



PRESIDENCY OF THE REPUBLIC OF PARAGUAY

MINISTRY OF FINANCE

DECREE NUMBER 1350

THIS REGULATES LAW NUMBER 5102/2013 "INVESTMENT PROMOTION IN PUBLIC INFRASTRUCTURE, EXPANSION AND IMPROVEMENT OF GOODS AND SERVICES PROVIDED BY THE STATE"

Asuncion, March 12, 2014

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Having: regarded to Article 53 of the Law number 5102/2013 "Investment promotion in public infrastructure, expansion and improvement of goods and services provided by the state". Ministry of Finance. File number 10.984/2014; and

Whereas: pursuant to Article 238, paragraph 3, of the national constitution: to regulate laws enacted by Congress is by exclusive power of the President of the Republic.

That under the law number 5102/2013, a system of Public-Private Partnership was created, this system is intended to promote the investment in public infrastructure and the provision of services that they are meant to provide or that are complementary to them, as well as the production of goods and the provision of services belonging to State Agencies or entities, as well as Public enterprises or companies in which the state has a share.

Under the system of Public-Private Partnership above mentioned, new and innovative institutional capacities, structures, legal and administrative processes have been established for the purpose of generating the conditions that will encourage the investment of resources coming from national or international private sectors, for the development of an efficient infrastructure.

For that purpose, new tools of legal and financial engineering have been developed, something that have been successfully used in several countries.

(In the event of discrepancy or misinterpretation between this translation written in English and the original Decree N° 1350/14 sanctioned in Spanish, the version in Spanish language shall prevail)

Traducido por Lic. Edgar Alam Paiva Moré, Matrícula N° 914. TRADUCCION OFICIAL



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To ensure adequate functioning, the rules regulating the developing procedures, structuring, articulation, bidding, adjudication, execution and control of projects as well as the interinstitutional relationship between the different institutions participating, a higher level of regulations is necessary.

That the reform of the state is nothing but the transformation and adjustment of the administrative structure of a state, to the challenges and present needs of society, when new and more efficient organizational schemes are efficient and sufficient to satisfy the needs and challenges, that have arose before the designing of the existing structure, after going through a process of revaluation and revision.

That any government must tend naturally to search better alternative management, constantly revising the functional organic-structure of the bodies and entities that form the state, to meet contemporary collective needs, all of this by means of the unavoidable help of the administrative sciences and the administrative law.

That the scheduling, direction, prioritization of the state modernization process, foreseen in the government program, requires the permanent coordination of the use of resources from the institutions and bodies involved with the administrative reform program.

That the Advocacy of the Treasury of the Ministry of Finance issued in the terms of the legal opinion number 229 in March 6, 2014.



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Therefore, in furtherance of his constitutional functions:

THE PRESIDENT OF THE REPUBLIC OF PARAGUAY

ISSUES A DECREE:

TITLE I

General provisions

Sole Chapter

Purpose and definitions

Article number 1: Purpose

This decree is intended to regulate the law number 5102/2013 "Investment Promotion in public infrastructure, expansion and improvement of goods and services provided by the state", for the development of Public-private partnership projects.

Article number 2: Complementary administrative principles

As a result of the principles listed in the Article number 2 of the law, for their Interpretation and application, the following principles will be complementary integrated.

- a) **Legality:** all actions of the state, carried out through the bodies involved in Public-Private Partnership process, must be based and comply with the constitution and the laws.
- b) **Rationality:** The conduct of the state through the bodies involved in the Public-private partnership process, must respond on rational criteria, sustainable and justifiable, taking into account the purpose of the legal system.



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- c) Effectiveness: any act carried out by the state, through the bodies involved in public-private partnership projects, must be guided to achieve satisfactory provision, quality public services, contribute to the accomplishment of goals and functional objectives of the administration, and serve the purposes that the legal system pursues.
- d) General interest: in all actions of the state, carried out through the bodies involved in public-private partnership processes, with the general interest prevailing over private interests.

Article number 3: Definitions

For the purposes of this regulation in addition to the definitions established in the article 2 of the law, the following definitions are adopted:

1. Contracting Authority: Are the government bodies and entities of the state, as well as the companies and firms with state ownership participation that have the authority to conclude Public-Private Partnership contracts.
2. AFD: Development Finance Agency (Agencia Financiera de Desarrollo)
3. Value for money analysis: qualitative or quantitative evaluation that provides information about the convenience of the public-private partnership modality compared with other modalities of public procurement, from a social and economic point of view.
4. CGR: Controller General of the Republic (Contraloria General de la Republica)
5. Contracts or PPP Contracts: are the Public Private Partnership contracts
6. DNCP: National Directorate of Public Contracting/Procurement. (Direccion Nacional de Contrataciones Publicas)



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7. Regulatory body or existing sectoral supervising body: is the public institution competent to regulate and supervise a specific sector.
8. Technical standards: Technical features that public works and services must meet for the public-private partnership project, and which permit the fulfillment of a certain level of service.
9. Structuring of projects: articulated and comprehensive programming of a Public-Private Partnership (PPP)
10. Feasibility study: definitive study regards to the viability, convenience and origin of a Public-Private Partnership Project.
11. Pre-feasibility study: preliminary study or previous study regarding to the viability, convenience and origin of a Public-Private Partnership (PPP)
12. Construction phase: is the elapsed time period since the contract was signed to the commissioning of the infrastructure built by the private partner.
13. The operation phase: is the elapsed time period since the completion of the construction phase of the infrastructure project to the termination of the contract.
14. Law: law number 5102/2013 "Investment promotion in public infrastructure, expansion and improvement of goods and services provided by the state"
15. MOPC: Ministry of Public Works and Communications (Ministerio de Obras Publicas y Comunicaciones)
16. Level of service: is the set of functionalities and benefits that a work or service included in a Public-private partnership contract, must meet during its construction and operation phase, in accordance with the respective contract.
17. Public works or public infrastructures: are the works described in the article number 3. Sub paragraph p) of the law number 2051/2013 "of public contracting"



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18. The successful tenderer/bidder or awardee: the offeror which was awarded the Public-Private Partnership contract.
19. Offeror: any national or foreign legal person or group of legal persons competing in the bidding/tender process of a Public-Private Partnership Project.
20. Private Participant: are all legal persons governed by private laws, which participate in a Public-Private Partnership project.
21. Deadline: all deadlines mentioned in this regulation will be counted in calendar days, unless other modalities of time calculation are expressly prescribed.
22. Book of bidding terms and conditions of the tender/ Tender document: Is the document that contains the basis and conditions under which the tender will be developed, including the requirements that the participants/offerors must meet, and defines the conditions of the contract, to be agreed with the participant from the private sector, for the implementation of a public-private partnership project.
23. General conditions: standard documents of tender that establishes the minimum content of instructions for the offerors, and the general conditions of contract.
24. PGR: Office of the Attorney General of the Republic (Procuraduría General de la República)
25. Private initiative Proponent: Is the one that submits an application of private initiative in accordance with the law and this regulation.
26. PPP (Public-Private Partnership) Projects: are those projects aimed at making investments in public infrastructure and the provision of services complementary to them, as well as the production of goods and/or provision of services that are part of the subject of public bodies, entities, public companies and business partnerships, in which the state is party, with a view to establishing a long-term, legal and contractual relationship, with a distribution of commitments, risks and benefits between the parties.



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27. Regulations: refers to this regulatory decree establishing regulations under law number 5102/2013 "Promotion of the investment in public infrastructure, enhancement and improvement of goods and services in charge of the state"
28. SNIP: National System of Public Investment. (Sistema Nacional de Inversion Publica)
29. STP: Ministry of Planning (Secretaria Tecnica de Planificacion)
30. PPP (Public Private Partnership) Unit or Unit: Unit for projects of Public-Private Partnership.
31. User: a natural or legal person, that benefits directly and in common with other persons, of the benefits of a public-private partnership and its supplementary services, according to its object and purpose.

TITLE II

PUBLIC-PRIVATE PARTERSHIP CONTRACTS

Chapter I

Legal status, risk distribution and related actions

Article 4.- Legal Status

Public-Private Partnership contracts shall be governed by its terms and conditions, by the provisions of the law regulating this contract modality, and for this regulation. The provisions of the Paraguayan civil code will be additionally applied, regarding to the content and consequences of the civil or commercial law and its terms, all that is not prescribed by law, in this regulation and the respective contract.



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Article 5.- Distribution of commitments, risks and benefits

The Public-Private Partnership contracts must clearly state the following:

1. The distribution of the commitments, administrative burden and costs of the project, that the parties must assume, either on their own or to be shared. In every contract, each risk will be assigned to the party that is in a better position to mitigate and respond to it.
2. The participation in the eventual profits, financial gain, rights and emoluments that every party will obtain, as a consequence of the project.
3. The parties' assumption of the legal and financial consequences of the eventual contingencies that might arise or emerge during the process of contract execution.
4. The identification of benefits or charges that a third party outside of the contract, should assume.
5. The determination of the treatment that should be granted to the negative events or contingencies that might arise.

Article 6.- Risks

Being this enumeration merely illustrative, according to the case, the contracts should consider the probability of one or more of the following risks:

- a) Risks of engineering and construction: risks of cost over-runs and delays, generated during the construction works, due to unexpected geological problems, insufficiency of the engineering project, flaws in the construction technique, increase in the price of construction materials, inefficiency in project management, unavailability of land, and logistics and transportation problems.



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- b) Operational risks: risk of fall in the expected production, risk of operations above the cost and technical obsolescence, risk of transportation in the case of production, risk of project management.
- c) Market risks: risk of supply of goods and services, risk in the quality of raw material used, risk of level of demand.
- d) Environmental risks and social conflicts.
- e) Financial risks of the project: unavailability of own funds that were committed, insufficiency of commitment of the shareholders to ensure compliance with funders, risk resulting from interest rate movements, when there is a mismatch between the assets and liabilities, risks of inflation, risks resulting from exchange-rate movements when there is currency mismatch.
- f) Political risks: risks of currency convertibility, risks of land availability, decisions of the sectorial authority or local, that obstructs the development of the project or its operation, risks of nationalization, risks of terrorism, breach of contract, risk of international conflicts affecting multinational projects, expropriation risks, authorization and permits risks
- g) Risks originated from force majeure events or unintentional.

Article 7.- Related administrative actions

Authorizations, permits, licenses and necessary approvals in order to carry out a public-private partnership project, should be identified before the approval of the project. Administrative burdens and costs involved in the managing and diligence of the project, shall be foreseen in this project.



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In the event of inconveniences or objections with the granting of authorizations and licenses, the entities responsible of supplying them, shall provide such information in written and without any delay, to the requesting party.

The rules for bidding and the Public-private partnership contract, shall Establish the responsibility of the Private Participant, and the responsibility of the Contracting authority in the process to obtain authorizations and necessary permits for the development of the project, after the adjudication, and in the contingencies that may arise.

CHAPTER II

Institutional framework

Section I

Contracting authorities

Article 8th. Organization of the Contracting Authority

In order to exercise the attributions conferred in article 8 of the law, the Contracting authority shall provide and structure the organization, in the most convenient way to achieve its goals, on the basis of the following principles: rationality, efficacy, legality and public interest, as established in article 2 of the present regulation. At a minimum, one person responsible shall be appointed for each stage of the project.

Article 9th. Agreement between contracting authorities

When there is a project that could or should be conducted by two or more Contracting authorities, these must agree the conditions of relationship and formalize an agreement before the presentation of the project, in which the contributions and commitments of each party, shall be mention with precision and detail. Furthermore, the representatives of each entity will be appointed.



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The duration of the agreements will be adjusted as envisioned, for the development of the projects.

The (MOPC) Ministry of Public Works and Communications could provide technical support to other contracting administrations in the preparation of the surveys and in the execution of the projects of public infrastructure. For that purpose, they may conclude cooperation agreements that are relevant.

SECTION II

Public-Private Partnership Project Unit

Article 10. Organization

As prescribed in Article 9 of the law, the organizational structure of the Public-Private Partnership Projects Unit, dependent on the (STP) Ministry of Planning, will be minimally composed by a General director, a legal director and a Director of formulation and evaluation of Public-Private Partnership Projects. The Ministry of Planning in a period not exceeding 30 working days after the publication of this decree, will establish the organizational and functional structure of the unit.

SECTION III

Ministry of Finance

Article 11. Cooperation with the Ministry of Finance

The Ministry of Finance, through the direction of the Public Investment System, must be available to guide the contracting administration about the features of previous studies, in the aspects to be assessed by the Ministry of Finance in accordance with the law, without affecting the evaluation report.



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Article 12 Fiscal commitments deriving from the contracts

In the case of Public-Private Partnership contracts in which the private party takes risks of availability of services, demand risks, and that the smaller part of incomes in present value, which are planned in the contract, may come from contributions by the state, the firm obligations assumed by the state, will be recorded according to the modality adopted by the Ministry of Finance.

When the public-private partnership contract or its modifications stipulates payments from the private party in favor of the state, which are not established in the second paragraph, Article 14 of the law, and from the state in favor of the private party, which exceeds one tax year, therefore, the respective contracting administration must include in its budget proposal for each tax year, during the contract period, the allocation equivalent to the stipulated payment, as well as the estimate of the revenue to be received as payments, from the private party, whenever applicable.

Pursuant to article 14 of the law, the commitments assumed by the state in the Private-Private Partnership Contracts can be categorized as follows:

1. Firm commitments: are the obligations in charge of the state, to pay the private party, a compensation, for the accomplishment of the acts specified in the contract.
2. Contingent commitments: are the potential obligations of payment in charge of the state, in favor of the private party, corresponding to the guarantees that the state has granted, in order to improve the risk profile of the project and to stimulate the private participation. For the purpose of registration, only the quantifiable contingent commitments will be taking into account, that is, certain or determinable guarantees.



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The Ministry of Finance, through the General Directorate of Credit and Public Debt, will keep records of future firm and contingent payments, in accordance with the dynamics of the accounting, to be provided by the Accounting General Directorate.

Article 13. National System of Public Investment

The Ministry of Finance, through the Direction of the System of Public Investment, will grant the code SNIP (National System of Public Investment) to the Public-Private Partnership Projects, which have the corresponding approval.

Section IV

Guarantee and Liquidity Trust Fund for Public-Private Partnership contracts

Article 14 Parties

The Paraguayan government shall adopt the role as Trustor, and for this trust, it will be represented by the Ministry of Finance. The trustee will be the Development Finance Agency (AFD).

Article 15. Constitution of the Trust

The Guarantee and Liquidity Trust Fund, under the terms established in Article 11 of the law number 5102/2013, will be constituted as a trust, in accordance with the law number 921/96 "trust businesses", constituting into an autonomous equity different from trust assets.

The Development Finance Agency, as a trustee, will act in accordance with the law Number 921/96 "trust businesses" and with its organic letter and modifications, also with this decree and the terms of the trust agreement of administration and payments, to be signed between the trustor and the trustee.



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The government, in its capacity as trustor, through the Ministry of Finance and the Development Finance Agency, as a trustee, shall subscribe the Trust Contract of administration and payments of the Guarantee and Liquidity Trust Fund for Public-Private Partnership contracts, hereinafter named "Trust Agreement". This contract will establish the conditions, rights and obligations of the parties, as well as the other terms, according to the current trust law.

Article 16. Purpose of the trust

The trust of administration and payments of the Guarantee and Liquidity Trust fund for Public-Private Partnership contracts, hereinafter called "Trust fund", aims to the perception, custody, investment and administration of its financial resources, and they will be used for the fulfillment of the obligations arising from the firm commitments and quantifiable contingents to which the state is obliged, and its share of the costs for the dispute resolution, through the subscription of Public-Private partnership contracts.

These firm commitments and quantifiable contingents arising from the Public-Private Partnership contracts, will be determined by the Ministry of Finance, which shall notify the trustee.

Following this purpose, the trustee will make the payments, according to the written Instructions given by the Ministry of Finance, upon request of the Contracting Authority, which are based on contractual obligations, according to the funds available, and with each instruction received in chronological order. The Ministry of Finance will transfer the financial resources to the trust, in order to carry out the obligations of firm commitments of contemplated and programmed payments, during the relevant budget year.



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In the case of contingent commitments that become effective, the Ministry of Finance will be able to pay with the resources available in the same tax year.

If there were a balance not transferred, it must be programmed in the next tax year.

The deadlines and the payment method, will be addressed in the Bidding Terms and Conditions from the tender, and in the Public-Private Partnership contract.

Article 17 Contributions from other entities

In the case of contributions as a donation from national or international entities, they should be given to the Ministry of Finance, which, in turn will transfer them to the trust fund.

Article 18 Attributions of the trustee

The trustee, for the management and administration purposes of the trust fund, will have the following attributions:

- a) Fulfill the obligations established in the trust fund and with the relevant legal provisions.
- b) Perform all necessary legal acts to fulfill the purpose of the trust fund.
- c) Report periodically the financial statements of the trust fund to the trustor and to the Superintendence of Banks. These financial statements will be in accordance with the regulations of the Superintendence of Banks, for fiduciary businesses.
- d) To define and implement the investment policy of the resources from the trust fund, considering safety, liquidity and profitability criteria, in the order of priority set forth.
- e) Receive the remuneration established in the trust agreement.



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- f) Other rights y obligations established in the Law number 921/96 applicable to this trust.

Article 19. Implementation procedures of the Trust Fund

The implementation procedures of the Trust Fund, shall conform to the following provisions:

- a) After the signing of the Trust Agreement, to comply with the obligation of having minimum funds in the Trust, which is established in Article 11 of the law, the Ministry of Finance may carry out the gradual transfer of the financial resources established in this article, or other sources available or scheduled.
- b) Once the Public-Private Partnership Contract is signed, the Ministry of Finance will notify the trustee, the payment schedule, which is established in the above mentioned contract, and will make the transfer of the relevant resources.
- c) The Ministry of Finance will order the payments to the trustee, by written instructions, upon a justified request from the Contracting Authority, according to available funds and in the chronological order in which they have been received.
- d) The other operational procedures of the trust fund will be established in the trust agreement and in the relevant operational regulations.

The Ministry of Finance will be responsible for implementing the legal and administrative mechanisms, relevant for cases in which the trust fund cannot meet the total amount of liabilities.



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Article 20

Remuneration of the trustee

The trustee will receive a remuneration for its services, which will be agreed with the Ministry of Finance in the corresponding Trust agreement. This remuneration will be deducted and paid with a charge to financial resources from the trust fund.

Article 21

Responsibility of the trustee

The trustee will be responsible only for acts carried out in fulfillment of its duties and will be held accountable, according to the provisions in Article 31 of Law number 921/96.

It will be the exclusive responsibility of the parties in a Public-Private Partnership contract, the fulfillment of the objectives and activities of the contracts, in compliance with the existing legal and regulatory provisions.

Article 22

Tax treatment

The trust of the Guarantee and Liquidity Trust Fund for Public-Private Partnership contracts, will have a tax treatment, according to the established in Law number 921/96 "Trust businesses", and Law number 125/91 "That establishes the new tax regime", as well as the amendments and regulations. This trust will be declared of public interest and will be a priority for the national government.

Article 23

Exclusion of the Law of Public Contracting.

Law number 2051/03 "Public contracting", in Article 2, paragraph e) It expressly recognized that the transactions and financial business are not subject to the limitations and restrictions, established in this law.

Therefore, being the trust business a financial operation in terms of Law number 861/96 and Law 921/96, it shall not be subject to this legal body.



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Article 24 Expenses of the trust

The expenses arising from the fulfillment of the purposes of the Trust Fund, will be deducted and paid with a charge to Trust Fund resources.

Article 25 Trust Fund resources

The financial resources of the Trust Fund, may be deposit in public or private financial institutions, national or international, which have an investment grade rating, issued by a credit rating agency, recognized by resolution of the Central Bank of Paraguay.

Section V

Information System of Public-Private Partnership Projects

Article 26 Public Registry of Public-Private Partnership Projects

The Public Registry of Public-Private Partnership Projects, must incorporate all Public-Private Partnership Projects, of public or private initiatives, which should remain available, at least, the following documents:

- a) All legal provisions applicable to Public-Private Partnership Projects
- b) Policies and plans adopted
- c) Identification of projects planned in the national plan to be driven by public initiative.
- d) General or standard specifications
- e) Approval decisions of pre-feasibility studies of the Public-Private Partnership Projects, with the corresponding document of pre-feasibility, including public and private initiative. These decisions include the rulings of the Ministry of Finance and the Public-Private Partnership Unit, and others that might be needed.



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- f) Approval decisions of feasibility studies of the Public-Private Partnership Projects, with the corresponding document of feasibility, including public and private initiative. These decisions include the approval decree of the Public-Private Partnership Project, the rulings of the Ministry of Finance, the decisions of the Public-Private Partnership Unit, and other entities.
- g) Invitations to pre-qualification with its books of terms and conditions
- h) Decisions adopted at prequalification processes where prequalified bidders are individualized.
- i) Invitations for bidding with its Books of bidding terms and conditions.
- j) Records of the Opening of envelopes containing the financial offers.
- k) Adjudication resolutions of the PPP projects.
- l) PPP Projects and its amendments.
- m) Operational, accounting and financial information of the PPP contracts.
- n) Financial pledges or trusts, constituted with regard to emerging rights of the contract.

The documents above mentioned, shall include the PPP projects, which were rejected, approved or executed.

This Public Registry will be accessible to the public through the official website for the dissemination of information.

Article 27.

Official Website for the dissemination of information

The official website for the dissemination of information, will be the web portal of the Public Contracting Information System, managed by the Public Contracting National Office (DNCP), for the purposes of Articles 15 and 22 of the law, in coordination with the PPP Unit.



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The DNCP (Public Contracting National Office) should advertise, through its official web site, all processes and acts which require advertising, in accordance with the provisions of the law and in the regulation, to ensure their transparency. It must also provide its technological platform for the development of the different stages in the processes and contracts of PPP projects.

In addition to the information referred to in Article 15 of the law, the information contained in the Registry of PPP projects, listed in the article mentioned above of this regulation and the management reports of the contracts mentioned in Chapter VIII "Transparency mechanisms, evaluation and auditing of PPP contracts" which should be publicized and shall be available to the public, in their web site.

The contracting administrations must provide documents to the DNCP, for dissemination in the web portal, these documents are the following:

- a) The calls for bids, with their respective bidding terms and conditions, five days before the beginning of the dissemination date. The same deadline shall apply for the amendments of the book of terms and conditions.
- b) Records of the Opening of envelopes containing the financial offers. At least two days after the opening date.
- c) Adjudication decisions, at least two days after the date of issue. They should be accompanied with the corresponding evaluation report.
- d) The contracts and their modifications, at least two days after its registration
- e) Any other information that is deemed to be written down/assigned, according to what the PPP Unit says.

The DNCP will coordinate with the PPP Unit, the formats and the content of the web site, and they will be responsible of keeping the information up to date.



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Section VI

Office of the Attorney General of the Republic

Article 28

Intervention of the Office of the Attorney General of the Republic

The Office of the Attorney General of the Republic shall give its opinion, prior to the binding opinions of the Ministry of Finance, according to Article 10, paragraph i) of the law, about the following acts:

- a) The Book of bidding terms and conditions, prior to its approval
- b) The contracts and their modification, prior to its signature
- c) Requests for indemnity or compensation addressed by the participant of the private sector, for any reason.
- d) Early termination of the contract, before taking any decision.
- e) Any other circumstance, which might directly jeopardize the state resources.

Requests for opinions must be accompanied of the legal position of the Contracting Authority and the relevant background information.

Section VII

Central Bank of Paraguay

Article 29

Reports to the Central Bank of Paraguay

In its capacity as a technical body, in charge of the implementation of the economic and exchange rate policy, The Central Bank of Paraguay shall be informed about:



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- a) The tentative schedule of the annual disbursement, for each approved project. The total amount of the future investment and the feasibility study. This report should be submitted for the contracting administrations, prior to the signature of the PPP Contract, furthermore, if any of these provisions or documents are modified in matters related to amounts or deadlines for disbursement, the contracting administration must submit a report, with the modifications, within fifteen business days, since the date of modification.
- b) The disaggregated list by project, of planned disbursements for the next tax year. This information should be submitted by the Ministry of Planning (STP), no later than November 30th of each year.

In addition, the Contracting Authority, The Ministry of Planning, the PPP Unit or any other government body, which should submit to the Central Bank of Paraguay, all reports at its request, in the exercise of its legally established duties, within ten working days, since the request of the report, or within a time limit to be determined by the Central Bank of Paraguay, given the complexity or extent of the required report.

CHAPTER III

Structuring and preliminary studies

Article 30

Beginning of the process

The process for the signature of a Public-Private Partnership contract may begin ex-officio by initiative of the government or by a private initiative, submitted by a proponent.



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Section I

Structuring and preliminary studies for the PPP Projects from public initiative

Article 31 **Initial paperwork**

The contracting administration that intends to embark on a PPP Project from public initiative, shall notify this decision to the PPP Unit.

This notification should indicate:

- a) Name, telephone number and e-mail of the person responsible of the paperwork of the project, designated by the contracting administration.
- b) Project profile

Upon receipt of the notification from the contracting administration, the PPP Unit will submit it, to the Ministry of Finance to take note.

The people In charge of the PPP Unit will be available for the person responsible of the Contracting Authority, to provide guidance or recommendations and provide technical support.

The Minister of the STP (Ministry of Planning), in his capacity as coordinator of the Public-Private Partnership Projects, may convene the highest authority of the Contracting Authority, the Minister of Finance or any other authority involved, to discuss general criteria about the project and its links with policies elaborated by the executive branch, and to coordinate other aspects related to its structuring.



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Article 32

Pre-feasibility studies

The contracting administration shall provide to the Ministry of Planning (STP), a pre-feasibility study of the PPP Project, which allows an initial evaluation of its feasibility.

The pre-feasibility study should provide as a minimum with:

- a) Cost-benefit analysis, market analysis, technical analysis, risks analysis, legal analysis, competition analysis, organization analysis, economic and financial analysis, where appropriate.
- b) The project's financial and social performance indexes.
- c) Preliminary study of the value for money, at least qualitative, which must justify the convenience of using the PPP modality as an alternative to other modalities of public procurement, as appropriate.
- d) Estimate of the budgetary and financial impact in the tax years, during which the contract will be developed, as well as the obligations that the state will incur under the contract, in compliance with the law.
- e) Social impacts, identifying the people directly affected by the project, performing an analysis of the population who live in the area of influence of the PPP Project and their possible participation in the project, with a clear aim in poverty reduction, and the inclusion of certain groups that are socially vulnerable.
- f) Preliminary assessment of the main environmental impacts of the project and alternatives to mitigate them, and their costs.
- g) Environmental studies of the project, establishing mitigating mechanisms for the damages that the development of the PPP project might cause and a compensation, when applicable.



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The pre-feasibility study will be accompanied with a proposal of the content that the feasibility study might include.

The methodology and the specific scope of the pre-feasibility studies, must be coordinated with the PPP Unit.

Article 33

Evaluation of the pre-feasibility study

The PPP Unit will perform an evaluation of the pre-feasibility study and shall deliver an opinion in a maximum time of 15 days, since it was submitted by the contracting administration, with the requirements which appear in the preceding article. With its opinion, the PPP Unit is expected to rule on the methodology and the specific scope of the feasibility studies, based on the proposition of the contracting administration.

Once the PPP Unit has delivered an opinion and if it is a favorable opinion, the PPP Unit will send a copy of the pre-feasibility study to the Ministry of Finance, within 2 business days from the date of the delivery of the opinion above mentioned.

The evaluation of the Ministry of Finance should consider the implications of the project in the country's public finances, social profitability and value for money of the initiative, as well as other weightings and evaluations to which they relate, according to the field of competence of the Ministry of Finance.

The opinion of the Ministry of Finance must be issued within 20 days after of receiving the opinion from the PPP Unit.

The rejected studies will be returned to the contracting administration that submitted them; they can be redrafted and submitted again.



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Article 34 **Feasibility studies of the project**

Once the favorable opinion have been issued by the PPP Unit and the Ministry of Finance, about the pre-feasibility studies, the Contracting Authority must submit the feasibility studies.

The feasibility study of the project shall contain at least the following:

- a) Basic engineering study
- b) Study of demand
- c) Social evaluation
- d) Territorial study
- e) Environmental studies of the project, establishing the environmental impacts and the mitigation mechanisms for the damages it might cause, during the development of the PPP Project, and compensations, where appropriate.
- f) Expropriations study
- g) Legal opinion
- h) Studies of alternatives of technology implementation and level of service to users.
- i) Structuring of the business plan
- j) Economic and financial study
- k) Evaluation and risks allocation
- l) Update of the value for money study

If the event that the presentation of documents carried out by the contracting administration does not meet the requirements of this regulation, the PPP Unit will reject it. If the presentation of documents were incomplete, the contracting administration must provide the missing requirements, within the deadline set by the PPP Unit, lest the presentation be deemed not to have been made.



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In the event that the presentation complies with the established requirements and once the documents have been received, the PPP Unit must issue an opinion within 20 days, renewable to another 20 days, and then send a copy of the feasibility study to the Ministry of Finance, within 2 business days since the delivery of the opinion mentioned before. The Ministry of Finance must issue an opinion within 20 days of having received the feasibility study, renewable up to another 20 days.

To use the extension period, the PPP Unit or the Ministry of Finance, should inform the necessity to do so, with their respective foundations to the Contracting Authority.

Article 35

Joint procedures

The Contracting Authority, the PPP Unit and the Ministry of Finance, based on their opportunity criteria or convenience, will be able to carry out the procedures mentioned in the preceding articles, through joint procedures, common or concurrent, in order to shorten deadlines and make effective their functions.

Nevertheless, the authorization of the preceding paragraph, each one of the entities listed above, should issue their opinions, resolutions and administrative acts in which their statements and provisions are instrumented.

Article 36

Intervention of the Board of Public Companies

The Board of Public companies, in the exercise of its powers, will intervene in the analysis of the PPP Projects which affect public companies and private companies with a controlling stake from the government, in the case of projects involving public companies. Upon request, they have 30 days term to make a statement. Such statement shall not be binding.



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Article 37 Decree of the executive power (The President)

In the event that the Ministry of Finance issues a favorable opinion, the PPP Unit will submit the project to the executive power (the President) for its consideration. The approval will be made by decree, the President can make amendments to this project , all of them having been on grounds of economic, technical, environmental or legal reasons.

Section II

Structuring and preliminary studies for the PPP Projects on private initiative

Article 38 The structuring and preliminary studies for the PPP Projects on private Initiative, shall be effected as prescribed in the Title IV of this regulation

Chapter IV

Selection procedures for the Private participant

Section I

Pre-qualification

Article 39 Pre-qualification of offerors

The Contracting Authority can make a call for pre-qualification, for the purpose of selecting (through a process consisting in one or several stages) the applicants who meet the requirements established in the terms of the pre-qualification, which may concern only to legal, financial capacity, technical or experience aspects.

Pre-qualification will be mandatory in the following cases:



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- a) Multifunctional projects with a higher degree of complexity, in these cases, the terms and conditions for the pre-qualification may demand objective requirements which are necessary to participate in projects of that kind, as long as they are not arbitrary elements and equal treatment among project participant is guaranteed.
- b) Projects in which the studies to be made by the proponents in order to participate in the bidding process have a high complexity and high cost, and thus a limited list of possible offerors must be made, in order to obtain from them the complementary studies that the project needs, at its sole cost and risk.

In the case of PPP contracts in which the Contracting Authority establishes functional requirements and service standards and if there were diverse alternatives of design or technology to fulfill them also if the participant of the private sector were responsible for defining the design or technology, the terms and conditions of the pre-qualification may stipulate the obligation to provide a preliminary design during the application to the pre-qualification process. In these cases the Contracting Authority will have to establish a harmonization process of proposals, in the terms established in this regulation.

The Contracting Authority must guarantee that the procedure of pre-qualification is transparent and equal treatment and opportunities for the participants; there must not be arbitrary or unjustified differences.

Article 40 Content of the call for pre-qualification and the Book of bidding terms and conditions of the pre-qualification

The Contracting Authority will prepare a book of bidding terms and conditions for the pre-qualification(Book of pre-qualification terms and conditions), which must be approved by it, after a favorable opinion has been given by the PPP Unit and the Ministry of Finance. The opinions shall be delivered and sent to the Contracting Authority within no more than 15 days of the date of receipt.



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The call for pre-qualification should provide at least the deadline and the address to pick up the book of basis and conditions for the pre-qualification, the subject matter of the PPP Project and the deadline to submit their background.

The invitations for pre-qualifications should be published for 2 consecutive days in the two most widely read newspapers. They will also be published in the Public Contracting Information System.

Between the last publication in the newspapers and the deadline to submit applications for pre-qualification, a reasonable time limit should be established in the Book of bidding terms and conditions, so that the interested parties could prepare and submit their documents, which may be no less than 30 days.

The book of bidding terms and conditions for the pre-qualification shall contain the following information: general description and objectives of the PPP Project, pre-qualification stages. They may also include the obligation to submit a preliminary technical project, which shall be financed by each proponent.

All interested parties which acquired the Book of basis and conditions for pre-qualification may make their enquires during the period established in the mentioned book. The enquires will be answered in communications, referred to as clarification circulars, which shall be addressed to the purchasers of the Book of pre-qualification terms and conditions. The Contracting Authority may, on its own initiative or upon enquiry clarify, rectify, amend or add the Book of bidding terms and conditions for pre-qualification through Clarification Circulars. The issues of Clarification Circulars will be subject to the same procedures as the pre-qualification book. They can be issued even 15 days prior to the presentation ceremony and opening of the envelopes.



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The Contracting Authority will pre-qualify those interested parties which meet the requirements laid down in the Pre-qualification Book of terms and conditions, and it may reject those who are not suitable under these criteria, for a specific project or whose preliminary technical projects do not meet the minimum requirements established in the Pre-qualification terms and conditions, if applicable.

Article 41 Consultation procedure and reception of proposals for improvements, additions and adjustments with the pre-qualified for the bidding, and technical harmonization of proposals.

After the pre-qualification decision and before the public call for bidding, a procedure for consultations and reception of proposals for improvements, additions or adjustments performed with the pre-qualified for the bidding process. In addition, a process of technical harmonization of proposals can be made according to the procedures established in this Article.

The process will begin with a formal communication of the Contracting Authority to all pre-qualified bidders, according to what is established in the Book of Pre-qualification terms and conditions.

The Contracting Authority will provide the pre-qualified bidders with drafts of the Book of bidding terms and conditions and the pro forma of the contract, when appropriate, as well as any other background information related with the PPP Project, that it deems pertinent and which is in its possession. Before the delivery of these drafts, the opinion of the PPP Unit and the Ministry of Finance will be required.

The pre-qualified parties must propose (within the period set by the Contracting Authority) improvements, additions or adjustments which they consider appropriate for the background information delivered, particularly those matters related with service levels and Technical standards.



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In addition, the Contracting Authority may carry out sessions or working meetings with the pre-qualified parties, which should be convened at least 2 (Two) days in advance. A written record shall be kept of the working meetings, which will be signed by all participants who wish to do so, the presence of the participants who did not want to sign should be recorded as well.

All communications and actions either from the pre-qualified or the Contracting Authority shall be immediately communicated to all pre-qualified.

The improvements, additions or adjustments that the pre-qualified propose will not be binding with the Contracting Authority.

The Contracting Authority may modify the drafts of the Book of Bidding Terms and conditions and the contract, and incorporate any necessary amendments which arise as a result of this procedure.

In the harmonization of the technical procedures, the Contracting Authority may make written comments about the technical project's satisfaction of the functional requirements, which were established in the pre-qualification requirements. The objective of this process is to achieve a better harmonization of the projects, in such a way that the subsequent adjudication may be feasible, based on the criteria established in the regulation.

Article 42

The right to cancel the bidding/tender (by the Contracting Authority)

The Contracting Authority, after reviewing the guidelines issued by the Involved Entity of the Public-private Partnership and the Ministry of Finance, may cancel the bid of a Public-private Partnership project by a well justified resolution once the pre-qualification stage has been completed, and this decision shall not generate any right to compensation for the prequalified parties.



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Section II

Public bidding/tender

Article 43

Public call to interested parties

The bidding/tender process will begin with public call to interested parties which should be made after the formal approval of the project by a decree from the Executive Branch (The President). The public call to interested parties shall contain as a minimum, the following information:

- a) Individualization of the contracting administration
- b) Purpose of the public call, which makes its interpretation easy for possible offerors.
- c) Competitive procedure to be used
- d) Place and date to pick up the Book of bidding terms and conditions
- e) Cost of the Book of bidding terms and conditions
- f) Place, date and deadline for the delivery of the envelopes containing the financial offers.
- g) Source and origin of funds

Article 44

Publications

The public call for the bidding/tender will be published in the web site of the Contracting Authority and in the web site of the Public Contracting Information System. It also will be published in a newspaper of national circulation, at least once. All of this without prejudice to other media that the Contracting Authority considers appropriate, in order to ensure a wide dissemination of publicity for the call for the bidding/tender.

However, when there has been a pre-qualification of the project and only the pre-qualified could bid, then the publications in the newspapers may be omitted.



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Between the date of the last publication of the call in the newspapers and the deadline to present offers, a period of time should be fixed in the bidding terms and conditions, to give an opportunity to the interested parties, so that they can prepare and present their documents, which may not be less than 60 (sixty) days.

Article 45

Offerors

Participation in tender/bidding procedures shall be open to Legal persons, national or foreign, considered individually or in a consortium, that comply certain basic conditions established for that purpose in the law, in this regulation and in the Bidding Terms and conditions of each Contracting process.

Those who are disqualified by the restrictions of the article 19 of the law, by the Public Contracting Office or by international organizations in which Paraguay is a member; cannot make any offers or be regarded as participants.

Article 46

Book of bidding terms and conditions for the bidding/tender and proforma of the contract.

The Book of Bidding terms and conditions for the bidding/tender and the proforma for the contract shall be approved for the Contracting Authority after the opinion of the PPP Unit, the Ministry of Finance and the Attorney General of the Republic. The opinions must be issued and delivered to the Contracting Authority within no more than 15 working days since its reception.

Without prejudice to the provisions of the law, the Book of bidding terms And conditions for every bidding, shall cover as a minimum, the following points:

- a) Name and contact details of the contracting party;
- b) Purpose of the bidding/tender;



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- c) Determination of legal requirements applicable to the call for bidding/tender
- d) Deadline and procedures to make inquiries, proposals for improvements, additions of adjustments, also request for clarifications to the Book of bidding terms and conditions and the draft of the contract.
- e) Instructions to the offerors, for the preparation and submission of the offers.
- f) Deadline for the submission of offers. Rules for the ceremony of the opening of envelopes which contain the offers.
- g) Evaluation criteria for the offers and adjudication
- h) Determination of the legal regulation applicable to the contract
- i) Official budget of the project.
- j) Guarantee scheme, its nature and value, indicating the deadlines in which they must be lodged. Among others the following guarantees are considered: guarantee that the bids made will not be withdrawn, guarantee of the construction and exploitation of the work.
- k) Economic conditions of the contract, including a detailed description of risks-sharing mechanisms established in Article 5 of this regulation, in the event of favorable conditions that justify this mitigation by the Contracting Authority and which has been explicitly and reasonably approved in the authorization from the Ministry of Finance.
- l) Fines and penalties for breach of contract.
- m) If it is a project financed by the private sector, they should provide the identity of the candidate and the reimbursement for the cost of the feasibility studies if applicable.
- n) Specification of the PPP Project, as well as additional works included in the book of basis and conditions for its operability and also minimum technical requirements for its design, implementation and maintenance and the operation of the service, where appropriate, as well as the environmental requirements affecting the project.
- o) Payments that the private participant must make to the government, if there were any.



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- p) Payments to be made by the state to the private participant, if there were any.
- q) If the investment and the construction will be conducted in one or several stages, during the PPP contract period, in compliance with the service standard previously established. In the absence of information about the stages in the book of basis and conditions, it will be understood that there will be only one stage.
- r) Any other stipulation that might be necessary or convenient to include, according to what it is established in the law and in this regulation.
- s) The Book of bidding terms and conditions shall have a basic engineering study, which will be only for referential purposes, the tenderer will be responsible for risk factor analysis of the engineering project and the successful tenderer/bidder will be responsible for the development of the detailed engineering project, unless otherwise provided by the book of bidding terms and conditions.
- t) The book of bidding terms and conditions must have an environmental impact study approved by the competent environmental authorities, including the mitigation measures, and compensation if they were necessary, unless otherwise provided by the book of basis and conditions.

Article 47.- Consultation and clarification. Procedures for reception of proposals for improvements, additions or adjustments to the book of basis and conditions and the proforma of the contract.

The offerors may make inquiries, proposal for improvements or Adjustments or request clarifications, which shall be addressed to the highest authority of the Contracting Authority, within the time period established in the Book of bidding terms and conditions. Such request shall be made at the entrance desk of the Contracting Authority, according to the time period established in the Book of bidding terms and conditions for that purpose.



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Both the answers given by the bidders as well as any clarifications, corrections, amendments, or additions that the Contracting Authority decides to carry on the bidding will be included in a document called Clarifying Notifications, aimed to all bidders in no less than 15 days after the opening of the envelopes containing the technical offer. If the Contracting Authority makes changes in less than 15 days, the date of the opening of the envelopes containing the technical offer, must be changed to a time period no less than 15 days after the last modification. The Clarifying Notifications must be available for the offerors in the place indicated in the Book of bidding terms and conditions.

The Clarifying Notifications involving modifications to the Book of bidding terms and conditions and to the proforma of the contract, shall go through the same process as the one in the approval of the Book of bidding terms and conditions.

Article 48 **Presentation of offers**

The presentation of offers will take place the day and time previously established in the Book of bidding terms and conditions.

The bids shall include all the elements required and necessary for the implementation of the project, according to the Book of bidding terms and conditions, additional information could be added, without ruling out any of the required substantial demands.

Article 49 **Offers**

The offer will consist of the "Technical offer", which shall contain general background of the bidder and technical documents required in the Book of bidding terms and conditions and for the "financial offer".



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All direct and indirect costs involved in the preparation and presentation of its offer shall be paid by the offeror, under no circumstances the Contracting Authority shall be responsible for these costs.

The offers will be delivered in separated envelopes labeled "Technical offer" and "financial offer", each envelope must have the name of the offeror.

Article 50

Language of the offer, translations and foreign public documents

Offers must be submitted in the Spanish language or with an official translation, except the technical annexes and brochures which can be submitted in their original language. In the event of a discrepancy between the offers and the annexes, the offer shall prevail. In the event of a discrepancy between the original offer written in a foreign language and its translation to Spanish, the version in Spanish language shall prevail.

Article 51

Opening of the envelopes containing the offers

The offers will be received in a public ceremony by the bid opening Committee, on the date, time and place established in the Book of bidding terms and conditions.

In case of postponement of the date for the reception and opening of the offers, all rights and obligations of the Contracting Authority and from the offerors shall be deemed extended until the effective date for the reception and opening of envelopes, guarantees must be provided, when appropriate.



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The bid opening committee shall consist of at least one member of the PPP Unit and two representatives of the Contracting Authority.

The Book of bidding terms and conditions may contemplate additional members.

During the opening ceremony, the technical and financial offers will be received, only the envelope containing the technical offer of each offeror will be open, and the background papers requested will be verified.

The envelopes containing the financial offer will be signed and sealed by all members of the bid opening committee and will remain in custody, without opening them until the selection of the technical offers that are acceptable, on the date specified in the bidding terms and conditions.

In the opening ceremony, a record shall be kept of the parties which made a bid, of the background information received and the comments from the offerors and the bid opening committee.

After the opening ceremony, no new offer or counteroffer will be accepted.

Article 52

Evaluation Committee of the offers

The Evaluation Committee of the technical and financial bids/offers, shall consist of a representative of the PPP Unit, a representative of the Ministry of Finance and three representatives of the Contracting Authority. The Contracting Authority may nominate additional members before the opening of the envelopes.

The members of the Evaluation Committee will evaluate the offers independently, they will have a deadline to give an opinion which should be established in the Book of bidding terms and conditions, according to the magnitude of the project, its complexity or the documentation required in the bid/offer.



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Article 53

Guarantee that the bids made will not be withdrawn

The Contracting Authority will require from offerors, the lodging of a security guaranteeing that the bids made will not be withdrawn until the signature of the contract. The form and the amount of the guarantee that the bids made will not be withdrawn, will be determined in the Book of bidding terms and conditions by the Contracting Authority.

The guarantee that the bids made will not be withdrawn should be in effect until the lodging of a security guaranteeing the fulfillment of the Contract or if all offers are rejected. The companies that unjustifiably withdraw their offers before the awarding of the contract, will lose their security lodged, which will remain property of the Contracting Authority. The awarding of the contract can be considered as null and void if the successful tenderer/offeror does not comply with the lodgment of the security for contract compliance, without prejudice of the loss of the Guarantee that the bids made will not be withdrawn, which was previously provided to the Contracting Authority.

Article 54

Compliance of the offer with the Book of bidding terms and conditions

The determination by the Contracting Authority whether the offer meets the requirements in the Book of bidding terms and conditions, will be based in the content of the offer itself.

An offer meets the requirements of the Book of bidding terms and Conditions, when it meets all terms, conditions and specifications given, without deviations, reserve or significant omissions.

Deviations, reserve or significant omissions are those which:



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1. Substantially affects the range and quality of the goods and services or the works, specified in the Book of bidding terms and conditions; or
2. Substantially limits (in disagreement with the requirements established in the Book of bidding terms and conditions) the rights of the Contracting Authority, or the obligations of the offeror established in the contract; or
3. If it is rectified, it would affect the competition on equal terms, damaging the offerors whose offers meet the requirements of the Book of bidding terms and conditions.

Any offer that is not substantially responsive to the Book of bidding terms and conditions, will be rejected by the Contracting Authority.

A rejected bid cannot be subsequently converted into an offer that substantially conforms to the bidding terms and conditions; one that originally lacked this requirement is disqualified, even if, after correcting the deviations, reservations, or omissions, the offeror intends its acceptance, it still remains disqualified.

Article 55

Study and evaluation of technical offers

The evaluation committee will function according to the following

Procedure:

- a) The technical aspects, on which the Evaluation Committee must give its opinion, will be established in the Book of bidding terms and conditions.
- b) The Evaluation Committee for the technical offers will draw up an appraisal record, tenders in which one or more of the aspects presented do not comply substantially with the provisions of these Regulations and of the bidding terms and conditions will be technically unacceptable.
- c) If there were no technically accepted proposals, the Evaluation Committee will recommend that the bidding is to be declared void.



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- d) The necessary time limits for the study and evaluation of technical offers, will be established in the Book of bidding terms and conditions of the PPP Project.

Article 56

Clarifications about the offer

The Contracting Authority, at the request of the Evaluation Committee, may require from the offerors and before the opening of the envelopes containing the financial offer, the following: clarifications, amendments for form errors or omissions and also the delivery of their background, to clarify the right direction and the extent of the offer, avoiding being disqualified for formal aspects in its technical evaluation, seeking to ensure the transparency of the process and equal opportunities for the offerors. The Evaluation Committee shall determine if the errors or omissions can be rectified through this procedure and if it is necessary, they will postpone the date of the opening of the envelopes containing the financial offer.

Article 57

Opening of the envelopes containing the financial offer

The opening of the envelopes containing the financial offers will be held on the date, time and place established in the bidding terms and conditions, without prejudice to the provision of the preceding article, the offerors who wish to attend may do so. At the time of the opening of the envelopes containing the offers, they will be read out loud and the main economic data will be registered immediately.

The Opening Commission will inform the result of the technical Evaluation of the offers, and they will only open the envelopes containing the offers which were technically acceptable. The envelopes of the offerors whose offers were not accepted in the technical evaluation stage, will be returned (without opening them), this information will be registered in the corresponding appraisal record.



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In the opening ceremony, a notarial act should be drawn with the list of offerors, background information received and remarks made by the offerors and members of the Opening Committee.

Article 58

Evaluation of the financial offers

During the evaluation period of the financial offers, the Evaluation Committee shall verify if the financial offers meet the requirements of the Book of bidding terms and conditions, they will evaluate them according to the factors established in the Book of bidding terms and conditions.

The financial offers that do not include all required documents in the Book of bidding terms and conditions, as well as envelopes with corrections or constraints, will be rejected.

The evaluation committee for the financial offers shall draw up a notarial Act, which will be signed by its members, in this act they will recommend the adjudication of the winning bidder/offeror

In the absence of valid financial offers, the Evaluation Committee will recommend to declare the bidding/tender void.

Article 59

Advertising of the evaluation process

A written record of all actions performed by the Evaluation Committee will be kept, which shall be published in the website of the DNCP (Public Contracting National Office), once the process is finished.



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Article 60

Adjudication (Awarding of the contract)

The Contracting Authority shall issue a decision declaring the adjudication of the bidding/tender, within 10 days since the receipt of the recommendation from the Evaluation Committee.

The Contracting Authority shall issue a decision declaring the adjudication of the bidding/tender. The resolution shall consider the recommendation of the Evaluation Committee and expose the foundations to justify the decision. All offerors will be notified and it will be published in the Public Contracting Information System.

In the absence of valid offers, the Contracting Authority shall declared the bidding/tender void.

The adjudication of the bidding/tender shall be decide through a scoring system predetermined in the bidding terms and conditions, which must address one or more factors established in the law and in this regulation. Systems involving the assignment of scores to technical and financial offers can be used, the final score is determined by their weighting, or systems that involve considering the winning offer to the one with the best financial offer, between the ones which have passed the minimum score of the technical offer.

In any case, if a weighting of financial and technical criteria is considered, only the proposals with the highest weighted index and whose financial offer is up to 5% worse than the best financial offer can be adjudicated. if the offer with the highest weighted value does not fulfill this requirement, the tender should be awarded to someone who has the next most weighted value and which meets the requirement above mentioned.



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The successful tenderer/bidder (within a period fixed for that purpose), shall renew the Guarantee that the bids made will not be withdrawn during the established period of time and with effect until the guarantee of construction/operation is delivered, where applicable. In case of breach of this obligation, the successful tenderer shall not be able to institute the company for specific purposes and the Contracting Authority will make the guarantee effective.

After a favorable opinion has been given by the Ministry of Finance and the PPP Unit, the Contracting Authority may withdraw from the project at any time, before signing the contract and for reasons of public interest, through founded resolution. The exercise of this right shall not generate any kind of liability for the government.

Article 61

Contesting

A reconsideration procedure before the Contracting Authority may be requested to review the decisions made in the pre-qualification, qualification or awarding stage which should be addressed to its highest ranking authority within the time period established by law. The contestation shall be well-founded and accompanied by its corresponding documentation, as well as the guarantee that can be contested, which is required in the Book of bidding terms and conditions, this guarantee will be legally enforceable if the contestation were rejected.

The amount of the guarantee must be established in the bidding terms and conditions, and it may not exceed one percent of the initial investment committed by the offeror, and when it were not possible to determine such amount, the guarantee will be one percent of the budget that was authorized for the contract. The duration of the guarantee that can be contested will be established in the bidding terms and conditions and in all cases should be greater than thirty days following the date that the reconsideration procedure was requested.



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Once the contestation has been made, within the time limit and accompanied by the legal requirements, the Attorney General of the Republic shall be informed, so it can issue an opinion about its legal basis. For such purpose, it may be assisted by technical specialists to analyze the arguments supporting the contestation. Once this opinion is received, the highest ranking authority of the Contracting Authority shall act in a well-founded manner and its resolution shall be notified to the appellant within no more than (two) days after it has been delivered. The resolution of the Contracting Authority will end the administrative discussion, legal proceedings are applicable.

Article 62

A Company for Specific Purposes

Within the time limit established in the Book of bidding terms and conditions, which cannot be less than 60 (sixty) days from the contract award resolution. The offeror which was awarded the PPP Contract, shall create a Public Limited Company, according to Paraguayan laws, this company will sign the PPP Contract. According to Article 27 of the law, the majority shareholder shall be the successful bidders, on a minimal percentage, which will be determined in the Book of bidding terms and conditions and in no case should it be less than 51% (fifty one percent). In the case of successful bidders that were awarded in a consortium, The Company for Specific Purposes shall be constituted with the same partners, shareholders or with members of the consortium, and in the same proportions they had had when the awarding took place. Any modification of these shares shall be approved by the Contracting Authority, without affecting the commitment of the bidders which influence the technical and financial capacity of the consortium.



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Minority shareholders in no case can be other bidders apart from those who have participated in the bidding/tender, and they may not exceed the participation percentage established in the Book of bidding terms and conditions, unless it is approved by the Contracting Authority, for justified reasons and the quality of the original offer does not deteriorate. The Books of bidding terms and conditions will establish the deadlines, forms and conditions from which the shareholder composition of the Company for specific purposes, can be modified. The modification of the shareholder composition from the Company for Specific Purposes shall be approved by the Contracting Authority.

The object of the Company for Specific Purposes will be determined in the Book of bidding terms and conditions, in accordance with the characteristics proper to the works or services tendered. The minimum duration of the society, will be the longest period between the term of the PPP contract, plus two years or the period of time of the warranty for future works or services. The terms of the bidding may establish other characteristics and requirements for this society.

The share capital of the Company for Specific Purposes, by the time of its formation, shall be composed of at least, equivalent to 20% of the official budget as estimated by the Contracting Authority, unless the terms of the bidding establish an amount or a different minimum percentage, without prejudice to the provisions of the law on this matter. The share capital shall consist of registered shares, and their payment or integration shall be proved with the opening balance of the society or any other general and objective mechanism, established in the Book of bidding terms and conditions.

The financial closure for the project must be completed within the time limit established in the Book of bidding terms and conditions.



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Without prejudice to accounting rules applicable to companies, the Contracting Authority may require from the Companies for Specific Purposes and through the terms of the bidding, the following information: records and accounting entries that might be necessary to audit the PPP Contract and the Company for Specific Purposes.

The Contracting Authority shall revoke the award of the contract, if any of the obligations in this article are breached. This decision shall require the prior opinion of the PPP Unit. In this case, The Contracting Authority shall enforce the guarantees from the successful bidder and currently in force, it has no right to claim compensation.

Once the resolution that annulled the awarding of the contract is notified, the Contracting Authority may carry out a new public tender/bidding, according to this regulation and the Book of bidding terms established for that purpose.

Chapter V

Execution of the contract

Section I

Contractual General Regime

Article 63 Economic regime for the development of the Public-Private Partnership Projects

The Books of terms and conditions developed for the contracting process, will identify the contributions and compensations that shall correspond in general terms to the Private Participant. Also, public contributions from the Contracting Authority will be determined, when applicable.



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Nevertheless, the contracts will be the ones that detail, describe and identify clearly and precisely the exact composition of public contributions and the compensations which correspond to the Private Participant, in an efficient and precise regime, consistent with the Bidding terms and conditions.

Each project shall have the following characteristics:

- a) Specific: concrete and precise
- b) Measurable: assessable, quantifiable
- c) Feasible: it can be implemented
- d) Relevant: is adequate to meet the objectives; and
- e) Opportune: it is submitted when it is useful, convenient and/or necessary

Article 64 Form and signature of the contract

The PPP contracts shall be concluded between the Contracting Authority, which will be represented by its president, and the Company for Specific Purposes, within the time limit established in the Book of bidding terms, and by the successful bidders/offerors, when thereby established by the Book of bidding terms and conditions. Before the signing of the contract, the favorable opinion of the Attorney General of the Republic, from the PPP Unit and from the Ministry of Finance, are required, they shall be issued and sent to the Contracting Authority within no more than 15 (fifteen) days of the reception of the request from the Contracting Authority. If an opinion is not delivered within the time limit given, the contract to be signed will be deemed to have been accepted. If the time limit established in the Book of bidding terms expires and the contract has not been signed, for a situation caused by the successful bidder, the Contracting Authority shall revoke the award of the contract, and it shall enforce the Guarantee that the bids made will not be withdrawn. Additionally, it may award the contract to the next best offer or may call for a new public tender, according to the PPP law.



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Article 65

Minimum content

The Public-Private Partnership Contract should contain as a minimum, the following Information:

- a) Name, identification data and legal capacity of the parties
- b) Legal status of the parties' legal representatives
- c) The subject of the contract:
- d) Rights and obligations of the parties:
- e) The characteristics, specifications, technical standards, performance and quality levels for the execution of the work and provision of services.
- f) The situation of the properties, public goods and rights affected by the project and their destination when the contract ends.
- g) Financial regime of the project with the compensations in favor of the participant from the private sector.
- h) Risk-sharing regime, technical, execution of the work, or financial risks by reason of unforeseeable circumstances or force majeure or from any other nature, between the parties, in any case it shall be balanced.
- i) The deadline for the construction work to begin and to end, for the beginning of provision of the service, as well as the contract duration or the resolution to extend its duration.
- j) Indication of the authorizations for the development of the project.
- k) Remuneration of the participant from the private sector, which should be broken down on to: bases and criteria for calculation of investment, operation and financing costs, and the income it may obtain as a result of the operation of the works or equipment.



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- l) Causes and procedures to determine variations in the remuneration during the execution of the contract and the criteria applicable to maintain a balanced economic-financial equation of the contract; if applicable
- m) Payment formulas and, specially, the conditions under which the amount of outstanding payments payable by the Contracting Authority and the amounts that the Private Participant must pay to the Contracting Authority as a result of penalties or punishing fines can be compensated at the time of each maturity or in a pre-specified period.
- n) A system of control by the Contracting Authority applicable to the execution of the contract, specially about the performance objectives, as well as the conditions in which cessions and subcontracts are authorized.
- o) Destination of the works and equipment that are subject of the contract when it ends.
- p) In the event of cancellation, termination and early termination of the contract, its effects, and the terms and conditions to implement them;
- q) Monetary penalties and sanctions to the parties, for failure to comply with contractual obligations;
- r) Mitigation and compensation mechanisms for environmental damage, under the terms of Article 11 of the law number 3001/96 "Valuation and compensation of environmental services", and
- s) Procedures for resolution of disputes

Article 66

Assignment/cession of a contract or company's shares

The total or partial assignment/cession of the contract, or the shares from the Company for Specific Purposes, will require the authorization of the Contracting Authority.

The Books of bidding terms and conditions will establish the conditions and requirements which the Private Participant must meet, for the purpose of



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total or partial assignment/cession of the contract, or the shares from the Company for Specific Purposes. The Contracting Authority shall have the opinion of the PPP Unit and the Ministry of Finance before it is authorized. After the assignment/cession of the contract, the assignee will be surrogated in the rights and obligations corresponding to the assignor. During the construction phase, the cession of the contract or shares may exceptionally be admitted, under the cases and conditions provided for in the contract.

Article 67 Subcontracts

The participant from the private sector may subcontract any kind of activity included in the PPP contract, under the private law, unless is expressly prohibited by the terms of the tender/bidding. In all cases, the Private Participant shall always be accountable to the Contracting Authority, for the proper execution of the contract, and it will be accountable to the Contracting Authority and the users, for third parties (subcontracting companies) which do not fulfill their obligations. Furthermore, under no circumstances should the government acquire responsibilities or obligations with third parties (subcontracting companies). The Books of bidding terms and conditions should establish the requirements for the implementation of the mentioned subcontracts. Both the contractors and the subcontractors cannot begin the construction work, if their respective contracts are not formalized, through the submission of a copy of them for registration by the Private Participant to the Contracting Authority.

Section II

Guarantees



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Article 68

Guarantees

The Contracting Authority will require from the successful bidders (Private Participants), the lodging of a guarantee of contract compliance, for the construction and operation phases, as a minimum.

The guarantees offered may take some of the following forms, to be specified in the bidding terms and conditions.

- a) Deposit (of a financial guarantee)
- b) Endorsement
- c) Bank security
- d) Stand-by letter of credit
- e) Insurance policy

According to Article 26 of the law, guarantees should be issued by an duly authorized agency by the Central Bank of Paraguay, in accordance with the conditions set in the Book of bidding terms and conditions.

Article 69

Guarantees of the contract

The private participant shall provide a Guarantee of contract compliance, which covers the construction and operation phases, within the time limits set in the bidding terms and conditions.

The guarantees mentioned in this article should be sufficient. Their nature, form and amount will be established in the Book of bidding terms and conditions.

Article 70

Extension of the guarantee of contract compliance

If penalties or compensation that are demanded from the Private Participant shall become effective on the guarantee, the Private Participant shall replace or extend the guarantee on the corresponding amount within 15 (fifteen) days from the execution of the penalty, otherwise the Private Participant shall incur in a causal for contractual termination.



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When, in the case that the contract price increases due to a modification to the contract, the guarantee must be readjusted to the new amount in the contract, within 15 (fifteen) days after the modification is notified to the contracting party.

Article 71

Causes for the execution of the guarantee

The Contracting Authority may enforce the guarantee of contract compliance, either in full or partially, in the event of non-compliance with it, particularly in the following cases:

- a) When the Company for Specific Purposes carries out some kind of act or contract without the necessary authorization from this regulation, the bidding terms or the laws.
- b) Non-compliance with the penalties or punishing fines imposed during the term of the contract.
- c) Non establishment or non-re-establishment of guarantees and insurance policies established in the terms of the Tender Documents within the time limits provided for therein.
- d) Delays in payments from the Private Participant to the government, which are established in the PPP Contract.
- e) Any failure from the Private Participant to meet obligations with third parties, when the Contracting Authority is held severally liable.
- f) Any other failure to meet obligations from the contract.

If a guarantee is enforced by the Contracting Authority, this must be reconstituted or complemented, as applicable. Within 15 (fifteen) days after the date of its execution.



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Article 72 **Guarantees in the construction phase**

The purpose of the guarantee of construction is to ensure the fulfillment of obligations by the Private participant, during the construction phase and it will replace the Guarantee that the bids made will not be withdrawn.

The duration, form and amount of this guarantee will be established in the terms of the tender, in all cases, the duration of the guarantee shall not be lower than the one in the bidding terms for the construction phase, plus 3 (Three) months.

The guarantee for the construction of the shall be reimbursed to the Private Participant once the commissioning of all the works has been completed and approved, and the documents required by the contract to complete this phase are delivered, provided that the guarantee of operation (for the next phase) has already been established to satisfaction of the Contracting Authority and in accordance with these rules.

Article 73 **Guarantees for the operation phase**

The Private Participant will be obliged to hand over the guarantee for the Operation phase, to the Contracting Authority, on the date, form and amount established in the Book of bidding terms and conditions.

The Contracting Authority will not authorize the temporary commissioning of the work, if the obligation to hand over the guarantee for the operation phase is not complied.

The terms of the bidding/tender may require new guarantees, to make new investments or with the purpose of ensuring the fulfillment of the conditions in which the Contracting Authority will receive the work required in the PPP contract, among others. The term of the constitution, validity, form and amount of the guarantee will be established in Book of bidding terms and conditions.



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The guarantee for the operation phase will be returned to the Private Participant within the time frame specified in the Book of bidding terms, provided that the Private participant has complied with all contract obligations with the Contracting Authority.

Article 74

Insurance

Without prejudice of the provisions of the law, and the terms of the Contract, the private participant must take out the following insurance policies: civil liability for third-party damage, insurance against all risks in the work area and labor accidents which might occur during the PPP contract period. The amounts received from insurance against natural disasters, will be assigned to the reconstruction of the work, unless the parties agree to assign them for other purposes or works proper to the PPP contract.

The Book of bidding terms will determine deadlines, form, conditions, modalities and the other contract clauses which must be established in the policies, as well as the procedure to approve them.

The terms of the bidding/tender may require other kind of insurance Policy.

Section III

Contract execution

Article 75

Control by the Contracting Authority and Information

Obligations of the Private Participant

The Contracting Authority and the PPP Unit will have broad control powers and they may use different instruments for that purpose; such as information injunction, external audits, performance evaluation, inspections and surveys.



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The controls to be exercised by the Contracting Authority will cover the following aspects: technical, operational, legal, economic, financial, accounting, environmental, or others which due to the nature of the contract, are considered pertinent to be included.

For that purpose, the Private participant will be obligated to provide all Information and documentation about the fulfillment of the contract, when they are requested by the Contracting Authority or the PPP Unit, the Private participant may not allude to trade secrecy to be exempted from this obligation.

The private participant will be obliged to:

1. Grant access to the Contracting Authority, the Project superintendent and other control bodies, to the following information: project backgrounds, construction drawings, calculations records or specifications related to the project and in general all necessary background for the supervision and control of the fulfillment of the provisions in the PPP contract.
2. Submit the quarterly and annual financial statements of the Society for Specific Purposes to the Contracting Authority.
3. Inform about the organization and composition of senior staff from the Private Participant, when the Society for Specific Purposes is established or every time there is a change on it.
4. Inform about the conditions of the guarantees provided by the Private participant, related to the PPP contract and particularly about the special pledge or trust, when applicable. The name and address of the creditors and guarantors should be indicated.
5. Provide monthly information about claims submitted by the users, specifying the name of the user and the complaint made.



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6. All information, data, instruments or relevant aspects related to the project, when considered appropriate to require them.

Article 76

Project superintendent

The Contracting Authority shall appoint a Project Superintendent for each PPP project. Natural or legal persons may be appointed.

When the importance of the work require it, and for the supervision of it, private consultant companies may be recruited, always according to the contracting procedures established in the law.

Article 77

Assets in use to be handed over to the Private participant

The contract shall determine the assets owned by the Contracting Authority or other public entities, which preceded the signature of the contract or are to be created or are to be supplied during its term, and for which the Contracting Authority conveys the Private participant a right to use the them, the Private participant is required to return them when the contract ends.

If the PPP contract includes private or public properties to be used for the execution of the work or to provide services, they will be delivered in use to the Private participant, in the form at which they stand at the moment the property or work were handed over. The Private Participant will be liable for the obligations established in the Book of bidding terms and conditions, regarding these matters.



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Article 78 **Assets and rights acquired by the Private Participant that are affected by the Public Private Partnership contract. (PPP)**

The contract determines the assets owned by the private participant, which preceded the signature of the contract or are to be created, or are to be supplied during its term, and for which the Private Participant needs to transfer to the administration of the project or needs to remove from the project area, when the PPP contract ends. In these cases the contractual instrument will determine the form of asset transfer or withdrawal of assets, as appropriate.

The assets and rights acquired by the Private Participant under any title and which are affected by the PPP Contract, cannot be sold separately, mortgaged or subject to taxation, without the authorization of the Contracting Authority. The assets and rights affected by the PPP contract will become property of the government when the contract ends.

The Contracting Authority shall keep an up-to-date register of all assets and rights affected by the contract. Assets that shall be affected by the contract are all property and rights acquired by the Private Participant under any title during the contract and which are qualified as such by the Contracting Authority.

The private participant may acquire for the government, the properties needed for the execution of the works established in the contract. In any case, the Book of bidding terms and conditions will indicate the procedure for the acquisition of assets.



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Article 79 **Resources needed for expropriation of assets**

Necessary resources for the expropriation, can be provided by the Contracting Authority, the Private Participant or both, according to the Book of bidding terms and conditions.

Article 80 **Construction Phase**

The construction phase will begin with the order for the beginning of works, according to the provisions of the PPP contract and it will end with the temporary commissioning of the work, according to the PPP Contract. This phase shall be regulated by the provisions of this regulation and the corresponding PPP contract, it shall include the following contracting aspects, according to the Public Private Partnership modality:

- a) The performance of studies as foreseen in the PPP contract.
- b) The construction of works according to the PPP contract.
- c) The supply of equipment established in the PPP contract.
- d) Repairs and maintenance of the public or private assets or works turned over to the Private participant, in the modality established in the PPP contract, since the beginning of the contract.
- e) Use and enjoyment of assets of public or private domain from the government, aimed to develop the PPP Project.
- f) Use and enjoyment of private assets aimed to develop the PPP Project.

Article 81 **Project supervision during the construction phase**

During the construction phase of the PPP Project, the Contracting Authority will appoint a Project superintendent whose role will be to ensure compliance with the obligations corresponding to this phase.

The project superintendent



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shall operate under the direction and supervision from the person responsible of the administration of the contract, who is appointed by the Contracting Authority, the project superintendent should keep him informed of all relevant events which may affect the prosecution of the contract and the tax contingencies.

Article 82

Duties and powers of the Project Superintendent during the construction

Phase

During the construction phase, the Project superintendent will ensure proper performance of the PPP Contract and shall have the following functions and powers, established in the PPP Contract.

- a) Ensuring that the private participant meets its contractual obligations.
- b) Ensuring the proper development of the construction of the works and inform the Contracting Authority about the breaches of obligations established in the PPP Contract, so it can apply the corresponding contractual penalties.
- c) Ensuring that the designs, constructions drawings, studies and specifications of the PPP Project, meet the provisions of the PPP Contract;
- d) Ensuring compliance with specifications and technical standards in the construction of the works;
- e) Ensuring compliance of the work plan proposed by the Private Participant;
- f) Ensuring compliance with safety norms;
- g) Ensuring compliance with quality norms;
- h) Ensuring compliance with environmental norms;
- i) Submit the reports requested by the Contracting Authority, which are related to the development of the PPP Contract, during the construction phase.



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- j) Review the statistical information submitted by the Private participant;
- k) Authorized the use of the construction site, for the construction of the works as foreseen in the PPP Contract, with the proper registration in the work control book;
- l) Ensuring compliance with legal, accounting and administrative aspects and, in general any other aspect arising from the contract documents.

Article 83

Execution of the work

The work will be executed in accordance with the provisions of the PPP Contract. To this end, the Private Participant must submit all required Documents on it, to the Project Superintendent, who will forward them for its approval to the Contracting Authority.

Article 84

Beginning of the construction of the works and progress report on the Works

The PPP Contract may establish deadlines for the beginning of the construction and the fulfillment of the stages of work progress and determine proper sanctions for their delay.

Article 85

Compliance with deadlines

The Private participant is under an obligation to finish the works and put them into service on the dates and partial or total deadlines, which are established in the PPP Contract or the ones established in its offer, as appropriate. The PPP contract shall indicate the penalties to the benefit of the Contracting Authority, for contractual breaches or accessory measures to the benefit of the user/beneficiary, such as free service for a specified time, additional benefits that were not considered in the project, among others.



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When the delay in the fulfillment of partial or total deadlines were attributable to the Contracting Authority, the Private Participant will receive an extension on the deadline for the construction, equal to the delay or suspension of the works, without prejudice to the provisions of the contract.

Article 86 Investment of Construction Stages/Phases

The PPP Contract shall establish if the investment and the construction will be carried out in one or more stages/phases, during the PPP Contract period, in accordance with the fulfillment of the standards of service previously established, as well as the deadlines and conditions that they will be subject to.

The PPP contract must clearly define the deadlines for the constructions or Investments and if they may or may not modify the economic regime of the contract, clearly establishing which conditions of the contract it (the modification) would affect and how the modification would be quantified (calculated). In the case that there were no provisions about modifications in the PPP contract, it shall be understood that the investments or works will not represent any extension in the timetable or the economic regime.

Article 87 Operation Phase

The operation phase will begin with the temporary commissioning of the Works, this phase covers the following aspects, according to the modality of PPP Contract that is being used.

- a) The provision of the service for which the work was built, or the operation and execution of an activity of public interest;
- b) The conservation and maintenance of the work, facilities and equipment, in optimal conditions, according to the provisions of the PPP Contract.



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- c) The collection of the tariffs that the users will pay for the services which the Private Participant is authorized to provide under the PPP contract.
- d) The use and enjoyment of State assets under either public or private domain, which will be used to develop the PPP Project.
- e) The use and enjoyment of private property, which will be used to develop the PPP Project.

The regulation of service work shall be drawn up by the Private Participant and submitted for the consideration of the Contracting Authority for its approval, upon report from the Project Superintendent.

Article 88

Authorization for temporary commissioning of the works

The Private participant may request the temporary commissioning (Completely or partially) of the works, services or activity, if stipulated in the PPP contract. The Contracting Authority shall approve or reject the temporary commissioning of the works, within a maximum period of 30 (thirty) days from the date of the request presentation.

To this end, the Private participant shall submit its request, accompanied by all documents which were required in the PPP contract, for the commissioning of the works, such as operational guarantee, insurance policies for that stage, the regulation of service work, among others.

Upon fulfillment of the above conditions and if the work, service or activity is approved, the Contracting Authority and through founded resolution, will authorize the temporary commissioning of the work, either partially or totally, if the PPP contract so provides, beginning the operation stage.



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Article 89

Definitive commissioning

The Private participant shall request the reception of the definitive commissioning of the work, service or activity, within the time specified in the PPP contract, which cannot be longer than 1 (one) year from the date of the authorization for the temporary commissioning of all works, service or activity. The PPP contract may establish requirements and conditions to authorize this commissioning.

Within 10 (ten) days from the reception of the request for the definitive commissioning of the work, the Private participant will be scheduled for the inspection of the work, service or activity. Once it has been established that the work and facilities, as well as the services and their correspondence to the project, and other approved technical specifications are in a satisfactory condition, A record shall be kept of the inspection. If the works were incomplete or faulty, a record shall be kept, which will have a detailed description of the omissions or defects observed.

The Private Participant may not have the definitive commissioning until The omissions of defects are corrected to the satisfaction of the Contracting Authority, within the time limit set in the record. In case of major faults, the Contracting Authority may cease the temporary commissioning of the work, and consequently, the collection of tariffs or the payments from the Contracting Authority, without prejudice to the other penalties which may be imposed.

In case of less serious faults, the Contracting Authority may extend the temporary commissioning of the work. The authorization will indicate the deadlines granted to correct or complete the works or facilities, without prejudice to the other penalties which may be imposed.



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The definitive commissioning of the work will be authorized through a resolution from the Contracting Authority in which the total amount of the investment made by the Private participant will be specified.

Article 90

Supervision during the operation phase

The Contracting Authority will be responsible for the technical supervision of the fulfillment of the obligations established in the PPP law, in this regulation and in the PPP contracts, during the operation phase of the project.

This supervision will be on service levels, tariff regime and the rights of users, according to the PPP contract.

The Contracting Authority will appoint a Project Superintendent, to ensure compliance with the contractual obligations corresponding to the operation phase. The Project superintendent shall operate under the direction and supervision of the person responsible of the contract administration, who will be appointed by the Contracting Authority, the Project superintendent shall inform the person responsible of the contract, all relevant facts that might affect the development of the contract and the tax contingencies.

Article 91

Supervision of the service levels

In the supervision of service levels, the Contracting Authority must verify the fulfillment of the technical standards linked with this levels, according to the requirements and the PPP contract, it shall apply penalties in case of nonfulfillment of these obligations.



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Article 92

Tariff Regime

The Contracting Authority must regulate and approve, according to the current legal regime, and where applicable, the rates which may apply for the use of public works or the provision of public services, in addition, it shall verify that the amounts charged to the users correspond with the ones that were regulated and approved.

The services whose prices are not regulated, will be subject to the provisions of the PPP contract.

Article 93

Violations and penalties in the course of the contract

Infringement or violation (by the Private Participant) of any of the obligations of the PPP contract, will be a cause for the application of penalties, which shall be clearly established in the contract, and they should be proportionate to the offense committed. The contract will also establish the procedure to apply the penalties.

The Private Participant will not be exempted from liability, even when the Infringements are the result of contracts with third parties.

Article 94

Unilateral modification of the contract

Before the decision of unilateral modification is made, The Contracting Authority will request a founded opinion, to the PPP Unit, the Office of The Attorney General of the Republic and the Ministry of Finance, accompanied by a technical report with the following information:

- a) It shall explain the need to increase the service levels and technical standards established in the PPP contract or other technical reasons of public interest which justify the modification of the contract.



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- b) An estimate of the cost of possible compensations to be paid to the Private participant, to the extent that such changes may negatively affect the economic and financial balance of the project.

The bidding terms shall establish the maximum amount of investment that the Contracting Authority may require to the Private participant, as well as the maximum term to order modification of the works or services. In any case, the maximum amount of these new investments may not exceed 15% (fifteen percent) of the final investment budget of the work or service, as appropriate. This maximum amount will be updated as of the date of the submission of the modification, using the Consumer Price Index (IPC). This modification may not be required on a date after two-thirds of the PPP contract has been fulfilled.

The calculation of compensations shall always be made in order to obtain that the present net value of the additional project is equal to zero. All that taking into account the applicable discount rate and the economic effect that the additional project may have on the original project, including the higher risk which can be added to it, also the revenue and incremental costs that involve respecting the original formula.

The applicable discount rate will be calculated on the basis of the current average interest rate for debt instruments, consistent with the duration of the investment, adjusted to the relevant risk of the additional project and the ones corresponding to the compensation mechanisms applied.

If any discrepancy exists about the applicable discount rate or the amount of the compensation, the parties may resort to dispute settlement mechanisms established in the contract.



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For the purposes provided in this article, an "additional project" is understood to be the one which directly results from any changes in the characteristics of the works or services contracted.

Article 95

Modifications by mutual agreement

For the exercise of this power, the Contracting Authority will request a founded opinion from the PPP Unit, the Office of the Attorney General of the Republic and the Ministry of Finance, accompanied by the corresponding technical report and a draft of the amending agreement.

The terms of the bidding/tender will establish the maximum amount of the Investment, that the Contracting Authority and the Private Participant may agree, through contractual modifications by mutual agreement, as well as the maximum time limit in which it can take place.

In all cases, the maximum amount of these new investments may not exceed 30% (thirty percent) of the final budget of work investment. This amount will updated as of the date of the submission of the modification, using the Consumer Price Index (IPC).

The Contracting Authority shall compensate the Private participant for the changes agreed on the contract, to the extent that such changes affect negatively the financial and economic balance of the contract.

The calculation criteria established in the preceding article about modifications of the contract by mutual agreement shall be applicable.



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Article 96 Fortuitous events or force majeure, duly verified, in accordance to the bidding terms and the contract.

Any act or event that is unforeseeable, irresistible and out of the control of the parties shall be considered as force majeure or fortuitous events. Situations that can be considered as fortuitous events or force majeure may include and are not limited to: natural disasters, fires, explosions, war, insurrection, mobilization, strikes and Government decisions.

Acts or events whose occurrence could be expected and whose consequences could be avoided with reasonable diligence shall not be considered as a case of force majeure or a fortuitous event. In the same way, acts or events which make the fulfillment of an obligation more difficult or more expensive for the corresponding party, shall not be considered fortuitous events of force majeure.

The Private participant is entitled to request the suspension of the contract and enjoy a term equal to the period of stoppage or interruption of the work, according to Article 35 of the law. It shall only have right to compensation if expressly agreed on the terms of the contract.

In case of express provision in the contract, the compensation will take place after the verification of serious damages caused to the Private participant which disrupt the financial and economic balance of the PPP contract and after obtaining the opinion of the Ministry of Finance. The compensation could be implemented by means of an extension of the contract term, (an extension which may not exceed ten years), by means of the variation in the regime of investments originally planned, by means of the modification of the tariff regime, and by means of the payment of subsidies, among others, according to the scope, mechanisms and procedures prescribed in the Public-private Partnership contract.



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Under no circumstances shall the Private Partner be indemnified for total or partial loss of their materials stockpiled on site, whose insurance costs are considered to be contemplated in the Public-private Partnership Program contract.

Article 97. - Competitive procedures for modifications to the contract.

The Contracting Authority shall have the capacity to request the Private Partner to carry out competitive and public procedures with the aim of implementing modifications to the contract. When the cost of the modification exceeds 2,500 (two thousand five hundred) minimum monthly wages for varied activities which are not specified in the Capital City of the Republic, this procedure shall be mandatory in the phase of operation.

In the cases in which this Article is applicable, the competitive procedure shall be performed by the Contracting Authority. The amount of investments that shall be compensated to the Private Partner shall be the one that comes out of the competitive procedure, to which an additional amount will be added under the concept of administrative expenses incurred in carrying out the contract, an amount that shall be stipulated in the Book of bidding terms and conditions.

The competitive procedure mentioned in this Article shall be performed according to the regulations that are established in the Book of bidding terms and conditions.

Section IV

Suspension or Termination of the Contract

Article 98.- Suspension of the Public-Private Partnership Program contract.

The suspension of the contract shall occur in the cases established in Article 35 of the Law and it shall not exceed the term established in that article.



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The suspension of the contract will require a prior authorization by the Involved Entity of the Public-private Partnership Program. In the case that the suspension has fiscal, economic or financial implications for the State, the Involved Entity of the Public-private Partnership Program shall request the prior authorization by the Ministry of Finance..

Article 99.- Maturity or expiry of the term, or fulfillment of any of the resolutive conditions stipulated in the contract.

The Public-private Partnership Program contract shall terminate when the term that was granted to it, has finished, including its modifications, or when any of the resolutive conditions stipulated in the contract is fulfilled.

The reception procedure shall be established in the Public-private Partnership Program contract, taking into consideration the nature of the project.

The Contracting Authority shall ensure that, in compliance to what is established in the Public-private Partnership Program contract for each case, the Private Participant shall:

- a) Restore the assets that the Participant is obliged to return or to transfer back to the State at the end of the contract;
- b) Transfer the technology used in the contracted work, asset, or service as well as the technical innovations introduced in them.
- c) Offer the timely training to the concerned government employees as successors of the activities, operation and maintenance related to the service and to the infrastructure; and,
- d) Offer support services, consulting and resources, including the supply of spare parts when needed, during a reasonable period of time to be determined in the Public-private Partnership Program contract and to be counted from the moment the infrastructure is handed back to the Contracting Authority.

The Contracting Authority, according to the procedures stipulated in the contract, shall perform the clearing of the contract and shall establish the amount of payments or receivables that shall be charged to the Private Participant.



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The Contracting Authority shall also make sure that the Private Participant has complied with its obligations and has made the necessary provisions for the fulfillment of those obligations left to be satisfied up until the end of the contract.

Article 100.- Serious non-compliance or abandonment of the Project by the Private

Participant.

1. When the Private Participant incurs in any of the grounds for termination due to a serious non-compliance, and as long as there are no losses for the public interest, the Contracting Authority shall follow the following procedure prior to the termination of the contract.
 - a) The Contracting Authority shall notify the Private Participant and their creditors who have made the special guarantee in their favor, about the non-compliance; this is the guarantee that is referred to in Article 38 of the Law on serious non-compliance of the contract and other relevant background.
 - b) The Private Participant, in the term that the Public-private Partnership Program contract sets, shall submit a report to the Contracting Authority containing the measures to correct the faults or to avoid their occurrence in the future. The report shall have the authorization of the creditors that were mentioned in the previous item.
 - c) The report shall address, among other things, the following subjects: managerial measure, changes in the administration of the society, and voluntary transfer of the Public-private Partnership Program contract.



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Furthermore, the report shall specify a timetable for the implementation of the corrective actions.

- d) The Contracting Authority, based on the report, shall set a deadline to implement the measures under the supervision of the Project Superintendent.
- 2) Within a term of three (3) days, from the declaration of non-compliance, the Contracting Authority shall designate a controller who will have the capacity to ensure the compliance with the Public-private Partnership Program contract, and who shall be obliged, in particular, to continue applying the authorized tariffs, if the work is in the operation stage, to make payments that are derived from the Public-private Partnership Program contract, and to demand from the State those payments that it is required to make. This controller shall fulfill his/her obligations with the diligence that a store owner will show in his/her own business, and shall be liable on civil, penal, and managerial grounds for acts or omissions that he/she may incur during his/her tenure, willfully or negligently.
- 3) The Controller, starting from his/her appointment, shall keep record of the income and expenses incurred in the Public-private Partnership Program contract in order to sustain a sound management, and shall have access to all of the books, papers, and documents of the Private Participant that are related to the mentioned contract.
- 4) if within the term established by the Contracting Authority, the Private Partner did not present the report, or the report was not satisfactory to the Contracting Authority, this institution shall offer the creditors, who are entitled to the special guarantees referred to in Article 38 of the Law, the option of appointing a new Private Participant within a term of one hundred and twenty (120) days.
- 5) The new Private Participant shall comply with the requirements established in the Public-private Partnership Program contract, unless the contract is in the stage of operation, in which the requirements can be modified,



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by means of a resolution issued by the Contracting Authority after reviewing a statement made by the Involved Entity of the Public-private Partnership Program and considering the soundness of the justifications for a modification of the original instructions.

- 6) In the case that the replacement has not occurred within the previously stipulated term, and after reviewing the guidelines by the Involved Entity of the Public-private Partnership Program, of the Office of the General Attorney of the Republic, and of the Ministry of Finance, the Contracting Authority shall declare termination of the Public-private Partnership Program contract, and shall bid the contract for the remaining term. The declaration of termination by breaching of the contract shall make the guarantees, which are found in the Law, in the present Decree, in the Book of bidding terms and conditions, and in the Contract, due and effective.

Article 101.- Early Termination of the contract due to Public Interest.

The Contracting Authority shall terminate the Public-private Partnership Program contract early due to reasons of public interest, if any of these situations should occur:

1. That the work or service turned to be unnecessary for the satisfaction of the public needs that launched the Public-private Partnership Program project in the first place.
2. That the work or service demanded a re-design or a complementation of such magnitude that the additional investments that are needed to upgrade the work to the new conditions exceed thirty percent (30 %) of the original budget for the work or service, and it were demonstrated that the social and economic benefits did not exceed the cost that the State would incur if it terminated the contract early. The mentioned amount shall be updated to the date of the presentation of the application for approval by using the consumer price index.



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In order to exercise this capacity, the Contracting Authority shall previously request a statement each from the Involved Entity of the Involved Entity of the Public-private Partnership Program, from the Office of the Attorney General of the Republic, and from the Ministry of Finance; each statement must be accompanied by the corresponding technical report.

The resolution that declares the early termination of the Public-private Partnership Program contract shall specify the terms and conditions by which the Private Participant shall deliver the work or service to the Contracting Authority.

In the case of early termination of the contract in the benefit of the public interest, the Private Participant shall have the right to an indemnification. The Book of bidding terms and conditions and the Public-private Partnership Program contract shall stipulate the criterion and procedures to calculate the amount of the indemnification, otherwise it would be nullified. The criteria that the Book of bidding terms and conditions need to respect is that an early termination during the construction stage shall entirely compensate the investment effectively made, and it shall determine beyond doubt that the construction was necessary for the provision of services, according to the contract; the indemnification shall include the cost of financial capital required for such investment, plus a bonus---equivalent to five percent (5%) of the amount of the investment made. For the calculation of the financial capital of the investment, the weighted average cost of capital for the business shall be considered as a discount rate, according to the criterion defined to that effect in the tender documents.

During the period of operation, the compensation shall be made with an amount equivalent to the expected worth of the business for the period that is left to finish. In the case of projects that were awarded by the present value of income formula, the present expected worth value shall be determined as remaining not yet obtained from present value of income minus the present value of the expense of having kept that money saved.

Any dispute with reference to the calculation of the amount shall be resolved by the referee Tribunal, after reviewing a technical report by a panel of experts.



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Payment adjustments and interests will be added to the total sum that will have been agreed upon up until the date that the mentioned payment is made effective.

Chapter VI

Resolution of Disputes

Article 102.- General Provisions

The Book of bidding Terms and conditions, which are a part of every Public-private Partnership Program contract, shall foresee mechanisms for the resolution of disputes, according to what is established in Article 41 of the Law and in the present chapter.

The text of the contract shall make an expressed reference to the mechanism that has been adopted for the resolution of disputes. Such information shall be available in the Public Registry of the Involved Entity of the Public-private Partnership Program.

The background legislation that is applicable to all disputes emerged within the frame of the Law and concerned with this Decree shall be the Paraguayan Law.

All of the terms that are mentioned in the present Chapter shall be consecutive days, unless it is otherwise established.

Article 103.- Stages in the Resolution of Disputes.

The following stages for the handling of disputes that emerge among the participants of a Public-private Partnership Program contract is hereby established:

- a) First Stage: Direct negotiations with the compulsory accompanying notification to the Technical Team, as prescribe in the Law and in this Decree.



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b) Second Stage: The dispute shall be dealt before the Technical Team, as long as the difference turns around a technical or economical issue; and

c) Third Stage: The dispute shall be submitted to an Arbitration Tribunal.

If the matter of the controversy is strictly an issue of rights, the possible stages for resolution shall be only those prescribed in the above item b), the direct negotiation, and in c), arbitration.

Article 104.- Determining the technical or the economical nature of the controversy.

Controversies can be of either technical or economical nature, alternatively, of a legal nature.

The following shall be considered controversies of technical or economical nature:

- a) The technical and economical evaluation of the investments made by the Private Partner, of the degree of progress, of their expenses and deadlines, according to the levels of service and technical standards that are prescribed in their corresponding contract.
- b) The determination of the existence of additional expenses and their economic, technical or managerial causes, or other causes due to facts or circumstances that technically affect or might affect the normal development of the works during the stage of construction.
- c) The determination whether the value of the planned investments for the modifications to the contract are adequate or not with respect to the limits that are established in this Decree, in conformity with Article 33 of the Law.
- d) The assessment of economic effects that the construction of additional works may have.



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- e) The technical determination of the discount rate, the business risks, the financial costs and other economic factors that are necessary to be established in order to calculate the economic compensations that correspond to the successful bidder in the case of an early termination of the contract, of the construction of additional works, or in the case of any other event that Law contemplates and that requires those calculations.
- f) Other technical or economic discrepancies that emerge among the participants of a Public-private Partnership Program contract because of the execution of the works or because of the technical or economical application of a regulation applicable to that contract and that, by common agreement, will be subject to their consideration, as well as other discrepancies that arise from this Decree or from the Book of bidding terms and conditions.

The cataloguing of being either a technical or an economical controversy shall be established by the Technical Team; in the case that the disagreement is determined to be neither technical nor economical; the dispute will have to be settled directly by arbitration.

Article 105.- First Stage in The Resolution of Disputes. Direct Negotiations. Notification.

In the case of disputes that emerge from the interpretation, execution, compliance, validity, development, suspension, and/or termination of a Public-private Partnership Program, the aggrieved party shall report its complaint by writing to the other party, including a description of the disputed events and a proposal to negotiate the controversy.

The negotiations shall be carried out based on the principle of good faith.

The Contracting Authority shall immediately notify to the Office of the Attorney General of the Republic of this claim, who will have the capacity of participating in the negotiations.



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Article 106.- Second Stage in The Resolution of Disputes. Technical Team.

In case the disputing parties had not arrived to an agreement within the frame of the negotiations that were entered into, the aggrieved party shall submit the controversy to the Technical Team within the term of thirty (30) days from the date of the notification, or within the longest term that is prescribed in the specific contract and in the tender documents, as long as the nature of the controversy is technical or economical.

If the aggrieved party considers that its claim does not involve such technical or economical nature, it shall nonetheless make a brief summary of the claim and shall request a statement of disavowal with respect to the competence of the technical Team which will allow it to resort to the arbitration. The decision made by the Technical Panel in that situation shall be final and definite for the involved parties.

The Technical Team, during the execution of the contract and even before the filing of any complaint, for the purposes of empathizing with the materials that could be litigated, may make periodic visits to the location of the project, may meet with the involved parties, and may be informed of the progress of the works and of other aspects that are concerned with the execution of the contract, as frequent as it is prescribed in the Book of Bidding terms and conditions. If the it does not contemplate the needed frequency, the information must be furnished quarterly by the parties.

Article 107.- Technical Team. Powers of the Technical Team.

The Technical Team shall not exercise jurisdiction, and shall issue a technical recommendation, duly supported, within the term and in the mode that it is established in the following article.

The recommendation made shall not be binding on the parties.



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The recommendation of the Technical Team does not preclude the capacity of the parties to move to the third stage in the resolution of disputes nor the capacity to raise the complaint to the Arbitration Tribunal, even though the controversy rests on the same facts as of the recommendation. In such a case, the recommendation may be considered by the Arbitration Tribunal as a background material not binding on the issuance of a judgment.

The Book of bidding terms and conditions shall establish the period of duration of the Technical Team after the termination or rescission of the contract in order to address the disputes that may emerge during those periods of time. If this term is not established expressly in the Book of bidding terms and conditions, it will be two years.

The Technical Team will set up a secretariat office for the reception of documents, for the handling of administrative matters, for the maintenance of a record file, and for the handling of complaints; the Team shall organize the secretariat office in the most convenient way it deems necessary, taking into consideration the principles of transparency and efficiency.

The administrative expenses of the Technical Team and the remunerations of its employees shall be borne by the contracting parties in equal shares. The Book of bidding terms and conditions and the Contract shall establish the maximum totals of such expenditures.

Article 108.- Technical Team. Procedures before the Technical Team.

The presentation of complaints between the contracting parties shall be made in writing. The Parties shall clearly express their view points or the subjects that support their claims, and shall accompany all of the background information that will be used as supporting evidence; furthermore, the claim shall specify the legal business address of the involved parties for the duly notification process.



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The background and rationale for the discrepancy cannot be added, rectified nor modified after their submittal, notwithstanding the capacity of the Technical Team to request reports, additional background information and documents that would complement the necessary information in order to issue a well-founded recommendation.

Once a dispute has been presented to the Technical Team, the Secretariat Office of the Team shall inform its members within the next business day.

The Secretariat shall also equally provide communication of the controversy, along with all its documents, to the accused party, within the next three (3) consecutive business days, in order for the accused to reply to the complaint.

The term to reply to the complaint shall be twenty (20) business days.

The Technical Team shall issue a recommendation within thirty (30) days, counted from the date of the reply to the dispute, a term that may be extended when based on a solid reason, automatically or by a request of the concerned party.

The issued recommendation must be comprehensive and it shall be duly notified to the involved parties.

The involved parties may request the Technical Team, within a term of eight (8) business days, counted from the date of the notification of the issued recommendation, to clarify any item that may be unclear or dubious, to rectify omissions, and to correct mistakes in the copies, in the references, or in the numeric calculations that may appear in the recommendation. A copy of such request for clarification shall be submitted to the other party on the same day. The Technical Team shall make a reply to the request within a term of fifteen (15) days and duly notify its judgment to the involved parties.



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Article 109.- Technical Team. List of members of the Technical Team.

When signing a Public-private Partnership Program contract, the contracting parties shall select three experts of renowned expertise in the field of the project to be the members of the Technical Team.

The selected professionals must enjoy recognized integrity and must be impartial and independent from the parties, even though they were designated by them.

These people must not be, nor must not have been, involved with the successful bidder, within a term of twelve (12) months prior to the presentation of the offers, be it as officers, employees, independent consultants, stock holders or people with entitlements to rights in the contracting companies or in their parent, subsidiary, or affiliate companies, nor with subcontractors of the offeror. Neither can the experts be, nor could have been, related to the Paraguayan Government nor to the Contracting Authority that is concerned, nor to an entity that would supervise the services which would be delivered by the contract, nor be a temporary or a permanent employee in the institution. It shall also be understood as an employee someone who had provided services that were paid with funds originated from loans that were granted by multilateral credit organizations.

The Book of bidding terms and conditions shall foresee the possibility of a substitution in the Technical Team during the execution of the project contract, to cover temporary or permanent absences, or in the case that the execution may require the division of the work in phases.

Once the experts have been chosen, the Involved Entity of the Public-private Partnership Program shall post a brief biography of each for fifteen (15) days, in which it should be included their nationality and their area of expertise. Public objections to the selected experts may be received upon which, the contracting parties may change their selection. The Public-private Partnership Program Unit shall rule on the details of this phase.



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Article 110.- Third Stage in The Resolution of Disputes. Arbitration.

A process of arbitration may be started for the resolution of disputes within a term of thirty (30) days counted from any of the following events:

- a) A rejection by any of the contracting parties of the recommendation of the technical Team; this rejection shall take place within ten (10) business days from the notification of the recommendation or the notification of the clarifying statement by means of a notification to the other party and to the Technical Panel. Such recommendation shall be deemed accepted if it is not rejected within the term of ten (10) business days. This term shall be considered interrupted in the case that there are requests to the Technical Team for clarification.
- b) The non-compliance by either of the parties of the recommendation made by the Technical Team, be it accepted by the parties tacitly or explicitly. The non-compliance shall be recorded by means of an intimidation note to the other party, point from which the term to submit the dispute to arbitration shall start to be counted.
- c) A judgment made by the Technical Team to manifest its lack of competence in the matter when the dispute involves matters that are not technical or economic.

Unless there is a different provision in the Book of bidding terms and conditions, the applicable regulations for the arbitration process shall be those of Law Number 1879/02 of the Republic of Paraguay on "Arbitration and Mediation."

The arbitration can be institutional or specially constituted, according to what is established in the Book of bidding terms and conditions and in the Contract. The Arbitration Tribunal shall be composed of three arbitrators, unless the parties, once the proceeding has been initiated, by mutual agreement and to reduce the costs of arbitration, expressly choose to have just one arbitrator. Each part shall name an arbitrator, and both arbitrators should nominate the third. The arbitrators may be Paraguayan citizens or foreigners, according to the choice of the concerned parties.



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The place of arbitration shall be the city of Asunción, Republic of Paraguay unless the Contracting Authority decides to change it elsewhere or when the contracting parties, due to reasons related to the size of the project and to other relevant factors, agree to move the arbitration to a different place, provided that the costs of arbitration and/or other conditioning factors are taken into account. If any of the cases foreseen in Article Number 3 of Law Number 1879/02 do take place, the arbitration will be considered, to all intents and purposes, an international arbitration, including the offering of due protection to the foreign party.

The tender Book of bidding terms and conditions, and the contract shall foresee, and the parties shall expressly agree, to the public nature of any arbitration process, regardless of what the applicable regulations for arbitration may establish.

The legal representation for the Contracting Authority at the arbitration process, unless the involved party is an autonomous, self-governing, or a corporate entity with a majority of its assets owned by the state, will be carried out by the Office of the Attorney General of the Republic, according to Article Number 246 of the Constitution, notwithstanding its right to participate as a legal advisor thereto in cases in which the party is an independent legal entity.

The arbitration procedure under this Regulation and considered in the Book of Bidding terms and conditions of each project that is part of the Public-private Partnership Program excludes any other legal forum, jurisdiction or place for resolving disputes, be it national or foreign, and this position shall be clearly expressed in the corresponding Book of bidding terms and conditions.

Article 111.- Absence or nullity of the Arbitration Agreement

In the case of the absence or nullity of the Arbitration Agreement as per the decision of the Court of Arbitration, disputes will be submitted to the jurisdiction of ordinary courts and Tribunals in the city of Asunción, Republic of Paraguay.



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Chapter VII

About the End Users

Article 112.- Rights and Responsibilities of end users. Customer service.

The Rights and Responsibilities of end users of the patrimony or services that are offered within the frame of the Public-private Partnership Program shall be established in a User's Regulations document, which shall be written by the Contracting Authority for each project and shall be approved by the Public-private Partnership Unit.

It shall be the responsibility of the Contracting Authority to verify the fulfillment of the obligations of the Private Participant in favor of the end users of the patrimony or service which is part of the contract under the Public-private Partnership Contract.

The Private Participant shall establish a Customer Service system to deal with end user's complaints and to address their inquiries, and to offer proper information to the public. The Customer Service system that the Private Participant institutes must guarantee an appropriate and friendly handling of customers, as well as a fast service to the public. Such Customer Service system shall be approved by the Contracting Authority.

Notwithstanding the information and inquiry systems that the Private Participant will establish, the formal complaints of end users claiming the violation of their rights shall be submitted within 15 (fifteen) days of the occurrence of the event. The Private Participant shall soundly reply to the grievance within 10 (ten) days of receiving the complaint.

The Contracting Authority shall respond to the complaints that end users may submit directly to them in case of a lack of proper or satisfactory response by the Private Participant within a maximum interval of 15 (fifteen) days of the filing the complaint in writing by the end user before the Contracting Authority.



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The Private Participant is obliged to submit information regarding the complaint upon the request of the Contracting Authority. The information requested shall be provided within 5 (five) business days. Furthermore, the Private Participant shall establish a computer record of complaints that can readily be accessed by the Contracting Authority and by the customer, if necessary in their case.

In case that a complaint made by an end user reaches the Contracting Authority, the Contracting Authority will issue instructions for the application of sanctions to the Private Participant according to the contract.

Such sanctions will be applied notwithstanding the actions that the customer may take against the person who was responsible for the grievance to the effect of mending any damages, if there were, that were directly caused by the responsible party.

Chapter VIII

Transparency, evaluation and audit of contracts that are part of the Public-private Partnership Contracts.

Article 113.- Audit and Evaluation of contracts that are part of the Public-private Partnership Program (PPP).

Notwithstanding the prerogatives for control that the Contracting Authority is entitled to, according to the Law, the present Regulation and the corresponding contracts, contracts under the Public-private Partnership Program will be subject to audits and evaluation of results according to the General Audit Plan that the Ministry of Finance will approve, in conjunction with the objectives of the General Audit Program of the Executive Power and of the Public-private Partnership Unit.

The Ministry of Finance, in its role of monitoring institution may contract external audits for contingent and firm assets and liabilities , and the external audit for service quality shall prescribe.----



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pertinent measures to carry out the contracting of these services according to budget parameters. Furthermore, the auditors must coordinate the General Audit Plan for all of the contracts under the Public-private Partnership Program with the General Audit Program of the Executive Power and with the corresponding Entity of the Public-private Partnership Program.

The National Directorate of Public Contracting will offer its assistance to cooperate with the Public-private Partnership Unit, and to the Ministry of Finance to verify the Public-private partnership contracts, through the Directorate of Contractual Supervising. If it were necessary, a specialized unit may be created within this Directorate to perform this supervising function.

To avoid overlapping of functions and duplication of institutional resources corresponding to the auditing work and to the verification of contracts, the National Directorate of Public Contracting will program and implement verifications that will be executed in a coordinated manner with the Public-private Partnership Unit, and within the audit platforms.

Article 114.- Administrative Management Audit.

There will be audits executed to verify the fulfillment of legal and contractual obligations which correspond to both the Private Participant and to the Contracting Authority. The main objective of these audits will be to measure and evaluate the levels of service, the tariffs regime, and the observance of the rights of end users, taking as reference: the monitoring of contractual indicators; the control programs for all the elements that are part of the Register of the contract under the Public-private Partnership Program; and current legal regulations. To these effects, the auditors will evaluate the timely presentation, the corresponding approval, and the supervision of all plans, programs and control instruments that the Public-private partnership contract prescribes.



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Article 115.- Frequency of Management Audits. Annual Audits Program

Each Public-private Partnership Program contract shall be subject to auditing every two years, unless a shorter term is specified in the Book of bidding terms and conditions or in the contract. In all contracts in execution, technical audits may be performed by the Contracting Authority, or by the Public-private Partnership Unit, when deemed necessary, without the need for advanced notification. On the month of December of every year, a new Yearly Program for Audits will be established for the following year, indicating the quarter of the year in which the audit will be performed. Every first quarter of the year, the selection and assignation of the auditor/auditors who will carry out this program will take place. By the last week of March, the final schedule of audits will be established, a schedule that must contemplate the singularities of each contract so as to not affect the proper development of the contract, such as taking into consideration the seasons of high and low volume of work.

Article 116.- Results of Management Audits

As a result of the auditing procedure, numeric scores or indexes will be elaborated in order to reflect the level of quality of the function, and so as to establish corrective, preventive or sanctioning measures.

Every month of December, these indexes shall be distributed, along with a comparative analysis of each Public-private Partnership Program contract in progress. With this information, a ranking of the quality of the execution of these contracts will be produced and published in January.

Article 117.- Reporting by the Contracting Authority to the Public-private Partnership Unit.

The Contracting Authority shall report to the Public-private Partnership Unit, periodically, every semester, about the fulfillment of the contracts under its care. Furthermore, the Contracting Authority should report to that Entity any substantial alteration or non-fulfillment with respect to the contract within five (5) days of having verified such alteration or non-fulfillment.



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Notwithstanding the reports that were mentioned in the preceding paragraph, the Public-private Partnership Unit may ask the Contracting Authority, at any time or when it deems necessary, any information or documentation relative to the fulfillment of the contracts, as well as to recommend specific external audits in order to guarantee the proper advance of the contracts.

Article 118.- Management Reports.

The Public-private Partnership Unit must prepare an annual report about its management undertaking as the coordinator of the process; the report must contain at least:

- a) The degree of accomplishment of the objectives and goals of the Plan of the Public-private Partnership.
- b) The results that were effectively obtained in reference to the results that were expected in each contract.
- c) The mechanisms and actions that were implemented to produce the transparency of the management.
- d) Other relevant aspects.

The complete report shall be made available to the public free of charge, at its official site in the Internet; furthermore, a copy shall be delivered to the Executive Power, to the Congress, and to the Office of the General Comptroller of the Republic, according to what is established in Article Number 15 of the Law.

Article 119.- Transparency and Publication of the information regarding the Management of Contracts.

Besides the information required by Article Number 15 of the Law, all of the information contained in the Public Registry of the Public-private Partnership Program as well as management evaluation reports, other evaluation reports, and audit reports that were conducted by the Involved Entity of the Public-private partnership and by the Contracting Authority shall all be made available to the public at the web page of National Directorate of Public Contracting.



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The Public-private partnership Unit will coordinate with the National Directorate of Public Contracting the implementation of systems that will collect the views of citizens on the management of contracts and on the work that the involved institutions are executing.

Article 120.- Other types of Public Control.

The mentioned controls will not affect, limit nor restrict other forms and systems used to administratively audit, supervise and monitor, functions which, according to their respective capacity, correspond to the Office of the General Comptroller of the Republic, the Council of Public Companies, or to other authorities, according to their legal competence.

TITLE III

TRUSTS AND FIDUCIARY MANDATES FOR THE DEVELOPMENT OF PROJECTS FOR PUBLIC INFRASTRUCTURE AND SERVICES

Article 121.- Scope.

The present title regulates the Trusts or Fiduciary Mandates in which the institutions and entities of the State act as a Trustee for the development of projects with public and private participation.

Article 122.- Trustees

According to Article Number 19 of Law Number 921/96 on "Trust Companies", only banks, financial institutions and the trust companies that have been specially authorized by the Central Bank of Paraguay may act as a Trustee.



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Under no circumstance may the Trustee take the position of Trustor or Beneficiary in a trust type business.

Article 123.- The duties of the Trustee.

The obligations undertaken by the Trustee are to be interpreted as of means and not as of results. For this reason, it is the duty of the Trustee to employ all its effort, knowledge and diligence in order to reach the set goals prescribed in the constitution of the trust company.

Article 124.- Public Trustors.

Public Trustors are Institutions and Entities of the State, according to what is established in Article Number 2, Item 2), literal Item g) of Law Number 5102/2013 on "Investment promotion in public infrastructure, expansion and improvement of goods and services provided by the state"

Article 125.- Constitution of Trust Companies.

The structure and constitution of trust companies in which Institutions and Entities of the State act as Trustors for the development of projects for the Public-private Partnership Program will be governed by the regulations contained in Articles 45, 46, 47 and concurrent articles of Law Number 5102/2013, by Law Number 921/96 on "Trust Companies" and its regulations, by this decree, and by others that the Central Bank of Paraguay issue.

For the constitution of common investment funds and securitization trusts under Law Number 5102/2013, a prior authorization by the Superintendence of Banks is not required, according to what is established in Articles 6 and 47, Item 69 of Law Number 5102/2013.



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The trustee, once the trust company has been constituted and formalized, will submit all the documentation concerning the improvement of the business to the Superintendence of Banks within 30 (thirty) consecutive days counted from the day that the constitution of the Trust has been endorsed according to the Regulations established by the Central Bank of Paraguay for that purpose. Such documentation must accredit compliance with the requirements set forth by Law Number 5102/2013, Law Number 926/96 on "Trust Companies," their regulations and the conventions of the Stock Market accordingly. The non-fulfillment by the Trustee of what is prescribed in the present article will make the Trustee liable to the penalties provided in Law Number 489/95 on "The Charter of the Central Bank of Paraguay."

Article 126.- Contracts for Trust Companies.

The contracts for Trust Companies, besides the requirements set forth in Law Number 5102/2013, must contain at the least the requirements established in Law Number 921/96 and its regulation, especially in what refers to objectives, rights, obligations, prohibitions, responsibilities, resignation of the contracting parties, extinction, contract settlement, resolution of disagreements, as well as additional information contained in the standards for trust companies established by the Central Bank of Paraguay.

Furthermore, the Trustees, besides the obligations laid down in the law and those expressly agreed upon in the contract for the trust company, shall comply with the professional obligations corresponding to a trust company which is based on a practical and effective principle of good faith.



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Article 127.- Supervision.

Notwithstanding the legal attributions to regulate and monitor that other Government agencies have, the Central Bank of Paraguay, through its Superintendence of Banks, within the frame of its entitlements, will supervise the operations and the management of the Trustees as they fulfill their obligations under the contract for a trust company, according to what is established in Article Number 45 of Law Number 5102/2013, to the entitlements granted by Articles Number 11 and 21 of Law Number 926/96 on "Trust Companies," and to Law Number 861/96 on "General Law for Banks, Financial Institutions and other Financial Entities."

Article 128.- Supervision and Control by the Comptroller of the Republic.

The Office of the General Comptroller of the Republic will control compliance with regulations by the Institutions and Entities of the State, when they act as Public Trustees, according to the entitlements granted by Law Number 276/94 on "Charter and Functions of the General Comptroller of the Republic, and according to Article 45 of Law Number 5102/2013.

Article 129.- Reports.

The Trustees shall report to the Ministry of Finance and to the Central Bank of Paraguay with the frequency, contents, and scope that the Central Bank of Paraguay require for trust companies, according to Law Number 5102/2013, and they shall attach the corresponding documentation; to this effect, the Trustees must submit the basic Accounting Balance Sheets of the trust companies within 10 (ten) consecutive days after the end of each month.

Similarly, the Central Bank of Paraguay, within the frame of its entitlements, may request information that it deems necessary concerning the Trustee and the Trustor, covering the operations that the Trustees are performing as fulfillment of their contract obligations to the trust company.



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Article 130.- Assets or Rights that are object of the Trust.

Any assets and/or rights that are in the public domain, unless they were unaffected, cannot be object of the trust. Nevertheless, they may be object of contract under fiduciary mandates, because the assets in public domain object of fiduciary mandates do not entail the transfer of ownership.

The allocation of assets to be held in trust according to Article Number 46 of the Law will be carried out by the regulations set forth in Law Number 921/96 on "Trust Companies," and by its regulations, according to what is established in Article 47, Item 4) of the Law.

To all legal effects, the assets and/or rights that are transferred to the autonomous equity of the trust will be deemed attached only and exclusively at the fulfillment of the objectives set by the Trustor under the Trust contract.

According to the autonomy of the trust assets, such assets do not belong to the common pledge of the creditors of the Trustee nor do they belong to the assets of its liquidation. Such assets only guarantee that the obligations contracted by the Trustee in order to achieve the goal set by the Trustor in the constitution of the Trust; therefore, the trustee shall always acknowledge this restriction on the assets as long as it performs its administrative functions.

Article 131.- Public selection of the Trustee.

In the processes of selection of Trustees, in which Institutions and Entities of the State act as Trustors, the principles of competency and equality will be applied as they are prescribed Article 2, Item 1), literal Item e) of Law Number 5102/2013, and as they are prescribed in the present Chapter, as deemed appropriate.



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In the public processes of selection, all of the entities and trust companies which were duly authorized by the Central Bank of Paraguay--according to what is laid out in Law Number 921/96 on "Trust Companies," and in its regulations--may submit their request to participate and conduct trust operations and business deals as Trustees.

The Contracting Authority must notify the Entity for Private-Public Partnership Projects about the calls for selection, about their awarding decisions when the pertinent, competitive selection process has ended, and about any addendum that may correspond. The notifications must be made up to 5 (five) business days prior to the dates of opening the pre-qualification stage, of the calling stage, of the approval of bids stage, and/or of the awarding resolution stage.

When selecting a Trustee, the Contracting Authority shall consider all of those criteria that will lead it to choose the Trustee with the best aptitude to exercise due diligence taking into consideration the magnitude and the complexity of the trust endeavor. The following criterion must be met, among others: the experience of the Trustee, its capacity in terms of financial, human, technical, and technological resources, as well as other criterion that may contribute to the proper administration and/or utilization of the trust property. Under no circumstances may the selection parameter be considered solely the lowest price presented when selecting a Trustee.

The calls for selection, the tender documents and the conditions, and the awarding of the bidding calls or the pertinent competitive selection shall be published on the web page of the Contracting Authority. Furthermore, they need to be published on the official web page that is established in this Decree, according to what is prescribed in Article 15 of Law Number 5102/2013.



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Article 132.- Resources allocated to trust businesses.

The resources allocated to trust businesses shall be deposited in the account of the trust business which had to have been established for that purpose. This account shall be separated from other accounts that belong to the Trustee himself/herself, according to what is established in Article 47, Item 5) of Law Number 5102/2013.

Article 133.- Accounting Records of the Trustee.

The accounting records of the Trustee shall be subject to what is set forth in Articles 34 and 35 of Law Number 921/96 on "Trust Companies." According to what the scope of and to what is described in the mentioned articles, the Trustee must prepare, for each trust business that he/she has endorsed, the following basic financial statements: Statement of Financial Position or General Balance Sheet; Profit and Loss Statement or Income Statement.

Furthermore, the accounting records of the Trustee shall be subject to the general rules that are prescribed by the Superintendence of Banks in exercise of its powers, according to Article 36 of Law Number 921/96 on "Trust Companies."

Article 134.- Treatment of the Trust for tax and budgeting purposes.

The trust businesses that were established by the Institutions and Entities of the State in order to develop projects under the Public-private Partnership Program, or other businesses in which the State participates for the same purpose, shall have the same fiscal treatment as that prescribed in Law Number 921/96 on "Trust Companies," and in Law Number 125/91 "Law that establishes the New Tax Regime, as well as in their modifications and their regulations. These trust businesses may be deemed as of public utility and shall be treated as of first priority by the National Government.



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The Contracting Authority shall adopt provisions leading to the establishment of trusts of which they are part of in coordination with the Ministry of Finance.

TITLE IV

PRIVATE INITIATIVE

Article 135.- **Competence to handle private initiatives.**

The Entity in charge of Projects under the Public-private Partnership Program shall be entitled to receive, to investigate, and to substantiate private initiatives for the development of Projects under the Public-private Partnership Program, only when the projects comply with what is established in Article 48 of Law Number 5102/2013.

The provisions of this Title shall be applied in conjunction with what has been established in Chapter III, on "Previous Structuring and Assessment," and in Title II, Articles 31 and 38, of this Decree.

Article 136.- **Project Contents.**

Every project under the Public-private Partnership Program which is promoted by a private initiative must be submitted before the Involved Entity of the Public-private partnership according to the methodology and to the Form for the Submission of Private Initiative Projects, which shall be drawn up by the Involved Entity itself.

The presentation must be accompanied by all the information that is needed to evaluate the project at the level of pre-feasibility, and it must contain at the least the following information:

- a) Documents that attest to the legal, technical and financial capacity of the proponent, and all of the background information that accredits the legal existence and validity and the entitlements of the heads and principals.



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- b) Identification of the Contracting Authority which is involved in the process.
- c) The Proposal by the private proponent which identifies, on the one hand, the unmet need, the problem to be solved, or the potential that is hoped to be developed with the project, on the other hand, the characteristics of the possible solution that the proposal promotes, as well as the main benefits and costs and, both, socio-economical and private parameters for the initial evaluation that will allow recommending decisions on the project.
- d) Market, technical, risk, competitiveness, organizational, economic and financial analyses, as needed.
- e) Assessment of the requirements of the State for support, if there were any in the periods of fiscal years in which the Contract will be executed, as well as the obligations that the State will undertake originated in the Contract, according to what is established in the Law.
- f) Social and environmental impacts of the project, in which the directly affected population is clearly identified and establishing the mitigating measures to face the damages that may be caused by the Project, as needed.

To the effects of the prioritization foreseen in the second-to-the-last paragraph of Article 48 of the Law, a private initiative can only be considered complete and rated first-class when the application contains all the information mentioned in the present article.

Article 137.- Presentation and evaluation of the pre-feasibility assessment.

The presentation of the pre-feasibility assessment will be delivered in an original document and two copies at the reception desk of the Involved Entity of Public-private Partnership Program, in which the date and time of reception will be recorded.



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Each of the mentioned background shall be duly supported and instituted, indicating the information sources that were used.

The Public-private Partnership Unit shall review the project in its formal aspects within ten (10) days of its submission. In case that the presented documents were found to be incomplete, or that more information were necessary, the proponent needs to submit such documents and instruments within five (5) days of the reception of notification of the request. In case the mentioned documents are not presented within the specified period, the presentation shall be deemed not made.

Once it has been determined that the presentation meets all the requirements laid out in this Decree, the Public-private Partnership Unit shall record all the information for identification of the project in the Public Registry of Projects under the Public-private Partnership Program, and submit a copy of the proposal to the corresponding Contracting Authority for its evaluation with the Involved Entity within two (2) days.

At the moment of assessing the desirability of acceptance of the project, it must contain, among other factors, innovative practices in the economic sector to which the project corresponds and innovative measures in the execution of the proposal or in the traditional public establishment of the works and services. Preference will be given to private initiatives that will be developed with assets of the private domain of the State.

Another consideration to be taken into account, as per the recommendations of the social and financial evaluation of the project, is whether it is more convenient to just carry out the project as a traditional public contracting project instead of developing it as a project under the Public-private Partnership Program.

The Public-private Partnership Unit shall submit the background documents along with its opinion to the Ministry of finance, who is going to determine the suitability of the project from the economic and fiscal points of view.



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The Ministry of Finance shall verify that the sum of pecuniary contributions and of the amount of future income that the Contracting Authority renounces to does not exceed ten percent (10%) of the total Investment that is necessary for the full provision of services to start for which purpose the asset is intended.

The evaluation process shall be performed by the Public-private Partnership Unit, the Contracting Authority, and the Ministry of Finance within sixty (60) days as established in Article 49 of Law Number 5102/2013. This term shall be computed from the day following the submission of the copy of the presentation of the private initiative proposal by the Public-private Partnership Unit to the Contracting Authority. The term may be extended by a duly supported pronouncement made by the Public-private Partnership Unit, which should also state the length of the extension.

The Contracting Authority together with the Public-private Partnership Unit, and based on the available background information, shall issue a formal statement about their interest on the private initiative proposal, or, alternatively, these institutions shall reject the proposal within the term mentioned above.

All costs incurred for the pre-feasibility assessments for the projects shall be borne by the proponents.

Article 138.- Presentation and evaluation of the Feasibility assessment.

The proposer of the private initiative that has been selected shall present the assessments of feasibility to the Public-private Partnership Unit. The term to submit the assessments of feasibility shall be set by the Contracting Authority in coordination with the Public-private Partnership Unit. The term may be extended by a duly supported pronouncement made by the Public-private Partnership Unit, which should also state the length of the extension.



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The assessments of feasibility to be presented by the private proposer shall be prepared according to the methodology and scope that the Public-private Partnership Unit establishes. At the least, it should contain the same documents that are requested for the public initiative projects.

According to Article 49, Item 4) of the Law, the Public-private Partnership Unit shall have a time frame of one hundred and twenty (120) days to analyze the assessments and to issue a statement on the initiative, or to request modifications. The analysis shall be made in coordination with the Contracting Authority. Furthermore, within that term and according to what is established in Article 10, Item b) of the Law, it is necessary to have a statement of the Ministry of Finance about the proposal, for which the Public-private Partnership Unit shall timely present all of the background information.

This term shall be computed from the time the private proposer submitted the assessments of feasibility to the Public-private Partnership Unit along with all the documentation requested by the Entity. The term may be extended by a duly supported pronouncement made by the Public-private Partnership Unit, which should also state the length of the extension.

In case the statement by the Ministry of Finance is favorable, the proposal shall be referred to the Executive Power for its review and eventual approval or rebuff.

Article 139.- About the reimbursement of expenses incurred by the proposer.

For the purpose of determining the costs to be reimbursed, the proposer of the private initiative that is selected shall present a budget containing the amount of expenses anticipated to be incurred while carrying out the assessments of feasibility.

The Contracting Authority, together with the Public-private Partnership Unit, will review and value the budgets that were presented, according to market standards, and shall primarily determine, within the term of twenty (20) days from the presentation of the budgets that are mentioned above, the amount



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of expenses to be reimbursed by the awarded offeror in case that the one who submitted the private initiative is not selected. The form, manner and term of the reimbursement shall be established in the tender documents.

Article 140.- Bonus in the evaluation of proposals.

The bonus to be granted to the proponents shall be lined up by the following scale:

- a) Projects whose estimated investments are included between twelve thousand five hundred (12,500) and one hundred twenty five thousand (125,000) minimum monthly wages for varied activities which are not specified in the Capital City of the Republic: will be awarded a bonus of three percent (3%).
- b) Projects whose estimated investments are included between one hundred twenty five thousand (125,000) and five hundred thousand (500,000) minimum monthly wages for varied activities which are not specified in the Capital City of the Republic: will be awarded a bonus of six percent (6%).
- c) Projects whose estimated investments exceed the equivalent to five hundred thousand (500,000) minimum monthly wages for varied activities which are not specified in the Capital City of the Republic: will be awarded a bonus of ten percent (10%).

The bidding process shall take place according to the norms that are established under the title Chapter IV of the Title II of the present Decree, once the Book of bidding terms and conditions have been drawn up by the Contracting Authority and approved by the Public-private Partnership Unit, and by the Ministry of Finance.



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Article 141.- Identification and Scope of the Public-private Partnership Program Projects.

For the purpose of applying Article 48, Item c) of the Law, within ten (10) days of the publication of the present Decree, the Ministry of Planning shall identify the projects that are to be included in the planning and that are to be driven by public initiative, and may ask the Contracting Authorities all the information that may be deemed necessary for that purpose. The report that the Ministry of Planning shall issue on the matter will be considered next by the Executive Power; the executive Power will then issue the corresponding Decree, after reviewing the remarks made by the National Economic Team.

The terms, contents, conditions and characteristics of each specific project shall be determined, detailed and specified in each case by a Decree issued by the Executive Power, in accordance to what is established in Articles 7 (last paragraph), 49 (paragraph 4), and 52 (last paragraph) of the Law.

Under no circumstances shall the Public-private Partnership Program contracts delegate to the Private Partner the responsibilities of the State in the following areas:

- a) The Police functions, traffic control, and the control of land, water and air transportation.
- b) The management and the provision of educational and health services at public establishments.
- c) The management and the provision of inmate custody, safety and security in prisons and jails.



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Article 142.- The use of electronic media.

The course of the proceedings in management, as well as administrative actions that are issued as the present regime is applied, may be made by information technology and by telematic means, according to the legal norms and regulations of government control that are in effect in the country.

Different concerned institutions may use the available electronic means to speed up and facilitate the performance of technical functions that pertain and that are deemed adequate, but always taking into practice the same safety conditions for the data, from their collection to their utilization.

Article 142.- Derogations

When any of the regulations that rule the contents postulated in the present Decree oppose this Decree, it is hereby derogated.

Article 144.- The present decree is endorsed by the Ministry of Finance and by the Ministry of Public Works and Communications.

Article 145.- Let this Decree be distributed to the corresponding departments, made public, and recorded in the Official Registry.

Exonerated waived excused exempt

Translation Note: The page bears three illegible signatures. There is also the seal of the Civilian Arm of the President's Cabinet, General Secretariat Office of the Directorate of Decrees and Laws of the Republic of Paraguay.