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LEGAL ALERT

Debate about the creation of a State run Infrastructure Fund starts in Chilean Congress

On June 8, discussion started in the Public Works Commission of the Senate over the law project which creates the state company, "Fondo de Infraestructura S.A.". The Project shall be approved by a special quorum (quórum calificado) as indicated in article 19 No. 21 of the Political Constitution of the Republic of Chile.

The Project was presented by the government on May 3, 2016 with the purpose of resolving the infrastructure deficit that currently exists in the country through the reactivation of the concessions program. Through the newly fortified concessions program they hope to complete the ambitious portfolio of projects that were presented in the 2014 plan entitled, "Infrastructure Agenda, Development and Inclusion, Chile 30.30".

In general terms, the Project creates a corporation owned by the state entitled "Fondo de Infraestructura S.A.", the purpose of which shall be construction, extension, repair, conservation, exploitation, development, financing or investment related to infrastructure projects, and associated services. The state's contributions will be administered by two separate entities, with 99% of the funds managed by the Chilean State and the remaining 1% controlled by the Production Encouragement Corporation (CORFO).

The company will be managed by a board of directors composed of five members appointed by the President of Chile, two of them from a list of five proposed by the Minister of Public Works, and the other three, from a list of three proposed by the Counsel of High Public Management (Consejo de Alta Dirección Pública). These three last directors will be considered as independent directors. The directors will serve a term of four years and may be renewed by partialities. In regards to the administration of the company, this will be subject, as may be pertinent, to the norms of Title IV of Law 18,046 and its complementary regulation.

Additionally, the shareholders will meet in ordinary or extraordinary

shareholders meetings, according to the case, in which the Chilean State will be represented by the Finance Minister and Public Works Minister and CORFO will be represented by a person appointed by the Directive Council of the System of Public Enterprises.

Likewise, the Project states that the workers of the company will be ruled exclusively by the dispositions contained in the Labor Code and its complementary regulations.

In respect to the regulation of the company, article 27 of the Project states that the company will be controlled by the Superintendency of Insurance and Securities and, notwithstanding, will be also controlled by the General Comptroller of the Republic (Contraloría General de la República) as corresponds to it, according to the second paragraph of article 16 of decree No. 2.421, of the year 1964 from the Finance Ministry.

With the aim of developing its business purpose, the Project grants to the company a series of faculties, among them:

- I. Construct, expand, repair, conserve, exploit or develop, through third parties, infrastructure projects over goods under the supervision of the company;
- II. Finance or invest in said projects, either directly or through third parties;
- III. Execute expenditures or investments for new projects, encouraging their construction and development, in the manner determined by the board of directors, considering the solvency of the company;
- IV. Issue debt of financial instruments, guarantees, or others expressly authorized by the board;
- V. Incorporate subsidiary corporations to achieve its objectives upon authorization from the shareholders meeting;
- VI. In general, execute all acts and agreements aiming to fulfill the business purpose of the company; and
- VII. Execute other activities as may be expressly established in the law.

In order to ensure the coherence of investment decisions, the board of directors shall submit for approval at the shareholders meeting, a “Five-year Business Plan”, which shall contain details of the investment projects that will be executed by the company and shall establish the mechanism through which the investment projects will be offered for concession. It should be noted that the message of the project gives special importance to its article 21, which refers to the evaluation process of infrastructure projects which require special

authorization, referring to those projects which may require State contributions due to those projects presenting more social than economic benefits. In this sense, article 21 of the Project indicates a series of requirements that this type of project must fulfill in order to be approved.

The Project indicates that the company will only be able to develop its objective through third parties, being able to do this by means of granting concessions or by the execution of agreements, which shall be defined according to a public bidding process which guarantees the competence and equality of all bidders.

Finally, in connection with the capitalization or initial financing of the company, the Chilean Minister of Public Works, Alberto Undurraga, stated in the Commission that the company's capital would total approximately US\$9 billion and would not require large State expenditure, since the company would be financed by issuing bonds, which will be paid through cash flow generated by road concessions. Although these roads are currently owned by private companies, many of them are nearing the end of the concession period and will soon revert to State ownership.

The Project is currently being discussed in the Public Works Commission (First Constitutional Step), so it is still subject to possible amendments.

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