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CHILE: TURNING CHALLENGES INTO OPPORTUNITIES

By Alejandro López Ortiz

Chile's geography was described as 'crazy' (loca) by Chilean writer Benjamin Subercaseaux in the title of his best known work. He was right. Chile extends over 2,650 miles, from desert landscapes in the north, to almost polar latitudes in the south and is, on average, only 110 miles wide. It is separated from the rest of South America by a dramatic mountain range reaching almost 7,000 metres. It is also one of the world's most seismically active regions. From an infrastructure perspective it is a challenge, which means opportunities for UK construction firms.

In contrast with its abrupt orography and seismic condition, over the last two decades Chile has enjoyed political stability and sustained economic growth and has consequently achieved a leading position in the region, becoming the first Latin American state to join the OECD, in 2010.

Since the 1990s, Chile has been developing its infrastructure, but, as in many other Latin American countries, much is still lacking, a shortage only partially due to its challenging geography. The devastating earthquake of February 2010, 8.8 magnitude on the Richter scale, caused damage costing somewhere between 15 and 30 billion US dollars and ruined Chile's ambitious infrastructure plans. As of today, only 23% of Chile's 56,000-mile road system is paved, in contrast with the 79% average for OECD countries.

The 2014 Infrastructure and Development Plan

After recovering from the effects of the 2010 earthquake, the recently elected government has launched a new programme, the Infrastructure, Development and Inclusion Agenda: Chile 30.30. The declared ambition is to modernise and develop the country's infrastructure by 2030 and bridge the gap with other developed countries. This plan comes at a time when the Chilean economy is slowing down and aims to increase investment in infrastructure from a current 2.5% of GDP to 3.5%.

The plan includes a public investment package, for regional transportation and water infrastructure projects, of US\$18 billion over the period to 2021, and also PPP projects for almost US\$10 billion, to be developed during the 2014-2020 period. PPP projects comprise the expansion of Santiago airport and another three airports, the construction of tunnels, bridges and roads, including one major urban toll road in Santiago, and two cable railways. While some of these projects have already been awarded, there are still opportunities for international contractors to participate in bids.

Some of these projects have been listed in the ranking of the 100 most strategic projects in Latin America issued by consulting firm CG/LA Infrastructure. Three Chilean projects appear in its top 10 and five in its top 15.



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The PPP regime in Chile

Since the Public Work Concession Law was passed in 1991, allowing concessions for most public works, including roads, airports and ports, PPPs are common in Chile. International contractors are allowed to participate in PPP tender processes, which are organised by the Ministerio de Obras Públicas (MOP). The successful bidder is required to incorporate an SPV that will be in charge of carrying out the construction and operating the project on completion. The Law specifies the content of concession agreements and also of the by-laws of the SPV.

The leading arbitral institution is the Arbitration Centre of the Santiago Chamber of Commerce, while the Chamber of Construction of Santiago also administers arbitrations. ICC arbitration with its seat in Santiago is widely accepted in international projects.

The Public Work Concession Law contains, however, a special dispute resolution regime for concession contracts, which provides for a permanent Dispute Board, issuing recommendations on technical and economic disputes, and for an Arbitral Commission, which decides legal disputes.

Dispute resolution in infrastructure projects

Arbitration is the preferred method for dispute resolution of infrastructure projects in Chile. Chile is a party to the New York Convention of 1958 and has a modern International Arbitration Law of 2004, based on the UNCITRAL Model Law. Arbitrations between Chilean parties which have the seat of the arbitration in Chile are, however, regulated by the Judicial Organic Code, which departs from international arbitration standards.

Conclusion

Despite its crazy geography (or maybe just because of it), Chile offers major infrastructure opportunities in a stable economic and legal environment.

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