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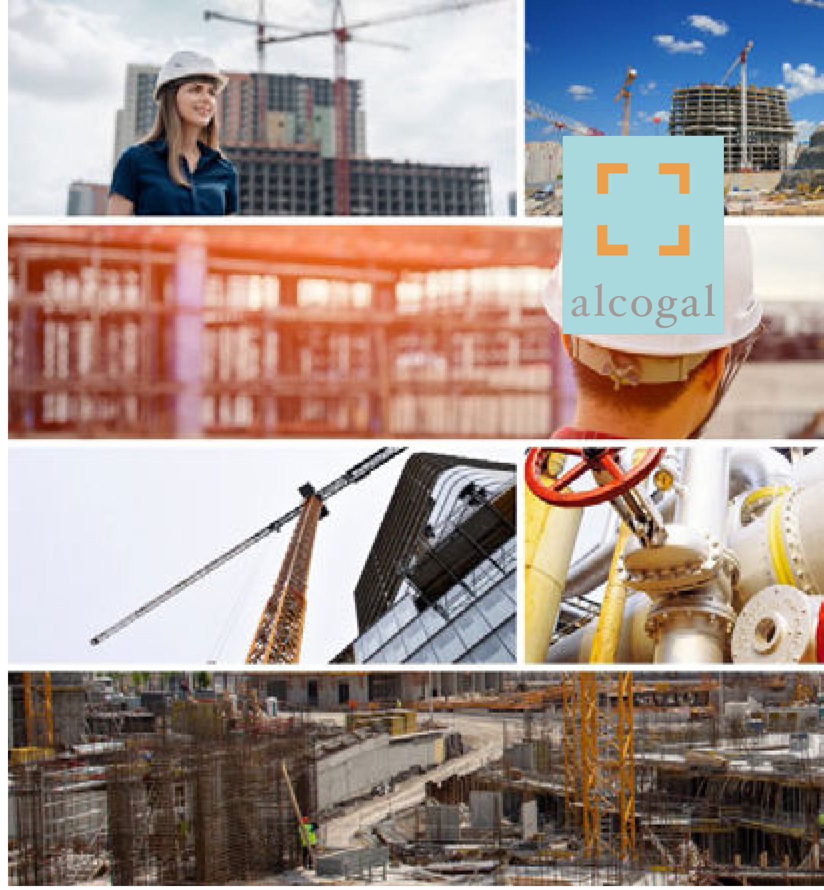
Relevant aspects of the Law on Public-Private Partnerships in Panama



To promote the development of infrastructure and public services in the Republic of Panama, Law 93 of September 19, 2019, was enacted. This law creates the Public-Private Partnership Regime for development as an incentive for private investment, social development, and job creation and establishes the legal and regulatory framework for the development of investment projects under the modality of Public-Private Partnerships (better known as PPPs), thus contributing to the growth of the Panamanian economy, job creation, and competitiveness, as well as improving the living conditions of the general population.

According to Law 93, PPPs bring together private capital through a long-term contract (called the PPP Contract), through which experiences, knowledge, equipment, technologies, and technical and financial capabilities are incorporated. Risk and resources are distributed for the design, construction, repair, expansion, financing, operation, maintenance, administration, and/or supply of a good or service to the contracting public entity and/or to the end users of a public service (called the Projects).

According to their financing, PPPs are classified as:

- Self-financed: those in which all the costs of the project are recovered with the income received by the contractor in charge of providing the infrastructure or public service (called the Contractor) through the collection of the fees, prices, tolls, or payments in general, charged directly to the end user.
- Co-financed: those in which financial resources from the State are required for the project's economic sustainability during all or part of the term of the PPP Contract.

Among the main advantages of PPP Contracts, we can mention the following:

- The structuring of the Project seeks to encourage the Contractor to meet the deadlines to start providing the service, thus avoiding cost overruns due to longer permanence.
- The Contractor executes the Project with the goal of recovering the capital invested.
- The risks related to the execution of the Project are assigned to whoever can manage them better, either to the contracting public entity and/or to the Contractor.

Finally, we share some particularities established by Law 93 of 2019 around PPPs, namely:

- Projects may be initiated by public initiative, i.e., by public contracting entities.
- Government banks may only finance up to 25% of the Projects.
- The successful bidder of a PPP Contract must establish a special purpose company in Panama that will sign the Contract.
- The Contractor must establish a special purpose trust in Panama to manage co-financed Projects' resources.
- PPP Contracts are governed by public law; the disputes related to these may be resolved by arbitration; their duration will be for up to 30 years, extendable for another ten years; they will come into effect from their endorsement by the Office of the Comptroller General of the Republic; and will be published in the Official Gazette.

The information we have presented here succinctly is of a general nature and, therefore, should not be a substitute for procuring complete advice on the subject matter of this article, which may be provided by our office, Alemán, Cordero, Galindo & Lee (Alcogal).