

The Federal Government announces the Program of Investment Partnerships - PPI

Just a few hours after becoming the interim President of Brazil, Michel Temer created a new program for infrastructure projects – the Program of Investment Partnerships (PPI) through Provisional Measure No. 727/2016 (MP 727). Provisional Measures are normative acts from the President with legal status used in relevant and urgent cases. Provisional Measures must be submitted to the Congress, which will decide in up to a 60-day term whether such act should be passed into a law or not.

PPI intends to expand and strengthen the relations between the State and the private sector, so that both can run together public infrastructure undertakings and other privatization measures through partnership contracts.

The partnerships between the State and the private sector that PPI handles embraces not only concessions, public-private partnerships (PPPs), permissions or leasing of public assets, but also any other public-private arrangements that have the same legal structure of the above – and, therefore, possess similar risks, amount of investments and complexities.

Presidential decrees will regulate and detail the federal public projects that will adopt the PPI's model of partnership. It means that such decrees will also give the strategic guidelines of the projects, its main legal aspects and will establish long-term policies for investment. The decrees will also determine the federal policies regarding partnerships in public infrastructure projects of States, Cities and Federal District, and settle other privatization mechanisms.

MP 727 establishes an institutional rearrangement in Brazil, modifying the way undertakings are structured, improving their licensing procedures and adopting better practices for their conduction.

Furthermore, said MP 727 created a “PPI Council” and a “PPI Executive Secretary”, which are entities directly subject to the Presidency. The Council will assist the President to manage the PPI and gathers the functions of three different entities: the PPP management office, the National Council for Integration of Transportation Policies and the National Council of Privatization. The Executive Secretary will lead, monitor and evaluate all the action taken in the PPI. The Brazilian Logistic & Planning Company (EPL) will leave the Ministry of Transport and will be subject to the Executive Secretary, acting as a supporting entity to the PPI Council.

MP 727 also authorizes the Brazilian Development Bank (BNDES) to create and participate in the Partnership Structuring Support Fund, which aims at enabling the partnerships approved within the scope of PPI. The fund should last 10 years, it will have private nature and own capital – different from its administrator's and shareholders'.

The President also issued Provisional Measure No. 726/2016 (MP 726), together with MP 727, to create a “super Ministry of Transport”. MP 726 established that the Civil Aviation Secretary (SAC) and the Secretariat of Ports (SEP) should be incorporated to the Ministry of Transport, and, therefore, losing the ministerial status they previously had. The new Ministry of Transport will expand its functions and will focus on the establishment of our national policy for transport, creating general granting plans for railways, highways, waterways and airports.

The licensing proceedings should be improved for PPI projects. They should be efficiently and timely issued to meet the PPI priorities. The entities and authorities from the Federal Government, States, the Federal District and Municipalities will have to work together to enable efficient in licensing proceedings.

As regards the structuring of the projects, it is now possible to open a preliminary procedure to support the definition of the basic characteristics of the projects. However, MP 727 prohibits compensations to the authors of such preliminary projects – which is significantly different from what used to happen in the last concessions.

Administrative bodies with jurisdiction over matters related to PPI will have to adopt their own programs of good practices according to national and international standards. Aiming at ensuring competition and compliance with sectorial rules, MP 727 emphasizes public consultation prior to the issuance of rules, impact studies for regulatory changes, annual monitoring of results and joint efforts with control bodies and with the Administrative Council for Economic Defense – CADE.

The new Government begins with an effort to reshape infrastructure ventures. We hope PPI thrive and that new opportunities arise in the forthcoming months. Rhein Schirato, Tavares, Meireles & Caiado Advogados will monitor the changes and will keep our partners and clients informed.

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