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# Benchmarking 2020 Infrastructure Development

Assessing regulatory quality to prepare, procure and manage PPPs  
and traditional public investment in infrastructure projects



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The World Bank

1818 H Street NW  
Washington, DC 20433  
Telephone: 202-473-1000  
Internet: [www.worldbank.org](http://www.worldbank.org)

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# Contents

<b>Foreword</b>	<b>1</b>
<b>Acknowledgments</b>	<b>2</b>
<b>Glossary</b>	<b>5</b>
<b>Abbreviations</b>	<b>6</b>
<b>Executive Summary</b>	<b>7</b>
<b>About <i>Benchmarking Infrastructure Development 2020</i></b>	<b>13</b>
What Does <i>Benchmarking Infrastructure Development 2020</i> Measure?	14
How the Data Were Collected	20
Scoring and Methodological Changes	20
Scope and Limitations of the Assessment	22
Content of the Report and Website	23
<b>Public-Private Partnerships (PPPs)</b>	<b>25</b>
<b>Regulatory Frameworks and Institutional Arrangements for PPP Projects</b>	<b>26</b>
Regulatory Frameworks for PPPs	26
Institutional Arrangements	29
<b>Thematic Areas Covered and Scored in the <i>Benchmarking Infrastructure Development 2020</i>: PPP Survey</b>	<b>31</b>
<b>Preparation of PPPs</b>	<b>32</b>
Assessments of PPPs	37
Fiscal Treatment of PPPs	40
<b>Procurement of PPPs</b>	<b>44</b>
PPP Procurement Methods	49
Procurement Complaints Review Mechanism	52
<b>PPP Contract Management</b>	<b>56</b>
Renegotiation of the PPP Contract	60
Alternative Dispute Settlement Mechanisms during Contract Implementation	62
<b>Unsolicited Proposals</b>	<b>66</b>
Regulatory Framework for USPs	69
Competitive Bidding and Minimum Time Limits	71
<b>Disclosure of Information throughout the PPP Life Cycle</b>	<b>74</b>

<b>Traditional Public Investment (TPI)</b>	<b>79</b>
<b>Regulatory Frameworks and Institutional Arrangements for TPI</b>	<b>80</b>
Regulatory Frameworks for TPI	80
Institutional Arrangements	83
<b>Thematic Areas Covered and Scored in <i>Benchmarking Infrastructure Development 2020: TPI Survey</i></b>	<b>84</b>
<b>Planning and Preparation of TPIs</b>	<b>85</b>
National Strategies, Project Prioritization, and Budgeting Systems	89
<b>Procurement of TPIs</b>	<b>93</b>
Barriers for Participation in Public Tenders	98
<b>TPI Contract Management</b>	<b>103</b>
Late Payments, Penalties, and Contract Performance	107
<b>Procurement Practices to Induce Innovation</b>	<b>110</b>
<b>Conclusions and Next Steps</b>	<b>114</b>
<b>Economy Data Tables</b>	<b>116</b>
<b>Economy Data Tables for PPPs</b>	<b>117</b>
<b>Economy Data Tables for TPI Pilot</b>	<b>143</b>
<b>Endnotes</b>	<b>151</b>
<b>References</b>	<b>154</b>
<b>Bibliography</b>	<b>157</b>
<b>Contributors</b>	<b>160</b>



# Foreword

A common strategic direction and aspiration for achieving high-quality infrastructure around the world has been recently formulated in the G20 principles for quality infrastructure investment (QII). These principles require a robust approach to project preparation, fair and transparent procurement processes, and adequate governance of project implementation to ensure efficiency, affordability and sustainability. Ultimately, the goal is to achieve value for money and obtain the expected economic returns from infrastructure assets. To provide high-quality infrastructure that can close chronic infrastructure gaps, governments around the world need to rely on public-private partnerships (PPPs) when suitable, and improve traditional public investment (TPI), which still accounts for the majority of investments in public infrastructure.

*Benchmarking Infrastructure Development 2020* is designed to encourage and support governments in improving the quality of regulatory frameworks governing large infrastructure projects. It does so by measuring the adoption of internationally recognized good regulatory practices oriented towards the sound preparation, procurement and management of large infrastructure projects that are closely aligned with the core philosophy of the G20 QII. Recognizing the relevance of conventionally procured projects, *Benchmarking Infrastructure Development 2020* builds on the success of *Procuring Infrastructure PPPs 2018* and expands its coverage to include a pilot group of 40 economies using TPI.

Since *Procuring Infrastructure PPPs 2018* was published, many economies have undertaken significant reforms of their PPP frameworks, bringing them closer to internationally recognized good practices. However, in many areas, the regulatory frameworks governing infrastructure projects (for both PPPs and TPI) are still weak. This is particularly the case in low-income economies where basic infrastructure is needed to ensure connectivity and promote sustainable and broadly shared economic growth.

A set of good regulations is just one of the ingredients necessary to create quality infrastructure for all, but it is foundational in nature, underpins good governance, and signals to private sector developers and operators—as well as citizens—a government’s commitment to efficiency, affordability, and sustainability of infrastructure investments. By identifying areas for improvement in existing frameworks and showcasing examples of better alignment with good practices, this initiative hopes to show a path forward for governments when undertaking regulatory reforms. It also hopes to encourage a more informed and evidence-based discussion among the international development community, as well as inspire and support further research. This is even more important as countries focus on strengthening policies, institutions, and investments, where rebuilding better infrastructure will be a significant part of a resilient recovery as part of stimulus response to the COVID-19 pandemic.

We would like to express a special appreciation to the Australian Government Department of Foreign Affairs and Trade (DFAT), without whose support this report would not be possible.



**Imad N. Fakhoury**  
Global Director  
Infrastructure Finance, PPPs  
& Guarantees Global Practice

# Acknowledgments

*Benchmarking Infrastructure Development 2020* is an initiative of the World Bank's Infrastructure Finance, PPPs and Guarantees (IPG) Group. It was prepared by a team led by Fernanda Ruiz Nuñez under the general direction of Imad Fakhoury, Vivien Foster, and Fatouma Toure Ibrahima. Members of the core team included Mikel Tejada Ibañez (topic leader), Isabela Franco Emerick Albergaria, Nasser Alreshaid, Nina Nawel Aoudjhane, Devesh Chandra Mishra, Annamaria La Chimia, Adam Jankowski, Khasankhon Khamudkhanov, Jane Park, Anand Kumar Srivastava, and Darya Yurlova. The team would like to recognize the active involvement and support of Jordan Z. Schwartz at the initial stage of this initiative. The team would like to offer special thanks to the formal peer reviewers of this report, including Federico Antoniazzi, Tania Priscilla Begazo Gomez, Enzo de Laurentiis, Tania Ghossein, Benjamin Herisset, Caroline Nicholas, and Pablo Pereira Dos Santos.

The report has been prepared with the financial support of the Australian Government Department of Foreign Affairs and Trade (DFAT).

The team is grateful to the Georgetown University Law Center and the McCourt School of Public Policy, the George Washington University Law School, and the American University Washington College of Law for organizing an externship program for students to conduct research for the project. The team would like to thank all the students who assisted the core team in the data collection and research for their invaluable help and support, including Andrea Azuka Adibe, Rodrigo Ajenejo, Duygu Baci, Salomee Bohbot, Ify Bozimo, Rayan Charara, Ivana Dahl, Vanessa Cervello Ferrando, Gabe Ghostine, Veronica Del Pilar Cruz Gonzalez, Anuraag Gupta, Cristina Gutierrez, Kay Hechaime, Jean Landry Binam Keyanfe, Haeun Kim, Se Hee Kim, Libba King, Man Yik Lau, Yucheng Liu, Yasmin Mansour, Hiro Mikuriya, Paloma Cipolla Moguilevsky, Thomas Montenegro, Tianjian Peng, Chenming Ran, Elizabeth Anna Resch, Christian Ruberwa, Ashwini Sahu, Danni Lauren Shanel, Saurya Siryal, Jie Song, Han Sun, Patricia Vallejos, Mariana Raphael Velasco, Verena Walther, Jiachen Wang, Rongwei Xie, Susan Yin, and Leticia Zecca.

The team is indebted to the following individuals for pro-bono feedback and guidance at various stages of the project, particularly during development of the survey document. Among them are *colleagues from the World Bank (WB)*, including Federico Antoniazzi, Daron Bedrosyan, Daniel Alberto Benitez, David Bloomgarden, Jenny Jing Chao, Jeffrey John Delmon, Victoria Hilda Rigby Delmon, David Duarte, Lincoln Flor, Tania Priscilla Begazo Gomez, Felipe Goya, Junglim Hahm, Ian Hawkesworth, Jay-Hyung Kim, Enzo de Laurentiis, Julien Morel, Giulia Motolese, Graciela Miralles Murciego, Philippe Neves, Daniel Pulido, Jinan Shi and Satheesh Kumar Sundararajan; *colleagues from International Finance Corporation (IFC)*, including Pierre A. Pozzo di Borgo, Javier Calvo (retired), Carla M. N. Faustino Coelho, Emmanuel B. Nyirinkindi, and Michael Opagi; and *colleagues from the International Monetary Fund (IMF)*, including Rui Monteiro and Isabel Rial. Non-World Bank Group colleagues who provided similar feedback include Maude Vallee (African Legal Support Facility), Andrew J. Kline and Sonja Walti (American University School of Public Administration), Trevor Lewis (Asian Development Bank), Cao Fuguo (Central University of Finance and Economics, Beijing), Joel Moser (Columbia University School of International and Public Affairs, SIPA), Vishwas Udgirkar (Deloitte India Tohmtatsu India Private Limited), Bill Banks (Ernst & Young), Claudine Lim, Matthew Jordan-Tank (European Bank for Reconstruction and Development, EBRD), Chris Blades (European Investment Bank, EIB), Ed Farquharson (European PPP Expertise Centre, EPEC), Marc Frilet (Frilet Société d'Avocats, United Nations Economic Commission for Europe, UNECE), Christopher Carrigan and John Forrer (George Washington University Trachtenberg School of Public Policy and Public Administration), Deborah DeMasi (George Washington University Law School), Jonathan Halpern (Georgetown University), Jack Handford (Global Infrastructure Hub), Joao Ribeiro (Hague Conference on Private International Law), Henry Lee (Harvard Kennedy School), Pradeep Singh

(Indian School of Business), Alex Katon (InfraCo Africa), Allard Nooy, Jeremy Saw, Prabaljit Sarkar, Raghav Koshik, and Shalabh Singhania (InfraCo Asia Development Pte. Ltd.), James Ballingall (Infrastructure UK), David Baxter (independent consultant), Gerardo Reyes-Tagle, Marcos Siqueira, and Rocio Medina (Inter-American Development Bank), Walid Abdelwahab (Islamic Development Bank), Michael Klein (Johns Hopkins School of Advanced International Studies), Andrés Rebollo (K-Infrastructure), James Stewart (KPMG), Francois Olivier Bergere (Long-Term Infrastructure Investors Association, LTIIA), David van Slyke (Maxwell School of Citizenship and Public Affairs), Anthony Coumidis (McBains), Stephen Gaull (Millennium Challenge Corporation), Cledan Mandri-Perrott (Partners Group), Jennifer Brake, Kylee J. Anastasi and Richard Abadie (PricewaterhouseCoopers), Caroline Nicholas and Benjamin Herisset (United Nations Commission on International Trade Law, UNCITRAL), Geoffrey Hamilton (United Nations Economic Commission for Europe, UNECE), Lawrence Martin (University of Central Florida), Stephane Saussier (University of Paris-Sorbonne), José Luis Guasch (World Bank and University of California, San Diego), and Nicolas J. Firzli (World Pensions Council).

The team would also like to thank many of our colleagues for their invaluable support and assistance at different stages of the project, including Zarrina Abdulieva, Anabela Abreu, Alphonsus Nji T Achomuma, Gabi G. Afram, Kiran Afzal, Aijaz Ahmad, Ruzita Binti Ahmad, Yesim Akcollu, Anna Akhalkatsi, Jamal Al-Kibbi, Valentina Aleksic, Aymen Ahmed Osman Ali, Abdulmuhsen Saad Alkhalaf, Khalid Sulaiman A. Alkhudairy, Waleed Alsuraih, Saltanat Alymkulova, Carmen Amaro, Bolormaa Amgaabaza, Daniel Amponsah, Tomas Anker, Preeti Arora, Vusala Mamed Asadova, Rakhymzhan Assangazyev, Mark Austin, Ahmad Hafiz Bin Abdul Aziz, Lulu Baclagon, Zhadyra Baibosynova, Samra Bajramovic, Trichur K. Balakrishnan, Andre A. Bald, Julia Barrera, Raul Antonio Barrios, Bernardo Weaver Barros, Paolo Belli, Mustapha Benmaamar, Jyoti Bisbey, Pierre Xavier Bonneau, Denis Boskovski, Angelica Maria Toro Botero, Raymond Bourdeaux, Mazen Bouri, Oliver Braedt, Virginia Brandon, Thomas Buckley, Odeta Bulo, Veasna Bun, Alfonso Abel Loureiro Caamano, Alessandra Campanaro, Elisabetta Capannelli, Caroline Cerruti, Jasmin Chakeri, Antonio L. Chamuco, Abid Hussain Chaudhry, Moez Cherif, Cordelia Chesnutt, Tasanee Chokwatana, Ibrahim Saeed Chowdhury, Nestor Coffi, Brett E. Coleman, Luciana Guimaraes Drummond E Silva Luis Constantino, Andrea Coppola, Maria Caridad Gutierrez Cordoba, Elena Corman, Souleymane Coulibaly, Vickram Cuttaree, Adja Mansora Dahourou, Ibrahim Khalil Dajani, Chappell Danvers, William Chappell Danvers, Laurent Debroux, Joelle Dehasse, Ruth Delgado, Fei Deng, Allen Dennis, Sebastien C. Dessus, Magueye Dia, Bailo Diallo, Ousmane Dione, Dung Do, Francisco Javier Winter Donoso, Catherine Doody, Arnaud Dornel, Mihaela Dumitrascu, Eric Raoul Philippe Dunand, Jane Olga Ebinger, Sebastian Eckardt, Moustafa Bahar El-Hefnawy, Simon David Ellis, Caroline Chema Eric, Fatou Fadika, Abdulaziz Faghi, Eneida Fernandes, Lincoln Flor, Achim Fock, Xavier Furtado, Paula Garcia, Carolin Geginat, Petrus Benjamin (Ben) Gericke, Coralie Gevers, Mariam Ghambashidze, Lela Ghongadze, Mark Giblett, Pierre Graftieaux, Andrew Goodland, Errol Graham, Alina Gres, Corina Mirabela Grigore, Lixin Gu, Andrea C. Guedes, Marta Mueller Guicciardini, Sumila Gulyani, Dereje Agonafir Habtewold, Faris H. Hadad-Zervos, Mohamadou Hayatou, Shughla Hellali, Hassan Mohamed Hirsi, Johanna Emelie Elisabeth Hoegstedt, Towfiqua Hoque, Wedex Ilunga, Mika Iwasaki, Jane Jamieson, Serdar Jepbarov, Sashikala Krishani Jeyaraj, Saroj Kumar Jha, Erik Caldwell Johnson, Aknur Jumatova, Patrick Kabuya, Takafumi Kadono, Hadija Rahama Diba Kamayo, Yuji Kano, Suhail Kassim, Faruk Khan, Isfandyar Zaman Khan, Qaiser M. Khan, Dongjin Kim, Maria Deborah Kim, Jakob Kopperud, Alexander Kremer, Keiko Kubota, Laura Kullenberg, Sergiy V. Kulyk, Smita Kuriakose, Eric R. Lancelot, Bernado Langa, Pierre Laporte, Luc Lecuit, Iona Lee, Alessandro Legrottaglie, Elan Liang, Da Lin, Andrea Liverani, Mirlinda Gorcaj Llalloschi, Mark Lundell, Shireen Mahdi, Sabina Vagif Majidova, Chanin Manopiniwes, Augustin Maria, James Robert Markland, Sunil W. Mathrani, Benjamin McDonald, Lorena Meco, Carole Megevand, Jimena Jesus Mejia, Kouami Hounsinou Messan, Sarah G. Michael, Andrei Mikhnev, Christopher David Miller, Merci Miyang, Masato





Miyazaki, Beatrix Allah-Mensah, Nadir Mohammed, Shabih Ali Mohib, Anna Lena Mohrmann, Jacques Morisset, Peter Mousley, Joyce Msuya, Nyda Mukhtar, Emanuel Salinas Munoz, Martin Naegele, Arvind Nair, Naomitsu Nakagawa, Renato Nardello, Mamadou Ndione, Bekele Debele Negewo, David Bot Ba Njock, Serah Njere Njoroge, Anne Njuguna, Jakhongir Normukhamedov, Camille Lampart Nuamah, Erwin De Nys, Adah Sylvia Olando, Kadar Omar, Valentin Onofriciuc, Jaime R. Díaz Palacios, Agata E. Pawlowska, Pak Budi Permana, Cveta Peruseska-Joncevska, Christian Peter, Laure de Petiville, Doina Petrescu, Tu-Oanh Phan, Bjorn Philipp, Tatyana Ponomareva, Paul Procee, Idah Z. Pswarayi-Riddihough, Firas Raad, Madhu Raghunath, Lira Hariravaka Rajenarison, Shakhnoza Rakhmankulova, Kailash S. Ramnauth, Fena Ravula, Binyam Reja, Helene Carlsson Rex, Hugh Riddell, Alberto Rodriguez, Pedro Rodriguez, Michel Rogy, Rajesh Rohatgi, Rolande Simone Pryce Rodrigo Rojo, Joao Reye Sabino, Mehnaz S. Safavian, Tarik Sahovic, Yannick Saleman, Taimur Samad, Mahaman Sani, Cristina Isabel Panasco Santos, Elena Savinova, Katherine M. Scott (Kinnon), Renaud Seligmann, Abdoulaye Seck, Saleh Musa Asvat Shaikh, Katrina M. Sharkey, Sabin Raj Shrestha, Shyamala Shukla, Lia Sieghart, Alex Sienaert, Chitambala John Sikazwe, Deva De Silva, Alphonse Soh, Hoon Sahib Soh, Celia Ortigas Sotes, Richard Jeremy Spencer, Sanjay Srivastava, Natalya Stankevish, Javier Suarez, Craig Douglas Sugden, Tamara Sulukhia, Hua Tan, Elvis Teodoro, Thato Thipe, Loungo Lolo Tibone, Rakesh Tripathi, Anne Tully, Erik Von Uexkull, Charles Undeland, Dr. Maria Vagliasindi, Paul Vallely, Rainer Stefan Venghaus, Thomas A. Vis, Mara K. Warwick, Puteri Natalie Watson, Barbara Weber, Warwick White, Andri Wibisono, Yuan Xu, Yutaka Yoshino, Gregor Wolf Namoos Zaheer, Wei Zhang, and Johannes Zutt.

The *Benchmarking Infrastructure Development 2020* website and its database are managed by Keshif LLC, led by M. Adil Yalçın, and Behar Xharra.

The report's media and outreach strategy is managed by Cara Santos Pianesi with support from Ali Carmona. The outreach strategy plan is implemented in close coordination with communications colleagues throughout the World Bank Group network.

The report was edited by Luba Vangelova and designed by a team from Base Three LLC, led by Dania Kibbi and Marianne Siblini.

*Benchmarking Infrastructure Development 2020* would not have been possible without the generous contributions of a network of almost 1,200 local public-private partnership (PPP) and traditional public investment (TPI) legal experts, private sector operators, academics, government officials, and other professionals administering or advising on PPP and TPI procurement processes in the 140 economies surveyed for the PPP and 40 economies surveyed for the TPI indicators. The names of those wishing to be acknowledged individually are listed at the end of the report and are made available at: <http://bpp.worldbank.org>.



# Glossary

**Financial model:** An analytical tool that allows the user to assess the financial robustness of a project by representing its expected financial performance, including cash flows and returns. Not to be confused with a financial proposal.

**Market sounding and/or assessment:** A procedure that assesses potential interest from financiers and/or contractors, providing insight into the likely level of market interest and providing a procuring authority with an opportunity to adjust the project scope, if necessary, to ensure private sector participation and to improve competition.

**Material adverse government action:** Any act, inaction, or omission by a procuring or other relevant authority that occurs during the term of a public-private partnership (PPP) agreement and that has a material adverse impact on the ability of a private partner to comply with any of his material obligations under the PPP agreement and/or results in additional unexpected costs or lost profits to a private partner.

**Public assets or services:** The basic assets or services for which there is not a competitive, unregulated market for their provision. Therefore, activities such as cell phone licenses, real estate, and mineral resource exploitation are excluded.

**Public-private partnership (PPP):** Any contractual arrangement between a public entity or authority and a private entity to provide a public asset or service, in which a private party bears significant risk as well as management and operational responsibility. For the purposes of the survey, this definition applies irrespective of the specific terminology used in a particular economy or jurisdiction and includes such modalities as concessions, build (rehabilitate)-own-operate, build (rehabilitate)-own-transfer, build (rehabilitate)-own-operate-transfer, and similar contract modalities, under which an infrastructure asset is built (expanded, reconstructed or upgraded), owned and operated by a private partner and transferred or leased back to a public partner upon expiration of the contract term.

**Procuring/contracting authority:** A ministry, department, agency, or public entity responsible for ensuring that the relevant asset(s) and/or service(s) is (are) provided. It is the authority in charge of a PPP project (including its identification, preparation, procurement, award, and post-award management).

**PPP unit:** A specialized government entity or a team of professionals within the structure of government that is responsible for facilitation of a PPP program in the country.

**Regulatory framework:** Encompasses all laws, regulations, policies, binding guidelines or instructions, standardized PPP contracts and/or bidding documents, other legal texts of general application, judicial decisions, and administrative rulings governing or setting precedent in relation to PPPs. In this context, the term “policies” refers to the other government-issued documents that are binding to all stakeholders and are enforced similarly to the laws and regulations and provide detailed instructions for the implementation of PPP projects. The term “policies” shall not be confused with the general government policy in relation to PPPs in the sense of a government’s statement of intent to use PPPs as a course of action to deliver public services. The “regulatory framework” includes, but is not limited to, the above-mentioned laws, regulations, policies and the like that are dealing with PPPs (note that it is not uncommon to see the procurement of PPPs regulated by or incorporated into the general public procurement framework).

**Project company:** A company specifically formed to undertake a particular PPP project, also known as a special purpose vehicle (SPV), special purpose company (SPC) or a special purpose entity (SPE).

**Traditional public investment (TPI):** Any contractual arrangement between a public entity or authority and a private entity that provides a public asset or service in which the resources from the government’s budget are allocated to fund and finance the acquisition of an asset or service to meet a public need. Under this contracting method, a procuring authority bears all the risks associated with the pre-planning, acquisition, financing, and design of a contract as opposed to sharing it with a private party. For the sake of clarification, TPIs include works contracts such as item rate, admeasurement, design-bid-build (DBB), design-build (DB), build-transfer (BT) and engineer-procure-construct (EPC) contracts, among others.

**Unsolicited proposal (USP):** A proposal to undertake a PPP project made by a private entity to a public entity at the private party’s initiative rather than in response to a request from the government.

# Abbreviations

<b>ALSF</b>	African Legal Support Facility
<b>BAFO</b>	best and final offer
<b>BPP</b>	Benchmarking Public Procurement
<b>ECG</b>	Expert Consultative Group
<b>EIA</b>	environmental impact assessment
<b>EMDEs</b>	emerging markets and developing economies
<b>EOI</b>	expression of interest
<b>GIH</b>	Global Infrastructure Hub
<b>PIM</b>	public investment management
<b>PPIAF</b>	Public-Private Infrastructure Advisory Facility
<b>PPP</b>	public-private partnership
<b>RFP</b>	request for proposals
<b>RFQ</b>	request for qualifications
<b>SDGs</b>	Sustainable Development Goals
<b>SIA</b>	social impact assessment
<b>SPC</b>	special purpose company
<b>SPE</b>	special purpose entity
<b>SPV</b>	special purpose vehicle
<b>TPI</b>	traditional public investment
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>USP</b>	unsolicited proposal

## Contract Types

<b>BLT</b>	build-lease-transfer
<b>BOO</b>	build-own-operate
<b>BOOT</b>	build-own-operate-transfer
<b>BOT</b>	build-own-transfer
<b>BT</b>	build-transfer
<b>EPC</b>	engineer-procure-construct
<b>DB</b>	design-build
<b>DBB</b>	design-bid-build
<b>ROT</b>	rehabilitate-operate-transfer

## Regions

<b>EAP</b>	East Asia and Pacific
<b>ECA</b>	Europe and Central Asia
<b>LAC</b>	Latin America and the Caribbean
<b>MENA</b>	Middle East and North Africa
<b>OECD</b>	Organization for Economic Co-Operation and Development
<b>SAR</b>	South Asia
<b>SSA</b>	Sub-Saharan Africa

# Executive Summary

**Appropriate and effective regulatory frameworks remain crucial for ensuring that investments in infrastructure are done strategically and efficiently.** Empirical studies show that every region of the world faces a chronic infrastructure gap. This problem is particularly acute in low- and middle-income economies. Since most infrastructure investment is undertaken by the public sector directly, besides public-private partnerships (PPPs) when suitable, it is equally relevant to ensure that traditional public investments (TPIs) in infrastructure are also efficient.

**Benchmarking Infrastructure Development 2020 assesses the regulatory quality for preparation, procurement, and management of large infrastructure projects through both PPPs and TPIs.** Building on the success of *Procuring Infrastructure PPPs 2018*, *Benchmarking Infrastructure Development 2020* updates the assessment of PPP regulatory frameworks in 140 economies and expands its thematic coverage to include a pilot assessment of 40 economies for TPI in infrastructure. By providing actionable indicators, the 2020 edition supports evidence-based regulatory reforms to improve the enabling environment for developing quality infrastructure projects. A new approach to measure de facto implementation of regulatory frameworks in practice was also piloted, and preliminary results at the aggregate level are presented throughout the report.

**The report highlights the key findings resulting from the data and is organized around the infrastructure project cycle phases for both the PPP and the pilot TPI assessment.** Both the PPP and TPI assessment cover the core phases of the infrastructure project cycle: preparation, procurement, and contract management. For PPPs, management of unsolicited proposals (USPs) is also assessed. For TPI, the regulatory framework to manage infrastructure assets after construction is also assessed. Disclosure of information for PPPs and procurement practices for innovation for TPIs are also discussed in the report as cross-cutting areas of interest. With reference to a highway transport project as a guiding example to ensure cross-comparability, the report presents the regulatory landscape at the end of June 2018 to develop infrastructure projects. Further details, methodological information and the complete dataset is available online at the project's website: <http://bpp.worldbank.org>.

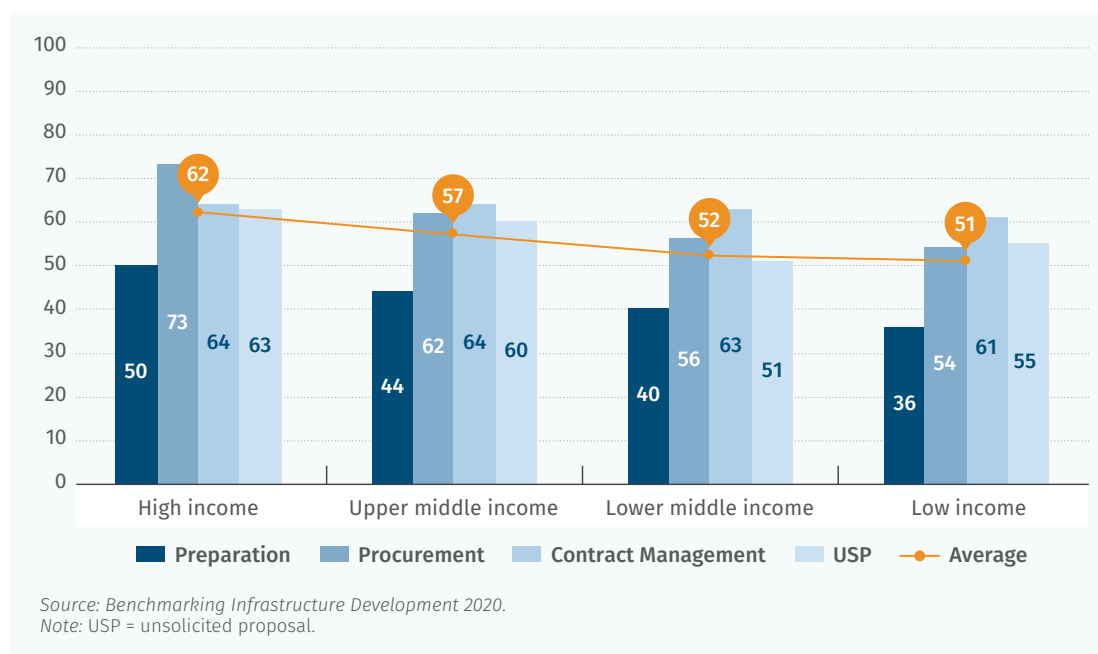
## Trends and highlights from the PPP data

**The higher the income level of the group, the higher the performance in the assessed thematic areas.** (See Figure ES1.) Performance also varies by region. The high-income economies of the Organisation for Economic Co-operation and Development (OECD), Europe and Central Asia (ECA), and the Latin America and the Caribbean (LAC) regions are best performers and relatively close to each other in the core thematic areas (preparation, procurement, and contract management). In contrast, the East Asia and Pacific (EAP) region has the lowest average scores across thematic areas, except for preparation, where the Middle East and North Africa (MENA) region's scores are lower.

**Regulatory frameworks have evolved since the 2018 edition of the report, but these reforms have a different impact on the regulatory environment.** Although up to 74 percent of the economies surveyed introduced some regulatory change, only 50 economies (36 percent) introduced regulatory changes that impacted the measured benchmarks. Even among those, some regulatory reforms had minimal impact (as in Peru and Spain, which already had relatively mature frameworks). On the other hand, economies such as Lebanon, Chad, and Georgia enacted new PPP laws and regulations that resulted in significant improvements in the quality of their regulatory frameworks as measured by the survey.

**PPP preparation is the thematic area in which a significant share of economies reformed their regulatory frameworks.** While a step in the right direction, further reforms are needed. Adoption of regulatory good practices continues to lag behind. Moreover, adopted reforms focused on already widespread practices, but several internationally recognized good practices (for example market sounding) remain rare worldwide. The introduction of more flexibility to design a procurement process that fits each PPP project was the aspect where more economies adopted meaningful reforms. Finally, PPP contract management did not see as large a proportion of economies introducing reforms, with only a few economies enhancing their frameworks to better tackle circumstances that may arise during the implementation of a PPP project, such as a need for renegotiation.

**Figure ES1 | Average PPP Scores by Income Group (score 1–100, N=140)**



**The establishment of PPP units remains a common feature of institutional frameworks for PPPs.** Eighty-four percent of the surveyed economies have established a dedicated PPP unit. In only 7 percent of the surveyed economies, however, do PPP units assume the role of procuring authorities for PPPs, while in 77 percent, the PPP unit has an advisory role to the PPP procuring authorities, usually line ministries. Among those PPP units with an advisory role, however, 41 percent of them do retain the capacity to approve PPP projects, usually by actively participating in the preparation and approval of the PPP feasibility studies. Economies that passed reforms establishing new PPP units include the Democratic Republic of Congo, Ethiopia, Gabon, Lebanon, Poland, and Uzbekistan.

**Preparation is the thematic area with room for improvement across all regions and income groups—but particularly for low-income economies.** Fortunately, this is also the thematic area that saw the largest share of economies adopting reforms in the last two years. However, adopted reforms usually focused on already widely established good practices, so room for improvement still exists. Also, the pilot results on de facto implementation appear to indicate that during PPP preparation, implementation of some good practices happens even when legal requirements are not in place. During preparation, sound project appraisal is key to bringing quality projects to the market. Environmental impact assessment is very commonly regulated as it is usually not just a PPP requirement. For more PPP-specific assessments

(such as fiscal affordability, risk analysis, value for money, etc.) around three quarters of the economies require them but only half of the economies have the methodologies to ensure effective and consistent evaluation. Market sounding (in particular regarding technological alternatives and innovation) and preparing a procurement strategy are the least commonly conducted assessments. Similarly, during preparation it is also important to ensure that fiscal commitments arising from PPPs are fully understood and recognized in the budget. However, while the great majority of surveyed economies provide the Ministry of Finance with a gatekeeping role (72 percent), only around a third of them have adopted specific provisions for budgeting, reporting, or accounting for PPPs.

**High-income economies perform closer to recognized good practices in the procurement phase, but there are still plenty of good regulatory practices not followed in low- and lower-middle-income economies.** Implementation in practice appears to lag behind (but only slightly) the legal adoption of requirements, according to the pilot results of the de facto implementation assessment. Increased flexibility to adapt procurement methods to each PPP project is one of the areas where more economies have newly adopted internationally recognized good regulatory practices. Despite this, most non-high-income economies are still relying primarily on traditional procurement methods and are not sufficiently adopting more innovative ones, such as competitive dialogue, that could better fit the features of a PPP. Similarly, while the adoption of more appropriate standstill periods is among the most commonly undertaken reforms, further widespread adoption of this regulatory requirement (only present in 41 percent of the economies now) would reinforce the complaint review systems for PPPs, particularly if accompanied by the still relatively uncommon use of independent reviewers (only present in 55 percent of the economies currently).

**Further alignment with good regulatory practices is still possible in PPP contract management for all regions and income groups.** This is also an area where de facto implementation appears to lag quite a bit behind the adoption of regulatory requirements for most regions and income groups according to the results of the pilot practice-based survey. Adopted areas of reform include better regulation of circumstances that may appear during the life of the contracts (for example, force majeure) and the need to track the progress of the construction works. Introducing a third-party approval requirement for modification of PPP contracts has also been newly regulated in 6 percent of the economies, bringing the total to 47 percent of the surveyed economies. This reinforces the regulation of renegotiation and helps prevent opportunistic behavior. The establishment of thresholds for modifications above which a new tendering process is required is another robust way of dealing with the renegotiation of PPP contracts, but it is only adopted by 40 percent of the surveyed economies. For dispute resolution, another relevant matter given the long-term nature and complexity of PPPs, arbitration and mediation are available in most economies, providing an alternative avenue to the judicial system. However, the creation of specific dispute resolution boards, which could be especially appropriate for technical discussions arising from PPPs, remains uncommon: Only 9 percent of the surveyed economies worldwide have established such boards, mostly concentrated in LAC and OECD-high-income economies.

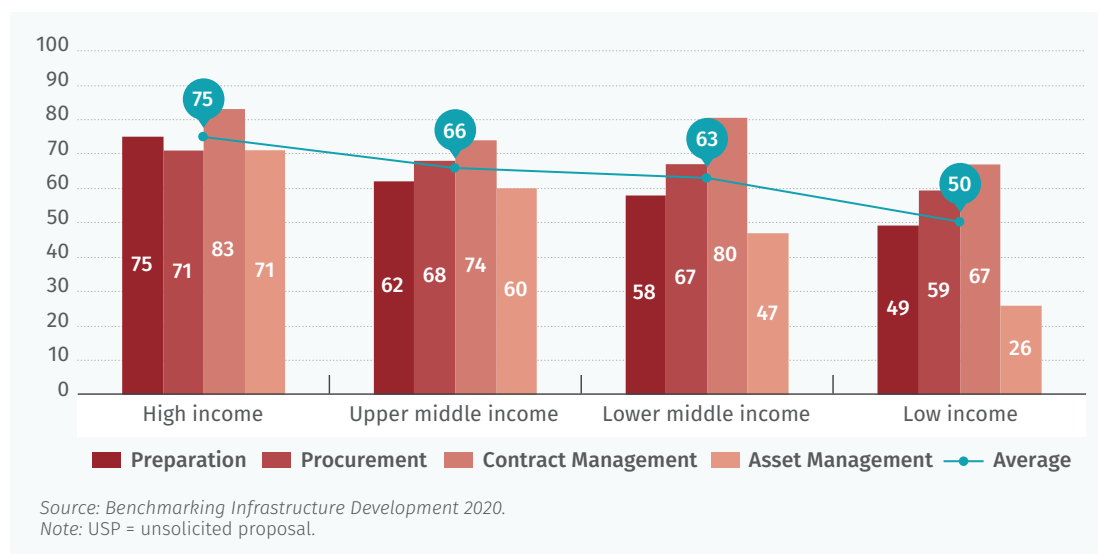
**Proper regulation of unsolicited proposals is required to ensure that they are pursued transparently and for the right reasons.** Sixty-one percent of the surveyed economies explicitly regulate USPs, while 2 percent of them explicitly prohibit them (including Lebanon since the introduction of the new PPP Law). In 29 percent of the surveyed economies, USPs are not explicitly addressed by the regulatory framework and they do not happen in practice (depending on the context, this lack of regulation appears to function as an implicit prohibition, for example in high-income economies of the OECD, where this is common). However, in 9 percent of the surveyed economies contributors attested that USPs happen in practice despite not being regulated. Moreover, according to the pilot results on de facto implementation, USPs are the thematic area where implementation in practice lags behind the most when compared with the adopted regulations. To ensure achieving value for money with USPs, fair competitive tender procedures should be followed. However, in 21 economies there is no express requirement to follow a competitive procedure when accepting USPs and only 14 percent of the economies where USPs happen require a longer period of time to prepare bids for USP-originated projects than for regular PPPs.

**Most economies adhere to international good practices in terms of disclosure of information to the public in the procurement phase, but do not adopt such disclosure practices during the preparation phase and contract management.** Among the assessed economies, it is very common to publish the PPP procurement notice and the award notice online. However, only 36 percent of economies also publish the PPP contracts online, and even fewer (19 percent) publish amendments to them. While tender documents are available online in half of the economies, only about a third of them also publish some of the conducted assessments and have standardized PPP contracts. During the construction and operation of a PPP, only 13 and 16 percent respectively of the surveyed economies publish information online.

## Trends and highlights from the TPI data

**As with PPPs, the TPI data generally indicate that the higher the income level of the group, the higher the performance in the assessed thematic area.** (See Figure ES2.) Among the three thematic areas that cover the investment cycle, preparation remains the weakest. However, the scores for infrastructure assets management after construction are even lower, particularly for low- and lower-middle-income economies. Contract management, on the other hand, appears to be much better regulated on average in the areas measured for TPI (77 points) than for PPP (63 points), maybe as a reflection of the difficulties managing long-term PPP contracts.

Figure ES2 | Average TPI Scores by Income Group (score 1–100, N=40)



**Public procurement laws and regulations are usually the key legal instrument for TPI projects, but its development is also significantly impacted by the broader legal framework.** Most economies rely on primary legislation complemented by secondary legislation as the main legal instrument for public procurement. The development of TPI projects is also impacted by other laws and regulations, in particular, those governing public finance and the budgetary process, environmental impact, and transparency/anti-corruption related laws. Forty percent of the surveyed economies have also adopted laws or regulations specifically governing public investment systems. Procurement frameworks generally give a broad definition of a procuring authority and, therefore, the public entity responsible for each sector is usually the procuring authority for TPI projects in that sector, but this varies widely.





**Regulatory practices for the planning and preparation of TPI projects should be reinforced particularly in low-income and middle-income economies.** The regulatory environment for the planning and preparation phase of TPI projects is weaker than that for procurement and contract management in all income groups except high-income, highlighting many areas where low- and middle-income economies could adopt positive reforms. The results of the pilot assessment of de facto implementation show that adopted regulatory provisions are mostly followed in this phase. Regarding regulations affecting more directly the planning of infrastructure projects (adoption of national strategies, project prioritization, and budgeting) basic requirements are quite widespread. For example, all surveyed economies have national strategies for infrastructure and require budgetary allocation for projects. However more nuanced practices/requirements are not as universally adopted: 85 percent of the surveyed economies check for consistency of projects with overall government priorities, 78 percent do multiyear forecasting of expenditure, and 73 percent have a project-prioritization system and spending ceilings incorporated in the budget. Finally, only 33 percent of the surveyed economies require assessing systematically what is the best procurement alternative for each investment project (for example, exploring the possibility of doing a PPP) and one half of those have a methodology for determining the appropriate form of procurement.

**Regulation of procurement for TPIs is fairly consistent across income groups, but adopting additional transparency and fairness-related practices would benefit low-income economies in particular.** In particular, low-income economies have weaker procurement systems than all other income groups. The adoption of already widespread regulatory practices will enhance the selection of contractors in these economies by creating a fairer and more transparent process. Similar to the planning and preparation phase, de facto pilot results show implementation closely following the adopted regulatory framework in the procurement phase. The cornerstone of effective competition for public infrastructure projects is the removal of barriers for participation in public tenders. However, in some cases, governments choose to establish formal and direct barriers to entry to foreign contractors or to establish local content requirements. Almost a third (30 percent) of the surveyed economies have at least one form of restriction for foreign bidders, while local content preferences are even more widespread: 60 percent of the surveyed economies establish some form of local content requirements. While there may be good policy reasons for some of these barriers and preferences, it is important to understand that they may increase the cost of public investments and distort the market.



**Most of the areas measured in TPI contract management are adopted in the regulatory frameworks.**

The regulatory frameworks of high-income, upper-middle-income and lower-middle-income economies are relatively well aligned with internationally recognized good practices. Low-income economies have more room for improvement as was the case for procurement. However, results from the pilot de facto assessment indicate that this is precisely the thematic area where practice lags more behind the adopted regulations, suggesting a potential issue with implementation that was not present for preparation and procurement of TPI. Consistent with this, when looking at the specific area of payments by the procuring authority, around 80 percent of the economies regulate in their frameworks three internationally recognized good practices: linking payments with the progression of construction, requiring payments on a specific timeline (30 days is a period set by 38 percent of the surveyed economies), and paying interest to contractors when that set timeline is not respected. These are widespread provisions that establish a minimum fair playing field for contractors.

**The introduction in the regulatory frameworks of practices that encourage innovation is much more widespread in high-income economies than in middle- and low-income markets.**

Several aspects—including the use of justified non-price criteria for evaluation, e-procurement systems with transactional capabilities, and allowing variants—are regulated in almost all high-income economies. Emerging markets on the contrary lag behind even in these initial innovative practices (especially on allowing the introduction of variants, only regulated in less than 40 percent of non-high-income economies). More advanced practices, like requiring a market sounding for technological alternatives and innovation or the use of competitive dialogue, while still nascent even in high-income economies (done by around half of them) are very rare in non-high-income economies.

**Economy profiles, customized queries, further methodological details and the complete dataset are available online in the project's revamped and interactive website:**

<http://bpp.worldbank.org/>. The goal of this report is to highlight some key findings that arise from the analysis of the relevant data. Given the level of detail, the findings presented in this report are necessarily limited and intended to provide just a flavor of the type of analysis and comparisons that are possible. The interactive website (<http://bpp.worldbank.org/>) has now been updated and visitors can access the full dataset, create customized queries, or conduct personalized analysis.

# About *Benchmarking Infrastructure Development 2020*

Empirical studies show that every region of the world faces a chronic infrastructure gap. This problem is particularly acute in the low- and middle-income economies where infrastructure “falls short of what is needed for public health and individual welfare, environmental considerations, climate change—let alone economic prosperity or middle-class aspirations” (Rozenberg and Fay, 2019). Moreover, as pointed out by Fay et al. (2019) “the vast majority (87-91 percent) of low and middle-income countries’ investment in infrastructure is undertaken by the public sector” and the infrastructure gap “depends on the countries’ goals and spending efficiency.” Besides promoting private participation in financing and delivering infrastructure, it is critical to ensure that traditional public investments are efficient. For this reason, both public-private partnerships (PPPs) and traditional public investments (TPIs) must be undertaken in a fair and transparent environment that enhances competition and contributes to the efficient provision of infrastructure. Furthermore, robust and reliable infrastructure is a key driver of economic growth and improved standards of living<sup>1</sup> by creating networks that facilitate connectivity and remove barriers for access to jobs, markets, information, and basic services.

Appropriate and effective regulatory frameworks and institutional capacity remain crucial for ensuring that investments in infrastructure are done strategically and efficiently. A supportive regulatory framework also reduces the costs and risks of carrying out individual projects. It provides the private sector and foreign investors with a more predictable, stable, and safe environment to invest in infrastructure, which is particularly relevant for emerging markets and developing economies (EMDEs). To assist with the assessment of the quality of the enabling environments in different economies, the use of data-based indicators has been recognized as useful both for shaping public awareness and for supporting government decision-making. The simplicity, communicability, and transparency of such data-based indicators can promote greater consistency in the decision-making process. Well-designed indicators can be influential in attracting the attention of senior policymakers, government officials, and the business community. Having consistent information across countries and over time is also critical to improving the quality of policy dialogue with client economies informed by evidence-based knowledge.

*Benchmarking Infrastructure Development 2020* builds on the success of *Procuring Infrastructure PPPs 2018* (<https://bpp.worldbank.org/>), which focused specifically on PPPs, and expands its coverage to include a pilot of 40 economies for TPIs in infrastructure—also referred to as traditionally or conventionally procured infrastructure projects. The initial PPP survey, inspired by the methodology of the World Bank Group’s Doing Business report, was successfully piloted in 10 economies in 2015 with the goal of supporting better policymaking by highlighting the alignment of PPP regulatory frameworks with internationally recognized good practices. The initiative was expanded to 82 economies in 2017 with the support of the Public-Private Infrastructure Advisory Facility (PPIAF) and further expanded in 2018 to cover 135 economies, with the financial and technical support of the PPIAF, the Global Infrastructure Hub (GIH) and the African Legal Support Facility (ALSF). The current 2020 edition has received financial support from the Australian Government Department of Foreign Affairs and Trade (DFAT).

By providing actionable indicators, the *Benchmarking Infrastructure Development 2020* report offers a basis for evidence-based regulatory reforms that may improve the enabling environment for development of quality infrastructure projects in different countries. Moreover, the initiative highlights areas for improvement and may guide policymakers in the concerned economies throughout the regulatory reform cycle, serving as a diagnostic tool and a benchmarking instrument against the recognized good practices in the key aspects of a country's legal and regulatory procurement framework. It also helps fill the private sector's need for high-quality information in order to become a partner in the delivery of public infrastructure, whether through PPP or a TPI modality. Furthermore, the data may serve the needs of the different stakeholders for information as well as for analytical and policy-making purposes. It is hoped that this report will fuel further academic research, help governments to assess their infrastructure governance systems, and deliver a unique information tool for the private sector and civil society.

## What Does *Benchmarking Infrastructure Development 2020* Measure?

*Benchmarking Infrastructure Development 2020* assesses the quality of regulatory frameworks for preparation, procurement, and management of large infrastructure projects. To do this, it relies on standardized questionnaires designed to collect data for further comparison of each country's regulatory framework with internationally recognized good practices. As announced earlier in the report, *Benchmarking Infrastructure Development 2020* expands its thematic coverage to include the assessment of TPI regulatory frameworks in a subset of 40 pilot economies. Consequently, the team underwent a similar survey development process as was used for the PPP survey. Identification of internationally recognized good practices for the development of large infrastructure projects, both through PPP and TPI modalities, relied on research of the relevant literature (see Bibliography). The Expert Consultative Group (ECG), which includes seasoned PPP and TPI professionals, academics, and individuals from the private sector, was consulted at various stages. Initial consultations with key ECG members allowed the team to produce an initial meaningful version of the new TPI survey. A wider virtual review with all ECG members was performed to confirm the contents of the new TPI survey and to refine the PPP survey.

Prominent sources that support the preparation of the survey include the World Bank PPP Reference Guide, along with a broader body of literature and related assessments prepared by other international organizations—in particular the IMF Public Investment Management Assessment (PIMA) and the OECD Methodology for Assessing Procurement Systems (MAPS). Additionally, the surveys were to a significant extent prepared on the basis of recommendations contained in standards developed by UNCITRAL on public procurement and public-private partnerships. The Model Law on Public Procurement provides procedures and principles aimed at achieving value for money and avoiding abuses in the procurement process, together with e-procurement procedures guidelines fit for the e-government approach. The Legislative Guide on PPPs together with the Model Legislative Provisions are the only existing international legislative models on PPPs. They offer guidance to states and legislators looking to establish a sound legal framework for PPPs. They were adapted in their revised version in 2019 (see Commission Report, para. 71) to incorporate the latest recommendations and good practices from states and experts, especially improvement of project planning and preparation, transparency and PPP-specific contract award procedures.

### Box 1 | COVID-19 Pandemic and Infrastructure Regulatory Quality

The COVID-19 pandemic has put tremendous pressure on the global economy. The delivery of infrastructure services has been affected in the short run and is expected to be significantly impacted in the medium and long terms, due to sharply declining revenues that subject infrastructure assets to financial distress; delays in projects that are in the preparation and construction phases; renegotiation of PPPs; and force majeure claims. All of these may increase fiscal pressure on governments.

Apart from the government's fiscal position, the capacity of institutions and the quality of regulation will play an important role in how a country responds and adapts to this rapidly evolving situation.

Regulatory aspects that may directly affect the response to such a crisis include: adopting international good practices on regulation of modifications and renegotiations of contracts to avoid opportunistic behaviors; regulation of specific circumstances like force majeure clauses; adoption of dispute resolution mechanisms, appropriately addressing grounds and consequences of contract termination; and adoption of modern monitoring systems for tracking progress and addressing issues in a timely manner. Moreover, properly regulating other aspects of the infrastructure project cycle—such as planning, prioritization and budgeting; adequate social and environmental impact assessments; and appropriate value-for-money evaluations of procurement modality options (PPP or TPI)—will also support an efficient use of resources to foster sustainable infrastructure during the recovery phase.

*Benchmarking Infrastructure Development 2020* presents the current landscape of PPP and TPI regulations covering the aspects mentioned above, among other things. Identifying key areas for improvement will hopefully help future sectoral reforms to facilitate the path to recovery and bolster the resilience of regulatory frameworks so they are better prepared to face future crises.

## Thematic Coverage

*Benchmarking Infrastructure Development 2020* serves as an indicator of the regulatory quality needed to develop infrastructure projects in those sectors where the intervention of public entities is still necessary to achieve the optimal service level. These sectors vary by country, level of economic development, and cultural and political context. However, even within those sectors the intensity of the government's involvement can vary. In a PPP, the government contracts out a whole infrastructure project throughout its lifecycle, including design, construction, and operation, to the private sector, thereby transferring a significant portion of the associated risks. In a TPI, the government retains the responsibility for the design, construction, and operation of infrastructure projects with the possibility of contracting certain aspects of technical execution at each stage to the private sector without transferring the core risks.<sup>2</sup>

To capture these two alternatives in the current edition of the report, two separate surveys were administered: (a) a PPP survey and (b) a TPI survey. While both surveys have a common structure for assessing the preparation, procurement, and contract management phases of the project cycle, they differ in the special modules. For the PPPs, management of unsolicited proposals (USPs) is assessed in a special module, while for the TPIs, operation and maintenance of infrastructure assets after construction is covered. In addition, the TPI survey expands the preparation stage by including questions about the public investment management system and the overall planning and budgeting process for infrastructure investments. Both surveys use common case study assumptions (a national highway

transport project) to ensure cross-country comparability and aggregability. The differences between the two include project size in the case study assumptions and the number of economies covered: the PPP survey covers 140 economies while the TPI survey is a pilot for only 40 economies.

#### a) The PPP Survey

The 2020 PPP survey closely follows the structure of the Procuring Infrastructure PPP 2018 survey. It maintains the same case study assumptions to support comparability over time (Box 2).

##### Box 2 | Case Study Assumptions for the 2020 PPP Survey

- › A private partner (a project company) is a special purpose vehicle (SPV)<sup>3</sup> established by a consortium of privately-owned firms that operate in a surveyed economy.
- › A procuring authority is a national/federal authority<sup>4</sup> in a surveyed economy that is planning to procure the design, build, finance, operation and maintenance of, for example, a [national/federal] infrastructure project in the transportation sector (i.e., a highway) with an estimated investment value of US\$150 million (or an equivalent in the local currency) funded with availability payments and/or by user fees.
- › For this purpose, a procuring authority initiates a public call for tenders, following a competitive PPP procurement procedure.

The PPP survey measures key characteristics of a regulatory framework applicable to PPPs at the different stages of a project cycle, including its preparation, procurement, and contract management with a special module on unsolicited proposals. Background information on regulatory framework and institutional arrangements is also included in the report for contextual purposes. Figure 1 below describes focus areas of the survey assessment.

Figure 1 | 2020 PPP Survey Thematic Areas

<b>Regulatory Framework and Institutional Arrangements for PPPs</b>	Overall assessment of the regulatory and institutional framework governing PPPs: existence of the specific PPP laws and regulations, role of the PPP units and the Ministry of Finance, etc.
<b>Preparation of PPPs</b>	Assessment of the preparatory activities taking place prior to launching procurement of a PPP project
<b>Procurement of PPPs</b>	Assessment of activities and requirements for the selection of a private partner
<b>PPP Contract Management</b>	Assessment of activities and contractual provisions that have an impact on implementation of a PPP project after contract award
<b>Unsolicited Proposals</b>	Assessment of the specific regulatory issues when dealing with unsolicited proposals for PPPs

## b) The Pilot TPI survey

New to the 2020 edition, the pilot TPI survey was developed following, to the extent possible, the structure and contents of the PPP survey. This allowed for the direct comparison of certain sections between the PPP and TPI surveys as well as for score comparisons among the answers to common questions.

The TPI survey adapts the case study assumptions of the PPP survey to allow comparability. The total estimated investment value was lowered to US\$50 million (Box 3) to capture TPI investments without the support of international financial institutions<sup>5</sup>.

### Box 3 | Case-Study Assumptions for the 2020 TPI Survey

- › A private party (contractor) is a privately-owned company that operates in a surveyed economy.<sup>6</sup>
- › A procuring authority is a national/federal authority in a surveyed economy that is planning to procure the construction of, for example, a national/federal infrastructure project in the transportation sector (i.e., a national highway) with an estimated investment value of US\$50 million (or an equivalent in the local currency) funded through the government's annual budget allocations.
- › For this purpose, a procuring authority initiates a public call for tenders, following a competitive public procurement procedure.

The TPI survey covers the same phases of the project cycle as the PPP survey does (i.e., preparation, procurement, and contract management) (Figure 2). However, in the preparation stage, the TPI survey focuses more on the public investment management (PIM) system and integration of infrastructure projects into the budgetary process. Similarly, certain important aspects of PPP projects with little to no relevance for TPI projects are excluded. Additionally, the TPI survey analyzes management, operation, and maintenance of infrastructure assets in a special module as a separate thematic area.

Figure 2 | 2020 TPI Survey Thematic Areas

<b>Regulatory Framework and Institutional Arrangements for TPIs</b>	Overall assessment of regulatory and institutional framework governing TPIs: applicable laws and regulations as well as institutional arrangements
<b>Preparation of TPIs</b>	Assessment of preparatory activities taking place prior to launching procurement of a TPI contract, including an overall assessment of the public investment management system in the country
<b>Procurement of TPIs</b>	Assessment of the activities and requirements for the selection of a contractor for a TPI contract
<b>TPI Contract Management</b>	Assessment of activities and contract provisions that have an impact on implementation of a TPI contract after contract award
<b>Infrastructure Asset Management, Operation and Maintenance</b>	Management of infrastructure assets once the construction is finished and assets are handed over to a public sector for operation and maintenance

### c) The Pilot De Facto Questions

New to the 2020 edition, pilot de facto questions were included in both the PPP and TPI surveys. Both questionnaires include the de jure and de facto questions, which separately capture regulatory aspects and implementation of those regulations in practice. These two types of data points allow for a comprehensive assessment of the legal rules in place and their actual enforcement:

- › The de jure data points are strictly regulatory-based and do not capture practice, unless reflected in the legal framework. This type of data assesses compliance of regulatory frameworks with internationally recognized good practices in terms of efficiency, transparency, and accountability.
- › The de facto data points are subjective in nature and are based on opinion. They try to assess the actual implementation of the legal requirements identifying those that are de facto respected in practice.

Analysis and interpretation of the de facto data must be made cautiously because responses to this type of question are difficult to measure precisely other than through some proxy measures. While an effort was made to administer practice-based questions to as many and as broad a spectrum of stakeholders as possible, a sample of contributors who provided their feedback is not necessarily representative of the targeted population in each economy. Moreover, the answers involve an element of judgment and are subjective in nature. The reported answers show the median value of all the responses received.

## Geographic Coverage

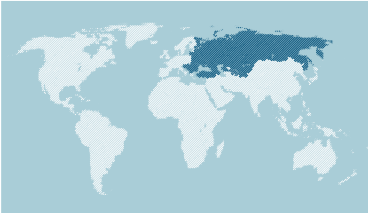
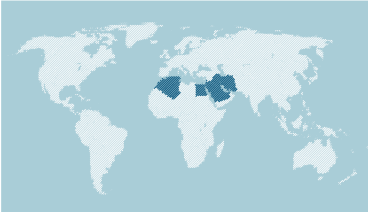

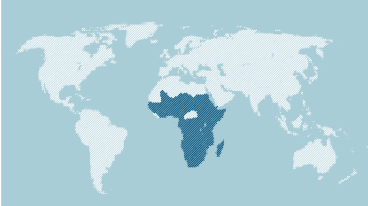
The *Benchmarking Infrastructure Development 2020* PPP survey includes 140 economies, consisting of the 135 economies covered in the *Procuring Infrastructure PPPs 2018* report and five additional economies: the Islamic Republic of Iran, Israel, Samoa, Uzbekistan, and Vanuatu. The geographical distribution of the 140 economies is as follows: 30 Organisation for Economic Co-operation and Development (OECD) high-income economies, 34 countries in the Sub-Saharan Africa (SSA) region, 17 economies in the East Asia and Pacific (EAP) region, 22 economies in the Europe and Central Asia (ECA) region, 18 economies in the Latin America and the Caribbean (LAC) region, 13 economies in the Middle East and North Africa (MENA) region, and six economies in the South Asia (SAR) region (Figure 3).

The *Benchmarking Infrastructure Development 2020* TPI survey includes a pilot of 40 economies, which were selected based on the following criteria: (i) the sample is representative of the global regional distribution; (ii) within each region, all income groups must be present; and (iii) within each regional and income group, the economies with the largest population size are selected. Certain corrections to this decision-making process were made to avoid including economies that proved to be rather challenging for data collection during the *Procuring Infrastructure PPPs 2018* report.

The geographical distribution of the 40 economies is as follows: six OECD high-income economies, 10 economies in the SSA region, seven economies in the ECA and LAC regions each, five economies in the EAP region, four economies in the MENA region, and one economy in the SAR (Figure 3).



Figure 3 | Economies Covered in the *Benchmarking Infrastructure Development 2020* Report

<b>OECD high-income</b> <b>27 economies</b>	<b>Australia*</b> Austria Belgium Canada <b>Chile*</b> Czech Rep. Denmark	Finland France Germany Greece Ireland <i>Israel</i> <b>Italy*</b>	Japan <b>Korea, Rep.*</b> Lithuania Netherlands New Zealand Poland Portugal	Singapore <b>Spain*</b> Sweden Switzerland <b>United Kingdom*</b> United States	
<b>East Asia and Pacific</b> <b>16 economies</b>	Cambodia <b>China*</b> <b>Indonesia*</b> Lao PDR Malaysia Mongolia	<b>Myanmar*</b> Papua New Guinea <b>Philippines*</b> <i>Samoa</i> Solomon Islands Thailand	Timor-Leste Tonga <b>Vietnam*</b> <i>Vanuatu</i>		
<b>Europe and Central Asia</b> <b>26 economies</b>	Albania Armenia <b>Azerbaijan*</b> Belarus Bosnia and Herzegovina Bulgaria Croatia Estonia <b>Georgia*</b>	Hungary Kazakhstan Kosovo <b>Kyrgyz Republic*</b> Latvia North Macedonia Moldova Montenegro <b>Romania*</b>	<b>Russian Federation*</b> Serbia Slovak Republic Slovenia Tajikistan <b>Turkey*</b> <b>Ukraine*</b> <i>Uzbekistan</i>		
<b>Latin America and Caribbean</b> <b>18 economies</b>	<b>Argentina*</b> <b>Brazil*</b> <b>Colombia*</b> Costa Rica Dominican Republic Ecuador	<b>El Salvador*</b> Guatemala Haiti <b>Honduras*</b> Jamaica <b>Mexico*</b>	Nicaragua Panama Paraguay <b>Peru*</b> Trinidad & Tobago Uruguay		
<b>Middle East and North Africa</b> <b>13 economies</b>	<b>Algeria*</b> Djibouti <b>Egypt, Arab Rep.*</b> <i>Iran, Islamic Rep.</i> Iraq Jordan Kuwait	Lebanon <b>Morocco*</b> Qatar <b>Saudi Arabia*</b> Tunisia United Arab Emirates			
<b>South Asia</b> <b>6 economies</b>	Afghanistan Bangladesh <b>India*</b> Nepal Pakistan Sri Lanka				
<b>Sub-Saharan Africa</b> <b>34 economies</b>	Angola Benin Botswana <b>Burkina Faso*</b> Burundi Cameroon Chad Congo, Dem. Rep. Congo, Rep.	Côte d'Ivoire Eritrea <b>Ethiopia*</b> Gabon <b>Ghana*</b> Guinea <b>Kenya*</b> <b>Madagascar*</b> Malawi	Mali Mauritius <b>Mozambique*</b> Niger <b>Nigeria*</b> Rwanda Senegal Sierra Leone	Somalia <b>South Africa*</b> Sudan <b>Tanzania*</b> Togo <b>Uganda*</b> Zambia Zimbabwe	

Notes: The (\*) denotes pilot economies for the traditional public investment (TPI) survey. Underlined italics indicate the new economies included in the 2020 edition for the public-private partnership (PPP) survey: Iran, Islamic Rep., Israel, Samoa, Uzbekistan, and Vanuatu.

*Benchmarking Infrastructure Development 2020* uses the World Bank Group regional and income group classifications, available at <http://data.worldbank.org/about/country-and-lending-groups>. Regional averages presented in figures and tables in the *Benchmarking Infrastructure Development 2020* report include economies from all income groups (low, lower-middle, upper-middle, and high-income), and the high-income OECD economies are assigned to a "regional" classification of OECD high income.

The scope of the assessment is limited to infrastructure projects developed by procuring authorities at the national or federal level. However, in the cases of Australia, Bosnia and Herzegovina, the United Arab Emirates, and the United States, the focus is on the sub-national level (the State of New South Wales, the Sarajevo Canton within the Federation of Bosnia and Herzegovina, the Emirate of Dubai, and the Commonwealth of Virginia, respectively).

## How the Data Were Collected

### Survey Contributors

The standardized questionnaires for the PPP and TPI surveys were distributed to approximately 20,000 contributors in the 140 and 40 economies included in the PPP and TPI survey, respectively. Data collection, analysis, and validation spanned nine months and ended in March 2020. Once the initial data collection was completed, a series of follow-ups via conference calls and emails was performed to address and resolve any contradictions or discrepancies in the data provided by various contributors. The preliminary data were finalized and then shared with the World Bank Group's Country Management Units (CMUs) for final validation with each economy's respective government.

The standardized questionnaires were distributed to practitioners who have knowledge and expertise related to PPPs and TPIs. Respondents were selected based on their experience and availability to contribute meaningfully to each questionnaire. The report's main contributors were law firms that have experience advising clients on PPP and TPI transactions, public officials involved in establishing and implementing PPP and TPI policy, chambers of commerce, consultants and academics knowledgeable in the topics of PPPs and TPIs, and others.

The following sources were utilized to identify the appropriate pool of contributors:

- › International guides, such as Chambers and Partners guides, the International Financial Law Review (IFLR), The Legal 500, Martindale-Hubbell, HG Lawyers' Global Directory, Who's Who Legal directory, Lexadin, and country-specific legal directories. The guides permitted the identification of the leading providers of legal services, including their specializations, in each economy;
- › Major international law, accounting, and consulting firms that have large and well-connected global networks through their partner groups or foreign offices;
- › Members of the American Bar Association, country bar associations, chambers of commerce, and other legal membership organizations;
- › Government organizations that formulate PPP and TPI policy in each economy and undertake individual projects, including ministries of finance, ministries of transport, PPP procuring authorities, and PPP units; and
- › Secondary resources and professional service providers recommended by World Bank staff as well as those found through embassy websites and business chambers.

## Scoring and Methodological Changes

The scoring methodology for the *Benchmarking Infrastructure Development 2020* PPP data was mostly inherited from the *Procuring Infrastructure PPPs 2018* report. As in the previous edition, scores for the PPP survey are aggregated for each thematic area: preparation, procurement, contract management, and USPs. Only areas recognized as international good practices were scored. The current scoring methodology allocates the same weight to all benchmarks. For the TPI survey, a scoring methodology has been developed following the same principles. TPI scores are likewise aggregated for each thematic area: preparation, procurement, contract management, and asset management.

The possible scores range from 0 to 100. Economies with the highest scores, nearing 100, are considered to have PPP or TPI frameworks that are closely aligned with international good practices in each thematic area. On the contrary, economies with scores at the bottom (nearing 0) have considerable room for improvement. The country tables at the end of the report contain only the scores at the thematic area level. However, all information collected during the implementation of the PPP and the TPI surveys is publicly available on the project's website: <http://bpp.worldbank.org>.

It is important to note that scores cannot be compared across the different editions of this initiative. There were significant changes in the scoring methodology in *Benchmarking Infrastructure Development 2020* compared with *Procuring Infrastructure PPPs 2018*. First, the survey instrument for PPPs has changed between the 2018 and 2020 editions. During the refinement of the PPP survey, 63 new questions were added, 12 questions were dropped and nine were reformulated. This was mainly done to ensure consistency with the new TPI questionnaire. Furthermore, *Benchmarking Infrastructure Development 2020* included a pilot of a de facto question for each legal question. This had significant implications in the scoring methodology because the 2020 edition no longer considers as valid answers to regulatory questions that are based on experience or established traditions and practice. To receive a full point for the scored legal question there must be a valid provision in the regulatory framework that addresses the issue. The scoring methodologies for both PPP and TPI surveys, as well as the details of the methodological changes with respect to the 2018 edition are available on the *Benchmarking Infrastructure Development 2020* website at: <https://bpp.worldbank.org/en/methodology>.



## Scope and Limitations of the Assessment

Understanding the scope of the data utilized in this report is important to interpreting the results. The data have both strong and weak sides that readers should bear in mind.

Firstly, procurement of both PPPs and TPIs can be carried out at different levels of government and sometimes along sectoral lines. While the report recognizes associated complexities, because of the limited resources it examines only procuring authorities at either the national or federal level. However, certain exceptions were made for some economies due to their specific constitutional and/or administrative configuration. For both PPP and TPI surveys, Australia is represented by the regulatory framework of the State of New South Wales. Additionally, in the PPP survey the assessment of Bosnia and Herzegovina is based on the Sarajevo Canton; of the United Arab Emirates, on the Emirate of Dubai; and of the United States, on the Commonwealth of Virginia. This approach was adopted to address the fact that the federal governments in these economies have limited authority regarding PPPs in infrastructure. This limitation, along with their particular constitutional arrangements, makes it unfeasible to evaluate the development of PPPs at the national or federal level. Specifics of each of these four economies are discussed in the description of corresponding regulatory frameworks available on the project website: <http://bpp.worldbank.org>.

Secondly, the regulatory framework to procure both PPPs and TPIs may differ across sectors. However, it is not feasible to design a survey that covers different regulations for all possible sectors and types of PPP and TPI projects. While most of the answers to both surveys may apply to many or all sectors, contributors were referred to a specific case study for the transportation sector (a highway project) to ensure cross-sectoral and cross-country comparability (refer to Box 2 for PPPs and Box 3 for TPIs).

Thirdly, *Benchmarking Infrastructure Development 2020* follows the World Bank definition of PPPs<sup>7</sup> and applies this definition irrespective of the specific terminology used in a country or jurisdiction. It includes such modalities as concessions, build (rehabilitate)-own-operate, build (rehabilitate)-own-transfer, build (rehabilitate)-own-operate-transfer, and similar contract modalities under which an infrastructure asset is built (expanded, reconstructed, or upgraded), owned, and operated by a private partner, and transferred or leased back to a public partner upon expiration of a contract term. In the following economies the authors detected two clearly separate regulatory regimes for concessions (sometimes defined as user-pay arrangements) and PPPs (sometimes defined as government-pays arrangements): Argentina, Brazil, Costa Rica, France, Mauritius, Niger, the Russian Federation, Senegal, and Togo. For these economies, the concession regime was evaluated and scored separately, but the findings in this report refer exclusively to the PPP regime for consistency. Information regarding concession regimes in these economies is available on the project website: <http://bpp.worldbank.org>. A more detailed discussion is presented in Box 4.

Fourthly, the *Benchmarking Infrastructure Development 2020* survey (both PPPs and TPI) uses a broad definition for the regulatory framework and includes any applicable legal texts and other binding documents (such as policies, standardized transaction documents, and contracts), as well as judicial decisions and administrative precedents regarding procurement of large infrastructure projects.<sup>8</sup> This broad understanding of the regulatory framework helps prevent, to the extent possible, any bias towards a particular legal system (civil law countries versus common law countries) or formal configuration of the regulatory framework.

Fifthly, the pilot de facto or practice-based questions aim to capture the extent to which regulatory frameworks in each economy are respected in practice. These types of questions represent the contributors' perceptions, judgments, and opinions, based on their exposure to and experience with PPP and TPI projects in their home economies. However, for most economies the pool of contributors that provided feedback may not always constitute a representative sample. It is important to recognize that de facto questions are at a pilot stage and results must be interpreted with caution, bearing in mind limitations of this type of assessment.

It is also important to note that *Benchmarking Infrastructure Development 2020* does not assess individual PPP or TPI projects and contracts on a regular basis or treat them as a source of information. For regulatory-based questions, the actual laws and regulations in place as of the cut-off date are used as the main information source. For practice-based questions, opinions of the contributors are the main information source.

Moreover, regulatory-based questions do not cover all regulatory challenges related to PPP and TPI project cycles. In particular, they do not consider the capacity of implementing agencies as demonstrated by staffing numbers, staff competence levels, professionalism, and experience, and macroeconomic stability or the prevalence of corruption in each economy. Additionally, *Benchmarking Infrastructure Development 2020* does not capture all the related elements and cannot be considered a complete and full assessment for a straightforward classification of economies based on their capacity to manage the PPP or TPI processes.

Furthermore, the relevant legal and regulatory provisions noted in the report reflect a moment in time. Thus, readers should note that the legal situations may have changed since then. Specifically, the cut-off date for the *Benchmarking Infrastructure Development 2020* report was June 30, 2019. Hence, any regulatory reforms or changes in practice that occurred after that date are not taken into consideration in this edition of the report.

Finally, the report and the data points are meant to be actionable by lawmakers and governments. Thus, the report highlights the relevant regulatory aspects of the PPP and TPI legal frameworks in the hope of giving the governments and parliaments of the respective economies an opportunity to have a critical look at possible areas for improvement within their PPP and TPI procurement frameworks and help them in formulating the direction of change that might be needed going forward. However, given the limitations discussed, the report is not meant to be prescriptive and does not attempt to rank economies by their capability to procure PPP or TPI projects.

## Content of the Report and Website

The goal of this report is to highlight some key findings that arise from analysis of the relevant data. Given the level of detail, the findings presented in this report are necessarily limited and intended to provide just a flavor of the type of analysis and comparisons that are possible. The interactive website ([www.bpp.worldbank.org](http://www.bpp.worldbank.org)) has been updated, and visitors can access the full dataset, create customized queries, or conduct personalized analysis.

Given the nascent nature of the methodology of the TPI pilot survey and its limited geographical coverage, a direct comparison between the results of the PPP and TPI surveys is challenging. While recognizing that in many of the common areas assessed, the same issues are equally relevant for both PPP and TPI, at this stage the report highlights only a few aspects for each procurement alternative (PPP and TPI) in order to provide a sense of the richness of the collected data. The report is by no means a complete reflection of the numerous areas assessed in the survey, which are available online. In its concluding section, a high-level aggregate comparison among the PPP and TPI results is provided as a starting point upon which to build in future editions.







# Public-Private Partnerships (PPPs)



## Regulatory Frameworks and Institutional Arrangements for PPP Projects

*Benchmarking Infrastructure Development 2020* covers a wide range of economies represented by different legal, regulatory, and institutional systems. This section provides a brief overview of the various types of regulatory frameworks and institutional arrangements applicable to PPP projects in those economies.

There are many ways to set up legal and institutional frameworks for PPP projects. No single approach works best for all economies, and the correct way will depend on the administrative and legal traditions in place as well as on the government's goals and objectives. Hence, the current report does not score economies based on their specific approaches to governing PPPs. Instead, this section aims to provide contextual information by exploring various regulatory and institutional set-ups, which can then help better understand thematic areas scored in the following sections.

### Regulatory Frameworks for PPPs

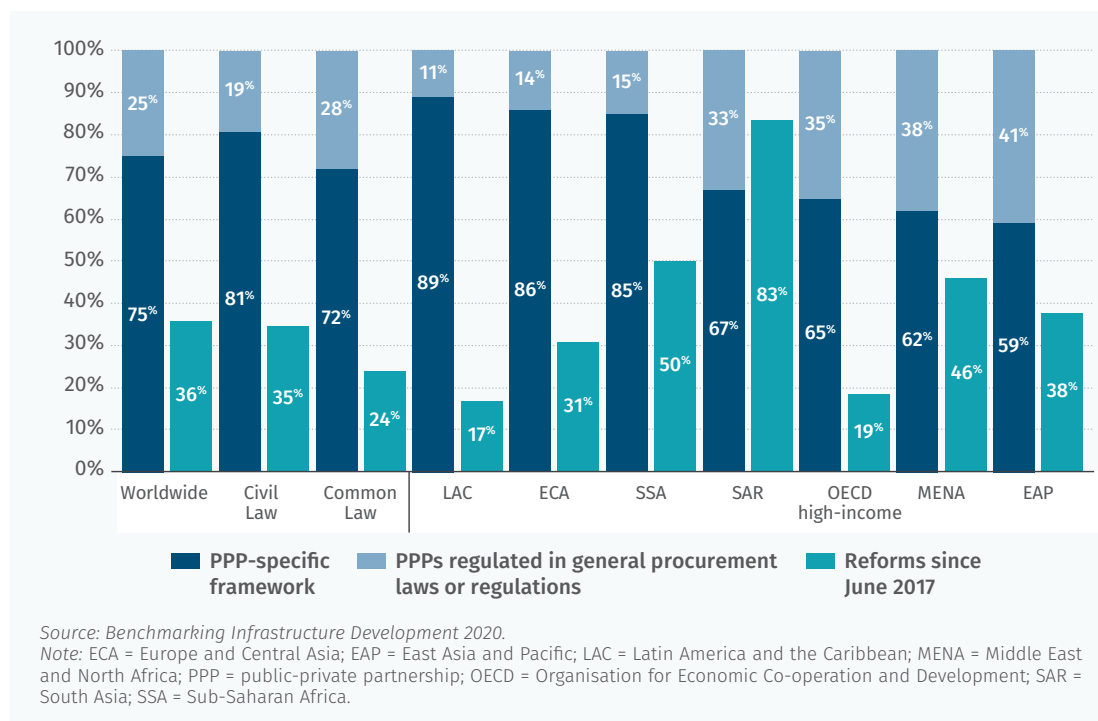
Lack of clarity about project governance and decision-making procedures can be a significant source of failures for PPP projects. A PPP-specific regulatory framework can be an effective tool that helps address this challenge by clearly defining PPP-specific requirements. However, adoption of a PPP law in itself does not guarantee the success of all PPP projects. Instead, such a law needs to be properly embedded in a broader regulatory framework (particularly in public procurement laws and regulations) to avoid legal vacuums. Consequently, not having a stand-alone law does not necessarily mean that an economy cannot have a mature PPP market. In fact, many economies with mature PPP markets, such as Australia, have developed successful PPP programs using the general procurement regulations complemented by PPP-specific guidelines, without enacting a stand-alone PPP law. So long as all relevant elements influencing the PPP process have been addressed without contradicting the existing laws, any legal set-up can create an environment that is conducive to the successful development and implementation of PPPs. Therefore, *Benchmarking Infrastructure Development 2020* focuses on the alignment of specific elements of the existing regulatory framework (no matter the set-up) with recognized good practices rather than assessing whether a particular type of framework was adopted.

While economies vary widely in terms of their approaches to regulating PPPs, broadly, two types of approaches exist: those adopting specific PPP laws, regulations, and guidelines, and those that apply general public procurement laws, regulations, and guidelines to PPP projects. In theory, stand-alone PPP laws and regulations are expected to be seen more commonly in the “civil law” economies, where core legal principles are codified. However, the data show only a minor difference between common and civil law economies in terms of adoption of PPP-specific regulations (72 percent vs. 81 percent, respectively) (Figure 4).

Globally, for economies that adopt PPP-specific regulatory frameworks, some regional variations emerge. Thus, the LAC and ECA regions are the champions of this trend (89 percent and 86 percent, respectively), while the EAP region displays the lowest adoption rate of this practice among all regions (59 percent). Interestingly, a significant share of OECD economies (35 percent) does not separately regulate PPPs but rather governs them using the general procurement laws and regulations in place. Interestingly, this rate has declined from 41 percent in 2018, according to the *Procuring Infrastructure PPPs 2018* report. This is possibly a result of the full transposition of the 2014 European Union (EU) Directives<sup>9</sup> into the local legislation in some European economies, through which traditional public procurement and concession rules were separated (see Box 4 for more details on concessions, PPPs, and other naming conventions,

including those arising from the adoption of the 2014 EU Directives). While differentiation between PPP (concession)-specific and public procurement rules is useful for analyzing the data, the reality is much more nuanced. For example, Malaysia still applies a public procurement framework for PPPs even though it has developed PPP-specific guidelines and standardized documents, as have Australia and Jamaica. Albania and Tanzania have adopted stand-alone PPP laws but use them only to regulate specific aspects of PPP projects while referring to public procurement laws and regulations for other matters. On the other hand, in economies like Argentina, the PPP law expressly excludes application of the general public procurement laws and regulations to PPP projects.

**Figure 4 | PPP-Specific Frameworks and Regulatory Reforms Since June 2017, by Legal System and Region (percent, N=140).**



Regulatory frameworks for PPPs have evolved since the 2018 edition of the report. In total, 104 out of 140 economies (74 percent) introduced some changes that affected their PPP regulations. However, in only 50 economies (36 percent) did those changes have an impact on areas analyzed as part of the survey. The share of economies that experienced reforms is larger for civil than common law economies (35 percent vs. 24 percent) but is quite uneven across regions (Figure 4). Thus, from June 2017 to June 2019, the lowest rate of reforms was observed in the LAC region (17 percent) while countries in the SAR (83 percent), MENA (46 percent), and SSA (50 percent) regions displayed some of the highest rates of reforms overall.

Importantly, these reforms had a different impact on regulatory environments. For example, Spain adopted a new public procurement law that also governs concessions, and Peru—a new PPP law. However, these changes generated only marginal improvements in the quality of their regulatory frameworks as measured by *Benchmarking Infrastructure Development 2020* (assuming that both countries already had relatively mature frameworks as assessed in *Procuring Infrastructure PPPs 2018*). On the other hand, there are economies where enactments of new PPP laws and regulations had a major impact. This is the case with Lebanon, where a new PPP law was approved in September 2017; with Chad, where

Ordinance № 06/PR/2017 regulating PPP projects was adopted; and with Georgia, where a new PPP law was enacted on June 4, 2018. In these three economies, adoption of new PPP regulations resulted in significant improvements in the quality of their regulatory frameworks as measured by *Benchmarking Infrastructure Development 2020*. Finally, in 87 economies (62 percent), reforms were ongoing or planned after the survey cut-off date of June 30, 2019. In certain economies, some of these reforms led to the adoption of a PPP-specific law later in 2019, as was the case with, for example, Panama, where the new PPP law was enacted in September 2019. However, the impact of this introduction will only be captured in the next edition of the report.

#### **Box 4 | Public-Private Partnerships, Concessions, and Other Naming Conventions**

As explicitly stated in the definition of PPPs, *Benchmarking Infrastructure Development 2020* follows a substance-over-form principle and focuses on the material/economic features of contracts independent of the legal terminology used in each jurisdiction. Based on the definition of PPPs and the case study assumptions, these relevant features imply that the private party bears significant risks and is responsible for the overall delivery and management of the infrastructure asset (including design, construction, financing, operation, and maintenance). This is quite a drastic difference from TPIs (where there is no bundling of different project activities under the responsibility of the private sector, and the procuring authority retains core project risks and management responsibility). However, within PPPs, there are different contract modalities that fall under the definition. For example, both “user-pay” and “government-pay” PPPs (compensated with availability payments) are included in the definition. Different naming conventions for the same contracts seen across jurisdictions also fall under the definition of PPPs so long as key features are present. For example, the Philippines adopted a so-called BOT (build-operate-transfer) law instead of a PPP law. However, the BOT law does cover several other contract modalities that can be considered PPPs (i.e., build-lease-transfer and rehabilitate-operate-transfer contracts, etc.).

The distinction between concessions and PPPs is often unclear and may create confusion. Depending on jurisdiction, these two terms may refer to the same or different contract modalities. For example, Chile uses the legal term “concessions” for all PPP-type arrangements. Similarly, after adoption of the 2014 EU Procurement Directives, many EU economies made a clear distinction between rules for public procurement and concession contracts, with two different directives regulating each contract type. The EU definition of concessions resembles the definition of PPPs used in *Benchmarking Infrastructure Development 2020*. However, some EU economies chose to maintain a single body of law for the different contracts and incorporated concession-related provisions in their public procurement regulations (e.g., Spain and Italy, among others). Others kept public procurement and concession rules separate (e.g., the United Kingdom and Denmark, among others). Therefore, these economies, despite having substantially similar regulations for concessions, have different legal configurations ranging from a standalone PPP/concessions law to a single public procurement framework. The opportunity for confusion is compounded by the fact that the EU Procurement Directives also offer the possibility of “mixed” contracts. Based on this possibility, some economies kept in place or adopted regulations for so-called “global contracts.” For example, in France the legal designation for PPPs (*partenariat public privé*) implies a lesser level of risk transfer to the private partner (and, thus, is considered a public procurement contract, not a concession).

In a few economies, including France, where there are two clearly separate legal regimes for PPPs and concessions, the team assessed both. These economies include Argentina, Brazil, Costa Rica, France, Mauritius, Niger, the Russian Federation, Senegal, and Togo. However, this does not represent an exhaustive list of economies with two separate legal regimes for PPPs and concessions. For simplicity, all conclusions, findings, and data analysis for such economies in the present report build on the data for PPPs, and information on concessions is only available online.

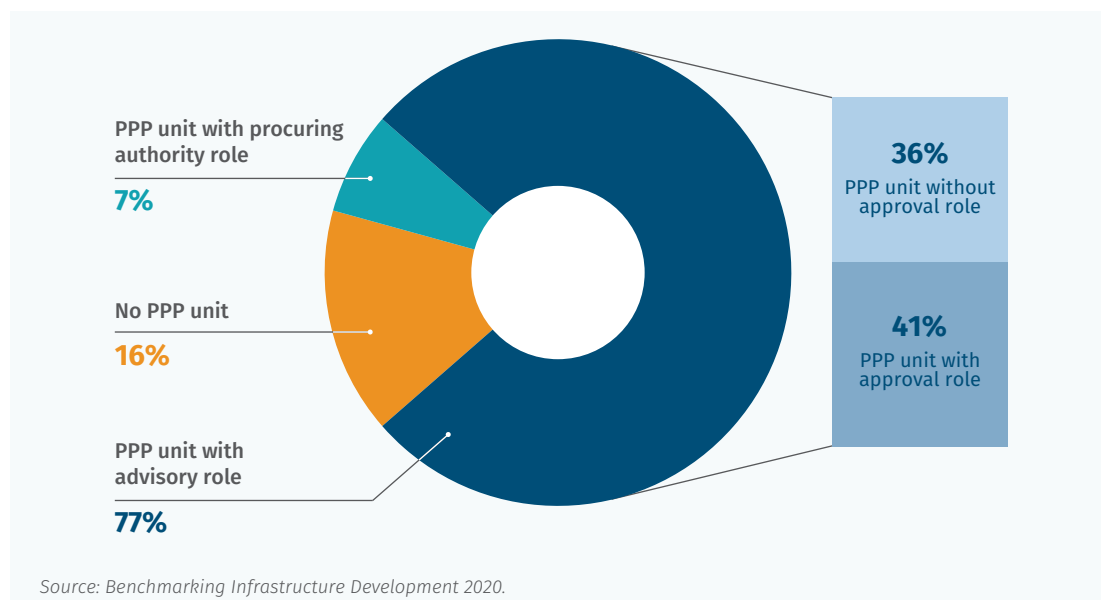
## Institutional Arrangements

In most economies, the procuring authorities for PPP and TPI projects are the same. Only a few economies have centralized PPP procuring authorities in PPP units. In some cases, procuring authorities vary for PPP and TPI projects in the same sector. For example, in Colombia the National Roads Institute (INVÍAS) takes the lead as procuring authority for most TPI projects, while the National Infrastructure Agency (ANI) was the procuring authority for the fourth generation of highway PPPs.

Given the complexity of PPPs, having a centralized entity (PPP unit) to provide administrative and technical support as well as to facilitate the development of PPPs is a common strategy. Creating a PPP unit is usually considered one of the key elements of establishing a new PPP framework. For example, in Uzbekistan, as part of the recently enacted PPP law and related regulations the Public-Private Partnership Development Agency was established as the authorized government body in the area of PPPs. Other economies that passed reforms establishing new PPP units include Ethiopia, Gabon, Lebanon, Poland, and the Democratic Republic of Congo. It is important to note however, that, as with regulatory frameworks, there is no one-size-fits-all institutional template. In fact, formation of a PPP unit is not, in itself, a sufficient condition for the success of a PPP program. Therefore, the description of institutional arrangements that follows aims to provide the context for the rest of the analysis. However, *Benchmarking Infrastructure Development 2020* does not score institutional set-ups and does not rank economies based on the way they decided to organize their institutions.

A dedicated PPP unit is present in 84 percent of the surveyed economies. While the roles and functions of PPP units vary, most of them have a common set of core tasks: PPP regulation and policy guidance (in 72 percent of economies with a PPP unit), capacity building for other government entities (73 percent), promotion of the PPP program (71 percent), technical support in implementation of PPP projects (69 percent), and oversight of PPP implementation (62 percent). Altogether, these functions represent an advisory role for a PPP unit in support of the actual procuring authorities (usually, the relevant line ministries). About a third of the PPP units participate in identification and selection of PPP projects from a pipeline; however, this task is also commonly performed by procuring authorities themselves. Finally, post-project appraisal and audit is very seldom performed by PPP units, with less than 7 percent of the surveyed economies having a PPP unit with this function.

**Figure 5 | PPP Units' Roles in the PPP Process (percent, N=140)**



In a very few economies (7 percent) (Figure 5), the PPP unit plays a more prominent role and acts as a main (or exclusive) procuring authority for PPP projects. This is the case, for example, in Guatemala (where the National Agency of Alliances for the Development of Economic Infrastructure (ANADIE) undertakes PPP procurement together with contracting entities); in Malawi (where the PPP Commission may, either by itself or in conjunction with other contracting entities, undertake procurement); and in Bangladesh (where the PPP Authority conducts and monitors the selection process of private partners). While having a centralized agency responsible for the procurement of all PPP projects (such as a PPP unit) may support efficiencies due to accumulation of PPP expertise in one place, it may also discourage line ministries that are ultimately responsible for the delivery of infrastructure if they are asked to engage in the contract management phase without participating in the selection process. Additionally, in 41 percent of economies where the PPP units play an advisory role (57 economies), those units also approve, provide an opinion, or participate in a broader approval process of PPP projects. One of the common ways for a PPP unit to engage at this stage is by participating in the assessment and approval of a PPP feasibility study, as is done in Benin and Kosovo.

Finally, in addition to creating PPP units, 20 percent of the surveyed economies also established project development funds. For example, the Department of Economic Affairs within the Ministry of Finance of India founded the India Infrastructure Project Development Fund (IIPDF) in 2013 to support the development of bankable PPP projects.





## Thematic Areas Covered and Scored in the *Benchmarking Infrastructure Development 2020: PPP Survey*

# Preparation of PPPs

PPP projects are typically large and complex, requiring long-term commitments from many stakeholders. Before undertaking procurement, contracting authorities need to gauge viability of a project through rigorous assessments to ensure that only sound and properly structured projects are selected to be delivered as PPPs. Such assessments increase the chance of a project's success and the sustainability of its results as well as ensuring that the government gets the sought value for money.

The preparation phase for PPPs consists of several key stages, beginning with identification of projects that may be suitable to be delivered as PPPs. At this stage, procuring authorities select and prioritize potential projects that are aligned with integrated infrastructure plans and strategies and conduct a preliminary cost-benefit analysis. It is also important to know the fiscal implications of PPP projects and make sure that such projects are properly accounted for, reported, and reflected in the budget.

Once a potential project is identified, procuring authorities need to conduct a thorough assessment to inform the structure of the transaction and ascertain the prospects of its successful completion. This is usually achieved by way of feasibility studies. Such studies cover all relevant aspects as much as possible, including a project's financial viability, its associated risks and risk allocation scheme, potential interest from market participants, available technology, and other relevant matters. At this stage, an environmental impact assessment is conducted as well. At the same time, good practice recommends making the results of such assessments public by including them in the request for proposals (RFP) or tender document and by publishing them online.

After the structure of a PPP transaction is determined, the final stage of the preparation phase includes development and disclosure of documentation that is required to launch a procurement process, including preparing a draft contract. Additionally, good practice suggests that procuring authorities develop and publish the standardized PPP contracts to ensure the transparency and consistency of the procurement process.

A lack of well-structured PPP projects is one of the main challenges that procuring authorities face when trying to attract private sector financing. Given that many projects are still hastily developed without adequate financial support or technical reliability, it is important to understand, promote, and apply recognized good practices for preparation of PPP projects, which are summarized in Box 5.





#### Box 5 | Preparation of PPPs—Good Practices Scored in *Benchmarking Infrastructure Development 2020*

Good practices that help ensure a well-informed decision to deliver a PPP project, and that all necessary groundwork was done before launching include the following:

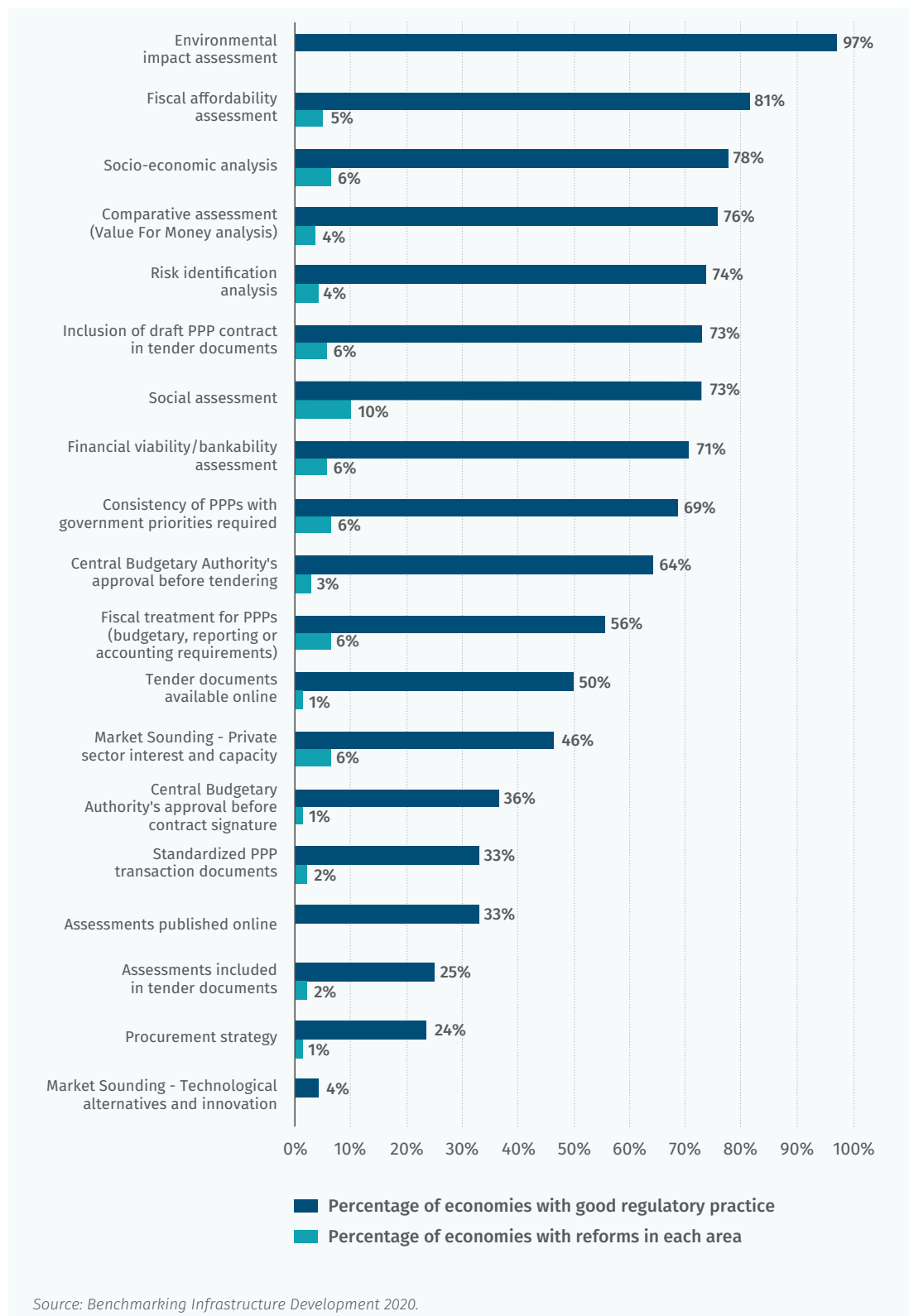
- › The Ministry of Finance or central budgetary authority assesses, accounts for, and signs off on the long-term fiscal implications of a project both before launching procurement and signing a contract.
- › There is a system in place to track the fiscal impact of PPPs such as inclusion of PPP projects in the budget, accounting for and reporting on them.
- › The project is selected, assessed, and prioritized together with all other public investment projects in accordance with national public investment plans and strategies.
- › The project is adequately justified based on the following types of assessments:
  - Socio-economic analysis;
  - Fiscal affordability assessment;
  - Risk identification, allocation, and assessment (risk matrix);
  - Comparative assessment to evaluate whether a PPP is the best option to deliver a project, including public sector comparator or value-for-money analysis;
  - Financial viability or bankability assessment;
  - Procurement strategy;
  - Market sounding assessment regarding potential interest for a project among market participants;
  - Market sounding assessment to identify solutions and technology available as well as opportunities for innovation;
  - Environmental impact assessment, including a consultation process with affected communities; and
  - Social impact assessment, including a consultation process with affected communities.
- › The results of the above-mentioned assessments are included in the tender documents.
- › The results of conducted assessments are published online.
- › The tender documents are published online.
- › The procuring authority prepares a draft PPP contract and includes it in the request for proposals and/or tender documents.
- › The procuring authority has developed standardized PPP contracts and/or transaction documents to facilitate the procurement process and to guarantee consistency.



Out of the 19 good practices scored for the preparation phase, 10 (53 percent) are present in regulatory frameworks of more than half of all surveyed economies (the threshold is 50 percent or more) (Figure 6). Common requirements are basic PPP assessments such as fiscal affordability (81 percent), value for money (76 percent) and risk identification and allocation (74 percent), along with environmental (97 percent) and socio-economic analyses (73 percent). There is a large difference between the most and the least adopted good practice (97 percent for environmental impact assessment vs. only 4 percent for the market sounding for technology and innovations). Other areas for improvement include preparation of a procurement strategy (24 percent), inclusion of the assessments' results in the tender documents and publishing them online (25 and 33 percent respectively), as well as development of standardized PPP contracts and transaction documents (33 percent).

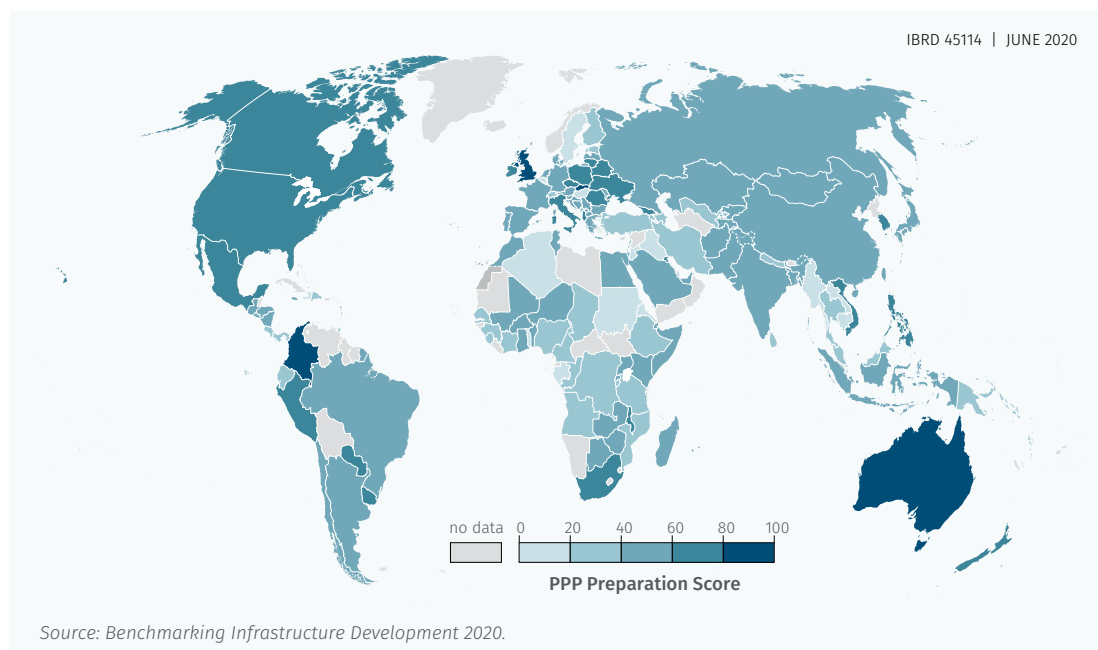
Since the 2018 edition of the report, the preparation phase is the one that saw the largest proportion of countries adopting reforms. However, this was mostly the case for already widely adopted good practices, including conducting some assessments such as a social impact assessment, which was newly regulated in 10 percent of the surveyed economies, socio-economic analysis (6 percent), financial assessment (6 percent), market sounding (6 percent), fiscal affordability (5 percent), and value for money (4 percent). At the same time, rarely adopted good practices were reformed much less than the ones with widespread adoption (for example, only 2 percent of economies have reformed the requirement to include the results of assessments in tender documents and only 1 percent to prepare a procurement strategy). For the market sounding, although scanning the market for private sector interest is a slowly increasing requirement (46 percent), the assessment of available technologies and potential areas for innovation remains a rarely adopted requirement (only 4 percent).

Figure 6 | Share of Economies that Adopt Good PPP Preparation Practices by Scored Areas (percent, N=140)

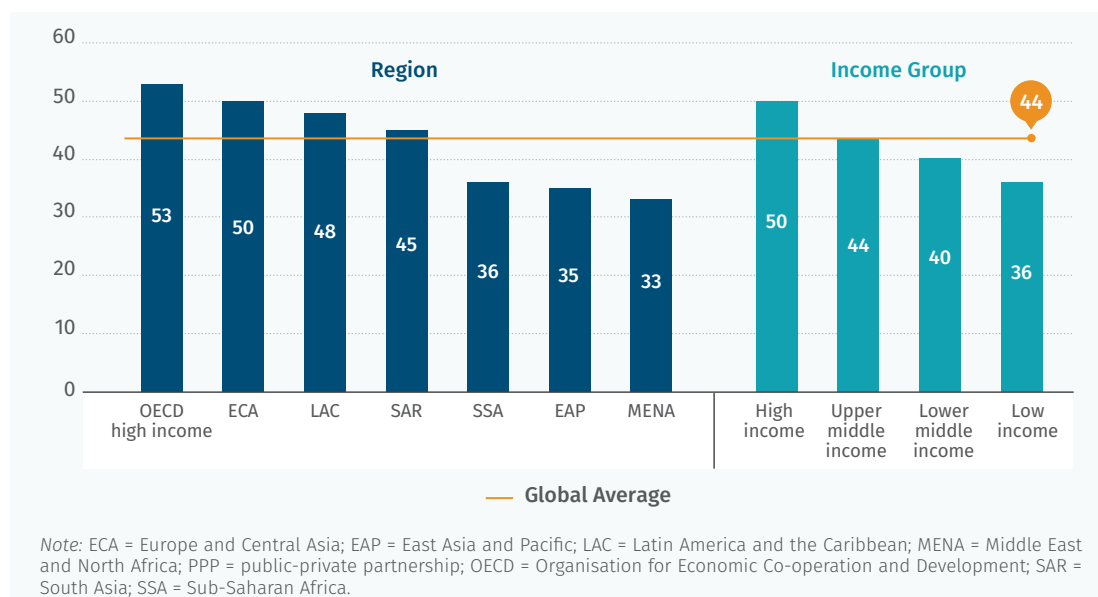


The *Benchmarking Infrastructure Development 2020* data reveal regional and income group variations in the average score for the preparation phase (Figures 7 and 8). The OECD and high-income economies are ahead of all other regions and income groups (53 and 50 points respectively). ECA (50 points), LAC (48 points), and SAR (45 points) regions score above the global average of 44 points, while SSA (36 points), EAP (35 points), and MENA (33 points) regions score below. The SSA region also has the largest intraregional variation, with scores ranging from 0 to 76 points. Disaggregating the data by income level reveals that the lower the income level of a country, the lower its average score for the project preparation phase.

**Figure 7 | Global Overview of PPP Preparation Scores (score 1–100, N=140)**



**Figure 8 | Preparation of PPPs, Score by Region and Income Group (score 1–100, N=140)**



*Benchmarking Infrastructure Development 2020* gathers a rich set of data covering various aspects of the preparation phase. The following subsections present and discuss the main findings for the different assessments of PPP projects and the fiscal treatment of PPPs.



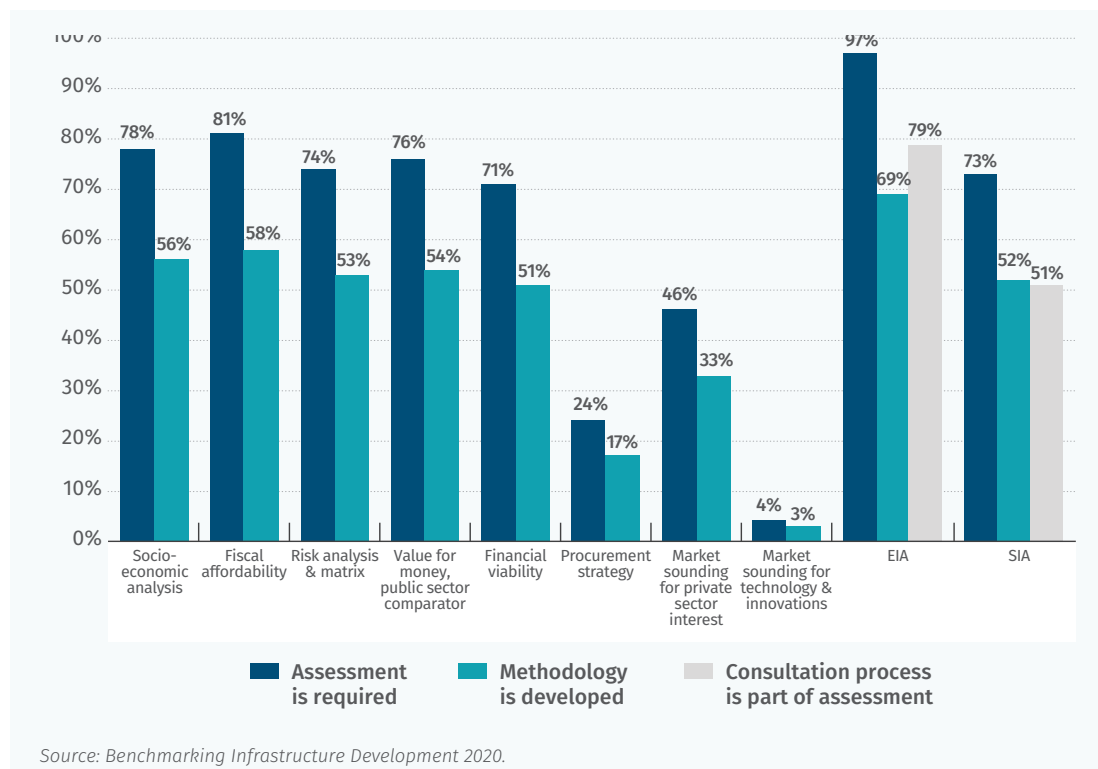
## Assessments of PPPs

A solid assessment of PPP projects helps identify the projects of optimal quality that have a high chance of reaching financial close and producing the expected outcomes. The assessment process also serves as an opportunity for the procuring authority to clearly understand the critical characteristics of the project, which can then allow the authority to thoroughly develop the structure of the project before designing a comprehensive PPP contract.

*Benchmarking Infrastructure Development 2020* asks whether the following aspects are considered among the required elements of a PPP in the feasibility assessment: 1) socioeconomic analysis;<sup>10</sup> 2) fiscal affordability; 3) risk identification, allocation, and assessment (risk matrix); 4) assessment to evaluate whether a PPP is the best option when compared to other procurement alternatives (sometimes known as value-for-money assessment, although the question coverage is not limited to this particular methodological approach);<sup>11</sup> 5) financial viability or bankability; 6) procurement strategy; 7) market sounding<sup>12</sup>, divided into two components: (a) including the potential interest from contractors and capacity in the market for the contract, and (b) specifically designed to identify the solutions and technology available as well as the opportunities for innovation; 8) environmental impacts of a project, including a consultation process with affected communities; and 9) social impact of a project, including a consultation process that involves affected communities. Coverage of the social impact and the elaboration of a procurement strategy are new to this edition.

In addition to identifying which assessments are required during the PPP preparation stage, this study also analyzes whether surveyed economies have an established methodology for each of the mentioned elements that can be consistently employed across different PPP projects. Having a standardized methodology is useful not only for enhancing government transparency but also for building institutional capacity because the methodology sets up objective criteria that are uniform, publicly available, and easily applicable to multiple PPP proposals. A methodology may take the form of supporting materials or methodological guidelines, including guides to the design and evaluation of investment projects.

**Figure 9 | Assessments Performed During PPP Preparation Phase (percent, N=140)**



Only two of the economies surveyed have a requirement to conduct all the assessments analyzed: Peru and the United Kingdom. The latter is also the only country to provide specific methodologies for all assessments measured by the report. It is notable that, regardless of the type of assessment, the availability of methodologies is significantly lower than the requirement to conduct them. For most assessments, around a third of the economies that require them have not developed a methodology to conduct them in a consistent way.

The data compiled for this year's report identify the environmental impact assessment as the most commonly required one (97 percent) (Figure 9). Seventy-nine percent of the economies also require that a consultation process with affected communities is conducted. Although not as common, the complementary social impact assessment is also required by 73 percent of economies and 51 percent of economies also hold a consultation with affected communities. Both assessments' goal is to account for externalities not fully considered as part of a more standard socioeconomic assessment of the cost and benefits of the project. The prevalence of the environmental impact assessment is explained by the general applicability to PPPs of broader national environmental laws that require this assessment for any large infrastructure project regardless of the delivery mechanism. Similarly, the requirement to conduct a social impact assessment falls in many cases under the umbrella of environmental impact studies. For instance, in Uganda the Environmental Impact Assessment Regulations require: "Preparation of project brief that social considerations must be conducted, which should include effects of proposal on generation or reduction of employment in the area; social cohesion or disruption; effects on culture and objects of cultural value, among other common requirements of social impact assessments."<sup>13</sup> This also explains the relatively high frequency of social impact assessment requirements; in many cases they are part of the environmental impact assessments and regulated by the same environmental laws and regulations.

The second most commonly required assessment is the fiscal affordability assessment for PPPs, with 81 percent of the economies covering this aspect in their regulatory framework. Through this assessment, the government weighs the public interest and social return against the cost of the project and measures the long-term fiscal and budgetary impact. The fiscal affordability of PPPs appears to be receiving increasing attention in the regulatory frameworks. In fact, since the 2018 edition, seven economies have passed new regulations with the requirement to conduct a fiscal affordability assessment as part of the preparation phase for PPP projects: Afghanistan, Chad, the Democratic Republic of Congo, Ethiopia, Georgia, Guinea, and Poland.

Market sounding appears to be one of the least required assessments. The market sounding assessment examining potential interest from contractors and capacity in the market for the project is instead required in 46 percent of the economies surveyed. In Indonesia, details of the market sounding are part of the Bappenas Regulation No. 4.<sup>14</sup> This regulation requires the procuring authority to (1) submit a PPP plan to the public in the framework of exploring the interest from prospective investors towards the PPP; (2) gather responses from prospective investors to gauge their perception of a project's feasibility, risks, and the need for government support and/or government guarantees for a PPP project; and (3) collect responses from national and international financial institutions and/or other institutions regarding potential for obtaining funding with indication of the amount of the loans that can be allocated to a PPP project. In 2018 this type of market sounding was the least commonly performed assessment when preparing PPPs, but eight economies (Angola, Austria, Benin, Lebanon, Poland, Saudi Arabia, Spain, and Zimbabwe) have since adopted regulations that require this assessment. For example, in Lebanon, the new PPP law requires the study of the extent of investor interest but without having adopted a detailed methodology for such a study. Overall, market sounding remains an area where much improvement is needed. For the current edition, the survey also assesses whether the market sounding assessments are specifically designed to identify opportunities for innovation. Only six economies (Finland, Italy, Peru, Poland, Romania, and the United Kingdom) have such legal requirements. In Romania, for example, the Procurement Law states<sup>15</sup> that before initiating the award procedure the contracting authority may conduct an assessment for market consultation and in the announcement of such should contain the aspects subject to the consultation concern, without being limited to them, or potential technical or financial solutions.

The procurement strategy is also a very uncommonly required assessment, with only 24 percent of economies prescribing the need for such study in their regulatory framework (and only 17 percent with detailed methodologies). This appraisal would encompass a quick assessment to plan and better strategize the tendering process in advance, in order to be fit for the purpose. For example, in Australia, the National PPP Guidelines Volume 1 regulates the "Procurement Options Analysis" and provides detailed instructions on how to determine the most suitable procurement method.





## Fiscal Treatment of PPPs

Either because they are directly structured as *government pays PPPs* or because they require government support to be marketable and bankable, almost all PPPs imply some type of fiscal commitment. Full recognition and understanding of the level of public commitment that a PPP entails is not automatic: The upfront cost of the investment is not usually borne by the government but embedded in the financial structure, to be paid over a long period of time with availability payments from the government (in *government pays PPPs*) or user fees (in *user pays PPPs* that ultimately can be understood as potentially foregone revenue). While there is a wide range of potential public commitments, they can be broadly divided into two types: (1) direct liabilities, e.g., availability payments or shadow tolls, whose values are generally explicated in the contract; and (2) contingent liabilities, e.g., guarantees or compensation clauses, whose occurrence, timing, and amount depend on some unforeseen future events beyond a government's control.

In order to ensure that fiscal commitments arising from PPPs are fully recognized, it is desirable to have a robust public fiscal management system in place and specific provisions regarding PPPs. This also helps mitigate any potential challenges to overall fiscal sustainability that a failed PPP could create. PPP fiscal treatment provisions are designed to increase transparency of existing commitments and avoid fiscally unsound deals. Economies with such provisions are expected to have more financially resilient PPP portfolios and fewer hidden liabilities arising from PPPs, which may be particularly relevant in times of turmoil. *Benchmarking Infrastructure Development 2020* measures a set of elements that are building blocks to a robust fiscal framework for PPPs. In the previous section, the assessment of fiscal affordability was discussed. Providing gatekeeping authority to the Ministry of Finance or central budgetary authority before signing PPP contracts is another key ingredient to establishing such a robust framework. The Ministry of Finance or central budgetary authority, being responsible for the overall fiscal sustainability of a country, is the agency best positioned to decide if a PPP is in fact fiscally sustainable and act as a counterbalance to spending agencies that usually take the role of procuring authorities.

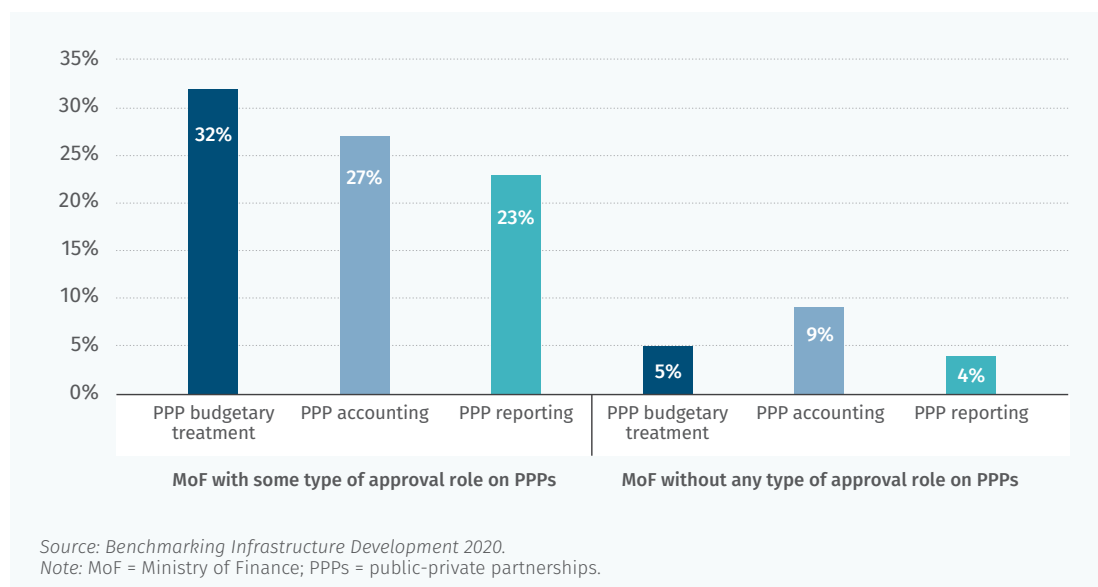
An approval by the Ministry of Finance or central budgetary authority is required in 101 out of the 140 surveyed economies (72 percent). In most cases, the requirement entails an approval before embarking on the PPP procurement process: A majority of the surveyed economies (64 percent) require such approval. This initial PPP approval process can have an important impact on the quality of project preparation and shape the way the financial structure of the PPP is designed. However, only 36 percent of the surveyed economies require a second approval by the same authorities before the PPP contract is signed. This may also be necessary to ensure that the project is still fiscally affordable after any significant changes that may have occurred during the tendering process. Only 40 economies (less than 30 percent of the total) require both approvals, thus giving the Ministry of Finance a more complete gatekeeping authority. Since the previous edition of this initiative, five countries have provided gatekeeping authority to the Ministry of Finance (Benin, Georgia, Niger, Thailand, Vietnam, and Zimbabwe). All of these changes occurred in the context of major reforms affecting PPPs. Other economies like that of Lebanon, which also undertook major reforms to their framework, already had such authority recognized even under the previous much less robust framework for PPPs.

The other element of a robust framework for the fiscal treatment of PPPs is the existence of specific provisions regarding the budgetary, reporting, and accounting treatment of PPPs. Only 17 out of the 140 surveyed economies (12 percent) have all three systems prescribed in their regulatory frameworks. Thirty-six percent of the economies have introduced some type of regulatory provision regarding the accounting treatment of PPPs and 37 percent have specific provisions about the budgetary treatment of PPPs. Reporting comes in as the least regulated instrument, with only 27 percent of economies having a legal provision concerning the matter.

Figure 10 shows an interesting correlation among the different elements discussed above. Most economies that have adopted specific provisions for the budgetary, reporting, and accounting of PPPs

also require the approval of the Ministry of Finance or central budgetary authority. Although the overall numbers are still low, this implies that countries that have assigned a formal gatekeeping role for PPPs to the Ministry of Finance are also the ones more likely to have established specific obligations regarding budgeting, reporting, and accounting of PPPs. The larger proportion (9 percent) of economies that do follow specific accounting standards while not having provided their Ministries of Finance with approval authority are composed of some European Union countries that have to follow ESA accounting standards (for example, Belgium, Denmark, Finland, the Netherlands, and Sweden).

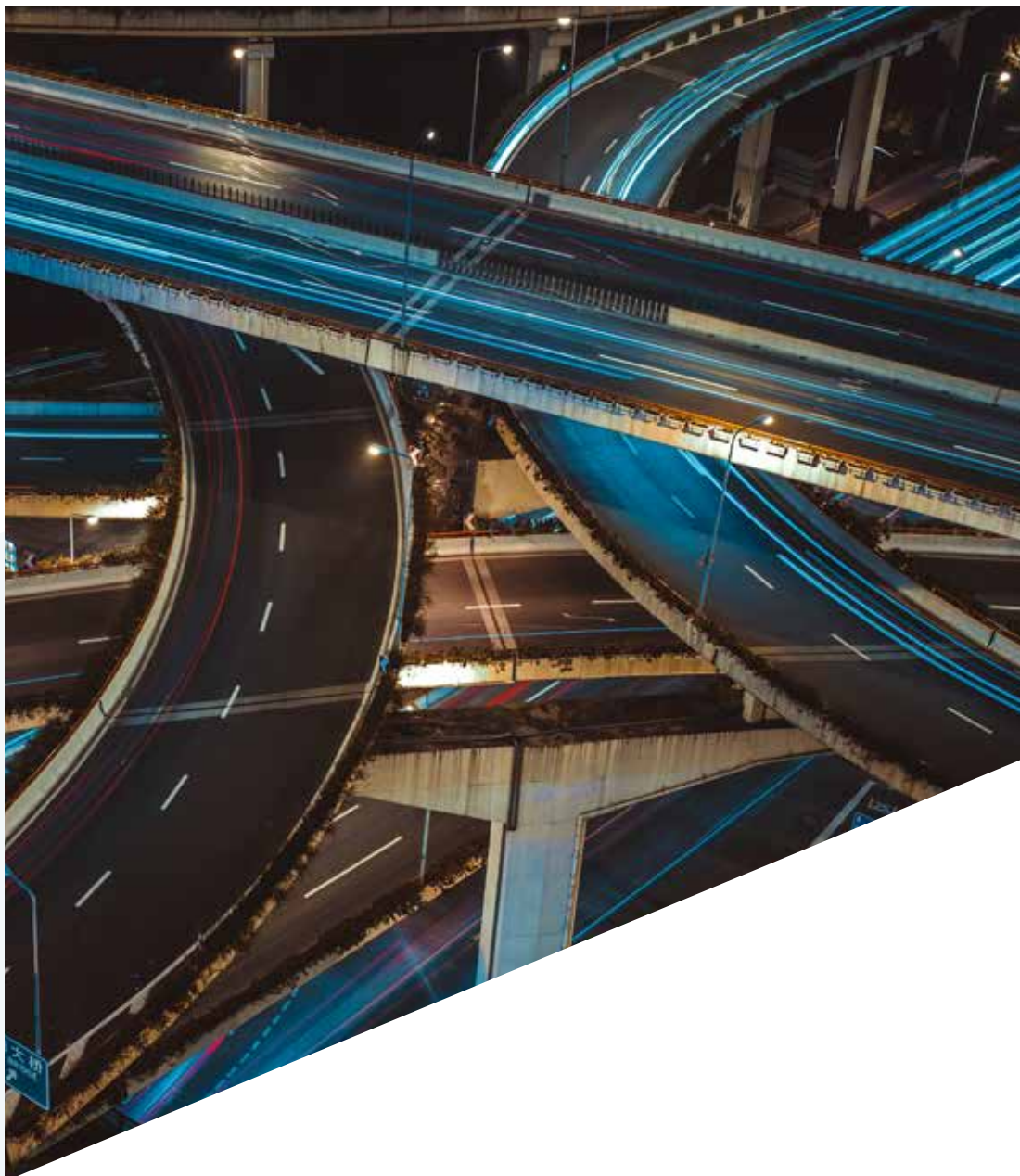
**Figure 10 | Fiscal Treatment of PPPs (percent, N=140)**



Budgetary treatment provisions take different forms, but in general they imply an express recognition of the long-term impact of PPP liabilities, including for example a requirement to approve the full commitment of a project at inception or setting a limit on the total liabilities from a PPP portfolio. Five economies have introduced new PPP budgetary provisions in the context of broader regulatory reforms for PPPs: Georgia, Niger, Peru, Tunisia, and Zimbabwe. For example, in Niger, the new PPP law requires for *government pays PPPs* to fully appropriate in each budgetary year the amount of expenditure incurred by the private partner in that year.<sup>16</sup> New reporting obligations are in place for Vietnam, Tunisia (with a report that is also submitted for approval along with the annual budget), and India (with the adoption of a new manual for the calculation and reporting of contingent liabilities arising from PPPs).<sup>17</sup>

Accounting refers more specifically to how PPPs are treated in the national accounts (for example, which party assumes as a liability the debt related to the PPP on its balance sheet). OECD economies that are members of the European Union are subject to the common European System of Accounts (ESA), which provides for a specific treatment of PPPs (requiring the public sector to account for PPP-related debt if it retains a substantial part of the risk in the PPP project). Other than this, less than 10 percent of the economies have adopted the International Public Sector Accounting Standards (IPSAS) as their model for the accounting treatment of PPPs. IPSAS require a PPP to be considered as part of the public sector balance sheet if the public sector retains control of the service provided and/or a residual interest in the project. These economies include Chile, Peru, Israel, Sierra Leone, Switzerland, and Turkey. Georgia, in the context of recent PPP regulatory reform, has decided to also implement IPSAS 32 as the accounting standard for PPPs.

Finally, *Benchmarking Infrastructure Development 2020* also included an additional pilot question on whether the Ministry of Finance, or government more broadly, discloses PPP liabilities in an online platform or database. Only 16 economies surveyed provide this type of disclosure according to a mandate in their regulatory framework. For example, in the Philippines, the Joint Memorandum Circular No. 2018-01 between the Department of Budget and Managements and the PPP Center<sup>18</sup> provide the framework for reporting PPP project spending and contingent liabilities. This provides that the PPP Center shall improve and regularly update the database of PPP project information to include projected and actual spending on PPPs, including contingent liabilities arising from the same, for the use of relevant agencies and oversight bodies, and to help the government track infrastructure spending targets and fiscal risks. This sort of mechanism helps to ensure that PPPs will be conducted in a transparent and proper manner but is clearly still not widespread among the surveyed economies.

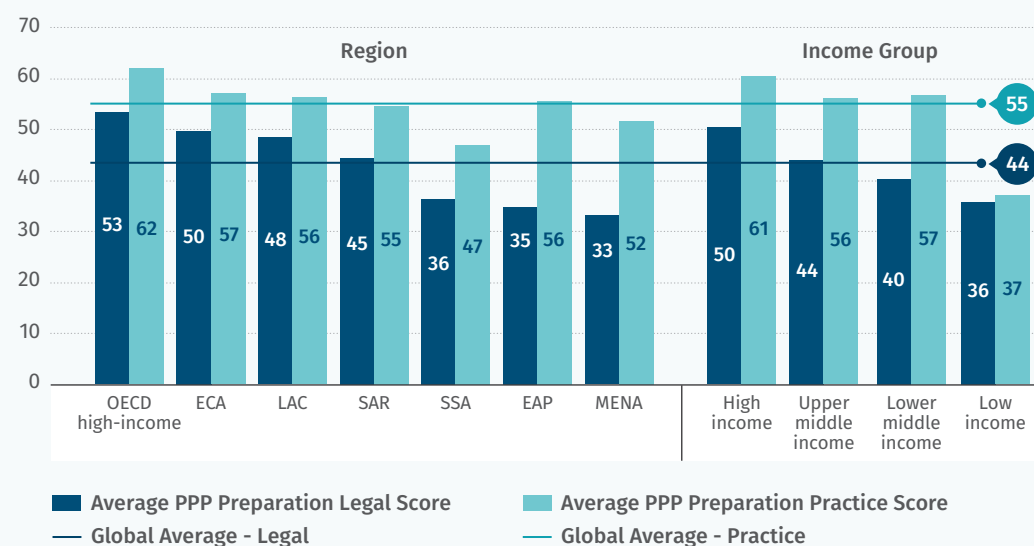


## Box 6 | Pilot Practice-Based Survey—Findings for Preparation Stage

A sound PPP preparation process well defined in the regulatory framework is as critical as its implementation to ensure well-structured PPP projects. A pilot of de facto questions was included in *Benchmarking Infrastructure Development 2020* to capture whether the written provisions are applied in practice.<sup>19</sup>

A comparison of the legal and practice scores (Figure B6.1) shows that practice scores are on average higher than legal scores (by 11 points) and this trend is consistent across both regions and income groups. Contrary to the procurement and contract management phases, the data show that during the preparation phase, economies are more commonly implementing good practices that are not required under their regulatory frameworks.

**Figure B6.1 | Preparation of PPPs—Legal and Practice Scores by Region and Income Group (score 1–100, Legal N=140, Practice N=104)**



Source: *Benchmarking Infrastructure Development 2020*.

Note: ECA = Europe and Central Asia; EAP = East Asia and Pacific; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; PPP = public-private partnership; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia; SSA = Sub-Saharan Africa.

In this thematic area, the introduction of legal requirements lags the actual implementation of some of the recognized good practices. For example, some of the assessments to ensure properly prepared projects are performed even though written regulations are not yet in place.

The general trends reflected in the legal scores are mostly followed by practice scores. High-income countries have both the highest legal and practice scores, while low-income economies have the lowest and similar legal and practice scores (36 and 37, respectively) indicating that they apply regulatory frameworks as written. SSA stands out as the region with the lowest practice scores, putting the region behind EAP and MENA. This indicates that despite having adopted more requirements in their regulatory frameworks, the economies in this region lag those in EAP and MENA in implementation of good practices. Environmental impact assessment is the regulatory practice for which implementation lags furthest behind (20 points), according to the data from this pilot assessment.

# Procurement of PPPs

Once the procuring authority has completed all preparation activities and decided to deliver an infrastructure project as a PPP, it moves to the procurement phase to select a private sector partner. To choose the right one, a procuring authority normally goes through a public tendering process in accordance with either the general public procurement rules or those specifically tailored to PPPs.

Working with the right private partner is crucial for a successful PPP project. Ultimately, whether the government achieves its target value for money depends heavily on how much the private partner can unlock value through innovation and greater efficiency. The importance of selecting the best suited private partner is reinforced even further given that PPPs are long-term contracts involving significant public resources. It's crucial for a government to build a long-term trusting relationship with the private partner, and for government employees to thoroughly evaluate the bidder's qualifications and proposals during the procurement process.

The long-term and complex nature of PPPs, however, usually translates into longer and more complicated tendering procedures relative to a conventional procurement. Costly and time-consuming PPP tendering procedures may eventually deter competition by discouraging potential bidders from preparing proposals and participating in the procurement process. This suggests that one of the essential ingredients to ensuring a level playing field for all the potential bidders is a minimization of the transaction costs, along with the clarity, fairness, and transparency of the procurement process. Procuring authorities should take these critical aspects into account when launching a PPP procurement process.

The thematic coverage of the *Benchmarking Infrastructure Development 2020* report encompasses a variety of aspects spread over the course of a PPP procurement process, including bidders' access to procurement-related information, the clarity and comprehensiveness of the procurement documents, the qualifications of the bid-evaluation committee members, the bid-selection criteria used, the way governments deal with the cases of sole proposals, and restrictions on negotiations during the award phase. To assess how well each of the surveyed economies is conducting a PPP procurement process, *Benchmarking Infrastructure Development 2020* scores each economy's procurement framework following the recognized good practices summarized in Box 7.

## **Box 7 | Procurement of PPPs—Good Practices Scored in Benchmarking Infrastructure Development 2020**

Good practices that help to ensure fair competition, value for money, and transparency during a PPP procurement process include the following:

- › The members of the bid evaluation committee are required to meet minimum qualifications.
- › The procuring authority publishes the public procurement notice online.
- › Foreign bidders have unrestricted access to participate in a PPP tender.
- › The procuring authority grants at least 60 calendar days to potential bidders to submit their proposals.
- › The procuring authority can choose among a range of competitive procurement methods to select the private partner based on the method's suitability.
- › If direct (non-competitive) award is possible, there are well-defined circumstances in which the usage of such a procurement method is justified.
- › The tender documents explain in detail the procurement procedure, providing the same information to all bidders.

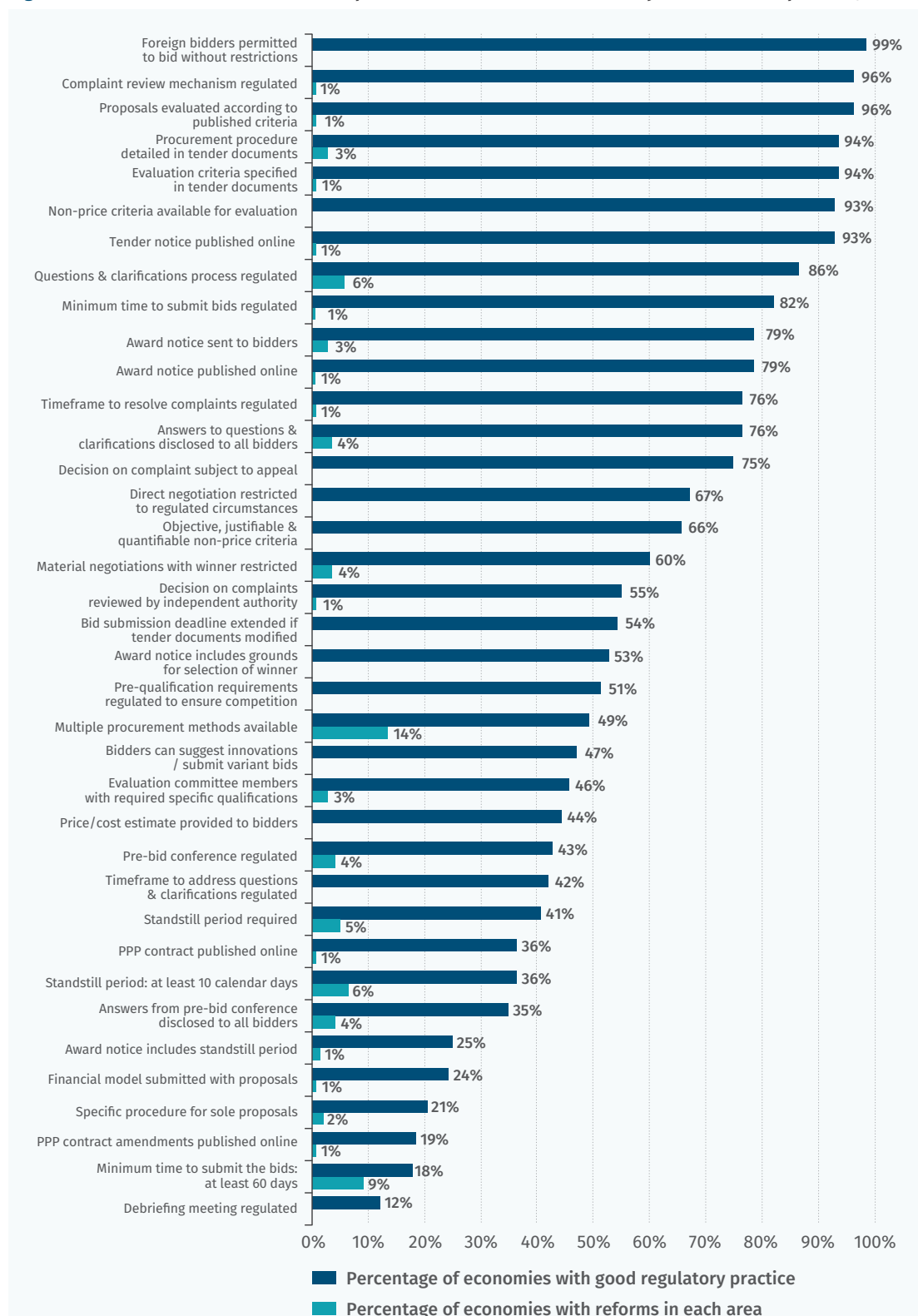
- › The tender documents specify the qualification requirements (or the pre-qualification requirements when applicable).
- › The qualification requirements (or the pre-qualification requirements, when applicable) are effectively regulated to ensure equal access for all qualified bidders to a PPP tendering process without limiting competition.
- › Potential bidders can submit questions to clarify the public procurement notice and/or the request for proposals (RFP) and the answers are disclosed to all potential bidders.
- › Potential bidders can suggest innovations to improve the tender documents or the procurement approach, including through the submission of variant bids, value engineering, and/or technologically neutral options.
- › There is a set timeframe for the procuring authority to provide answers to the bidders' questions or requests for clarification.
- › If any changes or modifications are made to the tender documents, the bid submission deadline is extended sufficiently to allow the potential bidders to adjust their bids.
- › The procuring authority conducts a pre-bid conference to further inform the potential bidders, and clarifications provided during the conference are disclosed to all potential bidders.
- › Bidders prepare and submit a financial model with their proposals or are asked to fill out the pro-forma financial model prepared by the procuring authority.
- › The procuring authority evaluates the proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents.
- › Non-price criteria can be used for the bid evaluation and such criteria are justified, objective, and quantifiable.
- › The procuring authority provides a cost estimate or value of a PPP contract in the tender documents.
- › The procuring authority follows a specific procedure to guarantee value for money if only one proposal is submitted.
- › The procuring authority publishes the award notice online.
- › The procuring authority provides all bidders with the results of the PPP procurement process, including the grounds for the selection of the winning proposal.
- › The procuring authority provides the bidders with the option of holding a debriefing meeting to discuss why their bids were not selected.
- › There is a standstill (or a pause) period of at least 10 calendar days after the notice of intent to award a contract is issued and before the contract is signed to allow unsuccessful bidders to challenge the award decision, and this period is specified in the RFP documents or in a notice of intent to award a contract.
- › Any material negotiations between the selected bidder and the procuring authority after the award and before the signing of a PPP contract are restricted and regulated to ensure transparency.
- › There is a specific complaint review mechanism for complaints related to the PPP procurement process.
- › There is a set timeline during which decisions on complaints will be issued.
- › The decision on complaints is subject to appeal.
- › The original complaint or appeal is reviewed by an independent body (other than a procuring authority or the courts).
- › The procuring authority publishes the signed PPP contract and its amendments online.



From Figure 11, it follows that some of the most basic requirements for a sound procurement process are very common, including the presence of a complaint review mechanism, inclusion of the procurement process details in the tender documents, and evaluation of the proposals according to published criteria. Interestingly, allowing foreign bidders to participate in PPP tenders is also rather typical. On the other hand, some of the more advanced procurement practices are relatively rare, including the possibility of holding a debriefing meeting, an online publication of contract amendments, and having a specific procedure when only one bid is received. Surprisingly, allowing at least 60 calendar days for the bidders to prepare and submit their bids is a threshold that is attained by a very limited number of countries (18 percent).



**Figure 11 | Share of Economies that Adopt Good Procurement Practices by Scored Areas (percent, N=140)**

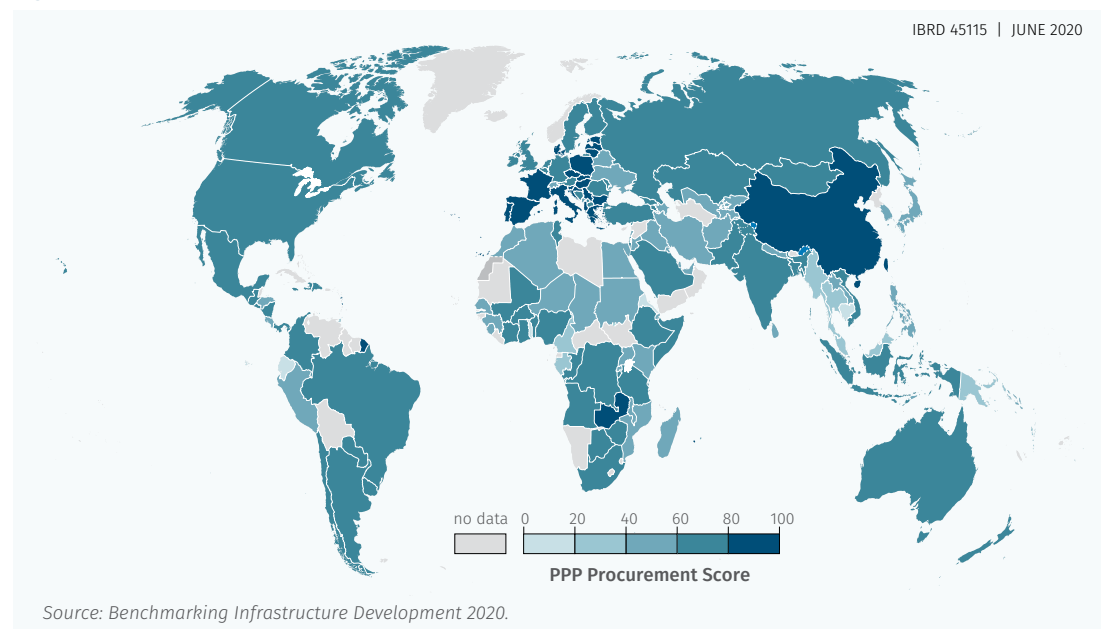


Source: Benchmarking Infrastructure Development 2020.

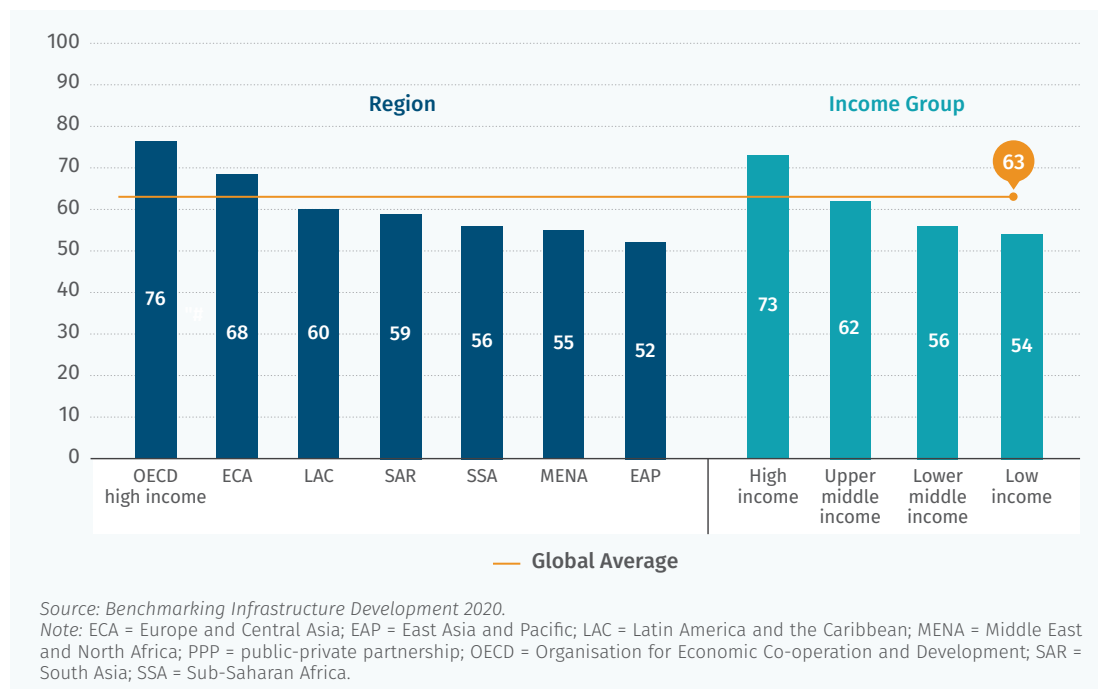
Some important reforms were introduced between June 2017 and June 2019. The only good practices area that experienced significant reforms is availability of different procurement methods, with 14 percent of the surveyed economies having introduced more flexibility in their frameworks when it comes to the private partner selection process. Additionally, a requirement to provide at least 60 days to submit bids was adopted in 9 percent of the surveyed economies. Another notable reform, a standstill period, was introduced by 5 percent of the surveyed economies, and in 6 percent the standstill period is now at least 10 days, which is considered the best practice, contributing to a more effective and efficient complaint mechanism. The only other area where more than 5 percent of economies have introduced reforms is the regulation of questions and clarifications during the PPP procurement process; that is now regulated by an additional 6 percent of the surveyed economies.

The *Benchmarking Infrastructure Development 2020* data reveal regional and income group variations in the average score for the PPP procurement phase (Figures 12 and 13). The OECD and high-income economies lead in the scoring (76 and 73 points, respectively), followed by the Europe and Central Asia (68 points), Latin America and the Caribbean (60 points), and the South Asia (59 points) regions. There is a significant gap between the best performing region (76 points) and the worst performing one (52 points). The East Asia and Pacific region has the lowest average score, but the greatest intraregional variance is observed in the Sub-Saharan Africa region, with scores ranging from 5 to 82 points, slightly higher than in the EAP region, where the minimum and the maximum scores are 8 and 80 points respectively. When disaggregated by income level, the data reveal the following trend: The lower the income level of a country, the lower are its scores for the PPP procurement phase.

**Figure 12 | Global Overview of PPP Procurement Scores (score 1–100, N=140)**



**Figure 13 | PPP Procurement, Score by Region and Income Group (score 1–100, N=140)**



The analysis that follows focuses on two parts of the PPP procurement phase: first, the method to select a private partner by assessing, in particular, the availability of alternative competitive methods but also addressing the possibility of using direct (non-competitive) negotiations; and, second, the existence of a complaints review mechanism.

## PPP Procurement Methods

One of the most important steps in managing a PPP transaction is defining its procurement strategy. The main goal of a procurement strategy is to define the optimal procedure to select the best solution for a project (from a technical and a value for money perspective) and the most competent private partner to implement that solution. This typically requires a fair, competitive, transparent, and efficient procurement process. However, the best procurement strategy to achieve these objectives may depend on the context. This means that the best procurement method will depend on the country context, the nature and capacity of the government institutions involved, and the characteristics of a particular project.<sup>20</sup>

Regulations may limit the availability of certain PPP procurement methods. In some economies, the existing laws and regulations prescribe a specific process (procurement method) to be followed to procure all PPP projects; in others, there is more flexibility, depending on the type of project. Although having a prescriptive regulatory framework in relation to the available procurement methods may improve the transparency of the procurement process overall, there are significant advantages to retaining flexibility to adapt procurement processes to the needs of a particular project.<sup>21</sup>

*Benchmarking Infrastructure Development 2020* collects data regarding the availability of the two most common procurement methods (open and restricted tendering, the latter referring to a bidding process with a pre-qualification stage) and the three more advanced/innovative ones: a multi-stage tendering, a competitive dialogue, and the best and final offer (BAFO) process. The survey includes a residual category to capture other interesting non-standard methods in the surveyed economies. Additionally, the survey inquires whether these methods are available or are required to be used as a default in each economy. It is important to note that the names of the different methods, their exact features, and the limits among them vary by jurisdiction, and what follows is just a stylized discussion.

**Open tendering** is open to all interested bidders, and the most economically advantageous bid wins without holding any contract negotiations. While such a method is presumed to foster an effective competition and value for money, there are arguments to the contrary in the case of PPPs since open tendering is very procedure oriented and is primarily designed for procurement of simple or standardized goods, works, and services. **Restricted tendering** (also known as open tendering with pre-qualification) is a competitive procurement method with a pre-qualification stage, during which the technical, legal, financial, and other capacities of potential bidders are assessed. Thus, compared to the open procedure, competition is somewhat limited in a restricted tendering. However, by limiting the number of bidders for which proposals would actually be evaluated, the danger of low-quality bids is significantly decreased. Moreover, uncertainty regarding the amount of time required to evaluate each bid also diminishes.<sup>22</sup>

A common example of a **multi-stage procurement method** is a two-stage tendering, which may or may not be preceded by a pre-qualification stage or include negotiations. In a two-stage tendering, the technical and financial proposals are submitted separately, one before the other, rather than simultaneously. If negotiations are envisaged as part of this procedure, bidders may also be able to assist the procuring authority in defining the technical requirements and the scope of work for a project. A **competitive dialogue** procedure is commonly used to procure particularly large or complex projects, including implementation of major integrated transport infrastructure projects or projects involving complex and structured financing; it is also used in cases where procuring authorities are unable to define the means of satisfying their needs or of assessing what the market can offer in terms of technical, financial, or legal solutions.<sup>23</sup> In a competitive dialogue procedure, pre-qualified bidders are invited to participate in a dialogue to define the means best suited to satisfying the contracting authority's needs. After a dialogue is concluded, bidders submit their final bids based on the solution(s) specified during the dialogue and the winning bid is usually determined on the basis of the best price-quality ratio.<sup>24</sup> The **best and final offer** process is usually seen as a tool or an option within a larger procurement process to allow bidders to amend or modify their proposals after a round of negotiations or clarification sessions with a procuring authority. The BAFO process may also be helpful when there are two or more preferred bids that are almost identical, and it is impossible to determine a winner.

In the surveyed economies, open and restricted tendering remain the two most common methods reflected in the procurement-related regulations, with the restricted method being the most prevalent. More than 90 percent of all surveyed economies make restricted tendering available (64 percent) or prescribe it as a default method (29 percent). The popularity of the restricted procedure is expected, given the complexity of most PPP arrangements, which makes appropriate the use of a pre-qualification step. At the same time, more than two thirds (72 percent) of the surveyed economies either make an open tendering available (51 percent) or prescribe it as a default method (21 percent). Advanced procurement methods are not as widespread overall, with penetration rates below 50 percent in the economies in question. Among such methods, the most popular one is the competitive dialogue, which is seen in the 45 percent of the surveyed economies.

Restricted tendering is a default method mostly in countries in the bottom income group, in which economies overwhelmingly require a pre-qualification step (61 percent of all the surveyed low-income economies have such a requirement). This tendency might indicate that the issue of insufficiently

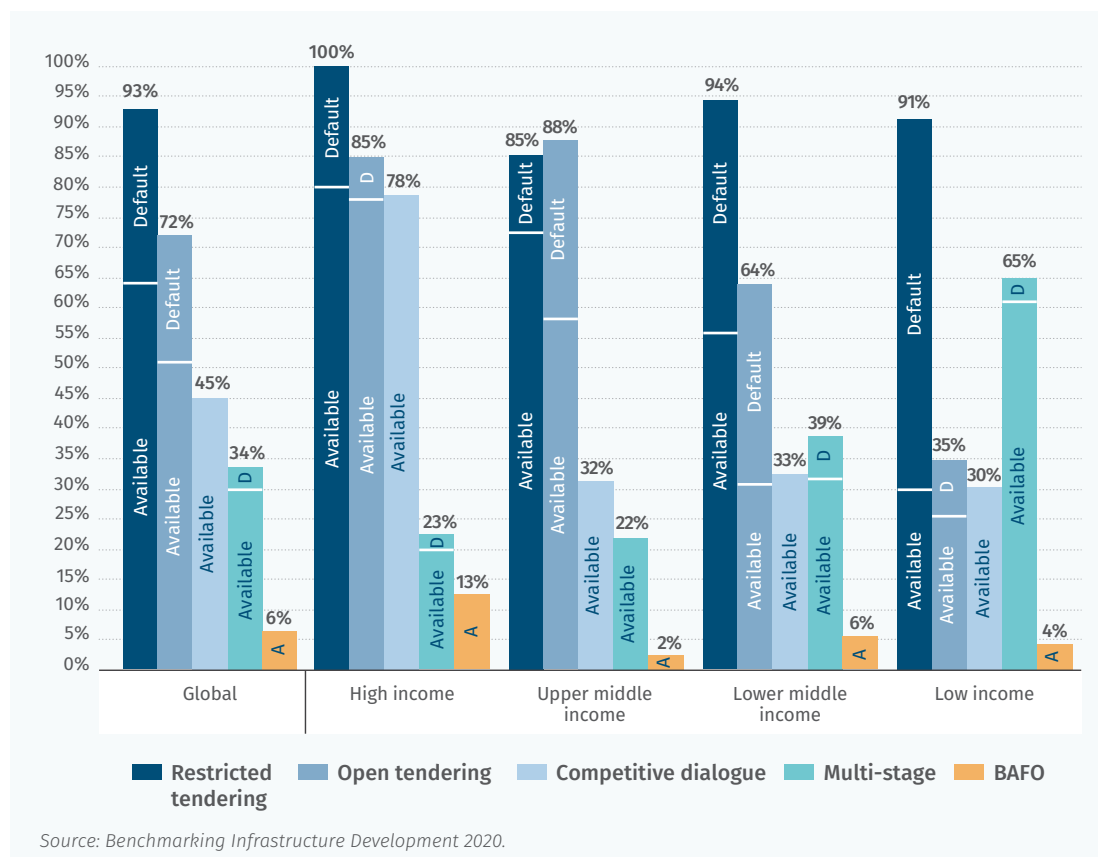
qualified bidders is a serious concern in the less developed economies and a requirement to have a pre-qualification stage there acts as an important backstopping mechanism against further low-quality bids.

Open tendering is more commonly used as a default method in the middle-income economies (both upper and lower-income groups), in which almost a third (33 percent in the lower-middle and 29 percent in the upper-middle-income groups) of all surveyed economies in each income group prescribe it. While requiring the use of an open tendering by default may or may not be justified in these economies (potentially, for reasons of capacity limitations of procuring authorities), good practice suggests that allowing procuring authorities a choice of procurement methods, depending on the needs of a specific project, would be preferred.

The more advanced procurement methods (a multi-stage tendering, a competitive dialogue, and a BAFO) are predictably common in the OECD and high-income economies, where the penetration rate for some of these methods reaches 90 percent (OECD) and 78 percent (high income) of the total surveyed economies in the region and income group. A surprising finding is that a multi-stage procurement method is also common in the low-income group (65 percent of the economies surveyed in the income group), mostly in the countries of the SSA region, with a 59 percent penetration rate. This is in contrast with the OECD-high-income economies, where competitive dialogue is the most popular option.

From Figure 14, it follows that the lower the income level of a country, the more likely it is to prescribe a certain procurement method to be used as a default rather than making it available or, in other words, the more prescriptive is its regulatory framework.

**Figure 14 | PPP Competitive Procurement Methods Globally and by Income Group, Available vs. Default (percent, N=140)**





Some economies introduced reforms between June 2017 and June 2019. For certain economies, such changes meant greater flexibility as more and, in some cases, more advanced procurement methods became available for PPP projects. This was the case, for example, in Zambia, where adoption of an amendment to the existing PPP Act made a competitive dialogue method and a BAFO option available. Peru and Ethiopia also permitted the use of a competitive dialogue method after their regulatory reforms were enacted. In other economies, reforms were more restrictive in nature, as was the case, for example, in Niger, where a newly adopted PPP law now requires a default two-stage bidding process preceded by a pre-qualification stage to procure all PPP projects.

#### **Box 8 | Direct Negotiations—Non-Competitive but Justified?**

A competitive selection process is the recommended route to procure PPP contracts. Its key advantages are transparency and the use of competition to choose the best proposal and thus it is most likely to result in value for money. An alternative to a competitive process is to negotiate directly with a private firm. There can be good reasons to do this, but they are relatively few, including: small projects with known costs; when there is no competitive interest in a project (for example, small changes in the scope of an existing project); when a previously conducted competitive process failed to attract enough interest; and when a procurement object comprises a state or a military secret, involves serving the first political figures in a country, or is needed in cases of emergencies and natural disasters.

Whenever a government allows for direct negotiations to be used under specific circumstances, these circumstances and their associated criteria must be clearly established in the regulatory framework. Direct negotiations must only be pursued once the suitable safeguards for value for money, transparency, accountability, and public interest have been established and operationalized.<sup>25</sup>

More than two thirds (69 percent) of all surveyed economies allow or envisage direct negotiations in their regulatory frameworks (96 economies). The majority (93 out of 96) also specify the circumstances in which this method can be used. The only three economies where its use is discretionary are Cameroon, Thailand, and Zimbabwe. Leaving the use of direct negotiations to the discretion of a procuring authority may set a dangerous precedent (especially if used often) and give market participants the impression that the whole process is non-transparent and is done behind closed doors, with unclear procedures, at potentially above-market prices, which may further deter capable and qualified private-sector players from the market in general.

Among the economies that do not allow or envisage direct negotiations in their procurement regulations, two regions stand out: SAR and LAC. The majority of the total surveyed economies in the SAR (67 percent) and LAC (61 percent) regions do not allow direct negotiations in their public procurement systems, including for the procurement of PPP projects.

## **Procurement Complaints Review Mechanism**

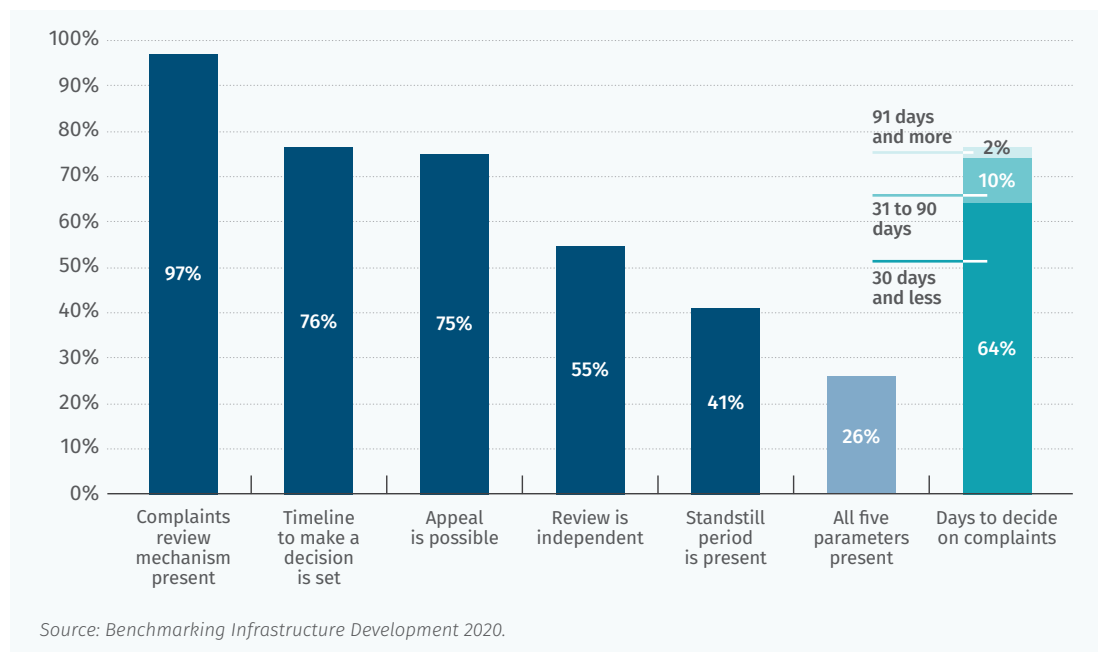
The main objective of a procurement complaint review system is to enforce the practical application of procurement regulations by ensuring that violations and mistakes during the procurement process can be corrected. A well-functioning procurement review and remedies system is in the interest of all stakeholders—private sector players, contracting authorities, and the general public.<sup>26</sup> Effective remedies for challenging procurement decisions are essential to build bidders' confidence in the integrity and

fairness of the overall procurement system. Key aspects of an effective recourse system are timely access, an independent review, efficient and timely resolution of the complaints, and adequate remedies.<sup>27</sup>

Given the relevance of this aspect, *Benchmarking Infrastructure Development 2020* looks for the existence of a complaints review mechanism that applies to PPPs. It also assesses the legal timeline for issuing a decision, a possibility of an appeal, and whether an independent body other than the courts is involved in the review.

The data collected indicate that 97 percent of all surveyed economies provide for a complaints review mechanism, except for Cambodia, Eritrea, Mauritius, Thailand, and Togo. Complaints review mechanisms are structured in different ways. Usually, the review and remedies system is made up of one or several elements, including the possibility for an aggrieved bidder to complain to a procuring authority or to an independent administrative body, such as a specialized public procurement review office (board) or an ombudsman; or to resort to the court system. There is no single recognized best practice for a complaints review system that would fit all economies. However, some favor a specialized review body that focuses only on procurement cases—compared to, for instance, the courts—for reasons of speed, simplicity of the review procedure, lower costs, and the specialization of staff on procurement cases, allowing them to build professionalism quickly.

**Figure 15 | Main Characteristics of the Complaints Review Systems, Standstill Period and Days to Decide on Complaints (percent, N=140)**



From Figure 15, it follows that while complaint review systems are universally present, defined timelines for a decision and the possibility of appeal are not as common (76 percent and 75 percent, respectively). The option of an independent review is even less common (55 percent). Upper-middle-income economies (54 percent) and economies in the LAC (67 percent) and SAR (50 percent) regions are the ones where an independent review is least common. Even rarer is a complementary requirement to have a standstill period. This is observed in only 41 percent of the surveyed economies, with mostly lower-middle-income countries failing to require a standstill period (81 percent) as well as all of the surveyed SAR and 92

percent of the MENA economies. Only 26 percent of economies have all five requirements present with the highest percentage in the high-income group (38 percent) and in the ECA region (52 percent).

A robust complaints review system should provide for a timeline within which the responsible review bodies will make a decision. Such clarity is important for the overall speed and efficiency of the review process. There is no universally established ideal timeframe: On the one hand, periods in excess of one month would be considered ineffective in promoting a fast review process; on the other hand, such short periods may not be realistic for very complex projects. Among 107 (76 percent) economies that establish a maximum amount of time within which a decision must be made, the overwhelming majority (84 percent or 64 percent of all economies) displays an adequate response time of 30 days or fewer. The bulk of economies within this group in fact establish even shorter periods, such as 10 to 21 days (48 percent) or fewer than 10 days (19 percent), with the quickest timeframe of two business days observed in Burkina Faso.

A good practice is to allow for the original decision to be reviewed by an independent party if a complainant is not satisfied. This is especially true if the first-tier reviewing authority is the procuring authority itself. According to the data collected, 105 (75 percent) surveyed economies envisage an option to appeal the original decision. Regionally, such an option is most commonly present in the ECA region (90 percent). Finally, in 77 economies (55 percent) either an original complaint or an original decision on a complaint is reviewed by an independent body other than the courts. Again, countries in the ECA region seem to be at the forefront of this trend (67 percent).

The presence of a complaints review mechanism does not automatically indicate that there is also a standstill period in place during which a contract signing is paused to give the aggrieved bidders a chance to challenge the award decision before the contract is executed. In the case of the surveyed economies, only 57 out of the 135 economies (or 42 percent) that envisage a complaints review system in their regulations also provide for a standstill period. Finally, if a decision on a complaint is required before the standstill period elapses, such a decision would be particularly relevant and timely. However, this happens in only a handful of economies (14 economies or 10 percent of the total), and it is seen mostly in high- and low-income economies (15 percent and 17 percent, respectively). Economies in only three regions display this relationship, including the ECA (10 percent), OECD (19 percent), and SSA (18 percent). Specific country examples include Burkina Faso, Burundi, the Republic of Congo, Italy, Lithuania, Mali, Portugal, Romania, the Russian Federation, the Slovak Republic, Slovenia, Spain, and Zimbabwe.

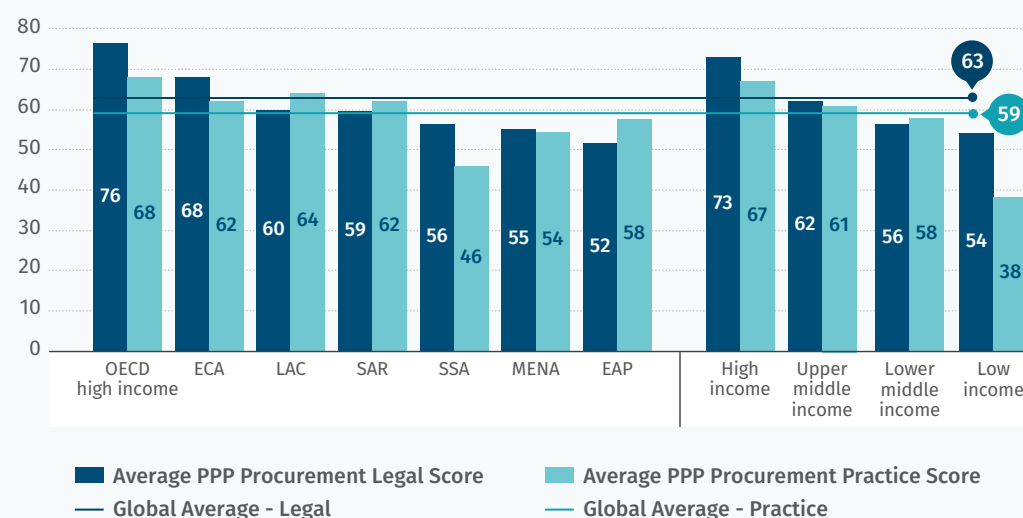
Some economies are already moving in the right direction by addressing the issue of a standstill period. In 2017, Zimbabwe, for example, adopted the Public Procurement and Disposal of Public Assets Act No 5/2017, which introduced a 14-day standstill period. Another improvement happened in Benin, where a PPP Law was adopted together with its supporting decrees. Thus, both the Law No 2016-24 in 2017 (PPP Law) and the Decree No 2018-028 in 2018 (Decree on PPP Commission) establish that a contract cannot be signed before the expiration of an appeal period of 15 working (21 calendar) days following an award notice.

### Box 9 | Pilot Practice-Based Survey—Findings for Procurement Stage

A procurement process clearly defined in the regulatory framework is as critical as its implementation to ensure a transparent and competitive tendering process. A pilot of de facto questions was included in *Benchmarking Infrastructure Development 2020* to capture whether the written provisions are applied in practice.<sup>28</sup>

Comparison of the average legal and practice scores during the procurement stage (Figure B9.1) displays different trends from those observed during the preparation stage. On average and globally, practice scores lag behind the legal ones (by 4 points) indicating that international good practices, while regulated on paper, are not always followed in practice.

**Figure B9.1 | Procurement of PPPs: Legal and Practice Scores by Region and Income Group (score 1–100, Legal N=140, Practice N=104)**



Source: *Benchmarking Infrastructure Development 2020*.

Note: ECA = Europe and Central Asia; EAP = East Asia and Pacific; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; PPP = public-private partnership; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia; SSA = Sub-Saharan Africa.

The data show differences across regions and income groups. As with preparation, the general trends defined by the legal scores are mostly followed by practice ones. High-income economies display the highest levels of both types of scores, while low-income economies demonstrate the lowest (54 and 38, respectively). Interestingly, the low-income group has the largest gap between legal and practice scores among all income groups (16 points) indicating that low-income economies are facing major challenges in implementing their regulatory requirements.

Among regions, LAC, SAR and EAP economies display practice scores above legal ones, raising questions about the reasons for the disparity. On the contrary, SSA economies lag behind in implementation, presenting the greatest gap among regions (10 points difference between legal and practice scores). Implementation of the complaint review mechanisms part of the procurement phase is further behind than implementation of the regulatory requirement (36 points).

# PPP Contract Management

Adequate completion of preparation and procurement phases certainly marks an important milestone for PPP project success. A signed PPP contract and accompanying financial closure, however, only indicate that the project is finally ready to be implemented, not that it has reached the finish line. In fact, it is the successful completion of this implementation phase that will determine whether the project delivers the expected value for money. Therefore, procuring authorities need to establish a sound PPP contract management system that allows them to effectively oversee the implementation process.

Managing the implementation of a PPP contract is the lengthiest of the stages of delivering an infrastructure project. Through the proper preparation and procurement of a project, implementation rewards the diligence used in the preceding phases and maintains its value for money. PPPs are long-term projects and their execution entails a range of construction and operations functions. While smooth implementation is desired, contracts inherently face changes in circumstances. Contracts cannot avoid all such variable conditions but rather they should create the mechanisms to address changes in circumstances should they arise.

*Benchmarking Infrastructure Development 2020* assesses the extent to which surveyed economies themselves have addressed the major elements of PPP contract management. In doing so, it measures not only whether the regulatory frameworks and generally followed practices provide adequate oversight frameworks but also whether there exist mechanisms that address changes in the structure of the private partner, renegotiations of the initial agreements, and dispute resolution. It also evaluates whether contract features, such as lenders' step-in rights and contract termination and the associated consequences, are defined in detail.<sup>29</sup> Box 10 presents a summary of good practices that are applicable to PPP contract management.



#### **Box 10 | PPP Contract Management—Good Practices Scored in Benchmarking Infrastructure Development 2020**

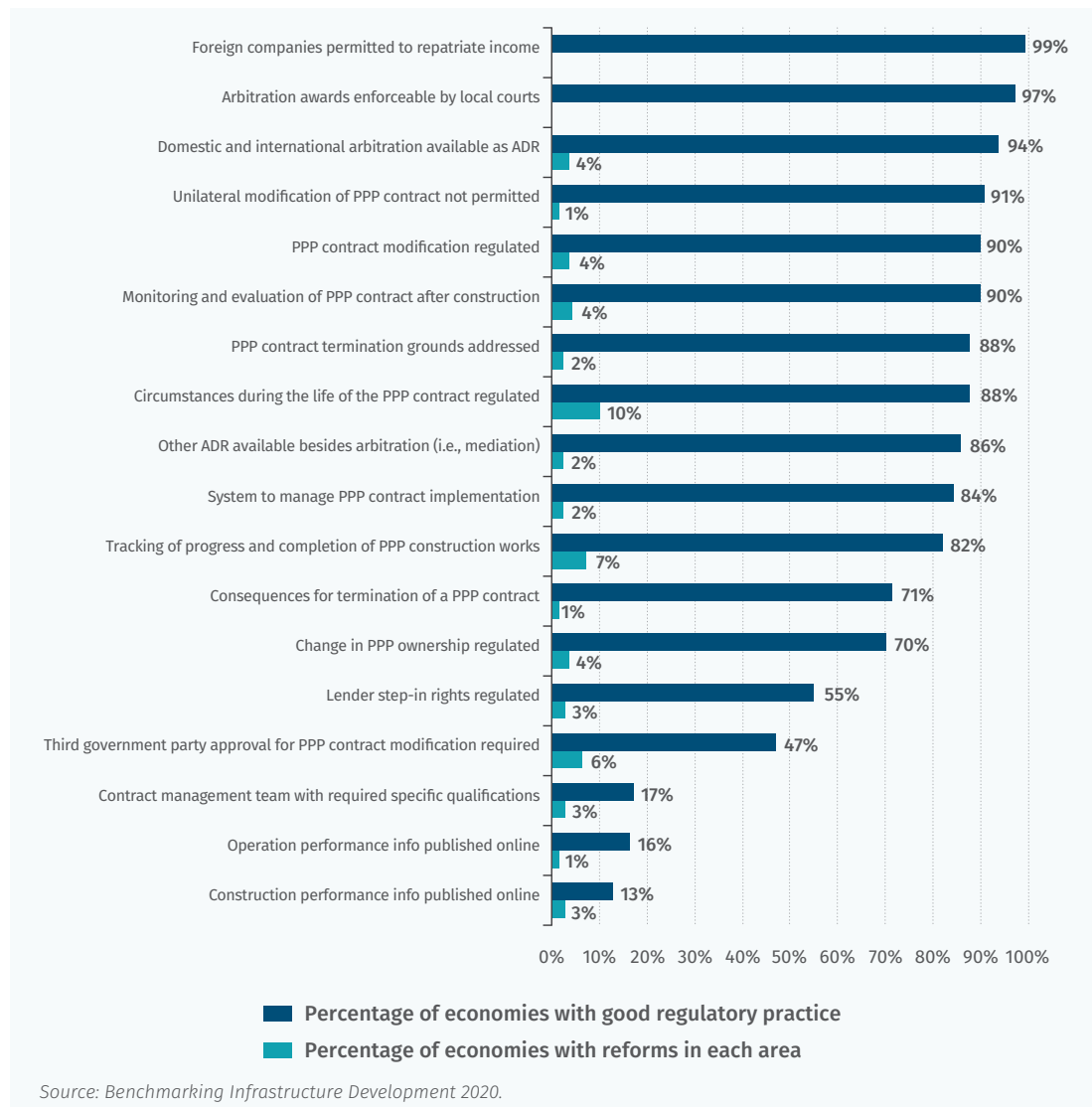
The following is a list of good practices that help ensure successful implementation and delivery of PPP projects:

- › The procuring (or contract management) authority has a system to manage the implementation of the PPP contract, including establishing a PPP contract management team; involving some contract management team members in the project starting at the procurement stage; and adopting PPP implementation manuals and risk mitigation mechanisms.
- › The members of the PPP contract management team are required to meet minimum qualifications.
- › The procuring (or contract management) authority establishes a system for tracking progress and completing construction works under the PPP contract, with relevant information made publicly available online.
- › Monitoring and evaluation systems are in place to oversee the implementation of the PPP contract after the construction stage, with relevant information publicly available online.
- › Foreign companies are permitted to repatriate income generated from PPP projects.
- › Potential changes in the structure of the private partner are expressly regulated, requiring the replacing entity to be at least as qualified as the original private partner.
- › Modification and renegotiation of the PPP contract are expressly regulated to reduce incentives to use these changes opportunistically by either the private partner or the procuring authority.
- › A third-party government approval is required for contract modifications.
- › The procuring (or contract management) authority cannot unilaterally modify a contract without third-party approval.
- › Specific circumstances (force majeure, material adverse government action, change in the law, refinancing) that may arise during the life of the PPP contract are expressly regulated.
- › Alternative dispute resolution mechanisms are available, including mediation, dispute resolution boards, and domestic and international arbitration.
- › Arbitration awards are enforceable by local courts.
- › Lenders are given step-in rights for cases when the private partner is at risk of default or if the PPP contract is under threat of termination for failure to meet service obligations.
- › Grounds for termination of the PPP contract and its associated consequences are well defined.

A significant number of contract management good practices are adopted by most (80 percent) of the economies surveyed (Figure 16). These practices cover enforcing arbitration awards, the prohibition of unilateral contract amendments, monitoring the implementation of a PPP contract during and after construction, and identifying grounds for contract termination. However, in the areas of disclosing contract management information to the public, including publishing information pertinent to project construction and operation performance, only 13 and 16 percent respectively of the surveyed economies regulate such practices. Qualifications of the members of the contract management team are only detailed in 17 percent of the economies. Figure 16 displays the percentage of economies that require compliance with each of the good practices considered for PPPs contract management.

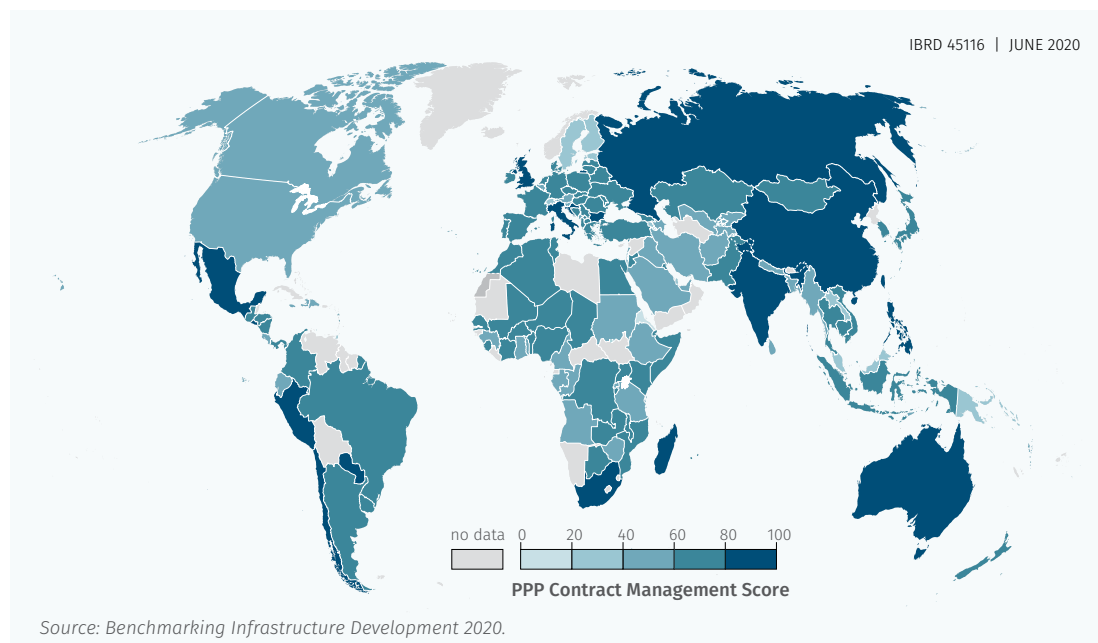


**Figure 16 | Share of Economies that Adopt Good Contract Management Practices by Scored Areas (percent, N=140)**

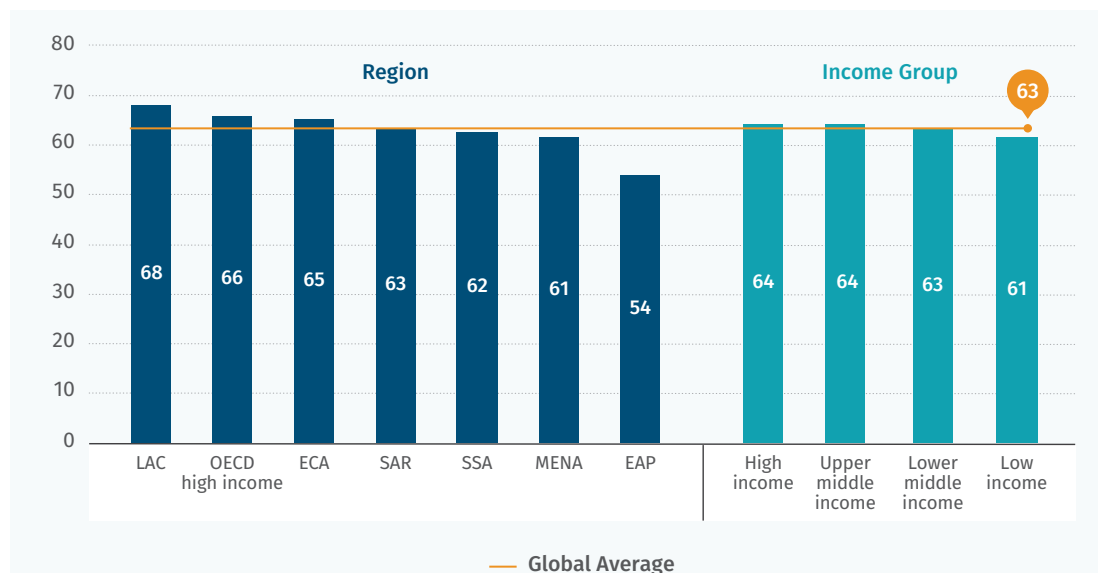


Three of the good practice areas measured stand out as having experienced more reforms since the last edition of the report. Ten percent of the surveyed economies have improved the regulation of circumstances that may occur during the life of the PPP contract (with these frameworks now expressly addressing issues such as force majeure among others). Proper tracking of works during the construction stage of a PPP has also been newly regulated by 7 percent of the surveyed economies. Finally, 6 percent of the economies have adopted new requirements for third-party approval of PPP contract modification, which will help increase due diligence and dissuade opportunistic behavior on renegotiation processes.

**Figure 17 | Global Overview of PPP Contract Management Scores (score 1–100, N=140)**



**Figure 18 | PPP Contract Management, Score by Region and Income Group (score 1–100, N=140)**



Source: Benchmarking Infrastructure Development 2020.

Note: ECA = Europe and Central Asia; EAP = East Asia and Pacific; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; PPP = public-private partnership; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia; SSA = Sub-Saharan Africa.

The *Benchmarking Infrastructure Development 2020* data reveal only slight regional and income group differences in the average score for PPP contract management (Figures 17 and 18). The Latin America and Caribbean region has the highest score, followed by the OECD high-income region. Intraregional variance is high in all regions in this thematic area. For example, scores within the Sub-Saharan Africa

region are as low as 4 points and as high as 86 points. In contrast, there is little variation across regions. The average for the leading region (Latin America and the Caribbean), 68, is only 14 points ahead of the worst-performing region (East Asia and Pacific). When the data are disaggregated by income level, the 2020 data also display very similar scores across income groups, with 3 points difference between the average of the high-income region (64) and the low-income region (61).

The next sections discuss additional findings from the analysis of the survey data, focusing on two key processes of PPP contract management: the renegotiation of a PPP contract and dispute settlement mechanisms.

## Renegotiation of the PPP Contract

PPP project implementation cannot be guaranteed to go smoothly. Properly procured PPP projects undergo multiple layers of diligent preparation and necessary institutional approvals. Yet, even with such safeguards in place, circumstances arise throughout the life of a PPP contract making it difficult if not impossible to implement in status quo contractual arrangements. The need to renegotiate certain elements of the contract hence may arise. The process of changes in contractual provisions, other than through an adjustment mechanism stipulated in the contract, is referred to as *renegotiation*.<sup>30</sup>

Regulating the renegotiation of PPP contracts ensures these contract amendments are not opportunistic, which would undermine the point of a competitive procurement process. In this respect, renegotiation can be a double-edged sword, generating positive outcomes by addressing the imperfect nature of PPP contracts, yet opening the door to opportunistic behaviors in the renegotiation process may lead to negative results as well. Opportunism can take the form of unjustified increases to tariffs or annuity payments to circumvent initial agreements or significantly changing the risk allocation structure thus fundamentally relieving either contractual party of its previous obligations. To avoid repercussions, therefore, renegotiation should be stringently restricted.<sup>31</sup> Meanwhile, the partnership nature of PPPs suggests that contract amendments should be balanced to preserve the rights and maintain the obligations of all stakeholders, which is also in the public interest.

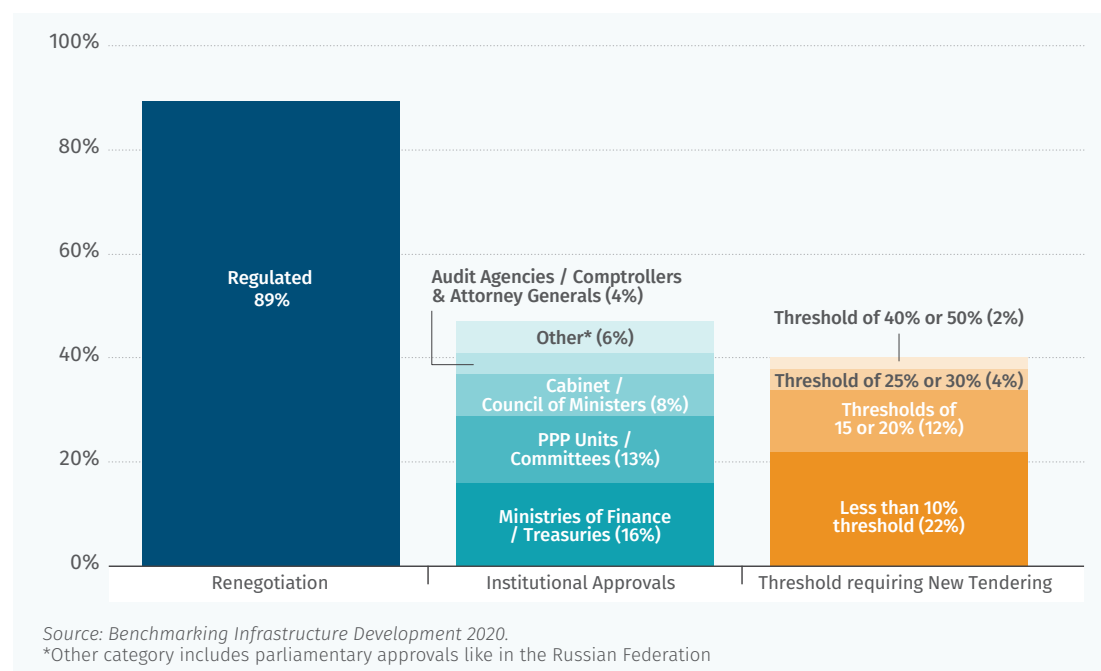
*Benchmarking Infrastructure Development 2020* assesses how renegotiations are regulated including requirements for third-party approvals and limitations to modifications of the scope of the contract, its risk allocation, the financial and/or economic balance, duration, and agreed price/tariff/annuity payments. Renegotiations are expressly regulated by the vast majority (89 percent) of surveyed economies. Figure 19 shows the main regulatory safeguards towards contract renegotiation adopted across economies: requiring certain institutional approvals and only allowing changes of scope up to certain thresholds. Other more specific limitations are much less common; for example, changes in risk allocation, despite how critical this issue is for PPPs, is discussed explicitly in only 24 of the surveyed economies in the context of renegotiation.

Avoiding opportunism gives justification to requiring approvals by government agencies other than the procuring authority itself. This approval process provides more impartial oversight over renegotiations of PPP contracts. Institutional approvals are a common trend among different economies, required in 66 of the surveyed economies. Nonetheless, the other surveyed economies lack such approval requirements and need to expressly engage additional government entities to monitor contract renegotiations and ensure that there is no risk of opportunism.

Within the pool of economies that require approvals to renegotiate PPP contracts, approving agencies vary. Nevertheless, a general categorization of approving agencies can be drawn from the data.<sup>32</sup>

Some economies have designated audit agencies/comptrollers and attorneys general with this role: Brazil, Thailand, and Zambia are among these 4 percent of the surveyed economies. The majority of economies that regulate this matter (16 percent), however, have given their Ministries of Finance or Treasuries this mandate. This is the case for example in Albania, Cambodia, Colombia, and Croatia. Ministry of Finance approvals ultimately help ensure that contracts remain fiscally prudent. A third category requires approvals by the Cabinet or Council of Ministers to renegotiate PPP contracts, as in Afghanistan, Bangladesh, the Arab Republic of Egypt, and Turkey, amounting to 8 percent of the economies. Afghanistan did not explicitly require such approvals until recently. Due to regulatory changes introduced in Afghanistan with the new PPP Law, it now safeguards PPP contract renegotiations with cabinet approvals through the High Economic Council.<sup>33</sup> Lastly, PPP units or committees are the approving agencies in 13 percent of the economies, including Benin, Bulgaria, Jordan, and Vietnam. Economies designating other approving agencies included 6 percent of the surveyed economies, among them Nigeria, Romania, Sudan, and the Russian Federation, where for example parliamentary approval is required.<sup>34</sup> Adopting any of the institutional approval approaches mentioned above helps check imbalances in the bargaining powers of either the procuring authority or the private counterpart by engaging a third party.

**Figure 19 | Renegotiation Safeguards Across Economies (percent, N=140)**



Institutional safeguards such as approvals also control situations where procuring authorities may unilaterally amend contracts. Unilateral amendments of government contracts are embedded to some extent in the legal traditions in particular of civil law economies. Several surveyed civil law economies (35) mainly in the MENA and LAC regions allow unilateral contract amendments by the procuring authority. Examples include El Salvador, Panama, and Qatar. This principle is fundamentally supported by administrative courts in countries like Lebanon and France, where the government is a contractual party. However, the authors' data show that only 35 of the 140 surveyed economies (25 percent) allow unilateral modifications of PPP contracts. More importantly, those unilateral modifications are exclusively under the purview of the procuring authority in only a handful of economies (13, or less than 10 percent).

Moreover, contracting entities in the different economies have been regularly instructed to keep contract amendments within certain limits. When renegotiations exceed these thresholds, a new tendering process is necessary to support competition. The objective is to ensure value for money for additional works and to give all bidders a level playing field. Thresholds are often established to ensure changes do not affect the overall object or scope of a contract. Among the 54 surveyed economies that expressly identified such thresholds, the limits ranged from as low as 3 percent of the original contract value in economies like Serbia to as high as 50 percent in economies like Costa Rica. Twenty-two percent of the economies have thresholds below 10 percent (Figure 19). Although the 10 percent threshold is represented in the bulk of economies, 29, this figure was enlarged by the EU economies collectively complying with EU Directives thresholds, namely EU Directive 2014/23/EU on the Award of Concession Contracts.

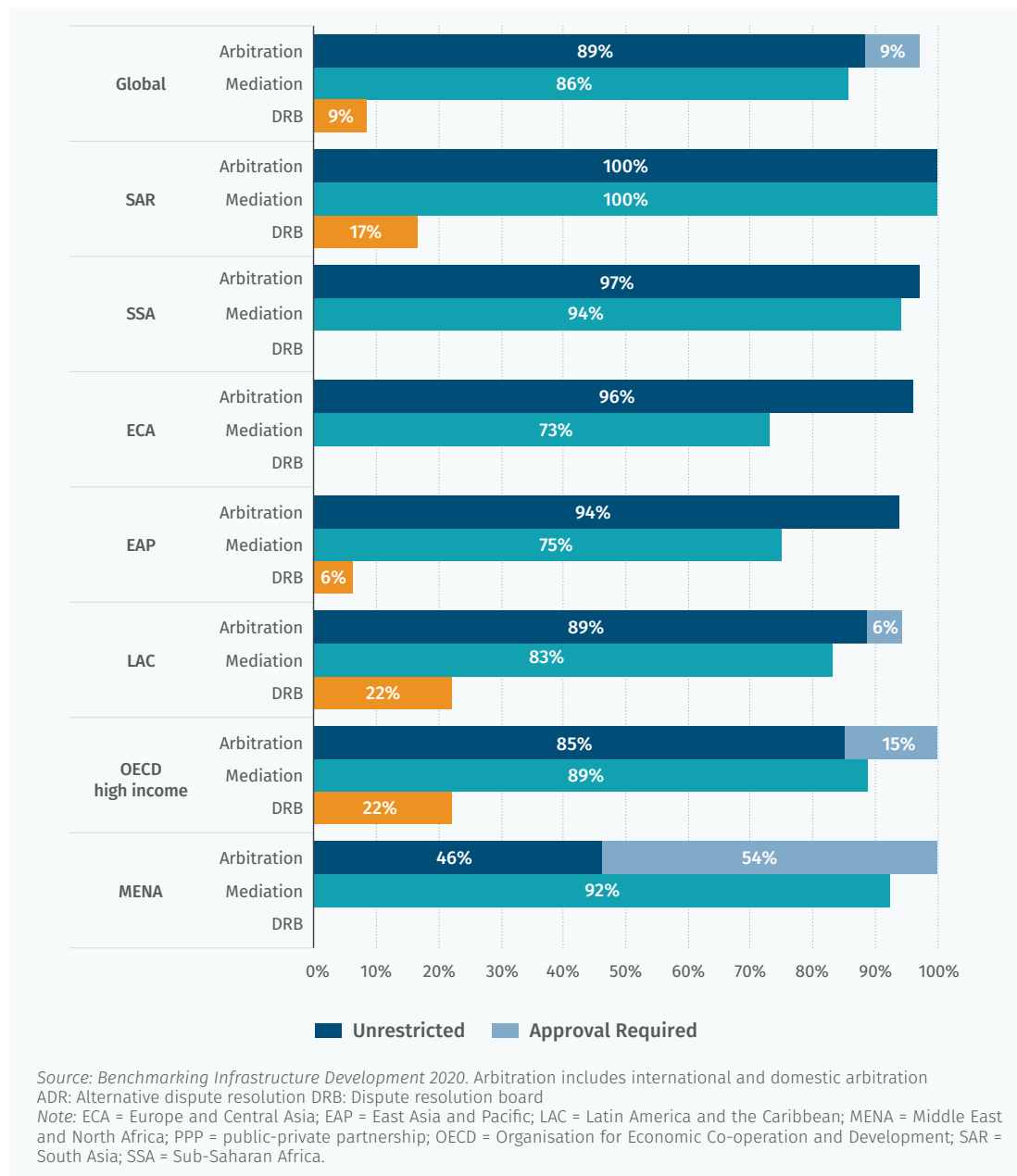
There are economies that have taken significant regulatory leaps towards addressing renegotiation since the last edition of this report. While PPP renegotiations were completely absent from governing regulations in economies like Lebanon, Rwanda, and Zimbabwe before June 2017, all such economies now address the issue of renegotiation. This is an appreciable step towards ensuring that renegotiation is no longer vulnerable to opportunistic behavior by contractual parties. In fact, Zimbabwe went even as far as addressing details of contract renegotiation like modifications to the financial and economic balance of a contract or changes to prices/tariffs in its regulatory reforms. The country now additionally requires institutional approvals and thresholds to be applied should renegotiations of PPPs take place. Rwanda also currently takes a similar renegotiation approval approach.

## Alternative Dispute Settlement Mechanisms during Contract Implementation

PPPs are often complex arrangements that engage multiple stakeholders, including the government, lenders, contractors, and investors. All such stakeholders need the assurance that if they choose to engage in infrastructure projects in an economy, their disputes will be resolved fairly and expeditiously.<sup>35</sup> Procedures should be designed to prevent disputes from escalating by using alternative dispute resolutions (ADRs). ADRs include arbitration, mediation, and third-party conciliation. These ADR mechanisms help parties resolve disputes without lengthy and costly litigation. *Benchmarking Infrastructure Development 2020* investigated how economies have brought in ADR to resolve disputes that arise during the PPP implementation stage. All surveyed economies but Eritrea have in fact explicitly identified some ADR scheme to resolve contract execution disputes. The types of ADRs regulated by surveyed economies are reflected in Figure 20.

Mechanisms in PPPs largely uphold contractual parties' ability to designate their preferred method of dispute resolution. This is done by allowing PPP contracts to reflect the chosen dispute settlement mechanism. Most economies from different regions adopt the approach that allows parties to tailor dispute settlement mechanisms in their contracts. And while there is flexibility among contractual parties to choose their preferred means, arbitration has nonetheless been consistently highlighted.

**Figure 20 | Types of Alternative Dispute Resolution (ADR) Mechanisms Regulated, by Region (percent, N=140)**



Arbitration is present in regulations to settle PPP implementation-related disputes. Almost all the surveyed economies (97 percent) regulate arbitration. Most regulations explicitly steer contractual parties to include arbitration as a mechanism. This is an approach Ethiopia adopted with the 2018 introduction of a PPP Proclamation that addressed previous gaps with regards to settling PPP disputes. While this Proclamation deferred to PPP contract parties to choose their preferred choice to resolve disputes, it explicitly mentioned arbitration as a choice for the parties to consider. Arbitration, although widespread, is not a flexible procedure in certain economies. France, in its concessions contracts regime, does not allow arbitration to be chosen to settle conflicts between a government party and its private counterpart. Brazil also restricts arbitration to domestic options only. This means that parties may choose arbitration to be held only in Brazil and in Portuguese for PPP contracts.<sup>36</sup>



In fact, there are economies (9 percent) that explicitly require institutional approval to seek arbitration. This safeguard could be justified by the implications of resorting to such a mechanism, such as costly litigation and sizeable financial awards incurred by taxpayers if the state is found to have violated a contract. Institutional pre-authorization of arbitration is required in economies including Algeria, Argentina, Belgium, Chile, the Arab Republic of Egypt, France, the Islamic Republic of Iran, Kuwait, Lebanon, Qatar, Saudi Arabia, and Spain. These economies represent a significant proportion of MENA region economies (54 percent). This approval layer is another element of the civil law economies mentioned above that is also present in some OECD-high-income economies (15 percent of them), such as Belgium, Chile, France, and Spain. It restricts recourse to arbitration in PPPs by requiring prior approvals as well.

Besides arbitration, there is a range of other dispute settlement options that economies could adopt. Mediation and third-party conciliation would be among the first options contractual counterparts are encouraged to pursue. Mediation is regulated by most economies around the world (120, or 86 percent of surveyed economies). Australia, for instance, necessitates before any further dispute settlement mechanism may be followed, like arbitration, that parties refer their dispute to a dispute resolution panel, and where such a panel was not able to make its decision, the matter must be referred for independent determination. Greece, India, Ireland, Pakistan, and Vietnam among others follow a similar route by emphasizing third-party conciliation.

Finally, in the context of ADR, *Benchmarking Infrastructure Development 2020* data specifically showcase the role of dispute resolution boards (DRBs) that are regulated in a select number of economies. DRBs are, in essence, independent bodies tasked with avoiding conflicts where possible and settling differences between contractual parties.<sup>37</sup> There are many solutions that such boards may offer to resolve disputes as swiftly and expeditiously as possible so that parties can maintain their services to the public. Paraguay necessitates a Technical Panel's recommendations be considered by disputing parties in a PPP contract.<sup>38</sup> However, only 9 percent of the surveyed economies—Australia, Argentina, Brazil, Chile, Greece, India, Ireland, New Zealand, the Netherlands, the Philippines, Paraguay, and Peru—explicitly entrust DRBs with a role in PPP implementation-related disputes. OECD-high-income and LAC economies make up most of the economies with DRBs.

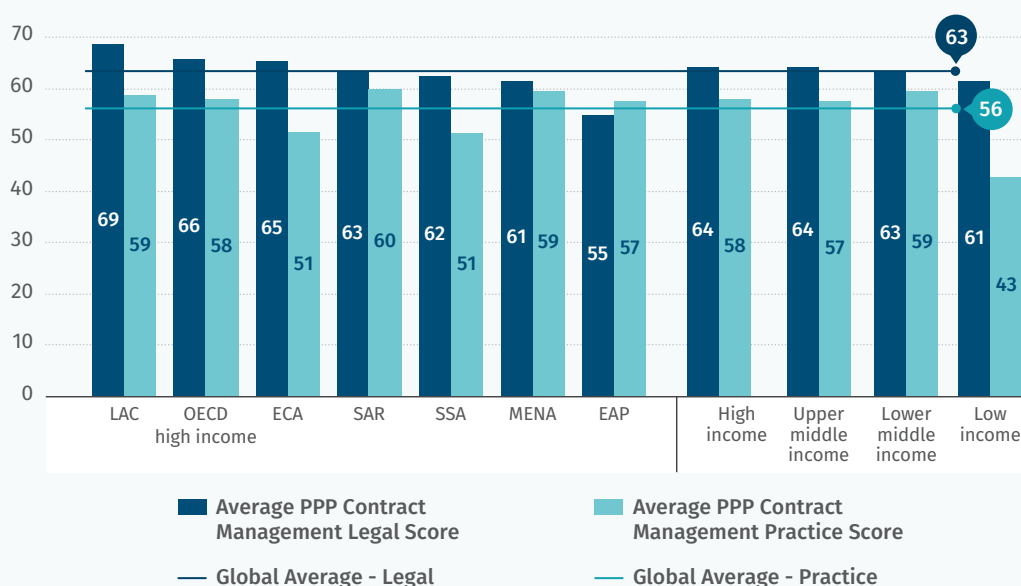
*Benchmarking Infrastructure Development 2020* highlights the improvements that economies around the world have made in addressing alternative dispute resolution mechanisms. In this respect, Sudan, for instance, has undertaken pivotal reforms by introducing a new PPP law in 2019. This law now explicitly addresses the need for PPP contracts to allow for a range of alternative dispute resolutions from mediation to arbitration on both domestic and international levels. Georgia has also taken a major step towards its regulation of alternative dispute settlement mechanisms that were not present in the same manner before 2018. With the approval of a new PPP law, Georgia pushes PPP contract parties to address their preferred dispute settlement mechanism and gives their choice priority over other methods like local courts.

### Box 11 | Pilot Practice-Based Survey—Findings for Contract Management

It is crucial to establish a sound PPP contract management system to oversee the implementation of the PPP contract. Such a system should not only be clearly defined in the regulatory framework but also carried out in practice. A pilot of de facto questions was included in *Benchmarking Infrastructure Development 2020* to capture whether the written provisions are applied in practice.<sup>39</sup>

In general, the global average legal score is higher than the practice score (by seven points). This difference is in the same direction but slightly higher than for the procurement phase (four points gap) (Figure B11.1).

**Figure B11.1 | Contract Management of PPPs: Legal and Practice Scores by Region and Income Group (score 1–100, Legal N=140, Practice N=104)**



Source: *Benchmarking Infrastructure Development 2020*.

Note: ECA = Europe and Central Asia; EAP = East Asia and Pacific; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; PPP = public-private partnership; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia; SSA = Sub-Saharan Africa.

The data show differences across regions. Unlike with the procurement phase, EAP is the only region that displays practice scores (57 points) above legal ones (55 points). All other regions face challenges in implementing their contract management regulatory requirements, with ECA having 14 points difference between legal and practice scores, SSA 11 points difference, and LAC a 10 points gap.

Income-wise a peculiar observation can be made: All income groups have similar average legal scores, varying from 61 to 64 points. However, low-income economies, while having a comparable score for the legal requirements (61 points), lag significantly in practice (43 points), indicating a relatively low compliance rate with contract management legal requirements. The use of arbitration as dispute resolution mechanism, and the enforceability of arbitral awards, are the areas where contributors considered that practice lags further behind regulatory requirements (34 points).

# Unsolicited Proposals

An unsolicited proposal (USP) is an alternative to a government-initiated PPP project. In a USP, the private sector entity submits to the government a proposal to develop a specific infrastructure project. In doing so, the private entity establishes the basic project specifications at its expense and then contacts the relevant government entity for approval. According to the World Bank Group's Private Participation in Infrastructure (PPI) database,<sup>40</sup> the use of USPs increased substantially in 2014 and peaked in 2016, when almost 20 percent of the PPP projects in the surveyed economies originated as USPs. In 2017 USPs remained important, originating 14 percent of all PPP projects, but they amounted to less than 5 percent of an increasing number of PPP projects in 2018.

USPs can help the public sector promote innovation in PPP projects by bringing knowledge and new ideas from the private sector. However, USPs also have raised serious concerns to public sector practitioners about some challenges inherent in their process, notably diverting public resources away from governments' strategic plans and priorities, failing to attract competition, and, ultimately, opening the door to corruption.<sup>41</sup> Allowing USPs implies granting private entities a leading role in identifying investment needs that typically require significant monetary resources. Hence, to leverage USPs, governments should figure out ways of encouraging private entities to propose innovative ideas for necessary and viable infrastructure projects while ensuring those projects are in line with the public interest and government priorities, and achieve the best value for money.



The best way for governments to harness the benefits of USPs while minimizing the associated risks would be to exercise a series of established good practices. Whenever a procuring authority receives an USP, it first needs to determine whether the project is potentially a good fit for its PPP program. If the authority decides to go with the USP, the next critical step is defining key objectives that the project is expected to fulfill. The authority should then rigorously assess the merits of the project. Key measures to be considered include: the demand for such a project; the alignment with the national infrastructure priorities as well as economic and social needs; and no overlap with the government's existing PPP pipeline.<sup>42</sup> Only if the USP is fully justified can the authority then initiate a transparent and competitive procurement process, in which both the USP proponent and other bidders are invited to participate in the selection process. Box 12 summarizes a list of good practices concerning USPs.

#### **Box 12 | Unsolicited Proposals of PPPs—Good Practices Scored in Benchmarking Infrastructure Development 2020**

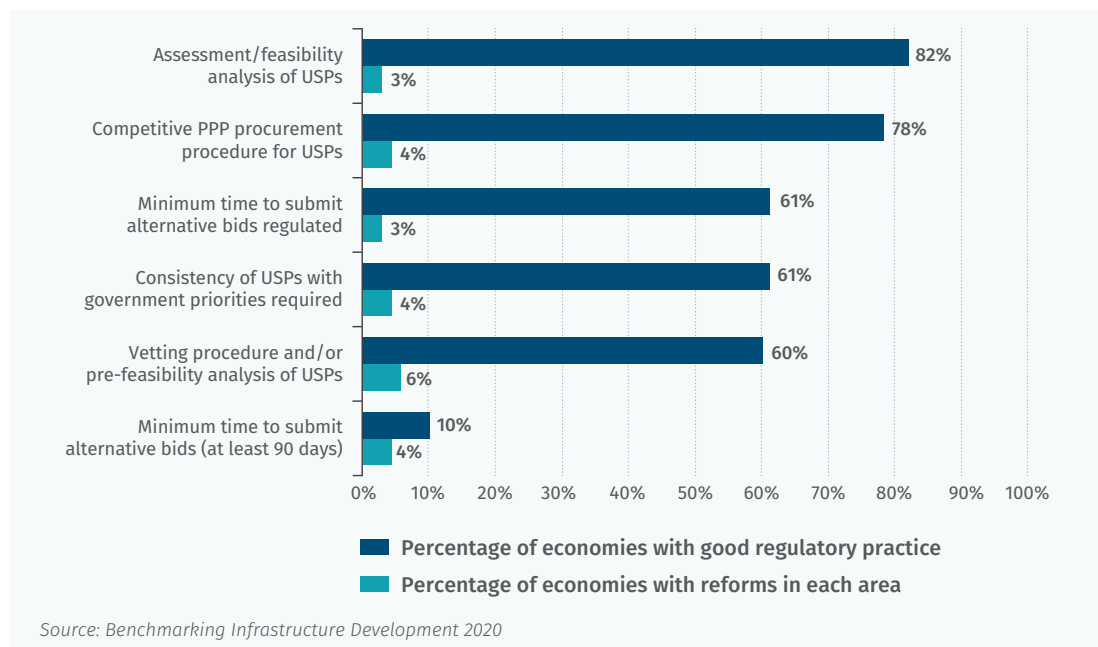
The following are among the good practices that help ensure transparency and competition for PPP projects originated as unsolicited proposals:

- › The procuring authority assesses the merits of the USP and ensures that it aligns with the government's investment priorities.
- › There is a vetting procedure and/or a pre-feasibility analysis before moving forward and fully assessing the unsolicited proposal.
- › If the USP is justified, the procuring authority initiates a competitive procurement procedure to select the private partner.
- › The procuring authority grants all potential bidders (besides the proponent) a minimum time to prepare alternative proposals.
- › The time to prepare alternative proposals is at least 90 days.

Out of the 97 economies in which USPs are taking place with or without explicit regulation, a large majority of them (82 percent) require that the procuring authorities conduct an assessment of the USPs presented by the private sector to ensure their viability. This is the most commonly followed good practice. However, on the same area of assessment other related good practices are much less common: For example, only 61 percent of the economies also ensure more directly the consistency of the USPs with other government priorities, and even less, 60 percent, have an additional vetting procedure or pre-feasibility analysis to avoid having to incur the cost of a full assessment for all proposals received from the private sector.

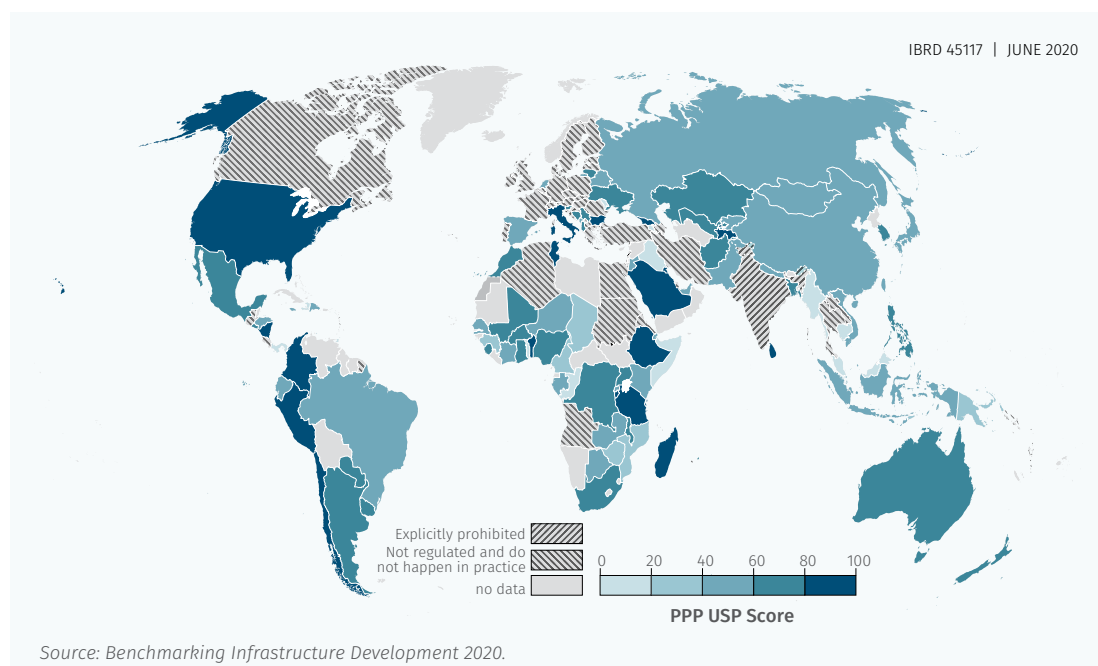
The second most common good practice followed by countries that use USPs is the requirement to hold a competitive procurement procedure in order to select the private partner that will ultimately develop the project (78 percent) (Figure 21). This is important because it implies that in most economies that use USPs, procuring authorities are required to give other potential partners the opportunity to outbid the original proponent, helping to ensure value for money on the final project delivery. However, only 60 percent of the economies actually require by law a minimum period during which alternative bidders may prepare their proposals, and in just 10 percent is this minimum period at least 90 days.

**Figure 21 | Share of Economies that Adopt Good USP Practices by Scored Areas (percent, N=97)**

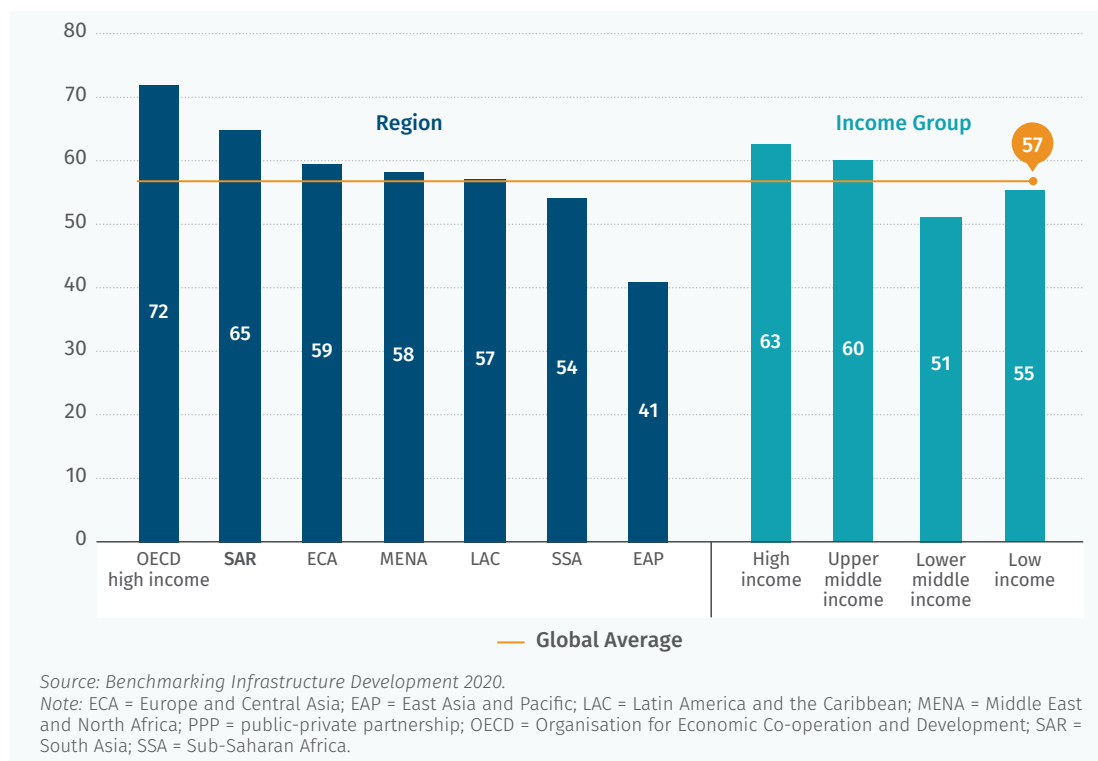


Adopted reforms of USP regulations are equally distributed among the measured good practices, with 3 to 4 percent of the economies having adopted reforms in most areas. A specific vetting procedure or pre-feasibility analysis for unsolicited proposals was adopted by 6 percent of the economies since June 2017. The introduction of this analysis before moving forward and fully assessing the unsolicited proposal reinforces the details of the feasibility analysis and makes the process more robust and potentially more efficient.

**Figure 22 | Global Overview of USP Scores (score 1–100, N=140)**



**Figure 23 | USPs, Score by Region and Income Group (score 1–100, N=97)**



The *Benchmarking Infrastructure Development 2020* data reveal regional and income group differences in the average score for USPs (Figures 22 and 23). The OECD high-income and South Asia regions stand out from the rest of the regions. The East Asia and Pacific region has the lowest average score, whereas the Latin America and Caribbean region has the highest variation in scores among economies within the region, ranging from countries that do not regulate any of the specified areas (zero points) to countries that regulate all of them according to the benchmarks used by this initiative (100 points). Disaggregated, the data by income level reveal a clear pattern: the higher the income group level, the higher the average scores on USPs.

The following subsections will first highlight the different regulatory approaches to governing USPs across economies and then discuss in more detail how the surveyed economies regulate the procedure to select the final private partner to carry out the project originated as a USP.

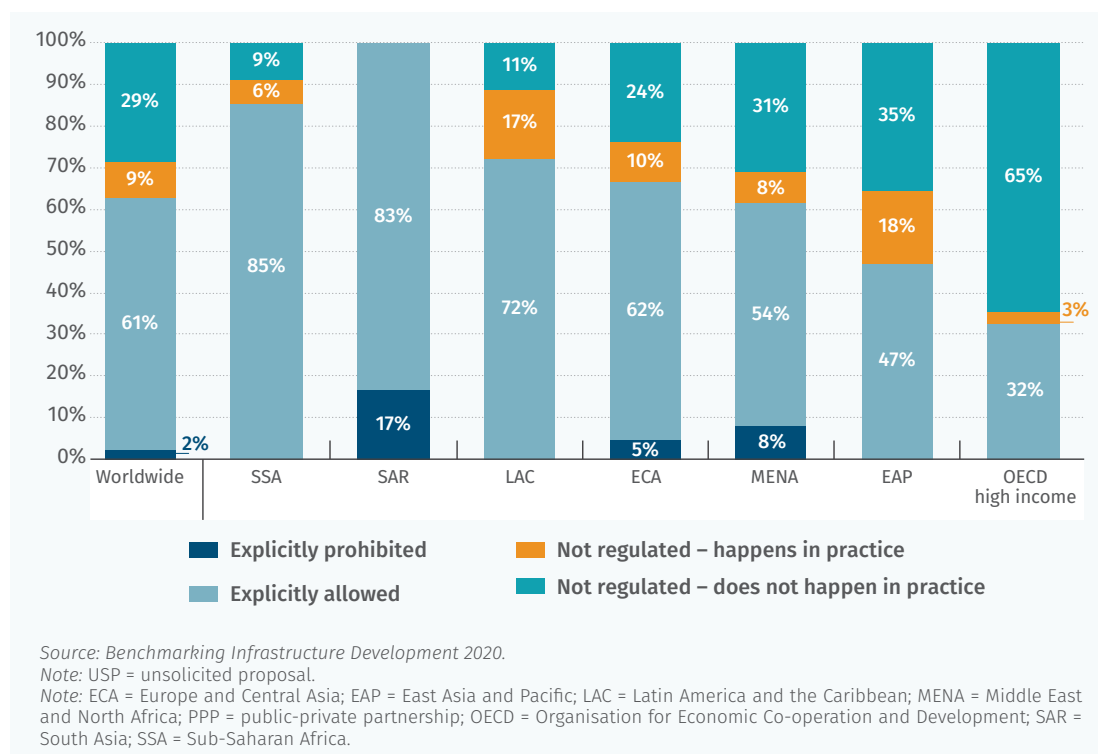
## Regulatory Framework for USPs

The approach to USPs varies in the 140 economies surveyed in *Benchmarking Infrastructure Development 2020*. Figure 24 shows the breakdown of approaches to USPs worldwide and by region. A first quite radical approach to USPs is to explicitly prohibit them in the regulatory framework. This is quite uncommon; it only happens in 2 percent of the economies covered worldwide (three economies): Croatia, Lebanon and India (Lebanon has just recently introduced an exclusion of private sector proposals as part of its recent regulatory reform for PPPs).<sup>43</sup>



Conversely, in 61 percent of the economies covered by the project, there is express regulation of USPs in place. All five economies of South Asia (except India, which prohibits USPs) expressly regulate them. Express regulation is common also in Sub-Saharan Africa (85 percent) and in SAR (83 percent). But in OECD high-income economies, express regulation of USPs is relatively rare (32 percent). Except for the express prohibition enacted by Lebanon, no other country of those covered in the 2018 edition passed an express regulation for USPs. However, in the context of its new PPP Law, Uzbekistan, which was not covered in the 2018 report, did in fact include an express regulation of USPs.<sup>44</sup>

**Figure 24 | USP Regulatory Framework by Region (percent, N=140)**



In 38 percent of the surveyed economies, USP issues are not explicitly included in the regulatory framework. This is particularly common in the OECD high-income economies, where 68 percent of them are silent on the matter. Lacking a specific regulation can be considered, depending on the legal context, an implicit prohibition, since the legal framework does not provide an avenue to channel them. This seems to be the case in a number of the economies where according to the contributors USPs in fact do not happen in practice (29 percent worldwide). In the remaining 9 percent of the surveyed economies, while the regulatory framework does not cover USPs explicitly, the survey contributors reported that these types of private sector proposals for PPP projects do nonetheless happen in practice. This can be a problematic approach, as lacking a clear framework for addressing USPs may result in accepting proposals that are not fully in the public interest. In the EAP and LAC regions, 18 and 17 percent of their economies do not have clear regulatory frameworks for addressing USPs.

## Competitive Bidding and Minimum Time Limits

Having a competitive bidding procedure for USPs is beneficial. For instance, it increases the transparency of how USPs are handled, reducing potential pressures from the private sector and special interest groups to accept proposals. Equally important, a project that is structured through a competitive and transparent procedure is more likely to maximize value for money because the procedure allows the procuring authority to select the best proposal submitted by the most suitable bidder to execute the project.<sup>45</sup> A lack of such a procedure, in contrast, carries a risk of generating lower value for money due to potential corruption and the selection of a lower quality project as well as a less reliable private partner.<sup>46</sup>

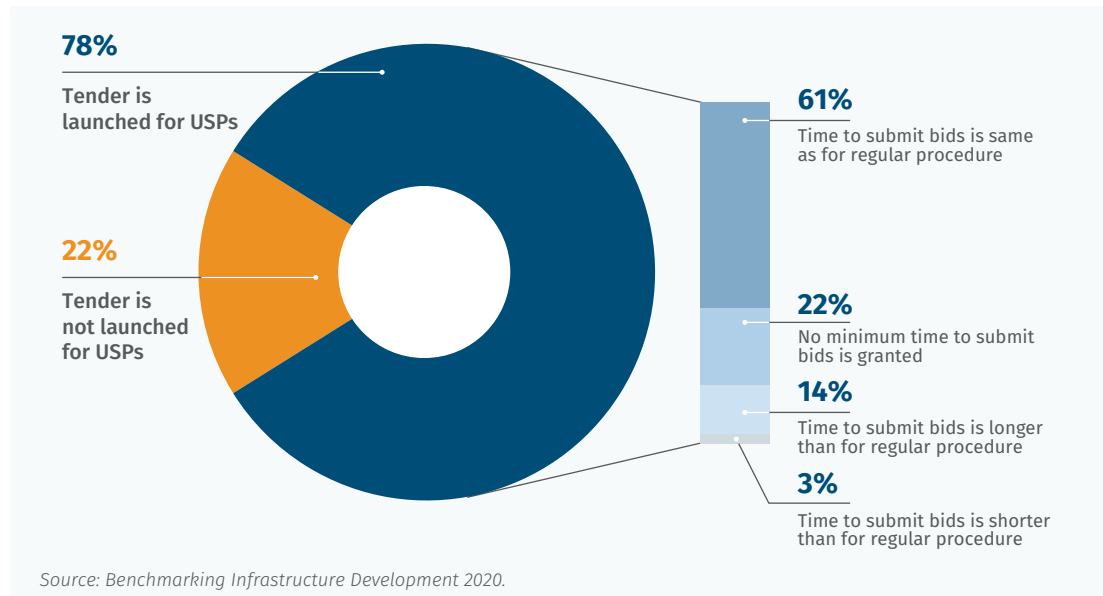
Despite this, only 78 percent of the economies that use USPs require them to be procured using a competitive mechanism. In the remaining 22 percent (21 economies), there is no express requirement for a competitive procedure. The original proponent is in those cases more likely to become the private partner. This includes most economies (10 out of 12) where USPs happen in practice but are not regulated, which is a logical consequence of the regulatory void on the matter. In the Netherlands, where USPs happen without an express regulation, according to the report's contributors, a competitive procedure will still be required due to the stricter procurement framework applicable in EU economies.

In most of the economies where USPs are regulated, the framework is quite explicit about the need to provide an opportunity for alternative potential bidders to participate. Three main avenues to regulate this aspect surface in the data. In the economies of Benin, Cameroon, Chile, and Tajikistan, among many others, the USP regulations directly refer to the need to conduct a competitive procurement process. In countries like the Philippines, the USP regulations spell out the procedure to be followed to permit competition. Finally, economies like Colombia, rather than directly referring to the competitive procurement process, mandate that procuring authorities provide potential alternative bidders with a period in which to indicate their interest, and if alternative bidders come forward, then a full competitive procurement process must be carried out. This same approach is taken by the new PPP Law in Uzbekistan, which requires the procuring authority issue a public invitation notice online so other potential applicants can declare their interest in implementing the project.<sup>47</sup>

It is important to note that even a competitive and transparent bidding procedure may not be sufficient, especially in the case of USPs, unless it is accompanied by an adequate amount of time for private entities (other than the original USP proponent) to prepare their bids. Granting enough time to prepare bids is already a recognized good practice for government-originated PPPs. The complexity of PPPs always demands high levels of due diligence in order to prepare quality proposals, but this is even more critical in the case of USPs. Providing a tight deadline to prepare alternative bids diminishes fair competition because the original proponent has an inherent advantage over the rest. The World Bank's *Policy Guidelines for Managing Unsolicited Proposals in Infrastructure Projects* advises that "competing bidders must be given sufficient time to prepare a competitive bid and must have timely and equal access to all relevant information about the project."<sup>48</sup>

To avoid an insufficient period to prepare alternative proposals, procuring authorities should provide at least the same amount of time for a USP as in the bidding process for a government-originated PPP project. Ideally, authorities should consider the special characteristics of USPs and grant an even longer period to prepare alternative proposals. Figure 25 below provides a breakdown of the economies surveyed, comparing the minimum time regulated to bid for USPs and the minimum time regulated in the case of government-originated proposals. In 22 percent of the economies that do require a competitive procedure, there is no regulatory provision regarding the minimum time to be granted to bidders at all, and thus this remains a matter to be regulated on an ad hoc basis by the procuring authorities.

**Figure 25 | Comparison of the Minimum Time to Submit Bids, Regular vs. USP Procedure (percent, N=97)**



Sixty-one percent of the economies require granting additional bidders the same amount of time as for government-originated proposals. This would usually be the case when the USP requirement of a competitive tender simply refers directly to the general regulation of procurement processes. Different times would instead appear when the USP regulation specifically tackles this issue. In 14 percent of the economies, this specific regulation for USPs entails a longer period, in accordance with good practice. Economies in this group include Jamaica (90 days instead of 30 days); the Commonwealth of Virginia in the United States (120 days instead of 60 days); and the Russian Federation (45 days instead of 30 days). Only 3 percent of the economies have provided a regulatory minimum time for USPs lower than the one for government-originated proposals.

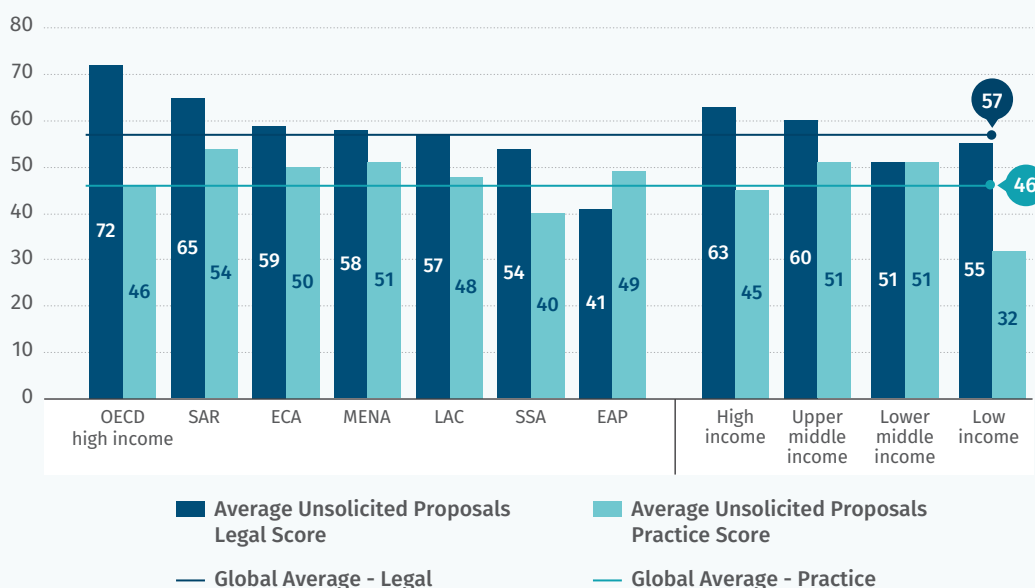


### Box 13 | Pilot Practice-Based Survey—Findings for Unsolicited Proposals (USPs)

Whereas in theory USPs may allow governments to benefit from the knowledge and innovation of the private sector, they could also reduce value for money. A sound USP process, well defined in a regulatory framework, is as critical as its implementation. A pilot of the de facto questions was included in *Benchmarking Infrastructure Development 2020* to capture whether the written provisions are applied in practice.<sup>49</sup>

The difference between legal and practice scores for USPs is the largest (11 points) and the average global practice score (46 points) is the lowest among all the thematic areas analyzed (Figure B13.1).

**Figure B13.1 Unsolicited PPP Proposals: Legal and Practice Scores by Region and Income Group (score 1–100, Legal N=97, Practice N=73)**



Source: *Benchmarking Infrastructure Development 2020*.

Note: ECA = Europe and Central Asia; EAP = East Asia and Pacific; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; PPP = public-private partnership; OECD = Organisation for Economic Co-operation and Development; SAR = South Asia; SSA = Sub-Saharan Africa.

As in the contract management phase, EAP is the only region that displays practice scores (49 points) above legal ones (41 points). All other regions face challenges in implementing USP regulated good practices. The largest gap between legal and practice scores is found in the OECD high-income group, with 40 points difference. This region is followed by SSA (14 points gap) and SAR (11 points gap).

While analyzing the economies by income group, the trend observed in the legal scores (the higher the income, the higher the scores) is no longer as clear, but the low-income group shows the lowest level of de facto adoption of good practices (32 points). However, high-income economies also present a large gap on implementation, with just 45 points in practice against 63 points in their legal score. USP is the thematic area with significant room for improvement in terms of implementation of USP regulations. For USP, the requirement to initiate a competitive procurement procedure is the regulatory benchmark where contributors see a bigger difference between what is established in the law and what happens in practice (15 points).

# Disclosure of Information throughout the PPP Life Cycle

Openness and public disclosure throughout the life cycle of a public-private partnership (PPP) project are essential to maximizing efficiency gains in infrastructure and to ensuring optimal socioeconomic outcomes. The availability of information in the public domain increases predictability, boosts public confidence in PPP projects, reduces the risk of corruption, and ensures the alignment of private investments with public interest.

Public disclosure can be either proactive or reactive. The former requires the responsible government entities to disclose information automatically, whereas the latter entails providing information only upon request. Proactive disclosure is sometimes dismissed, mainly due to the costs associated with information collection, processing, and dissemination—which is especially the case for online disclosure. Weak enforcement is also a factor that impedes proactive disclosure in many economies. Given the duration and high value of PPP projects, however, setting up and maintaining online systems may be worth the cost. Thus, most experts increasingly advocate proactive online disclosure to achieve transparency in PPPs, although mechanisms to protect sensitive information remain to be established.

Despite the growing awareness of its needs and benefits, public disclosure over the course of the PPP process is still limited and hence a prominent information gap persists for many categories of stakeholders. Obstacles to public disclosure vary across economies, from technical difficulties to low political will. Even if the information has been publicized, it often appears in the form of lengthy documents that are difficult to use.

Against this backdrop, *Benchmarking Infrastructure Development 2020* attempts to draw on empirical findings regarding global public disclosure practices at different phases of the PPP project life cycle. Box 14 presents the list of good disclosure of information practices scored by this initiative.

## **Box 14 | Disclosure of Information throughout the PPP Life Cycle—Good Practices Scored in *Benchmarking Infrastructure Development 2020***

The following are among the good disclosure of information practices that help ensure openness and transparency throughout the life cycle of PPPs:

- › Preparation
  - Standardized PPP contract and/or transactional documents available.
  - PPP assessments are available online.
  - Tender documents are available online.
- › Procurement
  - Procurement notice is available online.
  - Award notice is available online.
  - Contract is available online.
  - Contract amendments are available online.
- › Contract management
  - Information on construction progress is available online.
  - Information on project performance is available online.

*Benchmarking Infrastructure Development 2020* scores nine areas of best practices regarding disclosure of information (Box 14). The score of each question is then averaged by phase to yield an aggregated Disclosure of Information score for each phase (see more details at [bpp.worldbank.org/methodology](http://bpp.worldbank.org/methodology)).

Figure 26 shows the percentage of all economies surveyed that adhere to disclosure of information practices by topic area. In the preparation stage, while 50 percent of economies require that tender documents be published online, only one-third have established obligations to have the assessments published online, and the same is true regarding having standardized PPP contracts available. Out of the 46 economies (33 percent) that have developed standardized PPP model contracts and/or transaction documents, in only two these standards were not easily accessible online (Djibouti and Indonesia).

When it comes to the procurement phase, a majority of economies have introduced norms in their legal frameworks regarding the publication online of the PPP procurement notice (93 percent) and the PPP award notice (79 percent). Meanwhile, a little over 50 percent of economies require that the actual PPP contract be published, and only 36 percent demand that the contract be available online. Even fewer economies have provided that PPP contract amendments be published online (19 percent). In the contract management stage, economies have not been consistent with good practices, with 16 percent of economies requiring the publication of performance information online and only 13 percent providing that the construction information also be available online.

**Figure 26 | Share of Economies that Adopt Good Practices Regarding Disclosure of Information Throughout the PPP Life Cycle Stages, by Topic (percent, N = 140)**

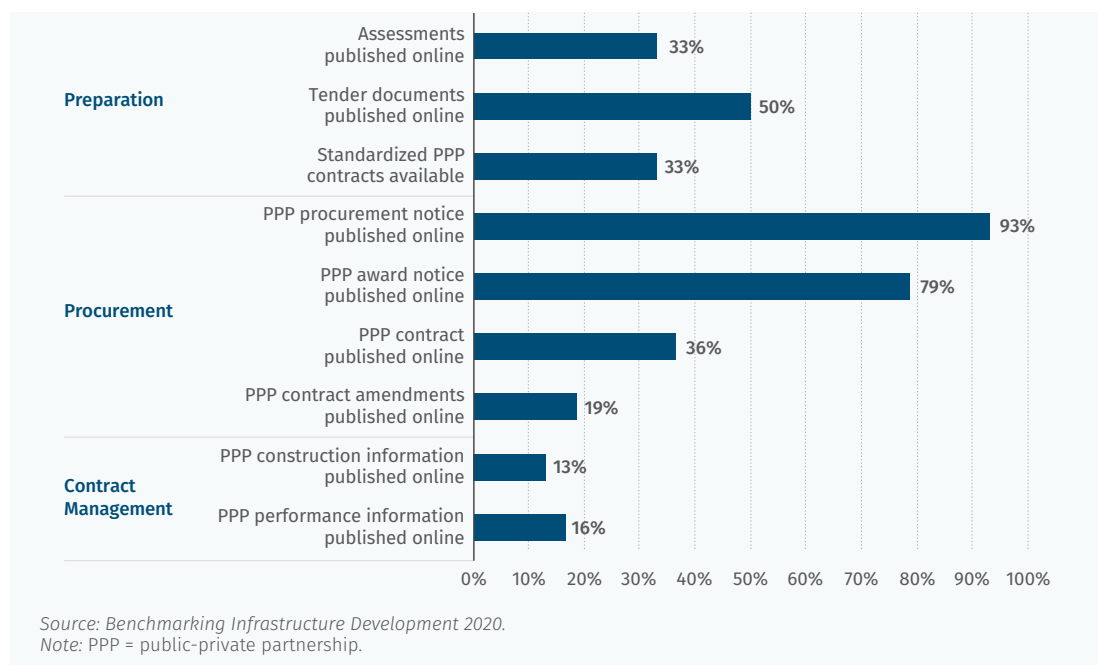
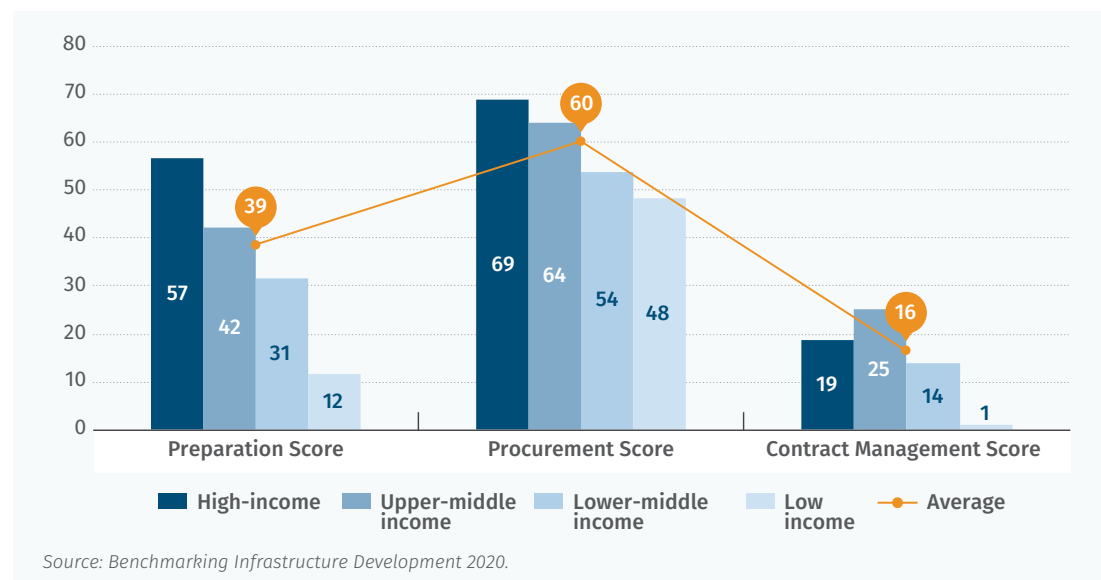


Figure 26 shows that while at the procurement stage, the global average of the *Benchmarking Infrastructure Development 2020* disclosure of information score is 60, this global average drops to 39 during the preparation stage and to merely 16 points during the contract management stage. This average score indicates that it is relatively easy to obtain information surrounding the bidding process, for example, but project assessments and standardized PPP contracts remain mostly unavailable in the public domain. Meanwhile, public tracking of PPP contract performance remains cumbersome or even impossible in many jurisdictions.



There is also significant divergence across income levels. Figure 27 shows that the higher the income level of the group, the higher their performance in terms of disclosure of information practices—with significant room for improvement for all income groups in project preparation and contract management. At the preparation stage, high-income economies reach an average disclosure of information score of 57 points, while low-income economies attain only 12 points. The lowest level of disclosure of information across income groups is observed in the contract management phase, where high-income economies score only 19 points—the lowest for this group across the different stages—upper-middle-income countries score 25, lower-middle-income economies score 14, and those at the low-income level score only 1 point.

**Figure 27 | Disclosure of Information Scores, by Thematic Area and Income Group (score 1–100, N=140)**



Some economies have made progress regarding disclosure of information. For example, Lebanon and Zimbabwe improved on procurement phase practices by passing regulations that require that the procuring authority publish the contract award notice online, and Uganda also requires that the contract award be published in newspapers of national circulation and using electronic media. In the contract management stage, two countries (Bulgaria and Georgia) have recently introduced mandates to have information on construction progress as well as project performance published online. However, data on construction progress and operational performance of PPP projects remains one of the most inaccessible types of information regarding PPPs across economies. This type of information is rarely publicly disclosed, making it difficult to ascertain whether PPPs deliver on their promise of providing efficiency gains.









# Traditional Public Investment (TPI)

# Regulatory Frameworks and Institutional Arrangements for TPI

*Benchmarking Infrastructure Development 2020* expands its thematic coverage from PPPs to also assess the quality of regulatory frameworks for the development of large infrastructure projects using conventional procurement methods. These are defined in the report as traditional public investments (TPIs). As described in the methodology section of the report, the study for TPIs has been conducted for a subset of 40 pilot economies distributed across all regions and representing different legal, regulatory, and institutional systems and traditions. This section provides a brief overview of the various types of regulatory frameworks and institutional arrangements that those economies adopt to govern TPI projects.

While various systems offer relevant data that all stakeholders can use in making decisions, no single approach works best for every economy. The right way of setting up a regulatory framework and institutional arrangement for infrastructure development depends on administrative and legal traditions in each jurisdiction and the government's goals and objectives. Hence, this study does not score economies based on their specific approach to governing TPIs. Instead, this section aims to provide contextual information by exploring various regulatory and institutional set-ups, which can help better understanding of the thematic areas scored in the following sections.

## Regulatory Frameworks for TPI

In the past 30 years, most economies have undertaken substantial reforms of regulatory and institutional frameworks applicable to their public procurement systems. These reforms have been driven (and continue to be driven) by the belief that sound procurement systems are essential for state building and good governance. Reform programs have intensified in recent years in developing economies thanks to donor support<sup>50</sup> (either at the bilateral or multilateral level). Most of these reforms are aimed at removing the structural, institutional, and regulatory obstacles that hamper smooth functioning of the procurement market and the efficient and effective purchase (and delivery) of goods, works, and services for public projects. Regulations have been enhanced significantly at international<sup>51</sup>, regional, and national levels also because of agreements aimed at opening up national public procurement markets to international/regional trade, such as the UNCITRAL Model Law, the World Trade Organization (WTO) Agreement on Government Procurement<sup>52</sup> and the EU procurement directives<sup>53</sup>. Such agreements have required the enactment of new legislation to ensure that foreign suppliers, products, and services face fewer obstacles and, therefore, have more access to the public procurement markets of other states.<sup>54</sup>

Some countries are undertaking procurement reforms based on findings and recommendations from comprehensive assessments such as MAPS 2018. The Methodology for Assessing Procurement Systems (MAPS 2018) is a universal tool that aims to spur and accelerate the implementation of modern, efficient, sustainable, and more inclusive public procurement systems in all countries. With the collaboration of international and regional institutions, in the last decade the procurement directives, agreements, international procurement frameworks, and procurement regulations for investment project financing (IPF) of multilateral development banks have to a great extent harmonized on basic principles and procedures guiding the public procurement of TPI. Such a collaboration has also resulted in framing MAPS 2018 (Box 15).

**Box 15 | Methodology for Assessing Procurement Systems (MAPS 2). A universal tool for assessing public procurement systems to identify their strengths and weaknesses and eventually propose reforms for any country in the world.**

MAPS was updated following a 2015 OECD Recommendation of the Council on Public Procurement and is reflective of leading international procurement frameworks such as the procurement policies of the MDBs, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement (2011), the European Union (EU) Directives on Public Procurement (2014), and the procurement frameworks used by donors and countries. It provides a holistic assessment framework, establishing the criteria of an effective and efficient procurement system that all countries should strive to achieve.

The 2018 version of MAPS is timely in the wake of the launch of the Sustainable Development Goals (SDGs). MAPS is related to Goal 12, which calls for the promotion of sustainable procurement practices in line with national priorities and policies, and Goal 16, which calls for effective and accountable institutions.

- › MAPS has been widely used since 2006 to assess the quality of public procurement systems.
- › “Pilot Assessments” were carried out using the updated version of 2018 in Senegal, Chile, and Norway (2017). The World Bank in collaboration with governments and development partners has completed seven comprehensive assessments in Malawi, Zambia, Mozambique, Kazakhstan, Gabon, Tunisia, and Rwanda. Similar comprehensive assessments are being carried out for 16 other countries.
- › MAPS reflects a modern understanding of public procurement, taking into account global developments and improvements and broad worldwide experience.
- › The MAPS core methodology provides a comprehensive approach for assessing public procurement systems. It defines the structure for conducting a country context analysis, presents a refined indicator system for assessing the quality and performance of the system in terms of outcomes and results, and describes the key elements of the assessment process.
- › The MAPS indicator system rests on four pillars:
  - **Pillar I:** Legal, Regulatory, and Policy Framework;
  - **Pillar II:** Institutional Framework and Management Capacity;
  - **Pillar III:** Public Procurement Operations and Market Practices; and
  - **Pillar IV:** Accountability, Integrity and Transparency of the Public Procurement System.
- › The pillars cover both the law on the books and its application and practice. The indicator system has a total of 14 indicators and 55 sub-indicators (overall relying on a total of 210 sub-criteria) to identify strengths and weaknesses of various aspects of the system and determine risks and material gaps that require actions.
- › The 210 sub-criteria are used to assess sub-indicators (criteria met, criteria partially met, and criteria not met with indications of risks, gaps and recommendations for improvement
- › The sub-indicators are evaluated in qualitative quantitative terms, and substantiated as appropriate by quantitative indicators.
- › Each country can define a baseline, set national targets, and measure progress over time based on MAPS findings. They are also useful for strategic planning to clarify the vision, goals, and time frame for improving the public procurement system and prepare necessary public procurement reforms.
- › MAPS is an assessment tool, not a public procurement regulatory framework or directive.

More details on MAPS 2018 and how it operates in practice is given at [bpp.worldbank.org/MAPS](http://bpp.worldbank.org/MAPS).  
Source: <http://www.mapsinitiative.org/>



Among the economies surveyed for *Benchmarking Infrastructure Development 2020*, a majority (80 percent) uses the primary legislation to regulate public procurement (i.e., acts, laws and legislative decrees, etc.). Only a handful of economies (8 out of 40) uses secondary legislation (i.e., regulations, executive decrees, orders, etc.) as the main legal instrument in this area. Often a mixture of primary and secondary legislation is used to regulate procurement. For example, South Africa regulates procurement at the central level through the Preferential Procurement Policy Framework Act of 2000, and primarily through a series of other rules and regulations set out in different statutes, including through Treasury Regulations<sup>55</sup> issued under the Public Finance Management Act. Notably even the South African Constitution refers to public procurement. In the United Kingdom, another country in the sample, procurement is regulated mainly by the Public Contracts Regulations, 2015, from the Minister for the Cabinet Office, issued to incorporate the European Union Directive 2014/23/EU.<sup>56</sup> All the economies have also adopted secondary legislation and/or guidelines regulating details not specified in the primary legislation. In some economies, like the Philippines, the full public procurement framework encompasses all these layers of regulatory instruments, starting with the Government Procurement Reform Act (Republic Act No. 9184 of 2003); its implementing rules and regulations issued in 2016; and the Generic Procurement Manuals developed by the Government Procurement Policy Board and issued in 2017.

Of course, in all economies the development of TPI projects is also impacted by other laws and regulations intrinsically linked with preparation and procurement of infrastructure projects. The most relevant ones are those governing public finances and the budgetary process, environmental impact assessments, transparency, access to information and anti-corruption laws, and sectoral laws (for example highway laws). Finally, 40 percent of the surveyed economies (16 out of 40) have specifically adopted the laws or regulations governing their public investment systems. For example, in Colombia, on top of the public procurement framework, the Organic Planning Law (Law 152 of 1994), regulates the national planning system and framework for the adoption of the pluriannual National Development Plans.



#### Box 16 | Contractual Modalities for TPI Projects

In TPI projects, carried out through conventional procurement methods, the procuring authority retains most of the project risks and pays for the works against its budget. However, under these general features different contractual modalities can be used. While naming conventions vary, based on the scope we can differentiate between: (i) build only or design-bid-build (DBB) contracts, in which a design has already been completed (generally contracted out beforehand by the procuring authority to a different engineering firm) and a contract is tendered to build an infrastructure asset; design-build (DB) contracts, in which a single contract is tendered for both the design and construction of an infrastructure asset; and engineering, procurement and construction (EPC) contracts, in which an engineering and construction contractor will carry out the detailed engineering design of a project, procure all equipment and materials necessary, and then construct to deliver a functioning facility or asset to its clients (in some jurisdictions also known as turnkey contracts). As is apparent from the definitions, these modalities represent a continuum from less to more bundling of activities and less to more risks transferred to the private sector, but still falling short of the level of risk transfer and bundling of activities that will characterize a PPP (fundamentally because operation and long-term finance remains outside the scope of any of the aforementioned contracts).

As the most basic modality of works contracts, unsurprisingly, all economies in our sample use build only or design-bid-build (DBB) contracts. However, it is noticeable that the naming conventions for build only or DBB are themselves foreign to many jurisdictions, where this type of contractual modality is simply referred to as a public works contract. This is the case in all European Union economies where, based on the EU Procurement Directives, public works is one of the basic contract types along with services contracts and supplies contracts (with concessions of works and services being regulated in its own directive). A similar typology of public contracts based on their object is also common in many other jurisdictions (sometimes including a specific type for consulting and/or professional services) and is usually more common as the legal terminology applicable to public procurement frameworks than the DBB, DB, and EPC conventions. In this context for example, a DB contract is just a mixed contract that includes both a service or consulting contract for the design of the project and a public works contract for the actual works.<sup>57</sup> According to this report's contributors, in any case, design-build (DB) contracts are also widely used, with 65 percent of the economies (26 out of 40) having used this modality within the last two years. Similarly, EPCs have been used in 30 of the 40 economies surveyed (75 percent). In OECD high-income economies, EPC appears to be used less frequently, while it seems instead to be the preferred method for TPI in lower and upper-middle-income economies.

## Institutional Arrangements

When it comes to the development of infrastructure projects through TPI, procurement frameworks generally provide for a broad definition of the procuring authorities. This includes ministries, departments, and agencies and, depending on the cases, state-owned enterprises (SOEs), although the scope of the application of public procurement frameworks to SOEs varies by economy. The public entity responsible for each sector is therefore usually the procuring authority for TPI projects in that sector. Taking into consideration the authors' case study assumption that offers a highway as an example, this responsibility will usually fall on the Ministry of Public Works, Ministry of Transportation, or Ministry of Infrastructure (depending on the allocation of responsibilities within the government). Many economies have also created specific agencies that act as procuring authorities for the development of the road network. For example, in India the National Highways Authority of India is competent to "develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government" (Section 16 National Highways Authority of India Act 68 of 1988).





## Thematic Areas Covered and Scored in the *Benchmarking Infrastructure Development 2020: TPI Survey*

# Planning and Preparation of TPIs

TPIs in the infrastructure sector usually involve large and complex projects whose success depends on several factors that need to be assessed carefully by procuring authorities before embarking on the investment. The planning and preparatory stage for a TPI project is crucial for its overall success and for its ability to deliver the intended benefits to society. It is during this phase that the basic principles governing the entire procurement process and a future relationship between contracting authority and contractor are established.

A sound TPI planning and preparation process comprises several stages. It begins with the identification of a project as well as with the decisions *what* to procure, *where* to invest, *what* objectives to pursue, and what are the *priorities*. These decisions need to be supported by a thorough needs and cost-benefits analysis; the choices made by the different procuring authorities must be aligned among each other and be consistent with national/sectoral policies and strategies for public investments and with broader development plans. It is important that TPI projects are not decided on in isolation by individual contracting authorities. A system also needs to be in place for prioritization of projects so that often limited public resources can be used most effectively and channeled to projects that respond to the most critical needs of the economy.

*Benchmarking Infrastructure Development 2020* discusses three topic areas within the planning and preparation thematic area. These include planning and strategy that covers high-level policy aspects, such as preparation of the national or sectoral strategies for infrastructure that are costed out and include measurable targets. This area also analyzes a project prioritization system. The second broad area is more project-oriented and looks at the various assessments or checks performed for a particular project, such as ensuring that a TPI project is consistent with existing national strategies or priorities, checking whether a TPI is the best option compared to alternative procurement methods such as PPPs, and performing the necessary assessments, including a socio-economic analysis, risk assessment, market sounding, and environmental and social impact studies (EIA and SIA), among others. The third area covers all budget-related aspects of infrastructure investments, including identification of the capital spending projects in the budget, making such information available online, having a budget allocation for a project before launching procurement, and ensuring that a budget system has certain key features that define its efficiency, including multiyear forecasting, establishment of the targets/ceilings to ensure debt sustainability, and inclusion of all projects regardless of their sources of financing in a budget. Internationally recognized good practices during the TPI planning and preparation thematic area scored in *Benchmarking Infrastructure Development 2020* are summarized in Box 17.



### Box 17 | Planning and Preparation of TPIs—Good Practices Scored in Benchmarking Infrastructure Development 2020

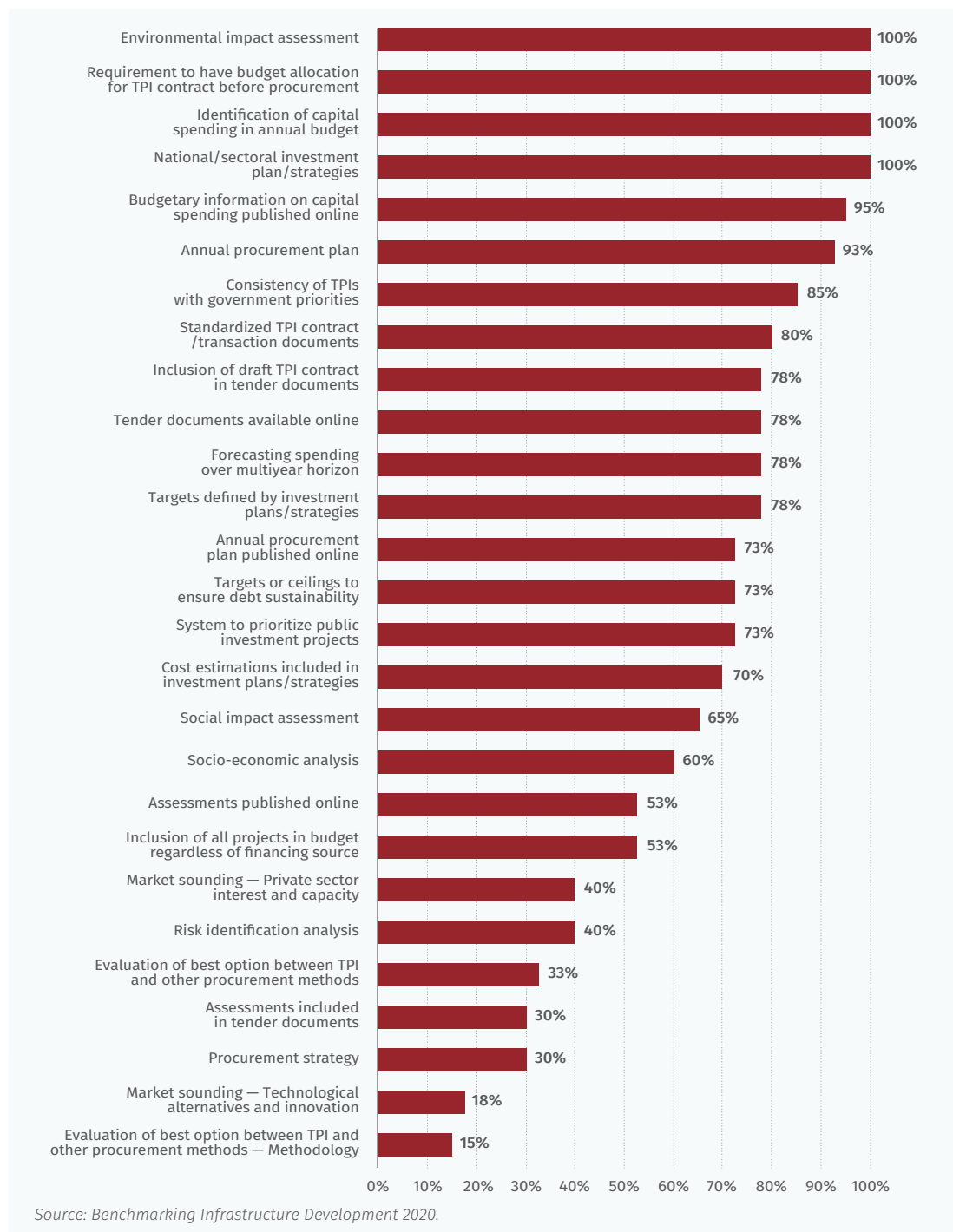
Good practices that help ensure that a TPI project is aligned with government priorities, budgetary resources are available, and the project is ready to be tendered include the following:

- › The government has national/sectoral public investment strategies and policies in place and these strategies are costed out and include measurable targets.
- › The government has a system to prioritize public investment projects, evaluates whether a TPI is the best option compared to alternative procurement methods such as PPPs, and uses an appropriate methodology for those decisions.
- › The procuring authority ensures that a TPI project is consistent with existing public investment strategies and priorities.
- › Capital spending projects are identified in the budget and budgetary information about capital spending projects is published online.
- › The public budgeting system includes the following elements: multiyear forecasting, establishment of the targets/ceilings to ensure debt sustainability, and inclusion of all projects regardless of their sources of financing.
- › The procuring authority prepares an annual procurement plan or a similar document and makes it available online.
- › The procuring authority has budget allocation for TPI projects before launching the procurement process.
- › Carrying out a TPI project is sufficiently justified based on the following assessments:
  - Socio-economic analysis;
  - Risk assessment;
  - Procurement strategy;
  - Market sounding regarding potential interest for a project among market participants;
  - Market sounding to identify solutions and technology available as well as opportunities for innovation;
  - Environmental impact assessment, including a consultation process with the affected communities; and
  - Social impact assessment, including a consultation process with the affected communities.
- › The results of the above assessments are included in the tender documents and published online.
- › The tender documents are published online.
- › The procuring authority prepares a draft TPI contract and includes it in the request for proposals and/or tender documents.
- › The procuring authority has developed the standardized model contracts and/or transaction documents for TPI projects.

Figure 28 shows the dispersion of some of the good practices. The data in Figure 28 indicate that some of the most basic elements of the planning and budgeting systems are quite common, including, for example, the fact that all economies prepare national or sectoral strategies for infrastructure, with the majority of them using both measurable targets (78 percent) and cost estimates (70 percent). All surveyed economies also identify capital spending projects in their budgets, and many publish key budgetary information online (93 percent) and require that a specific project be consistent with their national strategies (85 percent). However, some practices are much less widespread. For instance, evaluation of whether a TPI is the best procurement option compared to alternative methods such as PPPs is relatively uncommon (33 percent) as is having a methodology for that evaluation (15 percent). Another rare practice

is performance of the early-stage assessments that are key to understanding whether a project is worth pursuing in the first place. Except for EIA, less than half of the surveyed economies require them. The most uncommon assessments required are a market sounding for technological alternatives and innovation (18 percent), a procurement strategy (30 percent), and a risk assessment (40 percent).

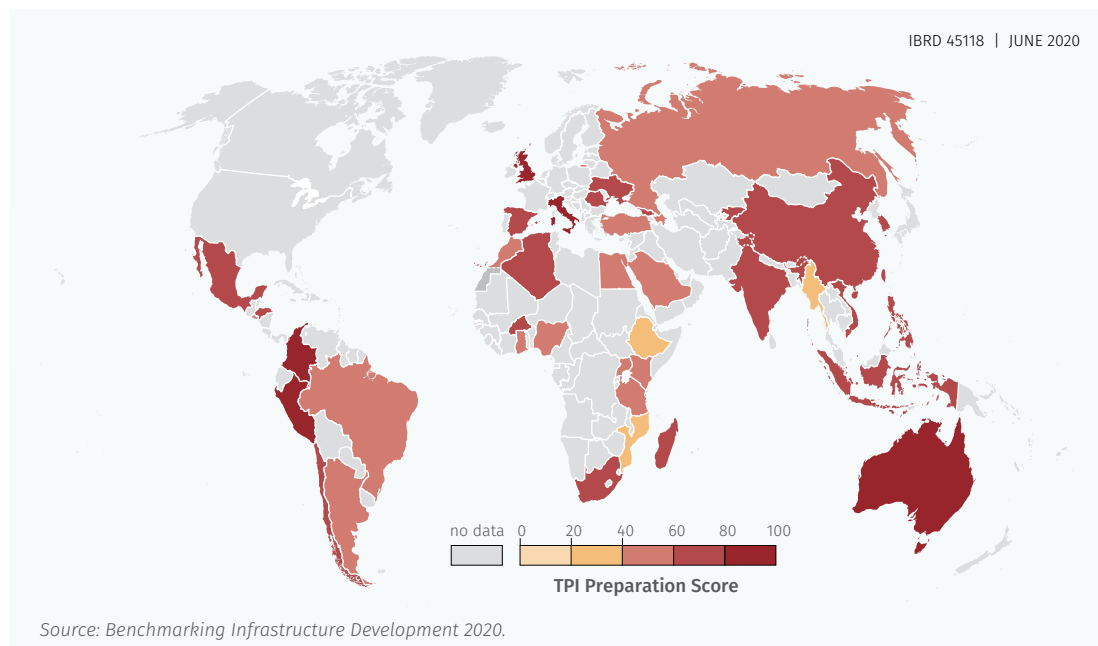
**Figure 28 | Share of Economies that Adopt Good Planning and Preparation Practices by Scored Areas (percent, N=40)**



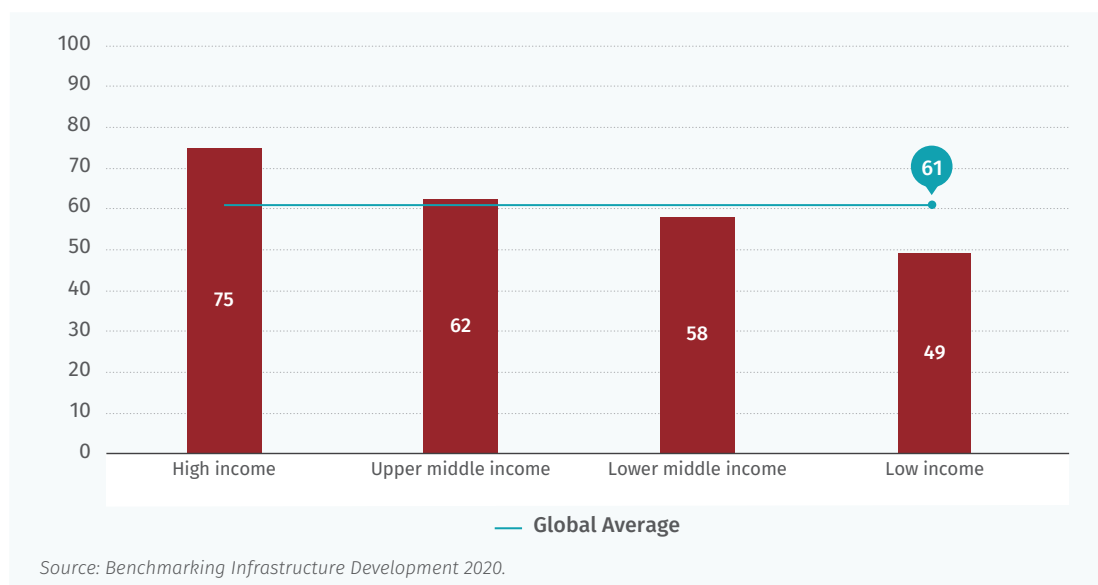


The *Benchmarking Infrastructure Development 2020* data reveal regional and income group variations in the average score for the TPI planning and preparation thematic area (Figures 29 and 30). The data reveal that the lower the income level of the group, the lower the average scores for the TPI planning and preparation thematic area with the higher variation among income groups (26 points).

**Figure 29 | Global Overview of TPI Planning and Preparation Scores (score 1–100, N=40)**



**Figure 30 | TPI Planning and Preparation, Score by Income Group (score 1–100, N=40)**



The analysis that follows focuses on planning and strategy, alignment, and budgeting thematic areas.

## National Strategies, Project Prioritization, and Budgeting Systems

The importance of a well-functioning system of infrastructure development cannot be overstated. Such a system consists of three elements, the first of which is a high-level national or sectoral strategy for infrastructure development, or *planning and strategy*. The economy's overall economic strength depends to a large degree on the strategic infrastructure it owns and operates. In this context, a long-term vision and planning are key to ensure alignment of infrastructure development with the overall economy's priorities—beyond the constraining logic of political cycles.<sup>58</sup> It is considered a good practice when governments prepare a national economic infrastructure plan to optimize a portfolio of infrastructure investments that include measurable targets and are costed out. This allows governments to identify interrelationships among sectors, decide which sectors and areas of development are to be prioritized, and identify opportunities to increase infrastructure provision by considering all available financing sources, including private ones. Such planning requires the ability to consider the bigger picture and see opportunities for greater interlinkages between infrastructure networks. The process of formulating such plans will vary from economy to economy and will depend on its size, stage of development, and existing political priorities.

The second important aspect is *alignment*, which includes a check of whether a TPI project is consistent with existing national strategies and is the best option compared to alternative procurement methods such as PPPs as well as a methodological support of such a check. Having such a requirement is a key element in the whole infrastructure development system and not only ensures consistency of a particular project with the economy's development goals but also encourages political support for a project once it's acknowledged as the one contributing to the achievement of the overall government infrastructure agenda, which, in turn, increases chances for its successful realization. Given the strained budgets in many economies, it is advisable in accordance with good practices that each project is evaluated as to its funding, with a decision on whether it will be funded purely with taxpayer money or if it may be suitable for another modality, such as a PPP. It is even better if there is also a specific procedure or a methodology for how to perform such an evaluation so that this check is performed consistently across projects.

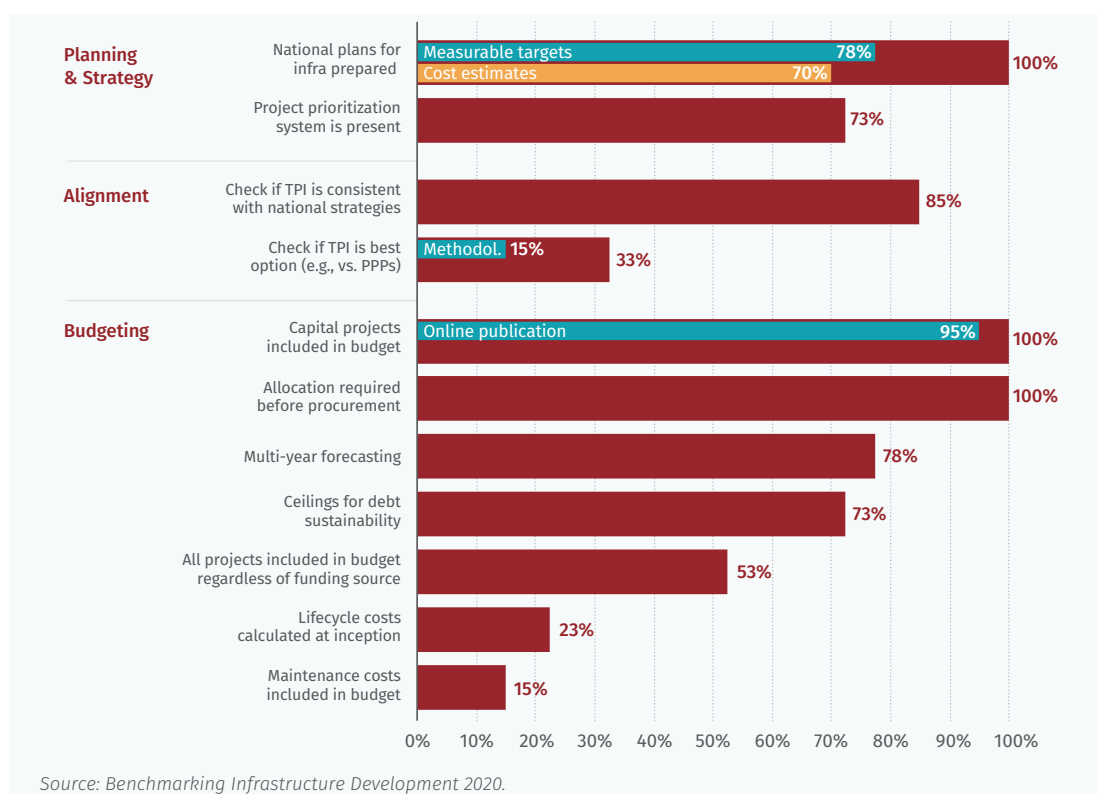
The final area is *budgeting*. Typically, during budget preparation, many officials have as a primary objective ensuring that agencies spend all infrastructure funds allocated for a fiscal year. This operational focus is natural—leaders fear forfeiting money if they leave it on the table—but it also prompts agencies to prioritize shovel-ready projects that require immediate funding, since this will help them use their full allocation. Because of this mindset, crucial infrastructure initiatives may not receive the capital they deserve, including those that could reduce costs, increase productivity, or substantially benefit the public. Conversely, projects that convey minor benefits may receive extensive funding, simply because agencies can immediately implement them.<sup>59</sup> On the other hand, some governments may provide minimal funds for maintaining and rehabilitating existing infrastructure, often because these projects do not attract as much interest or political support as new construction. The lack of basic upgrades and repairs raises overall infrastructure expenses, since many assets develop major problems associated with neglect. If these issues are analyzed at a strategic level and a proper argument and justification are made to highlight how maintenance projects relate to overall goals—for instance, by delivering shorter commute times set as targets in a national plan—they may be more likely to receive funding and ensure that the existing infrastructure is maintained adequately.<sup>60</sup> Therefore, a capital planning and budgeting process that is aligned with national infrastructure strategies is important. Aspects of the budgeting thematic area discussed in this section include: an analysis of whether the capital expenditures are clearly identified in a budget and whether this information is available online; whether the five important characteristics of a budgeting system are present (multiyear budget planning, targets/ceilings for debt sustainability, inclusion in the budget of all projects regardless of their sources of financing, calculation of lifecycle costs at inception, and inclusion of all necessary routine maintenance costs in a

budget); and whether a procuring authority is required to have a budget allocation for a project before launching procurement.

Figure 31 data show that processes in the *planning and strategy* area are among the most commonly adopted good practices. Thus, all surveyed economies require governments to prepare national or sectoral infrastructure strategies. Among them, almost equal percentages of economies have such strategies including either measurable targets (78 percent) or cost estimates (70 percent). Almost two-thirds (65 percent) of all surveyed economies have both, including Australia, Chile, China, Colombia, India, Indonesia, the Republic of Korea, Madagascar, Peru, Russian Federation, Spain, the United Kingdom, and Vietnam. Having both characteristics in national infrastructure plans indicates more solid and well thought out programs. Measurable targets act as key performance indicators, attainment of which helps gauge whether long-term objectives and capacity constraints are addressed as the project is being constructed. On the other hand, lack of cost estimates could lead to formulation of unrealistic and/or unaffordable development plans and make it harder to attract extra-budgetary resources for their realization. Therefore, addressing these aspects is important.

The majority of the surveyed economies have project prioritization systems (73 percent). Among those that do not, lower-middle-income (43 percent) and MENA (75 percent) economies are the ones that top the list. A system for selecting investments out of a pool of available options is crucial considering that public resources are limited, and a clear mechanism should be in place to help guide the choice of one project over the other.

**Figure 31 | Practices in the Planning, Alignment and Budgeting Thematic Areas Observed in the Surveyed Economies (percent, N=40)**



In the *alignment* area, two contrasting observations can be made. On the one hand, performing a check for a proposed project in terms of compliance with existing strategies and priorities is quite common (85 percent) while performing a check of whether a TPI is a better delivery mode than an alternative method such as a PPP is somewhat uncommon (33 percent). An even smaller percentage of surveyed economies (15 percent) has developed a methodology. These economies include Australia, Chile, Italy, the Republic of Korea, Peru, and the United Kingdom. A good example of a methodology for performing such an evaluation is a system in place in the Republic of Korea that consists of two steps: (1) review of a possibility for a private investment and (2) a simplified value-for-money test.<sup>61</sup>

In the *budgeting* area, there is great variation in the adoption of good practices. The overwhelming majority of the economies identify capital spending projects in their budgets (100 percent) and make key budgetary information available online (95 percent). Having a budget allocation before launching procurement is also seen across the board. When looking at the five characteristics of a budgeting system included in the TPI survey, more basic requirements are more common than more advanced ones. Multiyear forecasting for capital-related expenditures (78 percent) and establishing ceilings or targets to ensure debt sustainability (73 percent) are the most common parameters. On the other hand, characteristics related to routine maintenance and improvement costs (both their calculation and inclusion in budgets) are quite rare. India, Mexico, and South Africa are among the few economies that both calculate project life-cycle costs at inception and include maintenance and improvement costs in the budget.

Cutting across the areas of *planning and strategy*, *alignment*, and *budgeting*, none of the surveyed economies have all the policies, checks, methodologies, requirements, and characteristics in place. However, some of the economies have most of these requirements. Among them are Australia, India, Mexico, and South Africa, which lack only two parameters, and Chile, the Republic of Korea, and Peru, which lack only one parameter (Chile and the Republic of Korea do not include maintenance and improvement costs in their budgets, and Peru does not require inclusion of routine maintenance costs in a budget).

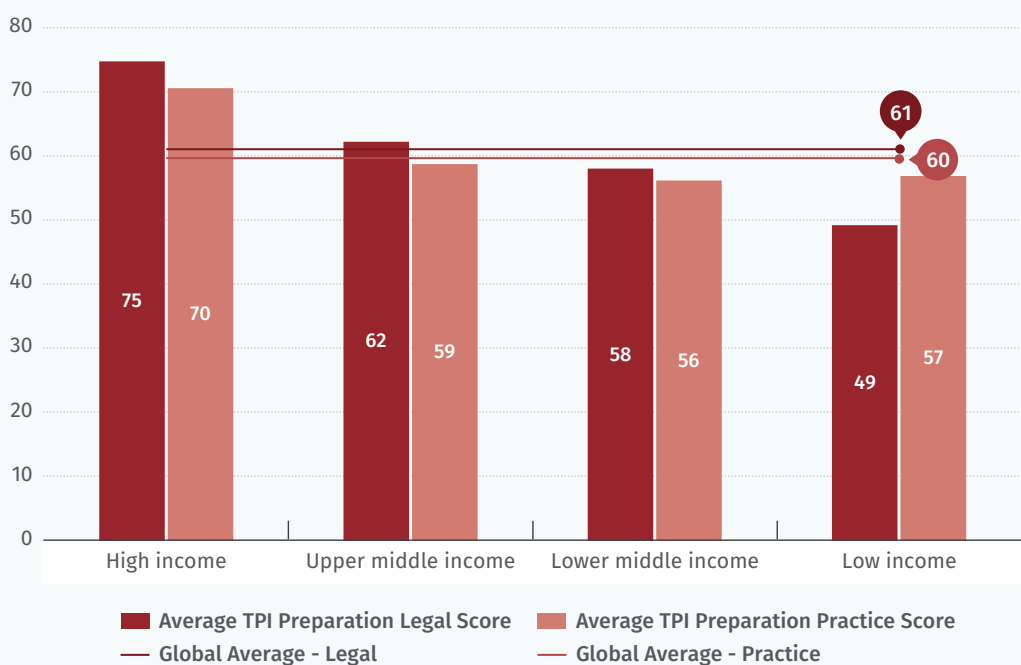


### Box 18 | Pilot Practice-Based Survey—Findings for Planning and Preparation Stage

A sound TPI preparation process well defined in a regulatory framework is as critical as its implementation to ensure well-structured projects. A pilot of de facto questions was included in *Benchmarking Infrastructure Development 2020* to capture whether the written provisions are applied in practice.<sup>62</sup>

A comparison of the global average legal and practice scores (Figure B18.1) shows that both are almost identical (a difference of 1 point) with the legal one being slightly higher. The legal scores are higher in all income groups except for in the low-income economies, where the practice score is eight points higher than the legal one, indicating that some of the good practices not required under their regulatory frameworks are in fact implemented. During TPI planning and preparation, the adoption of national and/or sectoral investment strategies for infrastructure is the area for which contributors see the largest difference between regulatory requirements and practice (47 points).

**Figure B18.1 | Planning and Preparation of TPIs—Legal and Practice Scores by Income Group (score 1–100, Legal N=40, Practice N=38)**



Source: *Benchmarking Infrastructure Development 2020*.

# Procurement of TPIs

Once the planning and preparation phase is complete, a procuring authority will proceed to the selection of the (best) contractor (or consortium of contractors) to deliver a project. The procurement phase plays a key role in the infrastructure sector because how well a TPI project is procured significantly affects whether a project will be brought to completion according to the agreed terms and timeline. Contractors for TPI projects are usually selected through a public tendering process that follows the existing public procurement rules. In most economies such rules aim to achieve the objectives of attaining value for money (VfM), avoiding the waste of public resources, fighting corruption, and promoting good governance and accountability.<sup>63</sup>

To achieve those objectives, the procurement process should adhere to principles of transparency, fair and equal treatment of contractors, open competition, and sound procedural management. At the same time, a regulatory framework geared towards constraints and compliance can shift the focus away from the outcome- and performance-oriented nature of a good procurement system.<sup>64</sup> For example, a 2011 United Kingdom government report pointed to “poor and inconsistent procurement practices” as a leading cause of waste and inefficiency in the public infrastructure sector.<sup>65</sup> Moreover, the rules and procedures followed during procurement can also either incentivize or deter innovation (this aspect is analyzed in a separate section of the report). Therefore, it is not surprising that enhancing the effectiveness of a public procurement is a major concern for policy makers. In the past 20 years, procurement systems around the world have undergone significant reforms as part of good governance programs.<sup>66</sup> Strong procurement systems are key to generating value for money for governments, creating business opportunities for industries (including for small and medium-sized enterprises, or SMEs), fostering innovation, and driving economic growth and development. Ultimately, better procurement systems lead to more and better infrastructure.

*Benchmarking Infrastructure Development 2020* covers issues throughout the procurement process that contribute to a fair, transparent and competitive selection of bidders and that also ensure that the procuring authority selects the best contractor for the project. Areas that affect bidders’ ability to participate in the process include restrictions for foreign bidders, local content requirements, and the fair use of bid securities. The report also covers transparency issues like the online publication and availability of the tender notice, answers to questions and clarifications, the tender award notice, and the contracts themselves. Additionally, the design of the procurement process is considered, with issues such as the composition of the bid evaluation committee, the available procurement methods, the selection criteria used, and the consideration of sole proposals. Finally, several of the areas address the fairness of the process, for example bidders’ access to procurement-related information, provision of sufficient time to prepare and submit bids, clarity and comprehensiveness of the procurement documents, restrictions on negotiations during the contract award, regulation of collusion, and the existence of a complaints review mechanism. Internationally recognized good practices measured and scored by *Benchmarking Infrastructure Development 2020* during the TPI stage are summarized in Box 19.



#### **Box 19 | Procurement of TPIs—Good Practices Scored in *Benchmarking Infrastructure Development 2020***

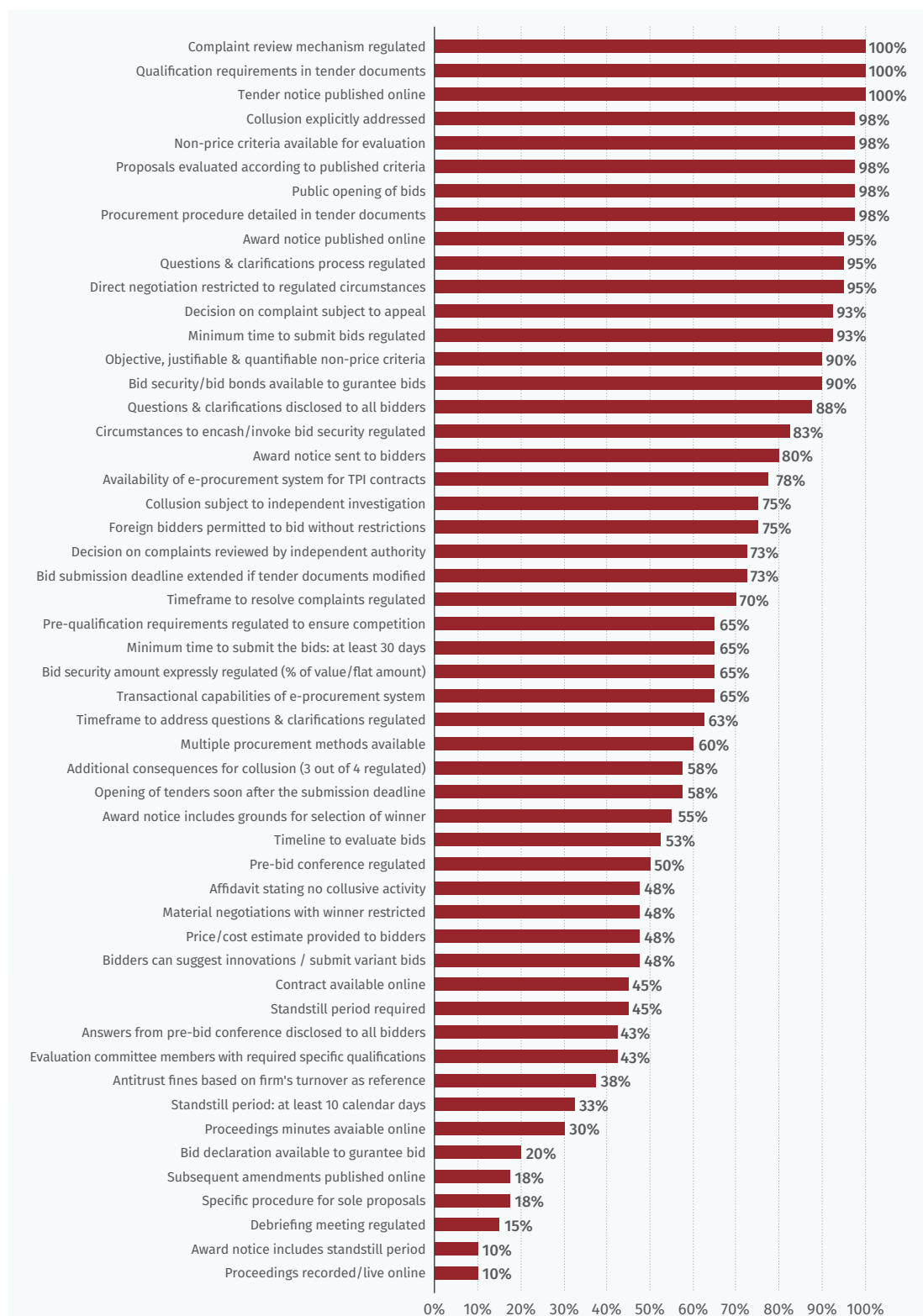
Good practices that help to ensure fair competition, value for money, and transparency during the TPI procurement process include the following:

- › The membership of the bid evaluation committee is specified, and its members are required to meet minimum qualifications.
- › The procuring authority publishes a public procurement notice online.
- › Foreign bidders are not materially restricted or prohibited from participating in a TPI tender.
- › The procuring authority uses an e-procurement system with transactional capabilities.
- › There are mechanisms to secure bids, including bid bonds, among others.
- › If a bid bond is required to secure the bids, its amount is established as a percentage of a contract value or as a flat amount.
- › Only regulated circumstances warrant the execution of a bid security mechanism.
- › The procuring authority grants at least 30 calendar days to potential bidders to submit their proposals.
- › The procuring authority can choose among a range of competitive procurement methods to select the contractor based on the method's suitability, including procedures that support innovation (such as competitive dialogue, among others).
- › If a direct (non-competitive) award is possible, there is a list of well-defined circumstances in which the use of such a procurement method is justified.
- › The tender documents explain in detail the procurement procedure, providing the same information to all bidders.
- › The tender documents specify the qualification requirements (or the pre-qualification requirements, when applicable).
- › The qualification requirements (or the pre-qualification requirements, when applicable) are effectively regulated to ensure equal access for all qualified bidders to a TPI tendering process, without limiting competition.
- › Bids are opened in a defined time and place in public, soon after (e.g., within 24 hours) the bid submission deadline.
- › The bid opening is recorded and/or streamed online, and the minutes are made available online.
- › Potential bidders can submit questions to clarify the public procurement notice and/or documents, and the answers are disclosed to all potential bidders.
- › Potential bidders can suggest innovations to improve the tender documents or the procurement approach, including value engineering and/or technologically neutral options, for example, through the submission of variant bids.
- › There is a set timeframe for procuring authorities to provide answers to the bidders' questions or requests for clarification.
- › If any changes or modifications are made to the tender documents, the bid submission deadline is extended sufficiently to allow the potential bidders to adjust their bids.
- › The procuring authority conducts a pre-bid conference to further inform the potential bidders, and clarifications provided during such conference are disclosed to all potential bidders.
- › The procuring authority evaluates proposals strictly and solely in accordance with the evaluation criteria stated in the tender documents.
- › Non-price criteria can be used for bid evaluation and such criteria are justified, objective, and quantifiable.

- › The procuring authority provides cost estimates or the value of the contract in the tender documents.
- › The procuring authority follows a specific procedure to guarantee value for money if only one proposal is submitted.
- › Regulations establish a timeline or a maximum period of time during which the evaluation of bids must be completed.
- › The procuring authority publishes the award notice online.
- › The procuring authority provides all bidders with the results of the TPI procurement process, including the grounds for selection of the winning proposal.
- › The procuring authority provides the bidders with the option of a debriefing meeting to discuss why their bids were not selected.
- › There is a standstill (or a pause) period of at least 10 calendar days after the notice of intent to award a contract and before the contract is signed to allow unsuccessful bidders to challenge the award decision, and this period is specified in the tender documents or award notice.
- › Any material negotiations between a selected bidder and the procuring authority after the award and before the signing of the contract are restricted and regulated to ensure transparency.
- › There is a specific complaint review mechanism for complaints related to the procurement process.
- › There is a specific timeframe to issue decisions on complaints.
- › Decisions on complaints are subject to appeal.
- › The original complaint or decision on the complaint is reviewed by an independent body (other than a procuring authority or the courts).
- › The regulatory framework specifically addresses collusive practices during procurement both among bidders and between the bidders and the procuring authority.
- › Bidders are required to submit an affidavit, administrative fines are based on the firm's turnover, and the following are also regulated as consequences of collusion: criminal sanctions, administrative penalties for government officials, suspension or debarment of firms, and/or inability to access government subsidies or tax preferences.
- › The review of collusion cases is done by an independent authority other than the courts.
- › The procuring authority publishes the signed TPI contract and its amendments online.

Figure 32 shows the dispersion of some of the good practices. According to the data in Figure 32, the most basic elements of a procurement system are also the most widespread, including the presence of a complaint review mechanism, which is observed in all economies, the requirement to publish the tender notice (100 percent) and award notice online (95 percent), the requirement for the tender documents to detail the procurement procedure (98 percent) and to conduct the evaluation of proposals strictly in accordance with the evaluation criteria set in the tender documents (98 percent). Some of the more advanced features, however, are not as common. Recording or streaming the bid opening online only happens in 10 percent of the surveyed economies, the inclusion of a standstill period in the award notice (to ensure that unsuccessful bidders are aware of it) in only 10 percent, the possibility to hold a debriefing meeting is only regulated by 15 percent of the economies, and the presence of a specific procedure in cases when only one bid is received in only 18 percent. These are some of the rarest practices observed in the surveyed economies, so there is room for improvement.

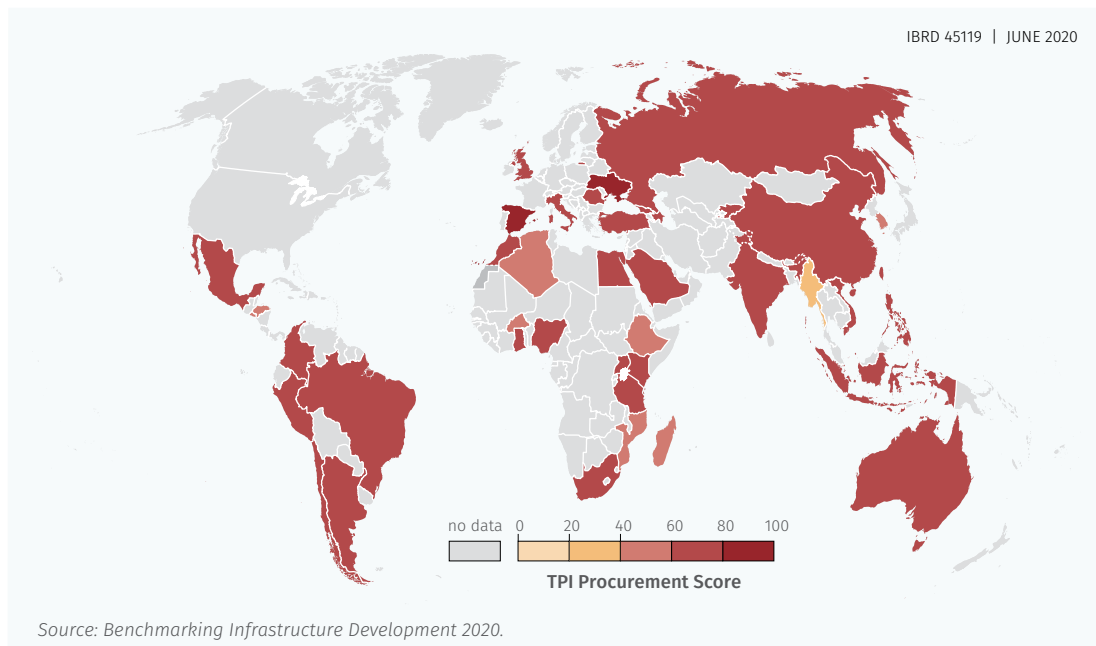
**Figure 32 | Share of Economies that Adopt Good TPI Procurement Practice by Score Areas (percent, N=40)**



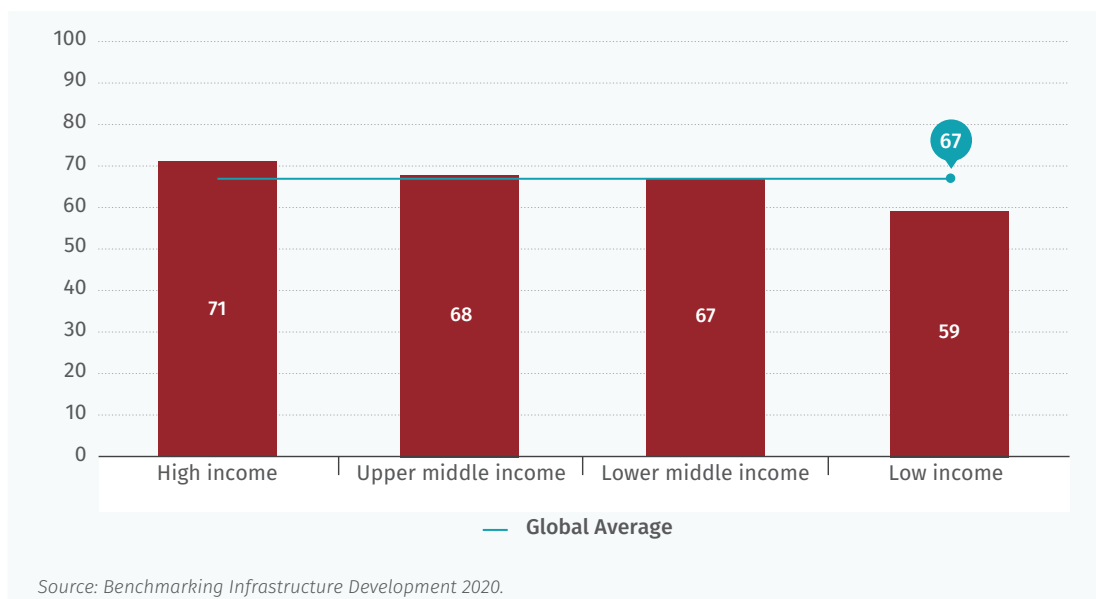
Source: Benchmarking Infrastructure Development 2020.

Figure 33 shows the global overview of TPI Procurement scores. The scores of TPI procurement thematic area (Figure 34) show the same trends as in other thematic areas, i.e., that the higher the income level, the higher the average score. However, procurement is the thematic area with the smallest variation among income groups (12 points).

**Figure 33 | Global Overview of TPI Procurement Scores (score 1–100, N=40)**



**Figure 34 | TPI Procurement, Score by Income Group (score 1–100, N=40)**



The analysis that follows focuses on the topic of barriers to participation in public tenders by looking at different aspects that may create barriers and deter the participation of both foreign and local bidders, potentially reducing competitive tension including formal restrictions for foreign bidders to participate in the tenders and the presence of local content requirements.

## Barriers for Participation in Public Tenders

The cornerstone of effective competition for public infrastructure projects is the removal of artificial, unjust, and arbitrary barriers to participation in public tenders, i.e., formal and informal requirements and procedures throughout the procurement process that make it harder for both national and international companies to access the public procurement market or that simply discourage potential bidders from participation in tender opportunities. Effective competition for public projects is important for: achieving a better value for the taxpayers' money (both better prices and better quality), reducing collusion among bidders or between bidders and a procuring authority, encouraging innovation, and enhancing accountability and fighting corruption. Ultimately, competition leads to better value for money.<sup>67</sup>



## Box 20 | Soft Barriers to Participation in Public Tenders

Besides explicit barriers to participation for foreign bidders, some rules and practices (or the lack thereof) may make it harder for both national and international contractors to access public tender opportunities. Eliminating discretionary and unjustified direct and indirect barriers to entry is key to stimulating competition. In order to do so, the regulatory framework needs to adhere to principles of equal treatment of bidders, non-discrimination, and transparency during all stages of the procurement process, from issuing the tender notice to the award of the contract. In particular, there are three issues assessed as part of *Benchmarking Infrastructure Development 2020* that can create unnecessary barriers to the participation of a larger pool of bidders: the lack of adequate time to submit the bids, non-transparent qualification requirements, and arbitrary or excessive bid security requirements.

Granting a sufficient period of time (usually at least 30 calendar days) to potential bidders to submit their bids guarantees equal access to procurement opportunities as it enables all companies to get familiar with the procedures and requirements in place. This requirement can be very important especially in the case of international tenders because foreign suppliers might be less familiar with local conditions. Among the surveyed economies, all economies, except for Algeria, the Philippines, and Indonesia, establish an explicit period of time to be given to bidders to prepare and submit their bids. The shortest period, 10 days, is given to bidders in the Arab Republic of Egypt, while the longest one, 90 days, is observed in Tanzania. Among the remaining economies, 45, 40, and 35 days are the most common periods regulated.

All surveyed economies are directed to specify any (pre-)qualification requirements in tender documents, making them available to all potential bidders. Furthermore, 26 (65 percent) surveyed economies regulate parameters for such requirements to ensure that they do not unduly restrict competition. For example, a requirement that “conditions of participation do not directly preclude potential suppliers on the basis that they have not had prior experience supplying to government” is seen in Australia. In Brazil “the use of any element, criterion or a secret, subjective or a reserved factor that may even indirectly elude that the principle of equality among bidders is violated is prohibited.” Regionally, all surveyed economies in the ECA, OECD, and SAR regions provide for such additional requirements, while the majority of economies in the other regions establish them, except for the SSA region, where only 10 percent of economies surveyed in the region establish them.

Finally, an effective procurement system must also have a bid security mechanism to ensure that a winner will follow through and sign the contract. There are various ways to establish such a bid security mechanism, including through the requirement to provide a monetary guarantee that will be forfeited in case of refusal to sign the contract or a bid declaration, which is a notarized sworn statement made by a bidder committing to sign a contract if he is selected. As with the pre-qualification requirements, conditions for bid securities must be adequate to the object and scope of procurement and must not create a barrier that can only be overcome by a single or a very limited cluster of bidders. The data compiled as part of *Benchmarking Infrastructure Development 2020* show that a bid bond (90 percent) is the most common type of bid security mechanism used in the surveyed economies, with the amount set predominantly as a percentage of a contract or bid value (63 percent). The most typical percentage value for bid bonds is 2 percent, seen in 36 percent of the surveyed economies that establish a bid bond amount as a percentage of a contract or bid value. The other common values are 1 percent, 3 percent, and 5 percent. Among the 25 economies in the sample that regulate a bid bond amount in such a way, the minimum and maximum values observed are 0.5 percent in Ukraine and 5 percent in Argentina, El Salvador, and the Russian Federation.



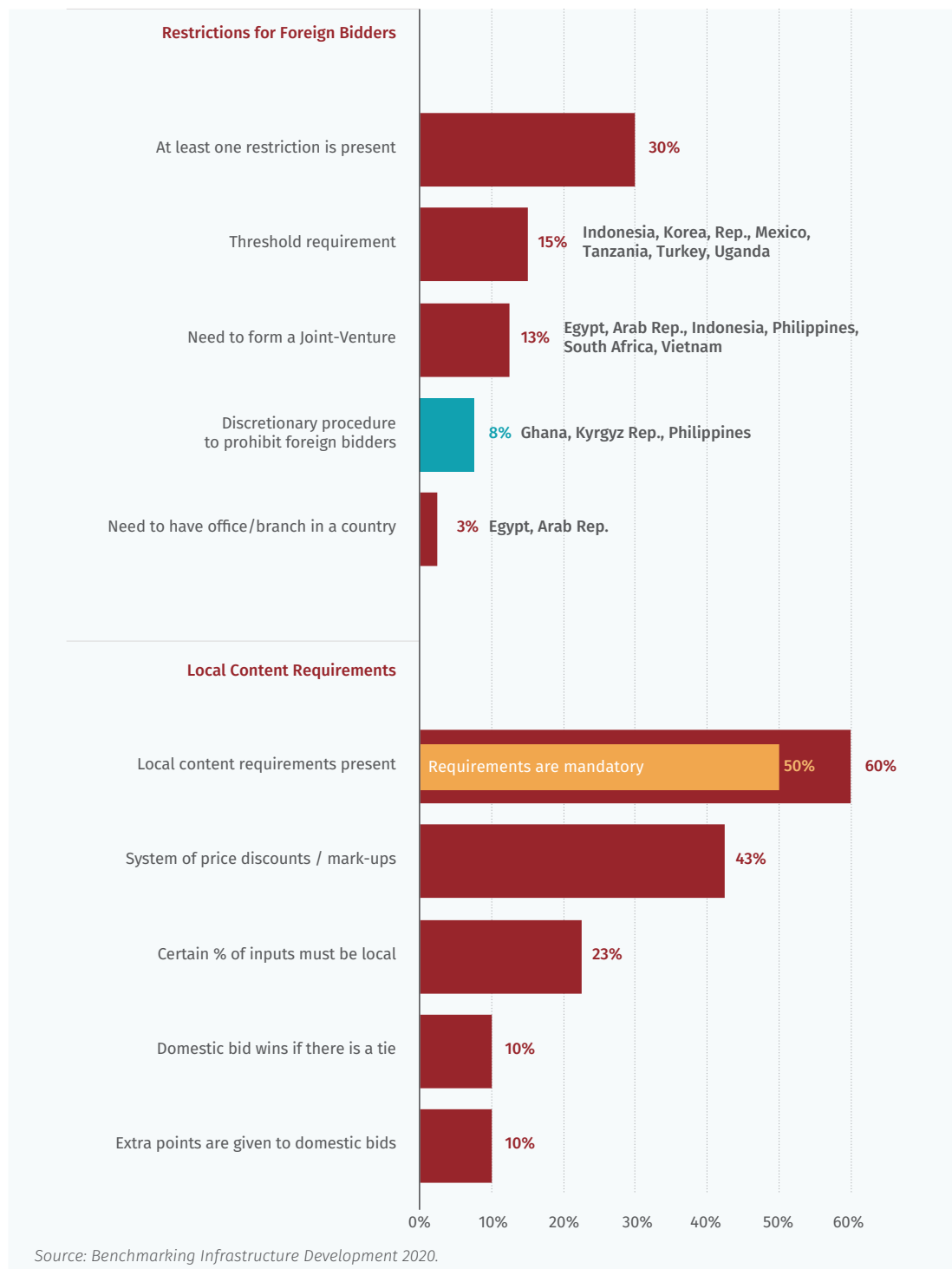
Despite the well-known benefits of competition, however, in some cases, governments choose to establish formal and direct barriers to procurement market entry, intending to support certain other objectives seen as worthy of public protection; for example, governments might want to limit access and/or grant preferential treatment to local contractors in order to support the local economy or bolster nascent industries. This may limit competition by formally restricting access to foreign bidders or introducing conditions or other additional requirements applicable to foreign suppliers only. For example, a procuring authority might ask suppliers to employ a certain percentage of the workforce from the local region, or it might impose other requirements such as expecting all (or just a certain percentage of) local goods/materials to be used, or it might impose price preferences in favor of local suppliers. Procuring authorities might incur additional costs by implementing such policies because they might not be selecting the best contractor and/or they might be paying more for the project. However, this may be justified by related economic and political benefits, especially in developing economies where governments are commonly the only outlets for trade and work orders. Indeed, governments often resort to such policies in order to achieve broader social, economic, and environmental goals, i.e., goals that go “beyond the delivery of a project itself.”<sup>68</sup> However, these policies should be pursued only when the level of competition in the national market is adequate not to overly compromise value for money (and a proper market sounding assessment may be required to fully understand this). Ultimately, these limitations should be clearly justified and regulated in a transparent and objective manner (non-arbitrary) that provides clarity to potential bidders.

*Benchmarking Infrastructure Development 2020* analyzes the accessibility to public tenders by foreign companies from two different perspectives. First, restrictions and requirements for the participation of foreign bidders include: discretionary power by the procuring authorities to limit access to foreign bidders, the presence of a local office/branch or the requirement to form a joint venture with a local company, requirements to have local experience, or the establishment of a threshold above which public tenders are open for foreign bidders. The second is the presence of local content preferences: the need to use a certain percentage of inputs from local suppliers, the establishment of a quota of public contracts that must be tendered to local bidders, awarding of contracts to the domestic bidder when two identical bids are identified, granting local bidders additional points or price discounts during bid evaluation, and establishing higher bid security for foreign bidders. Figure 35 summarizes the data obtained on this matter.

Almost a third (30 percent) of the surveyed economies have at least one of the above-mentioned restrictions for foreign bidders. The presence of a threshold requirement is the most common restriction for participation of foreign bidders, observed in six (15 percent) surveyed economies. Indonesia displays the highest monetary threshold, about US\$62.5 million for the tendering to be open to foreign bidders. Procuring authorities in Ghana, the Kyrgyz Republic, and the Philippines, on the other hand, can at their discretion limit the access of international companies to public tenders. Thresholds for public tenders to be open to foreign bidders are preferred to an outright prohibition to participate as they still allow procuring authorities to receive the benefits of international competition for projects that are above the thresholds while reducing the complexity of the procurement process for projects that might not be of interest to foreign contractors. However, for thresholds to be truly useful, they have to be set at an adequate level, i.e., not so high as to exclude potential foreign participants and sufficient to guarantee adequate competition at the national level. The need to form a joint venture with local companies is present in five (13 percent) surveyed economies, and in the Arab Republic of Egypt, foreign bidders need to establish a local office/branch before participating in a bidding process.

Local content preferences are much more common than restrictions for foreign bidders: 24 (60 percent) economies establish some form of local content requirements. Moreover, in most of the economies that have local content requirements they are mandatory (50 percent of all surveyed economies or 83 percent of the economies that have such requirements). A trend surfaces when looking at the income level of the economies that predominantly adopt local content requirements: The lower the income level of the economy, the more likely it is to support local contractors by giving them some advantages or protections when bidding for public works contracts. Thus, among low-income economies surveyed, all the economies adopt such a regime, while only 14 percent (1 out of 7) of high-income economies do the same.

**Figure 35 | Restrictions for Foreign Bidders and Local Content Requirements (percent, N=40)**



By and large, the most common type of local preference is a system of price discounts applied to domestic firms' offers (or, on the other hand, a system of price mark-ups added to bids submitted by foreigners) in order to make local bids more competitive. This practice is observed in 17 economies

(43 percent). Requiring contractors to use a certain percentage of local inputs (i.e., goods or services) when delivering a contract occurs in nine (23 percent) surveyed economies. Four surveyed economies (Colombia, El Salvador, Ethiopia, and Mexico) (10 percent) award a contract to a domestic bidder if there is a tie with an equally competitive bid from a foreigner. Another four (Algeria, Colombia, South Africa, and Vietnam) assign extra points to domestic bids when a system of points/weights is used to evaluate the bids. Price discounts (mark-ups) are somewhat better than other restrictions on foreign bidders because their costs can be quantified.<sup>69</sup> Additionally, by using a system of price discounts/mark-ups, the procuring authority can still attain benefits from allowing foreign bidders to bid for public tenders, including obtaining innovative solutions as well as reducing corrupt and collusive practices.<sup>70</sup>

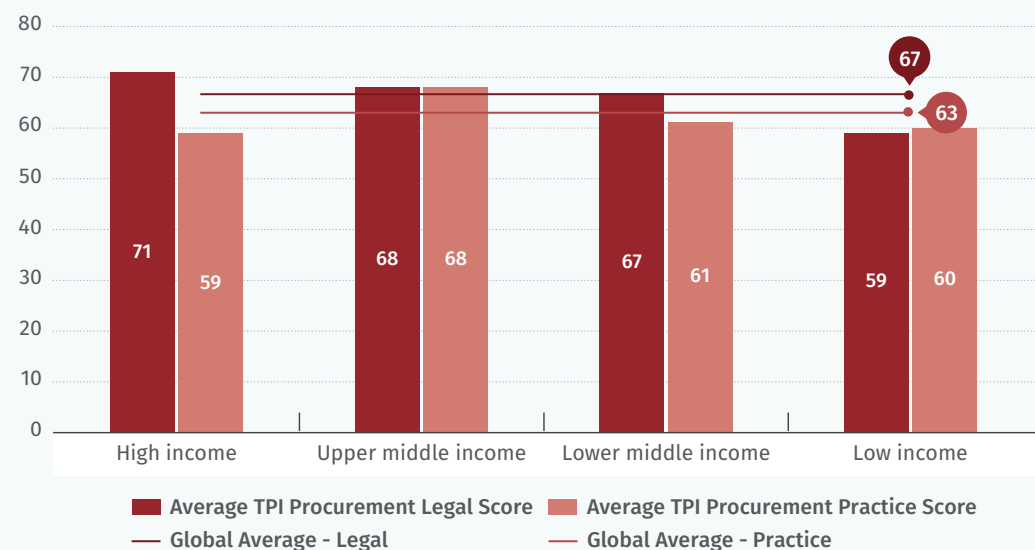
### Box 21 | Pilot Practice-Based Survey—Findings for the Procurement Stage

A procurement process clearly defined in regulatory frameworks is as critical as its implementation to ensuring a transparent and competitive tendering process. A pilot of de facto questions was included in *Benchmarking Infrastructure Development 2020* to capture whether the written provisions are applied in practice.<sup>71</sup>

As with the planning and preparation stage, the global average legal and practice scores for the procurement stage do not differ significantly (4 points) and this gap is only slightly larger than in the planning and preparation phase where it was just one point (see Figure B21.1).

The high-income group shows the largest difference between legal and practice scores (12 points), followed by lower-middle-income economies (6 points), indicating that implementation lags behind legal requirements. Upper-middle-income and low-income economies seem to follow good procurement practices as they are prescribed in their regulations. According to the survey responses, the area where practice lags most behind regulatory provisions is in the use of innovative procurement methods (i.e., competitive dialogue) (39 points).

**Figure B21.1 | Procurement of TPIs: Legal and Practice Scores by Income Group (score 1–100, Legal N=40, Practice N=38)**



Source: *Benchmarking Infrastructure Development 2020*.

# TPI Contract Management

Contract management is an important phase in a TPI project cycle. Once a contract is awarded and signed, the implementation stage begins. The project's management determines whether it will succeed in delivering the intended results. The same efforts put into the contract's award need to be put into its management. Failure to do so could even undermine procurement reforms.<sup>72</sup> Noteworthy is the criticism raised by Steven Kelman. He claims that the aims of the Government Performance and Results Act of 1993 to reform the U.S. procurement system were undermined because of lack of attention and resources devoted to the contract management phase. He writes that “the system was getting better, but contract management was getting worse—so much so that we have not noticed any improvements.”<sup>73</sup>

To this end, it is crucial to establish a sound TPI contract management system and a dedicated TPI contract management team to oversee the implementation of a contract. As Kelman argues,<sup>74</sup> a dedicated workforce and sufficient management resources for the implementation of projects are crucial to the success of the contract management phase. Effective contract management can help the authority save money and resources by avoiding costs overruns and corruption. Gavin Hayman contends that “poor, rushed project management further undermines public efficiency.”<sup>75</sup>

Works need to proceed according to the contract agreement reached between the authority and the awarded bidder, respecting the timeframe, quality, costs, and any other conditions in the contract. This is essential for the efficient and effective delivery of the infrastructure project and for the fairness of the procurement apparatus as a whole. Time overruns, delays in performance, delays in delivering the work, delays in payments, and contract modifications of any sort need to be carefully monitored and investigated because they might signal malpractice and corruption and they might compromise the satisfactory completion of the project. For example, delays in delivering the project by the contractors create problems both for the end users—the citizens who ultimately should benefit from the project—and for the procurement authority/government that has commissioned the project. Furthermore, such delays diminish the economic and social benefits that were supposed to be gained from the project and jeopardize the credibility of the procurement authority (and depending on the importance of the infrastructure, the government itself) that had commissioned the project, causing political backlash. One way to limit delays—and to make contractors accountable for such delays—is to anticipate penalties for such delays to be imposed on the contractor by the authority. In the authors' sample of cases, the regulatory frameworks of all but three countries (Georgia, Uganda, and the United Kingdom) provide that penalties are enforced on the contractor for delays in TPI contracts in accordance with the agreed-upon contract timeline.

Another sensitive issue of contract management is that of contract modifications. As is often argued in the literature, the possibility of modifying contracts needs to be carefully evaluated as artificial modifications—or modifications that exceed a set value of the contract, or that alter the contract substantially, for example by altering the quality and the overall costs of the project—might affect competition and might lead to a breach of procurement law, compromising the legitimacy of the award itself.<sup>76</sup> It is the practice in some jurisdictions, for example, that changes to contracts that amount to a “new contract” need to be re-tendered or face potential breach of procurement rules.<sup>77</sup> It is essential to regularly conduct inspection of work to monitor the quality and the pace at which the work is proceeding and to ensure that a thorough inspection of the infrastructure precede its final acceptance by the authority.

A sound contract management system will include many elements, one of which could be, for example, a system of tracking the progress of construction works together with making this information available to the public online. Such a system would act as an early warning mechanism to flag any possible delays or problems throughout project delivery. To help reduce the risk of corruption and ensure that work is

completed satisfactorily, an independent audit and control mechanism must also be in place. When possible, external stakeholders should also be involved in the monitoring and inspection process; it is becoming common practice, for instance, to involve civil societies organizations or groups of interested citizens in the monitoring, inspection, and control of work progress. In this respect new and modern methods of data standards publications and dissemination aimed at enhancing transparency, such as the Open Contracting Data Standards (OCDS), have the potential to greatly help the monitoring of contract management by the authority and by interested stakeholders, such as the public, civil society, and other companies.<sup>78</sup> In the sample of cases in Ukraine, for example, open contracting and the OCDS have been used extensively, leading to greater accountability, increased competition, and major savings.<sup>79</sup>

Control mechanisms are also important to maximize governments' chances of success in addressing—and containing—contractors' opportunistic behaviors, especially when contracts are complex.<sup>80</sup>

Acknowledging the importance of the contract management phase, *Benchmarking Infrastructure Development 2020* measures several aspects, including the presence of a contract management system with such elements as a specialized contract management team, a manual, and risk mitigation mechanisms; the regulation of the monitoring and evaluation system during the construction phase, including progress-based payments, progress reporting, and information disclosure requirements; the presence of an independent audit and control mechanism; performance guarantee requirements and their characteristics; and a robust system for making payments by contracting authorities and express provisions to regulate different circumstances during the life of a contract such as force majeure, material adverse government action, change in law, renegotiations, and dispute resolution mechanisms, etc. Internationally recognized good practices in the contract management phase of TPI projects are summarized in Box 22.



### **Box 22 | TPI Contract Management—Good Practices Scored in *Benchmarking Infrastructure Development 2020***

Good practices to ensure successful implementation and delivery of a TPI project include the following:

- › The procuring (or contract management) authority has a system to manage the implementation of the TPI contract, including establishing a contract management team, adopting an implementation manual, and risk mitigation mechanisms.
- › The members of the TPI contract management team are required to meet minimum qualifications.
- › The procuring (or contract management) authority has a system for tracking the progress of construction work, with relevant information publicly available online.
- › There is an independent audit and control mechanism to oversee the contract management stage.
- › The contractor is required to provide a performance guarantee, the amount of which is determined explicitly, and there are specific circumstances that justify its invocation.
- › There is a specific timeline within which the procuring authority must make payments to contractors and if there are any delays interest is payable on the overdue amount.
- › The contractor is penalized for delays in the delivery of a project.
- › The contractor is required to take out and maintain insurance against a comprehensive list of risks during the implementation phase.
- › Consequences of the procuring authority's default on its obligations are regulated.
- › Modifications or amendments to a contract are expressly regulated to reduce incentives for opportunistic behavior by either party.
- › Third-party government approval is required for contract modifications.
- › The procuring (or contract management) authority cannot unilaterally modify a contract without third-party approval.
- › Specific circumstances (force majeure, material adverse government action, change in the law, refinancing) that may arise during the life of the contract are expressly regulated.
- › Alternative dispute resolution mechanisms are available, including domestic and international arbitration, dispute resolution boards, and mediation.
- › Arbitration awards are enforceable by local courts.
- › Grounds for termination of the contract and the associated consequences are well defined.
- › The procuring (or contract management) authority inspects the works after the completion of a construction contract.

Figure 36 below shows how widespread some of the good practices mentioned in Box 22 are in the surveyed economies. The majority of best practices analyzed are followed by more than half of the economies surveyed, making contract management the thematic area with the most compliance. Some of these good practices are fundamental pillars of contract management, including explicit regulation of contract modifications during the contract life (98 percent), requiring a performance guarantee (98 percent), or regulating a system for monitoring performance of construction works (98 percent). The only three good practices that are followed in less than half of all the surveyed economies are requiring third-party government approval for contract modifications (40 percent), making construction progress information available online (23 percent), and requiring that a contract management team consist of members that meet minimum technical qualifications (23 percent).



**Figure 36 | Share of Economies that Adopt Good TPI Contract Management Practices by Scored Areas (percent, N=40)**

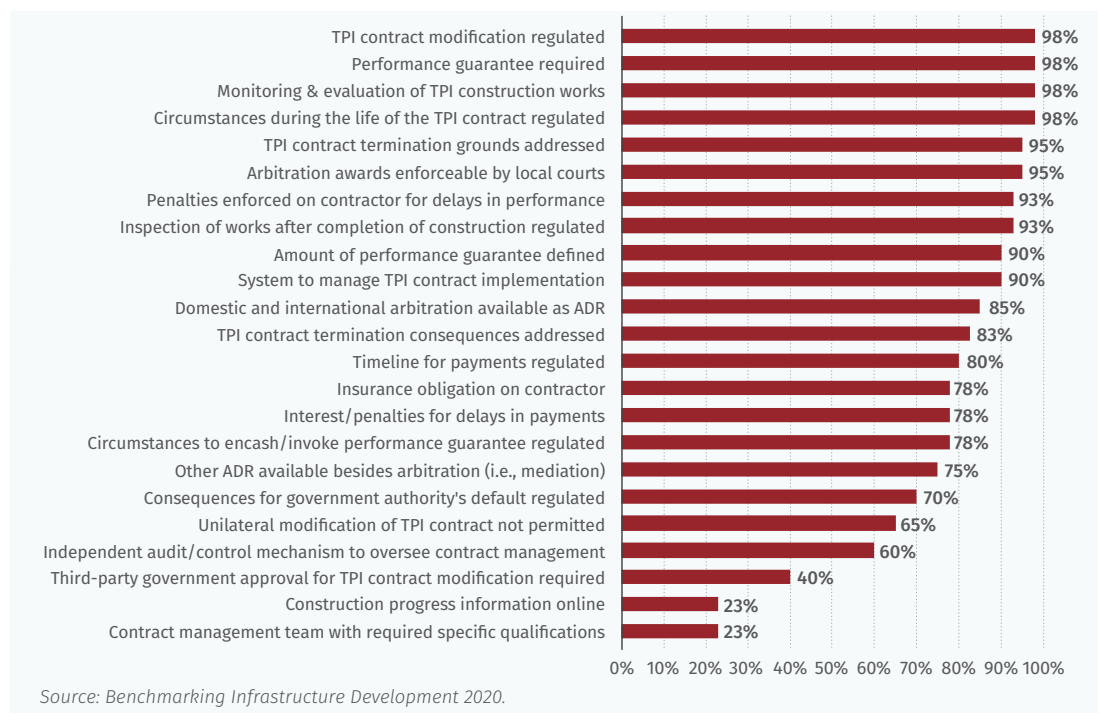
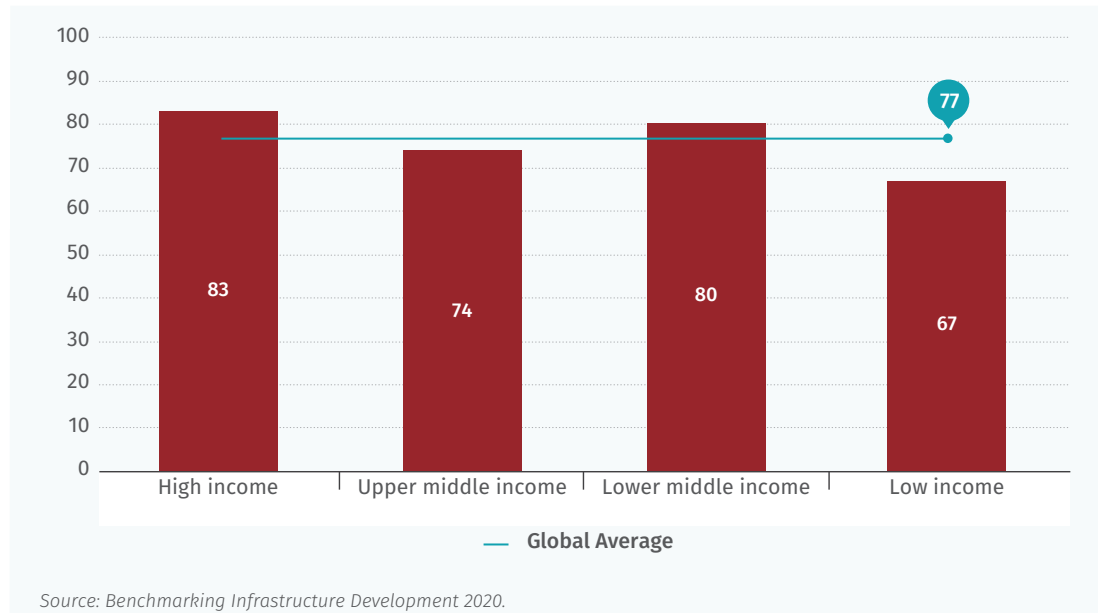


Figure 37 shows the global overview of TPI contract management scores. The average score for the contract management thematic area (77 points) is higher than for both preparation and planning (61) and procurement (67) thematic areas (Figure 38). When disaggregated by income level, the lower income economies surpass the upper-middle ones, which departs from a trend detected in the other two thematic areas, in which higher incomes were associated with higher average scores.

**Figure 37 | Global Overview of TPI Contract Management Scores (score 1–100, N=40)**



**Figure 38 | TPI Contract Management, Score by Income Group (score 1–100, N=40)**



The analysis that follows focuses on the topic of payments made by the contracting authorities to contractors, whether such payments are mandated to be made within a set deadline and whether penalties are required in the case of delays.

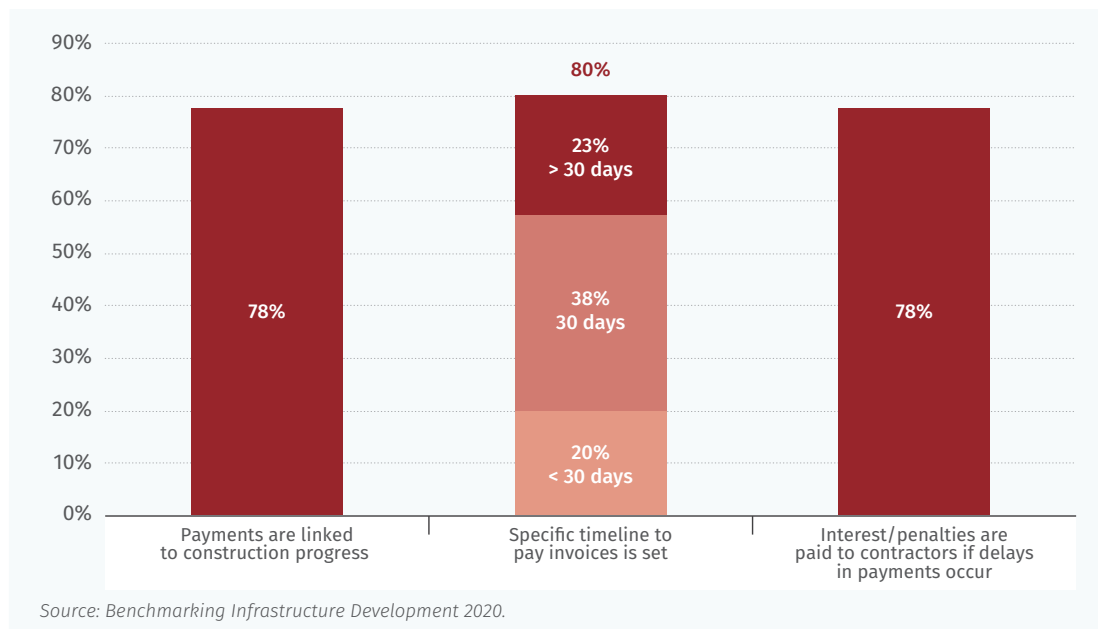
## Late Payments, Penalties, and Contract Performance

Timely payments by procuring authorities are critical for suppliers. Delays in payments increase costs and may negatively impact the completion/realization of a project. Delays also undermine confidence in the reliability of the procuring authority and might deter good contractors from participating in public tenders. They can even limit the appetite to do business with the government if delays in payments are an endemic problem within an economy rather than limited to a specific authority. Furthermore, payment delays can mask corruption—officials responsible for authorizing payments may withhold funding for unethical or even illegal reasons.

Delays in payments are particularly detrimental to SMEs if they subcontracted to deliver some of the project-related works. Delays can drive smaller companies out of business because they depend more on prompt payments to finance their activities and might need to resort to private lending or face higher financing and operating costs, including for paying their employees. Furthermore, late payments can cause delays in the delivery of a project because contractors might not have sufficient resources to continue carrying out their activities, i.e., buying materials and paying their employees.<sup>81</sup> The issue of payment delays is acute even in some more developed economies as has been the case in the European Union. The EU issued Directive 2011/7 on combating late payments, which establishes maximum periods under which the EU member states have to ensure timely payments to contractors. However, as recent case law from the Court of Justice of the European Union demonstrates, payment delays remain endemic in some European economies.<sup>82</sup>

*Benchmarking Infrastructure Development 2020* measures whether a regulatory framework establishes a specific period of time within which the procuring authority must pay submitted invoices, whether penalties are imposed for delays, and whether payments during the construction stage are linked to progress in contract delivery. As shown in Figure 39, most economies employ these practices.

**Figure 39 | Good Practices for Payments by Procuring Authorities (percent, N=40)**



Looking at each practice individually, most procuring authorities (78 percent) link payments to progress in contract delivery. Among the economies that adopt this practice is Colombia, where the Public Procurement Law provides that “in works projects, the procuring entities shall make payments commensurate with the progress of the works.” Similarly, in India the Standard EPC Agreement provides that “a [contracting] authority shall make interim payments to the Contractor as certified by the Authority’s Engineer on completion of [each] stage, in the length, number or area as specified and valued in accordance with the proportion of the Contract Price assigned to each item and its stage.”

Eighty percent of surveyed economies set a specific timeline for paying invoices. Thirty days is the most common period set; it is seen in 38 percent of the surveyed economies. On average, high-income economies have shorter timelines (24 days) than low-income economies (41 days). Among the economies that provide for a specific time to pay the invoices, all surveyed economies in the OECD, MENA, and SAR regions establish such a timeline. Several economies in the LAC, EAP, SSA, and ECA regions could improve their regulation of this matter as they do not explicitly provide for a specific timeline, including Colombia, El Salvador, China, Georgia, Kenya, the Kyrgyz Republic, Myanmar, and Tanzania. The longest payment period is 75 days, in Madagascar, while the shortest one, five days, is observed in Indonesia and the Republic of Korea.

Consequences for not complying with the established payment periods incentivize the procuring authorities to respect such periods, serving as enforcing mechanisms and, to some extent, compensating the damage to contractors due to late payments. Seventy-eight percent of the surveyed economies regulate such a practice. For example, in Ghana the Contract Administration Manual for Works says that “if [a contracting authority] makes a late payment, the Contractor shall be paid interest on the late

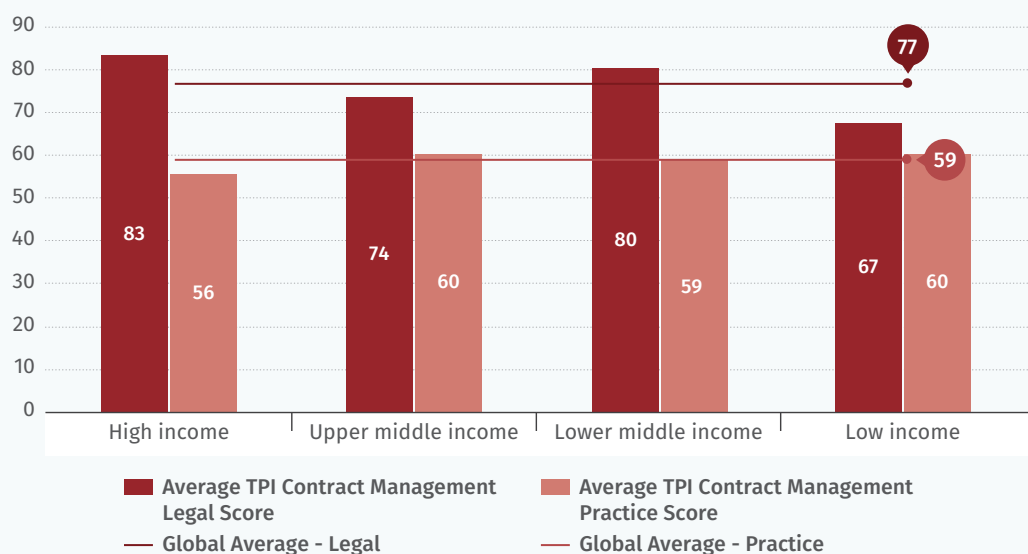
payment in the next payment [period]. Interest shall be calculated from the date by which payment should have been made up to the date when the late payment [was actually] made at the interest rate for each of the relevant currencies of payment.” In Mozambique, Decree Nº 5/2016 provides that “in the event of late payment due by the Contracting Authority, the Contractor is entitled to default interest under the terms set out in the Contract.”

### Box 23 | Pilot Practice-Based Survey—Findings for Contract Management

It is crucial to establish a sound contract management system to oversee implementation of a TPI contract. Such a system should not only be clearly defined in the regulatory framework but also carried out in practice. A pilot of de facto questions was included in *Benchmarking Infrastructure Development 2020* to capture whether the written provisions are applied in practice.<sup>83</sup>

The data show that the difference between global average legal and practice scores in the contract management phase is the largest among all phases analyzed (18 points vs. 1 point in planning and preparation and 4 points in procurement stages) (see Figure B23.1). Legal scores are higher than practice ones in all income groups, showing that implementation of good contract management practices is lagging legal requirements in all economies. Interestingly, the largest gap (27 points) and the lowest practice score (56 points) are observed for the high-income group, and the low-income group has the smallest gap (7 points). During TPI contract management, the adequate use of the performance guarantee is the area where contributors see practice falling furthest behind from regulations (44 points).

**Figure B23.1 | Contract Management of TPIs: Legal and Practice Scores by Income Group (score 1–100, Legal N=40, Practice N=38)**



Source: *Benchmarking Infrastructure Development 2020*.

# Procurement Practices to Induce Innovation

Promoting innovation is becoming a core objective for policy makers. Public procurement, given its size and the role it plays, is recognized as an important lever for stimulating innovation and an instrument for supporting and promoting innovative policies.<sup>84</sup> This is especially the case where government demand is significant, as in the case of investments in infrastructure. Through procurement activities, governments can support the use of new technologies, designs, networks, and ideas. As Richard Baron argues, “like other demand-side innovation tools (regulations and standards), procurement can spur innovation without engaging new spending—a plus in times of fiscal consolidation.”<sup>85</sup> In turn, through innovation in procurement, governments can “achieve better outcomes”<sup>86</sup> both in terms of efficiency and effectiveness of the gains. Innovation procurement has been described as “an opportunity for public buyers, citizens and businesses.”<sup>87</sup>

Public procurement can support innovation by identifying an unsatisfied need and creating a market to respond to it; aggregating demand from various agencies in a country, creating a larger market and economies of scale for a new product or service; and providing a reputational boost to the selected product or company, which can facilitate market penetration beyond the procurement contract (IISD 2012).<sup>88</sup> Legislation in many economies now recognizes the role that procurement can play in innovation. For example, the preamble of the 2014 EU Directive on public procurement states that “public authorities should make the best strategic use of public procurement to spur innovation ... [which] plays a key role in improving the efficiency and quality of public services while addressing major societal challenges.”<sup>89</sup> However, there are still significant barriers to the effective fostering of innovation within the procurement process. Procurement for innovation requires flexible and dynamic procedures, an efficient dialogue with contractors, and competent and honest officials who can exercise their discretion effectively when necessary.<sup>90</sup> On the other hand, in an attempt to limit the scope and occasions for corruption and collusion, many procurement systems are geared towards constraining the discretion of procurement officials, shackling them with excessive regulation and scrutiny.<sup>91</sup> This can cause rigidity in the rules and lead to inefficient and ineffective procurement. Therefore, balancing the two objectives of inducing innovation without increasing the risk of corruption is a process that must be undertaken by each economy while giving consideration to the local circumstances and practices.

*Benchmarking Infrastructure Development 2020* includes a set of questions that helps clarify whether procurement regulations are geared towards facilitating innovation. Such questions address whether there is: the requirement to perform a market sounding exercise during the preparation stage that is specifically designed to identify the available technologies and opportunities for innovation; the possibility for the procuring authority to conduct a pre-bid conference to further enhance communication with the potential bidders; the possibility for the bidders to suggest innovations/modifications including through the submission of variant bids; the use of an e-procurement system that has transactional capabilities; the possibility to use non-price criteria to evaluate the bids that are justified, objective, and quantifiable; and the availability of more innovative procurement procedures, including a multi-stage tendering, a competitive dialogue, and the best and final offer (BAFO) process.

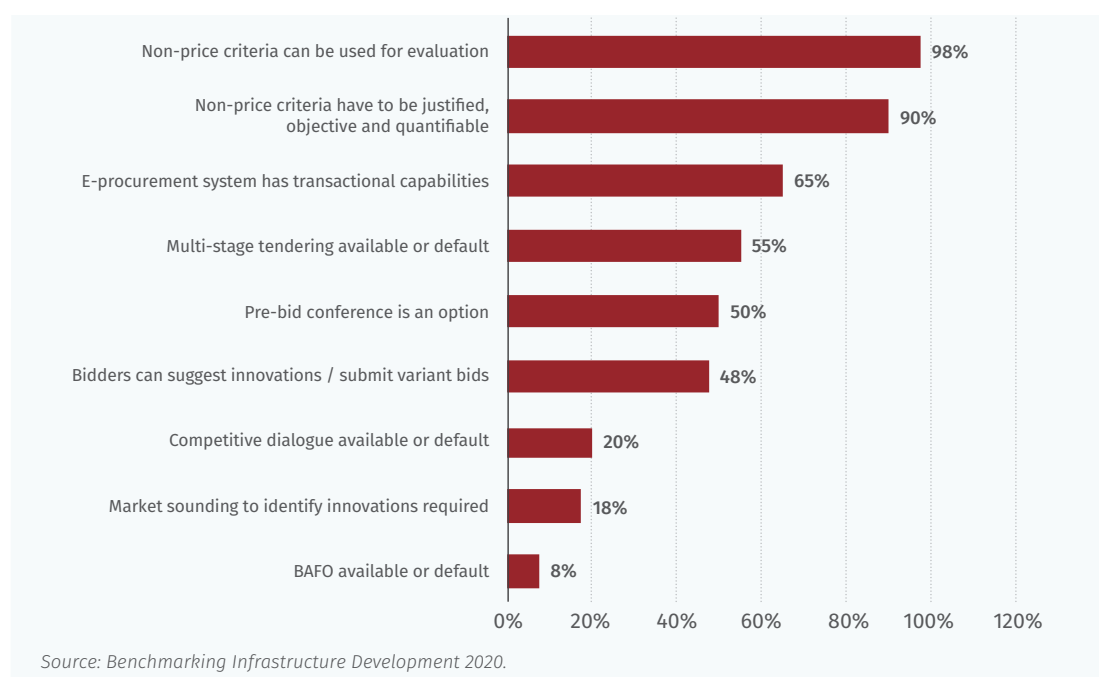
#### Box 24 | TPI Procurement Practices That Induce Innovation

Good practices to facilitate innovation include the following:

- › A market sounding to identify available technologies and opportunities for innovation is performed before launching procurement.
- › The procuring authority may conduct a pre-bid conference to further enhance direct communications with potential bidders.
- › Bidders can suggest innovations or modifications to the tender documents or technological solutions, including through submission of variant bids.
- › Procurement is carried out via an e-procurement system that has transactional capabilities.
- › Non-price criteria can be used to evaluate the bids and such criteria are regulated effectively to ensure that they are justified, objective, and quantifiable.
- › More innovative procurement procedures are available, including a multi-stage tendering, a competitive dialogue, and a best and final offer (BAFO) process.

Figure 40 demonstrates how widespread are practices that induce innovation in the surveyed economies. The data indicate the most common practices are the possibility to use non-price criteria that are justified, objective, and quantifiable for evaluating the bids, and the use of an e-procurement system that has transactional capabilities. On the other hand, requiring a market sounding exercise to scan for available technologies and innovations and some of the more advanced procurement methods, including a BAFO process and a competitive dialogue, are relatively rare in the surveyed economies. Holding a pre-bid conference is also a rare practice. The lack of a market scoping for innovation might be problematic because this instrument is important for understanding what innovative solutions are already available and how to maximize innovation within the procurement cycle. Considering innovative aspects at early stages of the procurement cycle would allow the authorities to devise better strategies for innovation and adopt innovative solutions more consistently.

Figure 40 | Share of Economies that Adopt Good TPI Procurement Practices by Scored Areas (percent, N=40)





Good practice suggests that procuring authorities should be able to choose among innovative procurement procedures based on a method's suitability for a particular project. Among the surveyed economies, at least one of the three procurement methods that facilitate innovation is available in 70 percent of the economies. Multi-stage tendering is the most popular method (55 percent of the surveyed economies), followed by competitive dialogue (20 percent) and BAFO process (8 percent). Some other methods seen, for example, in the EU economies include a partnership procedure specifically designed to promote and encourage innovation. Australia also encourages non-traditional procurement approaches when they can be linked to and favor innovation. Thus, according to section 3.3 of the New South Wales (NSW) Market Approaches Guide, the NSW Government Procurement Board encourages agencies to consider non-traditional approaches to procurement because "adopting procurement processes that are open to, and encourage, innovation, gives the market the opportunity to offer solutions that may be more productive, a better fit for government needs and, in some cases, more cost and resource efficient."

The authors' analysis also reveals that less than half of the surveyed economies (48 percent) allow bidders to suggest innovations through, for example, the provision of value engineering and/or technologically neutral options, including by submitting variant (alternative) bids. This might be a sign of how rigid procurement systems in some economies can be and how difficult it is to propose innovative solutions. An example is the Republic of Korea, where bidders are allowed to submit "alternative designs alongside the original bid in [the] 'tendering procedures for alternatives' when these actively promote innovation."<sup>92</sup> In Ghana, bidders can explicitly suggest innovations through value engineering that "(i) accelerate completion; (ii) reduce the cost to the Employer of executing, maintaining or operating the Works; (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer."<sup>93</sup>

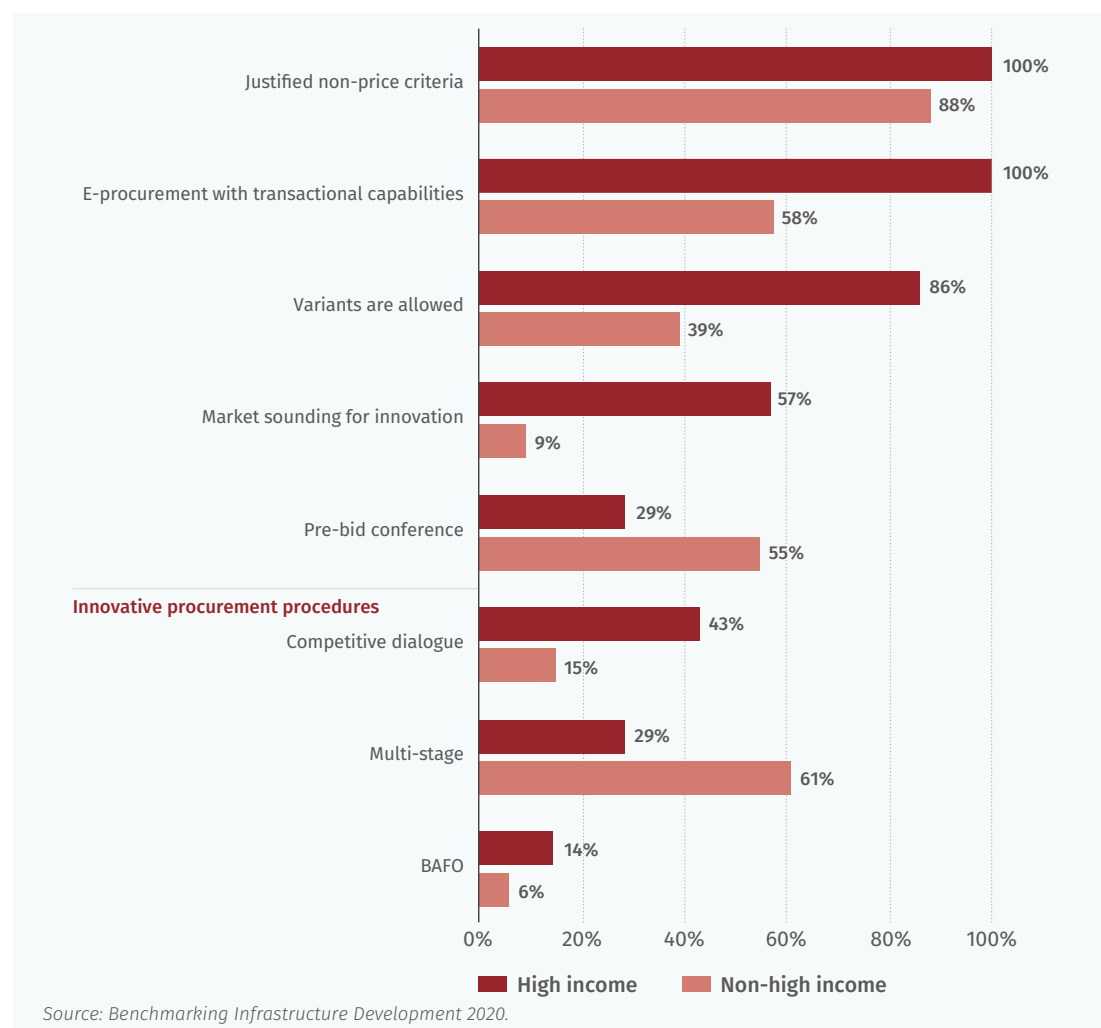
Innovations can also be linked to the use of modern technologies in procurement, such as through the establishment of an e-procurement system that not only notifies potential bidders about upcoming opportunities and provides other related notices but also has a number of useful transactional capabilities. E-services that streamline the procurement process include: submission of bids online; automatic opening of the bids soon after the bid submission deadline; and fulfilment of the tender requirements. Such services offer better and more transparent communication tools that can be streamed online and offer the opportunity to make video/audio recordings of the important steps in a bidding process that is open to the public. In the sample of 40 economies, an e-procurement system with transactional capabilities is used in 65 percent of the cases, a sign that a digital procurement system is now by itself an important innovation in the way procurement authorities in many economies operate. However, only 2 out of the 10 economies surveyed in Sub-Saharan Africa use such a system. In some countries, e-procurement is being completed by the use of Open Contracting Data Standards, an innovative method to enhance transparency and ensure that "everyone sees everything."<sup>94</sup> This new method of enhanced transparency can not only help curb corruption but also enhance competition and stimulate participation of SMEs in the public procurement market.<sup>95</sup>

Finally, innovations can also be fostered (or at least supported) at the evaluation stage when the use of non-price criteria is allowed. In the surveyed economies, this is a rather boilerplate requirement observed in almost all the surveyed economies, with the overwhelming majority of those also explicitly requiring such criteria to be justified, objective, and quantifiable (92 percent). This requirement is important to ensure that the non-price criteria are not twisted or abused to favor specific contractors by masking corrupt activities. Examples of non-price criteria that may induce innovation include giving extra points for the advanced technological solutions offered or the enhanced environmental characteristics of a project, such as energy conservation or pollution reduction, among others, as well as the use of a life-cycle costing approach, in which the overall cost of a project from construction to demolition, if envisaged, is minimized.

There are significant differences in the level of adoption of procurement-related innovative practices among income level groups (Figure 41). Unsurprisingly, high-income economies are above other income groups and the global numbers in terms of adoption of innovative practices. All the surveyed high-

income economies (Australia, Chile, Italy, the Republic of Korea, Saudi Arabia, Spain, and the United Kingdom) use justified non-price criteria and have e-procurement portals with transactional capabilities. Allowing variants is also common in these economies. Market sounding for innovation, while still not as widespread in high-income economies (57 percent or four economies: Australia, Chile, Italy, and the United Kingdom), is almost a nonexistent requirement in other income groups (only required in the Philippines, Romania, and Azerbaijan). A similar trend surfaces with competitive dialogue, which is the preferred innovative procurement procedure in high-income economies (43 percent) while being rarely present in other income groups (which instead rely more commonly on multi-stage procedures, 61 percent). This is in contrast with a less frequent use of pre-bid conferences as a means to interact with the bidders in high-income economies (29 percent) when compared to the other income groups (55 percent). This may reflect a different context or traditions but may also indicate that a competitive dialogue is used as a more structured and advanced way of introducing interactions and fostering innovations during the procurement process. Aggregating all the parameters discussed, certain conclusions can be made: The economies that have the largest number of innovation-promoting practices are Australia and South Africa, with Australia only lacking an express regulation of a competitive dialogue and South Africa missing the requirements of a market sounding for innovations and an e-procurement system that has transactional capabilities. In all other economies, there is ample room for improvement as several of the above-mentioned practices are still not in place.

**Figure 41 | Adoption of Good Practices in the Area of Innovations by Income Group (percent, N=40)**



# Conclusions and Next Steps

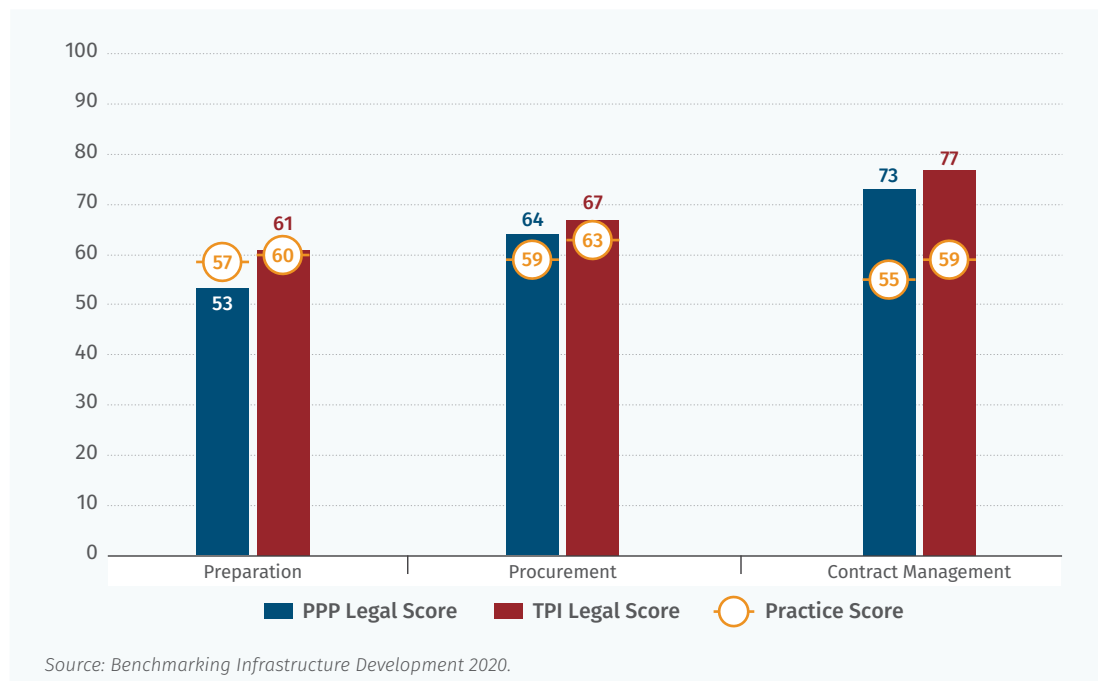
*Benchmarking Infrastructure Development 2020* assessed the regulations used to develop PPPs in 140 economies worldwide. The data reveal that several economies have enacted new PPP laws and regulations that resulted in significant improvements in the quality of their frameworks as measured by this project. Most of those positive changes have taken place in the preparation phase and in USPs. Despite this, however, improvements to the regulatory frameworks for PPPs remain to be made. Preparation of PPPs is the phase with the most room for improvement in all regions and income groups, but particularly for low-income economies. Interestingly, according to the data of the pilot practice-based survey, it seems that this is the phase where the implementation of good international practices precedes regulatory (de jure) requirements. During the procurement phase, high-income economies typically employ more of the recognized good regulatory practices, but there is still plenty of room for improvement for lower- and lower-middle-income economies. Improvements are still needed in PPP contract management across all regions and income groups. Moreover, the findings from the pilot practice-based survey shows this as an area where implementation lags the adoption of regulatory provisions. The same happens to an even larger extent in the case of USPs. Finally, while economies tend to adhere to international good practices in terms of disclosure of information to the public in the procurement phase, they do not so often adopt such disclosure practices during the preparation phase and contract management.

The *Benchmarking Infrastructure Development 2020* pilot assessment for the preparation, procurement, and contract management of TPI in 40 economies also revealed interesting trends. The quality of the regulatory environment for planning and preparation and for asset management of TPI projects has ample room for improvement, particularly in low-income economies. While the regulation of procurement for TPIs is more consistent across income groups, there is still room for improvement, in particular for low-income economies. Regarding TPI contract management, in most of the measured areas internationally good practices are already adopted in the regulatory frameworks. However, results from the pilot practice-based survey indicate that this is precisely the area where practice lags more often behind the adopted regulations. However, for TPI preparation and procurement, de facto implementation appears to closely follow the regulations. Finally, the data show a path forward for emerging economies to start introducing more advanced procurement practices to foster innovation.

This 2020 edition of *Benchmarking Infrastructure Development* introduced a relevant thematic expansion to cover TPI in a subset of 40 pilot economies. It also piloted a systematic assessment of de facto implementation of adopted regulations. Even the PPP assessment was refined based on input received since the publication of *Procuring Infrastructure PPPs 2018*. Moving forward, the initiative will build upon the current experience to expand the geographical coverage of the TPI assessment and to continue updating the PPP assessment, without major methodological changes, to allow for more systematic tracking of reforms. Importantly, the practice-based survey has faced challenges in its implementation and therefore it will need to be refined and further tested to achieve more robust results.

Both the PPP and the pilot TPI assessment follow the structure of the project cycle (i.e., preparation, procurement, and contract management). Beyond the specifics of each assessment, it is possible to make a high-level aggregate comparison for the 40 economies which are covered in both the PPP and the TPI survey (Figure 42).

**Figure 42 | Average PPP and TPI Legal and Practice Scores (score 1–100, N=40)**



The average results for the 40 economies show preparation as the weakest thematic area on the regulatory score for both PPPs and TPIs. However, the difference with other thematic areas is much more acute for PPPs than for TPIs. Contract management appears to be better regulated in the areas measured for TPIs (77 points) than for PPPs (73 points). Regulatory scores in procurement are similar, likely as a consequence of established practices for selection processes being fairly similar for both PPPs and TPIs (although some interesting differences emerge at the economy level). The pilot practice scores are slightly better in all thematic areas of TPI. While the differences are not extreme, they may point to the fact that TPI transactions are undertaken more frequently than PPPs. Interestingly, the practice scores are lower than the legal scores in all areas except for preparation of PPPs. This indicates that overall regulations precede the implementation of good practices.

Finally, while this report assesses the quality of the regulatory framework for large infrastructure projects, the ultimate aim is to ascertain the impacts of that framework on infrastructure investments and efficiency gains. Measuring such impacts is challenging because of the lack of data on outcome indicators. This impact evaluation falls out of the scope of this initiative but remains an important area for future research that this initiative hopes to support.

# Economy Data Tables

This section presents the individual Economy Data Tables, which include the legal scores for each of the thematic areas measured by the initiative. For the 140 economies included in the PPP survey it presents the legal scores for preparation of PPPs, procurement of PPPs, PPP contract management, and unsolicited proposals. For the 40 pilot economies included in the TPI survey it presents the legal scores for planning/preparation of TPIs, procurement of TPIs, TPI contract management, and infrastructure asset management.

Scores range from 0 to 100. Higher scores signify that an economy's regulatory framework is in greater compliance with internationally recognized good practices in that area. Lower scores indicate that there is considerable room for improvement because of less adherence to international good practices measured by *Benchmarking Infrastructure Development 2020*. All benchmarks in the assessment are given an identical weight by the scoring methodology. Not all the data collected in the preparation of *Benchmarking Infrastructure Development 2020* are scored. Only regulations that are internationally recognized as good practices receive scores. Therefore, those regulations for which no international consensus exists are not scored; this information is collected only for the purpose of providing context. A detailed description of the scoring methodology is available on the project's website (<http://bpp.worldbank.org/methodology>).

All the data points employed in the scores for each thematic area, along with all the non-scored data points, are publicly available on the newly revamped and interactive project website (<http://bpp.worldbank.org/economydata>). Among other features, a summary for each economy is available to download, identifying all the followed good practices and areas for improvement. The website also provides the full dataset for each economy, including all the answers to the questions and sub-questions to the survey instrument. In addition to providing greater context, the data on the website provide, when applicable, the detailed regulatory basis for each assessed item and the possibility of also downloading all the information. This can deepen understanding of each economy's regulatory framework related to PPP and TPI.

The scope and methodology of *Benchmarking Infrastructure Development 2020* is still evolving as evidenced by the relevant thematic expansion that the addition of the TPI pilot represents. The scoring methodology for *Benchmarking Infrastructure Development 2020* builds on the methodology used for the *Procuring Infrastructure PPPs 2018* report. However, there are significant differences in the scoring methodologies. Most prominently, the 2020 edition completely separates regulatory based de jure questions from practice de facto questions. The aggregated results of the pilot practice de facto questions have been presented for each of the thematic areas on the corresponding sections of this report, but individual practice scores by economy will not be presented given the nascent nature of this approach. The scores contained in the following pages and on the website are legal (de jure) scores, reflecting exclusively the regulatory alignment to internationally recognized good practices. Additionally, new questions have been added and several more reformulated. Therefore, the PPP legal scores presented in the following Economy Data Tables and on the website are not comparable with the PPP scores contained in *Procuring Infrastructure PPPs 2018*. A more detailed description of the changes introduced to the PPP scoring methodology is available on the project's website (<http://bpp.worldbank.org/methodology>). The detailed PPP scoring methodology also available on the website identifies the new and reformulated questions.



# Economy Data Tables for PPPs



## PPP Legal Scores

### Afghanistan

SAR  
Low income

Preparation



Procurement



Contract Management



USP



### Albania

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Algeria

MENA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Angola

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Argentina

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Armenia

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Australia

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### Austria

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Azerbaijan

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Bangladesh

SAR  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Belarus

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Belgium

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

## PPP Legal Scores

### Benin

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Bosnia and Herzegovina

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Botswana

SSA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Brazil

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Bulgaria

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Burkina Faso

SSA  
Low income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Burundi

SSA  
Low income



### Cambodia

EAP  
Lower middle income



### Cameroon

SSA  
Lower middle income



### Canada

OECD-High Income  
High income



USP  
Not regulated and do not happen in practice

### Chad

SSA  
Low income



### Chile

OECD-High Income  
High income



## PPP Legal Scores

### China

EAP  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Colombia

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Congo, Dem. Rep.

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Congo, Rep.

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Costa Rica

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Côte d'Ivoire

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Croatia

ECA  
High income

Preparation



Procurement



Contract Management



USP

Explicitly prohibited

### Czech Republic

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Denmark

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Djibouti

MENA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Dominican Republic

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Ecuador

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP





## PPP Legal Scores

### Egypt, Arab Rep.

MENA  
Lower middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### El Salvador

LAC  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Eritrea

SSA  
Low income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Estonia

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Ethiopia

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Finland

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

## PPP Legal Scores

### France

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Gabon

SSA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Georgia

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Germany

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Ghana

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Greece

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

## PPP Legal Scores

### Guatemala

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Guinea

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Haiti

LAC  
Low income

Preparation



Procurement



Contract Management



USP



### Honduras

LAC  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Hungary

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### India

SAR  
Lower middle income

Preparation



Procurement



Contract Management



USP

Explicitly prohibited

## PPP Legal Scores

### Indonesia

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Iran, Islamic Rep.

MENA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Iraq

MENA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Ireland

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Israel

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Italy

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Jamaica

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Japan

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### Jordan

MENA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Kazakhstan

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Kenya

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Korea, Rep.

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Kosovo

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Kuwait

MENA  
High income

Preparation



Procurement



Contract Management



USP



### Kyrgyz Republic

ECA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Lao PDR

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Latvia

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Lebanon

MENA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Explicitly prohibited



## PPP Legal Scores

### Lithuania

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### Madagascar

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Malawi

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Malaysia

EAP  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Mali

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Mauritius

SSA  
Upper middle income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Mexico

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Moldova

ECA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Mongolia

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Montenegro

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Morocco

MENA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Mozambique

SSA  
Low income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Myanmar

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Nepal

SAR  
Low income

Preparation



Procurement



Contract Management



USP



### Netherlands

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### New Zealand

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### Nicaragua

LAC  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Niger

SSA  
Low income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Nigeria

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### North Macedonia

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Pakistan

SAR  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Panama

LAC  
High income

Preparation



Procurement



Contract Management



USP



### Papua New Guinea

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Paraguay

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Peru

LAC  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Philippines

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Poland

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Portugal

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Qatar

MENA  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Romania

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

## PPP Legal Scores

### Russian Federation

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Rwanda

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Samoa

EAP  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Saudi Arabia

MENA  
High income

Preparation



Procurement



Contract Management



USP



### Senegal

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Serbia

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP





## PPP Legal Scores

### Sierra Leone

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Singapore

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Slovak Republic

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Slovenia

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### Solomon Islands

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Somalia

SSA  
Low income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### South Africa

SSA  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Spain

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### Sri Lanka

SAR  
Upper middle income

Preparation



Procurement



Contract Management



USP



### Sudan

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Sweden

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Switzerland

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

## PPP Legal Scores

### Tajikistan

ECA  
Low income

Preparation



Procurement



Contract Management



USP



### Tanzania

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Thailand

EAP  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Timor-Leste

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Togo

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Tonga

EAP  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

## PPP Legal Scores

### Trinidad and Tobago

LAC  
High income

Preparation



Procurement



Contract Management



USP



### Tunisia

MENA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Turkey

ECA  
Upper middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Uganda

SSA  
Low income

Preparation



Procurement



Contract Management



USP



### Ukraine

ECA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### United Arab Emirates

MENA  
High income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### United Kingdom

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### United States

OECD-High Income  
High income

Preparation



Procurement



Contract Management



USP



### Uruguay

LAC  
High income

Preparation



Procurement



Contract Management



USP



### Uzbekistan

ECA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Vanuatu

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP

Not regulated and do not happen in practice

### Vietnam

EAP  
Lower middle income

Preparation



Procurement



Contract Management



USP



## PPP Legal Scores

### Zambia

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP



### Zimbabwe

SSA  
Lower middle income

Preparation



Procurement



Contract Management



USP









# Economy Data Tables for TPI Pilot

## TPI Legal Scores

### Algeria

MENA  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Argentina

LAC  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Australia

OECD-High Income  
High income

Preparation



Procurement



Contract Management



Asset Management



### Azerbaijan

ECA  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Brazil

LAC  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Burkina Faso

SSA  
Low income

Preparation



Procurement



Contract Management



Asset Management



## TPI Legal Scores

### Chile

OECD-High Income  
High income



### China

EAP  
Upper middle income



### Colombia

LAC  
Upper middle income



### Egypt, Arab Rep.

MENA  
Lower middle income



### El Salvador

LAC  
Lower middle income



### Ethiopia

SSA  
Low income



## TPI Legal Scores

### Georgia

ECA  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Ghana

SSA  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Honduras

LAC  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### India

SAR  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Indonesia

EAP  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Italy

OECD-High Income  
High income

Preparation



Procurement



Contract Management



Asset Management



## TPI Legal Scores

### Kenya

SSA  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Korea, Rep.

OECD-High Income  
High income

Preparation



Procurement



Contract Management



Asset Management



### Kyrgyz Republic

ECA  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Madagascar

SSA  
Low income

Preparation



Procurement



Contract Management



Asset Management



### Mexico

LAC  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Morocco

MENA  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



## TPI Legal Scores

### Mozambique

SSA  
Low income

Preparation



Procurement



Contract Management



Asset Management



### Myanmar

EAP  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Nigeria

SSA  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Peru

LAC  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Philippines

EAP  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### Romania

ECA  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



## TPI Legal Scores

### Russian Federation

ECA  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Saudi Arabia

MENA  
High income

Preparation



Procurement



Contract Management



Asset Management



### South Africa

SSA  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management



### Spain

OECD-High Income  
High income

Preparation



Procurement



Contract Management



Asset Management



### Tanzania

SSA  
Low income

Preparation



Procurement



Contract Management



Asset Management



### Turkey

ECA  
Upper middle income

Preparation



Procurement



Contract Management



Asset Management





## TPI Legal Scores

### Uganda

SSA  
Low income

Preparation



Procurement



Contract Management



Asset Management



### Ukraine

ECA  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



### United Kingdom

OECD-High Income  
High income

Preparation



Procurement



Contract Management



Asset Management



### Vietnam

EAP  
Lower middle income

Preparation



Procurement



Contract Management



Asset Management



# Endnotes

- 1 Trebilcock and Rosenstock, 2015. "Infrastructure Public-Private Partnerships in the Developing World: Lessons from Recent Experience," *The Journal of Development Studies*, Vol. 51, No. 4, p. 335, <http://dx.doi.org/10.1080/00220388.2014.959935335>.
- 2 These are of course definitions created for the purposes of this study; the reality of contractual arrangements implies a continuum that goes from simple works contracts to full privatization, passing through PPPs somewhere in the middle.
- 3 A special purpose vehicle (SPV), also a special purpose company (SPC) or a special purpose entity (SPE), is a company specifically formed to undertake a specific PPP project.
- 4 The scope of the assessment is limited to infrastructure projects developed by procuring authorities at the national or federal level. However, in the cases of Australia, Bosnia and Herzegovina, the United Arab Emirates, and the United States, the focus is on subnational units (the State of New South Wales, the Sarajevo Canton within Bosnia and Herzegovina, the Emirate of Dubai, and the Commonwealth of Virginia, respectively).
- 5 International financial institutions (i.e., World Bank) support often requires application of specific procurement regulations that applies instead of the national regulations.
- 6 A privately-owned company may constitute a consortium of private firms.
- 7 See the Glossary for a complete definition and the World Bank website: <http://ppp.worldbank.org/public-private-partnership/overview/what-are-public-private-partnerships>.
- 8 See the Glossary for a complete definition.
- 9 These include: (1) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024> and (2) Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014L0023>;
- 10 This assessment could be undertaken either through a cost-benefit analysis (CBA), a cost-effectiveness analysis, or multicriteria analysis, as appropriate, or other relevant methodologies.
- 11 I.e., value for money analysis, public sector comparator.
- 12 Although interlinked, financial viability and market sounding refer to different aspects of the commercial viability of a project. The financial viability or bankability assessment compares the cost to operate, maintain, and replace assets with the benefit of the project using market prices, while market sounding evaluates the appetite for the project in the market, looking for evidence of investors' and private operators' interest in the project.
- 13 Law No. 13 of 8 May 1998 enacted the Environmental Impact Assessment Regulations.
- 14 Chapter III, B, 6 (b) of the National Development Planning Agency (BAPPENAS) Regulation No. 4 of 2015 concerning Procedure for Cooperation between Government and Business Entities in Procurement of Infrastructure (Bappenas Regulation No. 4).
- 15 Law No. 98/2016 on public procurement.
- 16 Article 56 of the PPP Law provides: "For Public-Private Partnership Contracts whose remuneration is ensured by the contracting authority, the commitment authorizations shall cover, from the year in which the contracts are concluded, the totality of the legal commitment up to the amount of the expenditure incurred by the co-contractor during the financial year. For partnership contracts where the remuneration of the contracting party is paid directly by the users, the State's conditional commitments are recorded in the guarantee and endorsement accounts."
- 17 The Estimation of Contingent Liabilities from PPP User Manual for Online Toolkit (<https://www.pppinindia.gov.in/clms/CLMSUserManual.pdf>) and Handbook on the Estimation of Contingent Liabilities from PPP 2017 (<https://www.pppinindia.gov.in/clms/CLFramework.pdf>) issued by the Department of Economic Affairs in the Ministry of Finance.
- 18 From December 21, 2018.
- 19 The methodology for this pilot has important caveats. See details at [www.bpp.worldbank.org/methodology](http://www.bpp.worldbank.org/methodology).
- 20 International Bank for Reconstruction and Development / The World Bank, 2017, Public-Private Partnerships Guide, version 3, Module 3: PPP Cycle, Section 3.5.1 "Deciding the Procurement Strategy," p. 162. Available at: <https://library.pppknowledge.org/documents/4699>.
- 21 Ibid.
- 22 Georgi Batov and Christian Schlosser, 2013, Student Paper "The advantages and disadvantages of the various procurement procedures," p. 11. Available at: <https://www.maastrichtuniversity.nl/sites/default/files/2013/batov.pdf>.
- 23 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014, "On Public Procurement and Repealing Directive 2004/18/EC" (English version), 2014, Preamble, Section (42), L 94/71, p. 7. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>.
- 24 Ibid, article 30, p. 39.
- 25 International Bank for Reconstruction and Development / The World Bank, 2017, Public-Private Partnerships Guide, version 3, Module 3: PPP Cycle, Box 3.11 "Competitive Procurement or Direct Negotiation," p. 161. Available at: <https://library.pppknowledge.org/documents/4699>.
- 26 Support for Improvement in Governance and Management (SIGMA), Public Procurement Brief 25 "Establishing Procurement Review Bodies," p. 2. Available at: <https://www.oecd-ilibrary.org/docserver/5js4vmn47gzs-en.pdf?expires=1582992187&id=id&accname=guest&checksum=4770EC9F937E063CCBD5020E4120EF01>.
- 27 Compendium of Good Practices for Integrity in Public Procurement, 2014, Part II, Section 5 "Complaints Mechanisms," paragraphs 36, p. 30. Available at: <https://www.oecd.org/gov/public-procurement/compendium-for-good-practices->

- for-integrity-in-public-procurement.pdf. Such a system is also mandatory under the United Nations Convention against Corruption.
- 28 The methodology for this pilot has important caveats. See details at [www.bpp.worldbank.org/methodology](http://www.bpp.worldbank.org/methodology).
- 29 Lender step-in rights refer to a power under the PPP contract or in the applicable legislation for the lender to take control of the project in certain situations. Step-in rights are appropriate for limited recourse financing, where the lender is limited in its recovery of the project assets.
- 30 World Bank PPP Reference Guide 3.0, 3.6.3, Dealing with Change, p. 184.
- 31 Guasch 2004.
- 32 It must be noted that there are a select number of economies that require multiple institutional approvals to amend PPP contracts. In addition to the PPP Committee approval in Bosnia and Herzegovina, the Ministry of Finance approves contract modifications. In Cote d'Ivoire, the PPP Committee approves amendments in addition to the Ministry of Finance. And whereas Jamaica also requires Cabinet approval to contract modifications alongside Ministry of Finance approvals, the Attorney General in Tanzania would need to review the PPP contract in addition to the PPP Steering Committee.
- 33 Presidential Decree No. 314 dated September 5, 2018 regarding the PPP Law 2018.
- 34 Article 13(6) of the PPP Law.
- 35 UNCITRAL 2019, 223, paragraph 1.
- 36 Article 11 "III" of PPP Law and 23A of the Concessions Law of Brazil.
- 37 Alternative Dispute Resolution Guidelines (2011), P. 15. World Bank Group Publication.
- 38 Article 110 of Decree 1350/14.
- 39 The methodology for this pilot has important caveats. See details at [www.bpp.worldbank.org/methodology](http://www.bpp.worldbank.org/methodology).
- 40 Private Participation in Infrastructure Database (<https://ppi.worldbank.org/>).
- 41 World Bank 2017b.
- 42 World Bank 2017b.
- 43 The PPP Law in Lebanon explicitly states in article 4 that PPP projects are proposed by the President of the Council or the Relevant Minister, while PPP Projects at a municipal level are proposed by the president of the municipal council or the president of the federation of municipalities. As such, a proposal by a private sector company, on its own initiative, is of no consequence. A private sector company may present proposals to the Relevant Minister, who might then submit it officially to the HCP Secretariat General.
- 44 Article 15 of the new PPP Law in Uzbekistan: According to article 15 of the PPP Law, "a PPP project may be initiated by ... an individual entrepreneur or legal entity (hereinafter referred to as the private initiator)." Furthermore, article 17 of the PPP Law describes procedures applied to a situation when a proposal is initiated by a private entity.
- 45 World Bank 2017b.
- 46 Hodges and Dellacha 2007.
- 47 Article 17 of the Uzbekistan PPP Law.
- 48 World Bank 2017b.
- 49 The methodology for this pilot has important caveats. See details at [www.bpp.worldbank.org/methodology](http://www.bpp.worldbank.org/methodology).
- 50 See La Chimia 2013, Ch. 11.
- 51 Most notably at the international level, major efforts to open up a national public procurement market to international competition have been made between WTO members through the WTO Government Procurement Agreement (GPA), a plurilateral agreement signed within the auspices of the WTO, binding on WTO/GPA member parties only. There are many examples at the regional level as well, such as the EU Public Procurement Directives. An important role in terms of setting international standards for procurement reforms and regulation has also been played by UNCITRAL, with the UNCITRAL Model Law on procurement used as a model in over 30 economies to reform their procurement systems, and by the OECD with the adoption, in 2015, of the OECD Recommendation on Procurement.
- 52 A plurilateral agreement agreed within the auspices of the WTO and applicable to signatory parties to the GPA only.
- 53 In the EU, procurement of TPI is part of general legislation applicable to procurement for goods, works and services, and such legislation complies with the principles and rules of the EU Treaty and of the EU Procurement Directives (namely Directives 2014/23/EU, 2014/24/EU and 2014/25/EC).
- 54 See Arrowsmith, Linarelli, and Wallace Jr. 2000a.
- 55 These regulations do not apply to procurement by a local government. Local government procurement is governed by the Municipal Supply Chain Management Regulations, made under a different statute, the Local Government: Municipal Finance Management Act.
- 56 Other rules in primary legislation (such as the Freedom of Information Act, and the Human Rights Act) and other non-enforceable instruments, such as guidelines and standards, are also relevant for procurement. For all of these, see the extensive account by Arrowsmith 2014 (especially chapter 2).
- 57 In the questionnaire, different terminologies were presented to avoid misinterpretations.
- 58 World Economic Forum 2012, Foreword, p. iii.
- 59 Luis Blanco, Dua, Duvall, Hurst, Law, and Safran 2017, p. 2.
- 60 Ibid, p. 4.
- 61 Public and Private Infrastructure Investment Management Center (PIMAC) 2008, pp. 68-79.
- 62 The methodology for this pilot has important caveats. See details at [www.bpp.worldbank.org/methodology](http://www.bpp.worldbank.org/methodology).
- 63 Arrowsmith, Linarelli, and Wallace Jr. 2000a.

- 64 Kelman 2018, pp. 101-108.
- 65 The UK Cabinet Office 2011, "Government Construction Strategy," section 1.5, p. 5. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61152/Government-Construction-Strategy\\_0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61152/Government-Construction-Strategy_0.pdf).
- 66 A lot of effort was made by governments and international organizations such as the World Bank and the Organisation for Economic Co-operation and Development (OECD) to improve public procurement by paying attention to strengthening the regulation of the procurement process itself, as well as to implementing good practices. Even more, an emphasis was placed on enhancing the capacity of procurement officials. Such programs are often financed by the banks. For an in-depth study of this issue, see La Chimia 2013.
- 67 Hafner, Robin and Hoorens 2014. The study is based on the 1988 Cecchini Report. The updated study is available at: [https://www.europarl.europa.eu/EPRS/EPRS\\_STUDY\\_536353\\_CoNE\\_Single\\_Market\\_1.pdf](https://www.europarl.europa.eu/EPRS/EPRS_STUDY_536353_CoNE_Single_Market_1.pdf).
- 68 Staples and Dalrymple have argued that "rather than purchasing infrastructure at the lowest price, a public sector client might decide to spend slightly more to create proportionately more public value achieving better whole-of-government outcomes. This might involve pursuing regional development or local supplier policies by selecting building contractors who are more capable of engaging local small- and medium-sized enterprises as subcontractors or suppliers, and or training apprentices or providing employment for at risk, long-term unemployed youth." Staples and Dalrymple 2011, pp. 512-523, 513. However, the authors also specify that "a lowest cost approach to procurement will still create public value, as the facility will enable a government department to provide goods and services. However, at the top of the continuum, the public value approach recognises that the procurement process has the potential to create additional public value, as well as just creating a physical facility."
- 69 See Arrowsmith, Mayer, and Tribus 2000b, pp. 4-5. See also more generally on social and industrial policies, Arrowsmith 1995, p. 5.
- 70 In relation to the benefits of opening up procurement to international competition, see Anderson, Kovacic, and Muller 2016.
- 71 The methodology for this pilot has important caveats. See details at [www.bpp.worldbank.org/methodology](http://www.bpp.worldbank.org/methodology).
- 72 Kelman 2018, p. 101.
- 73 Ibid.
- 74 Kelman 2018, pp. 101-108.
- 75 Hayman 2019, pp. 319-332
- 76 See Arrowsmith 2014d, Volume 1.
- 77 This is for instance the case under EU rules.
- 78 Hayman 2019 above and Open Contracting Partnership 2019.
- 79 See Hayman above.
- 80 Watson, Lonsdale, Peng and Sanderson 2012.
- 81 For example, in the case of Commission vs. Italy, the Court of Justice of the European Union stated that "Italy should have ensured that its public authorities complied, in their commercial transactions with private undertakings, with periods for payment not exceeding 30 or 60 days." Judgment of the Court of Justice in Case C-122/18 Commission v Italy.
- 82 Thus, in a judgment delivered on 28 January 2020 by the Court of Justice of the European Union, Italy was found in breach of the EU rules on combating late payments, for failure to comply with Directive 2011/7. The case was brought by the Commission after "having received a series of complaints from Italian economic operators and associations of economic operators which denounced the excessively long periods in which Italian public authorities systematically pay their invoices pertaining to commercial transactions with private operators, brought an action against Italy before the Court for failure to fulfil its obligations." Judgment of the Court of Justice in Case C-122/18 Commission v Italy. Directive on Combating Late Payments. C-122/18 delivered on 28 January 2020.
- 83 The methodology for this pilot has important caveats. See details at [www.bpp.worldbank.org/methodology](http://www.bpp.worldbank.org/methodology).
- 84 OECD 2011.
- 85 Baron 2016.
- 86 Forward in Duffield and Maghsoudi 2013.
- 87 *European Commission* 2018.
- 88 Baron 2016.
- 89 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, preamble, numeral (47). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>.
- 90 See Kelman 1990, who since the 1990s has been arguing that rigid procurement practices are an obstacle to innovation.
- 91 Kelman 2018, pp. 101-108; the author has long pointed out the problems caused by the "philosophy of reining in discretion" and the loss in terms of innovation and outcomes. See Kelman 1990, p. 88.
- 92 The Republic of Korea Enforcement Decree of the Action Contracts to Which the State is a Party, Art. 79(1)(3) and 79(1)(4). [http://elaw.klri.re.kr/eng\\_mobile/viewer.do?hseq=25473&type=new&key=](http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=25473&type=new&key=).
- 93 The Ghana Standard Tender Documents for Major Works Framework Agreements for National Competitive Tender (NCT) / International Competitive Tender (ICT) issued by the Public Procurement Authority, section 13.2. <https://capturetribe.com/theppa/wp-content/uploads/2019/02/Standard-Tender-Documents-for-Major-Works.pdf>.
- 94 Hayman 2019, pp. 319-332.
- 95 Ibid.

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# Contributors

## AFGHANISTAN

Sebghatullah Karimi, *Kabul Polytechnic University*

Zahid Safi, *RIAA Barker Gillette Afghanistan*

## ALBANIA

Artan Bozo, *BOZO & Associates*

Gazmir Vehbi, *Concession Management Agency (Agjencia e Trajtimt të Koncesioneve (ATRAKO))*

Gjergji Gjika, *Gjika & Associates*

Nensi Seferi, *Gjika & Associates*

Arbind Ahmetaj, *Halimi Law & Tax*

Eduard Halimi, *Halimi Law & Tax*

Marash Logu, *Halimi Law & Tax*

KPMG Albania

Oltjan Hoxholli, *LPA Law Firm Albania*

Renan Berati, *LPA Law Firm Albania*

Wendy Vata, *LPA Law Firm Albania*

Ilir Daci, *Optima Legal & Financial*

Kristiana Filip, *Optima Legal & Financial*

Olsi Çoku, *Optima Legal & Financial*

Ali Turhani, *University of Elbasan, Faculty of Economics*

Argita Malltezi, *University of Tirana, Faculty of Law*

Lealba Pelinku, *University of Tirana, Faculty of Law*

## ALGERIA

Radhia Nedjari

Telidji Salim

## ANGOLA

Augusto Dembo

Antônio Vicente Marques, *AVM Advogados*

Maria Inês Costa, *AVM Advogados*

Tiago Pereira Monteiro, *AVM Advogados*

Antônio Samuel, *BCSA Advogados*

Emmanuel da Silva, *BCSA Advogados*

João Bravo da Costa, *BCSA Advogados*

Vanessa Matos Mendes, *BCSA Advogados*

Kiluanje Tiny, *CFA Law Firm*

Rute Santos, *CFA Law Firm*

Yuri Ganga, *CFA Law Firm*

Tatiana Serrao, *FBL Advogados*

Duarte Marques da Cruz, *MC&A - Sociedade de Advogados RL*

Joana Ferreira Ribeiro, *MC&A - Sociedade de Advogados RL*

Vítor Marques da Cruz, *MC&A - Sociedade de Advogados RL*

Alberto Galhardo Simões, *Miranda & Associados*

Henrique Lopes Valente, *Miranda & Associados*

Nuno Albuquerque, *N-Advogados Sociedade de Advogados, Responsabilidade Limitada*

## ARGENTINA

Armando Guibert

Pablo Alejandro Pinnel, *Abeledo Gottheil Abogados*

Sergio Porteiro, *Abeledo Gottheil Abogados*

Verónica Fuente Kleiner, *Abeledo Gottheil Abogados*

María Agustina Di Santo, *Baker McKenzie*

Santiago Maqueda Fourcade, *Baker McKenzie*

Florencia Cairella, *Beccar Varela*

Juan Antonio Stupenengo, *Beccar Varela*

Florencia Cairella, *Beccar Varela*

Gabriel Vernola, *Beccar Varela*

Juan Antonio Stupenengo, *Beccar Varela*

Santiago José Barbarán, *Beccar Varela*

Behrad Nazarian, *Beretta Godoy*

Carlos Jorge Kirchner, *Beretta Godoy*

Federico Godoy, *Beretta Godoy*

Fernando Acevedo, *Beretta Godoy*

*Cabinet of Ministers, National Contracting Office, Normative Interpretation of Public Works Unit (Interpretación Normativa de Obra Pública - Oficina Nacional de Contrataciones - Jefatura de Gabinete de Ministros)*

*Cabinet of Ministers, Registry of Builders and Consulting Firms, Contracting of Public Works (Contrataciones de Obras Públicas, Registro de Constructores y Firms Consultoras - Jefatura de Gabinete de Ministros)*

Ignacio Machado, *Cabinet of Ministers, Undersecretary of Public Private Participation of the Secretariat for Budgetary Evaluation, Public Investment and PPPs*

Mario Eduardo Castro Sammartino, *Castro Sammartino & Pierini*

Armando Guibert, *Deloitte Americas*

Alan Arntsen, *Pérez Alati, Grondona, Benites & Arntsen Abogados (PAGBAM)*

Nicole Jaureguiberry, *Pérez Alati, Grondona, Benites & Arntsen Abogados (PAGBAM)*

Norberto Montero, *PwC Argentina*

Emilio Battoli, *Zang, Bergel & Viñes Abogados*

## ARMENIA

Ani Nargizyan, *K&P Law Firm LLC*

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Adam Stapledon, *Allen & Overy*

Beatrix Spargo, *Allen & Overy*

James Abbott, *Allen & Overy*

Simon Huxley, *Allen & Overy*

Anna Moran, *Allens*

Jonathon Hetherington, *Allens*

Larissa Chu, *Allens*

Michal Magat, *Allens*

Scott McCoy, *Allens*

Stuart Cosgriff, *Clayton Utz*

Nicholas Carney, *Herbert Smith Freehills*

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Nora Spiegel, *AustiraTech GmbH*

Silvo Korez, *AustriaTech GmbH*

Marlene Wimmer-Nistelberger, *CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH*

Miriam Baierl, *CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH*

Thomas Hamerl, *CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH*

Bernt Elsner, *CMS Reich-Rohrwig Hainz Rechtsanwälte GmbH*

DLA Piper Weiss-Tessbach Rechtsanwälte GmbH

Martin Sonntag, *Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice*

Christian Reininger, *Federal Ministry of Finance*

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Mukhtar Mustafayev, *Adalat Law Firm*

Elnur Aliyev, *BHM Law Firm*

Leyla Safarova, *BM Morrison Partners*

Mehri Rzayeva, *BM Morrison Partners*

Shaig Adigozalov, *Central Bank of Azerbaijan*

Ophelia Abdullayeva, *Dentons*  
 Sabina Orujova, *Dentons*  
 Sona Taghiyeva, *Dentons*  
 Ismail Askerov, *MGB Law Offices*  
 Lala Hasanova, *MGB Law Offices*  
*Ministry of Economy*  
 Anna Dreyzina, *Notem Law*  
 Rashid Aliyev, *Remells Law Firm*

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 Tasnuva Tabassum Ratry, *Dr. Kamal Hossain and Associates*  
 Khandaker Mashfique Ahmed, *Rahman's Chambers*  
 Asif Hasan, *Tanjib Alam and Associates*  
 Imran Anwar, *Tanjib Alam and Associates*

## BELARUS

Alexey Anischenko, *Advocates Bureau Sorainen*  
 Aliaksandr Artsiukhevich, *Advocates Bureau Sorainen*  
 Klim Stashevsky, *Arzinger & Partners Law Firm*  
 Sergey Mashonsky, *Arzinger & Partners Law Firm*  
 Ruslan Teodorovich, *Attorney-at-Law Teodorovich*  
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 Vasily Babariko, *Ernst & Young Legal services LLC*  
 Dmitry Kiyko, *Ministry of Finance*  
 Anaslasiya Malakhova, *SBH Law Office*  
 Katsiaryna Lahvinovich, *SBH Law Office*  
 Andrey Shastitko, *Verkhovodko & Partners LLC*  
 Anna Orlovich, *Verkhovodko & Partners LLC*  
 Dmitry Bokhan, *Verkhovodko & Partners LLC*  
 Igor Verkhovodko, *Verkhovodko & Partners LLC*  
 Nina Knyazeva, *Verkhovodko & Partners LLC*

## BELGIUM

Helga Van Peer, *Allen & Overy (Belgium) LLP*  
 Mark Clough, *Dentons Europe LLP*  
 Steven Van Garsse, *Equator Advocaten*  
 Guy Block, *Janson Lawyers*  
 Kris Wauters, *Janson Lawyers*  
 Frank Judo, *Liedekerke Wolters Waelbroeck Kirkpatrick*  
 Didier De Vlieghe, *NautaDutilh*  
 Harry Eliaerts, *NautaDutilh*

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Agnila Rafikou Alabi, *Cabinet du Maître Rafikou Alabi*  
 Tania Gaye, *Deloitte Bénin*

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 Aleksandar Sajic, *Law Firm Sajić*  
 Milica Karadža, *Law Firm Sajić*  
 Slaven Dizdar, *Maric & Co Law Firm Ltd.*

## BOTSWANA

Archie T. Makepe

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 Bruna Bouissou, *Azevedo Sette Advogados*  
 Frederico Bopp Dieterich, *Azevedo Sette Advogados*  
 Leonardo Antonacci Barone Santos, *Azevedo Sette Advogados*  
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 Bianca Correia, *Castro Barros Advogados*  
 Paulo Dantas, *Castro Barros Advogados*  
 Andre Freire, *Demarest Advogados*  
 Maria Virginia Mesquita, *Demarest Advogados*  
 Paloma Martins Lima, *Demarest Advogados*  
 Patricia Mattos, *Demarest Advogados*  
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 Paulo Leme, *Dias Carneiro Advogados*  
 Ricardo Sanches, *Dias Carneiro Advogados*  
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 Luis Antonio Menezes da Silva, *Felsberg Advogados*  
 Maria da Graça Pedretti, *Felsberg Advogados*  
 Rodrigo de Pinho Bertocelli, *Felsberg Advogados*  
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 Camillo Giamundo, *Giamundo Neto Advogados*  
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 Ana Luiza Jacoby Fernandes, *Jacoby Fernandes & Reolon Law Firm*  
 Jaques Reolon, *Jacoby Fernandes & Reolon Law Firm*  
 Murilo Jacoby Fernandes, *Jacoby Fernandes & Reolon Law Firm*  
 Rafael Vêras, Lessa, Bueno, *Coelho e Vêras Advogados*  
 Pedro Castro, *Lobo & De Rizzo*  
 Rodnei Iazzetta, *Lobo & De Rizzo*  
 Fernando Loeser, *Loeser, Blanchet e Hadad Advogados*  
 Ivana Cota, *Loeser, Blanchet e Hadad Advogados*  
 Marcio Roberto Alabarce, *Machado Associados*  
 Renata Almeida Pisaneschi, *Machado Associados*  
 Floriano Azevedo Marques, *Manesco, Ramires, Perez, Azevedo Marques, Sociedade de Advogados*  
 Mais Moreno, *Manesco, Ramires, Perez, Azevedo Marques, Sociedade de Advogados*  
 Tatiana Matiello Cymbalista, *Manesco, Ramires, Perez, Azevedo Marques, Sociedade de Advogados*  
 Raul Dias dos Santos Neto, *Mattos Filho Advogados*  
 Samuel Olavo Castro, *Mattos Filho Advogados*  
 Thiago Sombra, *Mattos Filho Advogados*  
 Antonio Carlos Mazzucco, *Mazzucco & Mello Advogados*  
 Christian Fernandes Gomes da Rosa, *Mazzucco & Mello Advogados*  
 Pereira Neto Macedo Law Firm  
 Aline Lícia Klein, *Porto Lauand Advogados*  
 Carolina Caiado, *Rhein Schirato, Meireles & Caiado Advogados*  
 Renata Meireles, *Rhein Schirato, Meireles & Caiado Advogados*



Vitor Rhein Schirato, *Rhein Schirato, Meireles & Caiado Advogados*

Ana Stein, *Stocche Forbes Advogados*

Guilherme Forbes, *Stocche Forbes Advogados*

Mariana Saragoça, *Stocche Forbes Advogados*

Miriam Signor, *Stocche Forbes Advogados*

João Paulo Pessoa, *Toledo Marchetti Advogados*

Marcelo Marchetti, *Toledo Marchetti Advogados*

Ricardo Medina, *Toledo Marchetti Advogados*

Roberto Oliveria, *Toledo Marchetti Advogados*

Taisa Hasimoto, *Toledo Marchetti Advogados*

Alberto Büll, *Ulhôa Canto, Rezende e Guerra Advogados*

Isabel Lustosa, *Ulhôa Canto, Rezende e Guerra Advogados*

Sofia Barbosa, *Ulhôa Canto, Rezende e Guerra Advogados*

Erik Oioli, *Vaz, Buranello, Shingaki & Oioli Advogados*

Felippe Monteiro, *Vaz, Buranello, Shingaki & Oioli Advogados*

## **BULGARIA**

Angel Bangachev

Donka Stoyanova, *Dimitrov, Petrov & Co.*

Metodi Baykushev, *Dimitrov, Petrov & Co.*

Antonia Markova, *Gugushev & Partners Law Office*

Kostadinka Deleva, *Gugushev & Partners Law Office*

Stephan Gugushev, *Gugushev & Partners Law Office*

Christopher Christov, *Penev LLP*

Manuela Zdravkova, *Penev LLP*

Yanko Nachovski, *Penev LLP*

Maria Pashalieva, *Penkov, Markov & Partners*

## **BURKINA FASO**

Diallo Bintou, *Burkinabè Investment Agency (Agence Burkinabè des Investissements)*

Maitre Barthelemy Kere, *Cabinet KERE-AVOCATS*

Seydou Dao, *Government of Burkina Faso,*

*Coordination Unit of the Second Impact Formulation of Burkina Faso*

Issa Zerbo, *Ministry of Infrastructure (Ministere des Infrastructures)*

## **BURUNDI**

Abdoul Mtoka, *Trust Juris Chambers*

Alain Tanguy Ntibwirizwa, *Trust Juris Chambers*

Issa Hatibu, *Trust Juris Chambers*

## **CAMBODIA**

Guillaume Massin, *DFDL Cambodia, Legal Tax & Investment Expertise*

Leab Seng, *DFDL Cambodia, Legal Tax & Investment Expertise*

Leap Kang, *HML Law Group & Consultants*

Monyrith Eng, *HML Law Group & Consultants*

Samvutheary Mao, *HML Law Group & Consultants*

Deline Sieng, *R&T Sok & Heng Law Office*

Kannitha Sarun, *R&T Sok & Heng Law Office*

## **CAMEROON**

Christine Moutome, *Cabinet NYEMB*

Jacques Nyemb, *Cabinet NYEMB*

Brice Tcheuffa, *ETAH-NAN & Co Société d'Avocats*

*Jing & Partners*

Alphonse Marie Onambebe, *Support Council for the Completion of Partnership Contracts (CARPA)*

Dieudonne Bondoma Yokono, *Support Council for the Completion of Partnership Contracts (CARPA)*

Jean-Noël Ekoman, *Support Council for the Completion of Partnership Contracts (CARPA)*

Marcel Blaise Mbella, *Support Council for the Completion of Partnership Contracts (CARPA)*

## **CANADA**

Blake, Cassels & Graydon LLP

Lisa Mitchell, *Infrastructure Canada*

Vincent Robitaille, *Transport Canada*

## **CHILE**

León Larrain A, *Baker & McKenzie SpA - Abogados*

Hernán Peñafiel, *Chirgwin Peñafiel*

Macarena Bedregal, *Chirgwin Peñafiel*

Raquel Frattini, *Chirgwin Peñafiel*

Dino Schiappacasse, *Claro y Cía*

Herman Rojas, *Claro y Cía*

Jorge Martín, *Claro y Cía*

Karina Henríquez, *Claro y Cía*

Luisa Nuñez, *Claro y Cía*

Rodrigo Ochagavía, *Claro y Cía*

Emiliana O'Brien, *Dentons Larraín Rencoret*

José Manuel Larraín, *Dentons Larraín Rencoret*

Hernán Fleischmann, *Fleischmann & León Abogados*

Juan Diego Rabat, *Fleischmann & León Abogados*

Juan Ignacio León, *Fleischmann & León Abogados*

Paulo Román, *Fleischmann & León Abogados*

Juan Chackiel, *General Directorate of Concessions (Dirección General de Concesiones)*

Ignacio Zaldivar, *Morales y Besa*

James Channing, *Morales y Besa*

Javier Balbontin, *Morales y Besa*

Katannya Jablonski, *Morales y Besa*

Orlando Palominos, *Morales y Besa*

## **CHINA**

Zhifeng Gao

Fei Xie, *China Public Private Partnerships Center*

Yushi Wang, *China Public Private Partnerships Center*

Jie Li, *Herbert Smith Freehills*

Monica Sun, *Herbert Smith Freehills*

Yunfei Guo, *Herbert Smith Freehills*

Billy Tam, *Institution of Public Private Partnerships*

Moon Wei, *Institution of Public Private Partnerships*

Fuguo Cao, *Law School of Central University of Finance and Economics; Chinese Academy of PPP Governance, Central University of Finance and Economics; National Planning Office for Social Science Foundation; China Institute for Public Procurement; China Energy Law Society.*

David Li, *White & Case*

Mengbi Xu, *White & Case*

## COLOMBIA

Carlos Umaña, *Brigard Urrutia*

Felipe Piquero Villegas, *Esguerra Asesores Jurídicos S.A.*

Juan Pablo González Mejía, *Esguerra Asesores Jurídicos S.A.*

Diana Díaz, *Estudios Palacios Lleras SAS*

Óscar Fabián Gutiérrez, *Estudios Palacios Lleras SAS*

Jaime Moya, *Godoy Hoyos Abogados*

Steffany Serebrenik Beltrán, *Godoy Hoyos Abogados*

Jose-Luis Suarez, *Gómez-Pinzón Abogados*

Juan-Antonio Ucros, *Gómez-Pinzón Abogados*

Paola Larrahondo, *Gómez-Pinzón Abogados*

Andres Hidalgo, *Lloreda Camacho Abogados*

Carlos Carvajal, *Lloreda Camacho Abogados*

Santiago Garzon, *Lloreda Camacho Abogados*

Angelica Velasco, *National Planning Department of Colombia (Departamento Nacional de Planeación)*

Diego De Pablos Cadena, *National Planning Department of Colombia (Departamento Nacional de Planeación)*

Laura Tarazona Bohórquez, *National Planning Department of Colombia (Departamento Nacional de Planeación)*

Luis Fernando Castro, *National Planning Department of Colombia (Departamento Nacional de Planeación)*

María Pardo Salinas, *National Planning Department of Colombia (Departamento Nacional de Planeación)*

Carlos Padilla, *Philippi, Prietocarrizosa, Ferrero DU & Uria*

Jorge Di Terlizzi, *Philippi, Prietocarrizosa, Ferrero DU & Uria*

Juan Fernando Gaviria, *Philippi, Prietocarrizosa, Ferrero DU & Uria*

Roberto Camacho, *Philippi, Prietocarrizosa, Ferrero DU & Uria*

## CONGO, DEM. REP

Barthélemy Tandou, *Pointe-Noire Chamber of Commerce, Industry, Agriculture and Trades (Chambre de commerce, d'industrie, d'agriculture et des métiers de Pointe-Noire)*

Sylvestre Didier Mavouenzela, *Pointe-Noire Chamber of Commerce, Industry, Agriculture and Trades (Chambre de commerce, d'industrie, d'agriculture et des métiers de Pointe-Noire)*

## CONGO, REP.

Patrick Gamassa, *KPMG Congo*

Ursula Dutoziet, *KPMG Congo*

Rufin Itoba, *Permanent Secretariat of the Privatization Committee (Secrétariat Permanent du Comité de Privatisation)*

## COSTA RICA

Alonso Miranda, *Arias Costa Rica*

Carlos Ubico, *Arias Costa Rica*

Carlos F. Camacho, *Arias Costa Rica*

Ignacio Flores, *Arias Costa Rica*

Laura Perez, *Arias Costa Rica*

Marco Ureña, *Batalla Legal*

Marvin Carvajal, *Batalla Legal*

Pamela Castro, *Batalla Legal*

Raquel Salazar, *Batalla Legal*

Raúl Guevara, *Batalla Legal*

Eduardo Ramírez, *BLP Legal*

Francisco Obando, *BLP Legal*

Luis Ortiz, *BLP Legal*

Carlos Arrea, *Caoba Legal*

Daniel Uba, *National Council of Concessions*

## CÔTE D'IVOIRE

Assouan Carole, *AnyRay and Partners*

Ika Raymond Any-Gbayere, *AnyRay and Partners*

Steven Amany, *AnyRay and Partners*

Koyo Sylvere, Bazié, *Koyo & Assa Law Firm*

Eloi K. Yao, *CLK Avocats*

Noumory Sidibe, *National Steering Committee for Public-Private Partnerships (CNP-PPP)*

## CROATIA

Ivana Manovelo, *Macesic & Partners LLC*

Natalija Perić, *Mamić Perić Reberski Rimca Law Firm LLC*

Domagoj Dodig, *Ministry of Economy, Entrepreneurship and Crafts, Division for Approval and Monitoring PPP projects; Agency for Investments and Competitiveness (AIK)*

## CZECH REPUBLIC

Martin Bytčánek, *Allen & Overy (Czech Republic) LLP*

Markéta Páleníková, *Masaryk University Brno, Faculty of Economics and Administration*

Katerina Helikarova, *Ministry of Finance Czech Republic*

## DENMARK

Jonas Kornerup Jensen, *Ernst & Young P/S*

Torben Hartz, *Ernst & Young P/S*

Gitte Holtsø, *Plesner*

Lise Aaby Nielsen, *Plesner*

Peter Fogh, *Plesner*

Steen Jensen, *Steenjensen.com ApS*

## DJIBOUTI

Fatouma Ahmed Moussa

Martin Dethier

Ahmed Abdourahman Chek, *Cabinet Avocats & Associés Abayazid & Abdourahman (CAA Law Firm) SCP*

Mohamed Abayazid Houmed, *Cabinet Avocats & Associés Abayazid & Abdourahman (CAA Law Firm) SCP*

## DOMINICAN REPUBLIC

Maria Portes, *Castillo y Castillo*

Marlene A. Herrera, *Coiscou & Asociados, Attorneys at Law*

Milvio Coiscou, *Coiscou & Asociados, Attorneys at Law*

Guillermo Estrella, *Estrella & Tupete, Abogados*

Rita Pilar Soriano, *Estrella & Tupete, Abogados*

Yamel Llenas, *Estrella & Tupete, Abogados*

Luis Arias, *Headrick, Rizik. Alvarez & Fernandez*

Mary Fernández, *Headrick, Rizik. Alvarez & Fernandez*

Vera Lucia Crespo, *Headrick, Rizik. Alvarez & Fernandez*

Gisselle Ivalera, *Jiménez Cruz Peña*

Luis Eduardo Jiménez, *Jiménez Cruz Peña*

Luis J. Jiménez, *Jiménez Cruz Peña*

Georges Santoni, *Russin Vecchi & Heredia Bonetti*

Jeanny Aristy, *Russin Vecchi & Heredia Bonetti*

Victor Garrido, *Russin Vecchi & Heredia Bonetti*

Paola Manon, *Seibel Dargam Henriquez & Herrera Law Firm*

Cesar Rodríguez, *Seibel Dargam Henríquez & Herrera Law Firm*



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Alfredo Larrea, *Bustamante & Bustamante Law Firm*

Francisco Bustamante, *Bustamante & Bustamante Law Firm*

Juan Felipe Bustamante, *Bustamante & Bustamante Law Firm*

Pedro Gómez de la Torre, *Bustamante & Bustamante Law Firm*

Manuel Pérez Aguilar, *Caxxor Group*

Diego Ramírez Mesec, *Fabara & Attorneys Law Firm*

James E. Keeble, *Fabara & Attorneys Law Firm*

Andrea Garcés, *Ferrere Abogados Ecuador*

Javier Robalino, *Ferrere Abogados Ecuador*

Mario Torres, *Ferrere Abogados Ecuador*

Paola Gachet, *Ferrere Abogados Ecuador*

Alejandro Pérez Arellano, *Flor & Hurtado Law Firm*

Mario Flor, *Flor & Hurtado Law Firm*

Vianna Maino, *Mainolaw*

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Ricardo Montalvo Lara, *ML Abogados*

## EGYPT, ARAB REP.

Mahmoud Alzayat, *AlZayat Law Firm*

Ayman Abdallah, *AM Law Firm*

Farah Hazem, *AM Law Firm*

Haidy Waheed, *AM Law Firm*

Mohab Amr, *AM Law Firm*

Wael El-Atfy, *AM Law Firm*

Ahmed Shehata, *Baker McKenzie*

Mohamed Ghanname, *Baker McKenzie*

Reem Mansour, *Ministry of Planning, Monitoring, and Administrative Reform*

Emad El-Shalakany, *Shalakany Law Office*

Farida El-Bakry, *Shalakany Law Office*

Nadine Nassef, *Shalakany Law Office*

Esraa Hesham, *Youssry Saleh & Partners*

Maha Ibarahim, *Youssry Saleh & Partners*

Mira Adly, *Youssry Saleh & Partners*

Nagy Hany, *Youssry Saleh & Partners*

Youssry Saleh, *Youssry Saleh & Partners*

Zayanb Ismail, *Youssry Saleh & Partners*

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Mohamed Salah Abdel Wahab, *Zulficar and Partners Law Firm*

## EL SALVADOR

Schafik Collazo

Javier Aguilar, *Arias Law*

Lilian Arias, *Arias Law*

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Federico Paz, *Deloitte*

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Miguel Martinez, *Ministry of Public Works and Transportation*

Fernando Velasco, *Valdes Suarez & Velasco*

## ERITREA

Yonas Andegergish, *Independent expert*

## ESTONIA

Mario Sõrm, *Ministry of Finance*

## ETHIOPIA

Bekele Jenessa, *ETHIO Infra Engineering plc*

Fikadu Asfaw Demissie, *Fikadu Asfaw & Associates Law Office*

Yodit Gurji Argaw, *Fikadu Asfaw & Associates Law Office*

Bereket Fesehatsion Tesfamarim, *Plan and Development Commission; Development Projects Directorate*

## FINLAND

Mika Lehtimäki, *Attorneys-at-Law Trust Ltd. Castrén & Snellman Attorneys Ltd.*

Heidi Muukkonen, *Dittmar & Indrenius*

Juha-Pekka Mutanen, *Dittmar & Indrenius*

Sakari Sedbom, *Dittmar & Indrenius*

Jemina Järvillehto, *Dittmar & Indrenius*

Lars Westermarck, *Finnish Transport Infrastructure Agency*

Seppo Toivonen, *Finnish Transport Infrastructure Agency*

Janna Pihanurmi, *Hannes Snellman Attorneys Ltd*

Rabbe Sittnikow, *Hannes Snellman Attorneys Ltd*

## FRANCE

Jacques Dabreteau, *Ashurst LLP*

Philippe Delelis, *Jones Day*

Laurence Folliot Lalliot, *Paris Nanterre University, Center for Research in Public Law (CRDP)*

## GABON

Davy Emame Ndong Nze, *PPP Support Unit (L'Unité d'Appui aux Partenariats Publics-Privés (UA-PPP))*

## GEORGIA

Natalia Merabishvili, *AMK Law*

Ekaterina Aleksidze, *BGI Legal*

Giorgi Chanturia, *BGI Legal*

Giorgi Jolia, *BGI Legal*

Lasha Gogiberidze, *BGI Legal*

Mariam Grigalashvili, *BLC Law Office*

Rusa Tchkuaseli, *BLC Law Office*

Davit Galdava, *EY LLC*

George Svanadze, *EY LLC*

Temur Phkhakadze, *EY LLC*

Sandro Samadbegishvili, *Mgaloblishvili Kipiani Dzidziguri*

Nodia, *Urumashvili and Partners*

## GHANA

Manuel Pérez Aguilar, *Caxxor Group*

Ellen Fayorsey, *Deloitte & Touche*

Jessica Twumasi, *Kimathi and Partners, Corporate Attorneys*

Kimathi Kuenyehia, *Kimathi and Partners, Corporate Attorneys*

Reginald Nii Odoi, *Kimathi and Partners, Corporate Attorneys*

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Athanassios Safaris, *Avramopoulos and Partners*

Vasilis Keramaris, *Bahas Gramatidis & Partners*

George Dellis, *Dellis&Partners Law Firm*

Nadia Sakellariou, *Dellis&Partners Law Firm*

Konstantina Karveli, *Kelemenis and Co*

Elisabeth Eleftheriades, *KG Law Firm*

Ioanna Antonopoulou, *KG Law Firm*

Kimon Tsakiris, *KG Law Firm*

Gregory Logothetis, *Koutalidis Law Firm*

Ioannis Kaptanis, *Koutalidis Law Firm*

Yannis Kantas, *Koutalidis Law Firm*

Nikolaos Mantzoufas, *Special Secretariat for PPPs*

## GUATEMALA

Gustavo Gamboa, *Arias*  
Herbert Girón, *Arias*  
Jorge Arenales, *Arias*  
Alfredo Rodriguez, *Consortium Legal*  
Ana Sofía Escribá Barnoya, *Consortium Legal*

## GUINEA

Lansana Cherif, *Cabinet d'Avocat de Me.Doumbia Mohamed Lamine*  
Mohamed Lamine Doumbia, *Cabinet d'Avocat de Me.Doumbia Mohamed Lamine*  
Souwla Cherif, *Cabinet d'Avocat de Me.Doumbia Mohamed Lamine*  
Sylla Sékou Mohamed, *National Anti-Corruption Agency (Agence Nationale de la Promotion de la Bonne Gouvernance et de Lutte Contre la Corruption)*

## HAITI

Abel Louissaint, *Cabinet Louissaint & Investigation-AL Group*  
Monique Bolmin, *EKWA Consulting*  
Alain Guillaume, *Frederic, Guillaume et Associes*

## HONDURAS

Armida Lopez, *Aczalaw- Bufete Internacional de Honduras*  
Cecille Flores, *Aczalaw- Bufete Internacional de Honduras*  
Carolina Aguirre, *Aguilar Castillo Love*  
Leonel Raín Contreras Espinal, *Aguilar Castillo Love*  
Melissa Margarita Miles Fortín, *Aguilar Castillo Love*  
Arias Honduras  
Jose Alvarez, *BLP Legal*  
Julio Rivera, *BLP Legal*  
Nadia Arriaga, *BLP Legal*  
Claribel Medina, *Central Law*  
Marcela Aguilar, *Central Law*  
Jorge Reina Interiano, *ECIJA Honduras*  
Roberto Alejandro Williams Cruz, *ECIJA Honduras*  
Patricia Alonzo, *Regulatory Office of State Procurement and Contracting (Oficina Normativa de Contratación y Adquisiciones del Estado (ONCAE)), Procurement Analysis and Management Unit*

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Eszter Berki, *Jalšovszky Law Firm*  
Gabor Pazsitka, *Jalšovszky Law Firm*  
Gabriella Szabó, *Lakatos, Köves és Társai Law Firm*  
Péter Köves, *Lakatos, Köves és Társai Law Firm*  
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Gautam Khurana, *India Law Offices LLP*  
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Dibyanshu, *Khaitan & Co*  
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Prateek Bhandari, *Khaitan & Co*  
Sakshi Mishra, *L&L Partners, New Delhi*  
Sameen Vyas, *L&L Partners, New Delhi*  
Vishrut Kansal, *L&L Partners, New Delhi*  
Gagan Anand, *Legacy Law Offices*  
Shalini Munjal, *Legacy Law Offices*

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Irgi Alfian S.H, *A.M Oktarina Counsellors at Law*  
Nasfiahtul Istani Daely S.H, *A.M Oktarina Counsellors at Law*  
Noverizki Tri Putra Pasaribu S.H. LL.M (Adv), *A.M Oktarina Counsellors at Law*  
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Bhirawa J. Arifi, *Ali Budiardjo Nugroho Reksodiputro (ABNR)*  
Freddy Karyadi, *Ali Budiardjo Nugroho Reksodiputro (ABNR)*  
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Fradinta Nadya Laksmi, *Hanafiah Ponggawa & Partners | HPRP Lawyers*

Giovanni Mofsol Muhammad, *Hanafiah Ponggawa & Partners | HPRP Lawyers*

Michael Kaihatu, *Hanafiah Ponggawa & Partners | HPRP Lawyers*

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Heru Mardijarto, *Makarim & Taira S.*

Irina Anindita, *Makarim & Taira S.*

Rizanesia Citrasari, *Makarim & Taira S.*

Stephen Sim, *Makarim & Taira S.*

Albertus Andhika, *Mochtar Karuwin Komar*

Chris Naziris, *Mochtar Karuwin Komar*

Ferdinand Jullaga, *Mochtar Karuwin Komar*

Tommy Gunarsa Handono, *Mochtar Karuwin Komar*

Albertus Andhika, *Mochtar Karuwin Komar*

Michael Amos Djohan, *Soewito Suhardiman Eddymurthy Kardono*

Miftahul Khairi, *Soewito Suhardiman Eddymurthy Kardono*

Winnie Yamashita Rolindrawan, *Soewito Suhardiman Eddymurthy Kardono*

Ana Sofa Yukung, *Yukung & Co. Attorneys at Law*

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Arash Izadi, *Izadi Law Firm*

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Ahmed Al Janabi, *MENA Associates*

Mohammed Norri, *Tamimi & Company*

Mohammed Taher, *Tamimi & Company*

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Ciara Dooley, *Arthur Cox*

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Orlaith Sheehy, *McCann FitzGerald*

Michael Kennedy, *Transport Infrastructure Ireland*

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Roberto Cursano, *Baker Mckenzie*

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Francesco Sciaudone, *Grimaldi Studio Legale*

Isabella Raso, *Grimaldi Studio Legale*

Matteo Trabacchin, *Grimaldi Studio Legale*

Maurizio Mengassini, *Grimaldi Studio Legale*

Rosaria Arancio, *Grimaldi Studio Legale*

Sergio Massimiliano Sambri, *Grimaldi Studio Legale*

Alice Favotto, *Italian National Statistical Institute (ISTAT)*

Giovanna Ottaviani, *Italian National Statistical Institute (ISTAT)*

Maurizio Delfino, *Law Firm Delfino e Associati Willkie Farr & Gallagher LLP*

Sergio Starace, *Law Firm Delfino e Associati Willkie Farr & Gallagher LLP*

Giovanni Coletta, *Ministry of Finance, State General Accounting Department*

Daniela Jouvenal, *Nunziante Magrone*

Otello Emanuele, *Nunziante Magrone*

Daniele Archilietti, *PwC TLS Avvocati e Commercialisti*

Federica De Luca, *PwC TLS Avvocati e Commercialisti*

Guido Ajello, *PwC TLS Avvocati e Commercialisti*

Antonino Castorino, *Ristuccia & Tufarelli Law Firm*

Giulia Fabrizi, *Ristuccia & Tufarelli Law Firm*

Luca Tufarelli, *Ristuccia & Tufarelli Law Firm*

Mario Di Carlo, *Ristuccia & Tufarelli Law Firm*

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Nadeen Abu Shaqra, *Ali Sharif Zubi Advocates and Legal Consultants*

Saleh Abdel Ati, *Ali Sharif Zubi Advocates and Legal Consultants*

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Bashar Gammaz, *Hammouri and Partners Attorneys-at-Law*

Omar Sawadha, *Hammouri and Partners Attorneys-at-Law*

Ruba Madi, *Hammouri and Partners Attorneys-at-Law*

Yotta Pantoula-Bulmer, *Hammouri and Partners Attorneys-at-Law*

Ali Al-Ghwairi, *Ministry of Finance*

Osama Suliman, *Ministry of Finance*

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Yersinbek Mukhamejan, *Centil Law firm*

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Rustam Baitazin, *Signum Law Firm*

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Atiq Anjarwalla, *Anjarwalla & Khanna LLP*

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Karim Lalji, *Anjarwalla & Khanna LLP*

Sanelisiwe Mpofana, *Anjarwalla & Khanna LLP*

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Martin Githua, *Iseme, Kamau & Maema Advocates*

Sarah Kabochi, *Iseme, Kamau & Maema Advocates*

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Faith Chebet, *Kaplan & Stratton*

Kenneth Kamaitha, *Kaplan & Stratton*

Godwin Wangong'u, *Mboya Wangong'u & Waiyaki Advocates*

Kimani Njane, *Mboya Wangong'u & Waiyaki Advocates*

Biko Angwenyi, *Mohammed Muigai LLP*

Wanjiru Ngige, *Mohammed Muigai LLP*

Robert Robert, *The National Treasury; Debt Policy, Strategy and Risk Management Department*

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Yong Jae Chang, *Lee&Ko*

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 Vjosa Misini, *Deloitte Albania and Kosovo*  
 Ahmet Hasolli, *Kalo and Associate*  
 Vjollca Hiseni, *Kalo and Associates*  
 Ilir G. Rama, *Ministry of Finance, Public Private Partnerships Central Department*  
 Durim Sheremeti, *Municipality of Peja*  
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## KUWAIT

Adel Abdulhadi, *Al Oula Law (Adel Abdulhadi & Partners)*  
 Dolly Sleem, *Al Oula Law (Adel Abdulhadi & Partners)*  
 Sanabil Jafar, *Al Oula Law (Adel Abdulhadi & Partners)*  
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 Dania Dib, *ASAR - Al Ruwayeh & Partners*  
 Ibrahim Sattout, *ASAR - Al Ruwayeh & Partners*  
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*The Law Office of Al-Essa & Partners*

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 Una Petrauska, *KPMG Law Firm*

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 Ghina Zibawi, *Abousleiman & Partners*  
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 Dainius Pupkevicius, *KPMG Baltics*  
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 Yann Ely Andrianavalo, *Ministry of Energy (Finance Unit)*

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 Joe Cosma, *Ernst & Young Malawi*  
 Shiraz Yusuf, *Ernst & Young Malawi*

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 Daouda Ba, *Vaughan Avocats*

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*Procurement Policy Office, BOT Projects Unit*  
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 Nicolas Richard, *Juristconsult Chambers*  
 Pritveeraj Buchoo, *The Government of Mauritius, Public Sector Investment Programme (PSIP) Team*  
 YKJ Legal

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 Rafael Robles, *Bufete Robles Miaja, S.C.*  
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Gustavo Mendoza, *Santamarina y Steta, S.C.*

Jair Vaca Avendaño, *Santamarina y Steta, S.C.*

María De Palacio Cuertos, *Santamarina y Steta, S.C.*

Mariano Calderón Vega, *Santamarina y Steta, S.C.*

Sergio Chagoya Díaz, *Santamarina y Steta, S.C.*

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*Public Property Agency*

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Rusu Viorel, *State University of Moldova*

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Nyamtsuren Bataa, *ELC LLP Advocates*

Unurtsetseg Ulaankhuu, *Independent Consultant*

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Dijana Vukčević, *Ministry of Finance, Directorate for Public Procurement Policy*

Jelena Jovetić, *Ministry of Finance, Directorate for Public Procurement Policy*

Svetlana Tomović, *Ministry of Finance, Directorate for Public Procurement Policy*

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Mariam Rouissi, *El Amari & Rouissi*

Mohieddine El Amari, *El Amari & Rouissi*

Kamal Habachi, *HB Law Firm LLP*

Azzedine Kettani, *Kettani Law Firm*

Saher Najat, *Ministry of Economy, Finance and Administration Reform; Department of Public Enterprises and Privatization; PPP and Active Management of the State Portfolio Unit*

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Mara Rupia Lopes, *HRA Advogados*

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Lourenço Veniça, *Road Fund; Planning Department*

Amina Abdala, *TTA-Sociedade de Advogados*

Edneuzza Massingue, *TTA-Sociedade de Advogados*

Natércia Sitei, *TTA-Sociedade de Advogados*

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Mya Thita Oo, *DFDL Myanmar*

William Greenlee, *DFDL Myanmar*

Cn Bei Lo, *Duane Morris & Selvam*

Krishna Ramachandra, *Duane Morris & Selvam*

Moritz Spenke, *Duane Morris & Selvam*

Priyank Srivastava, *Duane Morris & Selvam*

Than Linn Aung, *Internal Revenue Department*

Nyein Chan Zaw, *Lincoln Legal Services (Myanmar) Ltd.*

Sebastian Pawlita, *Lincoln Legal Services (Myanmar) Ltd.*

Thida Tun, *Ministry of Planning, Finance and Industry; Budget Department*

Zaw Naing, *Ministry of Planning, Finance and Industry; Financial Regulatory Department*

Rajah & Tann NK Legal Myanmar

Nwe Oo, *Tilleke & Gibbins*

Ross Taylor, *Tilleke & Gibbins*

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Jean Loi, *VDB Loi Myanmar*

Khin Sandar Win, *VDB Loi Myanmar*

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Sombhojen Limbu, *Kathmandu University School of Law*

Gourish Khishna Kharel, *Kto Inc. Advocates & Legal Consultants*

Shiva Prasad Rijal, *Pioneer Law Associates Public Procurement Monitoring Office*

Madhab Raj Ghimire, *PSM Global Consultants P. Ltd*

Ayasha Sharma, *Sinha Verma Law Concern*

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Jaap Koster, *Clifford Chance*

Thomas Heijerman, *Clifford Chance*

Wesley Veekman, *Ministry of Economic Affairs and Climate; PIANOO, Procurement Expertise Center*

David van Ee, *NautaDutilh N.V.*

Florence van Ravels, *NautaDutilh N.V.*

Jaco Belder, *NautaDutilh N.V.*

Marc Bollen, *Rijkswaterstaat*

Pascal Mousset, *Rijkswaterstaat*

Diederik de Koe, *Turner & Townsend*

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Tom Pemberton, *Chapman Tripp*

Guy Finny, *New Zealand Treasury, Infrastructure Transactions Unit*

Karen Mitchell, *New Zealand Treasury, Infrastructure Transactions Unit*

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Bertha Argüello, *Arias Law Nicaragua*

Gabriel Alvarez, *Arias Law Nicaragua*

José Román, *Arias Law Nicaragua*

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Yara Valesia Alemán Sequeira, *Arias Law Nicaragua*

Rodrigo Taboada, *Consortium Legal-Nicaragua*

Silvio Arguello, *Consortium Legal-Nicaragua*

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Jose Mejia, *Garcia & Bodan*

Fernando Midence-Mantilla, *Lexincorp*

Linda Barquero, *Lexincorp*

## NIGER

Idrissa Tchernaka, *Société Civile Professionnelle d'Avocats SCPA (Professional Civil Society of Lawyers) LBTI and Partners*

Richard Elad, *Société Civile Professionnelle d'Avocats SCPA (Professional Civil Society of Lawyers) Mandela*

## NIGERIA

Judith Odimbaiwe

Isoken Iyamu, *Abdulai, Taiwo & Co. Solicitors*

Kunle Ayansola, *Abdulai, Taiwo & Co. Solicitors*

Ladi Taiwo, *Abdulai, Taiwo & Co. Solicitors Advocat Law Practice*

Chisom Sam - Obasi, *Alliance Law Firm*

Doyin Fadare, *Alliance Law Firm*

Gabriel Onojason, *Alliance Law Firm*

Simeon Okoduwa, *Alliance Law Firm*

Uche Obi, *Alliance Law Firm*

Ayuli Jemide, *Detail Solicitors*

Adetola Lawal, *Gbenga Biobaku & Co*

Gbenga Biobaku, *Gbenga Biobaku & Co*

Ivie Ibharebhor, *Gbenga Biobaku & Co*

Osayaba Giwa-Osagie, *Giwa-Osagie & Co*

Akwu Okolo, *Infrastructure Concession Regulatory Commission (ICRC)*

Amanze Okere, *Infrastructure Concession Regulatory Commission (ICRC)*

Chidi Izuwah, *Infrastructure Concession Regulatory Commission (ICRC)*

Emmanuel Philip Chorio, *Infrastructure Concession Regulatory Commission (ICRC)*

George Nwangwu, *Ratio Consulting Limited*

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Olayemi Anyanechi, *Sefton Fross - Barristers & Solicitors*

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Rosemary Mba, *Solola & Akpana Barristers & Solicitors*

Tope Solola, *Solola & Akpana Barristers & Solicitors*

Ahmed Salawudeen, *Standard Insurance Consultants Limited*

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Chike Obianwu, *Templars Law*

Adeola Sunmola, *Udo Udoma & Belo-Osagie*

Chukwunedum Orabueze, *Udo Udoma & Belo-Osagie*

Marcus Ojaruega, *Udo Udoma & Belo-Osagie*

Nicholas Okafor, *Udo Udoma & Belo-Osagie*

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Bojana Mijovic Hristovska, *Analytica Skopje*

Tamara Mijovi Spasova, *Analytica Skopje*

Ema Dimitrieska, *Debarliev, Dameski & Kelesoska Attorneys-at-Law*

Jasmina Ilieva Jovanovik, *Debarliev, Dameski & Kelesoska Attorneys-at-Law*

Ljupcho Cvetkovski, *Debarliev, Dameski & Kelesoska Attorneys-at-Law*

Riste Georgievski, *Debarliev, Dameski & Kelesoska Attorneys-at-Law*

Ana Ikashirska, *Karanovic & Partners*

Bozidar Milosevic, *Karanovic & Partners*

Ljupka Noveska Andonova, *Karanovic & Partners*

Srdjan Randjelovic, *KPMG Macedonia*

Bojana Paneva, *Law Firm Trpenoski*

Darko Nikodinovski, *Law Firm Trpenoski*

Damjan Grozdanovski, *Law Office Cakarovska*

Danche Cakarovska, *Law Office Cakarovska*

Nikola Kirovski, *Law Office Cakarovska*

Nikola Pljakov, *Law Office Cakarovska*

Biljana Panova, *Law Office Panova*

Svetlana Necheva, *Law Office Pepeljuginoski*

Filip Ruben, *Mens Legis Law Firm*

Sanja Veljanovska, *Mens Legis Law Firm*

Gjorgji Georgievski, *Odi Law*

Marija Serafimovska, *Odi Law*

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Mubarak Khan, *Haidermota & Co.*

Rafiq Jan, *Planning & Development Department*

Adnan Qureshi, *Qureshi Law Associates*

Basharat Ali Mahmood, *Qureshi Law Associates*

Adil Tirmizey, *RIAA Barker Gillette*

Bilal Shaukat, *RIAA Barker Gillette*

Asma Hameed Khan, *Surridge and Beecheno*

Syed Adil Gilani, *Transparency International Pakistan*

## PANAMA

Raúl Borrell Azcárraga, *Aleman, Cordero, Galindo & Lee*

Javier J. Daza Rossi, *Alfaro, Ferrer & Ramírez*

Luis H. Moreno, *Alfaro, Ferrer & Ramírez*

Ana Cristina Arosemena, *Central Law*

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Andrew Kuria, *Kuria Lawyers*

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José Antonio Moreno Rodríguez, *Altra Legal*

Karin Kennedy, *Altra Legal*

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Milena Sljivich, *BKM Berkemeyer*

Paola Sapienza, *BKM Berkemeyer*

Sofía Suarez, *BKM Berkemeyer*

Claudia Arietti, *Ferrere Abogados*

Juan Manuel Ros, *Ferrere Abogados*

Nestor Loizaga, *Ferrere Abogados*

Alejandra Corrales, *Fiorio Cardozo & Alvarado*

Jorge Angulo, *Fiorio Cardozo & Alvarado*

Marcelo Alvarado, *Fiorio Cardozo & Alvarado*

Jorge Ignacio Gross Brown, *Gross Brown Law Firm*

Juan Pablo Zaputovich, *Gross Brown Law Firm*

Mauricio Salgueiro, *Gross Brown Law Firm*

Pablo Debuchy, *Gross Brown Law Firm*

Sigfrido Gross Brown, *Gross Brown Law Firm*

Sol Avalos, *Gross Brown Law Firm*

Adilio Celle, *Ministry of Finance, Public Investment Bureau, PPP Department*

José Canessa, *Ministry of Finance, Public Investment Bureau, PPP Department*

Carlos Vouga, *Vouga Abogados*  
Eusebio López, *Vouga Abogados*

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Cindy Rodas Correa, *Carrizales Infraestructura & Servicios Públicos*  
Martin Mariño Marquina, *Carrizales Infraestructura & Servicios Públicos*  
Giancarlo Villafrankui, *CMS Grau*  
Marirosalyn Barrenachea, *CMS Grau*  
Ramón Huapaya, *CMS Grau*  
Angela Raygada, *Estudio Eche copar*  
Jorge Danos, *Estudio Eche copar*  
Juan Carlos de los Heros, *Estudio Eche copar*  
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Carlos Gomero Rigacci, *Laub & Quijandría Energy Group*  
Jorge de la Cruz Ravines, *Laub & Quijandría Energy Group*  
Leslie Velásquez Gallo, *Laub & Quijandría Energy Group*  
Alvaro Valencia, *Ministry of Economy and Finance*  
Isabel Lira, *Miranda & Amado*  
Luis Marcelo De-Bernardis, *Miranda & Amado*  
Adriana Ospina-Jimenez, *Payet, Rey, Cauvi, Pérez Abogados*  
Alonso Rey, *Payet, Rey, Cauvi, Pérez Abogados*  
Karen Angeles, *Payet, Rey, Cauvi, Pérez Abogados*  
Marcelo Castilla, *Payet, Rey, Cauvi, Pérez Abogados*  
Michelle Aramburú, *Payet, Rey, Cauvi, Pérez Abogados*  
Sebastian Gamarra, *Payet, Rey, Cauvi, Pérez Abogados*  
Ronald Fernández-Dávila, *Philippi Prietocarrizosa Ferrero DU & Uría*  
Alberto Ñecco, *Private Investment Promotion Agency (Proinversión Institucional)*  
Veronica Sattler, *Rodrigo, Elías & Medrano Abogados*  
Miguel Sanchez Moreno Cisneros, *Rossello Attorneys-at-Law*  
Adolfo Pulgar Soarez, *Veolia Peru*

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Annalisa Carlota, *C&G Law*  
Jillienne Sotto, *C&G Law*  
Jennifer Marie Castro, *Cruz Marcelo & Tene francia*  
Manuel Manaligod, Jr., *Cruz Marcelo & Tene francia*  
Pamela Marie Mareclo, *Cruz Marcelo & Tene francia*  
Ralph Gabrielle del Rosario, *Cruz Marcelo & Tene francia*  
John Paul Ursua, *KPMG PH*  
Ma. Cynthia Hernandez, *KPMG PH*  
Ricardo Benjamin D. Osorio, *Public-Private Partnership Center of Philippines*  
Fernando Sioson, *Romulo Mabanta Buenaventura Sayoc & De Los Angeles*  
Steffi Sales, *Romulo Mabanta Buenaventura Sayoc & De Los Angeles*  
Arlene M. Maneja, *SyCip Salazar Hernandez & Gatmaitan*  
Carlo Miguel Romeo S. Go, *SyCip Salazar Hernandez & Gatmaitan*

## POLAND

Karolina Niewiadomska, *Bird & Bird Szepietowski i Wspólnicy*  
Magdalena Zabłocka, *Bird & Bird Szepietowski i Wspólnicy*  
Tomasz Zalewski, *Bird & Bird Szepietowski i Wspólnicy*  
Marcin Oszczak, *CMS Cameron McKenna Nabarro Olswang Pośniak i Sawicki sp.k.*  
Arkadiusz Krasnodębski, *Dentons Europe Dqbrowski i Wspólnicy sp. k.*  
Tomasz Korczyński, *Dentons Europe Dqbrowski i Wspólnicy sp. k.*  
Bartosz Korbus, *Institute of Public-Private Partnerships (Instytut Partnerstwa Publiczno-Prywatnego)*  
Małgorzata Gołyńska-Minkiewicz, *Ministry of Investment and Economic Development*  
Marcin Skowron, *Public Procurement Office*  
Agata Szeliga, *Sołtysiński Kawecki & Szlęzak - Kancelaria Radców Prawnych i Adwokatów sp.k.*  
Igor Hanas, *Squire Patton Boggs*  
Peter Swiecicki, *Squire Patton Boggs*

## PORTUGAL

José Miguel Figueiredo, *AAMM - Abecasis, Moura Marques, RL*

Paulo Marques, *AAMM - Abecasis, Moura Marques, RL*

Mafalda Teixeira de Abreu, *Abreu Associados, Sociedade de Advogados RL*

Manuel Andrade Neves, *Abreu Associados, Sociedade de Advogados RL*

Filipa Veiga Gomes, *Campos Ferreira, Sá Carneiro & Associados*

Maria Castelos, *Campos Ferreira, Sá Carneiro & Associados*

Maria de Athayde Tavares, *Campos Ferreira, Sá Carneiro & Associados*

Eduardo Queimado, *Gómez-Acebo & Pombo*

João Coutinho, *Ministry of Finance, Project Monitoring Technical Unit (Unidade Técnica de Acompanhamento de Projetos (UTAP))*

João Tilly, *Ministry of Finance, Project Monitoring Technical Unit (Unidade Técnica de Acompanhamento de Projetos (UTAP))*

Manuel Vieira, *Ministry of Finance, Project Monitoring Technical Unit (Unidade Técnica de Acompanhamento de Projetos (UTAP))*

Maria Zagallo, *Ministry of Finance, Project Monitoring Technical Unit (Unidade Técnica de Acompanhamento de Projetos (UTAP))*

Ana Luísa Guimarães, *Servulo & Associados*

Bernardo Ayala, *Uría Menéndez - Proença de Carvalho*

Gonçalo Andrade e Sousa, *Uría Menéndez - Proença de Carvalho*

João Louro e Costa, *Uría Menéndez - Proença de Carvalho*

Catarina Coimbra, *Vieira de Almeida e Associados*

Manuel Protásio, *Vieira de Almeida e Associados*

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Zoyal Khan, *Sultan Al Abdulla & Partners*

Omar Qouteshat, *Sultan Al Abdulla & Partners*

Ali Sophie, *TAGlegal Qatar*

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Nicolae Ursu, *Bpv Grigorescu Stefanica*

Raluca Iulia Marcu, *Bpv Grigorescu Stefanica*

Alexandru Sorici, *Filip & Company Law Firm*

Andreea Gheorghiu, *Filip & Company Law Firm*



Ioana Roman, *Filip & Company Law Firm*  
Corina Ionescu, *Ionescu Miron SPARL*  
Roxana Stoica, *Ionescu Miron SPARL*

Adina Chilim-Dumitriu, *Nestor Nestor Diculescu Kingston Peterson Attorneys & Counselors (NNDKP)*

Adriana Gaspar, *Nestor Nestor Diculescu Kingston Peterson Attorneys & Counselors (NNDKP)*

Alexandru Aman, *Nestor Nestor Diculescu Kingston Peterson Attorneys & Counselors (NNDKP)*

Vlad Anghel, *Nestor Nestor Diculescu Kingston Peterson Attorneys & Counselors (NNDKP)*

Cristi Porojanu, *RTPR Allen&Overy*

Ianita Tui, *RTPR Allen&Overy*

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Ivanov Ilya, *Ministry of Economic Development of the Russian Federation*

Artem Volodkin, *National PPP Center*

Evgeny Moiseichev, *National PPP Center*

Natalya Moiseicheva, *National PPP Center*

Svetlana Maslova, *St. Petersburg University, Graduate School of Management, Center for PPP Studies*

## RWANDA

Emmanuel Muragijimana

Angello Musinguzi, *KPMG East Africa*

Emmanuel Nkurikiye, *Ministry of Finance and Economic Planning (Ministere des Finances et de la Plannification Economic)*

## SAUDI ARABIA

Salam Awawdeh, *Deloitte & Touche (M.E.)*

Razan Alghamdi, *Talal Abu Ghazaleh Law Firm*

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Daouda Faye, *Cabinet d'Avocats Houda (Houda Law Firm)*

Rahimine Azimari Toure, *Cabinet d'Avocats SCP Geni & Kebe*

Aliou Saware, *Cabinet Me Aliou Saware; African Institute for Public-Private Partnerships (Institut African Pour Le Partneriat Public-Prive (IAF-PPP))*

Hélène Larroque, *CPCS*

Ndeye Khoudia Tounkara, *SCPA Mayacine Tounkara and Associates Court Lawyers (SCPA Mayacine Tounkara et Associés)*

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Jasna Zwitter-Tehovnik, *DLA Piper Weiss-Tessbach Rechtsanwälte GmbH*

Jelena Gazivoda, *JPM Jankovic Popovic & Mitic*

Darko Jovanovic, *Karanovic & Partners*

Mina Sreckovic, *Karanovic & Partners*

Nemanja Ilic, *Mihaj, Ilic & Milanovic Law Firm (MIM Law)*

Branimir Blagojevic, *National Bank of Serbia*

Milan Samardžić, *Samardžić, Oreški & Grbović (SOG)*

Stevan Radunović, *Serbian Association of Public Procurement Professionals*

Marija Tasic, *Tasic & Partners*

Nikola Salatic, *Tasic & Partners*

Vera Lukic, *Tasic & Partners*

Tatjana Jovanic, *University of Belgrade, Faculty of Law*

Maja Stanivuković, *University of Novi Sad, Faculty of Law*

## SIERRA LEONE

Keith Hammond, *UK Department for International Development*

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Jacob Vastrup, *KPMG Services Pte. Ltd*

Sharad Somani, *KPMG Services Pte. Ltd*

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Adam Hodon, *Kinstellar*

Martin Polonyi, *Ministry of Finance of the Slovak Republic*

Michael Sýč-Milý, *Ministry of Finance of the Slovak Republic*

Miriám Galandová, *PRK Partners s.r.o.*

Juraj Nemec, *UMB Banska Bystrica*

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Kevin Rihtar, *Karanović & Partners in cooperation with local lawyers*

Marko Ketler, *Karanović & Partners in cooperation with local lawyers*

Tomaž Petrovič, *Law office Fabiani, Petrovič, Jerač, Rejc*

Blaž Mrva, *Mrva Law*

Manca Gorisek, *Mrva Law*

## SOLOMON ISLANDS

Dulcie Ausuta, *Ministry of Infrastructure Development, Central Project Implementation Unit*

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Abdirashid Salah, *ISIR Consulting*

Abdullahi Sheik Abukar, *Ministry of Public Works, Reconstruction & Housing*

Mohamed Hussein, *Ministry of Public Works, Reconstruction & Housing*

## SOUTH AFRICA

Kieran Whyte, *Baker McKenzie*

Refilwe Mokanse, *National Treasury, Infrastructure Finance, Budget Office*

Bavesh Pillay, *Pinsent Masons Africa LLP*

Claire Barclay, *Pinsent Masons Africa LLP*

Kimera Reddy, *Pinsent Masons Africa LLP*

Reuben Cronjé, *Pinsent Masons Africa LLP*

Rajen Ranchhoojee, *RRA Inc.*

Thiagaraj (Joey) Pillay, *Western Cape Department of Transport and Public Works*

## SPAIN

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José Luis Zamarro Parra, *Clifford Chance, S.L.P.U.*

Marc Casas Rondoní, *Clifford Chance, S.L.P.U.*

Octavio Canseco, *Clifford Chance, S.L.P.U.*

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Maria Guinot, *CMS Albiñana & Suárez de Lezo*

Nora Pallaruelo, *CMS Albiñana & Suárez de Lezo*

Patricia Sainz de Vicuña, *CMS Albiñana & Suárez de Lezo*

Antonio Dorado, *Cuatrecasas*

Fernando Bernad, *Cuatrecasas*

Jorge Botella, *Cuatrecasas*

Mónica Reig, *ESADE Business and Law School*

Federica Giardina, *ESADE Business and Law School, ESADEgov - Center of Public Governance*

Alberto Dorrego de Carlos, *Eversheds Sutherland*

Diego Nuño Moya, *Eversheds Sutherland*

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Miguel Riaño, *Herbert Smith Freehills*

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Amalia Hernández Sendín, *J&A Garrigues, S.L.P.*

Fernández Rancaño, *J&A Garrigues, S.L.P.*

Juan Muguerza Odriozola, *J&A Garrigues, S.L.P.*

Ana López Carrascal, *KPMG Abogados, S.L.P.*

Borja Carvajal Borrero, *KPMG Abogados, S.L.P.*

Ignacio Castellanos Herraiz, *KPMG Abogados, S.L.P.*

Emilio Viciano, *Ministry of Finance*

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Carlos Daza, *Pérez-Llorca*

Elena Veleiro, *Pérez-Llorca*

Víctor Corpa, *Pérez-Llorca*

Carlos Melón, *Ramón y Cajal Abogados*

Pablo Fuentes, *Ramón y Cajal Abogados*

Bernat Martín Vilaseca, *Roca Junyent*

Marina Ramos Solé, *Roca Junyent*

Rosa Isabel Peña Sastre, *Roca Junyent*

Fernando Peñalba, *State Society for Land Transport Infrastructure (Sociedad Estatal de Infraestructura des Transporte Terrestre, SEITT)*

Patricia Valcárcel, *University of Vigo, Faculty of Legal and Labor Sciences*

Mariano Magide, *Uría Menéndez*

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Dunya Peiris, *D.L. & F De Saram*

Hansi Abayaratne, *D.L. & F De Saram*

Savantha De Saram, *D.L. & F De Saram*

Krishanth Rajasooriyar, *Varners*

Mahinda Haradasa, *Varners*

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Fatima Abass, *AIH Law Firm*

Mawada Ahmed, *AIH Law Firm*

Yassir Ali, *AIH Law Firm*

Mohamed ZeinElabden, *KAYAN Consultancy*

Amir Albashir, *Living Standards Organization*

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Hayat Hasan, *Ministry of Finance*

Somaia Abdallah, *Ministry of Finance*

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Peter Högström, *Cirio*

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Lisa Antman, *Wigge & Partners Advokat KB*

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Bahodur Nurov, *Grata International Law Firm*

Nurlan Kyshtobaev, *Grata International Law Firm*

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Mark Tindamanyire, *East African Law Chambers*

Stella Ndikimi, *East African Law Chambers*

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Methawat Wongsuwat, *Norton Rose Fulbright (Thailand) Limited*

Pimchanok Eianleng, *Norton Rose Fulbright (Thailand) Limited*

Somboon Kitiyansub, *Norton Rose Fulbright (Thailand) Limited*

Thanthiti Saneewong Na Ayudthaya, *Norton Rose Fulbright (Thailand) Limited*

## **TIMOR-LESTE**

Maura Santos

Elisa Pereira, *Abreu e C&C Advogados Timor-Leste*

Mafalda Teixeira de Abreu, *Abreu e C&C Advogados Timor-Leste*

Margarida Duarte Santos, *Abreu e C&C Advogados Timor-Leste*

Mariana Borges, *CRA Timor*

Rui Botica Santos, *CRA Timor*

Renato Guerra de Almeida, *Miranda & Associados*

Catarina Pinto Correia, *Vda - Vieira de Almeida & Associados*

João Cortez Vaz, *Vda - Vieira de Almeida & Associados*

Manuel Protásio, *Vda - Vieira de Almeida & Associados*

Marina Costa Cabral, *Vda - Vieira de Almeida & Associados*

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Alaki Essoham

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Samirah DAVISSE Freddine Mogony, *John W Ffooks & Co*

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Efoué Mamlan, *Martial Akakpo & Associes*

Joseph Sipotou, *Martial Akakpo & Associes*

Yaovi Montcho, *Martial Akakpo & Associes*

Dogbeavou Sédjro Koffi, *SCP Dogbeavou & Associes*

Dominique Nayo, *SCP Dogbeavou & Associes*

Joël Eklou, *SCP Dogbeavou & Associes*

Vigninou Lazare Sossoukpe, *SCP Dogbeavou & Associes*

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Hamish Bolland, *Chapman Tripp*

Thomas Pemberton, *Chapman Tripp*

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Mithra Rampersad, *Rivelin Consultants Ltd*

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Moncef Smaoui

Mohamed Kazdaghi, *Cabinet Caid Essebsi & Ben Salem Associés*

Elyes Chafter, *Chafter Raouadi Law Firm*

Habiba Raouadi, *Chafter Raouadi Law Firm*

Zine El Abidine Chafter, *Chafter Raouadi Law Firm*

Dr.Brahim Latrech *Law Office*

Zied Ktari, *Eversheds Sutherland el Heni*

Atef Majdoub, *General Public Private Partnership Authority (L'Instance Générale de Partenariat Public Privé (IGPPP))*

Mohamed Kammoun, *Kammoun & Kallel*

Atef Masmoudi, *Ministry of Finance (Ministère des Finances)*

## TURKEY

Uğur Emek, *Başkent University*

Aslı Erkli, *Bener Law Firm*

Onur Kordel, *Bener Law Firm*

Başak Ayık, *Çakmak Avukatlık Ortaklığı*

Ezgi Arslanpay, *Çakmak Avukatlık Ortaklığı*

Mesut Çakmak, *Çakmak Avukatlık Ortaklığı*

Nigar Özbek, *Çakmak Avukatlık Ortaklığı*

Ayça Özbek, *Ergün Law Firm*

Çağdaş Evrim Ergün, *Ergün Law Firm*

Gökseli Cengiz, *Ergün Law Firm*

Hakkı Gedik, *Gedik & Eraksoy Avukatlık Ortaklığı*

Utku Ünver, *Gedik & Eraksoy Avukatlık Ortaklığı*

Herguner Bilgen Ozeke *Attorney Partnership*

Ertunç Şirin, *Istanbul University*

Zafer Ertunç Şirin, *Istanbul University, Law Faculty*

Ali Fuat Gürler, *Moroğlu Arseven Law Firm*

Bahadır Gültekin, *Moroğlu Arseven Law Firm*

Benan Arseven, *Moroğlu Arseven Law Firm*

Büşra Bayram, *Moroğlu Arseven Law Firm*

Cansın Akıncı Doluel, *Pekin & Pekin*

Ece Ban, *Pekin & Pekin*

Elif Tolunay, *Pekin & Pekin*

Yasemin Kaya, *Pekin & Pekin*

Yasemin Ozman, *Pekin & Pekin*

Pelister Atayılmaz *Enkür Law Office*

Merve Oner, *Presidency of the Republic of Turkey, Presidency of Strategy and Budget*

Sedef Yavuz Noyan, *Presidency of the Republic of Turkey, Presidency of Strategy and Budget*

Yilmaz Ilgin, *Presidency of the Republic of Turkey, Presidency of Strategy and Budget*

Zeki Emre Tekin, *Presidency of the Republic of Turkey, Presidency of Strategy and Budget*

Bilge Müftüoğlu, *Yazıcı Attorney Partnership*

Murat Yazıcı, *Yazıcı Attorney Partnership*

Nihal Berker Atli, *Yazıcı Attorney Partnership*

## UGANDA

Didas Kayiranga Mirrimo

Aisha Naiga, *ABMAK Associates, Advocates and Legal Consultants*

Kenneth Katusabe, *ABMAK Associates, Advocates and Legal Consultants*

Dinah Mukasa, *Byenkya, Kihika & Co. Advocates*

Phillip Karugaba, *ENSafrica Advocates*

Catherine Nansubuga, *Kampala Associated Advocates*

Charles Kallu Kalumiya, *Kampala Associated Advocates*

David Bahige, *Kampala Associated Advocates*

Allan Luwagga, *Landwell Advocates*

Charles Odere, *Landwell Advocates*

Gertrude A Basiima, *Ministry of Finance, Planning and Economic Development*

Diana Ninsiima Kibuuka, *Mukumbya Musoke Advocates*

Juliana Laker, *Mukumbya Musoke Advocates PriceWaterhouseCoopers Limited*

## UKRAINE

Denis Lysenko, *AEQUO*

Mykhaylo Soroka, *AEQUO*

Viktor Komziuk, *AEQUO*

Ievgen Gusiev, *Asters*

Kateryna Oliynyk, *Asters*

Roman Stepanenko, *Asters*

Andriy Tsvytkov, *Attorneys' Association Gestors*

Andrii Moskalyk, *Baker McKenzie*

Serhiy Piontkovsky, *Baker McKenzie*

Anna Pogrebna, *CMS Reich-Rohrwig Hainz*

Maria Orlyk, *CMS Reich-Rohrwig Hainz*

Oleksandra Prysiazniuk, *CMS Reich-Rohrwig Hainz*

Sergiy Datsiv, *CMS Reich-Rohrwig Hainz*

Anastasiia Zhebel, *DLA Piper Ukraine*

Kateryna Soroka, *DLA Piper Ukraine*

Oleksandr Kurdydyk, *DLA Piper Ukraine*

Zhanna Babych, *DLA Piper Ukraine*

Vsevolod Volkov, *Everlegal*

Oleg Matiusha, *Kinstellar*

Oleh Andreikiv, *Kinstellar*

Dmytro Savchuk, *Lavrynovych and Partners*

Vadym Avdieiev, *Lavrynovych and Partners*

Yaroslav Pylypets, *Lavrynovych and Partners*

Olena Kucherenko, *Ministry of Regional Development, Construction and Communal Services of Ukraine*

Anton Rekun, *Redcliffe Partners*

Olexiy Soshenko, *Redcliffe Partners*

Svitlana Teush, *Redcliffe Partners*

Iryna Zapatrina, *Ukrainian PPP Center*

Alexander Borodkin, *Vasil Kisel & Partners*

Roman Riabenko, *Vasil Kisel & Partners*

## UNITED ARAB EMIRATES

Rita Allen, *Pinsent Masons LLP*

Tim Armsby, *Pinsent Masons LLP*

Shaheer Momeni, *Winston & Strawn LLP*

Shibeer Ahmed, *Winston & Strawn LLP*

## UNITED KINGDOM

Peter Livesey, *Infrastructure and Projects Authority*

Felicia Hanson Ofori-Quaah, *Milbank LLP*

John Dewar, *Milbank LLP*

Olivia Anderson, *Milbank LLP*

## URUGUAY

Silvina Panizza

Tomas Gurmendez

Federico Formento, *Andersen Tax & Legal, Uruguay*

Eugenia Ciganda, *Andersen Tax & Legal, Uruguay*

Juan Fischer, *Andersen Tax & Legal, Uruguay*

Agustín Texo, *Bado Kuster Zerbino & Rachetti*

Alvaro Carrau, *Bado Kuster Zerbino & Rachetti*

Diego Galante, *Galante & Martins*

Giorgina Galante, *Galante & Martins*

Diego Sasías, *Guyer & Regules*

Juan Manuel Mercant, *Guyer & Regules*  
 Sebastian Perez, *Guyer & Regules*  
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 Mariana Estradé, *Hughes & Hughes*  
 Magdalena Viera, *Presidency of the Oriental Republic of Uruguay, Planning and Budget Office, Public Policy Laboratory*  
 Silvana Tayler, *Presidency of the Oriental Republic of Uruguay, Planning and Budget Office, Public Policy Laboratory*

## UZBEKISTAN

Abdulaziz Jurajonov, *Azizov & Partners*  
 Yana Niyazmetova, *Azizov & Partners*  
 Dil'shad Habibullaev, *Centil Law Firm*  
 Medine Ahaeva, *Centil Law Firm*  
 Sabina Saparova, *Centil Law Firm*  
 Valeriya Ok, *Centil Law Firm*  
 Anna Snejkova, *Dentons Tashkent*  
 Bobur Shamsiev, *Dentons Tashkent*  
 Eldor Mannopov, *Dentons Tashkent*  
 Fayoziddin Kamalov, *Dentons Tashkent*  
 Atabek Sharipov, *GRATA International*  
 Tatyana Popovkina, *GRATA International*  
 Nizomiddin Shakhabutdinov, *Law Firm "Leges Advokat"*  
 Remir Mukumov, *Ministry of Finance*

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 Mai Trang Le, *Baker McKenzie*  
 The Canh Bui, *Baker McKenzie*  
 Dave Seibert, *DFDL*  
 Jerome Buzenet, *DFDL*  
 Phong Anh Hoang, *DFDL*  
 Oliver Massmann, *Duane Morris Vietnam LLC*  
 Albert Franceskinj, *Fidal Asiattorneys*  
 Dang Nguyen Ha, *Fidal Asiattorneys*  
 Don Stokes, *Freshfields Bruckhaus Deringer LLP*  
 Dang Hoan My, *Indochine Counsel*  
 Dang The Duc, *Indochine Counsel*  
 Nguyen Thanh Thao, *Indochine Counsel*  
 Dang Truong Nguyen, *Ministry of Planning and Investment, Public Procurement Agency*  
 Hung Duy Tran, *Monitor Consulting*  
 PwC (Vietnam) Limited

Duy Cao Dang, *Rajah & Tann LCT*  
 Vu Thi Que, *Rajah & Tann LCT*  
 Kent Wong, *VCI Legal LLC*  
 Charles Magdelaine, *VDB Loi*  
 Edwin Vanderbruggen, *VDB Loi*  
 Jean Loi, *VDB Loi*  
 Thuan Pham, *VDB Loi*  
 Ha Duong Thu, *YKVN LLC*  
 Hai Nguyen Van Hai, *YKVN LLC*  
 Tam Dinh Trinh Thanh, *YKVN LLC*

## ZAMBIA

Eustace Ng'oma, *Chibesakunda & Co.*  
 Janet Nsabata, *Ventus Legal Practitioners*  
 Prince Sinkala, *Ventus Legal Practitioners*  
 Victor Musabula, *Ventus Legal Practitioners*

## ZIMBABWE

Andrew Paul Lane-Mitchell  
 Peter Lloyd  
 Steven Gamble  
 Tawana Nyabeze  
 Gutu & Chikowero Attorneys-At-Law  
 Dr. Sibanda Khutula, *Infrastructure Development Bank of Zimbabwe (IDBZ)*  
 Engineer Malunga R. K., *Infrastructure Development Bank of Zimbabwe (IDBZ)*  
 Kenneth Geyi, *Infrastructure Development Bank of Zimbabwe (IDBZ)*  
 Thomas Zondo Sakala, *Infrastructure Development Bank of Zimbabwe (IDBZ)*  
 Chatapiwa Malaba, *Kantor and Immerman Legal Practitioners*  
 Tatenda Moyo, *Kantor and Immerman Legal Practitioners*  
 Unity Sakhe, *Kantor and Immerman Legal Practitioners*  
 Ronald Mutasa, *Manokore Attorneys, a member of DLA Piper Africa*  
 Ostern Mutero, *Sawyer & Mkushi*  
 Evans Talent Moyo, *Scanlen & Holderness*  
 Nellie Rafael Tiago, *Scanlen & Holderness*  
 Tanaka Kachara, *Scanlen & Holderness*







