

US \$1TN INFRASTRUCTURE PLAN A MAJOR OPPORTUNITY FOR SPANISH COMPANIES AND THEIR LAWYERS

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President Trump's 'Buy American, Hire American' policy not expected to restrict Spanish companies' ability to win infrastructure development contracts

US President Donald Trump's pledge to invest \$1 trillion in infrastructure and energy projects in the country could present a huge opportunity for Spanish companies and their legal advisers, lawyers say. Earlier this year, Trump pledged to replace "crumbling infrastructure" with new roads, bridges, tunnels, airports and railways. Under the terms of the plan, it is proposed that \$200 billion in direct federal funds will be used to leverage \$1 trillion in infrastructure investment over the next 10 years.

Spanish companies are firmly established as world leaders in infrastructure and will be looking to capitalise on the opportunity presented by Trump's infrastructure plan, according to Iván Delgado, resident partner at Pérez-Llorca in New York. "For several years, in an annual ranking of the world's top transportation developers, there have been more companies from Spain than any other country

and, in the US in particular, they have been awarded very important infrastructure contracts," he says. "The US market will be even more attractive to [developers in] Spain and Europe now that President Trump intends to strengthen investment in the US infrastructure sector."

While US companies would be expected to be the major beneficiaries when contracts are awarded under the plan, it is anticipated that foreign developers will also reap rewards. María José Menéndez, managing partner at Ashurst in Madrid, says that while Trump's infrastructure plan is ambitious, "if properly implemented, it would undoubtedly create many opportunities for American companies in the sector, but would also benefit other international players".

Luis Pérez de Ayala, partner at Cuatrecasas in Madrid, says Spanish companies have substantial experience of being involved in US infrastructure projects, with the result that they are ranked among the best in the world, and consequently they are expected to be awarded some sizeable contracts as a result of Trump's scheme. "A plan like that announced by President Trump represents a good opportunity for them," he argues. Meanwhile, Menéndez points out that Spanish sponsors and lenders have traditionally been key players in a wide range of project finance transactions and public-private partnerships, especially in relation to global infrastructure. She adds: "For example, companies such as ACS, OHL, Ferrovial, Acciona or Sacyr are leaders in the construction, development and operation of infrastructure projects in the US, whilst other Spanish lenders such as Baco Santander or BBVA, are present in many of the project financings in these types of project."

However, there are some concerns that, given Trump's talk of an 'America First' policy – which some anticipate could result in US-based companies being given preferential treatment when government contracts are awarded – Spanish companies' success in winning tenders could be limited. Pérez de Ayala says: "It will be necessary to check whether the infrastructure development programme finally includes protectionist measures, since such measures might prevent Spanish companies from being awarded the corresponding projects".

However, others are more optimistic about the prospects for Spanish infrastructure developers. Delgado argues that, even if 'America First' policies are implemented, they still may not end up being an impediment when it comes to Spanish companies being awarded contracts. "Their [Spanish companies] experience, the prices offered and project feasibility make the project more attractive than if it were to be developed by a US infrastructure company," he says. In contrast, Delgado thinks such policies could make it a lot harder for Trump to follow his investment plan, since such restrictions would limit the ability of producers to obtain the best prices. "It may lead to some projects being deferred or cancelled if they are not as profitable as expected," he adds.

Few restrictions

Menéndez argues that it is unrealistic to believe that Trump's protectionist approach towards the domestic economy will cause international players to be excluded from US projects. "Spanish infrastructure companies are often among the very few international operators actually capable of delivering on the most complex and sophisticated projects," she says. "We have asked them the same question and they are not worried that their opportunities will be limited – their perception is that the 'Buy American, Hire American' principle will mainly apply to the use of local contractors for the physical execution of works [the plumbers, electricians or builders] and not to the design and leadership of the project, because state-of-the-art infrastructure cannot be built without the involvement of the big international construction groups. However, we will have to wait and see."

Yet there remains considerable uncertainty with regard to how the US infrastructure plan will be implemented, according to Menéndez. "Although many Spanish companies are very experienced in the US market, they still find it a tough market," she says. "There are many questions that remain as yet answered, that will have a direct impact on the opportunities for international players, such as the level of private and public resources that will be used in the financing of the plan, the

requirements for bidding for a concession agreement, the tax implications, and the consequences arising from the changes to certain regulations and environmental laws." Menéndez continues: "That's why Spanish companies are interested in having the support of international law firms that know their approach to business and culture and can facilitate as much as possible their access to the US information and knowledge they require."