

EXAMINING THE FINANCES BEHIND RENEGOTIATING CONCESSIONS - KMPG

Posted on 17/07/2010



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As Government cuts and financial uncertainty impact on the viability of projects, groups of companies are now seeking to negotiate better contract and concession terms

Many companies involved with concession contracts are now revisiting the economics of projects, and in some cases preparing claims against the respective public institution as it looks to cut its project spending. But for such claims to succeed it is advisable to get a true representation of the financial situation that currently exists and the impacts it will have on them, says Enric Olcina Sargatal, partner with KPMG Forensic.

"Many of the larger and more complex project and highway concession schemes agreed in recent years with the Ministry of Development are coming undone because the economics no longer make sense, due to the significant impact of the current economic environment and, also, to some changes on the regulation to be applied, even some relevant accounting principles. Companies may not want to litigate straight away, but in order even to negotiate changes to existing contractual terms they must do so with a sound financial perspective."

Contractors will inevitably have signed a so-called Principio Equilibrio Económico- Financiero de la Concesión (Economic and Finance Equilibrium Agreement) that sets out the relative expectations of parties, but Enric Olcina Sargatal many are now looking to renegotiate on less onerous terms.

"In the main we are not seeing parties wishing to exit contracts or to undertake protracted litigation, instead they are looking to agree new participatory loans or to increase the life of the concession, all of which comes down to an ability to present an objective and rigorous analysis of the financial data."

What is notable is that groups of companies, or consortia, involved in the same project are now looking to present a combined case, says Olcina Sargatal. Collectively they are able to present more realistic financial projections, better quantify losses and have more leverage within negotiations.

"Many existing highway concession schemes are being renegotiated while others remain vulnerable to cancellation – but often the contractors' financing will already be in place, resources acquired and significant expenditure made. Ministers and administrations may change, but companies want to make sure that in the medium term they are in the best possible position for when the major decisions have to be made."