Benchmarking 2020
Infrastructure Development
Assessing regulatory quality to prepare, procure and manage PPPs and traditional public investment in infrastructure projects
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.

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 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.

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.