

## **The Federal Government enacted Law regarding the extension and republishing of infrastructure partnership contracts**

Provisional Measure no. 752/16 was passed into Federal Law no. 13,448/2017, after its enactment on June 6th. The law sets the general guidelines for the extension and the republishing of contracts and new request for proposals, respectively, regarding partnership contracts in the roadway, railway, and airport sectors, previously qualified for such in the Program of Investment Partnership (PPI).

The extensions can be carried out in the railway and roadway sectors. Federal Law no. 13,448/2017 sets forth different conditions depending on the type of extension chosen, which can be the “common contractual extension” (the extension after the contract term originally set forth) or the “anticipated extension” (effective even before the contract term originally set forth). In either case, the extension must have been specifically predicted in the original request for proposal or contract, and shall occur only once, on the competent entities’ initiative or upon request of the interested party. Regardless, the final decision on whether the extension will take place is left to the discretion of the Administration, upon the other party’s agreement.

The anticipated extension requires the inclusion of unforeseen investments in the original contract. It also sets forth additional conditions, such as: (i) when requesting the extension, the period elapsed of the effectiveness of the contract must be in between 50% to 90% of the period originally agreed upon; (ii) for road concessions, at least 80% of the works originally agreed upon must have been carried out; (iii) for railway concessions, the adequate service provision should be certified, as per conditions set forth in Law no. 13,448/17.

In either case, the competent authority must carry out a technical study to previously demonstrate the advantages of extending the concession. Such study must include an investment projection, economic and financial modeling, environmental guidelines and legal and regulatory issues. It should also assess the grantee’s capacity to assure the continuity and adequacy of the services. It should be highlighted that the contractual extensions set forth by Law no. 13,448/17 as well as the technical studies must be submitted to public consultation.

The other instrument introduced by Law no. 13,448/17 is the so called “republishing of the request for proposals”, conceived to assure the continuity of essential infrastructure services. As per the procedure, the previous concession contract is terminated and a new bidding process is carried out. Subject to such instrument are all the railway, roadway and airport partnership contracts in which there was a non-compliance with contract clauses or non-fulfillment of its

obligations, provided they were included in the PPI. An agreement between the Public Authority and the private partner must precede the “republishing of the request for proposal” provided the waive of participation in the subsequent bidding procedure by the private partner. Another condition for its use is the conclusion of an arbitration commitment for dispute settlement, especially considering the calculation of compensation due to the term of the contract. Furthermore, the Public Authority must suspend any contract termination proceedings set against the private partner.

The competent Authority must not only analyze the convenience of republishing the request for proposals, but also carry out technical studies to base the bidding procedure. The studies should be submitted to public consultation, with a 45-day period to receive suggestions. Shareholders that hold 20% or more of the former private partner equities are also forbidden to take part in the bidding procedure.

Republishing of the request for proposal depends on the conclusion of an additional term to the contract, that shall contain: (i) the irrevocable adhesion of the current private partner to the subsequent request for proposals and the extinction of the original agreement on friendly grounds; (ii) the suspension of the obligations that are not yet due, as well as the assessment of the minimal conditions that assure the continuity of the services; (iii) the establishment of an arbitral commitment between the parties. The additional term can also state that the new private partner will be responsible for compensating the former (or its financiers directly, if applicable) for indemnifications due because of assets that have not been amortized or depreciated according to the contracts.

The RSMC team will remain available to clarify any additional doubts regarding Law no. 13,448/2017 and any other aspects of our partners' interests.

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