

The Public-Private Partnership in the Mexican market

Category: Infrastructure, PPPs and Government Procurement, Publications

written by Nader, Hayaux & Goebel | March 2, 2021

Law Review - 7th Edition - Mexico - by Partner Alejandro Rojas and associate Benjamin Torrero

A brief description of the situation in Mexico regarding the law review of PPP projects, the process to submit an application, the considerations to be taken into account and which contacts should be considered for your process to succeed. It also includes a historical analysis of the industry in Mexico and the opportunities that the current government has to boost investment and growth.

"More than 14 PPP projects are still operating in the country in the health, telecommunications and transport sectors."

"In future years, the PPP agenda in Mexico may increase, particularly in the transportation and telecommunications sectors, since the administration for 2018 to 2024 has shown particular interest in developing railways, highways and airports, as well as an extensive telecommunications network project to provide internet access and digital services across the country."

"The energy sector has experienced changes as the open policy under former administrations was being slowed down by the current administration; notwithstanding, with the United States-Mexico-Canada Agreement (USMCA), the country's power supply, as well as oil and natural gas activities, remain open to foreign investment and are protected as a covered sector under Chapter 14 subject to national treatment, minimum standard of treatment and an investment dispute resolution procedure."

"The USMCA might also provide further confidence to foreign investors in other sectors, which, along with the recent assurances of the federal government regarding PPP projects, may drive the development of self-financed PPPs in Mexico as a means to increase foreign investment in the country."

“Since the enactment of the PPP Law in 2012, there have been more than 100 public biddings for the implementation of projects through the PPP model focused primarily on the health, transportation, telecommunications, social and hydraulic infrastructure sectors. The energy and environmental sectors have also shown an increasing participation in PPPs, which translates into more projects ranging from solar photovoltaic power plants to waste management and waste-to-energy projects.”

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Law Review - 6th Edition - Mexico - by Partner Alejandro Rojas

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Mexico's overview

The development of PPPs in Mexico began in 2004 under the scheme known as projects for the provision of services (PPS), although the enactment of the Law on Public-Private Partnerships (the PPP Law) and its Regulations occurred until 2012. In Mexico, however, different types of public-private investment schemes have been used since the early 1990s to implement infrastructure projects, such as concessions, financed public works and investment projects with deferred

expenditure registration. These schemes served as direct precedents of PPPs as understood at the time of writing.

PPPs constitute a long-term contractual relationship between the public and private sectors for the provision of services to the public sector or the end user, in which the private developer provides, partially or totally, the infrastructure required for such services and, generally, the public entity pays a monetary consideration to the private developer. PPPs have been used for government policy reasons to increase social welfare, offer more and better infrastructure and foster investment in the country.

Since the enactment of the PPP Law in 2012, there have been more than a 100 public biddings for the implementation of projects through the PPP model focused on the following sectors: health, transportation, telecommunications, social and hydraulic infrastructure. Also, the energy and environmental sectors have shown an increasing participation in PPPs.

To ensure transparency and access to information, the federal government created two websites known as CompraNet and Mexico Projects Hub. CompraNet is a digital platform that provides public information on projects, bidding processes, procurements, leases, public works and other related services; while Mexico Projects Hub contains updated detailed information of the most relevant energy and infrastructure projects that require private investment. The Hub is part of the Mexican government's initiative to create an investor-relations office to link investment projects with domestic and foreign potential investors, encouraging long-term financing for infrastructure.

In the following years, the PPP agenda in Mexico may increase, particularly in the transportation and telecommunications sectors, since the new administration for 2018 to 2024 has shown particular interest in developing railways, highways, airports, as well as an extensive telecommunications network project to provide internet access and digital services across the country.

PPP PROJECTS ARE AN OPPORTUNITY FOR INVESTMENT IN THE COMING YEARS

Mexico represents an opportunity for the promotion of PPP projects since they have

been a fundamental mechanism in developing economies to increase the offer of infrastructure and public services, involving public and private funding with the participation of the private sector in the development of projects where the private sector has better knowledge and experience. As of 2016, 41 new federal PPP projects have been structured and developed in Mexico; of those 41 projects, 18 are in the structuring and pre-investment phase; six in the bidding phase; and 17 in the development and operation phase. These projects are focused on the transportation, health, telecommunications, social and hydraulic infrastructure.

When President Andres Manuel Lopez Obrador took office in 2018, he announced an ambitious agenda in infrastructure, mainly focused on the south and south-east regions of the country, which are the most marginalised in terms of public services. This agenda included the development of new railways, highways, ports and refineries. At first, Mr Lopez Obrador proved to be reluctant and sceptical about PPP projects, however, at the end of 2019 he announced the National Infrastructure Plan, whereby the federal government plans to invest approximately 43 billion pesos in over 1,700 infrastructure projects from 2020 to 2024, mainly in roads and transportation, energy, tourism, water and sanitation; many such projects are structured under a PPP scheme. Besides, to prevent a reduction in foreign investment, it is essential that the federal government turns to PPPs as a viable option for structuring and developing new infrastructure projects that are much-needed in the country, gaining investors' confidence and promoting the participation of the private sector in Mexico's economic growth. The signing of the new United States-Mexico-Canada Agreement certainly reflects the trust and confidence in the country for the upcoming future. Entering its second year, federal government may use this leverage created by the new T-MEC to boost the projects recently announced.

The development of PPP projects by states and municipalities has increased in recent years. In 2020, the State of Nuevo Leon intends to bid and award the first waste to energy project in Mexico. The estimated amount of investment will be US\$500 million and it will be developed in the city of Monterrey, partly financed by the federal government through Banobras. Also, early in 2020, Fonadin will bid and award an MRO agreement under a PPP scheme for four federal roads and two international bridges on the states of Nuevo Leon and Tamaulipas, on a project

known as the 'Northeast Package'. The fact that local PPP projects have increased over the years is certainly a good sign for the sector itself, since it helps ease the burden on the federal budget.

For the upcoming year of this new administration, PPPs will become fundamental for the accomplishment of the goals established in the federal budget for 2020. If a safe environment for national and foreign investment is assured, PPPs can expect to grow in the following years, with some expected changes to provide more transparent and objective mechanisms in public biddings, as well as to properly manage public funds in the implementation of PPPs.

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