



# **Infrastructure Project Disputes and the World Bank Group**

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# Outline of Presentation

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- The Perspective of the World Bank Group
- The Data on Disputes
- World Bank Procurement Reform Initiatives
- Useful Tools - an Introduction to the World Bank PPI Database and the PPP Infrastructure Resource Center



# The Perspective of the World Bank Group

## Roles of the WBG Members

- the World Bank Group is the world's largest donor for infrastructure projects in developing countries
  - in 2011, the WBG entities provided \$26 billion in commitments and investments in infrastructure
- the different entities within WBG provide different types of support:
  - the World Bank (IBRD and IDA) deals directly with sovereign governments
  - the IFC supports the private sector in developing countries
  - MIGA provides political risk insurance
- another entity within the WBG – ICSID – provides a forum for the resolution of disputes between the private sector and sovereign governments



# The Perspective of the World Bank Group

## Roles of the WBG Members (cont.)

- the IBRD and IDA support both public and public-private partnership (PPP) infrastructure transactions
- even in the case of public sector projects, there is a degree of private participation (EPC Contracts, etc.)
- because the WBG is concerned with achieving the development objectives on each of the projects which it supports, the WBG – and the World Bank itself – has a strong interest in any major disputes that arise on the projects, and in how those disputes are resolved



# The Data on Disputes Overview

- information on disputes in infrastructure projects is, for systemic reasons, hard to obtain – parties to such projects frequently want to keep their disputes confidential
- for all the various types of dispute resolution mechanisms (negotiation, dispute boards, expert opinions, mediation, arbitration, litigation), data is only sporadically available
- information does not normally exist in regard to disputes resolved by arbitration (indeed, this is one of the perceived advantages of arbitration versus litigation) – only ICSID publishes summary data on the cases which are registered with it



# The Data on Disputes

## PPI Database Information

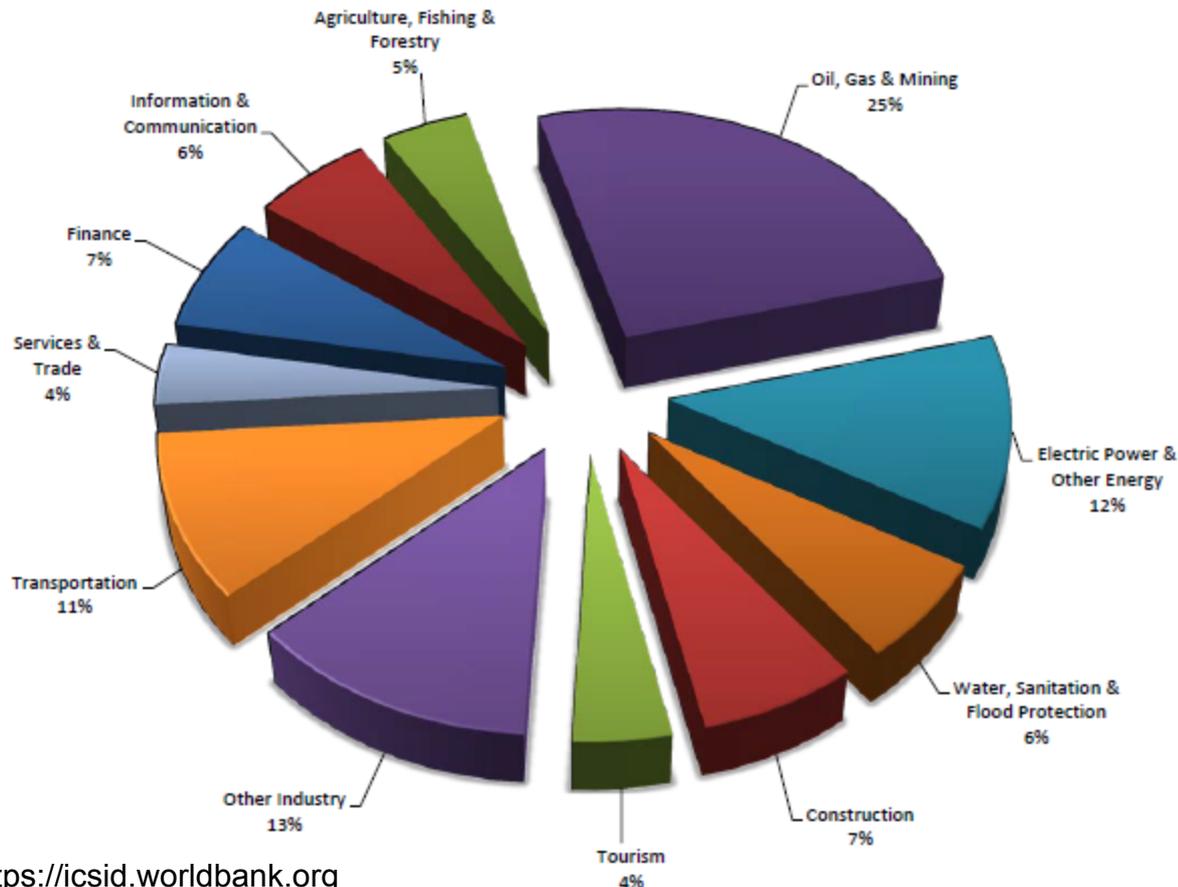
- the World Bank's PPI database, which provides information on private sector infrastructure transactions, does, however, provide data as to the number of "Canceled Projects" and "Distressed Projects"
- "Canceled Projects" are defined as projects from which the private sector has exited in one of the following ways:
  - selling or transferring its economic interest back to the government before fulfilling the contract term
  - removing all management and personnel from the concern
  - ceasing operation, service provision, or construction for 15 percent or more of the license or concession period, following the revocation of the license or repudiation of the contract
- "Distressed Projects" are those where the government or the operator has either requested contract termination or the parties are in international arbitration
- of the 3202 projects in the PPI Database which have reached financial closure since 2000, 80 have been "Canceled" and 25 are currently characterized as "Distressed Projects"



# The Data on Disputes

## ICSID Distribution of Cases by Sector

- ICSID maintains a database of all arbitration cases registered with it (which, pursuant to the ICSID rules, must involve a sovereign government), and the sectoral breakdown of the registered disputes in 2012 is as follows:



Source: <https://icsid.worldbank.org>



# The Data on Disputes Contract Renegotiation

- the most alarming data, however, is that which pertains to contract renegotiation, particularly in regard to PPP infrastructure transactions
- by definition, a renegotiation of a PPP transaction involves a change to the original contractual terms and conditions, as distinct from an adjustment (in payments or tariffs) that takes place pursuant to a mechanism defined in the contract
- in other words, a renegotiation arises from a particular form of dispute resolution, i.e. resolution by negotiation
- renegotiations frequently occur within a short period of time following financial close
- the majority of renegotiations are initiated by the private sector operators, but there are also instances of government-requested renegotiations



# The Data on Disputes

## The Frequency and Timing of Renegotiations

	<b>Renegotiated Concession Contracts</b>	<b>Average Time to Renegotiation</b>
<b>All Sectors</b>	<b>61%</b>	<b>1.8 years</b>
<b>Electricity</b>	<b>25 %</b>	<b>2.1 years</b>
<b>Transport</b>	<b>73%</b>	<b>2.9 years</b>
<b>Water</b>	<b>87%</b>	<b>1.3 years</b>
<b>Mega and Natural Resources Projects</b>	<b>53%</b>	<b>2.0 years</b>

Source: Guasch (2010) updated



# The Data on Disputes Initiation of Renegotiation Requests

	<b>Both Government and Operator</b>	<b>Government</b>	<b>Operator</b>
<b>All sectors</b>	<b>13%</b>	<b>26%</b>	<b>61%</b>
<b>Water and Sanitation</b>	<b>10%</b>	<b>24%</b>	<b>66%</b>
<b>Transport</b>	<b>16%</b>	<b>27%</b>	<b>57%</b>

Source: Guasch (2004), *Granting and Renegotiating Infrastructure Concessions Doing It Right* -- Analysis of Renegotiated Concessions in Latin America and the Caribbean, Mid-1980s to 2000.



# The Data on Disputes

## Drivers of Renegotiation

- renegotiations can arise from many causes
- in regulated markets, where prices cannot be adjusted, changes in economic circumstances will frequently lead to a request for renegotiation, either by the operator or the government
- occasionally, economic conditions will change unexpectedly due to macroeconomic conditions beyond the control of the parties (e.g. global financial crises, currency fluctuations, etc.)
- more commonly, demands for renegotiation arise due to poorly drafted contracts, or poorly prepared bids
- another major cause of renegotiation is opportunistic behavior on the part of governments or operators:
  - governments may decide to adjust tariffs, or unilaterally act to capture 'windfall profits';
  - operators may believe that the circumstances give them considerable leverage over the host government



# The Data on Disputes

## Problematic Aspects of Renegotiations

- the high incidence of renegotiation calls into question the credibility of the process for awarding PPP transactions
  - in his 2004 study, J. L. Guasch observed that there were fewer renegotiations when the initial contracts were awarded through a process of bilateral discussions, as opposed to competitive bidding – but this “should not be interpreted as an endorsement of [the bilateral] process”.
- it distorts the bidding process, by rewarding operators who are not necessarily efficient but who are skilled (re)negotiators
- renegotiations take place without the competitive pressure of the bidding process
- the results of renegotiations often favour operators, at the expense of either or both the government and end-users



# The Data on Disputes

## Outcomes of Renegotiations

	Percentage of renegotiated concession contracts with that outcome
<b>Delays on Investment Obligation Targets</b>	<b>69%</b>
<b>Acceleration of Investment Obligations</b>	<b>18%</b>
<b>Tariff Increases</b>	<b>62%</b>
<b>Tariff Decreases</b>	<b>19%</b>
<b>Increase in the number of cost components with automatic pass-through to tariff increases</b>	<b>59%</b>
<b>Extension of Concession Period</b>	<b>38%</b>
<b>Reduction of Investment Obligations</b>	<b>62%</b>
<b>Adjustment of annual fee paid by operator to government</b>	
<b>Favorable to operator</b>	<b>31%</b>
<b>Unfavorable to operator</b>	<b>17%</b>
<b>Changes in the Asset-Capital Base</b>	
<b>Favorable to Operator</b>	<b>46%</b>
<b>Unfavorable to Operator</b>	<b>22%</b>

Source: Guasch (2004), *Granting and Renegotiating Infrastructure Concessions Doing It Right -- Analysis of Renegotiated Concessions in Latin America and the Caribbean, Mid-1980s to 2000.*



# World Bank Procurement Reform Initiatives Overview

- over the last few years, the World Bank has taken a number of steps to reform its procurement procedures to improve the handling of large infrastructure projects
- in 2005, the World Bank introduced the concept of Dispute Boards as part of a tiered approach to dispute resolution in the Standard Bidding Document for the Procurement of Works
- in 2011, the World Bank initiated new procurement guidelines applicable to PPP projects, providing for a greater degree of flexibility for procurements in PPP transactions (these guidelines are now being adopted by the other multinational development banks)
- further reforms are now being considered in the context of a major new initiative – the Review of the World Bank Procurement Policy and Procedures
- this latest reform initiative is also addressing the process of dispute resolution on World Bank-funded infrastructure projects



# World Bank Procurement Reform Initiatives

## The Policy Review Initiative

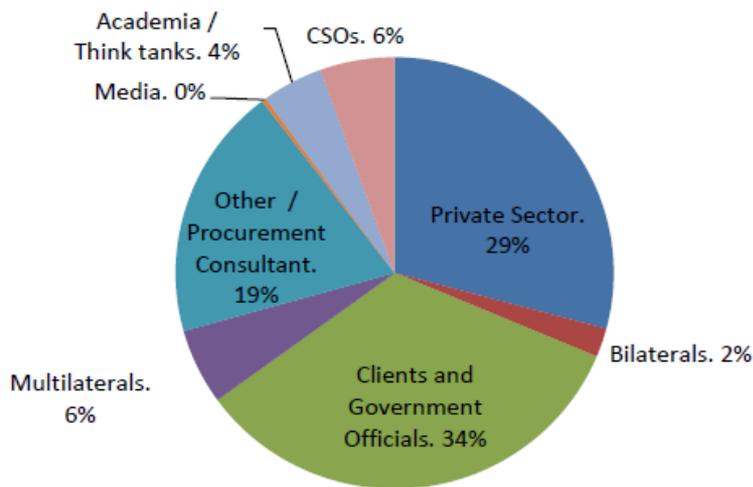
- the Review was initiated by the World Bank Board of Executive Directors in February 2012, as a two-step process to be completed by 2014
- the Review is being undertaken as part of the World Bank's modernization agenda, in response to:
  - the increased diversity of bidders on World Bank-funded projects due to globalization
  - the increased use of PPP transactions
  - new concepts of public procurement
- we are now nearing the end of Phase 1 – the multi-stakeholder consultation phase



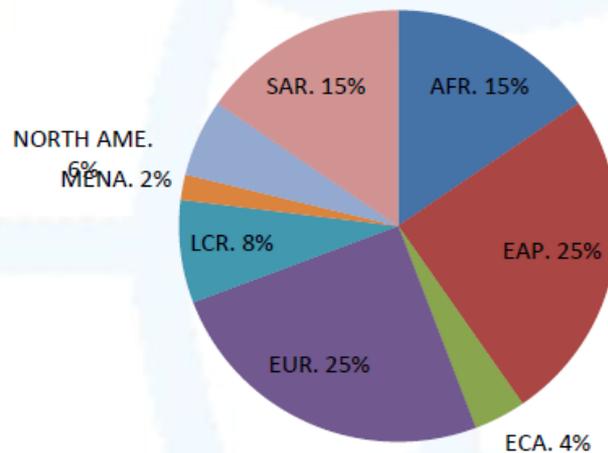
# World Bank Procurement Reform Initiatives

## The Stakeholder Consultation Process

- the stakeholder consultation process was started with the release of an Initiating Discussion Paper, issued by the World Bank in March 2012
- to date, there is been over 62 consultation meetings, with inputs from 85 countries and over 1900 participants



Participants according to sector



Meetings according to region



# World Bank Procurement Reform Initiatives Submissions Pertaining to Dispute Resolution

- both the Confederation of International Contractors' Associations (CICA) and the European International Contractors (EIC) have submitted position papers advocating the increased use of Dispute Boards, as part of their packages of dispute resolution recommendations
- the CICA recommendation was as follows:

*Dispute Boards should be further promoted and guidance should be given to the nature of the Board best adapted to the project. The Board should also be rendered more cost effective and their costs should be taken into account in the tender documents.*
- the EIC also supported increased use of Dispute Boards, and other stakeholders have subsequently endorsed the EIC and CICA proposals



# World Bank Procurement Reform Initiatives

## Next Steps

- the World Bank Procurement Review Team will prepare a new policy of framework for presentation to the World Bank Board of Executive Directors in late 2013 or early 2014
- a report will also be issued by the World Bank Independent Evaluation Group (IEG), based on its current study of World Bank Group procurement policies
- additional stakeholder consultations will be held throughout the process
- more information on the Procurement Review is available at [www.worldbank.org/procurementconsultations](http://www.worldbank.org/procurementconsultations)



# Useful Tools

## PPI Database

- the Private Participation in Infrastructure (PPI) Project Database is a product of the World Bank's Sustainable Development Network, and the Public-Private Infrastructure Advisory Facility (PPIAF)
- its purpose is to identify and disseminate information on private participation in infrastructure projects in low- and middle-income countries
- the database highlights the contractual arrangements used to attract private investment, the sources and destination of investment flows, and information on the main investors
- the site currently provides information on more than 5,000 infrastructure projects -- dating from 1984 to 2011 -- and it is annually updated
- it contains over 30 fields for each project record, including country, financial closure year, type of private participation, project location, contract duration and development bank support



# Useful Tools

## PPI Database: [ppi.worldbank.org](http://ppi.worldbank.org)

The World Bank Group
Public-Private Infrastructure Advisory Facility

### PRIVATE PARTICIPATION IN INFRASTRUCTURE DATABASE

GO >

PPI Home
Project Data
Snapshots
Methodology
Publications
FAQ
Challenge the Data

Home
Last data update: February, 2013

The **Private Participation in Infrastructure (PPI) Project Database** has data on over 5,000 infrastructure projects in 139 low- and middle-income countries. The database is the leading source of PPI trends in the developing world, covering projects in the energy, telecommunications, transport, and water and sewerage sectors. [>> LEARN MORE](#)

Current Features

Sector Updates

Regional Updates

Investor Notes

Get Data

Stop Animation

**New! 2011 Energy Update**  
In 2011 total private investment in energy decreased by 11% compared to last year. PPI Data Update Note 74, September 2012

**New! 2011 Transport Update**  
Private investment in transport increases in 2011, focusing on the road and rail sectors. PPI Data Update Note 75, September 2012

**New! 2011 Water Update**  
Private investment in water and sewerage recovers in 2011, mostly due to activity in China. PPI Data Update Note 76, September 2012

**New! 2011 Telecom Update**  
Private activity in telecommunications twenty percent down in 2011. PPI Data Update Note 77, September 2012

[Data update notes of previous years](#)



Understanding PPI Data

**First time here or have questions about the data?**  
Download this document with examples to understand the data.  
[>> Full Text](#)

Renewable Energy in Focus



**New! PPI Renewable Energy Database.**  
Now including pipeline projects and detailed snapshots.

[>> Click Here](#)

Did You Know?

Private activity in the water sector has more than doubled over the last decade.  
[>> Full Text](#)

Investment in road projects with private participation more than doubled between 2005 and 2008  
[>> Full Text](#)

[>>View All](#)

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**WORLD BANK**

**PPIAF**



# Useful Tools

## PPP Infrastructure Resource Center (PPPIRC)

- a web-based knowledge management tool, jointly funded by the World Bank, PPIAF, the IFC and the Norwegian Trust Fund for Private Sector and Infrastructure, designed to provide guidance on legal issues relating to infrastructure projects
- includes practice notes and checklists, together with sample agreements and clauses, sample legislation and regulatory instruments, and sample terms of reference for advisors
- there are links to websites and materials produced by government agencies and PPP units from around the world, such as standardized bidding documents
- the website includes documents in English, French, Spanish and, in the near future, Arabic and Mandarin
- material is sourced from World Bank-funded projects, as well as publicly available documentation



# Useful Tools

# PPPIRC Website: [www.worldbank.org/ppp](http://www.worldbank.org/ppp)



## PPP in Infrastructure Resource Center

for Contracts, Laws and Regulation

[www.worldbank.org/ppp](http://www.worldbank.org/ppp)

- [Home](#)
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- [LEGISLATION AND REGULATION](#)
- [AGREEMENTS](#)
- [PPP BY SECTOR](#)
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### Highlights

- Jobs and Consultancy Opportunities
- Presentations of "Legal and Enabling Environment for PPPs"
- Africa Electrification Initiative (AIE)
- Cape Wind PPA

- [About PPPIRC](#)
- [Energy & Power](#)
- [Transportation](#)
- [Clean Technology](#)
- [Solid Waste](#)
- [Telecom & ICT](#)
- [Water & Sanitation](#)
- [Multimedia](#)

### A World Bank Resource for PPPs in Infrastructure

Are you financing or structuring public-private partnerships in infrastructure?

The Public-Private Partnership in Infrastructure Resource Center for Contracts, Laws and Regulation (PPPIRC) contains sample public-private partnership (PPP) agreements and concessions, checklists and sample clauses, terms of reference, risk matrices, standard bidding documents developed by government agencies and sample PPP and sector legislation and regulation. It is designed for government officials, project managers and lawyers involved in PPP infrastructure projects and will help you address contractual and legal issues related to infrastructure legal reform and PPP projects, with reference materials in English, French, Spanish, Portuguese, Arabic and more recently Mandarin Chinese, drawn from reform initiatives around the world.

### Sign up for updates

Email:

### Related PPP Resources

- [PPP Laws by Country](#)
- [Hiring Advisors - Sample Terms](#)



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