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Brazil govt seen unlikely to succeed in reversing Eletrobras privatization

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The supreme court is more likely to preserve legal principles, BNamericas was told.



Brazil's supreme court is unlikely to side with the government and invalidate a restriction for shareholders to hold more than 10% of [Eletrobras](#)' voting capital, Alexei Vivan, a partner at Schmidt Valois Advogados law firm, told BNamericas.

Last week, the government attorney's office filed an unconstitutionality direct lawsuit against the restriction, which was established under the electric power holding's 2022 privatization law.

The lawsuit does not seek to re-nationalize Eletrobras or change its legal regime, but – if the ruling turned out favorable – would enable the government again to appoint most Eletrobras executives and define the company's course.

Vivan said the court is likely to preserve legal certainty and validate the privatization process, which was reviewed by congress and Eletrobras shareholders, including the government, at the time headed by Jair Bolsonaro.

Vivian added that a principle of law prohibits erratic and contradictory behavior and violates good faith and the duty of contractual loyalty.

"The government proposed and approved the rule that it now wants to nullify. Contrary to what the lawsuit sustains, there would be a lack of reasonableness, proportionality, impersonality, and administrative morality and efficiency would be violated, with a deviation of the purpose of the administrative act, if the action were to prosper," he said.

Legal certainty would be violated because whoever acquired Eletrobras shares did so under current rules, according to which the company is private, with directors appointed during a meeting in which no one can have more than 10% of the vote.

"Therefore, even those who acquired Eletrobras shares could contest the acquisition. Imagine the legal and institutional imbroglions that would be generated," Vivian said.

The lawsuit could also damage the government's relationship with congress. Lower house head Arthur Lira told CNN the government's Eletrobras moves are of concern. "As many groups, many countries are investing, the country should not try to change what is defined," he said.

In a statement, Eletrobras said that the lawsuit goes against the legal and economic assumptions that were the basis for the market's investment decisions based on a privatization model developed by the State.

The company said that, according to the law, shareholders contributed sufficient resources for the payment of 26.7bn reais (US\$5.33bn), made in 2022, to the government, as an award bonus.

Eletrobras said it will evaluate the measures that may need to be adopted "with a view to maintaining a reliable environment for investments by Eletrobras in the country and the legal certainty of all its shareholders and the market in general."

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