

## *Virtual Trade Mission to Brazil*

*U.S. Department of Transportation Federal  
Transit Administration,  
American Public Transportation  
Association, and  
U.S. Commercial Service*

Fabio Ferreira Kujawski

September 17, 2009

# Engaging in Public Transportation Governmental Programs

**I. Directly**  
(by becoming a  
domestic player)

**II. Indirectly**  
(by contracting/partnering  
with a domestic player)

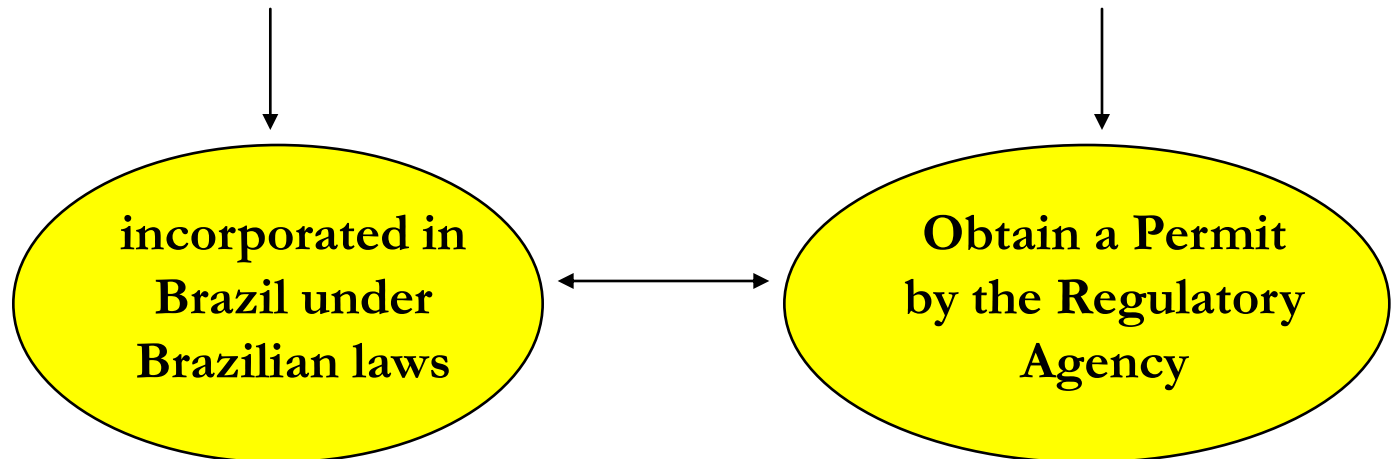


# Engaging in Public Transportation Governmental Programs

## I. Directly (by becoming a domestic player)

### I.1 Law 10233/2002

companies willing to provide transport services by road, railroad or waterway and/or explore transport-related infrastructure



# Engaging in Public Transportation Governmental Programs

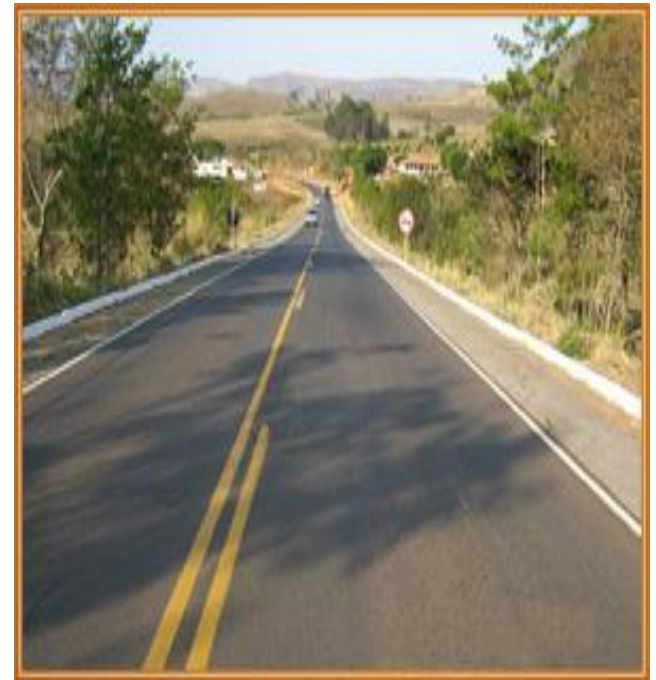
## I. Directly (by becoming a domestic player)

### I.1 Law 8987/1995

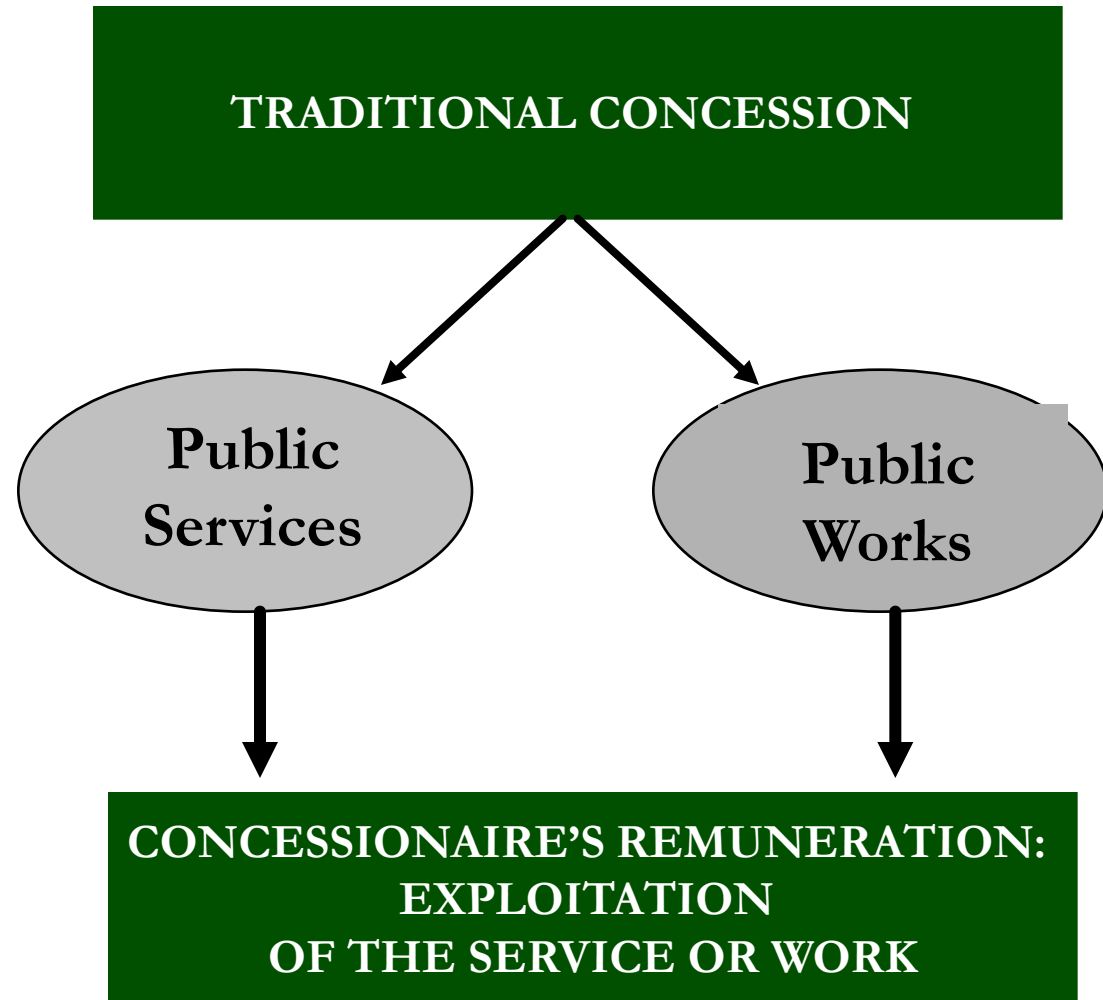
Concession of  
Public Works or  
Services

### I.2 Law 11079/2004

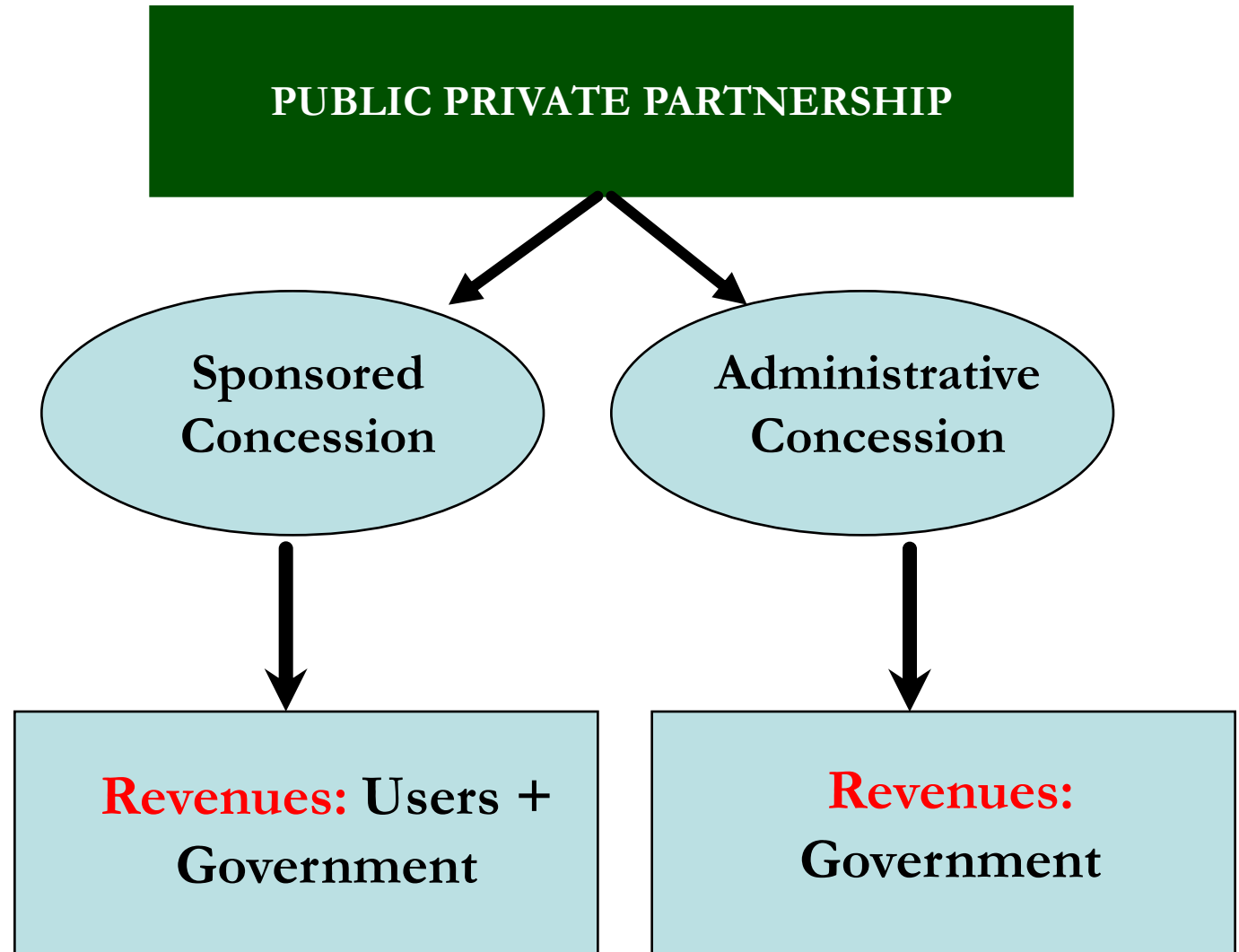
Public Private  
Partnerships



# Engaging in Public Transportation Governmental Programs



# Engaging in Public Transportation Governmental Programs



# Engaging in Public Transportation Governmental Programs

PPP  
X  
CONCESSION

PPP MAY NOT BE  
CONTRACTED



IF THE CONTRACT VALUE IS  
LESS THAN R\$ 20 MILLION  
(APPROX. US\$ 11 MILLION)



IF THE TERM FOR THE  
PROVISION OF SERVICES IS LESS  
THAN 5 (FIVE) YEARS

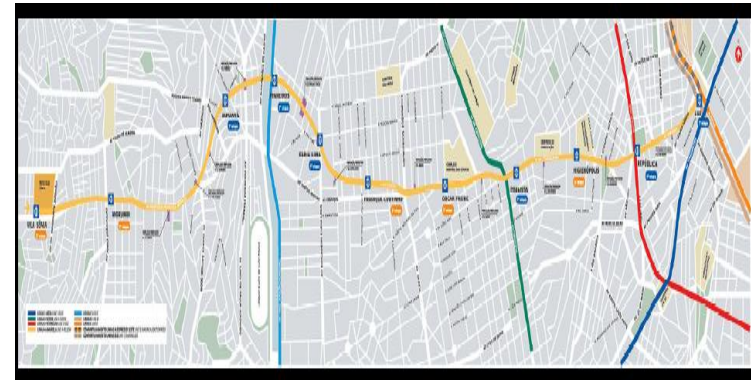


IF THE SOLE SCOPE OF THE  
CONTRACT IS THE SUPPLY OF  
LABOR, THE SUPPLY AND  
INSTALLATION OF EQUIPMENT  
OR THE EXECUTION OF PUBLIC  
WORKS

# Engaging in Public Transportation Governmental Programs

## II. Indirectly (by contracting/partnering with a domestic player)

- Subcontractor
- Direct Sales
- Sales Representative (Agent)
- Distributors
- Technology Transfer
- Licensing of Intellectual Property





# **Engaging in Public Transportation Governmental Programs**

---

## **Main Recurring Legal Issues**

- **Consumer Protection Code**
- **Warranties**
- **Limitation/Exclusion of Liability**
- **Back-to-back liability (subcontractor)**
- **Choice of law and Jurisdiction (Arbitration)**
- **Currency Indexation**
- **Local Maintenance and Technical Assistance**
- **Licensing of Intellectual Property**

# Engaging in Public Transportation Governmental Programs

## Brazilian Tax System

### - Import of Goods

- \* **II** (Import Tax): at variable rates depending on the classification of the product, applies to the CIF value (in most cases 0%-35%)
- \* **IPI** (Excise Tax): rate varies from 10% to 20%, applies to the CIF value added by the II
- \* **ICMS** (Sales Tax): generally 18% applies to the CIF value added by the II, IPI, the ICMS itself and the PIS and COFINS.
- **PIS / COFINS**: combined rate of 9.25% applies on CIF value added by ICMS and the PIS and COFINS themselves. Certain products may be subject to different tax rates. It could generate a tax credit to be offset with PIS and COFINS due on domestic transactions.

### - Import of Services and Intangible Assets

- \* **IRRF** (Withholding Income Tax): rates from 15% to 25%, with foreign tax credit when Brazil has signed double taxation treaties.
- \* **PIS / COFINS**: 9.25% (same rules above)
- \* **ISS** (Service Tax): from 2% up to 5% applies to the service price
- \* **CIDE** – royalties & technology: 10% on the operation amount when it involves royalties, technical services and technical assistance.

## Engaging in Public Transportation Governmental Programs

- **Special Tax Regime or Tax Benefits for products assembled or manufactured in Brazil**  
(requirements vary on a per program per product basis)
- **Preferential treatment to transport-related goods originating in MERCOSUR/ALADI countries**
  - **Specific custom rules for given products**
    - ✓ tractors, vehicles for more than ten passengers and tow equipment: subject to prior authorisation by the Environmental Agency and the Department of External Trade (“DECEX”)

**FABIO FERREIRA KUJAWSKI**  
**kujawski@bkbkg.com.br**

**Rua Dr. Eduardo de Souza Aranha, 387, 15º andar**  
**Phone (55) (11) 38970350**  
**São Paulo/Brazil**