

(HEADING OF THE LEGISLATURE)

LAW No. 5102

INVESTMENT PROMOTION IN PUBLIC INFRASTRUCTURE,
EXPANSION AND IMPROVEMENT OF GOODS AND SERVICES

PROVIDED BY THE STATE

THE CONGRESS OF THE PARAGUAYAN NATION HEREBY ENACTS

THIS LAW

(In the event of discrepancy or misinterpretation between this translation written in English and the original law No. 5102 sanctioned in Spanish, the version in Spanish language shall prevail)

TITLE I

PURPOSE AND PRINCIPLES

Article 1 - Purpose.

This Law seeks to establish standards and mechanisms to promote, through public-private partnership, investments in public infrastructure and in the provision of services intended or complementary to such infrastructure, as well as in the production of goods and provision of services corresponding to the agencies, entities, public companies and societies in which the State is party.

To this end, the Act provides the legal figure of public-private partnership contracts, includes the figure of private initiative and regulates the use of trusts for the purposes set out in this Law.

Article 2 - Principles and definitions.

1. All actions relating to this Law shall observe the following general principles:

- a. State supervision and control:** The State has jurisdiction and powers of planning, control, punishment, regulation, supervision and monitoring of the implementation of the contracts subject to this Law;
- b. Transparency and accountability:** Information on contracts regulated by this Law shall be made public, including acts involving fiscal commitments by the State and with effects on users;
- c. Social profitability:** Every project undertaken under the scope of this Law shall respond to the realization of the common good in the public interest, by clearly setting the overall objectives and benefits that the State expects to receive. The State shall define general criteria for social profitability, in order to evaluate each project prior to its implementation;
- d. Economic efficiency:** The contracts under this Law should be structured so as to generate efficiency in the management or use of infrastructure and services. The mechanisms of public-private partnerships can only be used when, through economic and technical studies, they are

found to be an efficient, effective and sustainable option for the construction of the work and the provision of services;

- e. Competition and Equality:** The selection of the private participants will be made through transparent and competitive procedures, respecting the principles of nondiscrimination, equality and wide publicity to promote the participation of the greatest number of economic agents and select the private participant who can provide a good or service in the most efficient and effective manner;
- f. Legal certainty:** Contracts shall establish the regime of rights, obligations and responsibilities of the parties, which may be modified in accordance with applicable law and contractual framework;
- g. Temporality:** A contract shall provide for a maximum term which, including all extensions, shall not exceed thirty (30) years, unless exceptional extensions are provided in the cases as specified in Article 34 of this Law. Where no deadline is specified in the contract, the maximum deadline hereby established shall be deemed to apply;
- h. Fiscal responsibility:** For investments made through contracts subject to this Law the payment capacity of the State to meet financial commitments arising from the implementation of projects, and proper accounting of enforceable and contingent commitments shall be taken into consideration, within the limits established by the laws; and
- i. Environmental Sustainability:** The contracts under this Law must be designed and developed considering the required environmental standards and general regulations on the subject.

2. Definitions:

For the purposes of this Law, the following definitions shall apply:

- a. State Agencies and Entities:** These are all public institutions defined as such under the national law, based on their legal status;
- b. Public-private partnership contract:** The contracts regulated under Title II of this Law, under which the Contracting Authorities participate with private legal entities in an investment project related to the object of this Law, through a long term contractual legal relationship, with a distribution of covenants, risks and benefits between the parties;
- c. Private Participant:** The private legal entities involved in a public-private partnership project.
- d. Contracting Authority:** The State agencies and entities, as well as companies and partnerships with State shareholding participation, with competence to enter into public-private partnerships;
- f. Private initiative proponent:** Is the person submitting a private initiative application pursuant to this Law; and
- g. Public trustors:** The State agencies and entities constituting or involved in trusts or trust fund projects to develop public-private partnerships.

TITLE II

PUBLIC-PRIVATE PARTNERSHIP CONTRACTS

Chapter I

Scope and Legal Regime

Article 3 - Scope.

The public-private partnership contracts may include infrastructure and service management projects, including road, rail, port, airport and waterway projects, as well as projects for dredging and maintaining the navigability of rivers, social infrastructure; electrical infrastructure, improvement, equipment and urban development projects, water supply and sanitation, among other investment projects in infrastructure and public utility services. They may also comprise the production of goods and provision of services that are corresponding to agencies, organizations, companies and societies in which the State is party.

The commitments of the private participant shall be established in the contract and shall include at least the total or partial financing of investments, as well as the operation and maintenance of infrastructure and its associated services, in addition to any of the following:

- a. Design and construction of infrastructure and the equipment if necessary, or
- b. Construction or repair and improvement of infrastructure and equipment that is necessary or appropriate;
- c. In the case of public companies and limited liability companies with State participation, the management of services in charge of them.

Projects in which investment expenditures exceed, in present value, the amount equivalent to 12,500 (twelve thousand five hundred) minimum monthly wages for various activities not specified if the capital of the Republic, can only be conducted under the regime of public-private partnership, based on the provisions of this Law.

Article 4 - Distribution of commitments, risks and benefits

Public-private partnership contracts must expressly state, for specific and agreed situations, the risks, benefits and commitments respectively assumed by the State and the private participant.

Article 5 - Legal regime.

Public -private partnership agreements shall be governed by the terms and conditions of the contract, the provisions of this Law and the regulations issued by the Executive and other statutory provisions as applicable.

Article 6 - Related Administrative actions.

Authorizations, permits, licenses, approvals or similar complementary actions, including natural resource concessions regulated under special legislation that need to be obtained to perform certain activities under a contract for the development of a proposed public-private partnership should be processed in advance, concurrently with or after to the signing of such contract, in accordance with the circumstances of each case and the legal framework applicable to each procedure.

Chapter II

Institutional Framework

Article 7 - Competent authorities.

Contracting Authorities, within the scope of their respective powers, shall develop projects through public-private partnership contracts under this Act. Contracting Authorities may jointly develop projects of public-private partnership, in which case, they shall hold the relevant agreements or contracts for that purpose, in accordance with the regulations.

The Ministry of Public Works and Communications (MOPC) shall be the competent public entity for the development, selection, award and execution of public-private partnership projects in the field of transport and communication channels, including dredging and signaling of rivers and airports. In case of decentralized entities that have responsibilities related to those projects, the Ministry of Public Works and Communications (MOPC) shall assume the powers necessary for the conclusion of the contract and its performance, replacing such authorities in the exercise of those powers.

The decision to promote a project through the arrangements provided for in this Law requires the approval of the Executive, in accordance with the procedure established in the regulations. Prior to this approval, assessment procedures provided for in this Law and its regulations must be made.

Article 8 - Powers of the Contracting Authority.

The Contracting Authority, under the coordination of the Public-Private Partnership Project Unit created pursuant to the following article of this Law, will be responsible for the structuring, selection, award and conclusion of the public-private partnership, and the supervision of its proper execution and fulfillment of the obligations assumed by the private participants. All of the above without prejudice to the powers of regulation and control that apply to other State agencies in accordance with their original powers and those which are conferred by this Law.

In order to develop public-private partnership projects, Contracting Authorities shall coordinate with the Public-Private Partnership Project Unit, the structuring of the projects, the preparation of specifications and evaluation of the tenders through the procedures and mechanisms established in the regulation. They may also instruct the Public-Private Partnership Project Unit to exert the powers necessary for the execution and performance of contracts established by this Law, by mandate or delegation agreements. The regulations shall determine the conditions under which these agreements shall be governed.

During the contract execution stage, the Contracting Authorities must first notify the Public-Private Partnership Project Unit of the following actions:

- a. Unilateral and consensual contractual modifications pursuant to Articles 32 and 33 of this Law;
- b. Applications for compensation raised by the private participant for any reason, including those provided in Article 34 of this Law;
- c. The imposition of sanctions on the private participant;

- d. The suspensions of contracts under Article 35 of this Law;
- e. Anticipated termination of the contract, before making the decision; and,
- f. Any other circumstance required in the regulations of this Law.

Article 9 - Public- Private Partnership Project Unit.

The Public-Private Partnership Project Unit as a specialized agency of the Technical Secretary of Planning is hereby created.

The organization of this agency will be established in the regulations under this Law, and the resources for its implementation and strengthening will be included in the General Budget Law of the Nation.

The functions of the Public-Private Partnership Project Unit are:

- a. To promote and coordinate with relevant authorities and public bodies the plans, policies and standards for the development and functioning of the arrangements for public-private partnerships;
- b. To coordinate and promote public-private partnership projects with the Contracting Authorities, and advise on the structuring, selection, award, execution and performance of public-private partnership contracts;
- c. To identify opportunities and mechanisms to promote public-private partnership between the Contracting Authorities to provide public services or activities of general interest;
- d. To promote public-private partnership projects between investors and potential funders and the community in general;
- e. To develop general bidding terms and conditions and advise the Contracting Authorities in the preparation of the individual sheets and the selection process of bidders;
- f. To manage the Public Registry of public-private partnership projects and private initiatives, under the conditions set under this Law;
- g. To post on the website which defines the regulatory information related to projects, the contracts and their execution, according to the records submitted by the Contracting Authorities;
- h. To maintain a broad public information policy and accountability for the Paraguayan society, in the scope of its authority; and,
- i. To carry out other duties or responsibilities under the Law or the Regulation.

Article 10 - Ministry of Finance.

The Ministry of Finance shall have the following functions in the context of structuring and development of projects carried out under public-private partnership contracts:

- a. To assess the risk allocation and fiscal impacts under the study phase and preparation of draft contracts for public-private partnerships;

- b. To issue prior binding opinions on the public-private partnership projects, on the risk sharing and fiscal impacts, and on the feasibility of the implementation of the projects;
- c. To ensure fiscal consistency of the quantifiable enforceable and contingent payments of these projects, subject to the terms of this Law;
- d. To keep track of the quantifiable and contingent payments involving the approval of each project;
- e. To evaluate and report for each General Budget Law of the Nation, the total amount authorized to transfer to the liquidity fund each year as quantifiable enforceable and contingent payments to private participants on the basis of the investment, according to the existing contracts when it is involved so;
- f. To verify that the Contracting Authority includes the corresponding allocation of the resources needed to meet the obligations arising from these projects in each bill of the General Budget of the Nation, as the case may be;
- g. To conduct an external audit of the enforceable and contingent liabilities of contracts governed by this Law at least every four (4) years;
- h. To hire an international audit to assess the quality of the services covered by public private partnerships, and submit the resulting report to the Presidency of the Republic;
- i. To issue binding technical opinions in the areas of its competence, based on the commitments and fiscal risks for the Financial Administration of the State, on:
 1. The bidding terms and conditions prior to approval;
 2. The contracts and amendments prior to their subscription;
 3. The applications for compensation raised by the private participant for any reason;
 4. The anticipated termination of the contract, before taking the decision; and,
 5. Any other circumstance that might affect state resources.
- j. Other powers conferred by this Law.

The deadlines for issuing opinions will be established in the regulations.

Article 11 - Guarantee and Liquidity Trust Fund for Public-Private Partnership Contracts.

A guarantee and liquidity trust fund is hereby created to meet the obligations arising from quantifiable enforceable and contingent commitments that might create an obligation for the State and the costs that correspond to the settlement of disputes, through the subscription of public-private partnership contracts. The trust shall be financially administered by the Financial Development Agency in a separate patrimony, pursuant to the provisions under Law No. 921/96 "TRUST OPERATIONS" and its regulation. The State, acting as trustor, shall act through the Ministry of Finance.

The regulations shall establish the mechanisms for the implementation of this fund.

The fund shall maintain a minimum percentage of 10% (ten percent) of accrued quantifiable contingent liabilities set forth in Article 14 and 100% (one hundred percent) of enforceable liabilities for the next calendar year. The regulations may provide different percentages of guarantees for quantifiable contingent risks, according to the particularities of each project.

The fund's resources may come from, among others:

- a. A State contribution, which shall be constituted from the resources provided in subsection a, of Article 3 of Law No. 4758/12 "CREATION OF THE NATIONAL FUND OF PUBLIC INVESTMENT AND DEVELOPMENT (FONACIDE) AND THE FUND FOR EXCELLENCE IN EDUCATION AND RESEARCH" not committed to funding running programs and projects. This contribution will be gradually integrated up to a maximum of 25% (twenty five percent) of the resources of the National Fund for Public Investment and Development (FONACIDE) corresponding to the National Treasury received in the year of enactment of this Law. The General Budget Law of the Nation shall include a budget destined to net replacement of the fund's amounts that would have been used in the previous fiscal year to maintain this State contribution;
- b. A percentage of the contributions resulting from payments to private participants made to the Contracting Authority under the terms of the public-private partnership contracts as set out in each case, in accordance with Article 24, paragraph e) of this Law; the percentage to be allocated to this guarantee and liquidity fund will be defined in each case by the Executive;
- c. Contributions resulting from payments made by private participants to the Contracting Authority under the terms of the public -private partnership contracts related to surpluses of projects or as stated in each case;
- d. Contributions from other entities;
- e. Return obtained by the administration of the fund's resources; and
- f. Fines levied on private participants under the penalties provided in this Law, its regulations and the corresponding contracts.

In case that the fund cannot cover all of the liabilities, the Ministry of Finance will implement the relevant legal and administrative mechanisms for each case.

Resources transferred to the fund under this Law shall not be returned to the Treasury, but they shall remain within the fund affected and shall continue destined to its objectives for the following fiscal years.

Payments to be made with the fund's resources shall be governed by Law No. 921/96 " TRUST OPERATIONS" and shall not be subject to the provisions of Law 1535/ 99 " STATE FINANCIAL MANAGEMENT". Payment schedules must be provided by the Ministry of Finance to transfer resources.

This trust will have the same tax treatment under the Trust Operations Law and its regulations.

The Finance Development Agency, as trustee, shall receive a fee for the administration of the Trust patrimony, which shall be agreed with the trustor corresponding contract under the Trust and in accordance with the guidelines laid down in the respective regulations.

Article 12 - Percentage assigned to departmental and municipal governments.

2% (two percent) of the payments provided for in Article 24, paragraph e) of this Law in the cases specified in the contracts, will be allocated to departmental governments and municipalities affected by the projects. For projects involving more than one municipality or governorship this percentage will be distributed in proportion to the areas concerned. These funds will be exclusively applicable to infrastructure.

7% (seven percent) of the resources provided in subsection a) of Article 3 of Law No. 4758/12 "CREATION OF THE NATIONAL FUND OF PUBLIC INVESTMENT AND DEVELOPMENT (FONACIDE) AND THE FUND FOR EXCELLENCE IN EDUCATION AND RESEARCH ", may be used for public-private partnership projects to be developed in the capital of the Republic and its metropolitan area related to the purpose of this Law.

The distribution and deposit of revenues described above will be made by the Ministry of Finance in coordination with other technical agencies of the State, in especially authorized bank accounts, without further formalities.

Article 13 - Public Registry of Public-Private Partnership Projects.

The Public-Private Partnership Unit of the Ministry of Planning shall be responsible for keeping a public registry of all projects under execution or that had been executed in the form of public private partnerships, including private initiatives. The Registry shall be public, and permanent access to the information by electronic means shall be guaranteed.

Article 14 - Fiscal commitments arising out of public-private partnership contracts.

The Ministry of Finance shall issue the accounting rules for the assessment and registration of enforceable and contingent commitments. It shall also keep control of these commitments updated.

The resources generated by the operation of the infrastructure or the provision of public services in developing public-private partnership projects shall not be credited to the General Budget of the Nation, during the execution of the contract.

The accrued amount of quantifiable enforceable and contingent payments, net of contingent income, made by way of public- private partnership contracts, calculated at present value, may not exceed 2% (two percent) of the Gross Domestic Product of the previous year. Similarly, the assumed amount of quantifiable enforceable and contingent payments per year may not exceed 0.4% (zero point four percent) of the previous year's GDP. The Ministry of Finance shall review the appropriateness of these limits and, if deemed necessary, prepare the proposal for legislative reform.

For the purposes of the provisions of this Article and the other references made in that regard in this Law, "enforceable commitments" shall be deemed as the obligations of the State involving the private participant to pay a fee for performing the acts referred in the contract, including its amendments, while "contingent commitments" are potential payment obligations by the Contracting Authority in favor of the private participant, corresponding to the guarantees that the latter granted to improve the risk-return ratio of the project and to encourage private participation. For registration purposes, the quantifiable enforceable and contingent commitments shall be taken into consideration.

Article 15 - Transparency.

The Public-Private Partnership Project Unit must submit an annual report to the Executive and the Legislature detailing the transparency mechanisms and actions implemented in each of the projects, including the results and indicators for verification; the report shall also be submitted to the Comptroller General's Office and published on the official site to be determined by regulation.

The following must be disseminated in the official Web site referred to in the preceding paragraph:

- a. The calls and invitations to bid specifications, pre-qualification and any other selection procedure provided in this Law, and their corresponding addenda;
- b. Award decisions with the corresponding bases;
- c. The contracts and amendments;
- d. Early termination decisions; and,
- e. Any other information indicated in the regulation.

Competent authorities shall be responsible for providing the above information to the administrator of the Web site in the form and deadlines established in the regulations.

Chapter III

Structure and processes

Article 16 - Starting the process.

The process leading to the signing of a public-private partnership contract can be started automatically by the Contracting Authority itself or it may be originated from a private initiative under the provisions of Title IV of this Law.

Article 17 - Previous assessment.

Prior to the initiation of the procurement procedure, the Contracting Authority shall have the relevant technical, economic and legal analysis. Likewise, it must have the opinion of the Technical Secretary of Planning and the favorable opinion of the Ministry of Finance.

The regulations shall establish the scope, form and content of previous assessments, including, among others, the engineering, operational, commercial, economic, financial, legal, environmental, and economic and social impact aspects, as may be applicable to each case. The Contracting Authority must prepare an environmental and social assessment and value for money assessment of the project, in the form prescribed by the regulations.

Article 18 - Eligibility for contracts with the Administration.

Only national or foreign legal persons who fulfill certain basic conditions provided for this purpose in this Law, its regulations, and the bidding terms and conditions of each recruitment process shall be entitled to act as Private Participants of the Contracting Authority.

Article 19 - Incompatibilities.

The following cannot be bidders or Private Participants:

- a. The authorities and officials of the Paraguayan State, decentralized, self-governing or binational entities, departmental governments and municipalities, and/or relatives thereof to the fourth degree of consanguinity or second degree of affinity, in the Contracting Authorities; and companies with which they are linked due to the direction, management or dependence;
- b. Those who have acted as consultants hired by the Contracting Public Administration in the project implementation on which they intend to participate as potential bidders, provided that such participation may involve preferential treatment with respect to other potential bidders;
- c. People with pending legal proceedings for breach of contract with the State, provincial governments or municipalities, or who have been convicted of such cause within 5 (five) years prior to the call;
- d. Those who are in bankruptcy or insolvency proceedings; and
- e. Tax debtors.

The persons specified in the foregoing grounds shall not act as members of a bidder or contractor consortium, or subcontractor of one, either directly or through another entity controlled, linked or part of an economic unit with such entities.

Also, the above prohibitions apply to those individuals or entities who, for reasons of direction, management or other circumstances, can be presumed to be a continuation of or derived by transformation, merger, transfer or succession or otherwise, from those undertakings included in one or more of the grounds set out above.

Article 20 - Types of procurement procedures.

The selection of the private participants shall be by public tender procedures. Without limiting the foregoing, contracts may also be awarded through other competitive procedures to be regulated, provided that they are not contrary to the general principles of economy and efficiency, and transparency and equality. Competitive procedures applied may provide additional or intermediate stages such as pre-qualification procedures for interested parties or similar.

In any case, domestic and foreign persons who meet the provisions of this Law, its Regulations and the bidding terms and conditions may apply to the selection procedures.

Article 21 - Pre-qualification of bidders.

The Bidding terms and conditions may consider a stage for pre-qualification of bidders to select interested parties who meet uniform, objective and reasonable requirements, which may refer only to legal, financial or technical capacity, experience and results in other works commissioned in the past. The list of pre-qualified candidates shall be published on the website of the Contracting Authority.

Article 22 - Call.

The call for interested parties to participate in the competitive process is conducted within the deadline determined by the Contracting Authority, according to the characteristics of the promoted public-private partnership project. This period may not be, in any case, inferior to 60 (sixty) days prior to the receipt of bids.

The call will take place with sufficient publicity according to each case. For these purposes, the notice of the call must be published at least one (1) time in a national newspaper, and will be posted on the website of the National Information System on Public Procurement.

Article 23 - Evaluation of proposals.

In the instance of evaluation of the received proposals, the Contracting Authority together with the Public-Private Partnership Project Unit, in accordance with the stipulations of the Regulatory Decree, shall verify that they meet the requirements established in the rules of the competitive process, and contain sufficient elements to be adequately assessed.

For the evaluation, criteria that are clear, measurable and allow an objective and impartial evaluation of proposals shall be used. Systems involving the allocation of points to technical and financial bids, among others, may be used, determining the final score from the weight of each proposal, setting a threshold above which the technical proposals are to be deemed, the assessment of tenders is based on economic or financial factors.

Article 24 - Award and signing of contracts.

The award shall be decided according to the evaluation system defined through a default scoring system contained in the bidding terms and conditions, which must meet one or more of the following factors:

- a. Fees paid by users;
- b. Remuneration for services rendered to the State;
- c. Term of the Contract;
- d. State contributions to the bidder to supplement revenue from users;
- e. Payments offered by the bidder to the Contracting Authority of the State;
- f. Income guaranteed by the State;
- g. Partial or total score obtained in the technical grade;
- h. Score of other useful and necessary additional services;
- i. Total revenue for the Contract, calculated in accordance with the provisions of the bidding terms and conditions; and
- j. Other objective factors defined in the regulation.

The signing of the contract will be completed with the offeror awarded in accordance with the regulations and the basis of the procurement provisions set forth in this Law, at the place, date

and time promptly notified by the Contracting Authority, and once all regulatory and procedural instances have been met.

Article 25 - Appeals.

Interested parties may file an appeal against the decisions of qualification, prequalification and award before the Contracting Authority within five (5) working days from the date of the respective notification.

To this end, and as a condition of admissibility of the submitted appeals, the appellant shall offer the guarantees set forth in the bidding terms and conditions. In case of rejection of the appeal, such guarantees shall be executed by the Administration.

The Contracting Authority shall issue a justified decision on the appeal within fifteen (15) business days.

Suspension of procurement procedures or contract performance shall only be available where there is clear evidence of acts contrary to the law and provided that the suspension will not cause serious harm to the public interest.

Article 26 - Maintenance of supply and contract compliance guarantees.

Offerors shall provide guarantees of supply and maintenance as a necessary requirement to apply to the selection procedures called by the Contracting Authority, and a guarantee of contract performance as a necessary requirement to sign the respective public-private partnership contract, as defined in each case by the Contracting Authority.

Such guarantees may be offered in the form of deposits, guarantees, bonds, "stand by" letters of credit and insurance policies to be issued by an entity of the financial system duly authorized by the Central Bank of Paraguay in the terms and conditions set for such purposes in the regulatory bases and the corresponding competitive procedures for creation, updating, rebuilding, replacement, execution and withdrawal. Likewise, in regard to the contract performance guarantees, the regulation and such bases may provide the constitution of different and independent guarantees for the construction and services provision, which also may be progressive and/or regressive.

Article 27 - Specific purpose corporation and trust.

The bidder awarded with a project shall be obliged to constitute in the Republic of Paraguay, and within the period specified in the bidding terms and conditions, a corporation with whom the public-private partnership shall be celebrated, in which the awarded bidder shall be the majority shareholder in the percentage set out in the regulations.

This corporation shall be incorporated only for the purposes determined in the bidding terms and conditions, in accordance with the characteristics of the awarded works or services procured. It will last at least the duration of the contract term plus two (2) years and as long as the guarantee period of the works and services performed. The corporation's shares shall be registered.

Alternative or in addition to the obligation to incorporate a specific purpose corporation, the bidding terms and conditions may set the obligation that all resources to be managed in the project shall be managed by a trust composed of all present and future assets and liabilities

related to the project. The Contracting Authority shall have the power to require information as it deems necessary, which shall be directly delivered to the applicant by the trustee, at such times and terms established in the contract. Yields of private resources in the trust belong to the project.

Once the trust has been constituted, within three (3) working days, the fiduciary must report to the Ministry of Finance on behalf of the trustor and the beneficiary, the value of the managed resources through the trust and any other required information.

Chapter IV

General contractual regime

Article 28 - Economic regime of contracts for the development of public-private partnership projects.

The consideration of the private participant will be determined in each contract according to the type and characteristics of the proposed public-private partnership. Different forms of remuneration may be provided, such as granting the right to charge fees to users, public contributions or other sources of income. Compensation mechanisms may be related to the availability and levels of the service.

Public contribution may include proceeds from public revenue, project financing guarantees, guarantees of minimum income collection, tax exemptions provided for in the laws, contributions to the capitalization of special purpose corporations, loans, among others. The contract for the development of public-private partnership projects shall determine the conditions under which compliance such public contributions are submitted to, as well as those relating to any amendments or termination.

The resources generated by economic exploitation of the project are not considered expenditures of public resources.

Article 29 - Assignment and subcontracting.

The private participant may voluntarily assign the public-private partnership contract to a third party. The voluntary assignment, like the mandatory cases arising from special guarantees execution, includes the transfer of all rights and obligations of the contract.

The assignment can only be made to a legal person or group, which qualifies and meets the requirements demanded for bidders in the original contract, which is not subject to disqualification under the Law. The assignment shall require prior authorization of the Contracting Authority to verify the compliance with the requirements.

The private participant may also subcontract activities under its responsibility pursuant to the respective public-private partnership contract, whether principal or accessory, related, derived or complementary to it. Subcontracting does not involve the release of responsibilities to the private participant.

Article 30 - Goods affected to the development of public-private partnership projects.

In the development of these projects, under the circumstances of each case and the respective contracts, the private participant may use different types of goods, namely:

- a. Real property of the Contracting Authority or other public entities, existing or to be created or supplied during the contract term, for which the Contracting Authority gives the private participant the right to use, the latter being obliged to return them to the Administration at the completion of the contract; and
- b. Property owned by the private participant, existing at the time of signing the contract or to be created, or provided during the contract term, and that should be transferred to the Administration or removed from the project area at the end of the public-private partnership contract. In such cases, the contractual instrument shall determine the form of transfer or removal of goods, as appropriate.

Article 31 - Guarantees and insurance.

The contract will specify the guarantees, insurance or bonds that the Private Participant, in accordance with the Regulation.

Article 32 -. Unilateral modification of the contract for the development of public-private partnership contracts provided by the Administration.

The Contracting Authority may unilaterally modify the public-private partnership contracts for reasons of public interest, duly supported by technical advice. The modifications made to the contract under this prerogative should be appropriate and proportionate to the causes that motivate, and must respect, where possible, the nature of the contract and the economic and technical conditions contractually agreed.

In such cases, the Contracting Authority shall be obliged to rebalance the economic and financial conditions of the public-private partnership contracts, fully compensating the private participant for damages eventually resulting from the alteration of the equation.

The Regulations shall establish the maximum amount of investment that the private participant may be required to make under the provisions of the preceding paragraph, and the maximum period within which the Contracting Authority may order the modification of the project.

Article 33 - Mutually agreed modifications.

The Contracting Authority and the private participant may agree to modify the characteristics of the contracted works and services, in order to increase service levels and technical standards set out in the bidding terms and conditions, by signing the corresponding supplementary agreement. The parties shall respect, where possible, the nature of the contract and the economic and technical contractually agreed terms.

The Regulations shall establish the maximum amount of investment that the Contracting Authority and the private participant may jointly agree, and the maximum period within which the project may be modified.

Article 34 - Compensation for supervening events.

The private participant is entitled to compensation from the Contracting Authority, in case that the following types of unforeseeable and extraordinary events at the time of signing of the public-private partnership are verified, when such events cause serious harm to the private participant and substantially alter the financial and economic balance of the contract:

- a. Unilateral modifications to the public-private partnership decided by the Contracting Authority, within its powers and authority and based on public interests, pursuant to the provisions under Article 32 of this Law;
- b. Fortuitous events or force majeure, beyond the control of the private participant, provided that the right to compensation for these events is expressly provided for in the contract;
- c. Particular acts from the State producing direct effects on the public-private partnerships contracts;
- d. General acts from the State that producing direct effects on the public-private partnership contracts, provided that the right to compensation for these acts is expressly provided for in the contract; and
- e. Other events expressly provided for in the public-private partnership contracts that are not attributable to the private participant.

The compensation in these cases shall take place after verification of the aforementioned serious harm, and can be implemented through an extension of the contract term not exceeding ten (10) years, the variation of investment regime initially planned, the modification of the tariff regime, subsidy payments, among others, according to the scope, mechanisms and procedures provided for in the public-private partnership contracts.

Article 35 - Suspension of the contract.

The Contracting Authority may suspend the contract with just cause due to:

- a. Fortuitous events or force majeure duly accredited, in accordance with the provisions of the bidding terms and conditions and the contract; and
- b. Any other cause indicated in the bidding terms and conditions. Following the suspension of the contract, the Private Participant shall have a period equal to the period of delay or breakdown. Also, if so stipulated in the contract, the Private Participant may claim any compensation under the terms defined in such contract.

The suspension shall not exceed a period of 60 (sixty) days from the notification of the decision. This period may be extended once for a period of equal length.

The temporary suspension of the contract will not generate an additional liability for the Contracting Authority other to those stipulated in the contract.

Article 36 - Termination of the contract.

The public-private partnership contracts shall be terminated upon the following grounds:

- a. Due to the expiration of the stipulated period for its validity or its extensions;
- b. Unilaterally and early, due to the serious breach of the private participant of the Contracting Authority, in accordance with the provisions in the public-private partnership contracts, determined by final decision issued in accordance with the system of dispute resolution provisions in this Law;

- c. Due to redemption decided by the Contracting Authority, for reasons of public interest, without prejudice to any compensation that may correspond, under the terms provided in the regulation and the relevant public-private partnership contract;
- d. Due to the impossibility of performance of the public-private partnership contract by the private participant as a result of measures taken by the State;
- e. Due to bankruptcy or insolvency proceedings of the private participant;
- f. On the occurrence of any cause that might impede the private participant to comply with its obligations;
- g. For mutual agreement between the Contractor and the private participant; and
- h. In other cases expressly provided for in the public-private partnership contracts.

Article 37 - Termination for Serious breach of the Private Participant.

The declaration of a serious breach of the obligations of the Private Participant shall be applied for, based on any of the grounds set out in the contract or the bidding terms and conditions, by the Contracting Authority at the instance of dispute settlement under the contract.

The declaration of breach shall entitle to the execution of the guarantees set out in this Law, its Regulations, and contract specifications.

Article 38 - Funding and special guarantee.

The Private Participant may finance the development of public-private partnership projects, through the modalities, instruments and financial transactions recognized and regularly used in national or international financial markets. For the benefit of its creditors and to ensure obligations directly related to the development of the corresponding public-private partnership contract, it may constitute a special guarantee consisting of a pledge or creation of collateral trust in respect of rights arising from the public-private partnership contracts, including future cash flows generated by the project, and the shares of capital stock of the corporation acting as private participant.

In case of breach by the private participant to its creditors holding such guarantees, they may execute them, in direct and extrajudicial manner, through regulatory or contractual mechanisms.

Alternatively, creditors holding such special guarantees may ask the Contracting Authority to proceed to the unilateral termination of the public-private partnership for breach of the private participant, in order to exercise their rights in the context of the termination of that contract.

Article 39 - Situation of creditors holding special guarantees in case early contract termination.

Prior to the early termination of the contract for the development of a proposed public-private partnership arranged by the Contracting Authority for reasons attributable to the private participant, the latter may offer creditors holding such special guarantees an option to continue with the contract compliance in the above mentioned terms.

In such cases, the successor to the private participant to be considered acceptable by the Contracting Authority must timely certify the compliance with requirements for bidders on the basis of the competitive procedure used for the award of the contract public-private partnership.

Article 40 - Attribution of competence in monitoring and sanctioning.

The Contracting Authority shall be the competent authority to monitor compliance with the obligations assumed by the private participant, and the imposition of sanctions for non-compliance, without prejudice to the functions of regulatory agencies that have jurisdiction over the contracted service. Controls to be exerted by the Administration will cover the technical, operational, legal, economic, financial, and accounting aspects, as provided in the regulations and the contract.

Management will have broad powers of control and may use different instruments for the exercise of such functions such as reporting requirements, audits, performance evaluation, inspections, surveys, and statements from witnesses.

Chapter V

Dispute settlement, claims from users

Article 41 - Dispute settlement.

For the settlement of disputes arising in connection with the interpretation, implementation, enforcement, development and/or termination of public-private partnership contracts and that cannot be settled by negotiation between the parties, they may submit their disputes to arbitration of law, as they relate to issues of private law.

To this end, the contract shall regulate aspects such as: the corresponding procedural instances, the requirements at each stage, the integration of decision-making bodies where appropriate, and the effectiveness of decisions, opinions and awards issued promptly, without prejudice to the provisions issued by regulatory means.

Technical or economic discrepancies arising between the parties during the execution of the contract shall be subject to the consideration of a technical panel of experts in the field of dispute, at the request of either party.

Article 42 - Claims from users.

Each claim raised by a user, in connection with the provision of services pursuant to a public-private partnership must be served by the private participant, who must solve it in a reasoned manner within a period of 15 (fifteen) days, from the date of submission. The Contracting Authority shall instruct the private participant about the procedure and deadlines for the consideration, registration and response of different complaints, requests and queries submitted by users, pursuant to the rules established in the Regulations.

In case of lack of timely or satisfactory decision by the private participant, the Contracting Authority shall attend the claims from users submitted against the private participant, and shall issue a decision, without prejudice to the right of the user to perform the legal actions.

Article 43 - Declaration of public utility.

Those goods necessary for the execution of the public-private partnership contracts shall be declared of public utility and therefore subject to the possibility of being expropriated by law.

The procedure, amount and means under which the parties concur to pay for such expropriation shall be defined in the bidding terms and conditions and the contract, notwithstanding that these provisions are also provided for in the Law authorizing the expropriation.

Article 44 - Easements.

1. The public-private partnership contract gives the participant the right to constitute easements on private property of the State, municipalities or individuals.

Easements shall be established by direct agreement between the private participant and the owner, and shall be formalized in a public deed, or by court order in the case that no decision is made through direct negotiations with the owner within 60 (sixty) days from the date the contract, and must be registered in both cases on public records.

In terms of predial servitudes, the laws referred to in the Civil Code apply in subsidiary.

2. In case that, for the implementation of the works is indispensable modifying existing easements, the private participant will be required to execute them at its own account, in the manner and deadlines set out in the bidding terms and conditions by the Contracting Authority.

TITLE III

TRUSTS OR TRUST FUNDS FOR THE DEVELOPMENT OF PROJECTS OF PUBLIC INFRASTRUCTURE AND SERVICES

Article 45 - Legislative authority and legal regime.

For the development of public-private partnership projects, the State agencies and entities may establish trusts or trust funds or participate in those constituted or to be constituted with private legal persons. Trust constituted operations constituted for the development of public-private partnership projects are governed by the provisions of this Law, Law No. 921/96 "TRUST OPERATIONS", and the corresponding regulations. These trusts or trust funds have the same tax treatment under such Law and its regulations.

The operations of the trustees in compliance with the trust agreement in which State agencies and entities are trustors, are governed by the rules set out in the trust agreement and the rules of private law. However, without prejudice to the supervisory powers conferred to the Central Bank of Paraguay under Law No. 921/96 "TRUST OPERATIONS", the public trustor shall be controlled by the Comptroller General of the Republic.

Article 46 - Goods or rights that may be subject to trusts or trust funds by public trustors.

The goods or rights that may be held in trust by the State agencies and entities are:

- a. The assets of the private domain of the State or the right of temporary use or exploitation of these assets;

- b. Revenues from taxes, fees, tolls, levies, including present and future flows, provided that the proceeds of these revenues are allocated to the purposes for which they were created or established;
- c. Taxes that have a specific purpose including current and future flows, provided that the proceeds of these revenues are allocated to the purposes for which they were created or established;
- d. Funds from external or local loans, obtained by the State agencies and entities, provided that such funds are intended for the purposes stated in the respective loan agreement;
- e. Proceeds from donations;
- f. Proceeds of the bonds issued by the Treasury which are part of the trustors' assets;
- g. Resources from the so-called "royalties" and "Compensation for Flooded Land" of Itaipu and Yacyretá Hydroelectric Dams, respectively, provided that they are intended for the purposes set out in the laws establishing their distribution; and
- h. Any other resource to be specified each year in the General Budget Law of the Nation.

The public property shall not be subject to trusts, unless it is disaffected. However, it may be subject to trust fund contracts that do not alter the legal nature of the good.

Article 47 - Procedures and authorizations.

1. Trust agreements or trust funds will shall signed by the competent authorities of the Contracting Authorities, with the assent of the Ministry of Finance.
2. The trustee shall be selected through a process of public and competitive selection to be established in the regulations. When the trustee is a public entity, it may be selected directly. The Financial Development Agency and the National Development Bank will act as trustees for the purposes of this Law.
3. The Ministry of Finance is authorized to transfer other complementary sources of funding to trusts created under this Law, provided that the trustor does not have sufficient funding to fulfill the purposes of the trust agreements. The resources for this purpose shall be provided for in the General Budget Law of the Nation.
4. Involvement of the property to be held in trust to the autonomous patrimony constituted by the trust shall be conducted under the rules established in Law No. 921/96 "TRUST OPERATIONS" and the regulations issued by the Executive.
5. Resources for trust operations constituted by the State agencies and entities under the provisions of this Law, shall be deposited in the account of the trustee, and applied only to the fulfillment of the purposes set out in the trust made. The deposit of future revenue flows that are held in trust may be made directly to the account without need for prior registration of the income in the public budget.
6. Trusts created under this Law are authorized to issue securities (bonds) with fiduciary guarantees, pursuant to Law No. 921/96 "TRUST OPERATIONS" and its regulations and in

accordance with the provisions of Article 9th of Law No. 1284/98 "SECURITIES MARKET" and its regulations.

TITLE IV

PRIVATE INITIATIVE

Article 48 - Competition for managing private initiatives.

The Public-Private Partnership Project Unit shall be entitled to receive, instruct and substantiate private initiatives for the development of projects initiated under this Law, included within their respective spheres of competence, provided that the object is not similar to other that:

- a. Has been submitted by a previous proponent and is currently under study of the Contracting Authority;
- b. The Contracting Authority is performing its previous studies about for promotion into the public initiative regime; and
- c. The Contracting Authority has identified and included in its planning with the express statement that shall be promoted ex officio;

Projects that address financial payment or waiver of cash income of the Contracting Authorities, whose present value exceeds, in both cases, 10% (ten percent) of the initial investment shall not be accepted through private initiative.

For the foregoing purposes, it is considered that a project is similar to another when its purpose is fully or partially coincident with the latter (geographic area, public or private property used, purpose and major activities), and its acceptance is incompatible or adversely affect the development of such other project. In case of submission of initiatives of similar projects, the processing of the first initiative presented shall be prioritized.

Projects which have been rejected under the provisions of this Chapter shall not be reintroduced, both by the applicant that originated the Project or by third parties, as well as by the Contracting Authorities, until (3) years had passed from its rejection.

Article 49 - Stages of the private initiative process.

The processing of private initiatives include the following steps:

- 1. Submission:** The proposer interested in developing its initiative in the framework of a public-private partnership project, must submit its project to the Public-Private Partnership Project Unit, crediting its technical, economic, financial and legal capacity for the development of the project. The proponent may be individual or be composed of more than one legal entity. Its proposal must contain information relating to its identification as proponent, the project to be developed, and its viability analyzed at pre-feasibility level.
- 2. Evaluation:** The information received shall be reviewed by the Public-Private Partnership Project Unit in coordination with the Contracting Authority within 60 (sixty) days, it shall assess the appropriateness of the acceptance, with or without modifications, or its rejection; all without liability whatsoever. This period may be extended. The acceptance will involve a favorable opinion, declaring the public interest of the initiative.

3. Feasibility Assessment: Once the public interest of the project has been declared, with or without modifications, the proponent shall prepare and submit the corresponding assessment at feasibility level in accordance with the requirements prescribed by the Public-Private Partnership Project Unit with the Contracting Authority, within the stipulated term.

4. Public call: The Public-Private Partnership Project Unit shall have a period of 120 (one hundred twenty) days to analyze the information received and decide on the initiative or request modifications. This period may be extended depending on the circumstances. The analysis will be done in coordination with the Contracting Authority. In case of a favorable decision, the Contracting Authority shall submit the initiative to the Executive Branch, and if it approves it, it shall proceed with the preparation of the bidding terms and conditions, and conduct the competitive procurement process pursuant to the provisions of this Law and the regulations. In these cases, the procedure initiated will aim at awarding the project provided for private initiative in the same terms as it was passed without possibility of incorporating new modifications, except for those accepted by the proponent.

Article 50 - Proponent's rights.

The proponent of a private initiative shall have the following rights and preferences:

- a. To obtain, once the final award of the contract has been issued, the reimbursement of accepted costs associated with the completion of the previous studies referred to in this Law, if the project does not lead to a winning proponent. These costs involve studies of the feasibility phase previously approved by the contracting institution, and shall be borne by the awarded bidder, which shall be reported in the corresponding public call;
- b. To obtain an award at the instance of competitive bids valuation procedure, involving a bonus of 3 to 10 % (3 to 10 percent) of the score obtained with the offer, depending on the size and complexity of the project in the terms set out in the regulation, which shall be added to it in order to determine its final score in that instance. Likewise, the promoter of the initiative shall not pay the acquisition cost of the bases of the competitive process or related documents.

The Contracting Authority may choose to call for pre-qualification and establish that the feasibility studies shall be financed by all pre-qualified proponents, in which case the highest award presented by the initiative shall not exceed 3% (three percent) of the score obtained with the offer. In this case, the awarded bidder shall reimburse the payment made by the feasibility studies to each pre-qualified proponent.

If for any reason the proponent does not perform feasibility studies within the time limits established by the regulation, the Contracting Authority shall conduct them itself or hire them in accordance with the corresponding procurement procedures, the proponent loses any right to receive compensation or benefit whatsoever.

Article 51 - Confidentiality of the private initiative.

All information on private initiative submitted shall remain confidential until the declaration of public interest or rejection of the respective project. The records relating to rejected projects will be published on the website of the Contracting Authority. Once approved by the Contracting Authority, the initiative shall be transferred automatically.

If the call is not made, the promoter of the initiative shall keep all the rights to it for a period of 3 (three) years.

TITLE V

FINAL AND TRANSITIONAL PROVISIONS

Article 52 - Legislative authorization.

Contracting authorities are authorized to structure, select, award and celebrate the respective contracts, under the terms of this Law, for the following projects:

1. Waterways, dredging, signaling and maintenance of the navigability of the Paraguay River and other navigable rivers.
2. International airports.
3. Construction, rehabilitation and maintenance of national roads and highways.
4. Construction, extension and operation of the railway service.
5. Construction and maintenance of national and international bridges.
6. Provision of drinking water and sanitation and wastewater treatment.
7. Generation, transmission, distribution and sale of electricity.
8. The road infrastructure of the capital of the Republic and its metropolitan area.
9. Social infrastructure, hospitals, health centers, schools.10. Prisons.
11. Improvement, equipment and urban development in which the Contracting Authorities are involved.
12. Aqueducts, pipelines, oil pipelines, alcohol pipelines, gas pipelines.
13. Production of goods and services corresponding to the purposes of businesses and companies in which the State is party.
14. Production and trade of cement.
15. Production, refining and trade of hydrocarbons, fuels and lubricants.
16. Telecommunications services.

The Executive Branch is expressly empowered to determine and specify in detail the terms, contents, conditions and characteristics of the specific projects to be executed.

Article 53 - Regulation.

Within 120 (one hundred twenty) days from the entry into force of this Law, the Executive Branch shall issue the regulation, which will be endorsed by the Minister of Finance and the Minister of Public Works and Communications.

Article 54 - Effectiveness.

This Law shall enter into force on the day following its publication, and shall apply to the procedures for procurement under projects initiated after that date.

Article 55 - Breach.

Failure to comply with this Law by officials responsible at the appropriate level of public administration shall be considered as poor performance of their duties and penalties under the relevant statutory provisions shall be imposed.

Article 56 - Derogations.

Provisions contrary to this Law are derogated.

Article 57 - To be communicated to the Executive.

Bill approved by the Honorable Senate, on the twenty-sixth day of September, two thousand thirteen, and sanctioned by the Honorable Chamber of the House of Representatives, on the twenty-eighth day of October, two thousand thirteen, in accordance with Article 207 paragraph 1) of the National Constitution.

Juan Bartolomé Ramírez Brizuela
President
House of Representatives

Julio César Velázquez Tillería
President
Senate

Hugo L. Rubin G.
Parliamentary Secretary

Emilia Alfaro de Franco
Parliamentary Secretary

Asunción, November the 1st, 2013

This Bill is enacted as Law of the Republic, and shall be published and inserted in
the Public Registry

The President of the Republic

Horacio Manuel Cartes Jara

Germán Rojas Irigoyen
Minister of Finance

Ramón Jiménez Gaona Arellano
Minister of Public Works and Communications

(HEADING OF THE MINISTRY OF FINANCE)

S.G. No. 93

MEMORANDUM

To: Ramón Ramírez Caballero, Vice-Minister of the Under-Secretariat of Financial Administration

C.C.: Daniel Correa, Vice-Minister of the Under-Secretariat of Economy

From: Alberto Alfonzo, General Secretary

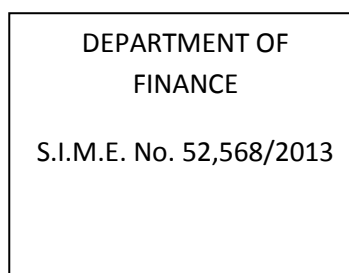
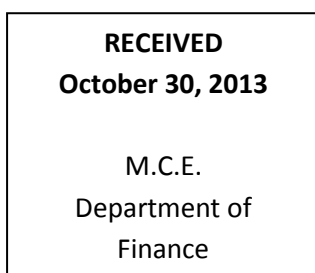
Ref.: Bill No. 5102/2013

Date: October 30, 2013

I hereby address to You in reference to the Bill of Law No. 5102/2013 “INVESTMENT PROMOTION IN PUBLIC INFRASTRUCTURE, EXPANSION AND IMPROVEMENT OF GOODS AND SERVICES PROVIDED BY THE STATE”.-

In this regard, I hereby submit photocopies of the above mentioned Bill, in order to request You to issue the corresponding report on it, on an URGENT basis, and making the recommendations that you deem appropriate.-

Kind Regards,



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Asunción, **October 30, 2013**

To the Directorate of the Public Investment System

(SIGNATURE AND SEAL)

Martín Colmán Llano
General Secretary
Under-Secretariat of Economy