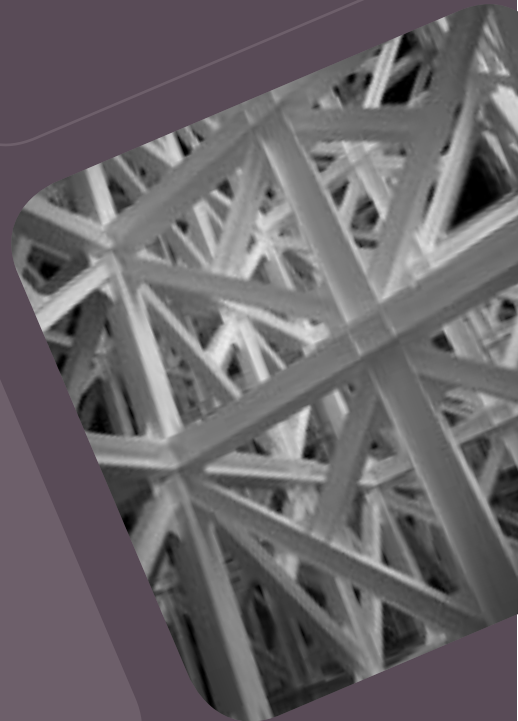


# Infrastructure Investment Latin America 2011





Infrastructure Investment  
Latin America 2011

# Executive Summary

*The development of infrastructure works and services in Latin America needs of successful partnerships between the public and private sectors. Our history has shown that any infrastructure program led by one of those one sectors without the other will fail to meet the results needed to improve the region's competitiveness and welfare. With this report we intend to provide our readers a comprehensive description of the current state of infrastructure development in LatAm and a thorough analysis of what the public and private sectors in Latin America are supposed to contribute to achieve successful partnerships.*

*The report starts with a look at the public sector in Latin America. To be an effective partner in the development of infrastructure, this sector needs highly specialized and independent units capable of describing to the private sector exactly what it is expected to do, negotiating the allocation of risks and monitoring performance. The report navigates through these and other measures being taken to foster the private sector's involvement in infrastructure development and also focuses on areas that need improvement highlighting costly mistakes that led to less than satisfactory projects.*

*The private sector's involvement is important for operational and financial reasons. The report focuses on the latter and analyzes the role of banks, pension and specialized infrastructure funds, and the capital markets in the financing of infrastructure development.*

*In the "Country Specific Section" it explores in detail the politics, law, and finance inside Colombia and Peru, two increasingly popular countries in the region when it comes to infrastructure investment as well as their current and upcoming projects.*

*The report also dedicates a section to the International Finance Corporation as the largest multi-lateral source of loan and equity financing for private sector projects in the developing world.*

*With my best personal regards,*

A handwritten signature in black ink, appearing to read 'P. Abal', with a long horizontal flourish underneath.

Patricio Abal  
Infrastructure Editor



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# Introduction

In the last two decades, investment in infrastructure projects that rely on private-public partnerships (PPPs) has steadily increased in Latin America, and the region is expected to invest US\$450 billion in infrastructure assets between 2011 and 2015, mostly in the surface transport and energy sectors. A recent World Bank report states that, in 2009, “69 infrastructure projects with private participation reached financial or contractual closing in eight low-and-middle income countries in Latin America and the Caribbean, involving investment commitments of US\$31 billion.” This total represents an 83% increase from 2008. There was additional private investment in ongoing projects which had originated between 1990 and 2008, with a total investment in infrastructure PPPs in 2009 of \$52 billion. In terms of total investment in 2009, Latin America boasted more private participation in infrastructure projects than any other developing region in the world (34%).

As Norman Anderson, CEO and President of LG/CA Infrastructure LLC, puts it, “The pipeline of infrastructure projects is increasingly robust in the region’s big countries,” including Brazil, Chile, Colombia, and Peru, where private investment is strongest.

Brazil accounts for most of the new projects (47 of the 69) and new investment (75% of the total)

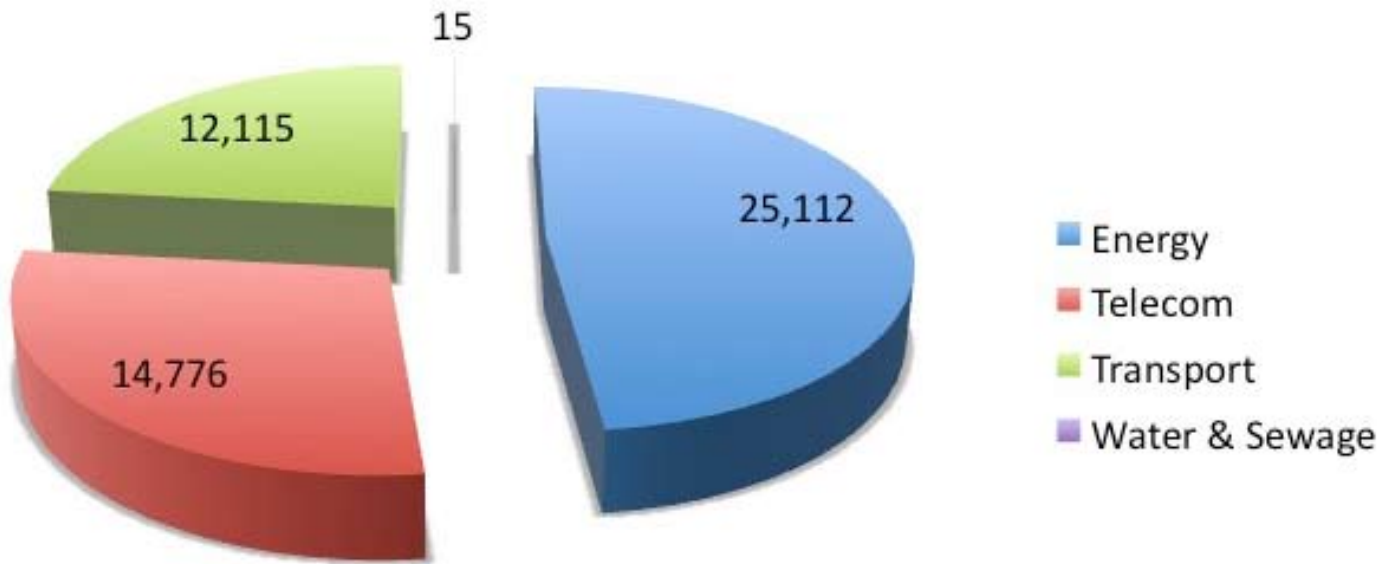
in 2009. Mexico, Peru, and Chile account for most of the rest.

The highly active energy subsector accounted for the most investment, with 43 new projects and US\$25.1 billion, up 127% from 2008. That amounts to 48% of the year’s total investment. There were 31 projects and US\$19.9 billion devoted to energy generation, with a 10.4GW rise in capacity, much of it from two large hydropower plants in Brazil. Electricity transmission had twelve projects and US\$1.5 billion of investment.

The boom in energy compensated for declines in the other subsectors. Investment in telecom fell 37% in 2009, to \$14.8 billion, with no new projects, though this subsector has accounted for the most total investment in dollars in the past two decades. Investment in transport fell 6%, to US\$12.1 billion, with 23 new projects, mostly in Brazil, Mexico, and Peru. Water and sewerage received its lowest investment in two decades, with US\$14.8 million invested in three new projects.

Most projects since 1990 have been either greenfield (690) or concession (533), a trend that continued in 2009, with 47 greenfield projects and 20 concessions.

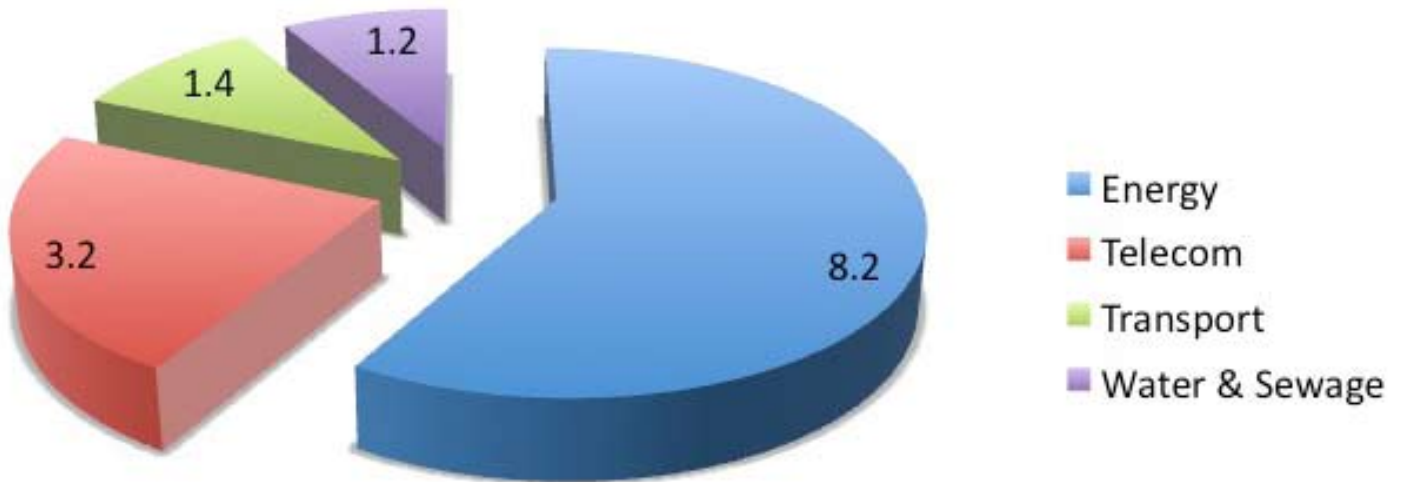
### Grand totals per sector



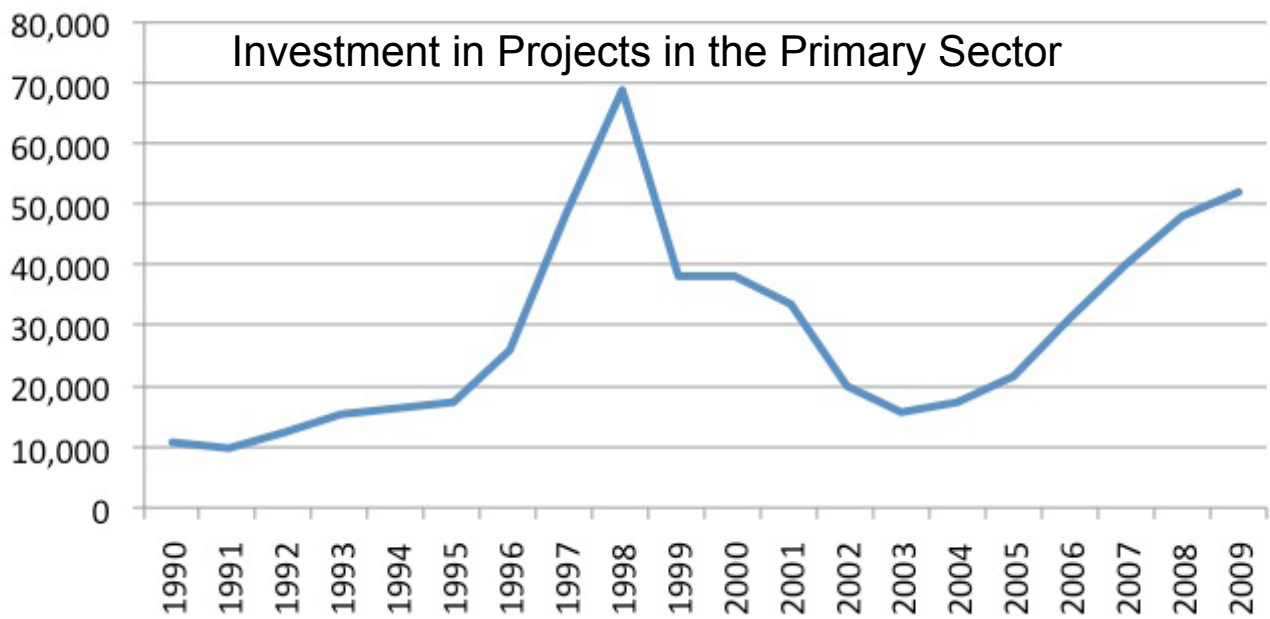
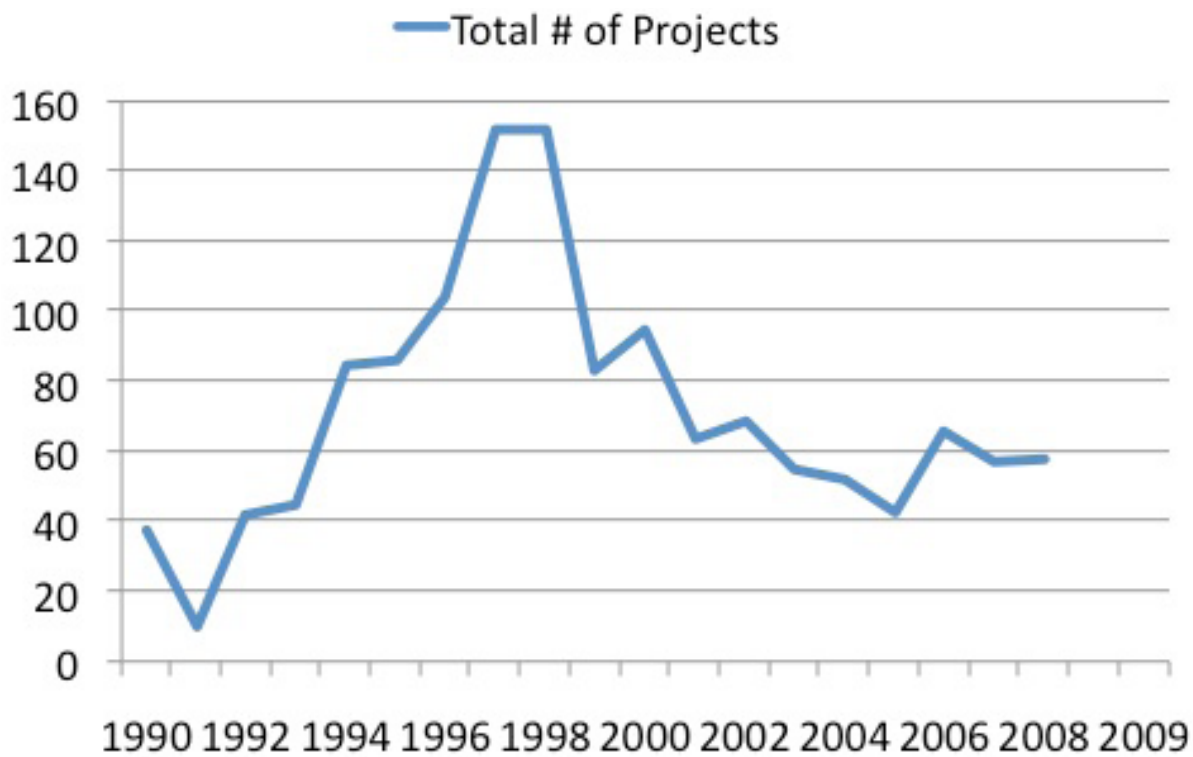
Investment figures (in millions)

### Grand Totals Per Sector

Number of projects



Source: The World Bank Group



Source: The World Bank Group

The rise in infrastructure PPPs bodes well for the region. As Andrew Bogan, Managing Member of Bogan Associates LLC, notes, “When you look at countries that have allowed a fair amount of private investment either in construction firms or concession operators in infrastructure, they have better infrastructure and higher GDP growth. Infrastructure is incredibly beneficial to a country and its people. Getting it built is a good idea, and governments simply can’t build all of it with the capital constraint they all have today.”

“There is a continuous conversation,” Mr. Bogan adds, “about what the role of government should and shouldn’t be” with respect to infrastructure

assets in Latin America. This report is a contribution to that conversation. In the following sections, we examine the various factors that contribute to the success and failure of infrastructure PPPs, laying out the current state of affairs and the ways in which the infrastructure community expects things to improve. We focus especially on the larger economies of South America, with particular focus on Colombia and Peru. Our information is based largely on interviews with observers and players from both the public and private sectors in several Latin American countries, as well as private sector experts from the U.S., all of whom are intimately aware of the challenges and promises of infrastructure PPPs.



# Fostering Private Sector Involvement in Public Infrastructure Projects

**T**he public sector's attitudes, policies, and frameworks regarding PPPs determine to a large extent how private investment in infrastructure projects will fare. As Mr. Anderson notes, a fundamental aspect of the public sector's readiness for PPPs is confidence. "There has to be confidence for the private sector to want to participate, and the public has to have a sense that private operation of infrastructure is going to be beneficial to the country as a whole and not just a few people." He singles out Chile as having an "overwhelmingly confident public sector," but says that confidence is still an issue for every other country.

Mr. Bogan observes three main causes of resistance to private involvement: deep-seated socio-political prejudices against the private sector, as is especially evident in countries such as Venezuela; a desire to protect assets of sovereign national importance, which accounts for why Brazil has yet to privatize its airport operations, for example; and the political benefits for public officials of employing the population directly. These three factors, among others, have inhibited the public sector's acceptance of private investment and ownership.

In general, however, the benefits of PPPs have proved increasingly irresistible. As Mr. Bogan observes, although most infrastructure projects are currently government-owned across the world,

many governments are coming to understand that, as he puts it, "capital is constraint.... They can't pay for their desired projects with their tax base alone." He uses Brazil as an example of a country that has followed an innovative model, generally maintaining public control of projects during the construction phase, when employment opportunities are greatest, and then transferring their assets to private hands during the operation phase, recycling the capital from the sale back into new projects.

Mr. Anderson also mentions a general shortage of skilled labor, especially in engineering, as a reason for governments to solicit private involvement. "This is the first time in most people's careers, dating back to the 70s, when there isn't enough talent available" to build what governments need to build.

As Mr. Bogan sums it up: "There are some projects it makes tremendous sense for the government to build and operate, but there are others where private investment really is the best model." He expects to see a strong shift toward welcoming private investment across Latin America. In a recent report entitled *Infrascope 2010*, the Economist Intelligence Unit (EIU) gauges the legal, political, and regulatory frameworks with respect to PPPs across Latin America, and remarks on the overall improvement of conditions. Of the 19 countries examined, 4 (Chile, Mexico, Guate-

mala, and Panama) have implemented appropriate legal reforms in the last year, and another five are in the process of doing so. Chile, Brazil, and Peru get the highest ratings in the report's index, followed by Mexico, Colombia, and Guatemala. Those six countries, in some combination, get the best grades for regulatory framework, institu-

tional framework, and operational maturity. The EIU also notes that Argentina, Uruguay, and the Dominican Republic "have reduced the risk of government non-compliance with financial-project obligations....[In each country,] the likelihood and/or track record of government payments to private partners for infrastructure projects has improved."

## 2010 Infrascopes

Rank	Country	Score/100
1	Chile	79.3
2	Brazil	73.2
3	Peru	67.2
4	Mexico	58.1
5	Colombia	53.7
6	Guatemala	42.4
7	Panama	34.6
8	Costa Rica	32.3
9	Uruguay	31.8
10	El Salvador	30.6
11	Trinidad & Tobago	29.9
12	Argentina	27.5
13	Jamaica	25.4
14	Honduras	24.6
15	Paraguay	24.5
16	Dominican Republic	23.7
17	Nicaragua	16.0
18	Ecuador	14.2
19	Venezuela	4.2

Source: Economist Intelligence Unit

We interviewed experts from Chile, Colombia, Peru, and Argentina, asking their opinions of the current state of affairs and what they expected from the future.

In Chile, Rigoberto Garcia Gonzalez, the International Coordinator and National Coordinator for IIRSA in the Ministry of Public Works, cited two concessions-related laws passed in 2010 and a law regarding the freedom and transparency of information passed in 2008 as propitious developments for private investment in his country. “In general,” he said, “public works projects have been characterized by an excellent interaction between the public and private sectors.” As examples of exemplary PPP projects, he mentioned the Tran-Santiago public transport system, the construction of the Plaza de la Ciudadanía, and the highways connecting Santiago and San Antonio (Ruta 78) and Santiago, Valparaíso and Viña del Mar (Ruta 68).

In Peru, Conrado Falco Scheuch, the Chief of Information and Economic Studies for ProInversión (the governmental agency charged specifically with fostering private investment in Peru), points to the construction of the country’s major highway grid as an exemplary project. Much of this construction involved coordination with IIRSA, including integrating Peru and Brazil. Falco says that these projects “are of major importance and their effective use has been much greater than the original projections. We have developed different innovative procedures and facilitated

private investment through financial instruments, but we’ve also approved adequate sums of state co-financing.”

In Colombia, Jean Philippe Pening Gaviria, Director of Sustainable Energy and Infrastructure in the National Department of Planning, gives the construction of the Ruta del Sol (Route of the Sun) as an exemplary case of public-private partnership. Part of a larger effort to connect the interior of the country with the ports of the Atlantic coast, the Ruta has been characterized, he says, by a long-term vision, an optimal distribution of risks, and a large portion of the investment concentrated in future operating and maintenance stages.

(See the Country-Specific Section below for a more detailed discussion of projects, policies, and overall conditions in Colombia and Peru.)

Argentina ranked 12 of 19 in the Infrascope 2010 report, indicating that there is substantial room for improvement in creating conditions conducive to private investment in infrastructure. In an interview, Nicolás Grosman of Fundación Pensar affirmed that certain sectors are improving, especially agriculture, real estate, tourism, and mining, all with help from foreign private investment. He was pessimistic, however, about the prospects of improving private investment under the current administration. “It’s not so much that it’s a left-tist administration,” he said, “but that there aren’t clear and transparent rules for private investment in infrastructure.”

# Areas for Improvement

In spite of the optimism and success stories, there is much room for improvement. As the EIU notes, summing up its Infrascopes 2010 report, the recent, encouraging reforms have been necessary “because of widespread weaknesses” in existing legal and regulatory frameworks and skills throughout the region, which they had reported in Infrascopes 2009. And while there is a marked upward trend in such countries as Chile, Brazil, and Peru, there are still many countries in the region with weak private sector cooperation, including several “which have shown no interest or have been damagingly inconsistent in their attitude towards private sector participation.” PPP conditions across the continent are poorer at the local, regional, and federal – as opposed to the national – levels.

Anderson adds that attracting private investment, and developing infrastructure in general, is particularly difficult for smaller countries in the region: “Small countries are having real problems,” he said, “it’s just so expensive to do projects. Their public sectors aren’t as capable as they need to be to support a significant and predictable pipeline of infrastructure projects. I think you have a ‘has/has-not’ situation in Latin America.”

In Chile, Colombia, and Peru, however, the current concern is less over political will or overall capabilities and size than on improving the political and legal frameworks surrounding PPPs. In Argentina, meanwhile, the political and financial environments need to improve.

Regarding Chile, Mr. García González said: “The processes, requirements, and waiting periods have to be sped up and streamlined as they are in developing countries, and generally the rules need to become more and more clear and transparent.”

Mr. Falco Scheuch concurred, saying that, in Peru, “there is much room to shorten the processes, simplify administration, and reduce costs with respect to private projects in public services.” He also suggested that more attention could be given to public relations, “to ensure a better reception of private investment on the part of local public opinion.”

Mr. Pening Gaviria of Colombia agrees that “efficiency in the tendering process” was paramount. He gives the following recommendations in general:

- Optimizing the transfer and distribution of risk between the public and private sectors;
- Improving studies to accurately gauge the requirements of the infrastructure projects and their services;
- Designing new forms of public-private associations to generate the confidence necessary for the active participation of institutional investors.

Mr. Grosman pointed to the following problematic areas in Argentina:

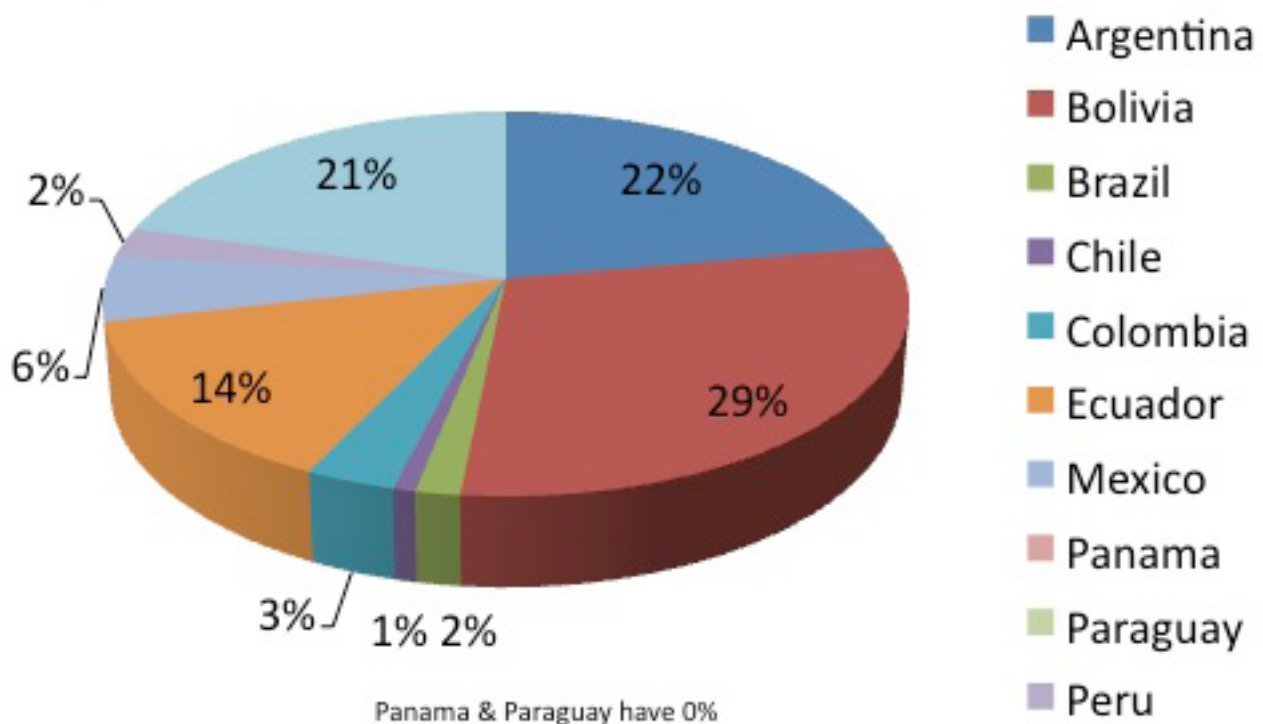
- Regulatory discretion, especially involving tariffs;
- The lack of institutionalization in the decision-making process, which hinders private investment;
- The lack of guarantees to back up investments;
- The lack of a definitive solution to the debt defaulted in 2002;
- The current administration’s lack of emphasis in productive infrastructure such as railroads and ports.

# Mistakes Made: Failed Projects

**M**uch as conditions have improved, difficulties in executing infrastructure PPP have persisted, manifesting often in canceled or distressed operations. The World Bank reports that, between 1990 and 2009, 131 PPP infrastructure projects were reported canceled or distressed, representing a total of \$50.3 billion of investment. The country-by-country breakdown is as follows.

The lone project in Chile was the Américo Vespucio Oriente urban highway in the metropolitan area of Santiago. The tendering process has dragged on for six years, with a total investment of US\$1.37 billion. Mr. García González explains: “One of the reasons for the delay has been the faulty decision-making process regarding the construction alternatives (above-surface vs. subterranean) and the concession model to employ.”

Projects cancelled or distressed as a percentage of the total investment in Infrastructure Projects with private participation for the period 1990 – 2009



Source: Private Participation in Infrastructure Database – The World Bank Group

Mr. Falco Scheuch said that, in Peru, perhaps the worst case of distressed projects involved the transfer of electrical companies to the southern region of the country. “Due to certain disagreements, much of it at governmental level and having to do with political pressures...the process was halted and the program’s general strategy had to be changed.” He adds that generally most of the problems and inconveniences with respect to private investment have been in the water/sanitation sector.

Mr. Pening Gaviria explained that Colombia has had projects fail at various stages. “Some have been declared abandoned in the tendering stage, while in others it’s been necessary to declare that the contract has fallen through.” He gives the following causes as possibilities: “Weak structuring of the project; insufficient detail in the studies and designs for tendering; unclear contracts; and projects with insufficient incentive for the large investors.”



**A**lthough the success of PPPs depends to a large extent on public sector readiness and execution, there remain the questions of how and why private sector parties can and should invest. The answers vary from country to country, and depend largely on investment climates and financing conditions. The recent EIU report rates such conditions across the region, finding that Chile scored best, “with 97.2 out of 100 for the PPP financial facilities category, leading the region with an almost perfect score.” Brazil, Mexico, Panama and Peru also scored relatively well. The EIU states, however, that there is vast room for improvement almost everywhere.

The general benefit of investing in infrastructure assets is that they tend to offer consistent returns. Infrastructure companies usually have solid fundamentals, hold concession rights or licenses that restrict competition and protect them against inflation, and are usually relatively immune to the economic cycle. Though there are high development costs, including design and construction, there are relatively low marginal costs for production, and little or no competition once in operation.

Risk-return will vary according to subsector, with greater risk-return for airport, sea port, and high

speed rail investments, for instance, than for investments in energy distribution or telecom. There are other factors that increase risk, as well, such as unpredictable political factors; the possibility of overzealous governmental regulation and price-capping, or even nationalization; and the risks inherent in large markets. But in terms of the fundamentals that determine long-term risks, infrastructure companies tend to be strong.

Mr. Bogan remarks on the dependability of infrastructure investment. Speaking of funds devoted exclusively to infrastructure assets (see “Infrastructure Funds” below), he says that if investors want exposure to an economy like Brazil’s, it is better to be invested in infrastructure than, for instance, certain commodities, as the value of infrastructure is determined more directly by Brazil’s expanding economy. “If you want exposure to some big sugar or soybean producer,” he remarks, “then you’re not making a bet on the Brazilian economy. You’re betting on commodity prices, which are very volatile.”

There are several sources through which the private sector can finance the development of infrastructure. In the sections that follow, we look at these sources, examining their unique roles.

## Infrastructure Funds

**I**nrastructure funds purchase shares in infrastructure project companies and work with strategic investors such as operators and construction companies to maximize revenue and increase equity value over time. The performance of such funds is tied to their ability to extract dividends from the operating asset or through refinancing. They may ultimately sell their shares to other owning members of the project’s consortium, a third party, or the public through an IPO.

In recent years, several major infrastructure funds

have emerged in Latin America. Examples include a fund established by Ashmore Investment and Inverlink in Colombia (see the country-specific section on Colombia below), Brookfield Asset Management’s Colombian and Peruvian funds (see below), and a Macquarie Group fund in Mexico. The Brazilian investment bank BTG Pactual and the domestic conglomerate EBX have each announced plans to set up major infrastructure funds. And Celfin Capital, one of Chile’s largest investment banks, has an infrastructure fund, Celfin Infraestructura, as well.

# Pension Funds

**M**any countries in the region allow domestic pension funds to commit capital to infrastructure funds and hold long-term debt issues. In a recent report, the Banco Bilbao y Vizcaya Argentaria (BBVA) sums up the mutually beneficial relationship between pension funds and infrastructure PPPs in the Latin American context. From the point of view of the funds, for one, they are often interested in infrastructure funds because the long-term life-cycle of infrastructure assets tends to match their long-term liabilities and “permits optimal planning.” At the same time, “It’s to be expected that the partici-

pation of pension funds in the infrastructure investment will reduce the political and regulatory risk, as one expects better discipline on the part of governments with respect to contracts and the rules of the game, if the wellbeing of local workers is at stake through private pensions,” says the report. Pension funds might also be attracted to the relatively good cost/benefit ratio of infrastructure projects. Lastly, the report notes that private pension funds “can garner public favor if the public sees that the funds are investing in projects that improve their daily lives as well as the returns and risk profile of their pension funds.”

# Capital Markets

**L**isted infrastructure shares in capital markets are seen by investors as an attractive option because of intrinsic characteristics of both the underlying business and the investment vehicle. They represent a dependable way to diversify portfolio risk. The highly local nature of infrastructure businesses and projects and their relative immunity from the economic cycle gives them a low correlation with broader stock trends.

In recent years, shares of Latin American infrastructure companies have outperformed their benchmarks: the S&P Global Infrastructure Fund; Macquarie Global Infrastructure 100 ETF; and the S&P Emerging Markets Infrastructure Index Fund”

Andrew Bogan observes four reasons why investing in listed shares is particularly attractive: the efficiency an open market gives to asset prices; greater clarity of dividend yields; added liquidity; and higher standards of transparency and reporting than one finds with private equity deals. The last point can be especially important for a skeptical public sector.

He also observes a correlation between the depth and breadth of a country’s capital markets, on

the one hand, and that country’s ability to expand economically. “Brazil has benefited from São Paulo’s dominance as a truly world-class financial center, one of the few in the southern hemisphere. It’s clearly been a huge benefit to the recent growth of their economy to have a domestic financial center with a great deal of scale and scope and international presence.”

For this reason, he is “very encouraged” by the recent joining of the Chilean, Peruvian, and Colombian capital markets. “Of those three markets,” he says, “Peru’s and Colombia’s are less familiar to typical international investors. There’s a sense that there will be better access to private company listings from other parts of the Andean region that could be very attractive but are currently off the radar screen.”

Norman Anderson concurs, saying that the merging gives the three countries “a critical mass that’s useful...I see them as being incredibly energetic potential protagonists in the whole infrastructure business. And it’s infrastructure and education that make countries grow year after year.”

# A quick note on the “Latin American Trust”

**T**he Latin American Trust, also known as fideicomiso, has proven to be a useful tool in project finance. With its regulation, regional governments have been able to attract private sector resources into infrastructure development works. In particular, the fideicomiso is used to guarantee obligations, access domestic and international capital markets, and carry out projects as the “special purpose vehicle” (SPV) needed to contain all the contractual and financial relationships of the project.

Within its framework, a settlor transfers a group of assets (physical or non-physical) in fiduciary property to a trustee, who in turn administers the assets for a predetermined beneficiary. Upon completion of the contract the assets are transferred to the beneficiary, the settlor, or a residual beneficiary. It is bankruptcy-remote because the transferred assets constitute a special patrimony immune to the creditors of any of the parties involved; thus the fideicomiso ensures that the resources necessary to fulfill an obligation will be kept aside.

Its “bankruptcy remote” nature makes the fideicomiso a suitable way to guarantee that the resources needed to fulfill an obligation will be kept aside. The Peruvian national government established a fideicomiso to guarantee that the monetary resources to pay for the expropriation of the land needed to carry out the second phase of the expansion of Lima’s international airport would be there when needed. Since the international consortium operating the airport had to raise the money for the expansion works in the international capital markets the strength of the fideicomiso was of critical importance. Furthermore, this same trust guarantees the regularity of

the payments by the public sector to the private parties that were granted the “co-financed concessions” of several provincial airports.

The expansion of the Bogotá-Girardot highway is without a doubt one of the most important works in the history of ground transportation in Colombia. The consortium that was granted the concession of the project transferred all the economic rights originated in said concession to a fideicomiso administered by a specialized financial services institution. One of the purposes of isolating these rights was to provide credit support for the asset backed securities issued by the same trust and sold in the capital markets to investors. The bonds issued by “Fideicomiso Concesión Autopista Bogotá – Girardot S.A” were rated Triple A and Double A.

A fideicomiso can also be used as the SPV of a project. In this case, project sponsors transfer all the project assets to the trust and constitute themselves as beneficiaries of it. The trustee has a mandate to both administer the assets and enter into the contractual relations typical of a project finance structure. Possibly the largest construction company in Latin America, the Brazilian “Construtora Norberto Odebrecht S.A”, was hired to install 1700km of gas pipelines that will run from north to south in Argentine territory. This massive project, valued in billions of dollars, has a fideicomiso in the centre of all contractual and financial relationships. So, for example, while Odebrecht signed an EPC (Engineering, Procurement & Construction) contract with the winners of the project’s public tender, the rights and duties emerging from the contract were immediately assigned to the fideicomiso, making it Odebrecht’s new client.



# The International Finance Corporation (IFC)

**T**he IFC, part of the World Bank Group, is a major player in the region, financing and supporting private sector investment in development-oriented projects in numerous sectors including infrastructure. The IFC operates worldwide, though the largest portion of its commitments are in Latin America, with over \$3 billion of its own accounts invested in 133 new projects throughout the region in the fiscal year 2010 representing 24% of its total commitments. 18% of its Latin American commitments in that year were in the infrastructure sector. Since 2000, the IFC has invested \$4.2 billion in infrastructure projects (24% in fiscal year 2010). It has invested more than \$4.2 billion in infrastructure projects in the region since 2000.

Among the aspects of the IFC's mission are "supporting private sector participation in infrastructure" and "improving the investment climate by promoting reforms for dynamic private sector development."

Some major IFC-backed projects in the region include the Totoral Wind Farm in Chile, which involved a \$30.8 million investment and 30.8 million syndication and is "expected to reduce carbon dioxide emissions by about 70,000 tons a year," and Ruta del Sol Highway (see above), a \$2.6 billion project for which the IFC structured the PPP.

Recently the IFC established its Asset Management Company (AMC), owned entirely by the IFC, to be a fund manager for third-party and IFC's capital mobilized under various IFC initiatives, including investors from pension funds, sovereign wealth funds, and others. The purpose of the AMC is to mobilize capital to address the effects of the global financial crisis and serve longer-term development needs around the world.

We spoke to Gabriel Goldschmidt, the IFC's Manager for Infrastructure in Latin America and the Caribbean, about IFC's approach to and role in infrastructure development in the region.

He explained the IFC's general institutional strategy for investing in collective investment vehicles focused on infrastructure assets:

"By leveraging new capital sources through IFC AMC's funds, IFC is able to make more investments than it could alone. Clients are able to benefit from increased access to IFC programs and a new class of investors will for the first time enjoy access to IFC's unparalleled expertise in developing and frontier markets, as well as its track record of strong returns in these markets. These investments are an effort to contribute to our mandate of financing development without replacing what we do through direct equity or loan investments."

Mr. Goldschmidt gave several factors that the IFC considers when investing in infrastructure projects:

- The stability and quality of the legal and regulatory framework in which the project will be situated;
- The stability of the company and its track record working with such regulatory and legal frameworks;
- The quality and track record of the sponsor or group behind the project;
- The general rationale of the project: Why is it necessary to invest? Is it delivering a valuable service to a population in need? Etc.

He points to three general subsectors in line with IFC's development interests which he considers the most active and important currently:

- Infrastructure related to climate change, which includes not only renewable energy of every

kind – wind, hydro, biomass, solar, etc. -- but also promoting ways of using resources more efficiently in general, such as better water-rationing, increased fuel efficiency, etc.;

- The logistics sector, which Mr. Goldschmidt says is essential in helping, for instance, coastal countries integrate their coasts with their interiors and centers of consumption, and generally improve their competitiveness;
- Water in general, including improving potability and access, in accordance with the U.N. Millennium Development Goals. (He notes that, although there is relatively less private sector involvement in water when compared to power and transport activities, this is on the rise, and most new projects are under the Public Private Partnership framework (PPP))



**P**eru and Colombia both have expanding economies and rapidly improving conditions for private investment in infrastructure. As Norman Anderson says, “After twenty years of not doing anything, Colombia could explode like Spain did between 1995 and 2005.” He expects continuous long-term infrastructure development in Peru, as well, especially with the precipitous rise of commodity prices.

## Peru

### ■ Politics

Peru has a governmental agency devoted exclusively to the promotion of private investment, called ProInversión. As Conrad Falco Scheuch said, “The Peruvian state has an ambitious program of concessions and PPP headed by ProInversión, with approximately 60 projects requiring investments of over US\$8 billion, principally in infrastructure for public use.” He added that one of the most important aspects of ProInversión is how it “coordinates with regional and municipal governments to collaborate with them in the processes of attracting private investment.”

Milagros Maraví Sumar and Diego Harman, of the law firm Rubio, Leguia & Normand, both agreed that ProInversión was a major factor in improving the overall conditions for PPP infrastructure projects. They claimed, however, that while ProInversión, a national agency, is flush with expertise, that expertise is lacking at the regional and local levels, and that often there are problems of coordination and implementation.

Ms. Maraví Sumar and Mr. Harman added that, while the country is preparing for national elections in April 2011, they do not expect the outcome to have much bearing on Peru’s improving conditions for private investment, as both of the major candidates are pro-business with platforms promoting private investment.

We interviewed people in Peru and Colombia to get their observations and expectations regarding politics, legal frameworks, and financing as they pertain to PPP infrastructure projects, as well as their opinions regarding the most important sectors and current activity.

### ■ Legal Framework

Ms. Maraví Sumar and Mr. Harman say that the legal framework for private concessions is good in Peru. “However,” they added, “there continue to be institutional problems that introduce obstacles to the process. For example there are problems with judicial power, specifically court injunctions -- when a court can suspend a concession during the tendering process” and effectively close it down. They claimed that the speed of this judicial process often “depends on who the plaintiffs are. It’s a matter of political connections, and it’s hard to trust in judicial decisions.”

### ■ Financing

Ms. Maraví Sumar and Mr. Harman explain that the nature of the financing depends on the size of the project and investment. For projects that cost over \$80 million, most investment comes from financial and capital markets or syndicated loans with investment banks such as Morgan Stanley, Merrill Lynch, and Deutsche Bank. Smaller projects usually rely on local bank loans. The IFC and other development banks are also active in Peru.

### ■ Sectors

Ms. Maraví Sumar and Mr. Harman give a long list of promising infrastructure sectors: Roads;

Ocean and river ports; urban electric rail transport; water and sanitation projects, including for water desalination; and hospitals.

## ■ Current and Upcoming Projects

Mr. Falco Sheuch gave us some examples of exciting projects in the pipeline:

- The government's promotion of the development of a zone chosen by the corresponding private

- operators that will be devoted exclusively to the strengthening of the petrochemical industry;
- Developing the coastal Pacific island of San Lorenzo, 4km from Lima, integrating it into the capital with a series of bridges, and creating a sort of "satellite city on the sea, with special areas for production or recreation with the latest technologies."

# Colombia

## ■ Politics

Mr. Pening Garavia explained the recent history of Colombia's political posture with respect to private investment: "The process of increasing private sector participation in infrastructure services began in the early 1990's with the liquidation of public entities and the privatization of part of state businesses and industries and part of the national bank. It proceeded with the private construction, operation, and maintenance of public infrastructure, particularly through transportation concessions, the opening of the telecommunications services market, and the sale of shares of state-owned companies in the energy sector. Since the year 2000, the process has continued through a consolidation and strengthening phase with national and municipal projects."

The entire process has been aided by the Programa de Apoyo al Proceso de Participación Privada y Concesión en Infraestructura (Program to Support the Process of Private Participation and Concession in Infrastructure), headed by the National Department of Planning and the Ministry of Works. "As the results have been excellent," Mr. Pening Garavia says, "the program, which was initially focused on transportation, urban

transportation, energy, and telecommunications, among other subsectors, now incorporates other sectors as well, such as health, education, infant care, and justice."

## ■ Legal Framework

Alessia Abello of the law firm Posse, Herrera & Ruiz, an expert on the legal aspect of infrastructure development in Colombia noted that the legal framework currently is less than ideal for PPPs. "We have a set of rules governing procurement contracts," she explained, "and this set of rules was enacted in 1993." Originally the rules actually facilitated the structuring of PPPs, "because you were just applying some simple principles. But since 1993 we have amended that initial statute, and today we have a rather constraining statute whereby the regulations applicable to the structuring of PPP agreements are the same rules that govern contracting pencils for a public office."

"Right now," she said, "there's a general plan among lawyers and the government to discuss new ideas with respect to specific regulations applicable only to PPPs, to try to separate general procurement from structuring big projects with private investment."

She said that more flexibility is needed, as the government rules and regulations often don't reflect the actual realities of a given project. She also said that the new statutes need to reflect international standards. For instance, with transport concession projects – a highway project, for instance -- currently the private concessioner has to deal with real estate issues surrounding the project, instead of the government transferring a complete rite of passage directly. Such an arrangement “generally scares away foreign investors” and needs to be reformed.

## ■ Financing

Ms. Abello notes that several infrastructure funds have been incorporated in Colombia recently, “because that sector is the upcoming investment in the country.” The Brookfield Fund, for instance, recently created a US\$400 million Brookfield Colombia Infrastructure Fund, which includes Brookfield and institutional investors from Colombia as its investors. Ashmore Investment and Inverlink also manage a recently created US\$500 million infrastructure fund focused on Colombia.

## ■ Sectors

According to Ms. Abello, “The safest sector to invest in from a fund perspective is the electric sector.” She explained that it is a highly stan-

darized sector “with its own set of rules and uniform and stable regulation from both the technical and legal standpoints,” adding that it works as a free but appropriately regulated market. She was also enthusiastic about the transport sector, noting that that is where the lion's share of government-sponsored development will be happening in coming years – in highways, ports, and airports. She singled out Ashmore and Brookfield as funds who have invested in Colombian transport projects.

## ■ Current and Upcoming Projects

Mr. Pening Garavia named the following noteworthy current or near-future projects:

- The aforementioned Ruta del Sol, a work-in-progress connecting the interior of the country with the Pacific coast – a project divided into three parts, two of which have signed contracts to begin and one of which is ready to be signed;
- The Central Railroad System (Sistema Ferroviario Central), a concession project about to be tendered, which will connect the cities of Honda and Chiriguana;
- The structuring of a project to link up private capital with infrastructure projects for legal offices and for the headquarters of the Superintendent Notary and Registrar.

# Disclosure

**A**lternative Latin Investor has neither been paid for, nor sought payment for, work relating to producing this report and no payments have been made for participating in this report.

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