

NHG was recognized with five awards at the Legal 500 Mexico Awards, 2023

Category: Awards, Firm news, Rankings

written by Adrián Trejo Santiago | May 15, 2023

NHG was recognized with five awards at the Legal 500 Mexico Awards, including “Firm of the Year” in Capital Markets and Insurance. In addition, three of our lawyers were recognized for their individual achievements. Michell Nader was named Senior Partner of the Year, Vanessa Franyutti was named Lawyer of the Year in Projects and Infrastructure and Miguel Ángel González was honored as Rising star of the Year in Corporate and M&A (high-end). These accolades are a testament to our unwavering commitment to providing unparalleled client service and maintaining exceptional standards across our various practice areas.



<https://www.legal500.com/events/mexico-awards/winners/>

Federal Public Administration Public interest and national security on projects and works of the Mexican Government

Category: Infrastructure, PPPs and Government Procurement, Legal Alerts
written by Adrián Trejo Santiago | May 15, 2023

On November 22, 2021, the Official Federation Gazette published the “AGREEMENT instructing the agencies and entities of the Federal Public Administration to execute the indicated actions, in connection with the projects and works of the Government of Mexico considered of public interest and national security, as well as critical and strategic for national development” issued by the President of the United Mexican States, Andrés Manuel López Obrador (the “**Agreement**”), which became effective on the day of its publication.

By means of such Agreement **(i)** the execution of projects and works by the Mexican Government associated with infrastructure in various sectors, including communications, telecommunications, customs, borders, hydraulic, hydric, environmental, tourism, health, railways, railroads in all its modalities, energy, ports, airports and those that, due to their purpose, characteristics, nature, complexity and magnitude, are considered critical and/or strategic for national development, shall be deemed of public interest and national security; and **(ii)** the agencies and entities of the Federal Public Administration are instructed to grant provisional authorizations regarding the filing and/or obtaining of opinions, permits or licenses necessary to initiate the referred projects or works, which must be issued within a maximum term of 5 (five) business days as of the filed request; provided that, once such term has elapsed without an express provisional authorization having been issued, such opinion, permit or license shall be deemed granted. The provisional authorization will be valid for 12 (twelve) months, during which period the definitive authorization must be obtained.

In view of the foregoing, the following consequences arise: Regarding any project of the Government of Mexico within the sectors subject matter of the Agreement, any permit, license or opinion required from a federal authority will be granted provisionally within a 5 (five) business day period from its request, either by explicit or deemed authorization. The foregoing guarantees the issuance of the permit, license or opinion, on a temporary basis, in order to be able to commence with any project or works.

Given that the projects and works of the Government of Mexico will be deemed of public interest and national security, the agencies and entities may consider awarding **(i)** public-private partnerships, **(ii)** acquisitions, lease and services, and **(iii)** public works and related services agreements, without being subject to a public tender or bidding procedure, through an invitation to at least 3 (three) persons or direct award, on the basis of the exception contained in each applicable law.

Regarding acquisitions, leases and services and public works and associated services, the participation of social witnesses may be exempted in cases of confidential information that endangers national security.

The authorizations granted by the agencies and entities will be provisional and, no later than 12 (twelve) months after its issuance, said authorities will definitively resolve such authorizations. Notwithstanding the foregoing, the execution of the projects and works may begin within such term, during which time the corresponding authorities will simultaneously carry out the evaluation of the respective project and/or work. The Agreement does not regulate the effects on the project or works if the definitive opinion is negative or if the permit or license is not definitively granted.

Regarding transparency and information access, all information in possession of any authority regarding such projects and works may be temporarily reserved for reasons of public interest and national security.

Should you require further information regarding the above, please contact your usual contacts at Nader, Hayaux and Goebel.

Interés público y seguridad nacional en proyectos y obras del Gobierno de México

El 22 de noviembre de 2021, se publicó en el Diario Oficial de la Federación el “ACUERDO por el que se instruye a las dependencias y entidades de la Administración Pública Federal a realizar las acciones que se indican, en relación con los proyectos y obras del Gobierno de México considerados de interés público y seguridad nacional, así como prioritarios y estratégicos para el desarrollo nacional” emitido por el Presidente de los Estados Unidos Mexicanos, Andrés Manuel López Obrador (el “**Acuerdo**”), el cual entró en vigor el día de su publicación.

Mediante dicho Acuerdo **(i)** se establece que serán de interés público y seguridad nacional la realización de proyectos y obras a cargo del Gobierno de México, asociados a infraestructura en diversos sectores, incluyendo comunicaciones, telecomunicaciones, aduanero, fronterizo, hidráulico, hídrico, medio ambiente, turístico, salud, vías férreas, ferrocarriles en todas sus modalidades, energético, puertos, aeropuertos y aquellos que, por su objeto, características, naturaleza, complejidad y magnitud, se consideren prioritarios y/o estratégicos para el desarrollo nacional; y **(ii)** se instruye a las dependencias y entidades de la Administración Pública Federal a otorgar autorizaciones provisionales respecto de la presentación y/u obtención de dictámenes, permisos o licencias necesarias para iniciar los proyectos u obras referidas, la cual deberá emitirse en un plazo máximo de 5 (cinco) días hábiles contados a partir de la presentación de la solicitud correspondiente, en el entendido que, transcurrido dicho plazo sin que se haya emitido una autorización provisional expresa, se entenderá emitida en sentido positivo. Dicha autorización provisional tendrá una vigencia de 12 (doce) meses, periodo en el que se deberá obtener la autorización definitiva que corresponda.

En virtud de lo anterior, se desprenden las siguientes consecuencias: Tratándose de cualquier proyecto del Gobierno de México dentro de los sectores materia del Acuerdo, cualquier permiso, licencia o dictamen que se requiera de autoridad federal será otorgado en forma provisional dentro de un plazo de 5 (cinco) días hábiles siguientes a su solicitud, ya sea mediante autorización expresa o *afirmativa ficta*. Lo anterior, garantiza la emisión del permiso, licencia o dictamen, de manera temporal, para poder iniciar con el proyecto u obra.

Dado que los proyectos y obras del Gobierno de México serán considerados de interés público y seguridad nacional, las dependencias y entidades podrán considerar adjudicar contratos de **(i)** asociación público privada, **(ii)** adquisiciones, arrendamientos y servicios, y **(iii)** obras públicas o servicios relacionados con las mismas, sin sujetarse a un procedimiento de concurso o licitación pública, a través de invitación a cuando menos 3 (tres) personas o de adjudicación directa, aplicando la excepción correspondiente de cada ley aplicable.

En materia de contratación de adquisiciones, arrendamientos y servicios y obras públicas y servicios asociados a las mismas, se podrá exceptuar la participación de testigos sociales en casos de información reservada que ponga en peligro la seguridad nacional.

Las autorizaciones otorgadas por las dependencias y entidades serán provisionales y, a más tardar 12 (doce) meses después de su emisión, dichas autoridades resolverán sobre las autorizaciones definitivas. No obstante lo anterior, la ejecución de los proyectos y obras podrá iniciarse dentro de dicho plazo, en el cual paralelamente las autoridades correspondientes realizarán la evaluación del proyecto y/u obra respectiva. El Acuerdo es omiso sobre los efectos en caso de que el resultado definitivo de un dictamen sea negativo o que el permiso o licencia no se otorgue de manera definitiva.

En materia de transparencia y acceso a la información, toda la información en posesión de cualquier autoridad respecto de dichos proyectos y obras, podrá ser reservada temporalmente por razones de interés público y seguridad nacional.

En caso de requerir más información en relación con lo anterior, comuníquese con sus contactos habituales en Nader, Hayaux y Goebel.

The Public-Private Partnership in

the Mexican market

Category: Infrastructure, PPPs and Government Procurement, Publications

written by Adrián Trejo Santiago | May 15, 2023

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.”

[To read the complete article, please click here.](#)

The Public-Private Partnership in the Mexican market

Category: Infrastructure, PPPs and Government Procurement, Publications
written by Adrián Trejo Santiago | May 15, 2023

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

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.

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.

[To read the complete article, please click here.](#)

NHG experts contribute to the 9th edition of The Projects and Construction Review

Category: Infrastructure, PPPs and Government Procurement, Publications
written by Adrián Trejo Santiago | May 15, 2023

Partner [Vanessa Franyutti](#) and Associate [Alejandro Alfonso](#) contributed to the Mexican Chapter of The Projects and Construction Review, 9th Edition.

Project financing and construction law are highly specialised areas of legal practice. Although there is an increased perception that project financing and construction law are global issues, the local knowledge offered by leading experts in 19 countries has shown that to understand the world, we must first make sense of what happens locally; to further advance our understanding of the law we must resist the modern view that all that matters is global and what is regional is of no importance.

The entire Mexico chapter can be downloaded [here](#). More information on the publication can be found on The Law Reviews' [website](#).

NHG contribute to the 8th edition of The Projects and Construction Review

Category: Publications

written by Adrián Trejo Santiago | May 15, 2023

Partner Vanessa Franyutti and Associate Alejandro Alfonso contributed to the Mexican Chapter of The Projects and Construction Review, 8th Edition.

This book has been structured following years of debates and lectures promoted by the International Construction Law Committee of the International Bar Association (ICP), the International Academy of Construction Lawyers, the Royal Institution of Chartered Surveyors, the Chartered Institute of Arbitrators, among others, who have dedicated themselves to promoting an in-depth analysis of the most important issues related to projects and construction law practice.

The entire publication can be downloaded [here](#). More information on the publication can be found on The Law Reviews' [website](#).

Landmark Fibra E Project commended in FT's 2017 Special Report North America Innovative Lawyers

Category: Capital Markets, Firm news, Publications, Rankings
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A landmark project in which Nader, Hayaux & Goebel participated was recently commended in the 2017 Financial Times' Innovative Lawyers rankings in under the category 'Accessing New Markets and Capital'. A team lead by Michell Nader, Gunter Schwandt and Adalberto Valadez assisted investment vehicle CKD IM, as sponsor, in the creation, registration and approval by the the Mexican securities regulator of an innovative Fibra E securities programme, worth 50bn pesos (\$2.6bn), that will allow companies to use tax-efficient structured financing to fund purchases of energy and infrastructure assets.

"This unprecedented matter will change the nature of the Fibra E market which had been primarily conceived as a monetization vehicle to allow new Fibras E to act as growth vehicles. This will give CKDIM an important advantage in the acquisition of assets in the future and the ability to harness business opportunities quickly and efficiently." -Michell Nader, Partner-

For more information please consult the [report by the Financial Times](#). Additional coverage on the transaction is available on [Latin Lawyer](#).