



# Getting infrastructure projects right: A legal adviser's view on standardization

To promote wider adoption of document and process standardization in the infrastructure industry, public- and private-sector organizations should foster greater collaboration during the early stages of project development.



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Governments, multilateral agencies, development finance institutions, and the private sector have made substantial efforts to improve the process of infrastructure projects from the predevelopment stage through implementation. These efforts include the creation of standardized infrastructure project frameworks—with guidance on key process stages (such as procurement) and risk allocation, as well as standard form documentation. Realistically, every infrastructure project is unique, and there are elements of each—for example, cost sharing or capital expenditure terms—that will always be project-specific. Yet the use of standardized tools where feasible can significantly reduce project development timescales and bring transparency into procurement and contracting processes for host governments and procuring bodies.

Despite such efforts to date, project development too often continues to be reactive rather than well planned, prioritized, and efficiently executed. To reap the full benefits of standardization, public- and private-sector participants must work together in a more meaningful way. By making better use of standard models, promoting knowledge sharing, and investing more in the predevelopment stage, infrastructure projects can proceed much more efficiently.

### Barriers to standardization

Significant investments have been made in developing standardized frameworks, model contracts, and guidance. While the infrastructure sector would be well served by maximizing the use of these tools, several barriers currently stand in the way:

- **Existing frameworks, model contracts, and guidance are often overlooked in the development of new infrastructure.** Instead, stakeholders make assumptions about what private-sector developers or lenders will accept and then enshrine such suppositions into frameworks or legislation. Understanding the best way to use existing resources in a specific context requires experience, and individual jurisdictions and government agencies without that experience often opt to create their own models.
- **Guidance on risk allocation published by international organizations is not necessarily accepted by investors, contractors, governments, or lenders.** Numerous international organizations—the Organisation for Economic Co-operation and Development, the International Institute for Sustainable Development, the United Nations Economic and Social Commission for Asia and the Pacific, and many others—have published guidance on allocating risks when developing projects. Perhaps due in part to the proliferation of guidance, no industry or market consensus has emerged on which organizations should be the leading voice (or voices). The sector also exhibits a degree of skepticism regarding the extent to which risk frameworks on infrastructure projects can be standardized, so the prevailing tendency is to treat each project as bespoke.
- **Even when stakeholders heed general guidance and use model contracts, adapting them to a specific deal can be a challenge.** With a cross-sector or generic standardized contract, for example, the provisions are often based on assumptions about the underlying project (for instance, that it includes both construction and services components) that are not always applicable. In addition, parties will often plead special circumstances on a particular transaction to justify departures from standard terms. The potential efficiencies



of using a standard form can easily be squandered if parties are not well advised on what modifications are genuinely necessary. Standardized documentation does not eliminate the need for properly experienced and empowered negotiating teams.

#### **Toward a more collaborative approach**

Developing and using standardized models comes with inherent challenges. Nevertheless, infrastructure leaders have no choice but to embrace the adoption of standardized risk allocation and documentation at greater scale to achieve more efficient and effective infrastructure development. (See sidebar, “Public–private collaboration on standardization.”)

#### **Making best use of existing models**

Infrastructure-program design must involve people with relevant expertise to ensure that existing standard models are used and customized to the specific requirements of a particular jurisdiction and sector. Private-sector participants with extensive, varied and often global experience in infrastructure development, can be an invaluable partner to governments in this process.

Of course, one of the biggest challenges facing the public sector is that getting standardization right requires significant investment at an early stage, when budgets are often constrained. The initial investment should yield future cost savings and better outcomes, but tangible impact may not be achieved in the short term. The private sector therefore needs to better articulate the benefits of standardization and convince the public sector to collaborate more closely in a program’s earlier stages. The private sector must also reinforce best practices by continuing to share examples of successful collaboration with the infrastructure community.

#### **Sharing knowledge and making a commitment to risk-allocation standards**

In the absence of a leading authority on risk-allocation standards, individual infrastructure projects tend to be undertaken without reference to a standard model or approach.

Some reticence toward standardized risk allocation is rational. A standard approach requires striking a balance between the parties’ competing needs, and some may think a stand-alone negotiation could result in a better deal. For standardization to work, all parties must agree that the benefits will outweigh any (possibly illusory) downsides.

Industry participants should actively explore ways to facilitate knowledge sharing and encourage collaboration across the sector, particularly as technological tools are developed that could be applied across many areas.

#### **Implementing standard models: Investing in the predevelopment stage**

Even with the use of standardized models and risk allocation, individual projects will always include unique features that require some customization. As such, a common pitfall of using standardized documentation is the perception that the work has already been done, so stakeholders may deploy less experienced or scaled-back negotiating teams to broker specific transactions. This is invariably a false economy. Instead, procuring bodies should aim to build well-advised teams that can identify potential customization needs at an early stage and avoid unnecessary negotiation and rework.

Participants should also explore new ways to facilitate greater investment in the early stages of projects. For example, the private sector could contribute to the cost of advising governments throughout the process, with such expenditures being recovered in the tender process or as part of the financing.

## Public–private collaboration on standardization

Argentina recently established a new public-private partnership (PPP) program and enacted legislation to facilitate investment in renewable power. While the longer-term outcomes of these initiatives remain uncertain, particularly in light of the country's current economic instability, the process of establishing and launching these programs exemplifies the benefits of close cooperation between the public and private sectors. In both efforts, the government of Argentina worked closely with the Inter-American Development Bank and the private sector. A few key lessons emerged:

- **Apply best practices from other projects.** With broad experience working on PPP projects across Latin America, the team was familiar with models used elsewhere: their features, what had worked well, and why. This experience guided the choice of structure and standard terms.
- **Tailor to the local context.** The team understood the political and economic context in Argentina, so it was able to properly tailor the program to meet the country's specific requirements and circumstances.
- **Balance the task at hand with the big picture.** The PPP program was designed so that the detailed work on standard documentation focused on the immediate priority—toll roads. At the same time, the overarching “master trust” structure was designed to be replicable across sectors as new priorities emerge.

The intention is to develop new standard documentation for different sectors as required, using the existing model as a base and then making minimal changes to tailor it to different infrastructure assets.

- **Focus on bankability.** The PPP program was specifically designed to tap into capital markets funding, so having advisers who were familiar with the market meant that the documentation was bankable from day one.
- **Remove politics from the equation.** The involvement of a multilateral agency helped depoliticize the initiatives. This effect was particularly apparent with the renewables law, which was approved shortly before elections with support from all sides. Establishing standardized programs for infrastructure can help to bridge political divisions, as long as the terms of the program are properly socialized with stakeholders prior to adoption in order to achieve buy-in.
- **Strive for transparency.** The involvement of private-sector participants that were accustomed to scrutinizing projects for compliance with international standards in a range of areas, from anti-bribery and -corruption to the environment, gave the market confidence in the program's transparency and robustness.

Bringing in funders at the outset can also build confidence among investors and debt providers. When parties are familiar with the standard structures and terms for a given project, the financing phase typically runs much more smoothly and efficiently.

Where potential financiers are more engaged with early stage project development, this may encourage them to take a more proactive role in designing funding packages that can be offered to governments or developers. We have already seen innovation in this area. The World Bank's Scaling Solar program, for example, offers a package that includes document templates, competitive financing, and insurance products. In the United Kingdom, the national government established a funding aggregator scheme to support the Priority Schools Building Programme through a single bond-financed funding platform that can be used to finance separate batches of schools.

Improving standardized infrastructure investment frameworks could promote the further development of liquidity platforms from a wider variety of debt providers and investors.

## Conclusion

While much has been done to develop standardized infrastructure project frameworks, too much skepticism about closer cooperation remains on both sides. A renewed focus on promoting collaboration between the public and private sectors when developing and implementing standardized models is crucial to reaping the full benefits of standardization. ■

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