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DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

**MICI-BID-BR-2019-0142
ELIGIBILITY MEMORANDUM**

SÃO JOSÉ DOS CAMPOS URBAN STRUCTURING PROGRAM – REQUEST III

**(BR-L1160)
(2323/OC-BR)**

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In accordance with the Access to Information Policy, this document is being made publicly available simultaneously with its distribution to the Board for information.

INFORMATION NOTE

ON THE MICI REGISTRATION PROCESS, ELIGIBILITY DETERMINATION ANALYSIS, AND PUBLIC REGISTRY

The Registration process begins when the Independent Consultation and Investigation Mechanism (MICI) receives a Request sent by Requesters, alleging that they have suffered or may suffer harm due to actions or omissions of the Inter-American Development Bank Group (IDB Group) that may constitute a failure to comply with one or more of its Relevant Operational Policies within the context of a Bank-financed operation.

In the Registration Phase, which lasts five business days, the MICI verifies that the Request contains all information required for processing and that it is not clearly linked with any of the exclusions that limit the MICI's actions. Following the registration of a Request, Management has the opportunity to provide its perspective with respect to the allegations submitted by the Requesters, which must be sent to the MICI within 21 business days after registration in the form of a document known as "Management Response" (Response).

Once it receives the Response, the MICI starts the eligibility determination process, which involves reviewing the Request against the eligibility criteria established in its Policy to determine whether or not the Request is eligible and whether it can be accepted for processing. This eligibility determination is neither an assessment of the merits of the Request or the issues raised, nor a determination of the IDB Group's compliance or noncompliance with its Relevant Operational Policies.

If the Request is declared eligible, the process will begin for the phase selected by the Requesters; otherwise, the process will be deemed concluded.



All Requests received by the MICI and their processing will be recorded in its virtual [Public Registry](#). Case files will disclose all public information generated in processing a case.

The MICI does not award compensation, damages, or similar benefits. It is not empowered to halt disbursements or suspend operations.

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3.	Management's Response to Request MICI-BID-BR-2019-0142 regarding the São José dos Campos Urban Structuring Program (operation BR-L1160)
4.	Loan proposal for the São José dos Campos Urban Structuring Program
5.	Amendment to the loan contract of the São José Urban Structuring Program
6.	Environmental impact assessment for the São José dos Campos Urban Structuring Program
7.	Social and environmental analysis/environmental and social management plan for the implementation of the Arco da Inovação road improvement project of the São José dos Campos Urban Structuring Program

EXECUTIVE SUMMARY

The Inter-American Development Bank is financing the São José dos Campos Urban Structuring Program (BR-L1160) through a US\$85.67 million sovereign-guaranteed investment loan, which includes a local counterpart contribution for the same amount. The executing agency is the Município of São José dos Campos. The Board of Executive Directors approved the operation on 12 May 2010. According to Bank systems, 60.28% of the loan amount has been disbursed as of the date of this memorandum.

The program's objective is to contribute to the Município's sustainable development so as to strike a better balance among economic, environmental, and social considerations, by improving and strengthening the Município's physical infrastructure and urban management. The loan contract was amended in February 2019 to add the construction of the Arco da Inovação (Estaiada Bridge) to the scope of the program's Component II. This Request lodged with the MICI was prompted by the aforementioned works project, and is part of the most recent (February 2019) amendment to the loan contract.

On 4 February 2019, the MICI received a Request in connection with the program from two residents of the Município of São José dos Campos, located in the State of São Paulo, Brazil. These residents have asked to remain anonymous owing to fear of retaliation.

According to the Requesters, the Arco da Inovação works began before a complete study of the environmental and social impacts in that project's area of influence had been prepared. They also contend that the public consultation processes with the affected community were held after construction had already begun, and allege a lack of timely information and that no formal channels of communication had been established with the affected community.

Regarding allegations of harm, the Requesters state that the negative impacts the bridge project would have on their property values were not taken into account, since their homes are directly adjacent to the street. They also allege current and future environmental harm owing to increased air, sound, and visual pollution, as well as increased vehicle traffic. The Requesters claim that the increase in traffic will potentially threaten their health as a result of increased vehicle and heavy particulate emissions. They further claim that the works will threaten their physical safety, owing to the potential for traffic accidents in close proximity to their residences.

After analyzing the relevant documentation, the MICI Director, in accordance with Section G of the MICI Policy (document [MI-47-6](#)), concludes that the Request **is eligible**, having met all eligibility criteria required by the MICI Policy of the IDB.

This determination of eligibility is not an assessment of the merits of the Request or the issues raised therein. Nor is it a determination of compliance or noncompliance by the Bank of its Relevant Operational Policies. In no way does the activation of the MICI process signify suspension of the program or the disbursements thereto.

Pursuant to the Requesters' petition, the MICI Director will transfer the case to the Consultation Phase to start processing under that phase.

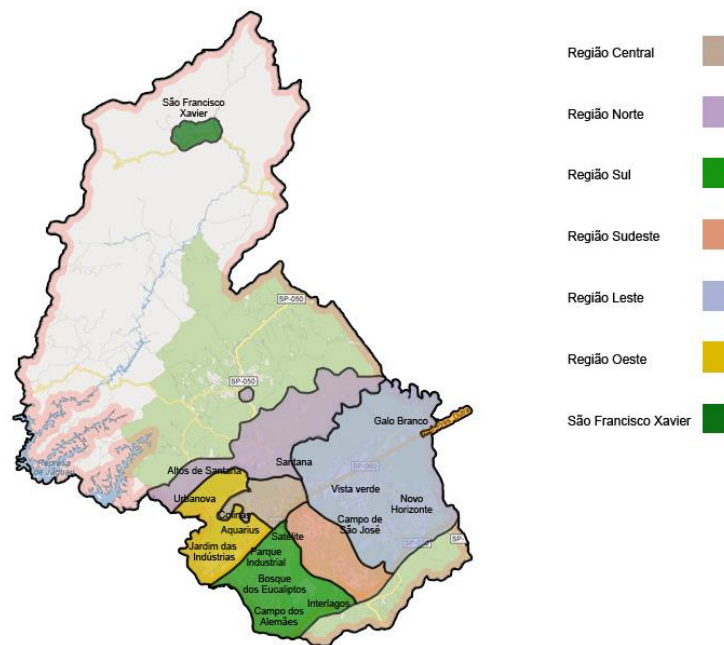
This memorandum was sent directly to the Requesters and Management for their information on 12 April 2019. Once the English version is available, it will be distributed to Board of Directors of the IDB and to any interested third parties for the same purpose through the [Public Registry](#).

THE PROJECT¹

A. Geographical and social context

- 1.1 The Município of São Jose dos Campos, in the State of São Paulo, is located in Brazil's Southeastern region. It sits in the middle of the Paraíba do Sul River Valley, and comprises a total of 1,099.60 square kilometers. It lies between the Serra do Mar and Mantiquiera mountain ranges, and is intersected by the Paraíba do Sul River, which is formed by one of Brazil's three largest secondary watersheds.
- 1.2 The city of São Jose dos Campos, the Município's capital, has a population of more than 630,000. It is a hub of commerce and industry, and is particularly well-known for its research and aerospace technology industries, which have driven significant economic and population growth in recent years. As a result, the Município needs to enhance the efficiency of its urban service offerings.

Figure 1. Map of the city of São José dos Campos



Source: Municipal Government of São José dos Campos

- 1.3 The Município has a master integral development plan in place to guide urban growth and development. It also has an urban mobility policy based on the principles of equitable use of public thoroughfares, roads, and parks; efficient and effective delivery of urban transport services; safe travel of persons and goods; and reducing the environmental impacts of urban mobility, among others. The São José dos Campos Urban Structuring Program (BR-L1160) is framed in that context.

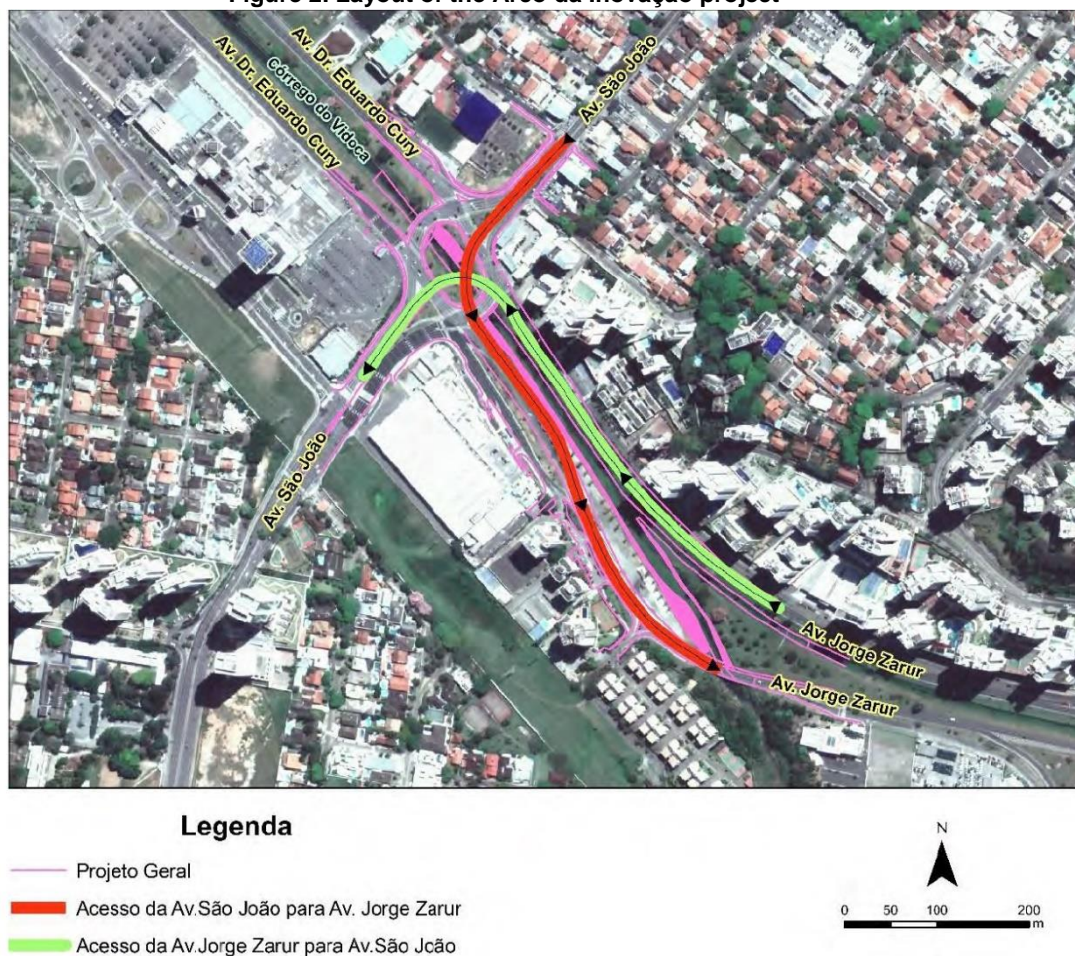
¹ Information taken from the Bank's website and public documents on the Operations. These documents are available in the electronic links section of this Memorandum.

B. The program

- 1.4 The Inter-American Development Bank is financing the São José dos Campos Urban Structuring Program (BR-L1160) through a US\$85.67 million-dollar sovereign-guaranteed **investment loan**, which includes a local counterpart contribution for the same amount. The executing agency is the Município of São José dos Campos. The program, which is currently in implementation, was approved by the Board of Executive Directors on 12 May 2010 under the simplified procedure.
- 1.5 The program's objective is to contribute to the Município's sustainable development so as to strike a better balance among economic, environmental, and social considerations, by improving and strengthening the Município's physical infrastructure and urban management. According to the loan proposal, the program is comprised of the following three components:
- 1.6 **Component I: Urban-environmental improvements.** The component's objective is to consolidate the integration between the urban space and the conservation area and improve the Município's urban-environmental quality by undertaking the following activities: (i) installation of urban parks with an increase in the percentage of green spaces; (ii) regularization of illegal subdivisions where families live with deficient infrastructure (some 2,000 lots); (iii) installation of sites for voluntary delivery of construction and demolition waste for recycling; (iv) execution of rainwater catchment works for irrigation; and (v) execution of drainage works.
- 1.7 **Component II: Improvements in urban mobility.** This component's objective is to restructure certain corridors and segments of the road system, thereby boosting the efficiency of public transportation, bikeways, and traffic safety. Its main activities include: (i) construction works on two corridors; (ii) construction of up to 13 bus transfer stations; (iii) support for the modernization of the traffic signal system and installation of an operations control center for roads; and (iv) development of an urban transportation master plan.
- 1.8 **Component III: Institutional strengthening.** The objective of this component is to improve public sector efficiency and effectiveness through: (i) information technology management in the municipal government; and (ii) electronic records and services management.
- 1.9 During program execution, the loan contract has been amended three times between 2016 and 2019, the latest of which occurred on 18 February 2019, authorizing the inclusion of the design and construction of the Arco da Inovação (Estaiada Bridge) (hereinafter the "Arco works"), which was not originally included in the program. These works gave rise to the Request received by the MICI and are considered in this document.
- 1.10 The Arco works consist of a bypass road. Its main purpose is to divert vehicle traffic on roads west of the city of São José dos Campos, which are currently saturated.
- 1.11 An environmental and social analysis plan² was prepared specifically for these new works (dated January 2019), which warns of environmental impacts—mainly the removal of vegetation and a variety of impacts on residents and businesses in the area of influence (e.g. increased traffic, the presence of workers, and construction debris, to name just a few).

² Only the preliminary version of this document is currently available on the IDB's website.

Figure 2. Layout of the Arco da Inovação project



Source: Environmental and social management plan.

- 1.12 At the time the program was approved, it was originally classified as a category “B” operation. As a result, the following operational policies are applicable to the program: the Involuntary Resettlement Policy (Operations Policy OP-710); the Environment and Safeguards Compliance Policy (Operations Policy OP-703); and the Access to Information Policy (Operational Policy OP-102).
- 1.13 According to Bank systems, 60.28% of the loan amount has been disbursed as of the date of this memorandum.

II. THE REQUEST³

- 2.1 On 4 February 2019, the MICI received a Request in connection with the Program from two residents of the Município of São Jose dos Campos, located in the State of São Paulo, Brazil. These residents have asked to remain anonymous owing to fear of retaliation. The corresponding public information is available in the MICI Public Registry (Request [MICI-BID-BR-2019-0142](#)).

³ The Request and its annexes are available in the electronic links section of this document.

- 2.2 The Request concerns the Arco works, which were added to the program in February 2019, and alleges that the Bank failed to comply with its operational policies, primarily Operational Policy OP-703, resulting in current and future harm related to the construction and future operation of the Arco da Inovação.
- 2.3 According to the Requesters, the Arco works began before a complete study of the environmental and social impacts in the project's area of influence had been prepared. They also claim that the public consultation processes with the affected community were held subsequent to the start of construction, and further allege a lack of timely information and that no formal channels of communication had been established with the affected community.
- 2.4 Regarding allegations of harm, the Requesters describe the potential negative impacts of the Arco works on their property, the environment, their health, and their physical safety associated with its construction and future operation. These include environmental harm, primarily associated with air and visual pollution during the construction phase and, subsequently, owing to increased vehicle traffic. The Requesters also claim that the increase in traffic could threaten their health as a result of increased vehicle and heavy particulate emissions. They go on to say that this situation will threaten their physical safety, owing to the potential for traffic accidents in close proximity to their residences.
- 2.5 The Requesters further allege that although their homes are located directly adjacent to the works, their adverse impacts on the Requesters' property values were not taken into account.
- 2.6 In terms of contact with Management, copies of the email correspondence between the Requesters and IDB Management in January 2019, in which the parties lay out their concerns, were included with the Request. In these email messages, Management states that, as of date of that correspondence, the Arco works were not yet eligible to receive loan proceeds under the program (operation BR-L1160), and that the executing agency had been required to prepare an environmental and social analysis as well as an environmental and social management plan, comply with environmental regulations governing the licensing of the works, and hold a public consultation. The timetable of the actions described in the Request is set out in Table 1.

Table 1. Timetable of actions associated with the Arco da Inovação project

Date	Relevant activities
2018	
23 April	Município provides notification, through the communications media, that the works will be implemented with IDB financing
13 August	Preparation of the sites of the works begins
14 December	Interruptions of vehicle traffic begin to install road signs and electrical works
28 December	Information requested from the IDB
2019	
21 January	Requesters send letter to IDB project team leader
24 January	Preliminary environmental and social analysis published on the Bank's website
29 January	Requesters receive the IDB's response
30 January	Start date established for Avenida São João widening works
4 February	Request sent to the MICI
6 February	Public hearing held on the works
18 February	Amendment to the loan contract formalized

Source: Request and attached documentation.

- 2.7 The Requesters allege that the actions taken by the Bank have been reactive in nature, late, and limited to addressing only one of the works that was already in execution. They further allege that the studies and activities planned prior to the initiation of the works were inadequate and therefore decided to submit their Request to the MICI.
- 2.8 The Request also mentions the existence of a public civil action based on safeguarding the right of sustainable urban development (proceeding 1032284-35.2018.8.26.0577), which was filed by the Ministério Público [Office of the Public Prosecutor] against the Município of São Jose dos Campos.
- 2.9 Lastly, the Requesters have asked the MICI manage the Request under both the Consultation Phase and Compliance Review Phase, should it be deemed eligible.

III. MANAGEMENT'S RESPONSE⁴

- 3.1 On 12 March 2019, IDB Management was notified that Request MICI-BID-BR-2019-0142 had been registered. On 14 March, IDB Management sent its Response to the MICI. A summary of its content is provided below (the complete text is provided in the links section hereof).
- 3.2 In its Response, Management confirms that the Arco works were not part of the projects initially included under the program when it was approved by the Board of Executive Directors in 2010, noting that said works were added pursuant to the most recent amendment of the loan contract in 2019. Management further states that it received the engineering designs from the executing agency on 28 February 2019, which the Bank is currently studying to determine their operational and technical feasibility. Consequently, as the date of its Response, Management has stated that no disbursements of loan proceeds have been made for the Arco works.
- 3.3 Moreover, Management notes that there is an active legal proceeding under way regarding the Arco works (proceeding 1032284-35.2018.8.26.0577), which was initiated on 19 December 2018 (see Table 2).

Table 2. Legal proceedings

Proceeding	Jurisdiction	Plaintiff/Defendant
Public civil action (proceeding 1032284-35.2018.8.26.0577)	Court of the State of São Paulo (First Court of Public Finance – São José dos Campos, State of São Paulo)	Public Prosecutor's Office of the State of São Paulo/Município of São José dos Campos

- 3.4 In its Response, Management also describes the actions it took to comply with the IDB's Operational Policies. Accordingly, it required the executing agency to: (i) prepare and publish an environmental and social analysis and environmental management plan for the Arco works; (ii) comply with local legislation governing the process of environmental licensing of infrastructure works; and (iii) hold a public consultation with the affected community, in accordance with the parameters of a category "B" operation.
- 3.5 Management's Response does not mention what it did to address the correspondence it received from the Requesters before they filed a Request with the MICI.
- 3.6 Lastly, reacting to the Response from Management, the Requesters sent additional comments to the MICI on 9 April. According to the Requesters, there was a misinterpretation

⁴ Management's Response is available in the electronic links section of this document.

of the exclusion cited in paragraph 19(d) of the MICI Policy regarding the aforementioned public civil action, since that proceeding had been conducted by a federal institution owing to omissions in local legislation and at no time dealt with potential violations of the Bank's Operational Policies, which were the grounds for their complaint lodged with the MICI.

IV. MICI ACTIONS

- 4.1 In accordance with Section G of the MICI Policy and the eligibility criteria of paragraph 22, the process for determination of eligibility of the Request followed the timeline below:

Table 3:
Timeline of MICI actions during the period

Date	Actions
4 February	Request received
11 February	Telephone call with the Requesters
12 February	Request registered and notification sent to the Requesters and IDB Management
12 February – 1 April	Document review and desk audit
14 March	Management's Response received
22 March	Telephone call with the Requesters
12 April	Eligibility Memorandum issued

- 4.2 Once the Request had been registered, in addition to the review of the documentation in this stage, various phone conversations were held with the Requesters and IDB Management with the aim of gaining a better understanding of the works and allegations presented in the Request.

V. ELIGIBILITY DETERMINATION ANALYSIS

- 5.1 As part of the eligibility determination process, the MICI considered the information presented in the Request, Management's Response, various project-related documents associated with the Request, and other relevant documentation.⁵
- 5.2 Pursuant to paragraph 22 of the Policy, a Request will be deemed eligible by the MICI if it is determined that it meets all the following criteria:
- The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the IDB-Financed Operation is implemented. If the Request is filed by a representative, the identity of the Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.
 - The Request clearly identifies an IDB-financed operation that has been approved by the Board of Executive Directors, the President, or the Donors Committee.
 - The Request describes the harm that could result from potential noncompliance with one or more Relevant Operational Policies.

⁵ The documents reviewed are available in the links section hereof.

- d. The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
 - e. None of the exclusions set forth in paragraph 19 of the MICI Policy apply.
- 5.3 In the case of **Request MICI-BID-BR-2019-0142**, the analysis of eligibility criteria established in the Policy consists of the following:
- 5.4 The Request is presented by two residents of the Município of São Jose dos Campos, located in the State of São Paulo, Brazil. The MICI has the contact information of the Requesters, but because they have asked to remain anonymous owing to fear of retaliation, that information is not public. Accordingly, **criterion 22(a) has been met.**
- 5.5 The Request identifies the “São José dos Campos Urban Structuring Program” (operation BR-L1160), approved by the Board of Executive Directors on 12 May 2010, and includes the works cited in its Component II that gave rise to the Request, which were added in the 18 February 2019 amendment of the loan contract. Accordingly, **criterion 22(b) has been met.**
- 5.6 The Request presents **allegations of harm** associated with environmental, health, and physical safety impacts linked to the works and future operation of the Arco project which may be attributable to a violation of Operational Policies OP-703 and OP-102. The Request also alleges violations due to the lack of complete environmental and social impact studies, the lack of appropriate consultation processes, and a lack of timely information and formal channels of public communication with the affected community, despite that the Arco works have already begun. Accordingly, **criterion 22(c) has been met.**
- 5.7 With respect to previous contact with Management, the Request presents information concerning various requests for information and email messages dated December 2018 or later. This correspondence describes the situation encountered by the Requesters, who allege these matters were not resolved. In its response dated 29 January 2019, Management informed them that it was still in the process of analyzing the works in question. Therefore, the MICI finds that **criterion 22(d) has been met.**
- 5.8 Regarding the exclusions established in paragraph 19, **the MICI finds that the exclusions established in paragraphs 19(a), 19(b), 19(c), 19(e), and 19(f) do not apply**, as the Request does not raise issues outside of the MICI’s scope of work; it includes the Requesters’ information; and the program under consideration was approved in 2010 and is currently in disbursement.
- 5.9 Regarding exclusion 19(c), in 2011 the MICI received and processed Request MICI-BR-2011-020 regarding the program’s involuntary resettlement component, which resulted in a compliance review for that activity (see Compliance Review Report, document MI-21-6). Upon analyzing the issues set out in the current Request vis-à-vis the previous one, the MICI finds that there are no similarities regarding issues it has already reviewed. Accordingly, exclusion 19(c) does not apply.
- 5.10 With respect to **exclusion 19(d)**, regarding the inapplicability of both the Consultation Phase and Compliance Review Phase to specific issues or matters raised in a Request that are under arbitral or judicial proceedings in an IDB member county, the MICI, through the Requesters and IDB Management, was aware of the existence of a civil action, and therefore conducted an analysis of the available information to determine the applicability of exclusion 19(d).

Table 4. List of active legal proceedings

Process	Jurisdiction	Issues	Plaintiff/Defendant
Public civil action (proceeding 1032284- 35.2018.8.26.0577)	Court of the State of São Paulo (First Court of Public Finance – São José dos Campos, State of São Paulo)	<p>Civil action filed by the Public Prosecutor's Office of the State of São Paulo to safeguard the right of sustainable urban development, centering on the following allegations:</p> <ul style="list-style-type: none"> – Construction of the works exceeds the Município's decision-making authority and its decision to build them was illegal in the absence of alternative studies; – Precautionary measures are requested to prevent the startup of construction on the Arco works; and – Priority was given to private transportation over public transportation. 	<p>Public Prosecutor's Office of the State of São Paulo</p> <p>Município of São José dos Campos</p>

- 5.11 The MICI had Internet access to the records through the portal of the [Tribunal de Justiça de São Paulo](#), as well as the documentation provided by the Requesters and Management.
- 5.12 With regard to aforementioned legal proceedings, the MICI finds no correlation between the matters proposed in the public civil action and allegations presented by the Requesters. Accordingly, **exclusion 19(d) does not apply** to these issues.

VI. CONCLUSION

- 6.1 The MICI Director, in accordance with Section G of the MICI Policy (document MI-47-6), has concluded that this Request **is eligible**, since it meets the eligibility criteria set out in the MICI Policy.
- 6.2 This determination of eligibility is not an assessment of the merits of the Request or the issues raised therein. Nor is it a determination of compliance or noncompliance by the Bank of its Relevant Operational Policies. In no way does the activation of the MICI process signify suspension of the project or the disbursements thereto.
- 6.3 This memorandum was sent directly to the Requesters and Management for their information on 12 April 2019. Once the English version is available, it will be distributed to the Board of Directors of the IDB and to any interested third parties for the same purpose though the [Public Registry](#).
- 6.4 After notifying the Board of Executive Directors, the MICI Director will transfer the case to the Consultation Phase, pursuant to the Request of the Requesters and as stipulated in the MICI Policy, to initiate its processing under that phase.