SUBJECT TO APPROVAL

Priority projects shall be those that aim at the implementation, expansion, maintenance, recovery, adaptation or modernization of infrastructure projects in the logistics and transportation sectors, including those projects relating to the payment of grants (*outorga*).

• PROJECT OWNER

The priority project shall be implemented and managed by a special purpose company incorporated as a corporation (*sociedade anônima*).

• REQUIREMENTS OF THE APPLICATION

The project owner shall submit the application for approval of the investment project for the issuance of infrastructure debentures, complying, in summary, with the following requirements:

- One application for each project;
- It shall include:
 - ✓ The name of the project;
 - ✓ Description of the works, including purpose and use of the proceeds;
 - ✓ Expected benefits of the infrastructure investment for the economic, social, local, regional or national development;
- Project schedule with the development stages and initial and final expected dates;
- Simplified description for the use of the investments;
- In case of a port project, a simplified description of the projected capacity;

- Obtaining of a technical certificate from the regulatory agency or competent body certifying the validity of the contract or other granting instrument, as well as whether the enterprise is contemplated in the contract or is related to the rendering of a public service;
- Copy of the corporate documents of the applicant, including of its management; and
- Evidence of tax regularity.

- **APPROVAL PROCEDURE**

The application shall be reviewed by the MTPA's Secretariat for Partnership Development, which may consult other Secretariats, such as the National Secretariats of Ports, Civil Aviation and Transportation. After expressing its opinion on the approval of the investment project, the Secretariat for Partnership Development shall submit the process for the review of the Legal Counsel of MTPA.

The approval of the enterprise as a priority will be published by MTPA as an ordinance.

- **VALIDITY OF THE APPROVAL**

The approval of the project as a priority will be valid for two (2) years, as of the date of publication of the MTPA's ordinance.

In the event of non-issuance of the debentures within such period, the project owner must explain the reasons to MTPA.

- **PROJECT MONITORING BY MTPA**

The project owner shall inform the Secretariat of Development and Partnerships about the issuance of the debentures within a period of thirty (30) days from its issuance date.

In the event of non-implementation of the priority project as approved in the ordinance, as well as in non-compliance, suspension or cancellation of the contract or other grant instrument, the project owner must also inform the Secretariat of Development and Partnerships.
