El futuro es de todos
DNP Departamento Nacional de Planeación

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DECREE 438 OF 2021

Decree 438 of 2021 was issued with the purpose of promoting private investment flows into infrastructure projects and to strengthen the legal framework for Public-Private Partnership (PPP). This decree reflects the best international practices on the subject, in addition to actions resulting from Colombia's experience in the structuring and execution of PPPs, scheme that has been internationally recognized in the World Bank ranking in 2019 occupying the 2nd place in the world for the development of projects under the PPP scheme.

Some *OF THE CHANGES* introduced by this decree are:

1. From now on, projects under the Public-Private Partnership (PPP) scheme must be aligned with national and local infrastructure priorities.

a. Private initiatives may only be submitted if they are included in the respective Development Plan or in any of the planning instruments of the entities.

2. Since the structuring phase of the projects, a liquid mechanism will be created to provide the monetary resources to meet contingencies, thus avoiding negative effects with high economic and social impact on the contract.

a. The creation of a fund charged to the economic exploitation of the infrastructure is proposed, aiming to have liquidity to attend contingencies that may arise due to geological problems, landslides, among others.

b. All private initiatives that do not require the disbursement of public resources must have at least one liquid mechanism destined to risk attention in charge of the State Entity.

3. Identify and regulate in a clear and standardized manner the sources of payment for the projects.

a. The disbursement of public resources to cover risks and contingent obligations is regulated.

b. The originator is required to present at the prefeasibility stage an estimate of the costs of capital and debt, as well as the identification of potential sources of financing.

4. Promote and ensure transparency through the provision of information on both public and private management.

a. It is defined that the contracting entity may establish in the Public-Private Partnership contract the obligation of the private investor to periodically provide technical, economic, and financial information on the costs of execution of the work, operation, maintenance, and financing, as appropriate, in accordance with the scope of the project.

5. Promote competition in the selection process of private initiative projects.

a. The score that the originator of a private initiative must obtain at the end of the abbreviated selection process of minimum amount to have the option to improve its offer is increased by 10% (from 80% to 90%).

6. Strengthen the evaluation and review of projects.

a. The General Direction of Public Credit and National Treasury of the Ministry of Finance may request the financial model of the projects in the feasibility stage, as well as any other information required for the proper analysis of the project, within the framework of the review and approval of contingent obligations. The foregoing retains the character of legal reserve referred to in Law 1508 of 2012.