



**ECONOMIST
IMPACT**

The 2021/22 Infrascope

Country summaries

COMMISSIONED BY



Contents

4	Argentina
6	Bahamas
8	Barbados
10	Belize
12	Bolivia
14	Brazil
17	Chile
19	Colombia
21	Costa Rica
23	Dominican Republic
25	Ecuador
27	El Salvador
29	Guatemala
31	Guyana
32	Haiti
33	Honduras
35	Jamaica
37	Mexico
39	Nicaragua
41	Panama
43	Paraguay
45	Peru
47	Suriname
49	Trinidad and Tobago
51	Uruguay
53	Venezuela

Infrascope country summaries

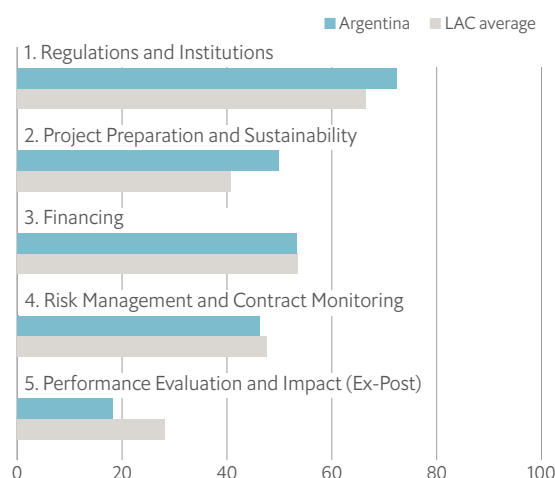
This appendix provides short profiles of the public-private partnership (PPP) environment for each of the 26 countries in this study, including key findings about their performance in the index. Countries are listed in alphabetical order. Please note that the information selected for the country profiles is intended to provide a high-level overview; it is not intended to provide an outline of the legal environment or represent a comprehensive account of all recent activity.

Note: The data gathering and processing that underlies the Infrascope's index ended in September 2021. Major developments occurring after this date may be mentioned in this appendix (which was completed in December 2021) but are not reflected in country scores. A complete list of references for each country is provided in the Bibliography section of the Methodology Appendix.





Argentina



Brief overview of the infrastructure PPP market and regulatory framework

Argentina's history of private participation in infrastructure projects extends to before 1990, although a dedicated PPP law did not exist until late 2016.¹ From 2017 to 2019 the value of infrastructure PPPs amounted to 15% of total infrastructure spending on average.² Recent projects have been developed primarily in the renewables (wind and solar) and gas-fired power sectors. Although the 2015-19 administration tried to implement PPPs to overcome shortcomings in infrastructure provision in the energy, mining, transport, sanitation, health and education sectors, the current administration has not shown interest in exploiting the PPP model and has discontinued all PPPs from the previous administration.

Instead, in early 2020, Argentina Hace, a public spending initiative focused on small-scale infrastructure projects, was announced, to be financed and managed by the Ministry of Public Works. Although the infrastructure plan was launched before the covid-19 outbreak, it has been reinforced during the pandemic. In late 2020, according to the proposed national budget, the Argentine government planned to reactivate the economy to reach GDP growth of 5.5% in 2021 with

investment of Ps1.5trn (US\$20bn, or 4% of GDP) in public works, innovation and development, and connectivity. This investment includes Ps435bn for a road and sanitation infrastructure program in the provinces of Buenos Aires, Santa Fe, Tucumán, Chubut and Tierra del Fuego.

Although Argentina passed two distinct regulations to promote private participation in infrastructure in the 2000s (Decree 1299 in 2000 and Decree 967 in 2005), these regulations have not been used. The 2015-19 administration showed renewed interest in PPPs, passing a broad law (Law 27328) in November 2016 that created a new PPP framework and permitted significant flexibility in the parameters of PPP contracts.

Decree 808 in 2017 established a PPP unit (the Under-Secretariat of Public Private Partnerships) tasked with developing, promoting and implementing PPPs. However, the unit has experienced repeated reorganization, personnel shuffles and relocation within the cabinet since its creation, which may have blunted its capacity to effectively perform its functions. More recently, the Financial Law No. 27431 of 2018 explicitly allowed the state to create financial trust funds to undertake PPP projects, with Decree 987 of 2018 broadening the alternatives for their creation. The PPP trust approach changes the form of the government's financial obligations: meaning public investment that cannot be accommodated within the current budget can be brought forward, allowing for the government's revenue and its direct liabilities to be reduced and creating a contingent liability for any shortfall.

Strengths and enabling environment for infrastructure PPPs

Argentina has made important efforts to strengthen the institutional and legal framework for PPPs, aiming to facilitate new direct foreign investments without constraining the government's ability to choose the optimal structure and process for each project. The PPP law allows for contract transfer, full compensation in case of early termination of the PPP contract by the state, and the submission of contractual disputes to arbitration.

Argentina exhibits some of the region's strongest capabilities in terms of project selection, including the utilization of needs assessments, prioritization rules for national investment planning, cost-benefit analysis,

¹ World Bank Private Participation in Infrastructure (PPI) database
² IJ Global and Infralata. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

fiscal affordability analysis, and value-for-money assessments—including published methodological guides. The project preparation process also features some of the region's most comprehensive attention to environmental, community and social considerations.

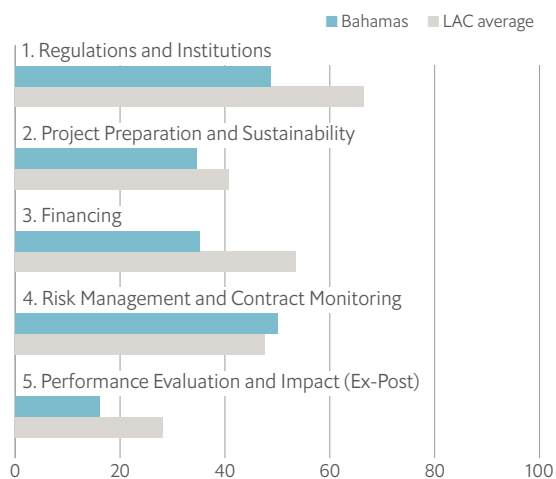
In terms of financing, the new Capital Markets Law (2018) aims to give an unprecedented role to the country's capital market and increase institutional investors' participation in project bonds and investment funds. Argentina's National Securities Commission (CNV) Resolution 764 of 2018 establishes requirements for bonds, investments and trust funds to be in accordance with international standards for green, social and sustainability bond issuance.

Key challenges and areas of improvement for infrastructure PPPs

After Law 27328 was passed in late 2016, the PPP unit unveiled a large and ambitious pipeline of around 60 projects in multiple sectors, totaling US\$26bn, but only a few of these made it past the tendering phase. The weakening of the economic environment hampered the participation of private investors and many of the flagship PPP contracts have since been suspended, including the six "Highways and Routes Network Project" contracts. Given political uncertainty and fragile public finances, it seems unlikely that medium- to long-term PPP projects (8+ years) will be implemented soon; projects with a shorter payout and lifespan (maximum of 4 years) have a better outlook but are still unlikely during the present administration. Currently, the country may benefit from capacity building for PPPs at the subnational level, given that the regulations governing PPPs allow for potential conflicts and overlaps between national and subnational government jurisdictions.



Bahamas



Brief overview of the infrastructure PPP market and regulatory framework

The Bahamas government has made infrastructure improvement a national priority, most recently through its continuously evolving 2015-2040 National Development Plan, which focuses heavily on improving roads and communications. Long-term planning, including through “Vision 2040” and with multilateral and academic support, has resulted in modern transport and telecoms networks and excellent medical facilities. Given that it is an archipelago, infrastructure development initiatives must be duplicated on each island. Recent hurricanes such as Dorian in 2019 have, however, severely damaged the well-developed infrastructure on Grand Bahama and Abaco (the country’s second- and third-largest economic centers, respectively) and Ragged Island. Reports estimate that Hurricane Dorian alone cost The Bahamas US\$3.4bn, or a quarter of the country’s GDP.³

At the end of 2018, the government implemented a formal PPP policy that established the first unified framework for identifying, screening, procuring and managing PPPs in the Bahamas.⁴ While a limited number

of PPPs had been developed prior to this policy, the legislation represented significant gains in establishing a formal scope for and regulatory approach to PPPs. Its implementation has stalled, however, and although a number of projects are in the PPP pipeline, none has progressed to the contractual phase in the past few years.⁵

Strengths and enabling environment for infrastructure PPPs

The 2018 PPP policy establishes a sound enabling environment for PPPs. Its procedural mechanisms and institutional arrangements predominantly mirror those adopted in countries with successful PPP programs. In addition, the country’s approach to infrastructure project prioritization through a long-term infrastructure plan and rigorous business case stage during project preparation is one of the strongest in the region. With respect to financing, the PPP policy stands out for its explicit and comprehensive support of performance-based payments and penalties in certain contexts.

The Bahamas ranks second in the region in terms of its low risk of action against contracts (defined as government-related actions, contract termination and bureaucratic risk). In addition, risk identification and allocation processes are required for PPP contracts, and regulations include guidance on the scope and mechanisms to be applied. Furthermore, there are established planning frameworks and accounting practices for contingent liabilities for infrastructure projects developed through PPP and non-PPP modalities, with internationally recognized approaches and annual parliamentary oversight. Ongoing contract management and monitoring practices are also well defined.

Key challenges and areas of improvement for infrastructure PPPs

The government has not yet made the institutional framework established by the PPP policy a reality on the ground. A majority of the initiatives described in the PPP policy that require coordinated efforts to

3 Bello, O., Fonted de Meira, L., Gonzales, C., Peralta, L., Skerette, N., Marcano, B., Patin, M., Vivas, G., Espiga, C., Allen, E., Ruiz, E., Ibarra, F., Espiga, F., Gonzalez, M., Marconi, S., Carrera, D., Nelson, M., Chakalall, Y., Perroni, A., Mason, M. (2020). “Assessment of the Effects and Impacts of Hurricane Dorian in the Bahamas”. Inter-American Development Bank. [https://doi.org/10.18235/0002582]

4 Government of the Bahamas. 2018. “Public-Private Partnerships (PPP) Policy.” [https://www.bahamas.gov.bs/wps/wcm/connect/5a74940c-6125-406c-8140-5584eaf525d4/Public+Private+Partnerships+Policy+Sept+2018.pdf?MOD=AJPERES]

5 There are a handful of contracts where a preferred bidder has been announced and a memorandum of understanding signed. See, for example, developments regarding the Nassau Cruise Port in 2019: IJ Global. 2019. “Contract signed for Bahamas port redevelopment PPP”. [https://ijglobal.com/articles/142188/contract-signed-for-bahamas-port-redevelopment-ppp]

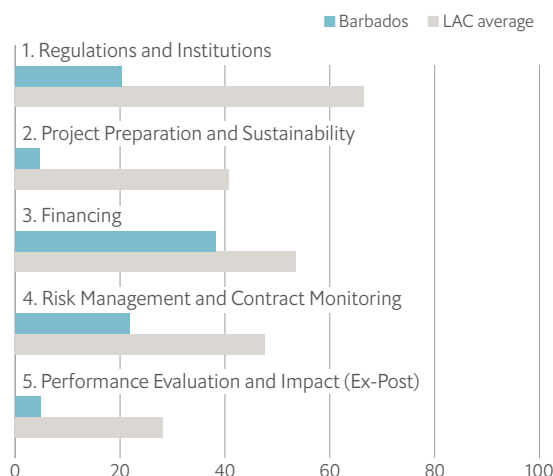
implement, such as establishing a PPP operational unit and centralized project preparation facilities, have not yet been undertaken. Moreover, there is little indication of how much progress has been made in the three years since the policy was adopted.⁶ To achieve the objectives stated in the PPP policy, the status of the policy's implementation and development of all PPP projects will need to be documented through a consistent, transparent process. This is particularly true in the current environment, where uncertainty exists about the applicability of each aspect of the PPP policy because of an apparent lack of progress toward others. This is illustrated by the lack of a PPP unit; in its absence, it becomes unclear where responsibility lies for creating a unified PPP registry as well as publishing contracts and their changes.

Testing the institutional framework outlined by the PPP policy is the country's most urgent challenge, along with enacting other aspects of the legislation and developing capacity within the PPP program. These priority areas will enable the Bahamas to move from policy to action, which will lend credibility to the new framework as more PPP projects are successfully identified, analyzed and developed. To this end, it remains crucial to adequately staff the PPP agency and provide it with the necessary competencies and tools to execute its mandate.

⁶ There is, for example, no indication regarding the PPP unit on the webpage "Areas of responsibility" of the Ministry of Finance.



Barbados



Brief overview of the infrastructure PPP market and regulatory framework

Barbados has little experience with infrastructure PPPs. Although high-level political figures have expressed their support for PPPs in certain contexts, and especially in light of the pandemic, there is no clear agenda for mobilizing private investment for infrastructure development projects in Barbados. The country also lacks PPP-specific policies, institutional frameworks and coordinated programs.

Despite suffering from a deep economic recession caused by the covid-19 pandemic, Barbados remains committed to its long-term strategy of debt reduction and fiscal consolidation, a key part of the IMF-supported Barbados Economic Recovery and Transformation (BERT) program to achieve long-term sustainable growth. However, in late 2021 the government unveiled a comprehensive and historically expansive three-year US\$250m capital works program in a bid to upgrade overall infrastructure on the island, with a particular focus on building bridges and enhancing the road network.

Strengths and enabling environment for infrastructure PPPs

The government of Barbados has made some efforts to modernize public procurement, in some cases setting a foundation for more private participation. For example, building on the country's history of utilizing pre-qualification in contract bidding, a requirement for pre-qualification is set to be formalized through a

new procurement bill introduced in 2018 that has not yet passed. Additionally, PPP-type contract elements (such as output specifications and private finance) are being incorporated into otherwise traditional design-build contracts. One example is the proposed contract to design, build and maintain the headquarters of the Barbados Water Authority.

On the regulatory side, the country's 2011 Financial Management and Audit Rules require contingent liabilities to be disclosed and analyzed comprehensively across all government transactions, introducing a measure of consistency and transparency into accounting practices across various contract modalities. Finally, although the market for sustainable bonds is still nascent, since 2018 there have been instances of companies raising capital through sustainable financing instruments issued on the domestic capital market for infrastructure projects, making Barbados an early regional adopter of sustainable infrastructure financing.

Key challenges and areas of improvement for infrastructure PPPs

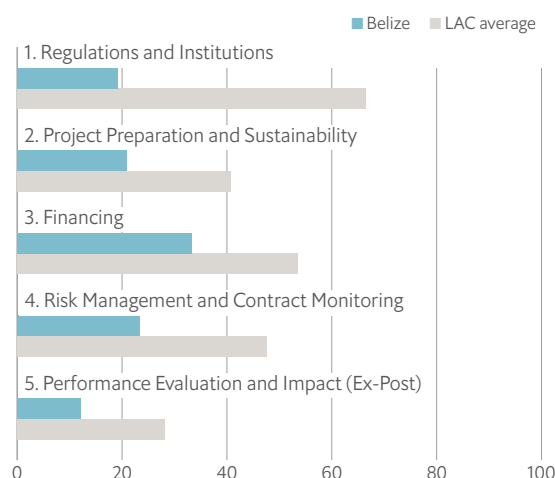
Despite growing political dialogue on the importance of PPPs and infrastructure needs, Barbados faces several challenges in developing the necessary conditions to generate efficient and sustainable PPPs. Currently, there is no legal, regulatory or institutional framework specific to PPPs; rather, the current regulatory framework is the 2011 Financial Management and Audit Rules, which does not detail the conditions under which PPP contracts can take place or meet other "minimum standards" to enable successful projects. The country has also not yet created a PPP unit or PPP program. According to a 2015 auditor-general's report dedicated to PPPs, projects reviewed at that time suffered from a non-competitive procurement process and lacked proper risk allocation, with the government assuming most of the risk.

Given the lack of regulatory and institutional guidance, it is unsurprising that Barbados also lacks approaches to project preparation, risk management, contract monitoring and project evaluations that would facilitate the development of efficient and sustainable infrastructure PPPs. Introducing project selection criteria and prioritization frameworks are a particular area for improvement, alongside developing comprehensive risk monitoring and reporting regimes and ex-post project evaluation requirements. The 2018 Public Procurement

Bill offers moderate improvements across these areas and would formalize PPPs as a procurement modality for the first time. While ensuring its passage should be a priority, stronger and more specific PPP regulations are also needed, ideally through policy guidelines and manuals that relate exclusively to the scope of PPP procurement in the country.



Belize



Brief overview of the infrastructure PPP market and regulatory framework

Belize has only a limited, sporadic history of private participation in infrastructure projects.⁷ However, in late October 2021⁸ the Belizean cabinet approved its first draft PPP policy and the creation of a new PPP unit to support the development of infrastructure PPPs in the country.⁹ Previously, the government had used a decentralized public procurement system for all infrastructure and works projects it outsourced, with each government department managing its own projects and little clarity available on which government body was involved in oversight or support at each stage. Financial and infrastructural details about existing PPP projects have been neither systematically collected by the Ministry of Finance nor disclosed in budget documents.

Operational PPPs in Belize include a build-operate-transfer hydroelectricity project (commissioned in 2007) as well as concession agreements for the operation of Philip S W Goldson International Airport (since 2004), municipal waste collection (since 2013), and the Belize City Civic Center (since 2018). In 2011 the Belizean government expropriated the controlling interest held

by private Canadian utility company Fortis Inc in Belize Electricity Limited, Belize's oldest and largest PPP venture. Despite this, both the party in power and the opposition unanimously encourage private participation in public infrastructure development.

The country's new PPP unit will replace the former acting PPP body, Belize Infrastructure Limited (BIL), a publicly owned company established in 2013 reporting directly to the Office of the Prime Minister, with a mandate for implementing major priority infrastructure projects. Although it intended to undertake several new PPP projects in the tourism sector, BIL's operations were suspended in early 2021. The government's new PPP policy, approved in late 2021, will establish a new institutional framework for PPPs in the country.¹⁰

Strengths and enabling environment for infrastructure PPPs

Despite Belize being a relatively smaller country with few PPPs, it does have a regulatory and planning environment that is largely conducive for private infrastructure players. An Economic Development Council (EDC) exists under the aegis of the Office of the Prime Minister, with an equal number of prominent private sector actors and top government officials on its board. The EDC's primary aim is to promote dialogue between top business and government officials to create a facilitative environment for commerce in the country. With respect to infrastructure planning, Belize performs quite well in the region for maintaining a long-term infrastructure development plan and utilizing needs assessments during project prioritization.

Promoting private participation in public infrastructure has also been pronounced in both the major parties' election manifestos in 2020, and there has been consensus about this in parliament, culminating in the recent approval of the country's new PPP policy. Although the extent of the new PPP policy and the capacity of the new PPP unit are not yet clear, it is anticipated that these developments will provide much-needed guidance around the government's procedures for PPP management.

The Belizean regulatory framework also exhibits several other positive features for infrastructure development. The government offers land acquisition support for private

⁷ World Bank PPI database

⁸ The data gathering and processing that underlies the Infrascope's index ended in September 2021, while the report was completed in December of the same year. Developments such as the October 2021 PPP policy are discussed in the report's analysis, but are not reflected in country scores. The text of the PPP policy is not yet publicly available as of this report's completion. Many indicators are likely to be affected by the new policy, and future editions of the Infrascope will fully consider any newly published regulations.

⁹ Government of Belize Press Office, October 28th 2021, "Cabinet Brief". [<https://www.pressoffice.gov.bz/cabinet-brief-31/>]

¹⁰ The text of the PPP policy is not yet publicly available as of this report's completion.

players without impinging the rights of landowners, and it has a robust environmental protection framework. Investors have the right to appeal unilateral contract termination and expropriation by the government. Meanwhile, government procurement contracts (through which most public infrastructure projects are commissioned) have an enforceable and secure termination clause protecting private companies. Regulatory frameworks governing public procurement in Belize also mandate regular monitoring and reporting, which cover the quality of services from operational infrastructure assets using financial and operational key performance indicators (KPIs). This helps to maintain a good balance between regulatory overview and non-interference. Finally, Belize has a largely transparent public bidding system, which requires documents from the bidding process and notices of awarded contracts to be published.

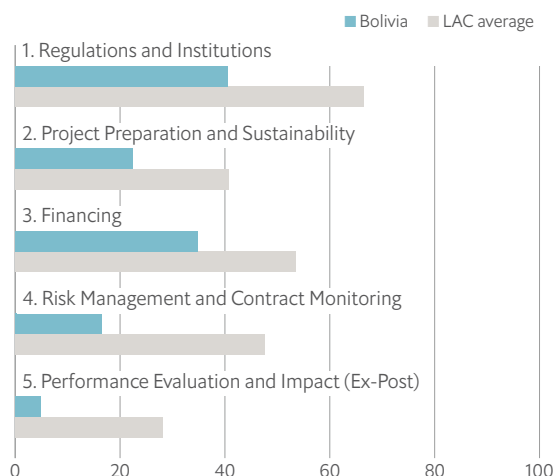
Key challenges and areas of improvement for infrastructure PPPs

Although previous and current administrations have demonstrated strong support for private participation in infrastructure, it remains to be seen how long-standing issues such as coordination between government departments and the Ministry of Finance will be handled in practice. PPP implementation in Belize has historically been hindered by a complex institutional, regulatory and legal framework. Additional clarity around institutional responsibilities has also been needed, especially with respect to PPPs. The new PPP policy should help bridge the gap between existing regulations for general procurement and particular regulatory processes and policies that are unique to PPP development. Institutional processes would also be improved by a standardized platform or system that can be used by public agencies to coordinate across project stages and stakeholders for PPPs and public procurement projects.

Contract management and oversight is also an important area of focus for Belize. Historically, the country has lacked risk assessment frameworks for public infrastructure projects, with no regulations in place mandating risk identification, analysis or allocation between the parties involved. The absence of such oversight arrangements raises the risk that PPPs will not improve value for money, while exposing the government to substantial fiscal risk. The ongoing investigation of BIL adds concern, with issues of transparency, accountability and clear operational hierarchy being raised at the highest levels of government.



Bolivia



Brief overview of the infrastructure PPP market and regulatory framework

Bolivia is a new addition to the Infrascope. Information regarding the country's capacity for PPP development is somewhat limited, in part because of the historical opposition of the previous 2006-19 administration to private investment in the provision of public services. Although that administration passed three laws that could facilitate investment projects between private and public participants, their limited scope does not extend to more traditional PPPs and they have not yet been used for infrastructure development. In general, Bolivia's infrastructure deficit remains significant.

As of 2021 there is no formal PPP law in Bolivia. Rather, Executive Order No. 3469 of 2018 establishes the precepts and the minimum content for certain arrangements, known as Strategic Alliances of Joint Investment Contracts (SAJIC), as defined in Law No. 466 of State Owned Enterprises (SOE) and Law No. 516 of Investment Promotion. SAJICs are investment mechanisms that allow national or foreign investors to associate with state-owned enterprises (SOEs) or autonomous territorial entities (but not other typical state sponsors of PPPs such as line ministries) to develop investment projects. The scope of a SAJIC therefore covers a small subset of contracts that would fall under the category of traditional PPPs. In any case, SAJICs have not yet been used.

Strengths and enabling environment for infrastructure PPPs

Bolivia performs best in areas of the index that are not specific to PPPs, but rather the broader procurement and financing environment. For example, the National Public Investment System and public registry of projects comprehensively document information regarding projects' evaluation and implementation. In addition, contract renegotiations and changes are subject to transparency and oversight per the procurement law (Supreme Decree 181: Basic Standards of the Goods and Services Administration System), which also mandates that projects account for disaster risk through an insurance requirement, although no minimum coverage level is specified.

The country also performs strongly with respect to its use of sustainable financing instruments in infrastructure development and low non-performing loan (NPL) ratios in the banking sector. Banco de Desarrollo Productivo SAM (the Productive Development Bank, or BDP) will be the first bank in Bolivia to issue debt instruments that focus on investments with social and environmental impacts. Among the categories sought to be financed are renewable energy projects, clean transport and adaptation to climate change.

Key challenges and areas of improvement for infrastructure PPPs

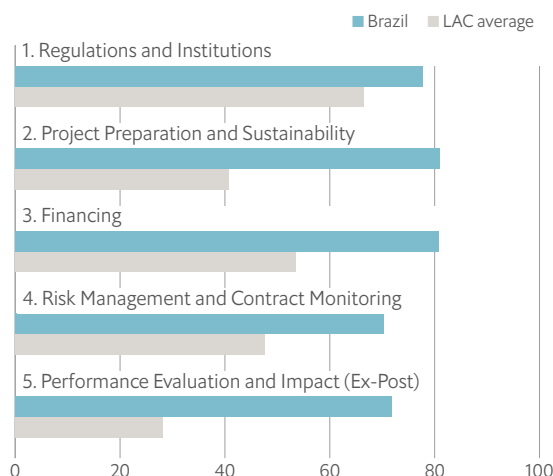
Bolivia's biggest challenge for private participation in infrastructure is utilizing and expanding a regulatory framework capable of supporting PPPs. While the SAJIC mechanism is available, the lack of political will to use it or any other mechanism for private participation has been demonstrated among high-level government officials and in congress. Moreover, the limited scope of the SAJIC regulatory framework does not provide sufficient support for, clarity or guidance on many critical aspects of contract development. For example, it does not detail the aspects of interaction between institutional bodies that have power to award contracts and those that regulate tariffs and service standards. There is also no established PPP-dedicated unit in the country.

Although Bolivia has a well-established investment department that develops social appraisals for projects, it may not have sufficient capacity to evaluate, design

and monitor either PPP or SAJIC projects, especially considering its lack of experience and technical expertise related to the development and financing of such projects. Bureaucratic effectiveness, particularly with respect to risk management, also remains a challenge. Encouraging private participation and implementing successful infrastructure PPPs will be difficult without strengthening the regulatory and risk management environment. Such improvements are needed for many aspects of risk identification and allocation, such as accounting for contingent liabilities, providing for lenders' step-in rights, establishing a long-term contract monitoring strategy covering different project phases, and reporting on that progress transparently. The need to drastically improve approaches to risk management is especially relevant given the country's lack of a solid regulatory framework, high cost of capital, lack of government support for project bankability, issues with capital portability, and prior administrations' history of nationalizing project companies and assets.



Brazil



Brief overview of the infrastructure PPP market and regulatory framework

Brazil has one of the most active PPP markets in Latin America and the Caribbean (LAC), representing more than 40% of the region's investment in infrastructure PPPs between 2011 and 2020.¹¹ The country also has one of the longest histories of private participation in infrastructure, with projects dating to the early 20th century.¹² Between 2010 and 2019 the value of infrastructure PPPs in Brazil has amounted to 25% of total infrastructure spending in the country on average.¹³ Infrastructure PPPs exist across sectors including roads, energy, air transport, ports, and oil and gas. Energy takes the lead, accounting for approximately 77% of the country's total investment value in infrastructure PPP projects, the largest share between 2018 and 2020, with 89 projects reaching financial close (most of which were PPPs), collectively worth over US\$25.5bn.¹⁴ The Investment Partnerships Program (PPI),¹⁵ established in

2016, centralized the structuring and implementation of priority projects within the Secretariat of Government of the Presidency of the Republic (SPPI). By end-2020 201 infrastructure projects had been procured, completed, or had contracts signed within the PPI, and the federal government expected to raise over BR740bn (US\$137.51bn) in investments in the next few years, mainly focused on the transport and energy sectors.¹⁶

Brazil's PPP framework consists of two main laws: the 1995 Concessions Law (No. 8.987) and the 2004 PPP Law (No. 11.079). The recently enacted new Procurement Law (No. 14.133 of 2021) modified both by introducing a new procurement modality called competitive dialogue". Specifically, this includes a standardized national public procurement platform (the National Platform of Public Procurement, or PNCP), and improves several policies on legal certainty, rationality and risk allocation, to be implemented by 2023. Brazil's federal government awards PPP projects in the energy and interstate transport sectors, while state and municipal governments are responsible for water, sanitation and local road PPPs. In addition, the new Sanitation Law (No. 14.026 of 2020), which promotes private investments and establishes mandatory KPIs in the water and sanitation sector, represented a breakthrough in modernizing Brazil's PPP legal framework.

Strengths and enabling environment for infrastructure PPPs

The Brazilian PPP environment has four main strengths: a well-equipped and well-funded PPP agency, the SPPI; efficient project selection and preparation; the attention paid to environmental and social sustainability during the project preparation phase; and frequent performance and impact evaluation.

The SPPI is an adequately staffed PPP-dedicated agency under the Ministry of Economy and manages projects across bidding and asset management phases. The existing framework enables checks and balances, with the SPPI's decisions requiring approval from the Council of the Investment Partnership Program. The council itself is a body under the Presidency of the Republic,

¹¹ IJ Global. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

¹² World Bank PPI database

¹³ IJ Global and Infratam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

¹⁴ World Bank PPI 2020 Annual Report.

¹⁵ Government of Brazil, Law No. 13.334 of September 13th 2016. "On the Investment Partnerships Program" [http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13334.html]

¹⁶ Special Secretariat of the Investment Partnership Program. Report to the Brazilian Congress on the Investment Partnership Program 2020. March 2021.

featuring representation from several ministries and public institutions, ensuring that the diverse sectors represented in the decision-making process are presented with technical opinions from experts.

The national government has lengthened the bidding timeline to allow more investors to prepare bids and started publishing documents in both English and Portuguese to increase transparency and streamline communication with foreign investors. Furthermore, there has been a decrease in market concentration that enables a more competitive environment and increased foreign investor participation, as 92 out of the 201 approved, completed or extended PPP projects within the PPI from 2016 to 2020 were won by foreign companies or foreign companies in consortium with Brazilian companies.¹⁷

Moreover, the PPP legal framework includes environmental and social provisions. It requires environmental impact studies to be conducted and affected communities to be consulted regarding infrastructure projects. Since 2009 there is a legal preference for selecting projects that save more energy, water and other natural resources as well as reduced solid waste production and greenhouse gas emissions.¹⁸

A final strong characteristic is the mandatory regular and standardized monitoring and reporting on the quality of services from operational infrastructure assets. This can be measured by performance clauses, which are considered important in the context of the PPI. Additionally, the procuring authority must send annual PPP performance reports to the National Congress and the National Court of Auditors (TCU), an independent and well-staffed agency responsible for evaluating and auditing the results of federal PPP projects, providing a strong measure of transparency.

To accelerate investment in infrastructure, the federal government has undertaken initiatives such as “Infra Week” in April 2021, a major auction event that raised private investments in transport infrastructure PPPs

worth over R10bn (US\$1.93bn). In addition, in June 2021 a bill was approved to privatize a semi-public electricity company, Eletrobras.¹⁹

Key challenges and areas of improvement for infrastructure PPPs

Brazil faces four main infrastructure PPP development challenges: ensuring appropriate risk allocation between public and private sector counterparts; improving coordination between the different agencies that play a role in projects’ development, oversight and implementation; enforcing legal certainty of PPP contracts; and implementing ex-post evaluation of environmental and social impacts. On these matters, the enactment of the new Procurement Law (No. 14.133 of 2021) represents a step in the right direction, but progress depends on its full implementation by 2023. In addition, progress on the aforementioned issues related to regulatory frameworks and institutional coordination would introduce greater consistency in Brazil’s performance in the Regulations and Institutions category, where the country currently sits at 12th (out of 26), despite its high scores across all other categories.

The strength of contracting institutions varies across Brazil’s federal states. Many sub-national entities lack broader infrastructure plans that could set and communicate infrastructure priorities to the market and potential partners. This is also true of coordination mechanisms—while some sub-national manuals describe the interaction process between different agencies in charge of preparing, procuring and managing the PPP contract, such manuals are not used universally and there is no similar guidance at the federal level. Additional regulatory clarity regarding how to define key contract characteristics of PPP contracts—such as time frames, assumption of risk, payment types and termination conditions at the federal level—is another area for potential improvement.

The lack of clear guidance on compensation mechanisms for early termination or contract defaulting and the vagueness of *force majeure* clauses create legal uncertainty for the private sector, which is exacerbated by allegations of contract breach that lead to judicial

¹⁷ Special Secretariat of the Investment Partnership Program. Report to the Brazilian Congress on the Investment Partnership Program 2020. March 2021.

¹⁸ Government of Brazil, Law No. 12.187 of December 29th 2009. “On the National Policy on Climate Change”. [http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/l12187.htm]

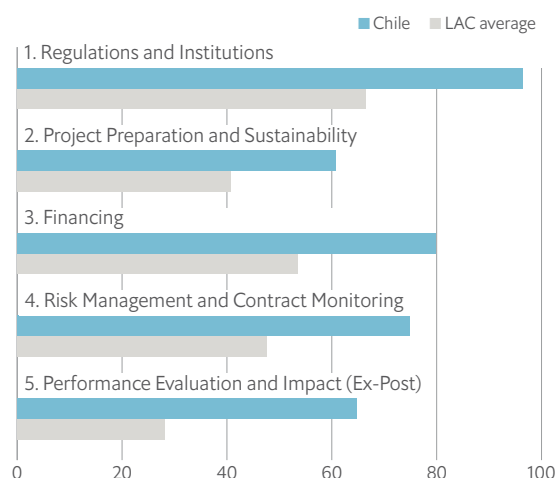
¹⁹ Government of Brazil, Law No. 14.182 of July 12th 2021. [http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/Lei/L14182.htm]

disputes. The case of the concession of the Yellow Line Highway in Rio de Janeiro, in which the former mayor expropriated assets of the concessionaire without a prior process, represents a red flag, although such occurrences are not common.

Attention is paid to environmental and social concerns during the selection and preparation phases. However, the same does not seem to be the case during the performance evaluation and impact stage, insofar as there is no incorporation of future-proofing elements into projects and no requirements for the project's performance to be measured against climate change goals or the SDGs.



Chile



Brief overview of the infrastructure PPP market and regulatory framework

Chile's history of private participation in infrastructure projects extends back to 1991, when it approved its first concessions law.²⁰ Between 2010 and 2019 the value of infrastructure PPPs amounted to 12% of total infrastructure spending in the country on average.²¹ The market has historically been highly concentrated. However, the situation has been improving, with the top three firms in 2020 accounting for less than half of new PPPs.²² Prior to the covid-19 outbreak, social unrest hindered the previously strong political and popular backing of PPPs, particularly for toll roads, with the government instead focusing on hospital infrastructure PPPs in its 2018–22 plan. However, the need to boost the economy following the pandemic and economic crisis has prompted the administration to launch a US\$34bn two-year infrastructure plan in August 2020, largely centered on road concessions.

20 A. Hill, "Foreign Infrastructure Investment in Chile: The Success of Public-Private Partnerships through Concessions Contracts", *Northwestern Journal of International Law & Business*, Fall 2011. [<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1012&context=njilb>]

21 IJ Global and Infratam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

22 World Bank PPI database. Note: Chile is not typically included in the World Bank PPI database. These data were obtained upon request.

The backbone of Chile's PPP regulatory framework is Supreme Decree No. 900 of 1996, which modified Law No. 164 of 1991 (Chile's original concessions law). Key additions to Supreme Decree No. 900 included Law No. 20,410 of 2010 and Law No. 21,044 of 2017. Industry participants confirm these new laws have enhanced policy coordination and execution by creating more transparent rules for risk allocation and contract changes, as well as by establishing the General Directorate of Concessions of Public Works (Dirección General de Concesiones de Obras Públicas, DGCOP), an independent, fully dedicated PPP unit under the Ministry of Public Works. Law No. 21,044 stipulates that the DGCOP's board of directors should be respected technocrats elected in a competitive process, and it requires the DGCOP to annually propose a five-year PPP project pipeline to Congress.

Strengths and enabling environment for infrastructure PPPs

Chile has a robust and conducive environment for PPPs. The regulatory framework establishes some of the region's most comprehensive and transparent rules for PPP contracts, including procedures for contract awarding, contract renegotiation and termination, risk allocation, dispute resolution, and compensation for acts of government authority, among others. Public entities involved in the PPP process are independent and effective, demonstrating best-in-class contract monitoring and reporting practices. Chile's strong local capital markets also offer region-leading long-term financing for concessions, with very low risks related to regulatory or government action.

The covid-19 crisis has tested the country's dispute resolution mechanisms, particularly as airport concessionaires have struggled with low passenger traffic and pushed renegotiated contracts and compensation as a result. However, Law No. 20,410 of 2010, which enhanced existing dispute resolution procedures, has proven extremely helpful in these disputes with airport concessionaires. Consistent with said procedures, in August 2021 an independent technical panel issued non-binding recommendations to solve some of the disputes, with others remaining under review.

While Law No. 20,410 of 2010 states that, in case of disagreement with the technical panel, either the

public or private party can summon a (binding) arbitration tribunal or file a lawsuit with the local courts, international treaties also allow access to the International Centre for Settlement of Investment Disputes (ICSID). In August 2021 Nuevo Padahuel, the concessionaire of the airport of Santiago de Chile, announced it would file a lawsuit with ICSID, as it disagreed with the technical panel's decision in May 2021 to discard the requests for compensation and contract extension.

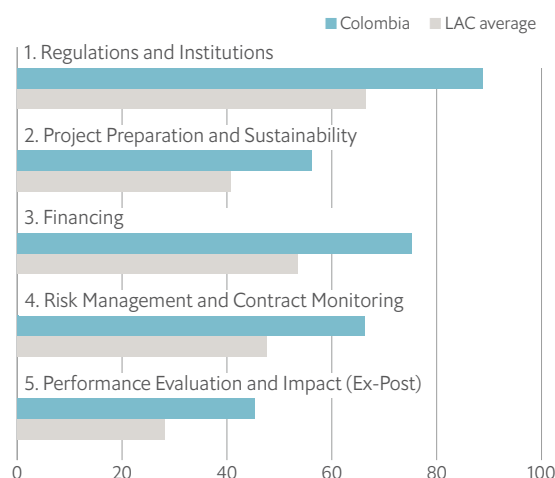
Key challenges and areas of improvement for infrastructure PPPs

The DGCOP's establishment and improvements to legislation made during the past decade have improved Chile's concessions process and contributed to its top performance on the Infrascope. Like all countries in the region, however, Chile's PPP regime still needs some improvement. In particular, the project planning, selection and execution process lacks goals for social inclusion, gender, employment generation and promoting micro, small and medium-sized enterprises (MSMEs). Similarly, the ex-post evaluation of projects does not include assessments of risk, cost-benefit, value for money or environmental impact and progress towards the SDGs. And although project financing is generally widely available, the government's infrastructure fund that was created in 2018 has not financed any projects yet.

These areas aside, the main challenge for PPPs comes from the political environment. A constitutional assembly inaugurated in July 2021 has been designated to draft a new constitution by mid-2022. Some investors have expressed concern that, in order to address some of the social tensions that have emerged in Chile since November 2019, the new constitution may include new principles or provisions that could somewhat hamper the country's traditionally highly attractive business environment. Depending on the potential constitutional changes, foreign and local investment, including that in PPPs, could shy away. The new constitution, together with a new administration during 2022-26, will face the challenge of demonstrating that they can address increased popular demand for social fairness, while keeping an investor-friendly operating framework for concessions.



Colombia



Brief overview of the infrastructure PPP market and regulatory framework

Colombia is one of the more active infrastructure PPP markets in LAC, with more projects during the past decade than all but three countries in the region. From 2010 to 2019 the value of infrastructure PPPs represented 18% of the country's total infrastructure spending on average.²³ These projects have been predominantly in the transport and energy sectors. A wide range of projects have received government financial support, typically in the form of capital subsidies.²⁴ Colombia has also offered a variety of sovereign guarantees to infrastructure PPPs, including payment guarantees, revenue guarantees and construction cost guarantees.

Since 2020 the need for economic reactivation has given new life and political support to large infrastructure projects that could potentially be financed using PPP mechanisms. To this end, the president, Iván Duque, announced US\$100bn in investment for the country's post-pandemic economic reactivation plan, with 75%

to come from private investment sources.^{25,26} The administration is also supporting regional and municipal efforts in PPPs, one example of which is the construction of Bogotá's first subway line. This will become Colombia's single most important infrastructure and PPP project, with investments exceeding US\$4bn.²⁷

Colombia has had public-sector procurement regulation in place since 1993 (Law No. 80), and in 2012 the Colombian Congress approved new PPP-specific regulation—Law No. 1508, known as the PPP Law. This law establishes a definition for PPPs and the process for procurement. The law has been made operational and slightly reformed through a series of presidential decrees and resolutions in order to improve its effectiveness and clarify its scope for stakeholders. In 2018 Congress passed Law No. 1882 on public procurement, designed to strengthen the PPP regulatory framework. It included provisions to enhance transparency in public procurement, reduce obstacles for project execution (e.g., the purchase of land or property), more clearly define the rules preceding and following the cancellation of a PPP contract, and facilitate execution of PPPs by regional and municipal governments and state-owned companies.

Strengths and enabling environment for infrastructure PPPs

Colombia demonstrates robust performance across all five index categories. In particular, the country stands out for its highly qualified and capable PPP agency, the Departamento Nacional de Planeación (DNC), which has ample capacity to conduct and publish many technical, financial, economic, statistical and methodological studies and reports. Colombia's National Infrastructure Agency (ANI) is also heavily involved in transport infrastructure PPPs and has previously been recognized as the best government infrastructure agency in the

23 IJ Global and Infratam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

24 World Bank PPI database

25 Diario Semana (2020) "Reactivación: 75% de la inversión saldrá de los bolsillos privados". [<https://www.portafolio.co/economia/reactivacion-economica-en-colombia-la-inversion-saldrá-de-los-bolsillos-de-empresas-privadas-543361>]

26 Diario El Tiempo (2020) "Se inició la ruta para licitar la primera ola de concesiones 5G". [<https://www.eltiempo.com/economia/sectores/infraestructura-con-cinco-licitaciones-abiertas-este-ano-despegan-concesiones-5g-5483261>]

27 Invest in Bogotá. Infrastructure and City Projects. January 18th 2021. [<https://en.investinbogota.org/investment-sectors/infrastructure-and-city-projects>]

Americas by P3, an infrastructure magazine.²⁸ Lastly, the National Development Financing Company (FDN)—co-owned by the government of Colombia, the International Finance Corporation (IFC), the Andean Development Corporation (CAF), and Sumitomo Mitsui Banking Corporation (SMBC)—is the only project finance bank exclusively dedicated to funding infrastructure projects in Colombia. These institutions underpin Colombia's high performance with respect to project selection, preparation and support, for which its scores are among the top four in the region.

Colombia is also distinguished by its strong approach to risk management, including comprehensive regulatory processes for risk identification and allocation, lenders' step-in rights, environmental risk analysis, and disaster risk management. With respect to long-term project evaluation, the country leads the region, along with Brazil, for its strong and detailed processes around ex-post evaluations and reporting. These institutional strengths and norms, coupled with Colombia's relatively mature and capital-rich financing environment, underscore why it continues to remain such an active PPP market.

Key challenges and areas of improvement for infrastructure PPPs

The Odebrecht corruption scandal, involving a Brazilian firm implicated in multiple Latin American countries (including Colombia) in 2015, temporarily paralyzed PPP projects, and the topic remains under investigation. The scandal's magnitude and publicity, with high-ranking politicians being charged with corruption and enabling anti-competitive behavior, has to some extent damaged the credibility of PPPs as a modality for public-private collaboration in Colombia. This situation underscores a few key areas of improvement for Colombia, where it fails to rise above the regional average in the index: requiring transparency and publication of bidding materials, requiring competitive bidding for unsolicited proposals, and establishing institutional mechanisms for oversight of contract renegotiations.

Land administration also stands out as one of Colombia's weakest areas in the index, where it falls behind

most other countries in the region with respect to both the quality of land administration and the level of government assistance provided to PPPs for land acquisition. In addition, while there is a legal requirement to conduct consultations with communities affected by infrastructure projects, the findings are not required to be published.

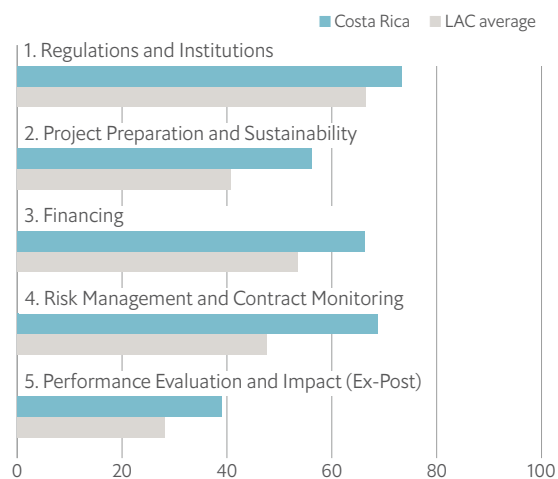
Finally, Colombia lacks certain processes for effective financial management of PPP contracts. In particular, there is no framework in place requiring regular reporting around financial and operational KPIs for active PPPs. A 2018 IMF report on fiscal transparency noted weakness in forecasting and budgeting due to budget fragmentation, gaps in the transparency and management of multiyear public investment projects, and weak practices in performance indicators for service delivery.²⁹

28 W Radio Colombia. Ani recibe reconocimiento internacional como "mejor agencia del año". [<http://www.wradio.com.co/noticias/actualidad/ani-recibe-reconocimiento-internacional-como-mejor-agencia-del-ano/20181018/nota/3813769.aspx>]

29 International Monetary Fund. 2018. IMF Country Report No. 18/250: Colombia: Fiscal Transparency Evaluation. [<https://www.imf.org/en/Publications/CR/Issues/2018/08/02/Colombia-Fiscal-Transparency-Evaluation-46148>]



Costa Rica



Brief overview of the infrastructure PPP market and regulatory framework

Costa Rica has implemented PPPs since 1992, with many of its projects having been developed in the electricity and renewables sectors, including the Alisios Wind Farm (2013) and the Orosi Wind Power Project (2015).³⁰ From 2010 to 2019 the value of infrastructure PPPs has amounted to more than 4% of the country's total infrastructure spending.³¹

Infrastructure PPPs have been regulated under various procurement laws, including the Law of Administrative Contracting of 1995 (Law No. 7494) and its ruling of 2006 (Decree No. 33411), and the Regulation of Private Sector Concession Projects of Public Works or Public Works Concessions with Public Service of 2004 (Decree No. 31836). More recently, PPP-specific legislation has been introduced, including the Regulation for Public Private Collaboration Contracts of 2016 (Decree No. 39965-H), the subsequent Regulation for Development Promotion and Management of Public Private Partnerships for Public Sector Development of 2018 (Decree No. 40933), and the General Law of Concessions of Public Works and Services of 2018 (Law No. 7762). These frameworks are consistent with national procurement law and public investment regulations and incorporate further

manuals and guidelines for PPP procurement and implementation.

Strengths and enabling environment for infrastructure PPPs

Costa Rica enjoys broad political support for PPP development, particularly from high-level figures in both executive and legislative bodies. The country's procurement regulations also represent a key strength, requiring specific rules for competitive bidding and the transparency of key documents in the bidding process, reducing the likelihood of PPPs being concentrated across a few enterprises. In addition, PPP regulations also establish clear rules for both contract disputes and risk allocation (including region-leading treatment of disaster risk and *force majeure* events).

PPP development in Costa Rica benefits from one of the region's more comprehensive project selection frameworks, including requirements for fiscal affordability and value-for-money assessments as well as a standardized methodological instrument for cost-benefit analysis. PPP development is supported by two agencies. The National Concessions Council (CNC) promotes, advises, assesses, contracts and manages concessions. The PPP Unit, housed within the Ministry of Finance, undertakes strategic planning and risk assessments, providing technical and analytical support to PPP agreements. Finally, Costa Rica also displays one of the better focuses on ex-post evaluation of PPPs in the region.

Key challenges and areas of improvement for infrastructure PPPs

PPP infrastructure development in Costa Rica faces several key challenges. Perhaps most importantly, there is not a single agency responsible for promotion, technical support and oversight of PPPs. Rather, these tasks are fragmented across two main bodies, with some overlaps and lack of clarity in their functions and responsibilities. Furthermore, the PPP agencies lack adequate staffing and capacity to manage projects across bidding and asset management phases.

Regulations are also framed such that individual PPP contracting institutions can decide whether to approach the CNC during PPP project development.

From a sustainability standpoint, although there is evidence that suggests infrastructure PPP outcomes

³⁰ World Bank PPI database

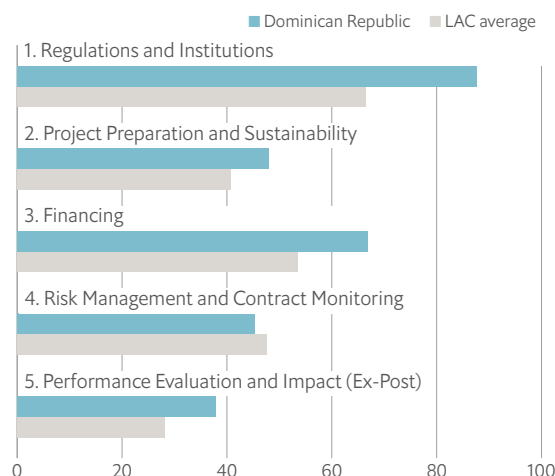
³¹ IJ Global and Infratam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

are mapped against the SDGs, PPP laws have given little attention to promoting sustainable financing instruments or sustainable criteria such as climate change commitments, social inclusion, job creation or gender goals.

Finally, there are opportunities to improve data collection and project analysis to prevent mistakes made in the past and enhance the results of future projects. These opportunities include updating information in the PPP pipeline, documenting and publicizing operational infrastructure project data, undertaking ex-post evaluations that identify incorrect risk allocation, and incorporating future-proofing elements into new projects.



Dominican Republic



Brief overview of the infrastructure PPP market and regulatory framework

From 2010 to 2019 the value of infrastructure PPPs in the Dominican Republic represented 5% of the country's total infrastructure spending, on average.³² PPPs have been used for renewable solar and wind power, traditional power, and the construction, rehabilitation and operation of airports, ports and highways.

In 2020 the Dominican Republic established its first national PPP law. Law 47-20 (2020) created the PPP agency, the General Directorate of Public-Private Alliances (DGAPP), which operates under a multi-ministry directorate called the National Council of Public-Private Partnerships (CNAPP). DGAPP is responsible for promoting and regulating public-private alliances (including producing PPP manuals, methodologies and policy guidelines), while CNAPP is responsible for evaluating and determining PPP projects' relevance. The 2020 PPP law and institutional framework it establishes constitute a comprehensive foundation for developing and implementing PPPs in the Dominican Republic. It also forms the basis for the country's strong performance in the Infrascope's Regulations and Institutions category, where it comes 4th.

32 IJ Global and Infralata. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

Strengths and enabling environment for infrastructure PPPs

The Dominican Republic benefits from strong political support for PPPs and the recent passage of a PPP law, which together create a strong regulatory foundation for developing and implementing efficient and sustainable PPPs. The new Law of PPPs (Law 47-20) of 2020 was recently approved with a majority in congress, firmly establishing PPPs as a procurement modality and instituting a new PPP agency attached to the Ministry of the Presidency that is equipped to fulfill its mission. The government has a diverse project portfolio and long-term infrastructure pipeline, and it has made public its intention to support the reactivation of the tourist sector via private participation.

The regulatory framework also establishes a transparent and competitive bidding environment and requires use of a diverse range of analyses and planning mechanisms in project preparation and selection. Comprehensive methodological guidance and tools are available for these assessments, underpinning the Dominican Republic's outstanding performance with respect to informed and standardized project selection. Similarly, risk analysis and allocation are required and supported by robust methodological guidelines and a risk allocation matrix tool.

Finally, PPPs in the Dominican Republic have access to a diverse range of financing options, including performance-based payments and sustainable financing, and project bankability is promoted by government financial support and healthy NPL ratios in the banking sector.

Key challenges and areas of improvement for infrastructure PPPs

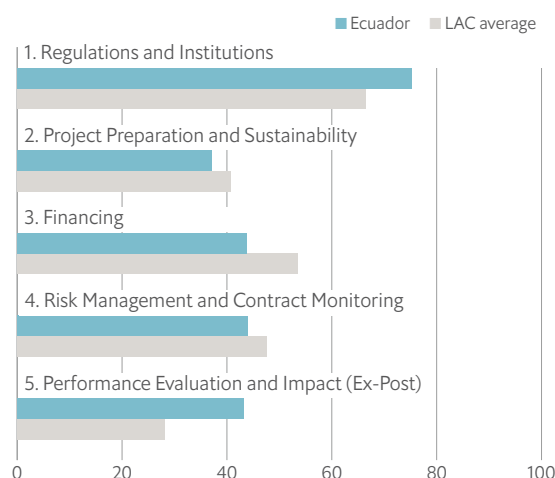
Areas for improvement in the Dominican Republic largely align with key challenge areas for the region. These include, among others, establishing project preparation facilities such as project development and viability gap funds, including environmental and social sustainability criteria in project selection, providing and protecting lenders' step-in rights, issuing guidance on applying and enforcing *force majeure* clauses in PPP contracts, and instituting mechanisms for project monitoring, reporting and evaluation.

There are some exceptions to this general trend—the country falls behind most of the region (21st out of 26)

with respect to government support for land acquisition and for the strength of its financial auditing and reporting standards, for example. As the country begins to test the new processes and institutional arrangements provided for by the 2020 PPP law, opportunities for development will include solidifying the strength of the regulatory framework through PPP-specific guidance and further expanding the country's comprehensive policy manuals to currently unaccounted-for topics such as *force majeure*. Similar to other countries with new PPP laws and institutions, the Dominican Republic would benefit from expanding the technical capacity and project preparation facilities of its new national PPP agency, so as to improve the country's ability to actively guide the preparation, procurement and implementation of PPPs.



Ecuador



Brief overview of the infrastructure PPP market and regulatory framework

Ecuador's history of private participation in infrastructure projects extends to the early 1990s.³³ Since passage of the country's PPP law in 2015, the value of infrastructure PPPs has amounted to 19% of total infrastructure spending in the country on average.³⁴ Historically, most PPPs have been concentrated in the roads sector, but recent years have seen new PPPs in the port, airport, hydro and roads sectors.

As established in Ecuador's 2015 PPP law,³⁵ PPP coordination is provided through a multi-ministerial PPP committee and a technical support and oversight unit. These organizations are responsible for promotion, technical support and oversight for PPPs, while the individual contracting agencies are responsible for PPP contracting and implementation activities. In November 2020 the government issued Executive Decree 1190, providing new regulations to the PPP law, aiming to provide more security for private capital and especially for PPPs. This decree strengthened Ecuador's institutional framework for PPPs, defined

state competencies in the PPP project cycle, delineated processes and standards, guaranteed transparency and promoted competition.

Strengths and enabling environment for infrastructure PPPs

In a bid to improve its investment environment during recent years, Ecuador has enacted new legislation and signed a variety of international agreements. The government has also issued a series of new tax laws,³⁶ seeking to promote long-term economic stability and attract new investments. In 2020 the issuance of new PPP regulation, Decree 1190, marked an important step forward for PPPs in the country, establishing processes for every phase of the project cycle and delineating the responsibilities of all stakeholders involved in the PPP process. There is also more clarity on the country's risk allocation processes, which rank among the best in the region.

In December 2020 Ecuador and the US signed a First Phase Agreement, intending to negotiate a broader and more comprehensive trade agreement regarding access to markets, repairing a commercial relationship that has been broken since 2004. In June 2021 Ecuador signed the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention), reaffirming its renewed focus to develop a competitive business environment and provide confidence to private sector investors.

Aside from these efforts to revive foreign financing, Ecuador benefits from one of the region's more robust frameworks for monitoring and evaluating PPPs in the operational phase, and it boasts some of the region's strongest ratings for its overall quality of infrastructure.

Key challenges and areas of improvement for infrastructure PPPs

Although the issuance of Decree 1190 at the end of 2020 represented important progress for the PPP regulatory framework in Ecuador, the country faces important challenges, especially related to its institutional policies.

³³ World Bank PPI database

³⁴ IJ Global and Infratam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

³⁵ Organic Law of Incentives for PPPs and Foreign Investment of 2015

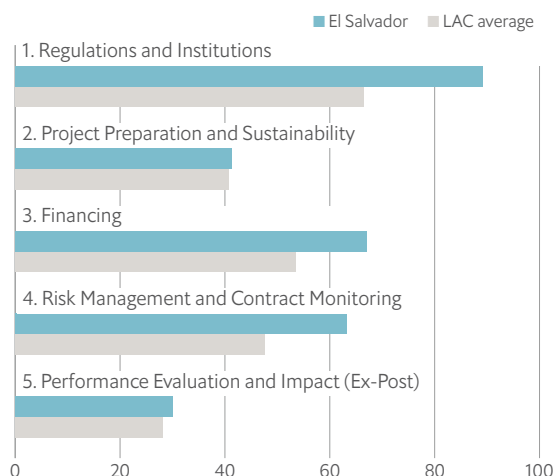
³⁶ These include the "Organic Law for Productive Development, Attraction of Investments, Employment Generation and Fiscal Stability and Balance" of 2018 and the "Regulations for the Application of the Organic Law for Productive Development, Investment Attraction, Employment Generation, and Fiscal Stability and Balance" of 2018.

As the new PPP law mandates, the Inter-institutional Committee of Public-Private Partnerships, in charge of coordinating and articulating policies and regulations, should provide increased clarity for PPP participants by issuing new manuals and guidelines for developing and executing PPP projects. Similarly, the PPP committee should also create a national PPP registry to enhance information transparency.

Ecuador's PPP framework does not yet consider criteria related to gender equity, climate change or the SDGs as part of its project prioritization and selection standards. Nor does the country take into account climate or SDG outcomes as part of its otherwise strong project evaluation system. Likewise, despite a careful focus on risk allocation, Ecuador does not have any regulations in place for environmental risk analysis or disaster-related risk.



El Salvador



Brief overview of the infrastructure PPP market and regulatory framework

El Salvador's history of private participation in infrastructure projects dates from the 1990s, although a dedicated PPP law did not exist until 2013.³⁷ From 2014 to 2019 the value of infrastructure PPPs has amounted to 27% of total infrastructure spending in the country on average.³⁸ Recent projects have been developed primarily in solar and gas-fired power sectors. The country's first major PPP project under the 2013 Special Law on Public Private Partnerships (outside of power purchase agreements)—the Cargo Terminal of the San Óscar Arnulfo Romero y Galdámez International Airport—was awarded in October 2020 to Alutech and Munich Airport. The second major PPP project—to finance, install, operate and maintain street lighting and surveillance on 143 km of highway around San Salvador—was expected to be launched before the end of 2020 but the deadline was extended through 2021. Although the health crisis paused the tenders, El Salvador shows a lively infrastructure development landscape, and the current administration has resumed plans to open bidding processes for its infrastructure PPP pipeline of 17 projects, worth potentially US\$775m, with energy, transport and facilities projects already on the calendar through the third quarter of 2022.

³⁷ World Bank PPI database

³⁸ IJ Global and Infralattam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

The Special Law on Public Private Partnerships was passed in 2013 and amended in 2014 and 2017, with the latest reform enabling PPPs in the health, education, public safety and water sectors. The law and its secondary regulations created two institutions related to PPPs: the Export and Investment Promotion Agency of El Salvador (PROESA), a government agency tasked with promoting and structuring PPPs; and a technical oversight body for PPP projects called the Audit Office for Public Private Partnerships (OFAPP), which supervises PPPs in sectors that lack specific regulators. In mid-2021 PROESA presented a new list of amendments to the Special Law on Public Private Partnerships, aiming to improve the attractiveness of private initiatives, allow more agile approvals and increase tendered projects.

Strengths and enabling environment for infrastructure PPPs

The current government administration has repeatedly expressed its intent to pursue infrastructure PPPs, and at the policymaker level there is a consensus that PPPs are an essential component of increasing infrastructure investment to drive economic and social development.

Even though the country's political climate has experienced increasing tension, concerns about the infrastructure PPP market's potential reaction did not materialize, as bidders and investors evaluated El Salvador's first PPP with a longer-term vision (also thanks to the project's sponsorship by the US Government's Millennium Challenge Corporation).

Finally, it is worth highlighting the active role that PROESA, the national PPP agency, has taken in promoting the improvement of the regulatory environment for private investment in infrastructure. El Salvador's regulatory and institutional foundation for PPPs ranks among the most comprehensive across LAC in the Infrascope. The country also registers a perfect score across indicators that measure the existence, accountability and staffing capacity of its PPP agency.

Key challenges and areas of improvement for infrastructure PPPs

Despite El Salvador's strong legal framework for PPPs, there is still substantial room for improvement in terms of project preparation facilities (including instituting standard processes and budgets, as well as

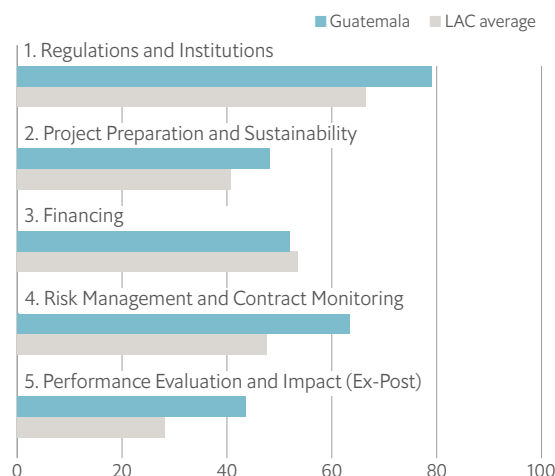
formal preparation funds) and in terms of stakeholder engagement (including and project coordination platforms and consultation with communities).

However, the biggest challenge will pertain to institutional stability. The Fomilenio II grant from the US ended in 2020, after having guaranteed operational reliability, driven growth-boosting reforms and supported the launch of the country's first two PPPs. Under this support, El Salvador appears to have overcome the traditional challenge of translating political will and regulatory framing into the effective awarding of PPPs. Now that it has ended, the country faces a litmus test of proving it can walk on its own feet in terms of maintaining institutional effectiveness and attracting private investment.

A key question will be whether public spending capacity remains adequate to retain the momentum experienced under the Fomilenio II grant (given the fragile business environment and the entrenched obstacles that constrain private investment)—especially now that El Salvador reports the highest debt balance in its history, with the looming threat of a fiscal crisis. In 2020 the country's debt increased by 16 percentage points, reaching an all-time high of more than 90% of GDP. These risks are highlighted by El Salvador's lower scores for country risk and financial sector maturity in the Infrascope, despite its relatively favorable environment for project bankability.



Guatemala



Brief overview of the infrastructure PPP market and regulatory framework

Guatemala has welcomed private participation in infrastructure since 1990, with recent PPP projects developed in the renewables, transport and hydropower sectors. From 2010 to 2019 the value of infrastructure PPPs amounted to 12% of the country's total infrastructure spending on average.^{39,40}

PPP in Guatemala are governed by the Law of Partnerships for Economic Infrastructure Development (Decree No. 16 of 2010) and its ruling (Governmental Agreement No. 360 of 2011), which define contract types, contract characteristics, and the sectors and government jurisdictions that may contract PPPs. This legal framework is consistent with Guatemala's national procurement law and public investment regulation.

Guatemala's key PPP agency, the National Agency for Partnership for the Development of Economic Infrastructure (ANADIE), coordinates throughout the project evaluation period until the selection of private participants, and coordinates the signature and management of the contract, advising the public contracting institution on the execution, operation and supervision of PPPs. ANADIE reports to the National Council of Partnerships for Development of Economic

Infrastructure (CONADIE), which approves PPP projects and their pre-feasibility studies, bidding rules, financial economic models and contracts. Coordination and interaction between these two organizations are clearly outlined within the regulatory framework.

Strengths and enabling environment for infrastructure PPPs

High-level political figures in the executive administration, particularly President Alejandro Giammattei, voted in during 2020, and the general coordinator of the executive committee of the National Competitiveness Program, have supported a consistent PPP agenda. The executive's support aligns with the national infrastructure long-term development plan (2014-32), which contains a prioritization strategy that includes PPPs. Despite this support, Congress has shown some opposition to PPPs and private sector participation by initially denying approval for rehabilitation, administration, operation, maintenance and complementary works of the Escuitla-Puerto Quetzal highway. The project was finally approved two years later in late 2021.

Legal frameworks in Guatemala are comprehensive and well defined, guaranteeing competitive bidding and transparent bidding-related documents and materials. It establishes clear rules regarding requirements for cost-benefit, fiscal affordability, value for money and overall risk assessments, and that these are undertaken using published methodologies. Detailed regulation is also provided for dispute resolutions, contingent liabilities and lenders' step-in rights.

Institutions are well organized and use a standardized online platform that helps stakeholders and agencies coordinate across project stages in a transparent manner. Additionally, the Sub-directorate of Planning within the Executive Directorate gathers information periodically on the progress of PPP contracts across different project phases.

Key challenges and areas of improvement for infrastructure PPPs

Guatemala's PPP environment shows some key areas for improvement with respect to regulatory guidance and comprehensiveness, particularly regarding ex-post performance evaluation, indemnities and sustainability. The country also has room to improve its institutional

³⁹ World Bank PPI database

⁴⁰ IJ Global and Infralata. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

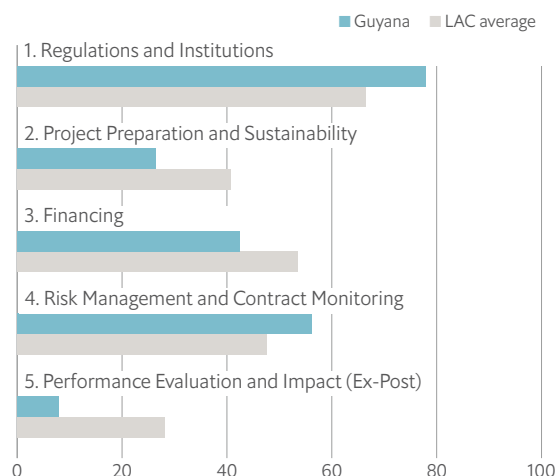
processes—especially project approval, project preparation and financing supports.

Although ex-post evaluations are required to be conducted by law, current projects in Guatemala are in the early structuring stages, and therefore none have been published. There is likewise no standardized mechanism in place to assess current projects and apply findings to future ones. In terms of indemnities, legal frameworks establish that contracts should set specific rules on their calculation in cases of early termination of PPP agreements; however, there is no explicit regulation guiding these estimations. Likewise, regulations do not explicitly include provisions for sustainable financing or project selection criteria related to climate change, social inclusion, or MSME and gender goals. In practice, some criteria like climate change and job creation have been considered in PPP projects, but there is no evidence suggesting that PPP project performance is measured against the SDGs.

Finally, with respect to institutional processes, Guatemala faces challenges in ensuring efficient project approval and preparation. All PPP contracts must be approved by Congress, which has lacked bipartisan support for PPPs, resulting in delays, blockages and litigation during the contract approval process. The country also lacks strong institutional supports for project preparation and financing: the government has no independent project development fund or viability gap fund to assist with PPP development, and the government offers no financial support to improve project bankability. Regulators also do not have a legal duty to issue post-award debriefs to unsuccessful project bidders.



Guyana



Brief overview of the infrastructure PPP market and regulatory framework

No brownfield or greenfield infrastructure PPPs reached financial closure in Guyana between 1990 and 2020.⁴¹ However, the government intends to encourage infrastructure PPPs in as many sectors as possible, including electricity, telecoms, water, transport, solid waste, and social (health and education).⁴² Key areas of development being pushed by the government include the Demerara Harbor Bridge, Linden-Lethem Road and Port Georgetown.

PPPs in Guyana can be undertaken under existing procurement legislation and policy guidelines, including the Procurement Act of 2003 and the Procurement Regulations under the Act (adopted 2004). The latter establishes procurement procedures, threshold values, and administrative review and transparency guidelines. Guyana's PPP Policy Framework, published in 2018, details the institutional framework for PPPs and the procedures to identify, screen, and manage projects and contracts. The strategic direction of Guyana's PPP program is the responsibility of the PPP Steering Committee, while the PPP Core Team within the Ministry of Finance acts as the Secretariat to the Steering Committee and as a focal point for the program's day-to-day management. All state agencies must annually submit a list of potential PPPs to the PPP Core Team for

screening; the PPP Steering Committee then submits a priority list of recommended projects to the cabinet.

Strengths and enabling environment for infrastructure PPPs

Although Guyana is not generally a top performer among LAC countries, it performs quite strongly in terms of its regulations and institutions. These are bolstered by conducive inter-agency coordination, highly competitive bidding standards (among the most complete in the region), fair and open procedures for contract changes, and broad political support for PPPs. Specifically, Guyana's laws and regulations ensure the independence and flexibility of its PPP agency, provide clear procedures for contract disputes and arbitration, and establish strong monitoring and reporting standards for ongoing contracts. There is also strong support for private participation in infrastructure development among high-level political figures, political parties, and influential advocacy organizations. Finally, a significant development has been Guyana's recent discovery of oil reserves, which has led to dramatic GDP growth and substantial interest from foreign lenders.

Key challenges and areas of improvement for infrastructure PPPs

Attracting capital from private investors has been a persistent challenge in Guyana, which has the highest rate of NPLs in LAC. Together with high domestic interest rates, this has led to most large public projects being funded through international and multilateral financial institutions.⁴³ The Guyanese government does not provide project preparation facilities, or sponsor project development or viability gap funds, to assist private developers in creating bankable projects. And despite the country's regulatory strengths, its on-the-ground experience and capacity to manage PPPs shows some weakness. For example, there is no evidence that the country's PPP Core Team provides technical training or incentivizes its staff to obtain PPP-specific certifications. Last, but not least, Guyana does not have an active, published infrastructure development plan in place to guide selection and implementation of PPPs.

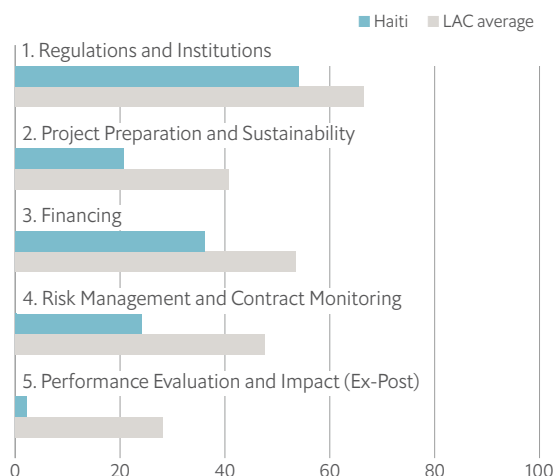
⁴¹ World Bank PPI database

⁴² Cooperative Republic of Guyana. "Public-Private Partnership (PPP) Policy Framework". 2018. [<https://goinvest.gov.gy/wp-content/uploads/2020/11/PPP-handbook.pdf>]

⁴³ International Trade Administration, "Guyana – Country Commercial Guide: Trade Financing". 2021. [<https://www.trade.gov/country-commercial-guides/guyana-trade-financing>]



Haiti



Brief overview of the infrastructure PPP market and regulatory framework

Haiti has a limited history of private participation in infrastructure projects.⁴⁴ After a major earthquake in 2010, Haiti was faced with rebuilding most of its infrastructure and was heavily supported by international organizations. Haiti remains in a precarious financial situation, and infrastructure projects are highly subsidized by the international community. In October 2020 the International Bank for Development initiated the Fifth Program for Productive Infrastructure, worth US\$65m. One of Haiti's most significant ongoing PPPs, begun in 2014, is rehabilitating Port Lafito, a shipping port just north of the capital. Previous PPPs had been implemented in the energy and information and communications technology (ICT) sectors.

Although the country does not have specific legislation for PPPs, the Public Procurement Law of 2009 allows PPPs through public service delegations and public works concessions. In 2012 Haiti established the Central Unit for the Management of Public-Private Partnerships (UCG/PPP), a public national agency that promotes private participation in infrastructure. The agency's mission is to help ministries and local authorities identify projects, conduct feasibility studies, navigate public procurement procedures, and manage evaluation and oversight of PPPs.

Strengths and enabling environment for infrastructure PPPs

Although Haiti is not a top performer among LAC countries, its strengths revolve around the public national PPP agency and its work to establish policy documents and provide independent project preparation facilities. The regulation to integrate disaster risk insurance requirements into projects is also noteworthy. Since 2012 the UCG/PPP has focused on developing the country's enabling environment for PPPs. To this end, in 2014 it established a comprehensive framework outlining which PPPs are possible under Haitian law. This document enabled the UCG/PPP to start work on a draft PPP law and educate national and local institutions on existing possibilities for private participation in infrastructure projects. The agency has also carried out awareness and training sessions about PPPs, and it has developed a network of local representatives that helps local authorities develop PPPs.

Key challenges and areas of improvement for infrastructure PPPs

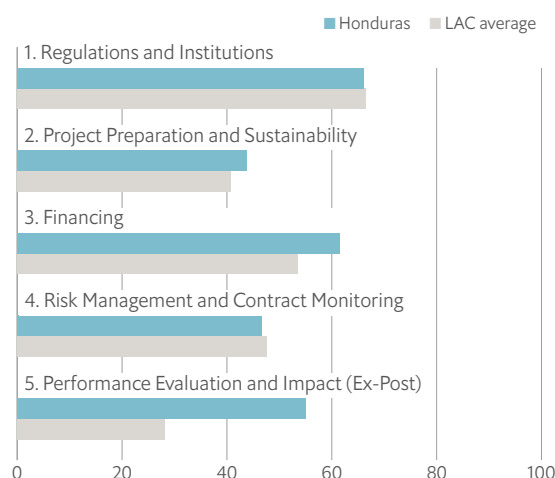
Although Haiti's previous administration (2011-16) focused on developing infrastructure PPPs, overall progress has been limited by the country's financial difficulties. Indeed, some of the projects established under that administration (such as rehabilitating Cayes Airport) are still in progress, despite their scheduled completion date having passed. The current administration (2016-21) has attached great importance to Haiti's economic stability, preferring to avoid establishing new infrastructure projects, in a bid to keep the country's debt situation from worsening. Likewise, the activities of Haiti's national PPP agency, which is housed in the Ministry of the Economy and Finance, have been highly dependent on the government's will to develop PPPs.

Lastly, stability represents an ongoing concern in Haiti. Foreign private investment has been difficult to attract because of the country's low levels of security, with major political instability posing problems for the government. Parliament has not been active since early 2020, and wide-scale protests against the former president began in 2018, culminating in his assassination on July 7th 2021. To develop its PPP market, Haiti would benefit from stabilizing the overall political and economic situation, establishing clearer political support for PPPs and the UCG/PPP, and strengthening its monitoring, reporting and performance evaluation of PPPs.

⁴⁴ World Bank PPI database



Honduras



Brief overview of the infrastructure PPP market and regulatory framework

Honduras's experience with private participation in infrastructure dates to the 1990s, with its most recent PPPs having been developed in the renewable energy and roads sectors. Most recently, the Palmerola International Airport project reached financial closure in 2020. From 2010 to 2019 the value of infrastructure PPPs amounted to 19% of the country's total infrastructure spending on average.^{45,46}

Infrastructure PPPs in Honduras are governed by the Law for the Promotion of Public Private Partnership (Decree 143 of 2010) and its general ruling (Decree 02073 of 2010), which are consistent with national procurement law, public investment regulation and subnational legal frameworks.

There are four national agencies involved in PPP projects. The Superior Council for PPPs, created in 2019 to replace the Commission for the Promotion of the Public-Private Partnership (COALIANZA), is mainly responsible for promoting, supporting and coordinating PPP projects. The second is the Technical Unit Specialized in Projects (UTEP, or PPP unit), which is responsible for assessing, selecting and structuring PPP projects, as well as providing technical support and advice for PPP development. The third is the

Unit of Fiscal Contingencies, which determines which projects are developed under PPP schemes and manages their fiscal risks. The fourth is the Superintendency of PPPs, which is primarily responsible for auditing and controlling PPP contracts.

Strengths and enabling environment for infrastructure PPPs

Honduras has typically enjoyed broad political support for PPP development within the executive administration, as evident from its efforts to strengthen PPPs through hosting summits, issuing support statements, and replacing institutions like COALIANZA with the Superior Council and PPP unit. Congress has similarly demonstrated broad support for private sector participation in infrastructure projects through endorsing the Honduran Council of Private Enterprise's proposal to participate in the transitional management of three airport concessions in San Pedro Sula, La Ceiba and Roatán. However, this proposal was rejected by the Superior Council for PPPs, and the recent November 2021⁴⁷ general election has increased uncertainty regarding future political support.⁴⁸

Despite these recent uncertainties, Honduras generally has a competitive PPP environment, which is reflected in its competitive bidding regulations, provisions that guarantee publication of bidding documents and related information, and its lack of strong concentration of PPP projects among a few firms. Processes are also in place to help reimburse project preparation costs provided through project development funds.

The country also has well-established processes in place to manage PPP contracts, such as clear regulations for contingent liabilities and procedures for dispute resolution that also allow for independent arbitration. Monitoring and quality assurance efforts are some of the region's most comprehensive, featuring processes to audit each PPP project's progress and results. Performance-based payments corresponding to KPIs are also an established option in PPP contracts.

⁴⁵ World Bank PPI database

⁴⁶ IJ Global and Infralattam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

⁴⁷ The data gathering and processing that underlie the Infrascope's index ended in September 2021, while the report was completed in December of the same year. Developments such as the November 2021 election are discussed in the report's analysis, but are not reflected in country scores.

⁴⁸ Radio Cadena Voces. 2021. "El BID congela fondos para licitación de tres aeropuertos en Honduras". [<https://www.rcv.hn/2021/09/27/el-bid-congela-fondos-para-licitacion-de-tres-aeropuertos-en-honduras/>].

Key challenges and areas of improvement for infrastructure PPPs

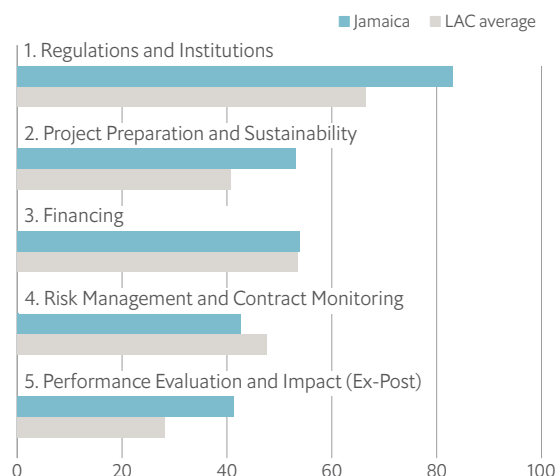
Beyond the concerns related to political support for PPPs, there are several key areas for improvement in Honduras: transparency, project preparation and sustainability. Gaps in transparency could be improved through mandatory publication requirements for both contract renegotiations and findings from consultations with communities.

In terms of project preparation, priority areas include improving the staffing and capacity of the PPP unit and clarifying processes by making policy guidelines and manuals available. Moreover, although regulatory frameworks outline processes for initial project evaluations, instituting standardized methodologies and systems will improve cost-benefit analyses, value for money assessments, project coordination platforms, and monitoring and reporting on the quality of services from operational infrastructure assets.

Finally, regulatory frameworks governing PPPs do not contain any provisions regarding sustainable financing instruments or sustainable criteria for PPPs projects, such as climate change commitments, social inclusion, and MSME or gender goals. Similarly, risk management frameworks contain no provisions on environmental risk analysis, disaster risk, or force majeure risks.



Jamaica



Brief overview of the infrastructure PPP market and regulatory framework

Jamaica's history of private participation in infrastructure projects extends to the 1990s, with its current PPP policy framework approved in 2012 and revised in 2017.⁴⁹ Between 2010 and 2019 the value of infrastructure PPPs amounted to 18% of total infrastructure spending in the country on average.⁵⁰ Recent notable PPP contracts include the Norman Manley International Airport Expansion, signed in 2019, and the Kingston Container Terminal Expansion, signed in 2016. The renewable energy and roads sectors also account for a large share of PPP activity. PPP contracts are limited to assets of high value (at least US\$10m) and sectors where the government is faced with fiscal constraints but obligated to provide infrastructure or service (which excludes housing PPPs, which are governed by the Ministry of Housing PPP policy). Support for infrastructure PPPs has been strong in the country, with successive high-level political figures and administrations continuing to promote and commit to new project development.

The 2012 National PPP Policy established the institutional framework for developing and implementing PPPs and created a pair of national PPP units, situated within the Development Bank of Jamaica (DBJ) and the Ministry

of Finance. The DBJ PPP unit manages day-to-day coordination and takes the lead on project development, while the finance ministry PPP unit coordinates fiscal management and evaluation. Jamaica's cabinet reviews projects proposed by the PPP unit and gives approval, at which point the PPP unit builds a business case, working with individual ministries and agencies to determine project feasibility, structure the PPP and evaluate the structure against established criteria. The country's Public Investment Management System has also helped to streamline the initial preparation, appraisal and approval of PPP projects. The Public Investment Management Secretariat conducts preliminary screening before projects go to the PPP unit, ensuring that the project is properly structured and aligned with government strategic and fiscal priorities.

Strengths and enabling environment for infrastructure PPPs

Jamaica's core strength lies in its robust regulatory and institutional environment for developing and preparing PPPs. It performs well relative to the region for its conducive and supportive political environment, its well-staffed and -trained PPP units, and its project preparation and support mechanisms, which include dedicated preparation facilities and a project development fund.

In a rare feat for the region, the country also takes a strong approach to ex-post evaluation of PPPs, and applying these findings to new projects, despite a lack of explicit regulatory guidance on the topic. Project evaluations are relatively comprehensive, seeking to measure both operational and financial KPIs and risk performance, including fiscal risk, risk allocation, contingent liabilities, *force majeure*, local content standards, responses to current events, and climate resilience. While the country does not explicitly measure the impact of PPPs with respect to climate outcomes, it does monitor how PPPs have contributed to Jamaica's progress toward the SDGs.

Finally, Jamaica also demonstrates one of the region's better environments for PPPs with respect to regulatory- and government-related risks, and it is one of the region's strongest users of project financing mechanisms for infrastructure PPPs.

⁴⁹ World Bank PPI database

⁵⁰ IJ Global and Infratam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

Key challenges and areas of improvement for infrastructure PPPs

Despite Jamaica's positive attention to preparing and evaluating PPPs, the country does demonstrate several notable gaps in its PPP framework—in particular, project selection, risk management and contract management. With respect to project selection, there is no evidence of a process for conducting needs assessments to inform project priorities. And although project evaluation studies such as cost-benefit and fiscal affordability analysis are conducted, there are no published methodologies or tools available for these assessments.

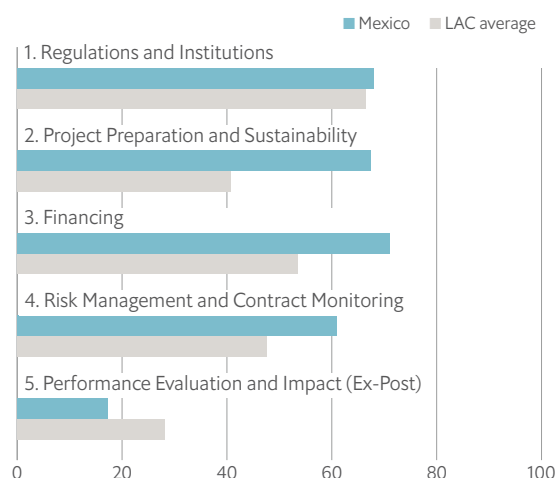
Risk Management and Contract Monitoring is Jamaica's weakest index category, with several important areas for improvement. First and foremost, the country does not stipulate any requirements for PPPs around environmental risk analysis, disaster risk and insurance or *force majeure* events. However, some amendments to the PPP policy around disaster risk have already been proposed.

In terms of contract management, although performance monitoring must be included in measurable terms in every contract, there is no requirement to publish regular reports about ongoing PPPs. Furthermore, while other processes governing contract management (eg, managing transitions, claims, refinancing) are typically included in each contract, a requirement for this is not spelled out in the PPP policy. There are also no regulatory mechanisms in place that establish lenders' step-in rights to remedy contract breaches. With respect to contract changes, the PPP framework does not define any penalties or compensation mechanisms that would apply in cases where contract terms and conditions are changed, and there are no requirements for contract renegotiations to be disclosed publicly.

Jamaica's final weak point is its fiscal situation, and although this is improving it still constrains the country's ability to offer financial supports and government guarantees to infrastructure PPP projects. PPP unit administrators recognize these challenges, however, and remain focused on creating robust project preparation supports to ensure the best outcome for PPPs.



Mexico



Brief overview of the infrastructure PPP market and regulatory framework

Mexico is one of the more mature infrastructure PPP markets in LAC, with a history of more projects during the past decade than any country in the region except Brazil. Between 2010 and 2019 the value of infrastructure PPPs in Mexico amounted to 11% of the country's total infrastructure spending on average.⁵¹ PPP investment has been focused on energy infrastructure and the transport sector. The country has also implemented PPPs in the water treatment and distribution and healthcare sectors, and in the past decade has significantly increased the share of renewable projects relative to traditional power projects in its investment portfolio.

Mexico's Law of Public-Private Partnerships, implemented in 2012 and reformed in 2018, regulates PPP development at the national and state levels. Although the federal government has developed this overarching PPP framework, states and municipalities have also developed and passed their own PPP bills, mirroring the national Law on Public-Private Partnerships.

Strengths and enabling environment for infrastructure PPPs

The regulatory framework established by the national PPP law and supported by policy guidelines is augmented by the National Infrastructure Trust Fund (FONADIN), a well-staffed agency and infrastructure coordination vehicle, which facilitates Mexico's outstanding performance in areas related to PPP project preparation, sustainability and risk allocation. Mexico is one of two countries in the region to sponsor comprehensive project development and viability gap funds. Rigorous environmental impact studies, considerations for impacted communities, social inclusion and job creation criteria in project selection also make it stand out.

Under the 2018 PPP law, any commercial risk borne by the state must be specifically and explicitly laid out in a PPP project's bidding documents and in the contract; in addition, contingent liabilities and lenders' step-in rights are well accounted for, and the government offers guarantees on project risks, all of which underpin Mexico's region-leading performance with respect to risk allocation. The law also facilitates a highly competitive bidding environment and ensures a minimum standard of transparency in contract adjustments, establishing when and if these need to be made in response to acts of authority that adversely affect the project.

Mexico also benefits from a relatively well-developed financing environment, with access to diverse financing sources, affordable capital, provision of government support for project bankability and a low degree of overall macro environment risks (as defined by measures such as sovereign risk, currency risk, interest rate volatility and others).

Mexico's clear efforts across these areas of analysis are further apparent in its low project cancellation rate and high value of PPP investment.

Key challenges and areas of improvement for infrastructure PPPs

Key areas of improvement for Mexico fall into two broad categories: expanding on existing foundations; and institutionalizing new mechanisms that are currently unaddressed in the regulatory framework.

Priority issues in the first category include establishing coordination mechanisms for the institutions involved

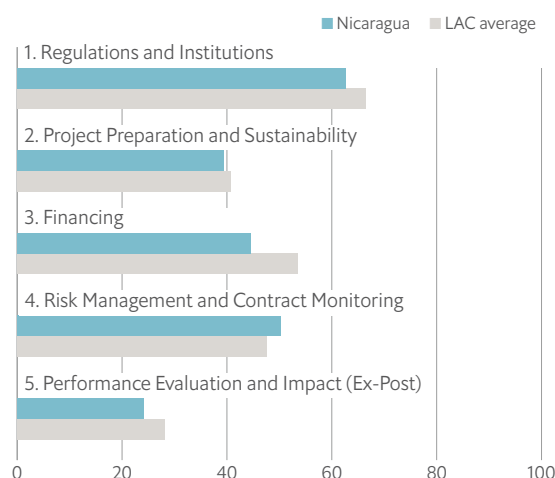
⁵¹ IJ Global and Infralata. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

in PPPs, moving from minimum to mature standards for contract changes, and tightening requirements related to monitoring and reporting contract risks—in particular, disaster-related risks. The 2012 PPP law is lacking detailed guidance or mechanisms for coordination. Although FONADIN—the Mexican government’s coordination vehicle for infrastructure development in the communications, transport, water, environment and tourism sectors and the country’s *de-facto* PPP unit—is starting to fulfill many coordination functions that would typically be accounted for through explicit regulatory mechanisms, stakeholders would benefit from explicitly defined avenues for coordination within the central government and the Ministry of Finance, especially given prominence of state and municipal actors in implementing PPP regulation and projects. There is also room for improvement with respect to increasing transparency and oversight of contract renegotiations.

With respect to institutionalizing new mechanisms that are currently unaddressed in the regulatory framework, a lack of guidance exists regarding routine contract management for operational infrastructure assets and how contracts should approach the definition and enforcement of *force majeure* clauses. Perhaps most critically, while Mexico has agencies tasked with evaluating and auditing the progress of each PPP project, ex-post project evaluations are not legislatively required and it is not clear that this remit extends to applying findings to future projects.



Nicaragua



Brief overview of the infrastructure PPP market and regulatory framework

Nicaragua's history of private participation in infrastructure projects dates from the mid-1990s, although a dedicated PPP law was not passed until 2016 and no infrastructure PPPs have been developed under it.^{52,53} However, the government continues to devote public funding to address infrastructure gaps at the national level. The government's budget for public investment projects in infrastructure increased to US\$768m in 2020 and US\$766m in 2021, compared with US\$597m in 2019. This mirrors the recent decline in foreign direct investment, which fell by US\$327m (40%) in 2020 because of the covid-19 pandemic and hurricanes Eta and Iota.

In early 2019 the government published a strategy to promote new investment from 2019 to 2021, featuring an updated list of priority infrastructure projects, totaling US\$11bn, to be developed under both traditional public procurement schemes and PPPs. However, its investment goals have not been achieved to date, and there is no record of a new private investment strategy.

Nicaragua passed its Public-Private Partnership Law in 2016, accompanied by further regulations in 2017, to boost private sector investment in infrastructure

and public services—including for development projects, new facilities and equipment, rehabilitation, modernization, operation, maintenance, and public service provision. Although Nicaragua has no dedicated PPP agency, the Department of Public Investments at the Ministry of Finance and Public Credit is tasked with promoting, supervising and providing technical support for PPP contracts. The Agency for the Promotion of Investments and Exports (PRONicaragua) also plays a role in PPPs; its main objective is to attract private investments to Nicaragua and coordinate efforts among institutions and partnerships across the public and private sectors, civil society and academia.

Strengths and enabling environment for infrastructure PPPs

The current PPP legislation regulates all stages of PPP project implementation (structuring, tendering, awarding, execution, and termination of PPP projects). The country has a competitive bidding process, including for unsolicited bids, and all stages of the selection and contracting process follow principles of transparency and social auditing provided by the PPP law. All information regarding PPP projects must be published online, including bidding materials, contracts, contract modifications, and contract awards. In the event of a PPP contract dispute, the PPP Law provides comprehensive guidance, with two mechanisms (mediation and arbitration) for dispute resolution. Parties are free to agree on the procedure to be followed by an independent arbitration tribunal.

In terms of institutional coordination, both the PPP Law and PPP Regulation are clear about the conditions under which the different agencies involved in the PPP process interact with each other, giving each entity a series of responsibilities in the selection, preparation, procurement and management of PPP projects.

Nicaragua is also one of the region's most consistent performers on environmental and social sustainability. It boasts particularly high scores for incorporating environmental and social sustainability considerations into project prioritization, for instituting requirements around disaster risk management and catastrophe insurance, and for promoting resilient PPPs through climate adaptation standards.

⁵² World Bank PPI database

⁵³ IJ Global. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

Key challenges and areas of improvement for infrastructure PPPs

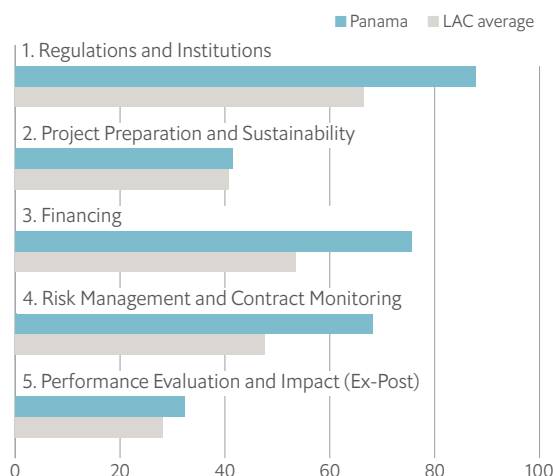
Nicaragua faces an unstable economic and political environment, with one of the region's lowest ratings for political effectiveness. Even though attracting new private sector investment is a priority area for the government, private companies face many practical difficulties, ranging from significant regulatory risk to financial sector immaturity. Access to financing is a challenge, as the country does not have a developed capital market, and there is no documented record of sustainable funding for infrastructure development in the country.

Despite the strengths of Nicaragua's PPP regulatory framework, the country has had limited opportunities in practice to implement it and build capacity for successful PPP development. The country also lacks examples of completed PPPs that could serve as templates for future projects. Addressing institutional weaknesses and implementing more long-term infrastructure planning stand out as important areas for improvement. Most notably, Nicaragua lacks a dedicated PPP unit and project preparation facilities to actively guide PPP development and implementation.

The future of infrastructure PPPs in Nicaragua will depend on the country's ability to re-establish private sector confidence by addressing these structural and institutional challenges, improving the investment climate, and providing adequate incentives for new investors across sectors.



Panama



Brief overview of the infrastructure PPP market and regulatory framework

Panama has a quickly developing and financially active PPP market. Between 2010 and 2019 the value of infrastructure PPPs amounted to an average of 21% of total infrastructure spending in the country, second only to Brazil in LAC.⁵⁴ In recent years most PPPs have been in the transport, power and renewables sectors.⁵⁵ In 2021 Panama's government prioritized public investment to build a US\$2.5bn metro line, postponing funding for the fourth bridge over Panama Canal, an initiative already awarded for US\$1.5bn. The current administration (2019-24) plans to leave road projects in the hands of PPPs.

The country's infrastructure agenda for 2022-23 contemplates US\$7.7bn for public investment, which will be divided between the Ministry of Public Works, the metro authority, the National Electricity Transmission Company (Etesa), the state-owned operator of Tocumen International Airport, and the mass transit authority's Mi Bus, among others.

Panama's PPP market is not highly concentrated; in fact, several firms from different countries shared PPP contracts in Panama prior to a new PPP law that was enacted in 2019, including the AES Corporation (US),

Cable and Wireless (UK), Grupo Argos (Colombia), PSA Corp (Singapore) and Digicel (Bermuda).

Panama's recently passed PPP law, Law No. 93 of 2019, defines and codifies PPPs as a procurement modality, and clarifies that only infrastructure projects and public services can be developed under the PPP regime. The law excludes public security services, medical health, education and metallic mineral extraction concessions from the scope of the PPP regime. No projects have been formalized under the new law. Further PPP regulations have followed under Executive Decree No. 840 of 2020.

Strengths and enabling environment for infrastructure PPPs

On the back of strong political will and support for PPPs and the incorporation of Law No. 93, Panama has enacted a robust set of norms and regulations for developing PPP projects. The 2019 law established a new, fully staffed PPP unit within the Ministry of the Presidency, which provides technical and operational support for PPPs. Panama's PPP regulations also establish the region's highest scoring framework for managing contract changes, including dispute and arbitration procedures, renegotiation procedures, and transparency and oversight mechanisms.

Panama also benefits from economic and financial competitiveness resulting from the country's location, currency, accessibility, and protection for investments. It outperforms most countries in the region in terms of access to capital, its overall macro environment for risk and financial maturity, and the structure and sources of PPP financing. Finally, rare among countries in the region, Panama performs fairly strongly across all aspects of risk management and contract monitoring, an area typically beset by gaps in regulatory comprehensiveness.

Key challenges and areas of improvement for infrastructure PPPs

One of the main areas of improvement for Panama is increasing the capacity and comprehensiveness of its relatively new project preparation institutions. Panama lacks supports such as independent project preparation facilities, a project development fund, or a viability gap fund. With respect to project selection, although the country uses prioritization plans, needs assessments and economic evaluation assessments, there are no

⁵⁴ IJ Global and Infratam. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. Note 1: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included. Note 2: Chile is not typically included in the World Bank PPI database. These data were obtained upon request.

⁵⁵ IJ Global and World Bank PPI database

standardized, published methodologies or tools in place for these. And although Panama does take strong consideration of environmental and community impacts during the project development process, it does not yet give attention to social equitability considerations such as gender, social inclusion or the SDGs.

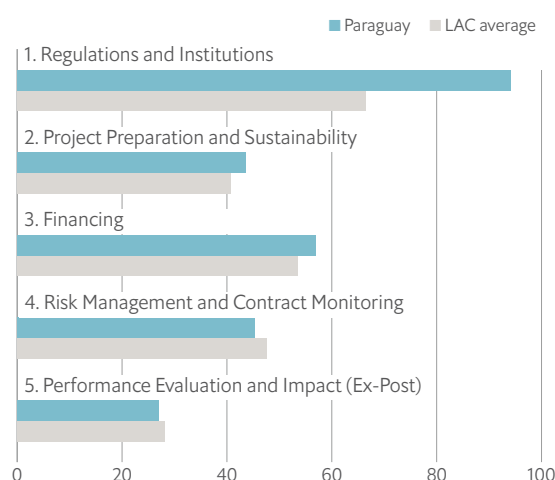
Another key area of growth for Panama is developing effective project monitoring and evaluation requirements. Although the country has relatively strong requirements for monitoring ongoing PPPs, it has none in place for evaluating the ex-post outcomes of projects during the operational stage. Likewise, its norms for publishing the results of such monitoring and evaluation assessments could be strengthened, and the frequency could be improved. While project evaluations by the Ministry of Public Works have been published in local media, these are for road works and infrastructure projects rather than PPPs.

Finally, it is worth noting that the covid-19 pandemic has contributed to a lack of progress on project development, diverting government efforts toward the health sector. The country has required urgent economic reactivation and growth, as the unemployment rate expanded to more than 18% in 2020 (from 7% in 2019) and led to the closure of many businesses.⁵⁶ Expanding PPPs is a key part of the government's post-pandemic agenda for recovery, and future success will depend on deepening the country's economic diversification and strengthening local institutions.

⁵⁶ Trading Economics. "Panama Unemployment Rate".
[<https://tradingeconomics.com/panama/unemployment-rate>]



Paraguay



Brief overview of the infrastructure PPP market and regulatory framework

Private investment in infrastructure PPPs has been relatively limited in Paraguay. Prior to 2018 there had only been a single PPP (the Ruta 7 project in 1998). However, more projects have been undertaken since, and in 2018 and 2019 alone the value of infrastructure PPPs represented 38% of the country's total infrastructure spending on average.⁵⁷ Current PPPs include two transport projects, the Ruta 2 and Ruta 7 Expansion and the Corredor Bioceánico toll road. The public sector has also been active in PPP projects, with the Ministry of Public Works announcing in early 2021 planned investments of US\$1.2bn to reduce the wastewater infrastructure gap in urban areas.

Paraguay's first PPP-specific regulation was Law 5102, issued in 2013 to promote investment in public infrastructure and services and to regulate PPP contracts. This law has been further clarified by Decree 4183 of 2020, which replaced Decree 1350 of 2014 and significantly expanded the comprehensiveness of the PPP regulatory framework.

Decree 4183 defines the jurisdiction of different government institutions and stakeholders involved in PPPs. It establishes the Unit for Public Private Participation Projects (UPPPP) within the Technical

Secretary of Social and Economic Development Planning (STP) as the body in charge of PPP promotion, structuring, coordination and public dissemination of information about developing and evaluating projects. The decree also establishes the General Directorate of Public Investment and its Department of PPPs, within the Ministry of Finance, as the organization(s) in charge of conducting project evaluation studies and assessments. In addition, it defines how the coordinating Executive Committee of PPP Project Authorities will be composed, including representatives from the Ministry of Finance, the Ministry of Public Works and Communications and the STP. Finally, it defines the responsibilities of the attorney-general's office, which is in charge of reviewing contracts, requests for compensation and early termination of projects, as well as other matters that affect state finances.

Strengths and enabling environment for infrastructure PPPs

On the back of its newly approved Decree 4183, Paraguay comes second in the Regulations and Institutions category. The legislation features especially strong regulatory guidance around competitive bidding and fairness and openness of contract changes. In addition, online manuals and guidelines for formulating and evaluating infrastructure PPPs have been developed by the STP in collaboration with multilateral development banks.

In particular, Decree 4183 introduced several new mechanisms aimed at decreasing investment risks and simplifying procedures. These mechanisms include the "competitive dialogue", which is a compulsory procedure that takes place prior to publishing the tendering process and is meant to integrate concerns from pre-qualified bidders, thereby ensuring optimal distribution of risk and social and financial gains, and avoiding renegotiations or financial modifications during later stages of the PPP process. It also introduced a "preparatory phase" for projects (including robust procedures for new project selection and evaluation), a process defining "financial closure" (which emphasizes the signing of all financing contracts necessary for project execution and hence reassures the fulfillment of the PPP contract), and a mechanism for "variable term" contracts (which retain their validity until the total offered income is achieved, giving flexibility to PPP projects and helping to ensure sponsors' expected return on investment).

⁵⁷ IJ Global and Infralata. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

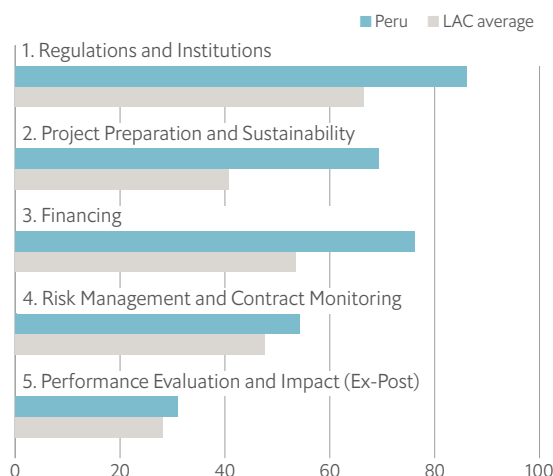
Key challenges and areas of improvement for infrastructure PPPs

Despite its strengths, the new PPP legislation has not yet been in place long enough to support systemic change around PPP capacity. Paraguay's performance across the Infrascope's four other categories tracks with the regional average, highlighting the country's limited experience with PPPs. Key areas of focus to promote further development of PPP capacity include implementing processes for risk identification, allocation and management (including mechanisms such as lenders' step-in rights), and instituting mechanisms for the ex-post monitoring and evaluation of operational projects.

To further improve its new institutional foundation, Paraguay would benefit from expanding the technical capacity of its new national PPP agency, as the country's ability to conduct pre-investment studies and coordinate across institutional bodies is still limited. The project preparation process would also be strengthened through formalizing the methodology and publication of environmental impact assessments, requiring consultations with affected communities, and incorporating climate and social equitability considerations into PPP selection procedures.



Peru



Brief overview of the infrastructure PPP market and regulatory framework

Peru's history of private participation in infrastructure projects extends to 1990, although a dedicated PPP law did not exist until 2008.⁵⁸ From 2010 to 2019 the value of infrastructure PPPs amounted to an average of 21% of total infrastructure spending in the country, the third-highest share in the region.⁵⁹ Private involvement in public works is heavily regulated in Peru, limiting participation to fewer entities; however, competition is still strong, and the few largest firms never account for more than 50% of contracts. Over the past 30 years, the most frequent project sponsors have been the ACS Group and Odebrecht.⁶⁰

Despite its investment, Peru's long-term infrastructure gap is significant, with 2019 estimates suggesting it would cost US\$110bn over the next 20 years to close it. The transport sector accounts for the largest share of the infrastructure gap (44%), followed by sanitation (20%) and health (16%).⁶¹

Peru published its first concessions law in 1996 (Law No.

059-96), allowing the government to contract private companies to develop highways, sanitation and airport projects. In 2008 Peru enacted its first legal framework for PPPs (Legislative Decree No. 1012), and in 2015 it approved Legislative Decree No. 1224, which became the main legal text regulating PPP projects. Additionally, Peru established ProInversión, a PPP agency and investment promotion agency that aims to prevent corruption in PPP award procedures, act as a unified state entity in charge of negotiating contracts with private entities, implement mechanisms for supervising regulatory agencies, and determine where to allocate resources for projects. In 2018 ProInversión's role over other state agencies was further strengthened through Legislative Decree No. 1362, which replaced Legislative Decree No. 1224. In 2019 Peru published the National Plan for Infrastructure Competitiveness, which aimed to inform private investors about Peru's project priorities.

Strengths and enabling environment for infrastructure PPPs

Peru leads LAC with respect to project selection and prioritization. In 2019 the government approved the National Plan for Infrastructure Competitiveness—developed by experts and following international recommendations⁶²—which established medium- and long-term objectives to guide future administrations on resource allocations, with consideration given to each sectors' infrastructure gap. The plan includes a policy to improve the PPP project award methodology, aiming to further aid possible investors and, in turn, incentivize investment. In conjunction, with Legislative Decree No. 1362, the government further cemented the position of ProInversión in PPP contract negotiations by adding advisory areas in which it would provide technical assistance to possible investors to reduce the possibility of erroneous PPP applications and offers.

Peru also performs among the region's best in terms of ensuring appropriate, adequate and diverse financing mechanisms for PPPs. For instance, each awardee of a PPP project or, in general, any private entity developing public infrastructure projects must allocate a percentage of their annual earnings to a fund. This fund finances

⁵⁸ World Bank PPI database

⁵⁹ IJ Global and Infralata. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

⁶⁰ World Bank PPI database

⁶¹ International Trade Administration of the United States of America. "Peru – Country Commercial Guide." 2021. [https://www.trade.gov/country-commercial-guides/peru-infrastructure-development]

⁶² University of the Pacific & Inter-American Development Bank/Inter-American Development Bank. "Three Good Practices of Peru's National Infrastructure Plan for Sustainable Economic Growth." 2019. [https://blogs.iadb.org/sostenibilidad/en/three-good-practices-of-perus-national-infrastructure-plan-for-sustainable-economic-growth/]

the government's investigations on possible new projects. The Peruvian government has also promoted financial instruments that support the worldwide green initiative, such as green bond emissions, which the Lima Stock Market first developed guidance for in 2018, with the support of the British Embassy in Lima. Finally, Peru has pioneered innovative government-backed payment certificates linked to project milestones. These certificates, tradable in capital markets, have increased the bankability of projects by reducing construction risk to a level comparable with national sovereign risk and have become a model for other countries in the region.⁶³

either disaster risk assessment studies or climate change; as such, these risks tend to be regulated contractually with no initial guidance for investors during the offering phase of the project.

Key challenges and areas of improvement for infrastructure PPPs

Public perception has been one of the most significant challenges for private investment in Peru. In 2015 Odebrecht, a firm engaged in PPPs, was investigated for corruption scandals in multiple countries, including corruption cases involving Peruvian public officers. In addition, in 2018 the Public Ministry determined that the largest Peruvian construction companies had colluded and arranged prices, dividing public works being awarded by the Ministry of Transportation and Communication among themselves. Legal experts have concluded that to counteract corruption Peru should prioritize strengthening ProInversión through legal reforms.

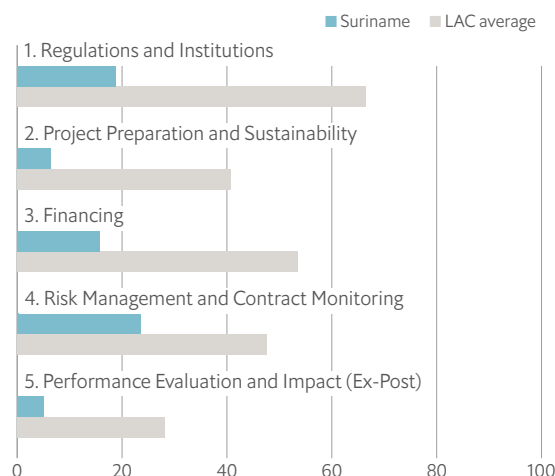
Peru also faces capacity challenges related to monitoring and evaluating ongoing and operational PPPs. The country's new legal texts and plans for PPPs contain several dispositions regarding such technical inspections on large projects; however, legal experts have expressed views that the state has not provided for sufficient appropriate technical and legal experts to thoroughly monitor if private entities are complying with all contractual conditions. As such, ProInversión cannot conduct regular reports on ongoing and operational projects. The critique of understaffing also extends to ProInversión's advisory areas, affecting its ability to adequately respond to potential and current investors.

Lastly, Legislative Decree No. 1362 and the National Plan for Infrastructure do not establish criteria related to

⁶³ Project Finance International (2015), "Peru and the project bond revolution". [https://www.bakermckenzie.com/-/media/files/insight/publications/2015/05/peru-and-the-project-bond-revolution/files/read-publication/fileattachment/ar_la_peruprojectbond_may15.pdf]



Suriname



Brief overview of the infrastructure PPP market and regulatory framework

As of mid-2021 there have been no infrastructure PPPs in Suriname, which is in a deep financial and economic crisis, with public debt levels amounting to 159% of GDP. Since 2013 99% of all ongoing infrastructure projects carried out by the Ministry of Public Works have been on hold as a result of outstanding payments.⁶⁴ In this context, the public works ministry only plans low-cost activities, and PPPs are discussed only as “user-pays” projects that could help Suriname with necessary development without increasing debt. Historically there have been infrastructure projects—primarily in the transport sector—for which a private party initially provided finance but without assuming substantial risk. The 2021 dredging project of Suriname River is a recent example of this arrangement, with the government remaining fully responsible for repaying the private party.

Suriname does not have any PPP or concession laws. The 1996 Regulation for the Procurement of Works in Suriname, the 1996 Conditions for the Execution of Works in Suriname and the 1996 Regulation for the Procurement of Services in Suriname govern all infrastructure procurement and execution of procurement contracts. The 1952 Budget Law (last amended in 2011) also governs public procurement in articles 18 and 19. Suriname’s Crisis and Recovery Plan

2020–2022 contains a list of planned infrastructure projects, among them PPPs, while the Ministry of Public Works’ Policy Plan 2020–2025 announces substantial infrastructure projects in Suriname and envisages PPP-specific regulation. Suriname does not have a PPP agency, but the Ministry of Public Works is responsible for construction and civil engineering works.

Strengths and enabling environment for infrastructure PPPs

Even though Suriname has limited experience with PPPs, some aspects of its enabling environment for infrastructure development are promising for the future. The country’s current (2020–25) administration aims to strengthen the enabling environment for PPPs through updating policy and procurement legislation and tightening collaboration with private sector actors; this has been emphasized in public statements by the president as well as by the ministers of finance, public works, and economic matters, entrepreneurship and technological innovation. The Crisis and Recovery Plan 2020–2022 also lists multiple infrastructure PPPs, confirming coalition intent to implement infrastructure PPP policy.⁶⁵

In terms of institutional support, the Ministry of Public Works’ Project Monitoring and Administration (PMA) department is mandated to guide infrastructure projects from proposal to delivery. The PMA department also handles the ministry’s online platform for publishing project data.⁶⁶ This platform publishes information about procurement and current project stages. Suriname’s 1996 procurement regulation also requires contracts to include clearly defined processes across project phases, mandating performance monitoring and periodic information gathering on the progress of contracts.

Key challenges and areas of improvement for infrastructure PPPs

Suriname lacks PPP-specific policies, procurement legislation and centralized procedures to safeguard the transparency and effectiveness of public spending.

64 Suriname Ministry of Public Works. “Policy Plan Ministry of Public Works 2020–2025”. [<http://publicworks.gov.sr/media/1244/beleidsplan-min-ow-2020-2025-15sept2020-design.pdf>]

65 Suriname Ministry of Finance. “Crisis and Recovery Plan 2020–2022”. [<http://www.gov.sr/media/1753/herstelplan-2020-2022-versie-12jan2020-final.pdf>]

66 Suriname Ministry of Public Works. “Overzicht van Openbare Aanbestedingen” [<https://datastudio.google.com/reporting/85918e98-90aa-4a37-bec6-a3ce42db7d73/page/9jtAB?s=ncXuEoPbDqc>]

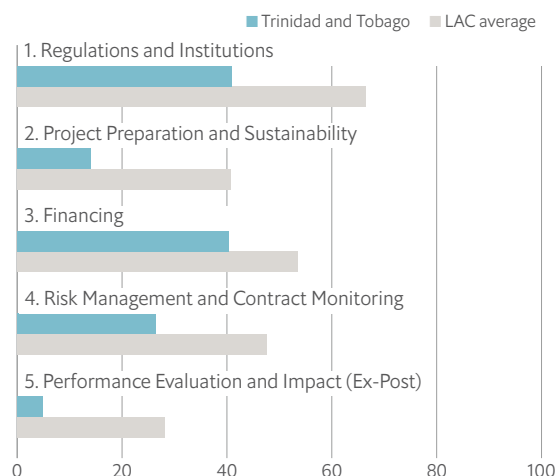
The current financial and economic crisis and high currency risk also hinder financing and bankability for infrastructure projects and prevent the government from making commitments involving financial risk.

A 2019 draft procurement law installing a centralized national procurement office has not yet been passed by parliament. However, the Ministry of Public works announced new policy and legislation for 2021-22 after the current administration took office in 2020.⁶⁷ The three 1996 procurement laws are not PPP-ready, given that separate regulations govern works and services, and it is unclear which ones apply to PPPs involving both works and services. The regulations are also unsuitable and not used for contracting foreign companies. Furthermore, Suriname's procurement process has been criticized for a general lack of transparency, particularly in relation to a 2011 amendment to the 1952 Budget Law. This amendment extended the president's level of discretion in refraining from publicly procuring works and services to all projects valued up to SR\$1.5m (US\$106,000), rather than the previous SR\$30,000 (US\$2,100). There have been complaints about misuse of this discretion during the presidency of Dési Bouterse (2010-20). When assuming office in July 2020, the current administration found various instances of mismanagement and corruption in government bodies, among them the Ministry of Public Works.

67 Suriname Ministry of Public Works. "Policy Plan Ministry of Public Works 2020-2025". [<http://publicworks.gov.sr/media/1244/beleidsplan-min-ow-2020-2025-15sept2020-design.pdf>]



Trinidad and Tobago



Brief overview of the infrastructure PPP market and regulatory framework

Trinidad and Tobago enacted its PPP policy in 2012, establishing a national PPP unit and defining the country's institutional arrangements for managing PPPs. The PPP unit is only minimally staffed but it is officially situated within the Ministry of Finance and tasked with promoting, overseeing and providing technical support for PPP activities. The PPP unit reports to the PPP ministerial committee, which reports to the cabinet. The Tobago House of Assembly has also recently adopted its own PPP policy and PPP unit (the Investment and Public Private Partnership Unit), specific to the island of Tobago.

Since issuing its 2012 national PPP policy, Trinidad and Tobago has utilized several private participation arrangements for developing infrastructure in the housing, energy and aviation sectors. In 2020, for example, the year-long US\$1.2bn ANR Robinson International Airport expansion project was awarded to China Railway Construction Caribbean Ltd. In the same year, to stimulate progress in energy efficiency and meet ambitious targets for increased renewable power generation, the Ministry of Energy and Energy Industries announced that successful proposals had been submitted for two utility-scale renewable energy projects from a consortium formed by Lightsource Renewable Global Development Limited (Lightsource BP), Shell Trinidad and Tobago Limited, and BP Alternative Energy Trinidad and Tobago Limited.

Various government jurisdictions have expressed interest in further developing infrastructure through

PPPs in sectors such as health, ports, waste treatment, water production and renewable energy. As of yet, however, no public registry or pipeline of PPP projects has been established, making it difficult to track prospective PPP opportunities in the country.

Strengths and enabling environment for infrastructure PPPs

Trinidad and Tobago has the potential to capitalize on the relative maturity and strength of its procurement and financing environments in its efforts to solidify PPP institutional arrangements and operational approaches. The country benefits from affordable capital, strong financial accounting and reporting standards, and low risks related to regulatory environments and unilateral government action.

The future development of the PPP program also stands to gain from further strategic investments in the country's long-term national development plan for infrastructure priority areas, ensuring that PPP prioritization is aligned with these goals, helping to boost the country's overall quality of infrastructure, which ranks 19th out of 26 in the region.

Key challenges and areas of improvement for infrastructure PPPs

The government lacks experience in utilizing the PPP model to its advantage. Although the 2012 national PPP policy represents significant progress on formalizing PPPs as a procurement modality, it has been largely inadequate to enable the successful development and execution of PPP projects. Institutional and regulatory support for PPPs remains hindered by the lack of funding and staffing for the PPP unit, which often relies on external consultants for technical assistance.⁶⁸

Although the national PPP policy provides basic principles, each PPP project needs to be implemented on a case-by-case basis, negatively affecting transparency in the PPP procurement process. Furthermore, the PPP structuring process often differs by sector, as tariff structures (and related subsidies) for public services such as electricity and water add complexity to contracts in those sectors.

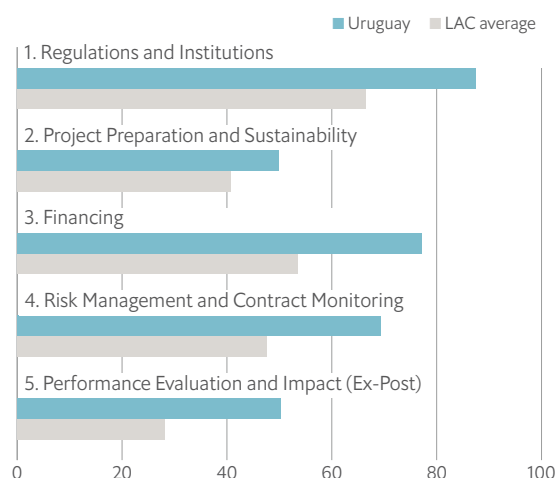
68 Central Bank of Trinidad and Tobago. "Public-Private Partnerships in Trinidad and Tobago. 2019. [<https://www.central-bank.org.tt/sites/default/files/page-file-uploads/Public-Private-Partnerships-in-Trinidad-and-Tobago.pdf>]

With respect to contract management and auditing, the government has only partially promulgated the Public Procurement and Disposal of Public Property Act (Act 1 of 2015), under which the Office of Procurement Regulation is directed to conduct audits and periodic inspections of public bodies to ensure compliance with the legal framework. However, some amendments to the act were made in 2020, and in mid-2021 it was submitted to parliament for debate regarding its operationalization.⁶⁹

⁶⁹ Ministry of Finance of Trinidad and Tobago. Public Procurement and Disposal of Public Property Regulations. 2021. [<https://www.finance.gov.tt/2021/07/03/public-procurement-and-disposal-of-public-property-act/>]



Uruguay



Brief overview of the infrastructure PPP market and regulatory framework

Uruguay's history of private participation in infrastructure projects extends to the early 1990s, although a dedicated PPP law did not exist until 2011.⁷⁰ From 2012 to 2019 the value of infrastructure PPPs amounted to 23% of total infrastructure spending in the country on average.⁷¹ Recent projects have been developed primarily in solar and gas-fired power sectors. Only one PPP initiative is in the operational stage, a prison complex (Recinto Penitenciario UPPL No. 1), while other approved projects (educational, and road and railway infrastructures) are still under construction or in earlier stages. Among them is the Central Railway (Ferrocaril Central) PPP project signed in 2019, a 276-km railway totaling investments of more than US\$3bn that is hailed as the largest private infrastructure investment in Uruguay's history.

Uruguay began implementing PPPs following passage of the Public-Private Partnership Law (Law 18876) in 2011, which was supplemented by several regulatory decrees between 2012 and 2019. The law and subsequent decrees allow PPP contracts in the transport sector, prisons, schools, healthcare facilities, social housing, waste management and energy infrastructure sectors.

⁷⁰ World Bank PPI database

⁷¹ IJ Global and Infralata. IJ Global data include infrastructure PPPs reaching financial close and excludes asset acquisition, company acquisition, securitization and refinancing transactions. (Note: PPP transactions listed in the World Bank PPI database were mapped to IJ Global transactions marked as "PPP = No" and included.)

Water and sanitation services are excluded, as these are handled by the state sanitary works. Sectoral ministries function as contracting authorities for sector-related projects.

A PPP unit within the Ministry of Economy and Finance is responsible for conducting financial risk and cost-benefit analyses for projects. The Office of Planning and Budget evaluates the financial feasibility of PPP projects, while the National Development Corporation (a private entity subject to public regulation) may be hired to promote PPPs, develop technical guidelines and provide advice on the selection, structuring and contracting of PPP projects.

One decade since PPP Law was enacted, Uruguay is actively rethinking its use, at least for the roads sector. The administration, in place since 2020, has confirmed the will to replace the PPP model with construction, rehabilitation and maintenance (CREMA) contracts, a private participation modality, for the country's US\$1.9bn of investments planned for the next five years in the road sector. Already used in Argentina, Peru, Colombia and even Uruguay in the 1990s, CREMA contracts can vary in length, but generally have a total budget and scope much smaller than that of PPPs. Uruguay plans to use CREMAs with two-year construction periods, followed by ten years of maintenance obligations, to ensure a commitment to quality.

Strengths and enabling environment for infrastructure PPPs

In light of ongoing concerns about PPP costs and delays, the government has already indicated changes to be implemented to its PPP law with the so-called Urgency Law (Law 19889 of 2020), with Article 353 calling for a Strategic Infrastructure Strengthening Plan. This plan, as stated in Article 354, must at a minimum establish objective technical guidelines that facilitate the adequate distribution of contractual risks, if applicable, based on the best international practices in the matter.

Whatever contingencies may follow from potential changes to the PPP law, the administration's plans suggest that PPP contracts that have been signed will continue, out of respect for the agreements and compliance with fair practices, while new projects in the roads sector are being evaluated under a different light. In this regard, Uruguay presents a positive image to future private investors that the government can be

trusted to follow through on its prior commitments, regardless of the party in power.

This sense of commitment is also highlighted by the country's attentiveness to the pragmatic aspects of PPP projects, such as risk management and contract monitoring, where it excels compared with others in the region. For example, as of Q3 2021 Uruguay has one completed and operating project, for which it conducts ex-post evaluations on service performance and publishes operational updates (including financial ratios). Uruguay also benefits from access to affordable and highly portable capital and strong financial auditing and reporting standards.

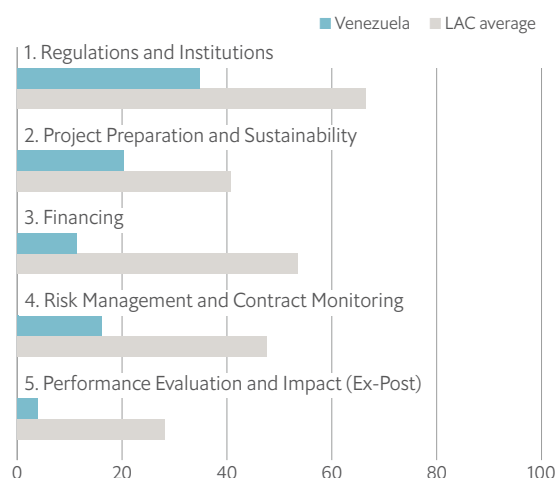
Key challenges and areas of improvement for infrastructure PPPs

Although previous administrations placed a strong emphasis on the PPP modality for promoting different infrastructure projects, recently it has been subjected to multiple criticisms. The incumbent administration does not believe that the PPP modality should continue, with the president judging it "moderately successful" but economically "very expensive". PPP projects have also struggled with delays, which has led some to prefer the more limited duration and scope of CREMA contracts, even if they are not useful for financing large infrastructure projects, sanitary facilities and ports.

Beyond the political challenges, Uruguay's sole areas of weak performance in the Infrascope are in the Project Preparation and Sustainability category (which measures performance across project selection, project preparation facilities, and efficiency of project preparation) and in quality monitoring and reporting on operational projects. There is scope for Uruguay to address issues with project delays through stronger preparation facilities and establishing institutionalized avenues for tracking project operations and outcomes (particularly those related to sustainability) in a standardized fashion. Doing so would allow for findings to be applied to future project preparation efforts in a way that does not preclude the development of larger-scale PPPs.



Venezuela



Brief overview of the infrastructure PPP market and regulatory framework

Venezuela's total private investment in infrastructure has been US\$2.7m since 1990, but no projects have been awarded since 2004.⁷² Historically, the government awarded concessions in key sectors such as ICT, roads, electricity, solid waste, transport and hydrocarbons. However, PPP awards dwindled in the early 2000s, with several expropriations of concession agreements and other non-disclosed government contracts occurring, putting the infrastructure PPP market at risk.

Although there is no specific legal framework for PPPs in Venezuela, there are two laws that allow for PPP contracts: the Concession Law (Law 318 of 1999) and the Public Contracts Law (Law 1399 of 2014). The Concession Law authorizes public entities to develop private infrastructure with all lawful businesses, but it also contains contradictory clauses regarding risk-sharing between public and private entities. The Public Contracts Law enables partnerships between public and private entities, but it does not specifically mention or regulate PPPs. Both laws were passed by unilateral decree and have few built-in protections for private investors. Furthermore, *de facto* laws differ from *de jure* laws in Venezuela. Government action plans take precedence over the aforementioned regulatory framework, and the state reserves the right to determine under these public statutes which are the "strategic sectors" that are under state control.

72 PPP Knowledge Lab. "Venezuela". [<https://pppknowledge.org/countries/Venezuela>]

More recently, in October 2020 the now-disbanded Constituent National Assembly approved the so-called Anti-Blockade Law (Ley Antibloqueo), which establishes measures for promoting the participation of private capital in the national economy. Even if this reform is intended to attract foreign investments, it allows the government and private sector to sign deals in secret and without a public bidding process. In addition, the law gives the executive body discretion to conceal contracts and administrative records from the public and declares all related decisions, procedures and acts to be classified. Within this frame of legal uncertainty and lack of transparency, it is unlikely that the law will effectively attract national and international private investments in the country.

Venezuela has two public bodies that could be responsible for planning and supervising compliance with public procurement procedures and inspecting awarded contracts: the Committee of Concessions and the National Contracting Service. The Committee on Concessions does not exist in practice, and the National Contracting Service has proven ineffective due to its lack of independence from the central government.

Strengths and enabling environment for infrastructure PPPs

Although infrastructure PPPs have not been pursued for some time in Venezuela, PPP contracts can legally be undertaken, and the regulatory ecosystem could serve as a decent framework for implementing PPPs. There are broad regulations outlining powers of and interaction between the entities in charge of preparing, procuring and managing PPP projects, as well as regulations outlining the delivery process, requirements for publishing contract awards and contracts, and procedures for contract disputes. In addition, the country scores quite favorably in terms of environmental and social sustainability regulations for projects.

Key challenges and areas of improvement for infrastructure PPPs

Country risk, especially related to legal uncertainty, still represents a significant issue for private participation in infrastructure. This uncertainty reflects how the regulatory framework has been built: both the Concession Law and the Public Contracts Law were implemented via unilateral decrees issued by the

executive branch, and thus they could easily be revoked or modified, with limited protection for involved parties.

The current economic and political climate also presents a significant challenge for PPPs. Infrastructure development tends to be state-led, projects are centralized, private investment in infrastructure occurs in joint ventures with public companies (which maintain majority ownership and control) and private investors enjoy few protections.

Despite legal requirements for judicial review and compensation, there is no independent body that reviews contract disputes, and the ruling party has a record of absorbing and expropriating infrastructure projects in strategic sectors without compensation. It has nationalized projects across electricity, port, airport, water and sanitation sectors. Recently the Venezuelan government has, however, been transferring control over key enterprises to private investors, offering profit in exchange for a share of revenue or products, but with little transparency and accountability. Except for one deal in the oil industry, these “strategic alliances” have taken place in sectors outside of the Infrascope’s consideration, and details are unclear.

Although political support for PPPs remains rare, the Venezuelan Chamber of Construction, a civic association without political power or affiliations, has long promoted the PPP model, endorsing various studies that support PPPs for developing and maintaining the country’s infrastructure priorities.⁷³ However, amid ongoing political and economic turmoil, it is highly unlikely that PPPs will become a more common modality of public procurement.

73 Ing. Ricardo Rivas V. (2020), “Las Asociaciones Público-Privadas (APP) para la construcción de la infraestructura pública en Venezuela: Oportunidades y desafíos para la Venezuela 2020”. [https://cavecon.org.ve/wp-content/uploads/2020/10/APP_Venezuela_Oportunidad_Desafio_CAVECON_RRIVAS_OCT_2020_RR13_1.pdf]

While every effort has been taken to verify the accuracy of this information, Economist Impact cannot accept any responsibility or liability for reliance by any person on this report or any of the information, opinions or conclusions set out in this report. The findings and views expressed in the report do not necessarily reflect the views of the sponsor.

LONDON

20 Cabot Square
London, E14 4QW
United Kingdom
Tel: (44.20) 7576 8000
Fax: (44.20) 7576 8500
Email: london@eiu.com

GENEVA

Rue de l'Athénée 32
1206 Geneva
Switzerland
Tel: (41) 22 566 2470
Fax: (41) 22 346 93 47
Email: geneva@eiu.com

NEW YORK

750 Third Avenue
5th Floor
New York, NY 10017
United States
Tel: (1.212) 554 0600
Fax: (1.212) 586 1181/2
Email: americas@eiu.com

DUBAI

Office 1301a
Aurora Tower
Dubai Media City
Dubai
Tel: (971) 4 433 4202
Fax: (971) 4 438 0224
Email: dubai@eiu.com

HONG KONG

1301
12 Taikoo Wan Road
Taikoo Shing
Hong Kong
Tel: (852) 2585 3888
Fax: (852) 2802 7638
Email: asia@eiu.com

SINGAPORE

8 Cross Street
#23-01 Manulife Tower
Singapore
048424
Tel: (65) 6534 5177
Fax: (65) 6534 5077
Email: asia@eiu.com