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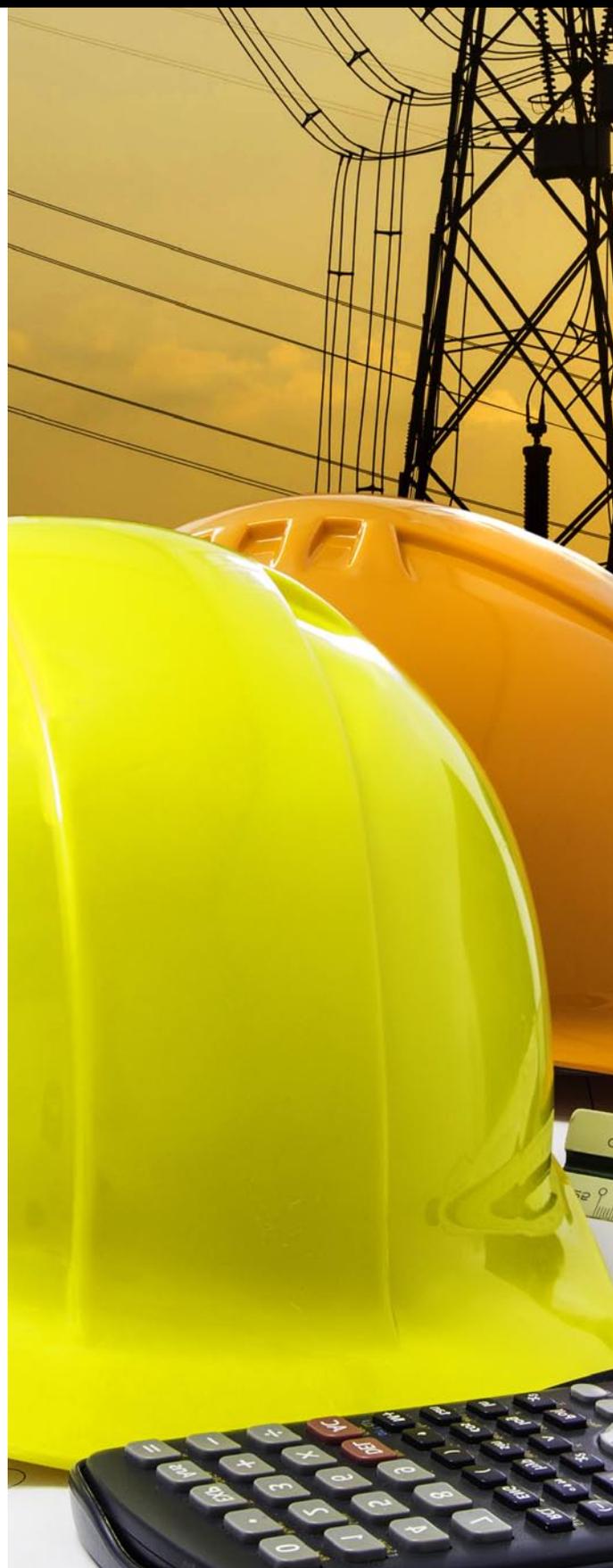
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INFRASTRUCTURE & PROJECT FINANCE

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Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in infrastructure & project finance.

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INTRODUCTION

Though infrastructure development is often a boon for regional and national economies, in recent decades there has been a surprising lack of it among some of the world's largest economies.

Despite their status as economic powers, countries such as Germany and the US have neglected their infrastructure needs, much to their detriment. Accordingly, workers and goods alike have been forced to traverse crumbling, antiquated transport networks for years. Thankfully, however, in certain jurisdictions there is political will – as well as economic need – to improve networks and drive investment.

Public-private partnerships (PPPs) have a vital role to play in the ongoing infrastructure renaissance. In many jurisdictions, diversifying funding sources to include PPPs has proven popular, kick-starting activity. However there is much more to be done, both in terms of new projects and rehabilitating existing infrastructure. Transport networks, high speed internet connectivity, schools and public building projects are just a few examples of the types of projects in desperate need of funding. And many of these projects cannot be financed through public sources alone – there is an urgent need for private finance, and PPPs have a key role to play.

For those parties undertaking infrastructure deals, the importance of due diligence cannot be overstated. Given the risks and regulatory challenges inherent in infrastructure transactions, due diligence is vital to successful deal execution. There are myriad legal, commercial and technical issues which parties must be prepared for, and due diligence is the key to overcoming them.



UNITED STATES

DOLLY MIRCHANDANI
WHITE & CASE LLP

Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN THE US OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

MIRCHANDANI: The last 12-18 months has been an exciting period of growth, with steadily increasing deal flow in the US infrastructure market – both greenfield project development as well as secondary market acquisition and disposal activity – and greater diversification of the asset classes in which private capital is deployed. The airport sector was given a real boost with the successful financial close of the \$4bn Central Terminal Redevelopment project at LaGuardia Airport in New York which, being a terminal deal that did not need FAA approval, now provides a template for sorely needed terminal redevelopment projects across the country. The water sector saw the implementation of the \$3.4bn Vista Ridge pipeline project in San Antonio, Texas, which will deliver water from 142 miles away and replenish aquifers that are projected to be depleted given the scale of population growth. Meanwhile, a novel project in the energy sector involved the grant of a 50 year concession for the comprehensive management of Ohio State University's energy system.

Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

MIRCHANDANI: The market continues to see a steady stream of agencies implementing congestion management through the use of managed lanes that utilise dynamic tolling. Virginia recently closed a significant extension of the successful 95 Express Lanes project, and other states are hoping to replicate this success. The other prevalent characteristic is complexity. Difficult construction where innovation can produce a better, cheaper and faster solution is attracting the attention of the authorities, such as the recently-awarded C-70 project in Colorado and the massive Landside Access Modernisation Programme at LAX airport that is under procurement.

Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT

MIRCHANDANI: There is significant need for private investment in infrastructure projects in the US, both new build and rehabilitation, as well as the renewal of existing assets that have reached or exceeded their useful life. Certain sectors have been developed and managed by the private sector for many years, for



PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

example, electricity and telecoms; while other sectors – including surface transportation, water and public buildings – have not traditionally deployed private equity capital in asset development and long term operation. Federal, state and local governments are increasingly challenged to source funding for the scale of required investment. As a result, over the past decade many governmental authorities have looked to the private sector to deliver projects with cost savings derived from innovation, accelerated delivery and improved performance efficiency over the long-term life of the asset rather than being principally focused on upfront capital cost.

Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

MIRCHANDANI: The US debt market is both liquid and cheap at the moment, providing even greater rationale for accelerated implementation of project delivery. Sources of debt for the US infrastructure market include taxable and tax exempt bonds, both publicly and privately marketed, as well as commercial banks and low cost government lending programmes, such as the TIFIA loan programme administered by the Build America Bureau within the US Department of Transportation. Recently, the private placement market has been a popular source of low-cost, long-term fixed rate debt, with institutional providers of such debt willing to provide contractual commitments during the bid phase of procurements, including flexibility on delayed draw and competitive terms. We also have seen such debt raised at both the Opco and Holdco levels, which allows the optimisation of the amount of debt that is made available within investment grade rating requirements.

Q WHEN EXECUTING INFRASTRUCTURE DEALS, HOW IMPORTANT IS DUE

MIRCHANDANI: Comprehensive due diligence is critical to successful deal execution and the mitigation of financing risk for infrastructure projects. Experienced authorities that implement procurement processes and wish to maximise value and fully exploit competitive tension are well served by



DILIGENCE TO MANAGE THE RISKS AND REGULATORY CHALLENGES?

anticipating bidders' due diligence needs. Those typically cover real estate and access rights, utility and other third-party interfaces, environmental risks and remediation of hazardous materials, geotechnical risk, market risk in the case of demand risk transactions – for example, traffic and revenue or ridership studies – appropriations and credit risk in the case of availability payment-based transactions and technology risk, among others. Similarly, private parties that wish to maximise value in the sale of their infrastructure investments will want to provide a populated data room at the outset to permit the conducting of detailed due diligence.

Q IN YOUR EXPERIENCE, WHAT ELEMENTS ARE ESSENTIAL TO OPTIMISING EXISTING PROJECTS, GENERATING RETURNS AND CREATING LONG-TERM VALUE FROM INFRASTRUCTURE INVESTMENTS?

MIRCHANDANI: Funds that invested in infrastructure assets to optimise operational efficiencies and deliver more for less have generally achieved significantly higher multiples on invested capital at the time of exit. That compares to those which have not been able to implement strategies to drive higher asset performance at the operational level. With record levels of private equity capital raised to invest in US infrastructure, and relatively few assets available for investment, EBITDA multiples in the mid-30s have been seen over the last year for long concession life assets that were heavily competed for among purchasers keen to lock in yield. The key to long-term value for infrastructure assets is a stable contractual framework for the concession arrangements, with fair and balanced risk allocation that is appropriate for the asset and its related risk profile. If concessions seek to transfer risks that cannot be priced or managed effectively to the private sector, such as demand risk for pure greenfield toll road projects with no history of traffic demand, the prospect of long-term value creation is diminished.

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN THE US OVER THE COMING MONTHS?

MIRCHANDANI: There will continue to be strong interest from the US public sector to attract private investment in the development and operation of infrastructure assets. The government has expressly indicated its desire to implement policies that will support greater private investment. However, the public sector will need to solve the fundamental issue of expanding funding sources to repay the huge volume of private debt and equity capital that is needed to tackle the immense backlog of infrastructure investment needs. Funding sources could include the

“There will continue to be strong interest from the US public sector to attract private investment in the development and operation of infrastructure assets.”

utilisation of user fees for assets that historically have not been paid directly by users, such as tolling the interstate highways. They could also include the implementation of rate increases for assets that currently are paid for by users but which are so heavily subsidised that there is inadequate correlation between the charged user fees and the actual cost of the service plus a reasonable rate of return, such as water rates. Tax increases are another potential source of increased funding. There is general pessimism that Congress will implement tax increases at the federal level, but local governments and cities are turning to various forms of 'self-help' by passing tax measures at the local level to raise funding for infrastructure projects. For example, billions are being raised for transportation projects in Los Angeles due to the passage of Measure M and Measure R. This self-help is expected to be rewarded with increased allocations of available funding from the federal government.

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Dolly Mirchandani's practice focuses on infrastructure projects, including public-private partnerships and energy. She has over 20 years of experience working on some of the most significant deals in the sector. She represents sponsors, infrastructure funds, commercial banks, institutional lenders, contractors, secondary market investors and governments in the tender and acquisition of greenfield and brownfield infrastructure projects. Her breadth of practice allows her to anticipate concerns, propose solutions and promote agreement. She has played a leading role in the introduction of private investment and finance in the infrastructure sector in North America, having advised on multiple, award-winning transactions.



PERU

CARLOS ENRIQUE ARATA
RUBIO LEGUÍA NORMAND



Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN PERU OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

ARATA: Unfortunately, the development of new infrastructure projects in Peru has almost completely stopped. Over the last 12 months, only two minor projects were awarded: the Aguaytia-Pucallpa 138kV Transmission Line and the Amazon Waterway. There have been several reasons for this stagnation. First, the mining sector has seen a decrease in activity over the last three years, due to lower mineral prices. Peru is primarily a mining country; consequently, our economy is largely shaped by its movement. When the mining industry suffers, almost all other sectors suffer as well. Furthermore, the *Lava Jato* corruption scandal has heavily impacted the infrastructure sector in Peru as it involved the largest construction companies operating in the country and the most important infrastructure projects. Furthermore, it has affected the whole scope and the general view of PPPs in Peru. Consequently, public investors have been hesitant to move forward with most projects. The government has been preoccupied with the scandal and has looked to resolve it before awarding new contracts. Finally, several projects already awarded were bypassed due to expropriations and interference issues; as a result, the government has moved to solve those problems before awarding new projects.

Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

ARATA: Although toll roads have been the main type of project green lit, the focus now is moving to transmission lines and social infrastructure. Regarding transmission lines, Peru has installed capacity to produce an amount of energy that surpasses the amount used, but at the same time, there are still some towns that do not have access to electricity. To solve this situation, the government is promoting different projects of transmission lines, many of which are expected to be awarded this year. On the social infrastructure side, the president has pledged to build water and sewerage systems for every town in Peru by 2021, so many



projects should be awarded over the next 12 months. Furthermore, there is a commitment to build hospitals in most Peruvian towns and the PPP alternative has already proved successful.

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Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

ARATA: Over the last decade, different governments have promoted private investment in infrastructure projects, through both PPPs and private initiatives. Beside clear and steady regulations and a general protection for private investments, the government included in co-financed projects a mechanism to compensate investments by assuming the obligation to pay a guaranteed income to the concessionaire or to assume the payment of any shortfall with respect to a minimum income. This payment is made by the completion of certain milestones and the payments start on a fixed date, regardless of whether the project is operational. This reduces the equity requirement as it shifts construction risk to the government, and allows a reduction of financial costs through the use of securitisation structures. It is a plausible scheme as one of the biggest problems faced by infrastructure projects relates to expropriations and interference, which generally delays construction.

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Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

ARATA: There is huge appetite for new projects in Peru. Foreign and local developers and national and international banks are keen to participate in Peruvian projects and are actively looking for projects. The bright side of the *Lava Jato* scandal is that bidding processes are now more transparent, which, in turn, is attracting new players that were not willing to participate in Peruvian projects in the previous decade. In addition, due to the lack of new projects, banks have much more liquidity and need to be more competitive with their rates – they are even willing



“The pipeline of projects is huge, and the government is taking the correct steps to modify all aspects that have been delaying new projects.”

to lend at capital markets rates. Finally, there has been a shift in the government’s attitude toward guaranteed income schemes. It wants developers to assume more, or all, construction risks, so the guaranteed income will only be paid when the project is complete and operational. This will move financing to a typical project finance structure and will increase the equity requirements. The bright side is that bigger and more financially sound developers will also participate.

Q WHEN EXECUTING INFRASTRUCTURE DEALS, HOW IMPORTANT IS DUE DILIGENCE TO MANAGE THE RISKS AND REGULATORY CHALLENGES?

ARATA: Due diligence is incredibly important, especially on the lands and permits side. One of the biggest problems that project developers face relates to expropriations and interferences. Unfortunately, land ownership is very informal in certain areas of Peru, and this is particularly true in areas that lack appropriate infrastructure. Accordingly, developers must identify the land needed for expropriation or which easements will have to be imposed. These issues can delay projects for several years if they are not properly planned and regulated on the corresponding concession agreement. Permits are very important too. Bureaucracy is slow and permits are not always obtained on legal terms, so knowing in advance all the permits and corresponding requirements is a must.

Q IN YOUR EXPERIENCE, WHAT ELEMENTS ARE ESSENTIAL TO OPTIMISING EXISTING PROJECTS, GENERATING RETURNS AND CREATING LONG-TERM VALUE FROM INFRASTRUCTURE INVESTMENTS?

ARATA: With regard to land and permits management, the government is now trying to award only mature projects, those which have all the required land identified and with a mandatory expropriation plan to be included in the concession agreement, and which have the most permits already granted. These two aspects will reduce delays significantly, increasing the project value for all stakeholders, namely the developers, the government, lenders and beneficiaries. More mature projects will also reduce the need for amendments, which have been in the spotlight lately as they were a way to make corruption payments by increasing costs, generating additional works or increasing the term of the agreement.

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN PERU OVER THE COMING MONTHS?

ARATA: We expect a very active infrastructure sector in 2018. The pipeline of projects is huge, and the government is taking the correct steps to modify all aspects that have been delaying new projects. Furthermore, the incoming projects will be more focused on those with social impact and a positive contribution to decreasing poverty in the country. On the financing side, as the government intends to move away from the structure used so far in co-financed projects, financing will move toward traditional project finance structures instead of securitisation schemes implemented to raise funds. Finally, along with new and bigger developers, we are seeing increased participation from foreign pension and private equity funds. So far, their participation has been centred on acquiring operating projects, but they are now beginning to show an interest in projects under construction.



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SPAIN

JOAQUÍN SALES
KING & WOOD MALLESONS



Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN SPAIN OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

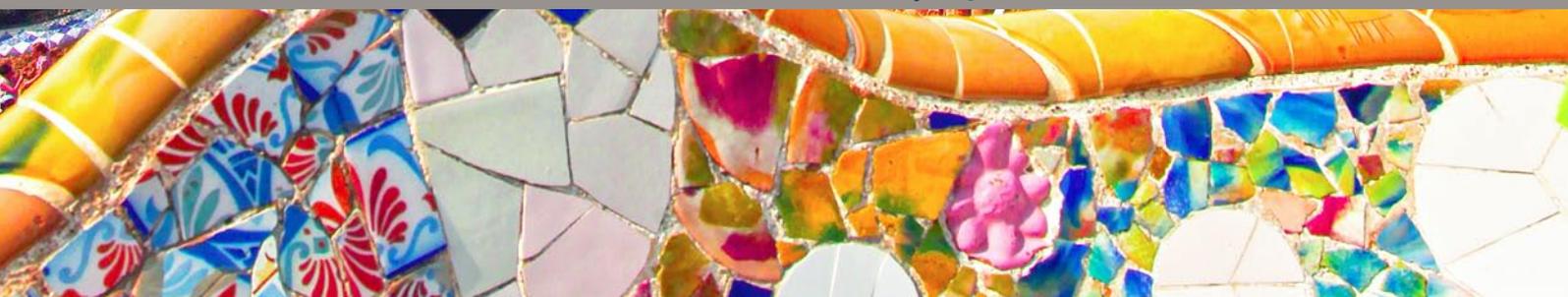
SALES: Public investment and bidding processes in the infrastructure sector in Spain have been slow in recent months, due to budget shortages and political fragmentation. The construction and improvement of infrastructure projects is currently affected by forecasts of reductions in public spending. However, it is important to note that Spain still has one of the most modern and efficient transport networks in the world – our high-speed rail network being second to China only, and the largest in Europe at over 3000km long. Furthermore, Spanish companies have steadily gained leading positions in the infrastructure sectors of foreign markets, due to their participation in the most important construction and management projects concerning air, sea and land transport around the world, such as the recently completed improvements to the Panama Canal.

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Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

SALES: The most popular infrastructure projects in Spain in recent months have concerned land transport – including rail and road – water and environmental projects. Ports and connecting infrastructure have also been important, as Spain has the longest coastline in the EU and some of its most active ports.

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Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

SALES: The Spanish government is aware of the recession in infrastructure investment and has recently presented a PPP investment plan for road transport, which is yet to be implemented. Experts consider that the ratio of public investment in infrastructure per capita in Spain is low and significantly below the EU average. However, the need to reduce public debt and balance state and regional budgets makes it difficult to increase public efforts in this field. Collaboration of the private sector through PPP and PFI initiatives will be key, as well as the general economic recovery. In this sense, it is worth pointing out that the EU Audit Court has recently questioned the use of EU funds in several Spanish ports, and those of other countries as well, which are significantly underutilised – a problem which should be mitigated by the economic recovery and associated increases in trade.

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Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

SALES: The Spanish infrastructure finance market has recently recovered – a result of the general recovery that our economy has experienced over the last three years. Investor appetite for project finance has increased and the secondary market has gained momentum. Traditionally, Spanish infrastructure projects have been financed by bank loans, leaning on strong banking relationships of local sponsors, whether on a syndicated or a club deal basis, but of late financing through debt capital markets, project bonds or quasi-project bonds, and funds – both as equity and debt investors – are worth highlighting.

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“We must learn from the mistakes of the past, reducing risk and avoiding over-indebtedness and short-term profitability goals.”

Q WHEN EXECUTING INFRASTRUCTURE DEALS, HOW IMPORTANT IS DUE DILIGENCE TO MANAGE THE RISKS AND REGULATORY CHALLENGES?

SALES: Due diligence is important to review the existence of potential hidden liabilities and contingencies, and in order to avoid future negative impacts on projected cash flows and capital or operative expenditure. In particular, the review of project agreements and finance documents is critical in M&A deals, as change of control clauses may be triggered as a consequence of the transaction. This is also relevant for project licences, depending on the level at which the change of control takes place. Additionally, different regulatory risks, both relating to permits and authorisations, and to the amount and timing of regulated income, must be taken into account in all projects. Finally, as evidenced in the last few years, a realistic assessment must be made of the strength of any public-sector payer covenant.

Q IN YOUR EXPERIENCE, WHAT ELEMENTS ARE ESSENTIAL TO OPTIMISING EXISTING PROJECTS, GENERATING RETURNS AND CREATING LONG-TERM VALUE FROM INFRASTRUCTURE INVESTMENTS?

SALES: We must learn from the mistakes of the past, reducing risk and avoiding over-indebtedness and short-term profitability goals, and adjusting debt levels, tenors and profiles to a realistic, more conservative cash flow scenario. Also, securing strong, reliable sponsors and contractors for construction and operation throughout the life of the project and properly allocating risks, in particular regulatory risks, will be among the key factors.

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN SPAIN OVER THE COMING MONTHS?

SALES: The infrastructure sector is expected to continue to gradually bounce back from the crisis, though the government will continue to implement conservative measures regarding public expenditure in the next few years. Looking ahead, one of the most important projects expected for the coming months will be the refinancing of the bankrupt toll highways around Madrid. The idea is to repay the debt with the money collected from the tolls, over a longer period of time, a solution which, of course, will only be feasible if traffic continues to grow. Additionally, investments are expected in water and environmental projects, as well as in developing education and healthcare infrastructure.

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GERMANY

CHRISTOPH SCHAUENBURG

LUTHER RECHTSANWALTSGESELLSCHAFT MBH



Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN GERMANY OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

SCHAUENBURG: While Germany is still one of the world's biggest exporters and is enjoying record low levels of unemployment, Europe's largest economy has long suffered from a lack of investment in its infrastructure. Following reports of a partially insufficient and aging infrastructure, in August 2016 the German federal government adopted a plan to spend €270bn on construction and modernisation of the country's infrastructure over the next 15 years. Our impression is that the mere announcement of the Federal Transport Infrastructure Plan has already led to an enhanced investment climate. In addition, the federal government has committed to pay roughly €10bn annually to the 16 states in exchange for getting more say on infrastructure projects. In fact, Germany's complicated division between federal and state responsibilities has often slowed down infrastructure investments. With regard to private investments in larger public infrastructure projects, the current low-interest rate environment makes it more favourable for government institutions to finance projects on capital markets through the issuance of bonds.

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Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

SCHAUENBURG: Clean and renewable energy projects generally have gained prominence in Germany, particularly since the country's energy turnaround in 2011, which will see the phasing out of nuclear energy by 2022. Still, we are seeing a considerable number of transactions in this field. Compared with many other countries in the EU, Germany lags behind in terms of internet connectivity. Hence, many municipalities are expanding their internet networks. With the aim of provide faster broadband internet to rural and urban areas alike over the next few years, the federal government is hoping to support a significant reduction in the investment costs for the private sector expansion of such networks.

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Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

SCHAUENBURG: Traditionally, there is a certain resistance in Germany when it comes to privatisation. Compared to other countries, private sector spending on infrastructure projects has been relatively small in the past. However, given the urgent need to improve the country's aging infrastructure, the federal government has announced its intention to promote collaboration between public bodies and private investors on infrastructure projects. Apparently, the government hopes that the announced Federal Transport Infrastructure Plan will support PPPs.

Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

SCHAUENBURG: As a general matter, the German lending market, both in terms of lending from banks and from other sources, such as insurances, funds or family offices, has been very attractive for borrowers and equity sponsors. This is due, among other reasons, to the fact that financing providers have shown an increasing appetite to participate in more complex financings offering higher yields. This general trend has also had a positive impact on those areas of project financing which have been very active in Germany, such as the financing of renewable energy projects. However, in some areas of the German market, we traditionally see relatively few transactions, such as the financing of road constructions and PPPs. In this area, no clear market trends can be identified since the terms of the transactions depend heavily on the facts of each relevant case.



Q WHEN EXECUTING INFRASTRUCTURE DEALS, HOW IMPORTANT IS DUE DILIGENCE TO MANAGE THE RISKS AND REGULATORY CHALLENGES?

SCHAUBURG: In project financing, due diligence regarding legal, commercial, technical and other aspects will always play an important role in the credit decisions of investors, and a fruitful due diligence requires close cooperation between the involved advisers and their clients. Legal due diligence is of particular importance when lending against a project based cash flow in a highly regulated environment. Past experience shows that lenders have been well advised to analyse the existing regulatory environment carefully, but also to anticipate the impact of potential regulatory changes to projected cash flows, for example, with respect to public subsidies for projects in the field of renewable energy. Due diligence should also include an analysis of the potential for delays in the implementation of larger infrastructure projects resulting, among other things, from environmental regulations and similar sources.

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Q IN YOUR EXPERIENCE, WHAT ELEMENTS ARE ESSENTIAL TO OPTIMISING EXISTING PROJECTS, GENERATING RETURNS AND CREATING LONG-TERM VALUE FROM INFRASTRUCTURE INVESTMENTS?

SCHAUBURG: When looking at existing projects, the key elements to optimisation depend heavily on the circumstances of each project. General key elements are certainly a close ongoing monitoring of performance, milestones and risks, as well as the financing structure by benefitting from financing opportunities from traditional banks and other sources, including the capital markets. One critical element for larger infrastructure projects in certain fields is that the timing for the implementation of the project has not been carefully planned at the outset and that the delay until ramp-up affects projected cash flows and debt servicing obligations. Hence, monitoring the timing for the various completion steps is an important element for the success of the project.

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“Germany has a pressing need for infrastructure investment in various areas, such as streets, bridges and public buildings, such as schools.”

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN GERMANY OVER THE COMING MONTHS?

SCHAUENBURG: Generally speaking, Germany has a pressing need for infrastructure investment in various areas, such as streets, bridges and public buildings, such as schools. These investments cannot be financed solely from public sources as was done in the past. As a long-term trend, we expect project financing structures, including through PPPs and other innovative structures, will be increasingly used in the German market. However, given the slow pace of growth seen in this market over the last few years, we would not expect a major development over the next few months. In the field of renewable energy, we expect to see a continued strong market for projects and project financings.



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Luther.



ITALY

ALESSANDRO FUSELLATO
GRANT THORNTON CONSULTANTS



Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN ITALY OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

FUSELLATO: The last two years has been a key period for the infrastructure sector in Italy, both in terms of results and in the paradigm shift in infrastructure planning. The conclusion of three emblematic works for the country, Salerno-Reggio Calabria, the Variante di Valico and the AV Treviglio-Brescia railway, represent a period of change and a break with the past. The sector reform process is reviewing its priorities and consequently there have been changes to the regulatory framework governing the approval of the new Public Procurement Code and the issuance of the Guidelines for Investment Evaluation in Public Works of the Ministry of Infrastructure and Transport (MIT). These have been the result of a new approach to the planning and realisation of infrastructure that focuses on the quality of the work and on its effective economic, environmental and social uses.

Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

FUSELLATO: In addition to the major railway, road and port projects, special attention has been paid to the so-called 'cure of iron' in 14 metropolitan cities, to high-speed links to the country's airports and to the new national cycle networks. The new approach of the MIT to infrastructure policy focuses on the needs of citizens and businesses, and promotes infrastructure as a tool to meet the demand for passenger and freight mobility and to connect Italy's regions through interventions that promote economic development. The new infrastructures projects will therefore have to not only be useful but also slender and shared. There have also been ongoing investments into the country's broadband network; this work is urgently needed to achieve compliance with the European Digital Agenda. The ultra-broadband network is facilitating the digitalisation of businesses, as well as improving the computer literacy of citizens. Investments in technology and broadband are the drivers that will shape the future competitiveness of our businesses even in relation to European and world markets.



Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

FUSELLATO: The role of central government is the most important for defining policies that can support infrastructure development. However, the regions, which have to be promoters of accompanying and incentive-driven businesses in research and development, also have a key role to play. In Italy, there is a manufacturing base, formed mainly of small and medium-sized enterprises, which represent a receptive structure for technological innovations. The government has recently set up a number of initiatives in the field of innovative start-ups, for example, one promoted the Small Business Act and a Start up Act. The use of PPPs will reduce the impact of these works on the public debt and will transform management of the infrastructure sector.

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Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

FUSELLATO: One of the most critical factors in Italian project financing seems to be the inadequate allocation of administrative risk, which remains largely a burden on private firms. This is mainly due to shortcomings in the coordination between the various decision-making levels of the PA and the limited attention given to the design of interventions or the presence of conclusion of the contract and mechanisms put back essentially to the authority of the PA. Looking at the sub-sectoral breakdown of infrastructure investments made in Italy in recent years, funded projects have mainly been concerned with developing road networks, as well as urban transport schemes and subway projects.

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**Q WHEN EXECUTING
INFRASTRUCTURE DEALS,
HOW IMPORTANT IS DUE
DILIGENCE TO MANAGE THE
RISKS AND REGULATORY
CHALLENGES?**

FUSELLATO: It is well known that there are many risks during a project's life cycle, including site and construction risks, commercial and financing risks and regulatory and macroeconomic risks. These risks must be carefully divided between the public and private sector partners of the PPP. If the allocation is misjudged, that could have severe consequences, such as providing inadequate incentives for the private contractor or bankruptcy or costly bailouts. For that reason, PPP promoters need to identify and assess the risks by using checklists, scenario techniques and expert workshops. They should also review the previous projects and then capture the results in a risk matrix, along with an assessment of their likelihood and potential impact. This is why due diligence is fundamental, especially in a country like Italy where the regulatory and administrative environment is complex. In addition, the process is even more important when it comes to long-term PPP projects where stakeholders cannot go back unless they have undergone a difficult debt restructuring and have obvious consequences on the surrounding environment. Due diligence may also have a dual role to play. It can identify the actual bankability and prevent risks, and it can also identify alternative strategies that create value.

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**Q IN YOUR EXPERIENCE, WHAT
ELEMENTS ARE ESSENTIAL
TO OPTIMISING EXISTING
PROJECTS, GENERATING
RETURNS AND CREATING
LONG-TERM VALUE
FROM INFRASTRUCTURE
INVESTMENTS?**

FUSELLATO: Modern, efficient, reliable and secure infrastructure networks are required to support industrial and economic growth. At the same time, infrastructure projects must be accessible to all, and should foster resilient, responsible and sustainable industrialisation. The areas that have the most impact in Italy are concerned with developing sustainable infrastructure, modernising industries and enhancing research and development facilities to drive innovation and growth. These are the areas in which Italy still has a great deal of work to do. Even with reference to the analysis carried out by the Ministry of Economic Development, Italy is slightly negative with regard to providing research support, access to communications and technology information, quality of infrastructure and growth and strengthening the role of industry. However, there are also sectors in which Italy is already ahead of the curve, such as environmental issues, because Italian industry has adopted a positive stance on CO2 emissions.

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“New technologies will continue to play a key role in the development of efficient infrastructure and quality in a context of limited resources.”

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN ITALY OVER THE COMING MONTHS?

FUSELLATO: There is certainly a need to implement a structured methodology of evaluation, selection and monitoring of infrastructure projects, especially with scarce public resources, to guide investment toward priority works and to encourage a proper allocation of resources. Secondly, new technologies will continue to play a key role in the development of efficient infrastructure and quality in a context of limited resources. Digital technologies, particularly Internet of Things (IoT) devices, offer immense opportunities for the world's infrastructure. Given worldwide trends, such as progressive and unstoppable urbanisation, and urban, European and national sustainability policies, digitisation and the IoT will be key to developing resilient and sustainable environments that respond effectively to challenges such as pollution risks, energy consumption and climate change, and the development of smart cities.



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JAPAN

IZUMI YAMADA

DELOITTE TOHMATSU FINANCIAL ADVISORY LLC



Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN JAPAN OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

YAMADA: The Japanese government revised its national PPP/PFI action plan in 2017 to encourage more private participation in public services and assets through PPP/PFI schemes. The supervisory agency, the Cabinet Office (CAO), has also updated its numerical targets for 2013-2022 with expected projects valued at ¥21 trillion: ¥7 trillion for concession projects, ¥5 trillion for income-generating facilities, ¥4 trillion for public real estate utilisation facility and ¥5 trillion for other projects. The government also prioritised concession projects in six airports, six sewerage facilities, six water facilities and one toll road project between 2014 and 2016, as well as three education facilities, six public housing projects, three cruise ship terminals and six MICE facilities between 2017 and 2019. CAO is also considering introducing PPP/PFI schemes into public real estate properties. In the energy sector, the gas retail business has been deregulated to encourage more private entries from April 2017.

Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

YAMADA: Various players from diverse sectors formed consortia to bid for the announced concession projects, indicating a robust investment appetite among Japanese investors. It is expected that considerable numbers of players will join in the bidding processes of upcoming concession projects such as Fukuoka airport and the Shin-Chitose airport projects. In the energy sector, M&A and renewable transactions have been more frequent in light of the deregulation in the power and gas industries, as well as revisions in the feed-in tariff system, resulting in restructuring, reorganisation and partnerships across various sectors.

Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE

YAMADA: In December 2015, the CAO and the Ministry of Internal Affairs and Communications jointly announced the Guideline for Preferential Consideration of Various PPP/PFI methods and also introduced Universal Testing, which compels local municipalities with a population of more than 200,000 to consider private capital utilisation when implementing public



DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

services. In addition, the CAO announced the PPP/PFI Promotion Action Plan in May 2016, designed to accelerate the formulation of a regional platform for improving the capacity of PPP/PFI projects with local public authorities. The regional platform, which focuses on government designated cities, is expected to improve the current situation where information and the know-how of local public authorities and private entities are not sufficiently shared and discussed through dialogue and proposals between them.

Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

YAMADA: In the past, project financing was usually oriented with PFI projects with stable availability payments, mainly procuring considerable financing from lenders like mega-banks. However, recent concession projects have tended to be more sponsor-oriented PPP/PFI projects, requiring the project structure to rely less on government expenditure and meet more sponsors' interests. A further trend is increasing rural infrastructure projects as national targets, and local entities and local financiers are seeking broader roles and involvement in these projects, rather than participating as minority shareholders as they did previously. For cross-border project finance transactions, Japanese banks, particularly mega-banks, are very robust in the market, dominating the upper ranks of league tables in 2017. At the same time, the government is expanding public finance options through JICA, NEXI and JBIC, which cover sub-sovereign risk and demand risk, and are aimed at promoting more outbound investment in the infrastructure sector.

Q WHEN EXECUTING INFRASTRUCTURE DEALS, HOW IMPORTANT IS DUE DILIGENCE TO MANAGE THE RISKS AND REGULATORY CHALLENGES?

YAMADA: In Japan, infrastructure projects tend to be concession or brownfield projects and the historical data and track records of these projects are accessible to all. Thus, the common practice during due diligence is to analyse future business plans and cash flows based on this historical data when negotiating and preparing transaction documents, including the bidding price. The controversy in recent concession projects is the risk



“Infrastructure in Japan has already matured in some respects, and there are only a few requirements to develop new, large-scale infrastructure assets.”

allocation between public and private, especially with the defection risk of the existing facilities during due diligence. In other words, upon transferring the ownership of the facilities from public to private under the concession agreements, if there are any defects identified in the facilities when operated by the public, the private entities believe the expenses should be borne by the public. The main issue here is the uncertainty over how many defects exist, how expenses should be included in the business plan and who will carry the cost. From a private entity's perspective, in addition to carrying out proper technical due diligence, the potential expenses attached to defects identified by technical due diligence should be reflected in the concession price, after revising the financial model. A public entity undertaking the bidding process must consider how to allocate the defection risk and the extent of information to disclose to meet the concerns of private entities. In addition, there is an issue over the quality of financial information available. In other words, the applicable accounting systems are different for private and public entities, thus the accounting difference needs to be well analysed at the financial due diligence process. Most importantly, public implementing agencies should be fully aware of these technical issues when they disclose information packages to private entities.

Q IN YOUR EXPERIENCE, WHAT ELEMENTS ARE ESSENTIAL TO OPTIMISING EXISTING PROJECTS, GENERATING RETURNS AND CREATING LONG-TERM VALUE FROM INFRASTRUCTURE INVESTMENTS?

YAMADA: Infrastructure in Japan has already matured in some respects, and there are only a few requirements to develop new, large-scale infrastructure assets. However, there is a huge necessity for asset renewal among public facilities. In such circumstances, where upward revenue trends cannot be easily expected, from the perspective of private entities, the key is to reduce project costs, especially in the water sector, to create long-term value and ensure profitability. In addition, private entities need to draw up a master plan for creating income generating assets, such as real estate developments and shopping facilities, when considering value-up strategies in the airport and road sectors.

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT

YAMADA: Project finance in the domestic infrastructure market has been driven by solar power generation. However, project finance for solar power generation is expected to decrease and there is an increasing trend in project

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN JAPAN OVER THE COMING MONTHS?

finance for biomass and wind power projects, as a result of reshuffling feed-in tariff prices. Regarding PPP/PFI, there appears to be a need for payment projects, mainly for social infrastructure assets. However, these projects are small in scale, requiring less financial arrangements with project finance. For concession projects, local governments prefer amortisation payments to upfront payments with concession fees that require less project finance. Yet the government is considering setting a policy for payment exemption on guarantees of future interests, aiming to pursue early debt liquidation in the public sector. If this policy is introduced, there is a possibility that local governments will shift finance procurement to private rather than public finance, mainly in the water and sewerage sectors, creating huge investment opportunities for private entities. In addition, it is expected that the concession scheme will be introduced to Olympic facilities after the 2020 Tokyo Olympics and the government also intends to develop sports facilities such as stadiums in 20 locations nationwide under the concession or PPP/PFI frameworks, hoping to revitalise local communities by 2025.

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Izumi Yamada heads the Infrastructure & PPP Advisory Group in Japan. Mr Yamada has extensive experience in various fields, including audit, reorganisation & restructuring services, and infrastructure-related advisory services. In infrastructure business, he has considerable experience and knowledge of PPP/PFI through a good record of advisory services both for public and private entities in multiple sectors. He has also written on financial due diligence. Mr Yamada is a certified public accountant in Japan.



MALAYSIA

KAMILAH KASIM
RAHMAT LIM & PARTNERS



**Q HOW HAS THE
INFRASTRUCTURE SECTOR
FARED IN MALAYSIA OVER
THE LAST 12-18 MONTHS?
WHAT FACTORS ARE
AFFECTING INVESTMENT
AND DEVELOPMENT?**

KASIM: According to Goldman Sachs, Malaysia has the highest quality of infrastructure among the ASEAN countries. This is due to the commitment of the government to its comprehensive outline of government development policies and strategies, also referred to as the Malaysia Plan, to implement infrastructure projects. A key factor for the successful implementation of the country's infrastructure projects is the adoption of public-private partnerships (PPPs) in the early 1980s. PPPs allowed the government to embark on many infrastructure projects by sharing the burden of funding the infrastructure projects with private sectors. PPP projects are typically funded using either non-, or limited non-recourse project financing and they have helped establish Malaysia as a world leading issuer of *sukuk* or Islamic bonds. In a conference held jointly by the Malaysian Security Commission and the World Bank it was reported that between 2012 and 2015, 61 percent of the world's infrastructure *sukuk* was issued in Malaysia. Under the 11th Malaysia Plan (11MP), the next batch of infrastructure projects will focus on building an integrated need-based transport system; unleashing growth of logistics and enhancing trade facilitation; improving coverage, quality and affordability of digital infrastructure; continuing the transition to a new water services industry framework and encouraging sustainable energy use to support growth. In the public transportation sector, there are myriad factors which have driven the demand, investment and development of this sector, including income growth and urbanisation in the country; the pressing need to shift automobile reliance in cities, and achieving balanced economic development for the whole country by focusing transportation development on the east of the peninsular and the east of Malaysia. In the sustainable energy sector, the Malaysian Energy Commission hopes to balance the needs of consumers and providers of energy to ensure safe and reliable supply at reasonable prices and also to protect public interest, and foster economic development and competitive markets



in an environmentally sustainable manner. Chinese investments on infrastructure projects in Malaysia have gained prominence over the past two years with many infrastructure projects declared as part of China's 'Maritime Silk Road Initiative'. The infrastructure projects are either foreign direct investments (FDIs) or PPPs with no obligations from or liabilities to the government, though certain quarters have argued that some of the infrastructure projects are publicly funded projects, as the financing is through soft loans provided by the Chinese government or Chinese agencies to special purpose vehicles owned by the Ministry of Finance to implement certain infrastructure projects.

**Q WHAT TYPES OF
INFRASTRUCTURE PROJECTS
ARE PROVING POPULAR AT
PRESENT?**

KASIM: Based on the 11MP, public transportation and sustainable energy are proving popular at present. In respect of public transportation, the government has embarked on a number of projects. The Klang Valley Mass Rapid Transit Line 1 traverses 51km between Sungai Buloh and Kajang has been completed and became operational in 2017. The KVMRT Line 2 began construction in 2016 and is expected to be completed and operational in 2020. The construction of a Light Rail Transit (LRT) Line 3 connecting Bandar Utama to Klang running over 36km will start in 2017 with the expected completion in 2020. The remaining packages of KVMRT Line 2, LRT Line 3, Pan Borneo Sarawak Highway and the West Coast Expressway are to be awarded in 2017. The East Coast Rail Line will be approximately 600km and will cut through four states and connect many rural townships. The Kuala Lumpur-Singapore High Speed Rail promises a travel time of only 90 minutes. In the sustainable energy sector, in 2016 and recently in 2017, the Malaysian Energy Commission issued a request for proposals to develop, finance, design, supply, install, operate and maintain large scale solar PV power plants in the Malaysian peninsular or in Sabah/Labuan under long-term power purchase agreements.



“Malaysia has used PPPs to finance most of its infrastructure projects and will likely continue to adopt PPP funding models or variables.”

Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

KASIM: The government has introduced various support schemes, including the pioneer status incentives (PSI) and the investment tax allowance (ITA) which are regulated by the Malaysian Investment Development Authority (MIDA). The PSI is a five year partial exemption from the payment of income tax. The ITA is an allowance of 60 percent on qualifying capital expenditure, such as factories, plant, machinery or other equipment used, incurred within five years from the date the first qualifying capital expenditure is incurred. The PFI or other similar funding, based on the UK model, has been scaled back to avoid or reduce contingent liabilities.

Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

KASIM: Like most jurisdictions, lenders are generally willing to finance infrastructure projects if there is sufficient security cover and commitment from the sponsors. Other factors may include the involvement of the government or government linked company and previous experience or exposure between lenders and sponsors. In Malaysia, large scale financing or ground breaking infrastructure projects would almost always involve a syndicate of banks to spread risk.

Q WHEN EXECUTING INFRASTRUCTURE DEALS, HOW IMPORTANT IS DUE DILIGENCE TO MANAGE THE RISKS AND REGULATORY CHALLENGES?

KASIM: As with any infrastructure projects, be they PPPs or otherwise, due diligence is crucial.

Q IN YOUR EXPERIENCE, WHAT ELEMENTS ARE ESSENTIAL TO OPTIMISING EXISTING PROJECTS, GENERATING RETURNS AND CREATING LONG-TERM VALUE FROM INFRASTRUCTURE INVESTMENTS?

KASIM: In our experience, it appears that the essential elements, among others, would be a prudent and cost effective operation and maintenance regime. This is typically achieved by applying innovative approaches to optimising the use of existing infrastructure while minimising costs through the better use of smart management and technology. For example, using new and improved technologies, including IT to improve operational efficiency to increase capacity, reduce maintenance and operating costs, and improve the reliability and safety of infrastructure assets.

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN MALAYSIA OVER THE COMING MONTHS?

KASIM: The 11MP will be implemented until 2020. Malaysia has used PPPs to finance most of its infrastructure projects and will likely continue to adopt PPP funding models or variables. It seems that Chinese investment in Malaysia's infrastructure projects – in the form of FDIs, PPP or contractor-financing – will be the alternative funding mechanism for future infrastructure projects in Malaysia.

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MOZAMBIQUE

PAULA DUARTE ROCHA

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Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN MOZAMBIQUE OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

ROCHA: Over the last two years, Mozambique has experienced a reduction in foreign investment inflows. Low commodity prices, plus the withdrawal of funding by international donors due to hidden debts contracted by government, have slowed the country's economy and growth. All these factors have contributed to a decrease in investment in the infrastructure sector and consequently affected investments and developments in the sector. Some of the projects that were under way have come to a halt and some of them recorded losses when the price of goods in the market increased significantly and purchasing power declined. In the face of some measures implemented by government entities and the central bank, it was possible to prevent a further rise in inflation and restore the country's economic stability. Despite the reduction in the number of projects under way in the private sector, a number of important projects in the infrastructure sector have been developed by the public sector. The economy has shown signs of improvement and this has had a significant impact on the infrastructure sector.

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Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

ROCHA: At the moment, the most popular infrastructure projects are Palma's LNG production plant, Nacala's deep-water port, the Maputo-Catembe bridge and the Ressano Garcia-Matola gas distribution network.

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Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

ROCHA: Mozambique has an investment law which offers many inducements, including tax incentives, in order to attract private investment. The government has offered its support to private investment and is trying to attract private investment to fund infrastructure developments. For instance, 2017 saw an amendment to the law of entry and permanence of foreigners which will allow investors and tourists to get a visa at the border at the moment of entry to the country, even if in their country there is no Mozambican diplomatic representation. This measure aims to facilitate the entry of investors in the country with a view to attracting investments into various areas. In recent years, there has been no increase of projects in the form of public-private partnerships, however.

Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

ROCHA: The cost of an infrastructure project in Mozambique has increased significantly in recent years. The country's economic situation has also affected the banking sector and raised the price of interest rates in the market. However, banks have continued to lend.



Q WHEN EXECUTING INFRASTRUCTURE DEALS, HOW IMPORTANT IS DUE DILIGENCE TO MANAGE THE RISKS AND REGULATORY CHALLENGES?

ROCHA: Due diligence is crucial, not only to keep pace with and ensure compliance with constant legislative developments, but also to mitigate common risks associated with the gap between legal principles and common practice, including the potential for corruption risks.

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Q IN YOUR EXPERIENCE, WHAT ELEMENTS ARE ESSENTIAL TO OPTIMISING EXISTING PROJECTS, GENERATING RETURNS AND CREATING LONG-TERM VALUE FROM INFRASTRUCTURE INVESTMENTS?

ROCHA: The majority of economic infrastructure projects in Mozambique still require a significant amount of private investment. Reducing barriers to private infrastructure finance – leading to a lack of bankable projects being developed in the country – and diversifying the economy, including developing the financial sector, are essential to optimising existing projects in the pipeline and creating long-term value from infrastructure investments.

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Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN MOZAMBIQUE OVER THE COMING MONTHS?

ROCHA: Natural resources will continue to set the pace for the development of infrastructure and project finance in Mozambique, with the development of LNG projects playing a major role in restoring the economy, by creating investment opportunities and allowing the country to regain growth momentum. No financial decisions are expected to occur before the end of the year though.

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“The majority of economic infrastructure projects in Mozambique still require a significant amount of private investment.”

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ANGOLA

CATARINA LEVY OSÓRIO
ALC ADVOGADOS



Q HOW HAS THE INFRASTRUCTURE SECTOR FARED IN ANGOLA OVER THE LAST 12-18 MONTHS? WHAT FACTORS ARE AFFECTING INVESTMENT AND DEVELOPMENT?

OSÓRIO: We have witnessed a minor yet consistent increase in infrastructure projects in Angola. The success of recent governmental efforts to finance infrastructure abroad has contributed to this overall improvement. For instance, the Angolan minister of finance recently announced an agreement with the Chinese government for a loan of \$7.8bn which will be channelled to the promotion of nearly 40 projects of public works. On a similar note, the 'bonds project' has recently been founded between the Angolan Capital Markets Commission and three financial institutions. The project is meant to finance the construction of basic infrastructure around the country in energy, water, sewage and transportation. With this objective in mind, bonds issued will be available for purchase by national and foreign investors.

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Q WHAT TYPES OF INFRASTRUCTURE PROJECTS ARE PROVING POPULAR AT PRESENT?

OSÓRIO: The energy sector has always been very popular in Angola. As well as the traditional petroleum sector, the country is now expanding to new areas of energy production, particularly the renewable sector. Angola is believed to have enormous potential for energy production from renewable sources, and both national and foreign investors have been looking into projects in these areas. The country has also established ambitious targets for renewable energy production, as well as for the increase of the electrification index. The combination of these and other factors have made the Angolan energy sector extremely attractive to investors. A joint venture of American, European and Asian investors has recently announced an investment of \$10bn in energy infrastructure in Luanda. The construction of the Laúca Dam is also worth noting. It will be capable of generating 2070 megawatts of energy and will serve nearly 8 million people.

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Q TO WHAT EXTENT IS THE GOVERNMENT INTRODUCING POLICIES AND INCENTIVES TO ATTRACT PRIVATE INVESTMENT TO FUND INFRASTRUCTURE DEVELOPMENT? HAS THERE BEEN AN INCREASED APPETITE FOR PUBLIC-PRIVATE PARTNERSHIPS (PPPS) AND PRIVATE FINANCE INITIATIVES (PFI), FOR EXAMPLE?

OSÓRIO: PPPs continue to be a scarcely implemented model in Angola. Besides the construction of a biofuel production plant and the construction of a deep water port in Cabinda, other PPPs are yet to emerge. Nonetheless, developments are expected in this regard. The government appears to remain focused on promoting better management and the recovery of infrastructure investment, and has created a public company with that objective in mind – the *Empresa Gestora de Terrenos Infraestruturados*. Further, the IMF has, in its policy recommendations to Angola, highlighted economic diversification and the enforcement of the role of the private sector in infrastructure projects. The PPP Guarantee Fund was also created at the start of the year, despite being initially provided for in the PPP Law of 2011. The Fund is designed to guarantee public financial obligations arising out of PPPs when the public resources allocated to a particular PPP prove to be insufficient to their implementation.

Q WHAT TRENDS HAVE YOU SEEN IN PROJECT FINANCE, IN TERMS OF PRICING, TERMS, WILLINGNESS TO LEND, AND SO ON?

OSÓRIO: Before the latest crisis around oil prices, project financing was flourishing in various sectors of the Angolan economy. Since the crisis began, however, project financing has undergone a sharp decline and is now slowly recovering again. Most of the financing has been obtained from abroad, albeit with local guarantees – this applies to both private and public initiatives. We have seen an increase in both. There is no noticeable unique trend to the Angolan market; the pricing and other terms of PPP and infrastructure investments follow the general market terms which dictate the bargaining power of each side. Currently, the bargaining power of private investors is higher than it used to be, motivated by the economic crisis, low oil prices, the need to diversify the economy and the political momentum toward the promotion of infrastructure development and PPPs.



**Q WHEN EXECUTING
INFRASTRUCTURE DEALS,
HOW IMPORTANT IS DUE
DILIGENCE TO MANAGE THE
RISKS AND REGULATORY
CHALLENGES?**

OSÓRIO: Due diligence on risks and regulatory challenges is, in our view, a *sine qua non* requirement before investing in Angola. Particularly in areas such as environmental regulation, licensing, land law issues, local content, tax and private investment issues. Angola is a highly regulated jurisdiction when it comes to infrastructure, PPPs and foreign investment in general. Due diligence will allow for the fine tuning of what is legally provided for with the local and national practice. We also believe that it is important to conduct due diligence processes to ensure a project achieves compliance in its early stages, which is a more cost efficient strategy than adjusting the project later. In this sense, the amount of time and resources spared in the initial stages of a project will, most of the time, be less significant than time and resources spent later in adjusting the project and making the necessary ratifications when the project is already under way.

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**Q IN YOUR EXPERIENCE, WHAT
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FROM INFRASTRUCTURE
INVESTMENTS?**

OSÓRIO: In this regard, it is fundamental to calculate risks and implement strategies to mitigate and, where possible, prevent such risks from crystallising. There are some legal instruments at the disposal of investors in order to mitigate investment risks; however, these legal instruments are not sufficient. Although Angola has been working on the stability of the economic, legal, political and social spheres, some projects are still permeable to external factors which require an extensive and detailed evaluation. Thus, besides putting all legal mechanisms in place for the stability of the project, it is also important to decrease costs, increase the lifetime of the infrastructure and reduce operation and maintenance costs. These objectives are sometimes hard to achieve by foreign investors due to lack of knowledge of the Angolan market, so it is usually advantageous to obtain assistance on the ground from a national entity or an experienced foreign one.

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“Angola is a highly regulated jurisdiction when it comes to infrastructure, PPPs and foreign investment in general.”

Q LOOKING AHEAD, WHAT KEY TRENDS DO YOU EXPECT TO SEE IN INFRASTRUCTURE AND PROJECT FINANCE IN ANGOLA OVER THE COMING MONTHS?

OSÓRIO: Despite the economic crisis which has affected the Angolan economy and the drop in oil prices the Angolan government has kept its objectives concerning public infrastructure, supported by the recognition that the Angolan economy needs to be restructured and diversified. Therefore, infrastructure and project finance initiatives will, in the next few months, probably undergo a minor increase. Long-term estimates cannot be made at this point as elections will take place in August 2017 and the implications the elections will have on policy and investment are unclear. At the moment, foreign investors are confident albeit watchful. In any event, the current government and political officials appear to have put in place sufficient mechanisms and safeguards to ensure a smooth political transition.



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