New Regulation to Foster Innovation and Technology in Brazil

While in the US the private sector represents the largest share of investments in R&D, Brazil still has most of its research funded by the government . Despite the advances in scientific research, Brazil lacks synergy among private and public sectors in this area. Recent efforts to foster innovation, scientific and technological research in Brazil led to the enactment of Law No. 13,243 in 2016 (Marco Legal da Ciência, Tecnologia e Inovação – Law 13,243) and, more recently, to the issuance of its regulations by means of Decree No. 9,283, of February 7, 2018. The Decree details certain procedures and legal instruments that are essential to enable the actual application and enforcement of Law 13,243, including more detailed rules on how the government and ICTs can support the creation and management of innovation hubs and incubators.

Among the innovations brought by Law 13,243 and regulated by the Decree is the possibility of public scientific, technological and innovation institutions (ICTs) holding minority stakes in private companies, with the purpose of developing innovative products or processes, in accordance with the public policies applicable to the institution. The investment may be made directly in the company or by means of investment funds created with own or third-party resources for this purpose. Such investments will need to comply with the institution's investment policy, which must establish the criteria, procedures and a number of other conditions related to the direct and indirect investments to be performed by the relevant ICT.

Another novelty is the regulation of certain instruments created by Law 13,243, designed to foster innovation in private companies, such as the concepts of subvention (subvenção econômica), project support (apoio a projetos), technology bonus (bônus tecnológico) and commissioning (encomenda tecnológica). In particular, the technology bonus is a subvention to small and medium enterprises to support the costs borne by the company with the sharing and

use of technological R&D infrastructure, hiring of specialized technological services or ancillary technology transfer. Such funds must be used within 12 months and may be employed in the engagement of public or private ICTs, or companies. In consideration for the technology bonus, companies must offer a financial or non-financial contribution, as required by the authority that provided the bonus.

The technology commissioning, on the other hand, allows the public administration to engage directly (i.e. without a prior bidding process) with public or private ICTs, non-profit private entities or companies focusing on research activities with recognized technologic qualifications, with the purpose of performing research, development and innovation activities involving technological risk, with the goal of solving a specific technical problem or obtaining an innovative product, service or process. The parties must define by contract the ownership or use of intellectual property rights resulting from the technology commissioning, as well as their possible assignment, licensing or transfer of technology.

While it is expected that the novelties brought by the Decree will increase legal certainty and predictability in the process of partnerships between public and private entities, we are yet to see how the new instruments will be applied in practice, and whether they will fulfill their goal of overcoming the usual Brazilian red-tape and truly fostering innovation and technology in the country.

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