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# “Research on the Context of Trustee at Public Private Partnerships (PPP) Realization. Evidence from Colombia”

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## ABSTRACT

In the last decades Colombia has introduced several institutional arrangements in order to attract investment at infrastructure facilities and installations, so that this research is aimed to compare and clarify the different frames in reference to the introduction of trustee as a fair investment vehicle for Public Private Partnerships (PPP) realization in Colombia.

Additionally, in order to attract investment from China to Colombia, this research depicts the realization of Public Private Partnerships (PPP) through the use of trustee as special investment vehicle. The study aims to identify advantages and disadvantages exploring the Special Purpose Vehicle (SPV) as mechanism of PPP realization based on the case of Colombia introducing trustee as a complementary SPV cooperation tool.

This study seeks contributions to creditors, investors, policy makers, governmental entities, to encourage its use by clarifying the difference within the application and realization of PPP projects depicting necessarily through the PPP context in Colombia served by New Institutional Economic Perspective (NIEP) whose main direction is demonstrating and assuring through trustee a fair treatment among its counterparts involved at executing complex infrastructure projects and to take the case of Colombia as an example that could be applied in other countries.

## Keywords

Trustee, Special Purpose Vehicle (SPV), Public Private Partnership (PPP). New Institutional Economic Perspective (NIEP), Project Finance, Investment, Infrastructure.

## Introduction

### 1.1 Background

Nowadays, the main problem faced in developing countries is to provide sufficient infrastructure in order to produce tangible development, according to [Organization for Economic Co-operation and Development \(OECD\)](#) estimates that emerging economies could need as much US\$1.5 trillion/year of infrastructure investments up to 2030, yet it is considered that these countries only spend currently about US\$800–900 billion, leaving a very remarkable gap to be financed.

[Penner, J.E. \(2014\)](#) stated that trustee consists of a contract where one or more than two persons, called trustors, transfer ownership of assets to be managed by another person, called a Trustee. In Colombia, Trustees are independent financial entities (fiduciary companies) regulated and supervised by the Government. The fiduciary (Trustee) acquires the obligation to manage the assets in accordance with the purpose established by the trustor, in favor of one or several beneficiaries, that, depending on the purpose, may be the same person as the trustor or another's (called beneficiaries).

Furthermore, current literature have analyzed factors influencing and moderating success in PPP projects such as [Albalate \(2019\)](#), [Leiringer \(2006\)](#), [Yinglin \(2019\)](#), [Zhang \(2019\)](#), [Wang \(2019\)](#), [Eaton \(2006\)](#), [Akbari \(2019\)](#) whose main objective was assessing whether one to another affects the project progress where conclusions have brought an important amount of literature showing different types of factors increasing and decreasing success in the development of PPP'S. In developing countries, some studies have shown that trustee influences positively investment attraction, credit allocation and higher level of governance (control of corruption, government effectiveness, regulatory quality, and rule of law) reduces the negative influence of risk assumed by private partners on private investments. ([Wang Liu, et al., 2018](#)).

According to the World Bank PPPs can be a tool to get more quality infrastructure services to more people. When designed well and implemented in a balanced regulatory environment, PPPs can bring greater efficiency and sustainability to the provision of public services such as energy, transport, telecommunications, water, healthcare, and education. PPPs can also allow for better allocation of risk between public and private entities.

However, these studies haven't analyzed profoundly the role of trustee as a tool collaborating and guaranteeing the realization of PPP projects in developing countries, so that, literature is still insufficient compared to its potential, assuring control in a vast number of fields in a project, hence, guaranteeing success in the realization of PPP'S.

On the other hand, corruption is viewed as a major barrier to development and negatively impacts the level of domestic private investment and foreign direct investment (FDI) in developing countries ([Pusok, 2016](#)). Another reason supporting benefits from trustee controls towards investment attraction due to its transparency and equal treatment within public and private investors.

This study has been structured towards filling this gap by supplying the information with methodologies that support and bring itself to the expected results.

## 1.2 Research objective

Therefore, this study analyzes the context for financing and attracting investment in infrastructure for developing countries, so that, the main objective guiding this research consists on exploring how to fill up this need toward pushing up emerging economies such as Colombia.

In the same way, the study aims to contribute investors, policy makers, governmental entities, to encourage the use of trustee by clarifying the differences within different application and realization of PPP projects, demonstrating and assuring through the trustee a fair treatment among its counterparts involved at executing complex infrastructure projects and to take the case of Colombia as an example that could be adopted in the Chinese investment market as in other countries.

Provided the existence of investing opportunities particularly in developing countries on one hand, and on the other, the evidenced lack of a systematic institutional analysis takes relevance when it comes to operation and realization of projects managing remarkable amounts of money like in PPP's, there are several advantages to be discovered in this study such as granting security to the participants involved in the PPP as the assets are attached to the Autonomous Patrimony (AP) and affected to the fulfillment of the project purpose, another is that the Fiduciary Company (trustee) is administered by a qualified professional whom behavior is jealously supervised by the Government that requires high capital of constitution that must have adequate risk management systems.

Consequently, according to the above introductory context, taking into account that there are not sufficient investigations satisfying this collaboration in the realization of such a projects, either from practical or theoretical aspects, this investigation is going to fill the aforementioned gaps by answering the following questions:

Q1: How have Colombian's institutional arrangements adapted to the new challenge in project financing and delivery approach for infrastructure development?

Q2: How to describe the role of trustee as Special Purpose Vehicle (SPV) in the context of Public Private Partnerships (PPP)?

Q3: Whether attractive would be the use of trustees for PPP operation after exploring its pros and cons in Colombia considering the absence of trust financial vehicles for PPP realization in other countries?

The current work is important and valuable since developing countries deal with big challenges, one of them is attracting investment, provided that most countries in development face permanent lack of resources for infrastructure on one hand, and for creditors and investors its important to get to understand a variety number of tools guaranteeing their resources are appropriately invested in successful projects.

In terms of beneficiaries, such projects are impacting directly to the community as long as it brings opportunities such as industrialization, trade, tourism, education, etc.

To sum up, this research aims to formulate a theoretical framework proposing worldwide new alternatives for project financing and attracting investment in infrastructure for developing countries, so that, the main goal solving the aforementioned questions is exploring how to fill up this financing need toward pushing up emerging economies such as Colombia.

In the same way, the practical contribution of the study is to contribute investors, creditors, policy makers, governmental entities, to encourage the use of trustee by clarifying the differences within different application and realization of PPP projects as it is compared between the conventional system and Colombian system with trustee, demonstrating and assuring a fair treatment among the counterparts involved at executing complex infrastructure projects and to take the case of Colombia as an example that could be adopted in the Chinese investment market as in other countries.

### 1.3 Research Methodology

In order to accomplish the objective on attracting investment from abroad to Colombia, the research is aimed to be successfully developed from the New Institutional Economics Perspective (NIEP) which will allow the work to discover a detailed panorama of Colombia among different Economic levels, a source highly needed for this research as long as trustee for PPP purposes remain widely unknown and, on the other, the case of Colombia introducing trustee as a complementary SPV cooperation vehicle which will address to underpin a theoretical contribution by opening the box of function comparison of trustees to discover how the system works.

Below the roadmap of this research:

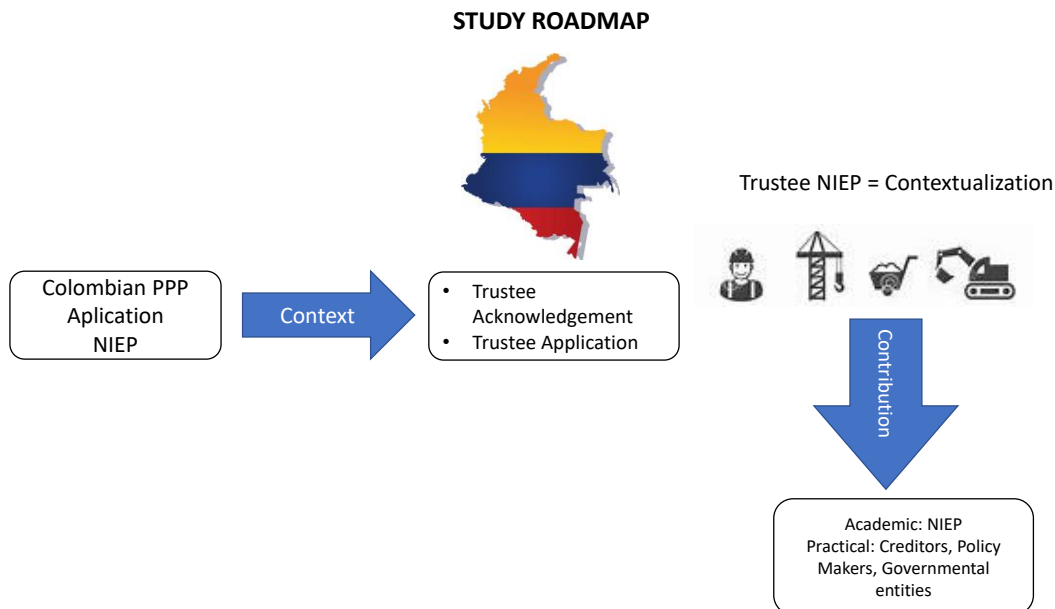


Fig. 1.1 Study Framework

## 1.4 Research Structure

To solve the proposed questions this study will be addressed by contextualizing PPP implementation in Colombia guided by the New Institutional Economic Perspective (NIEP) methodology. The study as an all in all, conducts an analysis structured as follows:

Chapter 1 is Introduction. Chapter 2 Literature Review. Chapter 3 PPP context in Colombia according to New Institutional Economic Perspective (NIEP). Chapter 4 Conclusions.

## Materials and methods

### CHAPTER 2: Literature Review

Different studies have been developed supporting on one side the Institutional Economic Levels as there is an important amount of literature related describing business process changes from different perspectives and for different objectives.

In order to make sure to address this review well organized focused on enriching the research objectives and identify the research gaps aimed to be supplied with the current study, this chapter is going to be divided in three (3) parts: The first introducing PPP, the next about the Role of Trustee as SPV in a PPP and the third related to NIEP.

## 2.1 Introduction of PPP

For several years, Colombian trade policy has favored the foreign investment attraction. It is in response to the trend that began in the 1980s in developing countries to open their markets, a process given in Colombia in the 1990s. This trend made foreign investment a key asset in these countries' growth processes, as the idea was imposed that it could be a mean of overcoming existing gaps in resources, technology transfer and capacities (Tienhaara 2009).

Insufficient infrastructure has been a problem for almost all countries; this problem is exacerbated by the lack of funds available in the public sectors (Matos-Castaño et al., 2014; Qiu and Wang, 2011). Furthermore, it is well known that when the Government assumes control and investment over infrastructure itself leads a low efficiency in the development and operation of these projects. PPP as a vehicle which deliver resources from private and public investing firms is a great opportunity for resolving the aforementioned deficiencies of infrastructure in developing countries, (Chan et al., 2011); nowadays it is arguably that PPP's are the most significant, worldwide trend in the public sector (Garvin and Bosso, 2008; Koch and Buser, 2006), creating a good chance for promoting good governance as an important factor for the success of PPP projects in terms of developing sound economic policy and administrating projects (Li et al., 2005).

These projects have contributed our study to identify success factors for PPP projects, providing critical factors with ideas that have been included in this research as part of the current problem in projects realization bringing the opportunity to the study to introduce possible solutions by using trustee in PPP's which are presented as theoretical and practical contributions of our research.

The aforementioned phenomenon aims to increase trust from private participation in development of infrastructure as from 1990 to 2019 according to the World Bank, Colombia has achieved the financial closure of 188 PPP projects including Airports, Collection and Transport, Electricity, Information and communications technology (ICT), Natural Gas, Ports, Railways, Roads, Water and sewerage, most of these projects are mainly from local investors, Spain and Canada. This trend gives opportunity to highlight and dig more into the cause of this success that is happening right now to Colombia whose roots are mainly coming since 2012 when trustee was compulsory adopted in PPP projects. That point is where this study want explore more about in order to demonstrate by comparing why this framework has been running successfully.

According to the World Bank (2019), the total number of infrastructure projects with private participation in 2019 reached 409 projects within 62 countries, ranking China as first investor worldwide with 39% of the total investment commitment of 96.7 billion million US dollars, in projects of energy; transport; information

and communications technology (ICT) backbone; water and the newly included municipal solid waste (MSW) infrastructure in low- and middle-income countries.

Therefore, the efficient provision of infrastructure services is one of the most important aspects of development policies, especially in countries that have oriented their growth abroad. For most economists, the absence of adequate infrastructure, as well as the inefficient provision of infrastructure services, constitutes one major obstacle to the effective implementation of development policies and obtaining economic growth rates that exceed international averages. (CEPAL, 2004)

Moreover, the adequate availability of infrastructure, as well as efficient provision of services contributes to develop competitive advantages and achieve a greater degree of productive specialization. Likewise, infrastructure networks also constitute a central element of the integration of the economic and territorial system of a country, making possible transactions within a given geographical economic area abroad. In this sense, such networks constitute a backbone of the economic structure of countries and their markets, as well as of the specific mechanisms of articulation of national economies with the world economy. (CEPAL, 2004). A PPP is generally run in four big stages: development, realization, operation and transfer. The development stage starts with the project initiation and ends at the financial closure and transfer. The development stage comprises feasibility and design, realization the construction, and commissioning. The operation stage is relatively simple as compared to the realization stage, but longer and exposed to external uncertainties along the remaining concession period which is usually ten to thirty years. The PPP process assumes diverse tools and guaranties in order to captivate investors and creditors assuring fulfillment to the expectations of all participants. (Shuibo Zhang, 2013)

Several definitions of PPP can be offered with different perspectives. For example, Federal Highway Administration (2004) describes it as “a long-term contractual agreement formed between public and private sector partners, which allows more private sector participation than is traditional. The agreements usually involve a government agency contracting with a private company to renovate, construct, operate, maintain, and/or manage a facility or system”. Similar definitions are given from the perspective of the contractual arrangement (Infrastructure Australia, 2008; Yong, 2010). Another is the contractual perspective and partnership-focused perspective seeing PPP from the point of view of two different types of “relationship”. The contractual perspective focuses mainly on the formal and legal dimensions of the relationship that binds the government and private partners together while the partnership focused perspective mainly emphasizes the social dimension of the relationship, characterized with mutual commitment and trust. The function specific perspective is task oriented and takes PPP as an integration of all the fragmented work roles throughout the whole project cycle, including financing, design, construction and operation, all transferred from the government to the private partner, particularly the shift of the financing and operation roles from



government to private partner. However, these categories of definitions, focusing on a different perspective, can be seen as complementary rather than exclusive. Therefore, as an integrated perspective Shuibo Zhang (2013) states that PPP can be defined as a strategy that is utilized to provide quality infrastructure facilities and services with high efficiency (as purpose and function), based on a long-term contractual arrangement between public and private parties (as basis of formal governance of the relationship), through the synergetic cooperation between the public and private partners.

Another reason is that high levels of corruption Distort government decision-making and increase market risks. Corruption is viewed as a major barrier of development and negatively impacts the level of domestic and foreign investment. (Wang, 2018).

## **2.2. Conceptualizing trustee and the role as SPV in PPP projects**

One of the options available at the time of establishing the SPV, in accordance with the interests of the parties involved in the project, is the constitution of a commercial trust that serves as a vehicle for design, execution, administration and operation of the project. (Pinzón Fonseca, 2015) This alternative is compulsory in Colombia since 2012 exclusively for money management, along this study we are going to discover other areas in the execution of a PPP where trustee is going to be helpful organizing information therefore enabling the project to be successful in terms of controls which are going to support risks mitigation.

## **2.3 NIEP (New Institutional Economic Perspective) Methodology**

The make it trustee better known in order to understand what is happening in Colombia, NIEP is adopted According to Williamson (2000), there are four relevant levels of factors in economic transactions. The first level, consisting of informal institutions, customs, traditions, norms and religion, acts influencing the transactions. Factors on this level are often taken as spontaneous, and indirectly influence the outcome of transactions through the second level: formal institutions, which consist of formal rules, such as the proper laws, rights, judiciary and bureaucracy which are reflected in the legal and administrative systems. This level is intended to get the institutional environment right for economic transactions. The third level is governance, the playing of the “game”. The main purpose of this level is to align governance structures with transactions and, if the right structure is designed and utilized, transaction costs can be reduced or removed. This level deals with the direct organization of transactions with contract design as the lens. The fourth level is resource allocation and employment that involves prices, quantities and incentive alignment. This level aims to get the marginal conditions right. As between the four levels, each higher level imposes boundaries on the lower level from Level 1 to Level 4; and each lower level gives feedback to each higher level from Level 4 to Level 1. (Shuibo Zhang, 2013).

**CHAPTER 3: PPP context in Colombia following the guidelines from New Institutional Economic Perspective (NIEP).**

A PPP is generally run in four main stages: development, realization, operation and transfer.

Several success factors, including responsibility of public and private parties, realistic cost/benefit assessment, public institutions, good governance, favorable legal framework, political support, modes of organization, game rules, market conditions, technology, within others, influence the outcomes of PPP projects.

A simple framework is useful as provides a clearer view of fundamental forces describing empirical situations that might, otherwise, be overlooked. Therefore, a framework is developed to delineate the analytic boundary and guide the institutional analysis of PPP in Colombia.

For the purpose of an institutional analysis of the transaction of PPP projects, the NIEP is adopted According to Williamson (2000), there are four relevant levels of factors in economic transactions, 1. Informal Institutions, 2. Formal Institutions, 3. Governance and 4. Resource Allocation.

According to S. Zhang, et al. (2014) the precedent levels are represented in the following chart (Fig 3.1) which was modified including trustee as role actor highlighted in red rectangle:

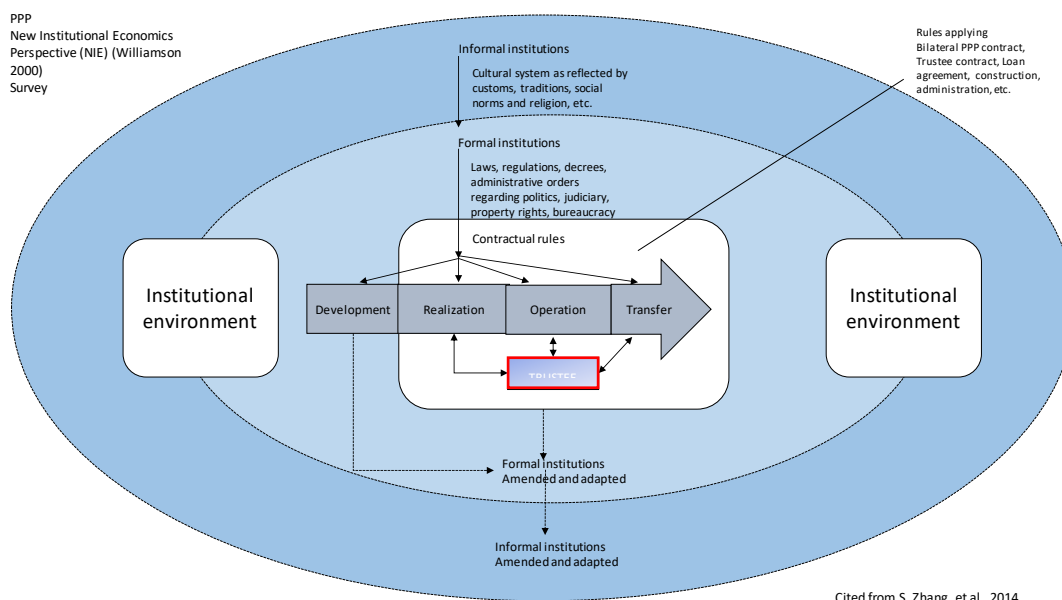


Fig. 3.1 NIEP analysis adding trustee vehicle under Colombian context.

As can be seen from Fig. 3.1, following guidelines from [Shuibo Zhang \(2013\)](#) the initial development stage of the whole PPP process is mainly governed by institutional rules. The path for developing a PPP project at this stage follows the legal framework and the administrative rules, with underlying latent practices dictated by culture (informal institutions), as, at this stage, the contracts that govern the specific relationships of the PPP participants are not yet in place. The realization and operation stages are formally governed by contractual relationships that regulate everyday operation of the project which are nested in a hierarchy of the institutional environment. In addition, feedback emerges from Level 4 to Level 1, as a process of organizational learning, improvement given the fullness of PPP project life cycles.

The solid arrows represent the influence from a higher level to a lower level and the dashed arrows signal feedback from a lower level to a higher level. Such relationships are displayed in the organization networks constituted by concession contracts, shareholders' agreements, investors and financing agreements, construction contracts, supply contracts, off-take agreements. The institutional and contractual rules, with their interactions with each other, constitute the governance system of the whole PPP project. Guided by framework shown above, the following sections analyze the development of PPP in Colombia's infrastructure sector, focusing on its institutional context.

Based on the above concepts and taking the PPP into context, a framework is the result to describe the institutional analysis of PPP project transactions, specially in the area of contribution by including trustee SPV vehicle as highlighted in red in Fig. 3.1 The PPP project execution is formally governed by the contractual rules designed to regulate the participants (inter-organizational). In turn, these contractual arrangements are limited by the institutional environment, both informal and formal (first and second level), through which they operate. The informal institutions include the perceptions of PPP by the general public and a PPP facilitating or restricting culture, while the formal institutions include constitution, laws, regulations, decrees, directives and administrative commandments of the government. The institutional environment functions as regulator or facilitators that influence the PPP transaction process directly or indirectly.

### **3.1 Depicting PPP**

NIEP has been used to understand different economic environments, its also been used to understand PPP in other countries such as China ([Shuibo Zhang, 2013](#)), now the current study is adopting the methodology to understand the economic institutional context in Colombia.

The term PPP comes from a very general nature, with various origins from different countries, regions, and organizations, for example, in Colombia *Asociacion Publico Privada* (PPP) is an instrument for linking private capital, made of a contract between a state entity and a natural or legal person under private law, for the

provision of public goods and their related services, which involves the retention and transfer of risks between the parts and payment mechanisms, related to the availability and level of service of the infrastructure and / or service ([Colombian Law 1508/2012](#)). Private finance initiative (PFI) in UK, build–operate–transfer (BOT) in Asia and Pacific Regions, concession in France, private participation in infrastructure (PPI) of the World Bank, each with possible relevance to their political, economic, legal, cultural, and industrial backgrounds. These terms have gradually converged to the term of PPP.

### **3.2 Role of trustee in PPP, the case of Colombia**

In Colombia, although the administration of the assets corresponds to the trustee, the assets do not become part of the assets of the fiduciary entity, but instead creates an Autonomous Patrimony (AP) independent from the trustor, the fiduciary entity and that of the beneficiary; in which has a special protection, so that, in principle, they cannot be prosecuted by the creditors of any of the aforementioned intervenors (Trustor, Trustee or Beneficiary). The assets of the AP only support the obligations of the purpose established in the trust agreement (contract).

The concept of trustee has become in Latin America one of the most important tools for the execution of business operations, mainly because of the confidence that inspires the institutions running this kind of businesses. Such trust arises mainly due to the professional nature of the trust entity. Responsible for executing the commitments acquired in the fiduciary contract and the creation of an Autonomous Patrimony (AP) that protects the trusted assets, as it excludes them from the general pledge of creditors of the trustor and the trustee company. The essential elements of the contract were designed to provide security for the parties in their projects and investments.

When it comes to PPP, the role of trustee as part of the SPV takes relevance due to operating as a figure created by the participating parties (public and private entities) in order to assure the accomplishment of the proposed objectives, to which specific activities are aimed at the development, administration, operation and transference of the project assigned, in order to obtain and distribute the resources according to the interest of the participants in the project and in accordance with the terms defined in the contract.

Additionally, it can be used as guarantee trustee and source of payment trustee for trustors and creditors understood to be the business in which a person irrevocably transfers the ownership of one or more assets as a commercial trust, or delivers them as an irrevocable trust to a fiduciary entity, to guarantee with them and with its cash flows, the fulfillment of certain obligations – commitments in charge and in favor of third parties (creditors, investors or loaners), designating as beneficiary the creditor-loaner, who can even require the

trustee to sell the trust assets so that with the product value pays off the obligation or the unpaid balance, in accordance with the instructions provided in the contract.

Assets transferred and the creation of trust autonomous patrimony (AP) Below, the explanation of trustee operation in Colombia makes necessary showcasing a brief chart of functional description of transactions which is shown in figure 3.2:

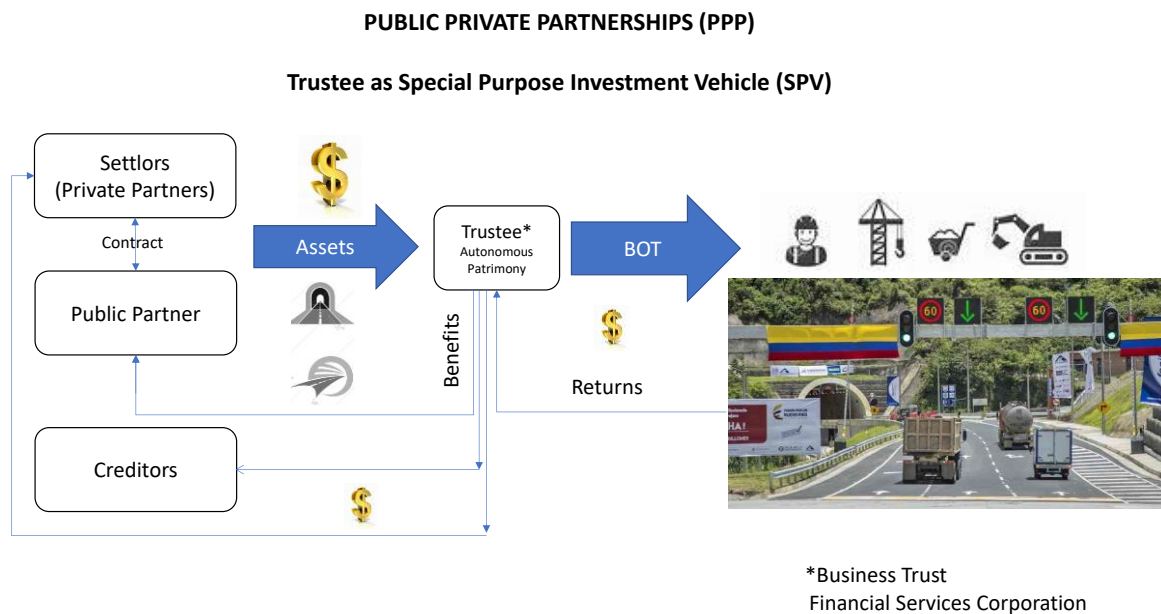


Fig 3.2 Trustee as Special Purpose Vehicle

Guided by the above information, the following part digs into the development of PPP in Colombian’s infrastructure sector, concentrating on its institutional context, for example on Level 1 informal institutions and on Level 2 formal institutions on Level 3 governance and Level 4 resource allocation and employment.

### 3.3 Institutional context in Colombia

Institutions are the norms and rules of a society and affect the performance of economies by reducing uncertainty in guiding human interactions and structuring incentives in such exchange (North, 1990). These rules basement is reflected by the cultural system for informal institutions and the legal and administrative systems in formal institutions.

#### 3.3.1 Level 1 Informal institutions

Colombian cultural system

Due to its colonial history, the culture of Colombia is very similar to other Latin American countries. The colonial legacy of Spain comes across the country and indigenous people have distanced themselves from their pre-Colombian roots. Today, Colombian culture is a mixture of European and Indigenous customs and traditions that are reflected through music, art, literature and the relationship between them.

Colombia was formed as a state in 1810 from the Viceroyalty of New Granada, a colony of the Spanish Empire that had been founded in 1550. Its history is generally divided into time periods of Pre-Colombian, discovery and Spanish conquest, colony, independence, republican consolidation and the 20th century.

The first republican century was turbulent. The Constitution of 1886 put an end to the liberal hegemony and created a centralist, conservative and strictly Catholic state. The 20th century was inaugurated in Colombia with the Thousand Days War. Undoubtedly the most notable event of the 20th century in Colombia was the assassination of the liberal leader Jorge Eliecer Gaitán, which occurred on April 9<sup>th</sup> of 1948, had precipitated the country into unusual violence that was especially cruel. The strengthening of the drug mafias starting in the 1970s would put Colombian society in check and profoundly affect the ruling classes.

After more than fifty years of armed conflict with the FARC (Colombian Revolutionary Armed Forces), a Peace Agreement put an end to the violence with that guerrilla in 2016, the largest internal conflict in Colombia's history. The Agreement includes a comprehensive agricultural development plan with access to land, services and a strategy for the sustainable substitution of illicit crops.

The mentioned agreement served a great potential of making business in Colombia which can be as easy as Colombians manage a very simple business culture characterized by carrying out commercial networks, through dialogue and knowledge of the market within which they want to link.

In companies, it is very important to maintain a defined business culture as it is going to impact the product characteristics and make the difference of its brand image and recognition that the organization will show at the moment to establish business relationships.

Another important aspect to take into account is to confirm in advance and arrive a few days before the scheduled date so that you can get used to the climate and height. The punctuality in Colombia is not a strong point, as in most Latin American countries, you may have to wait 15-20 minutes before meeting your counterparts.

For Colombian businesspeople, trust is very important, which why in principle they will want to know a little more about the company, the first appointments will take place in the offices or facilities of the company afterwards they can arrange meetings at restaurants and hotels in order to strengthen ties of network.

In Colombia salutation in business context, men and women are greeted with a handshake, you should extend it first to the most important person in the company. Colombians are generally very talkative, so before focusing on the topics of Businesses will want to discuss other matters. Topics related to the beauty of the country, soccer, artists, food, Colombian products, among others, are perfect subjects as “ice breakers” to set a little more confidence. Humor is welcome but be careful to overuse this source.

### **3.3.2 Level 2 formal institutions**

#### Legal System

Colombia has a unique and complex legal system. Traditionally, based on the civil law system supported in codes and laws instead of jurisprudences, however, in Colombia, as well as in other civil law countries, the high courts’ jurisprudence has attained more power as in certain occasions, especially in high profile cases where the matters are controversial, a court’s interpretation of the law is just as important as the written law itself (Vega, 2018). Colombia is characterized by democratic ideology. The Colombian National Constitution of 1991 states in Article 1 that “Colombia is a social state of law, organized in the form of a unitary, decentralized republic, with autonomy of its territorial entities, democratic, participatory and pluralist”.

The political power is distributed in three branches. These branches, according to Article 113 of the Constitution, are the executive branch, legislative branch, and judicial branch. They all have independent roles but are “designed to work harmoniously for the realization of the nation’s goals.” As shown in Fig. 3.3.

The executive branch is managed by the President. Governors, mayors, and ministries report to their respective leaders. For instance, mayors report to the respective governor and the president, therefore, governors report to the president.

The Legislative branch’s duty is to amend the constitution, make laws, and exercise political control over the government and the administration. Congress is the body in charge of the legislative function, and it is made up of the Senate and the House of Representatives.

The Judicial branch administers justice. The judicial branch in Colombia has four high courts, which are the last instance for the three most important jurisdictions: ordinary, administrative and constitutional.

In the following figure 3.3 it is depicted the Colombian`s Legal System:

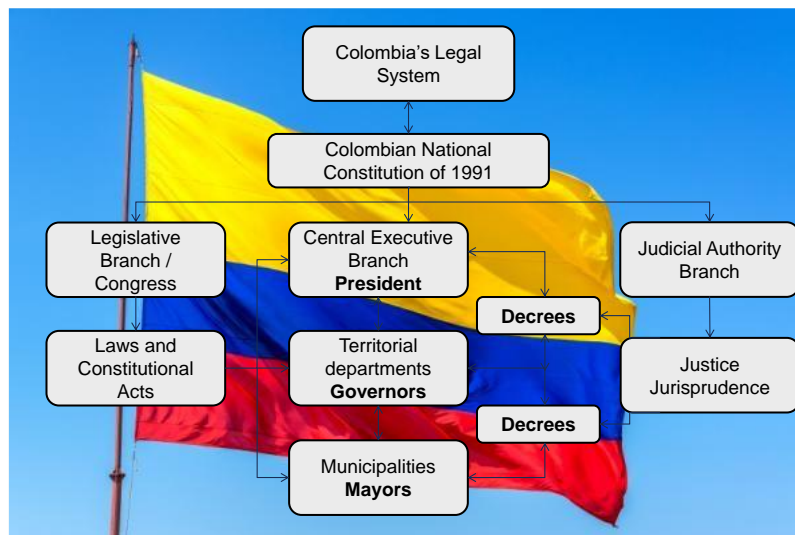


Fig 3.3 Colombian Legal System

### General framework of Colombian Administrative System

The president as the leader of the all-administrative ministries and organizations across the country, within other assignments, is in charge of planning national economic activities, leading and managing urban and rural projects, and allocating administrative functions to the municipal and departmental governments. With regard to infrastructure, several ministries and administrations are specifically relevant for PPP projects, including the Ministry of Finance, Ministry of Education, Ministry of Transport and National Planning Department. Presidency is responsible for executing, in a coordinate manner, all administrative activities that are at the service of the general interests of the community for the fulfillment of the essential purposes of the Country. It is represented by the President of the Republic, who symbolizes national unity, is the Head of State, Head of Government and supreme administrative authority.

The Executive Branch has 3 orders: National, Departmental and Municipal. As a Civil Law country, Colombia's legal system is mainly based on Constitution, Codes and Laws rather than jurisprudence (Common Law countries).

A municipality is an administratively and legally organized territorial entity. It is directed by the figure of a mayor, who governs together with a municipal council; both figures are elected by popular vote. Colombia has 1,123 municipalities.

Located between the nation and the municipality, the departments are headed by a governor in charge of the autonomous administration of the resources granted by the State. They have autonomy in handling matters related to their jurisdiction and function as coordinating entities between the nation and the municipalities.



They are administered by a governor and an assembly of deputies elected in popular elections. In Colombia there are 32 departmental units.

The framework of the administrative structure of Colombia is shown in the following fig. 3.4:

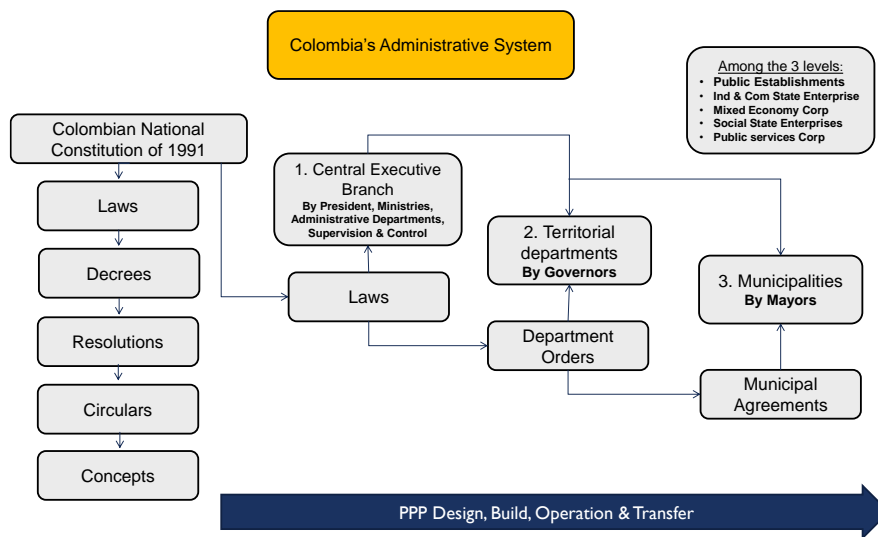


Fig 3.4 Colombian Administrative System

### 3.3.3 Level 3 Governance

#### 3.3.3.1 The early phase (1961–1991)

In this phase most of the investment in infrastructure (except mining, oil and gas) was developed by the public sector. (Yaker, Restrepo, 2000). However, in 1983 the Government issued the Decree 222 "By which introduced rules on contracts of the Nation and its decentralized entities", giving the possibility of granting to private firm's public works through the concession mechanism. Although (BID, 2018), has shown the figure used in the country did not give the expected results specifically in the area of road concessions, for the first, second and third generation concession contracts, these works had significant delays compared to the established time frames, which as a result ended in lawsuits and fines for the parties, in addition they have required renegotiations of great impact both at run time and the estimated cost.



3.5 This photograph denotes the complexity of Colombian Geography

In the end of this period, [BID \(2018\)](#) reported investment in energy was the dominant one, showing a clear trend concentrated in hydroelectric generation projects financed by external credit. As belonging only to public sectors aqueducts were characterized as of great financial hardship, presenting the lowest investment rate sector as in telecommunications whose development was mostly concentrated to larger cities. As a result of these unequal investment patterns, the country accumulated excess of capacity in some sectors and huge deficits in others. While installed generation capacity doubled in 10 years and telephone lines increased five times in just 20 years, road infrastructure expanded by just over 5700 kms, remaining static at the same level since 1984, and the power transmission network expanded at a very slow pace. In terms of coverage, the behaviors are similar, showing, for power generation a very strong growth in coverage between 1970 and 1987, the year from which it reached the levels it maintains meaning that installed capacity grew at the same rate as the population did.

Lastly, with the Political Constitution of 1991, within a framework of economic openness, Colombia strengthens the regulatory framework to promote the development of private participation in infrastructure.

### **3.3.3.2 The development phase (1992–2012)**

Since the approval of the new Constitution in 1991, the rules of investment patterns were radically changed as the private sector consistently gained participation in construction, operation and transfer of large amounts of construction projects introducing competition in several infrastructure sectors as Transport, Electricity and Domiciliary Public Services.

This new policy boomed from 1995, in sectors such roads and telecommunication sectors. Oil brought some dynamism which was led by discoveries of new reserves. In gas, the private sector has been developing some infrastructure in transport since 1993 and, in the meantime, it is noteworthy that in the period Colombia developed a huge gas transport and distribution network.

The risks of infrastructure projects for Colombia in this period, especially in the regulatory field, commercial and majeure force projects were important. Regulation has been developed in various sectors. Regulatory institutions were created in 1993 and 1994, highly exposed to political interference, cost adjustment regulations were periodically postponed, opting for adjustment schemes more gradually.

Private investment has been introduced through concession contracts (roads, airports, basic sanitation, ports, telecommunications, oil transport and gas distribution) and partnership contracts (oil and gas exploration and exploitation). Private participation in State Owned companies started to happen.

Under these circumstances, the dynamics of private investment started from designing concession contracts. More consistency at risk distribution (between the private investor and the public contractor) depending on the project characteristics, bringing development to the Colombian Institutional Framework increasing the expected returns versus investment, captivates a greater interest from private participation.

#### **3.3.4 Level 4 resource allocation and employment.**

In 2012 Colombia boosted private investment in infrastructure since regulatory and institutional change for PPP's was implemented. The new legal framework introduced with Law 1508 in 2012. In 2013, the Fourth Generation Road Concessions Program 4<sup>th</sup> Generation was launched. As a result of these changes, infrastructure investment reached 6.46% of GDP in 2015 (Rodriguez and Pinto, 2018), which is expected to have a positive effect on the country's competitiveness and productivity.

Over the years, Colombia has shown a very favorable change in its macroeconomic indicators. However, the challenges developing the country's economic and social infrastructure between 2003 and 2013, the Colombian state invested an average of 3.2% of GDP in infrastructure. Therefore, according to the World Bank, it was estimated that a 6% economy growth requires doubling this investment effort, with rates of around 7% per year. Since 2010, Colombia has had a regulatory and institutional change for PPP's boosting private investment in infrastructure as it will be demonstrated in the following figure. The policy improvements and lessons learned brought to positioning Colombia at the top of the Infrascopes index 2017 among Latin America and the Caribbean, benchmarking tool that evaluates the capacity of countries to implement sustainable and efficient PPP's in key infrastructure sectors.

As under the new reform in 2012, the Law increased the scope for private partners to develop projects in a wide area of development, such roads, hospitals, building renewal and every purpose involving the state needs and supplying commitments.

There's an immediate positive effect after the introduction of trustee in the new PPP scheme in 2012 shown in the following fig. 3.6 Within several advantages led the country to attract more private investors mainly due to it is paid for a service instead of the infrastructure. There are risk allocation guidelines from processes perspective (the ease party able to manage the specific risk). Additionally, enables requirements such as legal capacity, financial capacity, Investment and structuring experience projects. The structure is designed for institutional and financial investors.

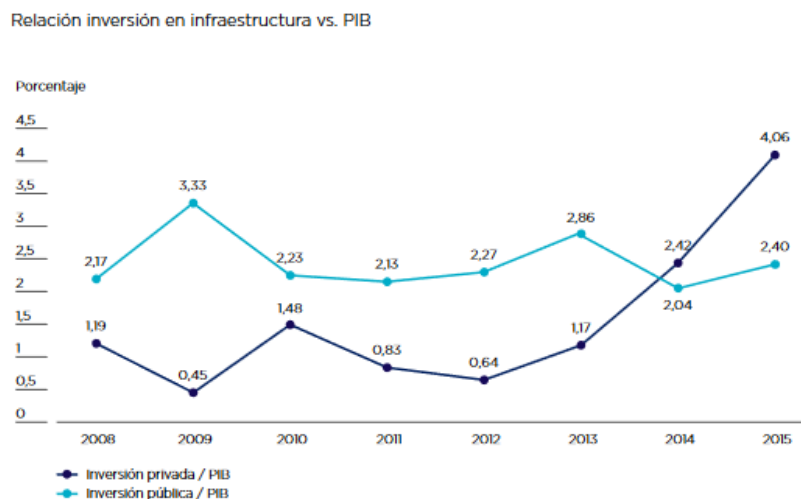


Fig.3.6 Infrastructure Investment Vs. GDP. Source: DNP Infrastructure in Colombia (2018).

As in the chart the light blue line represents Public investment which demonstrates that since 2014, private investment as a percentage of Gross Domestic Product (GDP) exceeds investment made directly by the public sector. (IDB, 2018) as since 2012 the dark blue line representing private investments shows it boosts the value effect of private investment since 2012 with the introduction of the new PPP's regulation, increasing from 0.64 in 2012 to 4.06 in 2015 the percentage of GDP invested from privates which demonstrates on one side the trust and on the other, evidence of confidence in the business trust for special purpose vehicles.

On the other hand, supported in BID (2018) the evolution of this model involved big changes in the way projects are evaluated, as well as their design, administration and development, seeking more competitiveness offering great qualitative advantages in each investment, making this model on one side as an alternative to promote development with the participation of private funds which means a “win – win” relationship representing profit for privates and efficiency for the State.

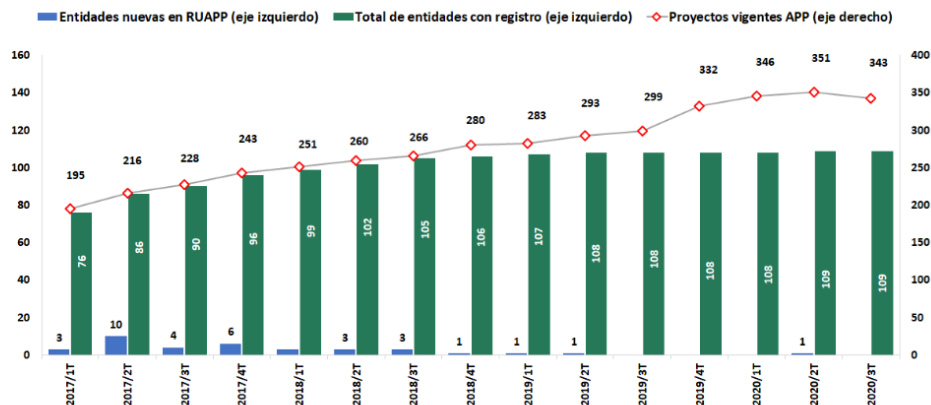


Fig.3.7 Number of projects ongoing Vs. Entities Registered running PPP. Source: Single Registry of Public Private Association RUAPP

It is important to mention that PPP's are gaining strength, a fact demonstrated in the position recently obtained from the [Infrascope \(2019\)](#), in which Colombia occupies the second place with most favorable environment for development of infrastructure PPP's in the region. Additionally, the fig. 3.7 denotes a total of 343 projects ongoing among 109 different public entities along the country steadily increasing since 2017. The initiatives are mainly concentrated in areas of transport, culture and sports.

As it has been shown, the success of PPP in any country is based on one's own experience and influenced by experiences brought by other countries, despite the cultural, organizational and social differences of each region; it is possible to generate successful PPP investment projects as long as there is a clear scope of responsibility within public and private parties, it is a reality that countries like Colombia do not have sufficient resources to meet the infrastructure and service offer needed to be competitive and enter the world of developed countries, just as if it is also true that Colombia has made progress in this regard, as an emerging country, however the path is about being served and covered, it is still demanding maturity after years of issuing regulations that give opening to this figure in the country and its main focus is on the design, construction, maintenance and transfer of highly demanded infrastructure trough working out private initiatives that seek the construction and operation of projects an attractive mechanism of pursuing profits and social development.

## Conclusion

### Chapter 4 Conclusions

All the advantages discovered and clarified with trustee are mostly related to corruption statistics, and the advantages of trust administration, Supervision from Government, sub-accounts, expertise supervision of Trust Business Corporations, transparency, balance for the parties, guarantee for creditors and the Public

Agency.

The success of Colombia at developing PPP's with trustee is evident compared to other countries. The example of trustee towards a maturity PPP phase as an outcome of institutional worldwide improvement from success in Colombia.

World Bank statistics and multilateral organizations have referred to Colombia as one of greater business environment in Latin America. Positioning the country as one of the best places Latin-America to develop PPP projects due to institutional, trustee structure, legal guarantees, etc. supporting the cited statement due to the following results:

- The institutional development of PPP in Colombia is achieving a good level of maturity which gives security to potential investors.
- The introduction of trustee gives a guarantee of success for the investment of resources in this type of projects giving confidence to the investors.
- Long-term projects (up to 30 years) will produce profit either from public sector contributions – service fees and payments corresponding to the fee paid for the use of the infrastructure by users.
- Investors are able to offer public infrastructure projects to accomplish public needs, seeing this opportunity as a profitable and ideal environment for investment.
- It is an attractive scheme also for the State, especially for developing countries since due to the scarcity of resources to invest in infrastructure in general, this type of project facilitates the investment of resources of private origin, which implies less demand for resources necessary to materialize large public infrastructure projects and the payment will be made to the extent that the infrastructure is available, which necessarily obligates the project developer to finish the construction in order to put the infrastructure into service so that they can receive their revenues.
- Describing the advantages of trustee as a strategical and transparent investment vehicle that can be adopted by investors, policy makers, governmental entities, business trust managers etc.
- Depicting the realization of PPP in the Colombian context will encourage investors by a better understanding of trustee management.
- Trustees promote equilibrium within the counterparts at executing complex transactions in the projects.
- Colombia can be an example that could even be adopted in the Chinese investment market as in other countries.

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