

January 25, 2012

Mexico Enacts PPP Law

On January 16, 2012, the Executive Branch of the United Mexican States ("Mexico") published the Ley de Asociaciones Público Privadas (Law on Public-Private Partnerships) (the "Law") in the Federation's Official Gazette and amended various other laws relating to public tenders in connection with the new Law. The Law does not replace existing public tender laws; rather it provides an additional modality for the construction and operation of infrastructure projects.

The Law implements the framework for public private partnerships in Mexico for federal projects to allow greater cooperation between government agencies and the private sector in connection with the construction of infrastructure projects and the provision of services in respect thereof. The Law is limited in scope to new projects commenced on or after the publication of the Law and may not be implemented in connection with existing projects and activities reserved to Mexico, such as extraction of hydrocarbons and basic petrochemicals or any activities under the jurisdiction of the President and the Procuraduría General de la República (the Attorney General of Mexico).

The Law also permits the private sector to propose new projects to relevant government agencies where opportunities have been identified by the private sector. No proposed project may be awarded directly to the party proposing the same – the Law requires that any such proposed project be subject to customary tender procedures. The Law further provides that governmental agencies shall evaluate such proposals within three months following presentation thereof. The bid of any party proposing a project subject to a tender procedure shall be evaluated under beneficial criteria not to exceed ten percent of the applicable evaluation criteria (i.e., price, efficiency parameters, etc.).

The Law further provides that the term of public-private partnerships shall not exceed the greater of forty (40) years and the term of the underlying concession or permit (as provided by law), and it requires that governmental agencies participating in any project assist the private sector party in obtaining relevant permits and authorizations for the development of the project. Notably, the Law provides that, except with respect to environmental permits, all other permits shall be deemed granted if the applicable authority fails to respond to any petition within sixty (60) days.

The Law also contemplates various provisions in connection with (i) the financing of such public-private partnership projects, the rights to grant security and the rights of lenders in connection with the project cash flows, assets and permits, (ii) step-in rights of the government agency participating in the project and (iii) the circumstances pursuant to which a public-private partnership agreement may be amended.

With the implementation of the Law, it is anticipated that more projects in the social infrastructure arena will be developed in Mexico as governmental agencies will now have a way to address demand in social infrastructure, such as hospitals, schools and prisons, while not depleting their sometimes limited budgets.

This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice, including as to the law of Mexico. We would be pleased to provide additional details or advice about specific situations if desired. If you wish to receive more information on the topics covered in this publication, you may contact your regular Shearman & Sterling contact person or any of the following:

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