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ABOGADOS

Government boosts PPPs and Infrastructure Investment in Peru

Payet, Rey, Cauvi plays key role in new investment regime

By Sheila La Serna (Peru)

After Fitch and Standard & Poor's in 2008 and Moody in 2009 granted Peru investment grade; and furthermore, after learning that the General Domestic Product (GDP) ended at 2.5% percent in 2009, we can say that the Peruvian economy has showed strong resilience to the recent global crisis. Still, the numbers remain positive: recent publications of the International Monetary Fund refer to a very positive economic growth in Peru, expected to reach 6,25% this 2010, and almost 6% in 2011.

Part of these positive economic outcomes is due to the "stimulus plan" that the Government of Peru (GoP) introduced in the past two years to stimulate public and private investment, without disregarding the prudent macroeconomic policies applied in the past. Today, the GoP is rushing to narrow the gap in infrastructure, which has been calculated in approximately USD 37,760 million, by issuing a number of laws and regulations to boost Public-Private Partnerships (PPPs) for the investment in infrastructure. In this process, Payet, Rey, Cauvi; member of the World Law Group (WLG), has played a key role.

Where are the bottlenecks in the infrastructure and investment projects?

This story began near the end of 2008, matching timings with the initiation of the global crisis, when Payet, Rey, Cauvi Abogados was requested by the Private Pension Funds Management (AFPS) industry to engage in the preparation of a legal research regarding the bottlenecks in infrastructure projects, which study was used by the GoP to launch its famous "stimulus plan".

From the legal research conducted by our firm, an impressive conclusion was reached: the main bottlenecks in infrastructure projects were generated within the bid processes aimed to award such projects. The phases of identification,

design and promotion of the projects took at the end of the day more than 5 years - before a concession was awarded - without considering the time required to obtain financing and to get all set from a regulatory standpoint (permits, governmental authorizations) and hence, for a project start-up.

Mainly, the critical features of the bid processes were focused on (i) the overlapping of functions and competences of different governmental authorities that participated in such processes, which – by the way - were not necessarily aligned towards a common objective, and (ii) the high level of liabilities bore by the foregoing actors; fact which did not facilitate the decision-making proceedings.

The public disclosure of our research helped to enhance the promotion of PPPs. The GoP stimulus plan on PPPs was basically intended to shorten the time required for the granting infrastructure projects to the private sector and to declare at least sixty four (64) different projects on ports, airports, drainage, energy, health, and education as those of national necessity and priority development. The foregoing projects enjoyed from a *fast track* bid process and had a deadline of approximately one year to be awarded. One of the ideas that supported this special fast track plan was that after several years, the Peruvian Government was actually getting concerned about the bankability of the projects.

The Fideicomiso de Infraestructura

Almost following the research on infrastructure in November 2009, Payet, Rey Cauvi assisted the AFPs industry in structuring a special vehicle, the “*Fideicomiso de Infraestructura*”, to invest in priority infrastructure projects promoted by the GoP within a wide range of sectors such as toll roads; ports; airports; water, sewage and drainage systems

This fund “*Fideicomiso de Infraestructura*” that was settled by the Private Pension Funds and authorized by the Peruvian Superintendence of Banks, Insurance and Pension Funds (“SBS”) has a commitment to invest up to USD 400 million in infrastructure.

Moreover, the *Fideicomiso de Infraestructura*’s release was the final step of a strong effort conducted by the AFPS industry with the assistance of Payet, Rey Cauvi, member of the WLG, and the support of the GoP to create an alternative financing vehicle for infrastructure PPPs in a context where risks of long-term financing are not massively being bore by the main financial and banking actors in the market, and thus, where the costs associated to such direct financing are surprisingly increasing.

Recently, on May 27, 2010, the “*Fideicomiso de Infraestructura*” has participated in a first investment: the financing of Huascacocha Project, which entails the design, construction, operation and maintenance of a water system in Lima that will benefit 2.4 million people pursuant to a 20 year-term concession granted by the Peruvian Government. The aggregate investment in Huascacocha Project almost reaches USD 113 million; from where at least 31.5% was funded by the “*Fideicomiso de Infraestructura*”.¹ Immediately following this first investment comes an important PPP pipeline, including projects such as the concession of the Port of Paita; Central IIRSA Toll Road and regional airport concessions.

¹ This first financing of the Fideicomiso de Infraestructura was implemented under a private offering of two series of Notes (*Huascacocha Finance Limited Senior Series 2010-1 VAC Indexed - Notes* and *Huascacocha Finance Limited Senior Series 2010-2 Variable Funding Notes*) issued under the Regulation S within an offshore transaction, and due in April 2028. The transaction entailed a structure that has been commonly used within the last five (5) years in project finance projects: the purchase of Work Progress Certificates (CAOs) - that evidence the completion of a portion of the construction and further reduce certain risks associated to the completion of the construction phase, and that serve as collateral for the issuance of notes.