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GROWING EXPECTATION

There is plenty of interest in Argentina ahead of the imminent launch of the first infrastructure PPPs

During his campaign, President Mauricio Macri put special emphasis on the need to address an ambitious infrastructure development plan as the main driver of investment and employment and to finally reduce poverty.

In this context, Macri has driven several measures to achieve his ambitious idea; the main one being the approval of the Law N° 27.328 for the Contracts of Public Private Partnerships.

Published in the official gazette at the end of November 2016 and enacted in February of this year (Decree No. 118), the law has as its fundamental mission to provide a framework of legal certainty to investors, striving to maintain an adequate balance between the prerogatives of the state and the guarantees of the contractor. It aims to avoid the problems that occurred in the past, which led to the loss of credibility of Argentina's infrastructure sector and consequent litigation (both locally and internationally), higher financing and the reduction of investment projects.

For months, there have been rumors about which projects will be tackled under this modality of contracting. And although water projects, hydroelectric plants, trains (for example a train to the Vaca Muerta reservoir) and even hospital and prison facilities (in the province of Buenos Aires) have been discussed, it is only the projects on road infrastructure that appear as the most prompt and safe construction.

The delay of the procurement process is no different to what has happened in other countries, since the process of consolidation of this modality depends firstly on the organization of the P3 unit, which is the central body for the operation of this system (with the respective allocation of sufficient resources). But also the process requires the issuance of various regulations, manuals and guides on best practices. An official website is also needed on

which to post the relevant documents of each project, and finally all the areas involved must carry out their tasks within a framework of adequate harmony and efficiency.

Faced with so much expectation, it should be remembered that, as is well known, the success of a project of this nature will depend largely on the correct implementation of all previous steps of study and analysis provided by law and regulation.



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Within the government's National Plan of Transport and Infrastructure, with an investment of \$33bn for public and private investments for 2016-19, the first projects to be procured are expected to cover the construction, operation and maintenance of roads. Projects, expected to be launched this September, include the roads from 1-8, plus the Luján-Carlos Casares highway. These roads have been subject to previous concession contracts, with their original deadlines expired – except the latter, which expires in April 2018.

Although the projects are expected to be P3s, they will be tendered under the old law for

concessions. So it is yet to be seen if this will change or if the previous law will have a more flexible interpretation. The new legal framework provides sufficient flexibility to avoid conflicting situations that have been faced in the past, which resulted in successive and exhausting renegotiations.

For example: flexibility in the establishment of alternative financing (it is expected that the upcoming tenders will consider as a weighting factor the lower demand for contributions from public funds – in this case, the SISVIAL fund that is integrated with the resources collected by the diesel oil rate).

Also, the framework provides the legal guarantees for the investor that will facilitate (we will see to what extent) the financing. Some of the measures taken involve the limitation to the modifications that can be arranged on the contract; step-in rights; power to suspend execution of the contract if half breach; the need to provide in the contract the formulae of compensation in case of early extinction (in all cases) and restoration of the economic-financial equation; the provision of a Technical Panel for the resolution of controversies of a technical, interpretative or patrimonial nature; and, if applicable, the alternative of international arbitration.

It is expected, then, that in light of the advantages of this new legal framework, road concessions are to be a real success in the implementation of the P3 regime in Argentina. **P3**