



June 21, 2016

Brazil's Pre-Olympics Emergency Declaration Raises Legal Questions

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A Brazilian state governor's declaration of a state of emergency and request for federal money to meet obligations hosting the Olympics in Rio de Janeiro is being questioned on constitutional grounds and may lead to lawsuits, attorneys say.

Brazilian politicians and jurists contend the declaration issued Friday is an exploitation of the law. They say a state of emergency is intended for natural disasters — not manmade fiscal ones.

"This is the first time our state uses a decree like this for something that is not related to a natural disaster," said Victor Madeira, a partner at Madeira, Valentim & Alem Advogados, a Sao Paulo-based firm that specializes in construction. "This is being very much questioned by jurists and other politicians that are not in support. ... It's not clear how long this decree will stay in force because it doesn't look very well-supported on legal grounds. We

BRAZIL

are expecting a lot of lawsuits to be filed against this decree.”

The move, which comes less than two months before the city hosts its first Olympic Games, also creates a political quandary for Brazil’s interim president Michel Temer, who will have to step carefully in determining what kind of aid the government gives Rio, lest it set a precedent of bailing out states that go broke, Madeira said.

In addition to creating a path for federal aid, the emergency declaration gives the state greater ability to choose which expenses it will pay first and which it will defer, Madeira said. Since it is intended for natural disasters, it also would theoretically allow the state to hire without the use of a legally required bidding process, said Enrico Bentivegna, a partner at Sao Paulo-based Pinheiro Neto Advogados, whose practice focuses on project finance and debt issuances for companies and states.

“Some people are saying that could be challenged as unconstitutional. Other people are saying it’s the only way to solve the problem,” Bentivegna said. “The Olympic games are a private event, so the state is using this tool to make a private event happen, which makes things awkward.”

Two of the biggest areas of concern related to the Olympic games, which are

scheduled to begin Aug. 5, are completing a new metro line in the city of Rio and paying for police protection for the half million expected visitors, Madeira said. The metro line, which is about 95 percent completed, is critical because without it, the influx of visitors moving about in cars could be stuck in traffic for hours, Madeira said. Rio wouldn’t have enough parking anyway.

But the constitution of Brazil establishes priorities above public defense, such as health, welfare and social security, Madeira said. The state government cannot pay an expense for the Olympic games or even the salaries of the police



Sao Paulo attorney Victor Madeira says Brazil’s legal community is questioning the first-of-a-kind use of an emergency decree for something other than a natural disaster.

department, and not pay, for example, expenses related to hospitals or welfare.

“The federal government is stepping on eggshells on this issue because they will have to be very careful not to create a bad precedent by giving money to a state on an unconstitutional basis,” Madeira said. “There are all sorts of questions about the validity and how the federal government will justify payments to the state. All the steps that they are doing

are being closely followed by all the opposite parties in order to create some sort of question about the legality and the validity of this government.”

STATE BAILOUT?

Brazil’s acting president Temer has a lot on his political plate already.

He was former president Dilma Rousseff’s vice president from a different political party on a coalition ticket until Rousseff was forced to step down in May to face an impeachment trial linked to ongoing corruption scandals. Temer has since been named in an oil executive’s

plea bargain as having traded campaign contributions for better luck in bids, but Temer has called the accusation “absolutely untrue,” according to the Wall Street Journal.

Establishing the precedent of bailing out the state could be a problem for him, Madeira said, because all the other Brazilian states are also suffering economically and others might want to follow suit.

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One possible way out may be for the federal administration to help the state obtain financing, either on its own or with a federal guarantee.

“If the federal government wants to be a state guarantor, the state might be able to raise funds in the international financial market,” Bentivegna said.

Domestic banks would not be available to them for a number of reasons, including the state of the economy, Bentivegna said. Fitch Ratings downgraded Rio’s debt last week. More information was expected to be released after a meeting between state and federal of-

officials Monday, he said.

Madeira said locals already knew the state was having financial issues because of delayed payments to health care programs and eyebrow-raising cuts to programs such as a mudslide alert system. Mudslides would not affect the Olympic area, Madeira said, and it's not rainy season.

The country as a whole was in a richer position a decade ago when the city of Rio de Janeiro won its bid to host the Olympics. The state of Rio de Janeiro, which includes the Olympic host city by the same name, is the Brazilian state with the greatest oil wealth and thus most affected by the drop in oil prices, Madeira said. That, combined with the corruption scandals gripping the country and an economic contraction, means income from oil royalties and taxes from commerce and investment are not near those projected when Rio won the bid for the 2016 Olympics, he said.

The current state of Rio's finances, environmental issues and Brazilian corruption scandals, combined with concerns about the Zika virus, may have altered the venue's allure as an Olympic host.

If Rio were applying to host the Olympics today, it probably wouldn't qualify, Madeira said.

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