Public-Private Partnerships: New Mechanism for the Development of Public Infrastructure Projects and the Provision of Public Goods and Services in the Dominican Republic

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I. BACKGROUND

As the Dominican Republic, who has the fastest-growing economy in Latin America (its gross domestic product in 2019 increased 5%, according to Forbes[1]), became a more predominant player in the region and was in pursuit of increasing the productivity and competitiveness of its economy[2], it became paramount to design, draft, reach a consensus and pass a public-private partnerships law. Such law would enable and/or guarantee the necessary investment flow to modernize and provide timely maintenance to service networks and public goods, as well as diversify the range of public services and infrastructure, which will, in turn, allow for innovation and the implementation of new initiatives.

The latest legal framework proposal for the governance of public-private partnerships—which was passed into law by the Dominican Republic's executive branch on February 20th, 2020 (Law No. 47-20 on Public-Private Partnerships, hereinafter the "Law")—is a landmark legislative achievement that will assure the implementation of strategic partnerships between the country's public and private sectors. Its content and design were based on similar laws already in force throughout Latin America, as well as on the input of international advisors such as the Inter-American Development Bank and the World Bank.

II. DEFINITION & SCOPE

The Law regulates the selection, award, execution, engagement, follow-up and termination of public-private partnerships related to the provision, management and operation of public goods, infrastructure and services. Public-private partnerships, defined by the Law as the mechanism by which public and private agents, voluntarily and by means of a competitive process, execute a long-term agreement (hereinafter, the "Agreement") for the supply, management or operation of goods and services of public interest, in which there would be: (i) a partial or complete investment by the private agents and, (ii) a tangible or intangible contribution by the public sector, and (iii) risk distribution amongst both parties, wherein compensation is associated to performance, as per parameters established in the Agreement.

The reach of the Law extends to: (i) entities that make up the Public Administration under the dependence of the executive branch; (ii) decentralized and autonomous non-financial institutions; (iii) social security institutions; (iv) Companies or non-financial agents of the public sector that commission the design, construction, operation, reparation, expansion or maintenance of a social interest good or service to private agents, by means of the public-private partnership mechanism; and (v) city halls.

On the other hand, the Law is not applicable to any licenses, authorizations, permits and concessions established in sectoral laws that do not fit in the definition of public-private partnership—such are governed by Law No. 340-06 on Public Procurement of Goods and Services.

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[1] *República Dominicana, el País que Más Crece en América Latina* https://forbescentroamerica.com/2020/02/21/republica-dominicana-el-pais-que-mas-crece-en-america-latina/ Last accessed on March 29th, 2020.
[2] Such in order to meet the goals established in the country's National Development Strategy 2030.

III. TYPES OF PUBLIC-PRIVATE PARTNERSHIPS AND PROCEDURES FOR ITS IMPLEMENTATION

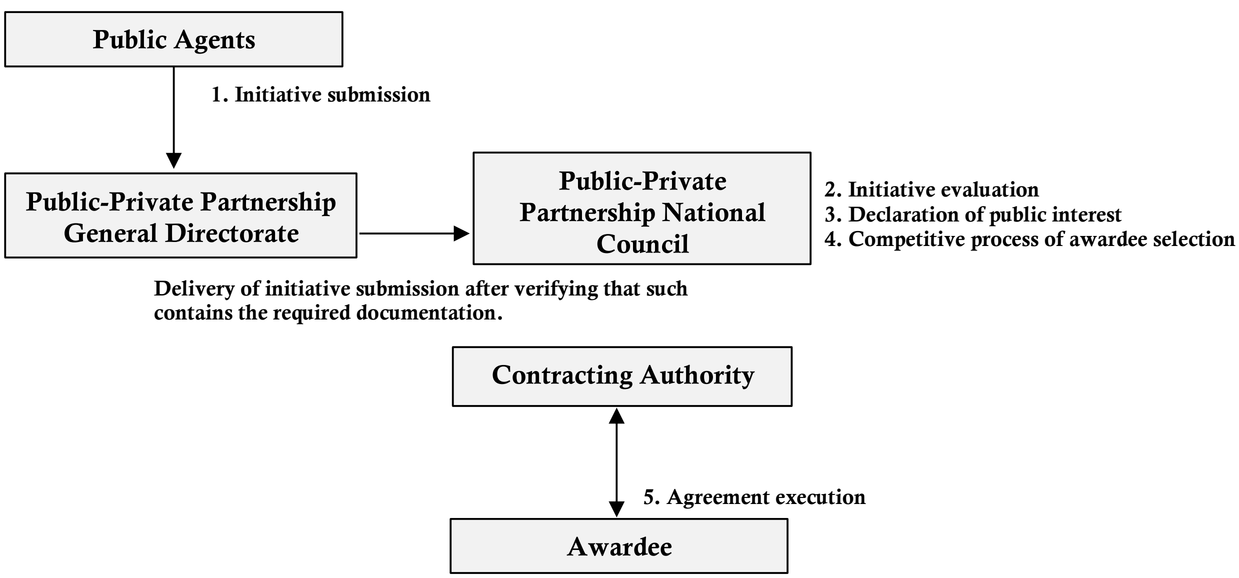
Public-private partnerships may be of:

- Public Initiative, meaning those created by public agents (entities and/or bodies of the State that make up the Public Administration); such may be implemented with or without the transfer of State resources.

- Private Initiative, which are the ones created and proposed by private agents (private legal persons) to the Dominican State.

In cases where the formation of a public-private partnership entails, in a firm or contingent way, the transfer of State assets, the use of national income, the execution of public credit operations or when it implies a tax exemption, the Law states that the Agreement must be approved by the National Congress.

a. Procedure for the Presentation and Selection of Public Initiatives

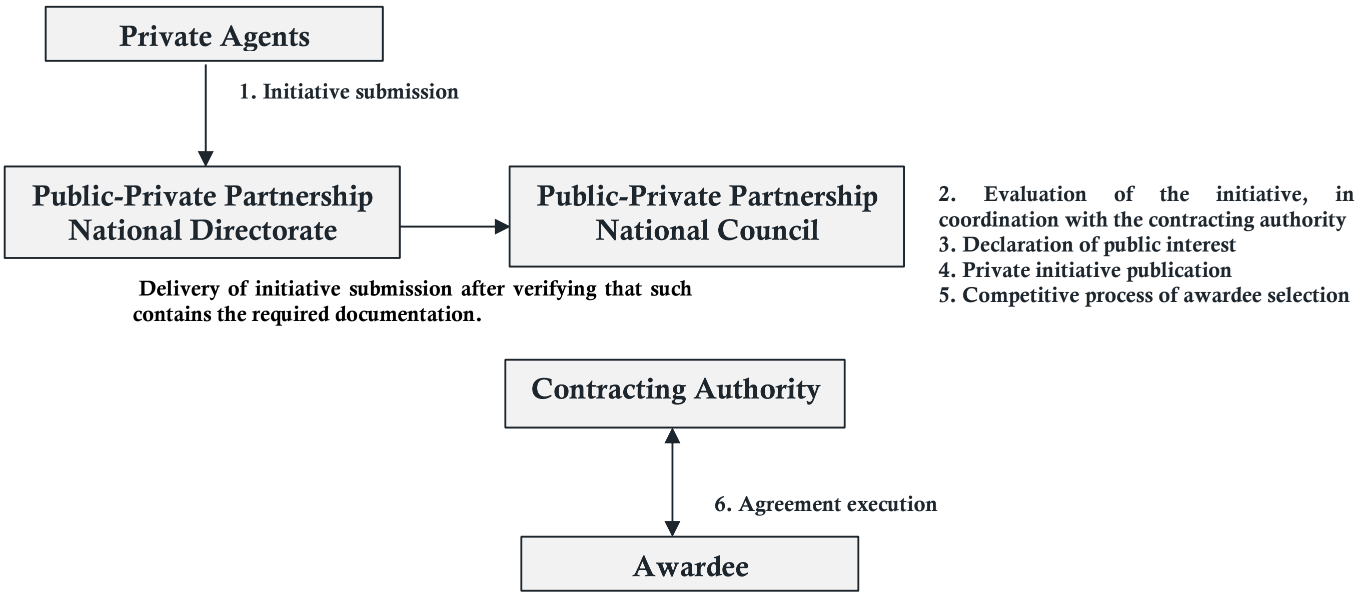


Notes:

- The competitive selection is construed in the following manner: (i) bidding qualification, (ii) technical evaluation and (iii) financial evaluation.

- If the initiative is not declared of public interest, it can only be presented under a private initiative scheme after two years, starting from the (notification) date it is declared as not being of public interest.

b. Procedure for the Presentation and Selection of Private Initiatives



Notes:

- Initiatives may only be presented in sectors that the State has determined of interest.

- The consideration of the initiative does not generate any right in favor of the private agent nor any State obligation.

- In the fourth phase, the Council can change the modality from private to public, compensating the private agent who made the proposal for the cost of the studies for preparing the proposal.

- The originator of the initiative has certain advantages when the competitive selection process is exhausted.

IV. OTHER RELEVANT INFORMATION

- For public-private partnerships that involve, in a firm or contingent way, the transfer of government resources, the Agreement will preferably provide for the constitution of a public-private partnership trust, to administer the goods and rights contributed or to manage any other aspect of the project, as agreed to between the parties.

- The Law foresees the implementation of non-profit public-private partnerships, which link public legal entities and international cooperation and development organizations or local non-profit organizations, to carry out collaborative activities in the provision of goods or services of social interest, the purpose of which is to promote the country's social development, and from which there any generation of financial benefit will not be recognized.

- During the first five years, starting from the beginning of the execution of the project object of the public-private partnerships, the awardee may choose to refund the value added tax (VAT) generated from the purchase or rental of equipment, materials and supplies directly related to the construction, repair or expansion of the assets and infrastructure relative to the Agreement, subject to compliance with the conditions established in the Law.

In addition, the Awardee may access an accelerated depreciation and amortization regime, subject to compliance with the conditions and following the procedures established in the Law.

In regards to risk, public-private partnerships involve risk distribution between the public and private sectors, assigning the same to the one with the greatest capacity to administer them at the lowest possible cost. According to the Law, any financial, social, political, institutional, legal, operational, environment, technological risks associated with the project must be assigned, partially or totally, to the private agent.

There is much appetite and interest from the Dominican Government to implement this Law to its fullest extent. By means of Presidential Decree No. 141-20 dated April 1st, 2020, the Executive Branch created the Emergency and Sanitary Management Committee, which is tasked with advising President Danilo Medina in his response to COVID-19, developing public-private partnerships to improve the capacity and preparedness of the local health system to deal with the COVID-19 pandemic, among other duties.

On an ending note, it is evident that the Law intends to strengthen institutional ties between the State and civil society, as well as allow the State to manage, in a timelier manner, the traditional budgetary limitations and its response to unforeseen events (i.e. COVID-19). We believe it may lead to greater economic growth and increased productivity for the execution of public policies, structural and sectoral reforms.