



XII
CONGRESSO
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New Approaches to Risk Allocation in Infrastructure Projects
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Realização **IBDiC**  **INSTITUTO BRASILEIRO DE**
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Outline of the Presentation

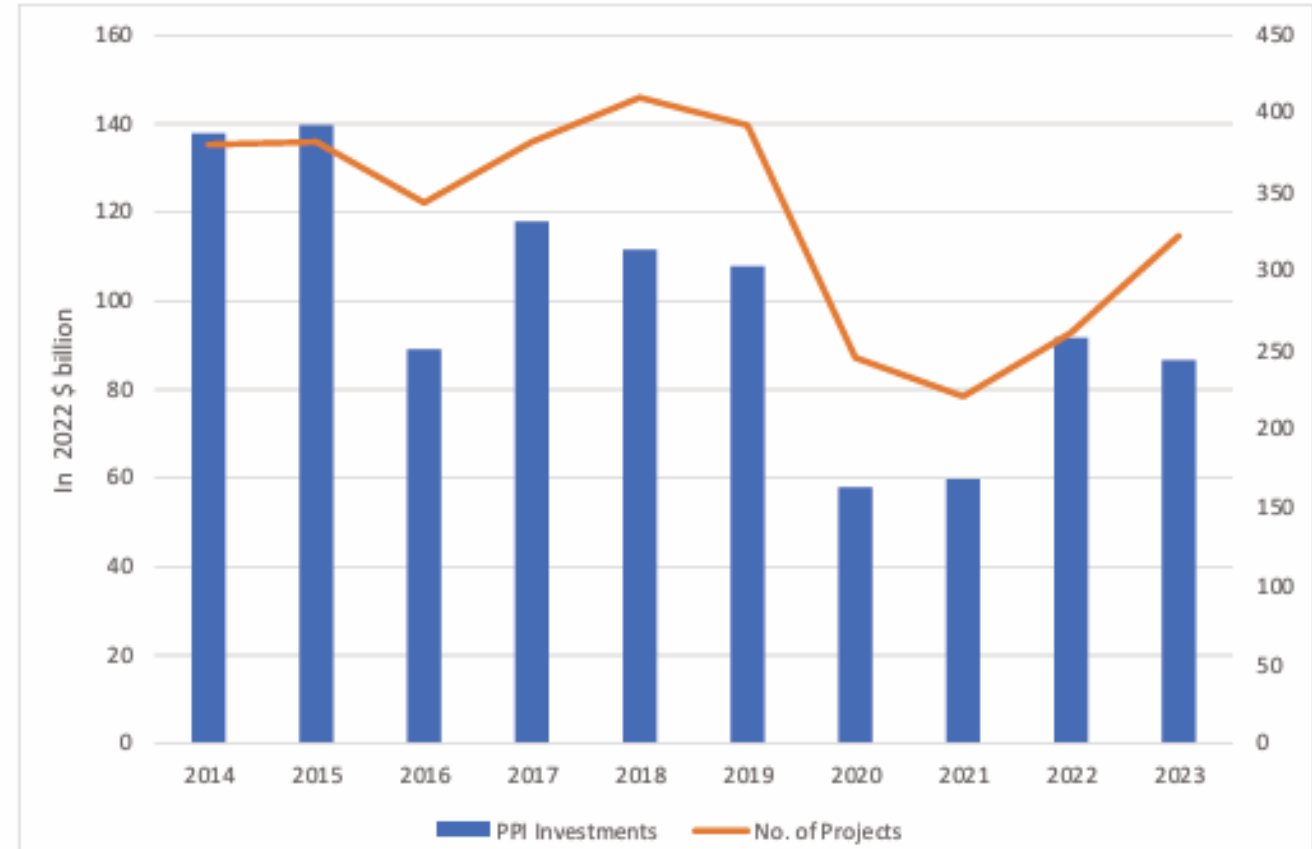


Three main topics

- I. Why Do We Need New Approaches to Risk Allocation in Infrastructure Projects**
- II. Possible New Approaches to Risk Allocation**
- III. Concluding Observations**

I. Why Do We Need New Approaches to Risk Allocation

The number and size of infrastructure projects involving private sector participation continues to be disappointing, particularly in Emerging Markets and Developing Economies



World Bank *Private Participation in Infrastructure (PPI) Annual Report 2023*, available at <https://ppi.worldbank.org/content/dam/PPI/documents/PPI-2023-Annual-Report-Final.pdf>

I. Why Do We Need New Approaches to Risk Allocation (cont.)



**The World Bank's
*Private Participation
in Infrastructure
Annual Report 2023*
reveals what are, at
best, mixed results**

- **investment commitments declined by 5%** compared to 2022, totaling USD 86 billion – down from USD 91.3 billion
- Latin America and the Caribbean received \$15.8 billion, a **43% decrease** year on year, and a decrease of 27% from the previous five-year average.
- the report noted that “This reduction was largely due to a substantial decrease in private investment in **Brazil** and Mexico”

I. Why Do We Need New Approaches to Risk Allocation (cont.)



Even in countries with a strong tradition of successful private participation in infrastructure – such as Canada – the risk allocation arrangements in the conventional Public-Private Partnership (PPP) model are being questioned, by both the public sector and the private sector

At the turn of the 2020s, the narrative on PPPs shifted, along with public sentiment and project delivery practice. ...

Institutionally within government, the overwhelming preference for PPPs faded...

As governments sought to transfer significant construction cost risks to the private sector to achieve on time and on budget performance, these risks began materializing and becoming more costly than some firms could bear. ...

Receiving sufficient competition for PPP project calls for proposals became increasingly difficult, as fewer firms had the appetite or the financial ability to bid for the largest and most complex projects.*

**** University of Toronto 2023, [Public-Private Partnerships: Is a reassessment underway?](https://on360.ca/policy-papers/public-private-partnerships-is-a-reassessment-underway/#_edn30), available at https://on360.ca/policy-papers/public-private-partnerships-is-a-reassessment-underway/#_edn30***

I. Why Do We Need New Approaches to Risk Allocation (cont.)



Part of the problem is the perception that the risk allocation arrangements in long-term PPP contracts are **inflexible**

PPP project agreements are long-term, complicated and comparatively inflexible because of impossibility to envisage and evaluate all particular events that could influence the future activity

* Ministry of Finance of Lithuania 2023, *PPP Advantages and Disadvantages*, available at <https://finmin.lrv.lt/en/competence-areas/public-and-private-partnership-ppp/ppp-advantages-and-disadvantages/>

I. Why Do We Need New Approaches to Risk Allocation (cont.)

A key point: There is an urgent need to address this issue, since **future infrastructure projects will need to deal with the uncertain impacts of climate change**

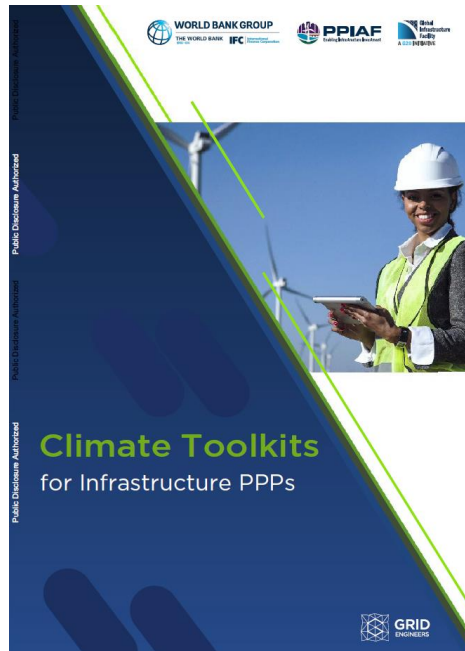
Dealing with climate uncertainty

One of the major challenges in structuring PPPs and designing projects for climate change is our inability to predict the actual evolution of climate stressors. Decision-makers will often find themselves swinging between the lower-cost optimistic scenarios and their costlier, higher-risk counterparts, which call for adopting more adverse climatic projections. ...

The need for contract flexibility to accommodate uncertainty

*Unavoidably, inclusion of uncertainty and adaptive planning into the equation will negatively impact the long-term visibility required by investors. ...**

*World Bank Group 2022, *High-level Climate Toolkit*, available at <https://www.worldbank.org/en/topic/sustainableinfrastructurefinance/brief/climate-toolkits-for-infrastructure-ppps>



II. Possible New Approaches to Risk Allocation

There is a wide range of alternative models – we will briefly look at four options

- **Refining the Existing PPP Model**
- **Institutional Public-Private Partnerships**
- **Progressive Design-Build**
- **Alliance Contracting**

II. Possible Options – Refining the Existing PPP Model

One option would be to make **targeted adjustments** to conventional PPP contracts

- new risk sharing arrangements, such as, for example, adjustments allowed for **costs associated with uncertain climate change impacts**
- a good example is the award-winning Th̄ch̄q All-Season Road Project in Canada, which includes an innovative Climate Change Risk-Sharing Regime*



* Canadian Council for Public-Private Partnerships, 2000, *National Award Case Study of the Th̄ch̄q All Season Road Project*, available at <https://www.pppcouncil.ca/getmedia/c0c63a91-29b6-4dfb-b4d0-f470d84a2106/2019-Award-Case-Study-Tlich̄o-Road-final-web.pdf>

II. Possible Options – Institutional PPPs

Various jurisdictions have experimented with arrangements whereby the Government Contracting Authority (GCA) is a **minority shareholder in the PPP Project Company**

- the **Wales** Mutual Investment Model (MEM)*
- **France**'s Société d'économie mixte à opération unique (SEMOP)
- **Italy**'s *Sperimentazioni Gestionali* legislation

* See Government of Wales 2024, *Mutual Investment Model*, available at <https://www.gov.wales/mutual-investment-model-infrastructure-investment>

II. Possible Options – Progressive Design-Build

In a Progressive Design-Build project, the Government Contracting Authority selects a qualified design-build contractor and ‘progresses’ the design of the project towards a proposal that meets the GCA’s needs

- the design-builder is retained by the Government Contracting Authority early in the life of the project – in some cases, before the design has been developed
- the design-builder is generally selected primarily on the basis of qualifications, and the design-builder’s final project cost/price and schedule commitment is not established as part of the selection process
- the design-builder delivers the project in two distinct phases, with (i) Phase One including budget level design development, preconstruction services and the negotiation of a firm contract price; and (ii) Phase Two including final design, construction and commissioning*

* See Design-Build Institute of America 2023, *Progressive Design-Build Primers*, available at <https://store.dbia.org/product-category/primers/>

II. Possible Options – Alliance Contracting

In the Alliance Contracting model, the Government Contracting Authority and the contractor form a joint organization to plan and deliver the project collaboratively

- **key principles to drive collaboration in Alliance Contracting include:**
 - **sharing information with an ‘open book premise’**
 - **collective decision making**
 - **apportioning risk and reward on a ‘pain share/gain share’ basis to align interests**
 - **prohibiting legal actions between the parties other than under specific circumstances**
- **Alliancing is a slower and more labour-intensive model of contracting, that is intended to deliver improved results through the fostering of meaningful collaborations***

* See CMS LLP and Arcadis 2019, *Guide to Contract Alliancing in Construction*, available at

<https://cms.law/en/media/international/files/publications/guides/cms-guide-to-contract-alliancing-in-construction>

III. Concluding Observations

Key 'takeaway' points

- in order to meet the UN Sustainable Development Goals and close the 'infrastructure gap', **we need to find new approaches to attracting private sector investment in infrastructure**
- **more collaborative and flexible contracts are urgently needed** to deal with the uncertainties associated with **climate-smart infrastructure**
- **various countries are experimenting with different models**, ranging from targeted modifications to 'conventional' Public-Private Partnerships, through to entirely different forms of contracting, such as **Alliancing**



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