

# ARGENTINA PASSES A PUBLIC-PRIVATE PARTNERSHIP LAW

22 December 2016 | Madrid  
Legal Briefings

---

On 30 November, the Argentine Government passed Law 27,328 on Public-Private Partnership Contracts, which regulates the essential aspects of public-private partnership contracts entered into by the State, as contracting party, and the private sector, as contractor.

The aim of the new law is to establish a legal framework to regulate private investment and to stimulate private investment in key sectors of the economy such as infrastructure, housing, services, production, applied research and technological innovation.

The law has been passed at a vital moment of the country's economic development: in September, Argentina approved a **national transportation infrastructure plan valued at US\$35 billion**, considered to be one of the most ambitious plans in the country's history.

The following contains a brief summary of the new law's most significant provisions.

## **PUBLIC-PRICE PARTNERSHIP CONTRACTS**

- Public-private partnership contracts are contracts entered into between bodies and entities comprising the national public sector and private or public individuals or entities, as contractors, with the aim of performing projects in the infrastructure, housing, services, production, applied research and technological innovation sectors.
- The contracts will be designed with a degree of flexibility necessary to adapt them to each project to be developed and the sources of financing involved.
- If projects are to be performed using this kind of contract, it must first be checked that doing so will meet the public interest objectives sought.

- The companies and entities in which the State, the provinces, the city of Buenos Aires or municipalities may also enter into public-private partnership contracts as contractors, on an equal footing with the private sector.
- When structuring public-private partnership projects, the onus is on the contracting body to promote environmental protection in the context of the project.
- Special purpose vehicles, trusts and other types of vehicles of joint venture schemes may be incorporated to enter into public-private partnership contracts and perform the project until completion.
- Depending on the project's characteristics and for the purpose of acting as contractor, the National Executive may create public companies in which the State has a stake in compliance with the General Companies Law. The Executive may also found trusts for these purposes.
- The mandatory content of the contract must be complied with. As well as the general clauses, special clauses are also included for contracts of this kind, which are included to protect the private contractor, such as:
  - The possibility of assigning the credit rights arising out of the contract or offering them as security, including the amounts committed by the contracting party, remuneration and compensation, as well as the securitisation of connected cash flows; or
  - The obligation to establish a contractual term that takes into account the investments that have been committed, the financing applied and reasonable profitability; contracts cannot exceed a term of 35 years, including extensions, if any.

## **SELECTION PROCEDURES**

- The contractor will be selected by public or competitive tender, national or international depending on the complexity of the project, the ability of local companies to participate, economic and/or financial reasons connected to the project's characteristics, available contract capacity, and/or the origin of the funds in the case of projects that have or require external financing.

- Selection procedures, as well as the resulting actions and steps, must guarantee transparency, publicity, dissemination, equality, access and competition.
- The contract must be awarded to the offer that is considered to be the most beneficial to the public interest, in accordance with the conditions established in the terms and conditions of the tender and after an opinion has been issued by the Public-Private Partnership Unit<sup>1</sup>.
- Other than in exceptional cases, the provision of assets and services that must be made in the context of the contracts entered into pursuant to this law shall have a minimum domestic component of 33%.
- A bid or an offer will be rejected if at any moment of the tender process money or any gift is offered to influence a public official or authority to do or not to do anything related to their duties, without prejudice to the administrative, civil or criminal liability that may befall anyone who engages in the above unlawful practices.

## **REGULATION AND CONTROL OF THE PERFORMANCE OF THE CONTRACT**

- The performance of the contracts executed under the provisions of this law shall be subject to the control and supervision of the contracting State or the body created for that purpose in the corresponding jurisdiction.
- The contracting State shall have broad powers of inspection and supervision, and may demand information of any kind related to the performance of the contract and progress of the project; it shall guarantee the confidentiality of commercial and industrial information in accordance with legislation in force.
- External auditors that have sufficient technical knowledge and domestic or international experience and that are suitably independent and impartial may be used to supervise and control the performance of the projects.

## **DISPUTE RESOLUTION**

- The parties may choose arbitration as a means of dispute resolution. If so, an arbitration clause must be included in the contract.
- Arbitral awards rendered in the Republic of Argentina are only subject to appeal via appeals for clarification or for annulment, as provided by law. Those appeals cannot in any event include a reconsideration of the facts of the case or the application of the

provisions of applicable law.

## BUDGET

- For 2017, a maximum of 5% of the General State Budget may be used for public-private partnership projects. In subsequent years, draft budgets must indicate precisely the part of the budget allotted to these projects.

---

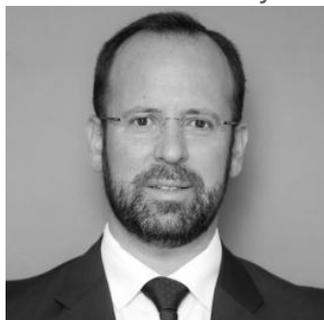
For the complete law published in the Official Journal of the Republic of Argentina: [www.boletinoficial.gob.ar](http://www.boletinoficial.gob.ar): *Ley 27328 de Contratos de Participación Público - Privada, publicada el 30 de Noviembre.*

<sup>1</sup> The duties of the contracting State include its obligation to establish a term for the contract that takes into account the committed investments, the financing used and reasonable utility. The Public-Private Partnership Unit is responsible for centralising, from a regulatory standpoint, the contracts of this type that are entered into.

[VIEW SPANISH VERSION >](#)

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**IGNACIO PAZ**  
PARTNER, MADRID

+34 91 423 4005  
[ignacio.paz@hsf.com](mailto:ignacio.paz@hsf.com)



**JUAN-JOSÉ  
ZENTNER**  
PARTNER, NEW YORK

+1 917 542 7808  
[Juan-Jose.Zentner@hsf.com](mailto:Juan-Jose.Zentner@hsf.com)

---

## LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

---

**SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE**

Close

© HERBERT SMITH FREEHILLS LLP 2021