

Legal security and the Public-Private Participation Regime in Argentina

 rdai.com.br /ojs/index.php/rdai/article/view/203

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DOI: <https://doi.org/10.48143/rdai/11.ez>

Palavras-chave: Administrative contracts, Public-Private Participation, Public Tender, Prerogatives, Guarantees, Legal security

I summarize

The Public Private Participation (PPP) contracts were introduced into the Argentine legal regime with the enactment of Law 27,328, sanctioned on November 16, 2016. This was the result of an important social consensus regarding the need to issue a regulation that allow a paradigm shift in administrative contracting. The law was regulated by decrees 118/2017 and 936/2017. This new regime, whose flexibility allows it to cover all types of contracting, is structured as an alternative modality to the other administrative contracts regulated in our legislation, tends to increase the effectiveness of public contracting, at the same time that it promotes the achievement of other objectives of public interest such as social inclusion, the creation of jobs and the protection of the environment, among others. This article delves into the analysis of the regime and in particular of those structural aspects through which it is intended to offer legal security to investors, contractors and the State, through the establishment of clear rules that give confidence to those interested in participating. of this type of hiring. Thus, it is explained that contracts must clearly establish their term of validity, the distribution of risks between the parties, the obligations of the contractor, the regime of exploitation and destination of the goods, the forms, modalities and opportunity of payment, the regime price review and penalties for breach of contract, among many other clauses. Likewise, emphasis is placed on the importance of clearly foreseeing the prerogatives of the Contracting State during the term of the contract, especially those of revocation and modification of the contractual clauses, establishing at the same time adequate mechanisms to keep the contractor harmless. In this sense, the clauses aimed at maintaining the economic-financial equation of the contract are essential. It also establishes a regime of patrimonial responsibility of the State more favorable for the rights of the contractors, than that foreseen for the rest of the administrative action. On the other hand, it explains how the selection of the contractor through bidding procedures or public tender - as provided by law - allows better satisfaction of the public interest. At the same time, The guarantees that the regime foresees are developed to ensure the payment obligations assumed by the contracting party, and in particular the role that the Public Private Participation Trust plays in this regard. Regarding the resolution of controversies, the two alternatives provided by law are analyzed: constitution of technical panels and settlement and / or arbitration mechanisms, with a special regime, aimed at granting the highest possible guarantees to

investors. Finally, the controls to which the regime is subject are detailed: the centralization of the regulatory framework is headed by the Undersecretariat of PPP, in turn, the contracts are subject to the contractor's powers of control and inspection, as well as the monitoring of the Bicameral Commission created for this purpose.

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Es abogado, egresado de la Universidad de Buenos Aires. Realizó un curso de postgrado en Derecho Administrativo en la Universidad San Pablo CEU de Madrid, España, y otro de Derecho Administrativo Económico en la Pontificia Universidad Católica Argentina. Es profesor adjunto de la materia Derecho Administrativo de la Pontificia Universidad Católica Argentina, y de la Universidad Nacional de Lomas de Zamora. Es profesor visitante de numerosas Universidades del exterior. Es miembro del Instituto de Derecho Administrativo de la Academia Nacional de Derecho y Ciencias Sociales de Buenos Aires. Es Director de la Revista Iberoamericana de Derecho Administrativo y Regulación Económica. Es Secretario de la Asociación Iberoamericana de Estudios Regulatorios (ASIER). Es Codirector de la Diplomatura de Contratos de Participación Público Privada y Financiamiento que organiza la Procuración de la Ciudad de Buenos Aires, la Secretaría de Participación Público Privada de la Nación y el Colegio de Abogados de la Ciudad de Buenos Aires. Es socio del estudio jurídico CASSAGNE – Abogados, en el marco del cual asesora tanto al sector privado como al sector público. Ha sido Director y Secretario del Colegio de Abogados de la Ciudad de Buenos Aires (2015-2019). Ha sido corredor de la ley de Participación Público Privada en el ámbito nacional, y en distintas jurisdicciones. ezequiel@cassagne.com.ar

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