

FINANCING OF INFRASTRUCTURE AND CAPITAL PROJECTS IN BRAZIL

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2nd Edition. February 2026.

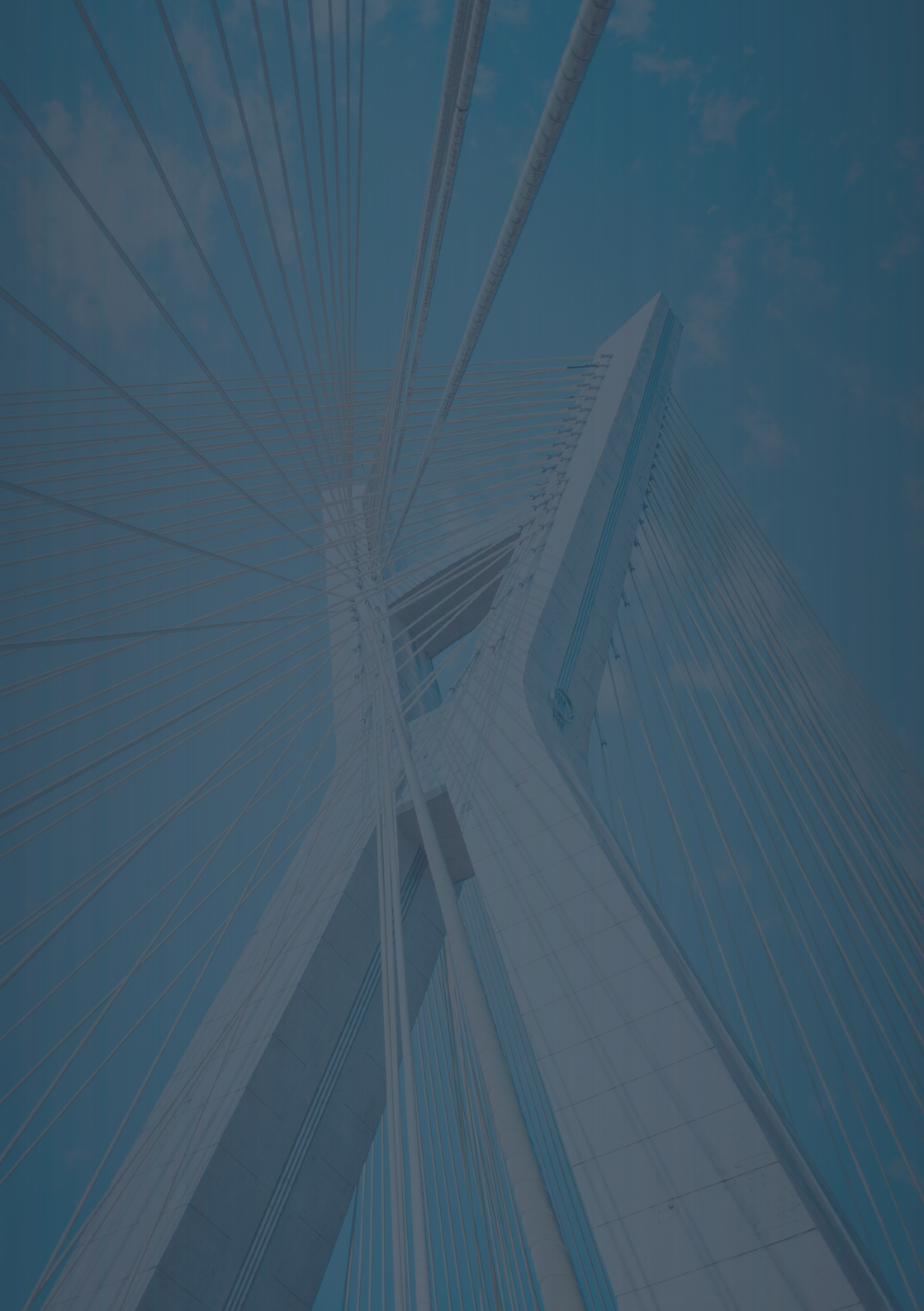


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INITIAL CONSIDERATIONS

1.1. INFLUENCE OF GOVERNMENT INSTITUTIONS AND POLICIES ON THE FINANCEABILITY OF INFRASTRUCTURE PROJECTS IN BRAZIL

Until the 1980s, most infrastructure projects worldwide were financed and operated by government entities.

As public investment in infrastructure declined, owing both to recurring fiscal crises and to the paradigm shift brought by the Washington Consensus, the private sector's role in the industry grew significantly. Private players became central participants in the financing and management of this type of project, thereby contributing to the development of *Project Finance* on a global scale.

In Brazil, the financing model for infrastructure and capital projects remains, to this day, predominantly characterized by investment from public banks and development institutions, particularly the National Bank for Economic and Social Development (BNDES), with still-modest participation from the private credit market. Notwithstanding, in recent years there have been a growing increase in private investment, largely as a result of the incentive mechanisms created by federal, state, and municipal governments, over the past two decades, to encourage these non-public financing arrangements.

Various sectors of the Brazilian economy have been employing partnership models between the public sector and the private market. Such structures, including public procurement of services rendered by private initiative, the direct sale of assets at privatization auctions, and the concession of public assets for operation by private entities for a fixed term, have increasingly expanded the role of the market in the creation, expansion, and maintenance of the nation's infrastructure.

Among the government mechanisms introduced in this century to encourage private-sector participation in the financing of infrastructure and capital projects, some are particularly noteworthy. In this regard, a relevant milestone was the enactment of Law No. 12,431/2011, which introduced *tax-incentivized debentures*. These debt securities are issued by companies to raise funds for infrastructure projects in certain sectors classified by the government as priority sectors and subject to tax benefits granted to debenture subscribers.

Similarly, the overhaul of the structuring model for concession projects and public-private partnerships (PPPs) introduced by Law No. 14,133/2021, proved essential to making the interaction between private players and public authorities more efficient. The statute provided greater legal certainty to the parties involved in such procurement processes, improving risk-allocation mechanisms and consolidating the contractual models, which certainly expanded the financeability of projects subject to the statute's framework.



The possibility of promptly rebalancing concession agreement in the event of unforeseeable events, the allocation of public funds to ordinary concessions, the concessionaire's ability to generate ancillary revenues, and the suspension or termination of services provided under PPPs in the event of the government's default or delay in making payments were also fundamental to this framework.

By meeting long-standing expectations of financial and development institutions, these measures made it possible to define contractual procedures and criteria for the performance of public contracts, allocating responsibilities and risks inherent in infrastructure projects in a more rational and efficient manner. The ultimate purpose of these innovations was, therefore, to ensure contractual balance throughout the execution of the projects, providing investors with greater predictability by securing the receipt of revenues arising from the contracts and mitigating exposures that, by their nature, would otherwise be difficult to quantify.

In this sense, Law No. 14,801/2024, which enhanced the innovations introduced by Law No. 12,431/2011, was instrumental in creating infrastructure debentures, thereby introducing an additional mechanism for raising funds to the implementation of infrastructure and capital projects.

Almost simultaneously, Law No. 14,711/2023, known as the new "Legal Framework for Guarantees" ("Marco Legal das Garantias"), modernized and consolidated Brazil's system of collateral and credit recovery and provided greater legal certainty in the relationship between creditors and debtors, thereby directly impacting private investment in infrastructure. The law allowed new types of assets to be offered as collateral, improved the fiduciary sale ("alienação fiduciária") and mortgage instruments, and created mechanisms to reduce credit risk.

In addition, the statute regulated the fiduciary collateral administration agreements and the duties assigned to collateral administrators, while further simplifying the procedure for issuing debentures.

Also noteworthy is the new "Legal Framework for Railways" ("Marco Legal das Ferrovias") (Law No. 14,273/2021), which innovatively provided for the organization of rail transport, the use of railway infrastructure, and the types of grants for the indirect operation of railways within the Brazilian territory. The same applies to the new "Legal Framework for Basic Sanitation" ("Marco Legal do Saneamento Básico") (Law No. 14,026/2020), which set forth ambitious goals for universal access to sanitation services by 2033, thereby expanding opportunities for private investment in the sector.

Beyond legislative innovation, paradigm shifts in the conduct of regulatory bodies were also essential. One example of this evolution is the work of the National Land Transportation Agency (ANTT), which improved concession agreements, increasing significantly the number and diversity of participants in auctions overseen by the agency.

All these measures illustrate the importance of building an institutional environment shaped by public policy and capable of encouraging private investment in infrastructure and capital projects in Brazil. Recent regulatory developments have fostered a more secure and attractive environment for investors, enhancing the predictability of revenues and reducing investment-related risks associated with the investments. It is essential that this trend be sustained and further developed to achieve an effective balance between private investment and public funding in the sector.

1.2. RECENT CHANGES IN GLOBAL GEOPOLITICS AND THEIR IMPACT ON THE DOMESTIC INFRASTRUCTURE SECTOR

In recent years, certain significant shifts in the global geopolitical landscape have brought about meaningful changes in the infrastructure investment landscape. More specifically, several of these developments are expected to affect the attractiveness of domestic infrastructure projects in the short and medium term.

In addition to the scenario described in item 1.1 above, geopolitical developments have prompted major investors in infrastructure and capital projects, such as large institutional funds, to review their investment policies and direct greater attention to projects in countries previously regarded as less attractive investment destinations, like Brazil.

In this regard, developed countries have adopted policies that tend to roll back environmental protection measures and incentives for energy-transition investment. In the United States, for example, these developments include: (i) the withdrawal from the Paris Agreement, (ii) the repeal of the "Inflation Reduction Act" ("IRA"), which provided for US$400 billion in clean-energy project funding in the United States, and (iii) policies aimed at expanding domestic fossil fuel production. All these developments may encourage major financiers to consider reallocating capital to countries that observe and promote strict ESG criteria.

The impacts caused by these measures are expected to directly affect foreign investment in Brazil, particularly with respect to infrastructure projects regarding sustainability and renewable energy. On the other hand, there may be increased pressure for Brazil and other countries to adopt more stringent measures regarding energy transition and compliance with the objectives of the Paris Agreement. While such measures could constrain the feasibility of projects that fail to meet the applicable requirements, they could also create significant investment opportunities in the near future.

In any event, it is not yet possible to determine precisely the concrete consequences of the geopolitical realignment described above. It is reasonable to assume, however, that this realignment could create a favorable environment for cross-border investment in Brazil.





PROJECT FINANCE IN BRAZIL: CURRENT LANDSCAPE

As mentioned before, although the public sector remains the leading source of financing for infrastructure and capital projects in Brazil, its relative importance has gradually declined. At the same time, private-sector participation has assumed an increasingly fundamental role in the development of the sector.

According to the Brazilian Association of Infrastructure and Base Industries (ABDIB), the outlook for 2026–2030 points to a favorable environment for the expansion of concessions and public-private partnerships, driven by the pipeline of projects being structured at the federal, state, and municipal levels across the transportation and logistics, energy, basic sanitation, and social infrastructure sectors. These initiatives represent approximately R$760 billion in potential investments, a significant portion of which is expected to be allocated in the short and medium term. The largest concentrations are in the transportation and logistics and basic sanitation segments, reinforcing expectations that the infrastructure investment cycle will continue.

Part of this landscape can be attributed to recent changes in the dynamics of concession in Brazil, which have undergone significant developments. In 2025, private investment in infrastructure reached a record level of R$280 billion, and Brazil is now preparing for a promising pipeline of auctions in 2026. Initial projections indicate that more than 469 (four hundred and sixty-nine) public actions will be held, involving contracts that may generate more than R$760 billion in new investments.

The market's attraction to the public actions is readily explained. The accumulated infrastructure deficit, coupled with strong pent-up demand, makes long-term investment particularly attractive, especially given that infrastructure projects can offer competitive returns compared to other investment alternatives and encourage the allocation of private capital to this strategic sector.

Moreover, the Brazilian construction market has become increasingly competitive. Once dominated by large construction and engineering firms, the sector now features the growing presence of investment funds, international players, and small and mid-sized contractors – reflecting structural transformations in the financing, implementation, and operation of these projects.

2.1. WHAT IS PROJECT FINANCE?

Project Finance is a specific type of legal and financial structuring designed to enable large-scale investment through recourse to the future cash flow generated by the project itself, without, in principle, requiring recourse to the balance sheets of the project's sponsors. Therefore, it is a complex financial, economic, and legal structure, widely used to finance large-scale, capital-intensive projects in sectors such as infrastructure, energy, and natural resources.

Unlike traditional financing methods, in which credit is extended based on the sponsors' financial capacity, *Project Finance* is structured around the technical and financial feasibility of the project itself. Accordingly, debt service and returns on investment are tied to the project's projected cash flows.

2.1.1. The Current State of Project Finance in Brazil

The implementation of Project Finance requires a relatively stable macroeconomic and regulatory environment to ensure predictability in the project's cash generation, the performance of the parties involved, and the enforceability of the relevant contracts.

Among the main obstacles to the effective implementation of Project Finance in Brazil, investors highlight the following: (i) **foreign-exchange risk**, which may limit the participation of foreign investors where projects are denominated in local currency; (ii) **demand risk**, resulting from the lack of an established track record and precise estimates; and (iii) **cost-overrun risk**, driven by inflationary pressures and the high technical complexity of infrastructure projects, which may affect overall project costs and the predictability of financing requirements.

The Brazilian infrastructure sector is undergoing significant transformation, driven by the growing need to diversify sources of capital. This new context requires the modernization of both contractual structures and financial instruments, including the adoption of more sophisticated practices aligned with global market trends.

2.1.2. Fundamental Characteristics of Project Finance

By its nature, the *Project Finance* model has several fundamental characteristics that distinguish it from traditional financing structures, including:

LONG DURATION

Infrastructure, energy, and other capital-intensive projects require substantial upfront investment and typically involve long amortization periods. Accordingly, *Project Finance* structures are generally designed with financing terms exceeding 15 (fifteen) years, allowing debt service to be aligned with the project's long operating life and expected cash flows.

USE OF SPECIAL PURPOSE ENTITIES (SPES)

Infrastructure projects are typically structured through Special Purpose Entities (SPEs), which are separate legal entities organized exclusively to develop, operate, and manage the relevant project.

The use of SPEs is intended to facilitate the segregation of project-related risks, such that the project's debt and liabilities are generally ring-fenced from those of the shareholders or sponsors. Such structure also provides greater financial and contractual control, facilitating cash-flow management and ensuring that the project's contractual arrangements remain legally separate from the financial standing of the investors.

HIGH LEVERAGE (DEBT-TO-EQUITY RATIO)

Project Finance is characterized by a high degree of financial leverage, with a significant portion of project funding provided through debt. Depending on the sector and the project's risk profile, the debt-to-equity ratio may range from 70:30 to 90:10.

This high leverage is possible by the predictability of the project's cash flows, which provides greater capacity for the project to service its debt. For sponsors, the use of leverage reduces the amount of equity capital required to finance the project, thereby potentially enhancing the return on invested equity.

GUARANTEES: NON-RECOURSE, LIMITED RECOURSE, AND FULL-RECOURSE FINANCING

Although the Project Finance guarantee structure may vary, under ideal conditions the model would require essentially that creditors use only funds or assets derived from or tied to the project itself to settle their claims.



Under this format, known as *non-recourse* financing, repayment is expected to be made primarily from the project's cash flows, with creditors generally having no recourse to the assets of the shareholders or sponsors. Because this structure provides lenders with limited recourse beyond the project's assets and cash flows, it generally entails greater credit risk and may therefore result in a higher cost of financing. In turn, it may allow for higher levels of leverage, subject to the project's financial feasibility.

In the *non-recourse* structure, financing risks become indistinguishable from the project's own risk. Accordingly, the qualitative analysis of the project and its cash-generating capacity is complex and detailed, and this analysis determines the very structuring of the financing arrangement, including the determination of interest charges and amortization periods.

Accordingly, where the project's ability to generate sufficient revenues sufficient to service its financing is subject to uncertainty,

it may become necessary or advisable to provide additional collateral beyond the project's projected cash flows. In such circumstances, two alternative structures may arise which, although also referred to as Project Finance, differ from the traditional model because they rely on third-party guarantees or other forms of credit support that are not directly linked to the profitability of the financed project.

The first of these models, known as *limited-recourse* financing, is characterized by a balance between the guarantees provided, combining additional guarantees from third parties, particularly, corporate guarantees provided by entities affiliated with the SPE – with security supported by the revenues generated by the project itself. Under this structure, corporate guarantees, security interests over assets unrelated to the financed project, guarantees of payment, and other similar instruments are commonly required.

The second of these models, referred to as *full-recourse* financing, is distinguished by the fact that creditors require direct guarantees from shareholders and sponsors sufficient to cover the project's financial obligations in full. This structure is generally used where lenders are unable to precisely determine the project's return potential, typically because one or more of the project's key risks cannot be adequately quantified or anticipated.

It is worth noting that, unlike *non-recourse* financing structures, obligations arising under *limited-recourse* or *full-recourse* financing are normally reflected on the sponsors' own balance sheets, thereby affecting their level of indebtedness and, consequently, their capacity to obtain additional financing.

In Brazil, the adoption of *non-recourse Project Finance* structures still faces significant challenges. *Limited-recourse* structures have traditionally been more prevalent, although the landscape has begun to change in recent years. Notably, in 2022 BNDES approved its first non-recourse financing transaction, providing financing to a small toll-road concessionaire.

2.1.3. Typical Legal and Contractual Structure of Project Finance

The *Project Finance* structure becomes possible through a complex contractual framework that defines the rights and obligations of each party involved in the project. These contracts set forth the terms governing financing, supply of inputs, construction, operation, and sale of the final product or service. They are also essential to ensuring the predictability of the project's revenues and financial performance and to allocating and mitigating the risks and contingencies that may rise over the project life.

The success of the financing structure depends on an efficient and rational allocation of risks and responsibilities among the parties involved in the project to prevent or minimize disputes. Among such risks, particular note should be taken of those relating to construction (*cost overrun*, specification errors, schedule delays, pre-operational performance), the environment, prevailing technology, operation, demand (tariffs quantification and revision, non-payment, elasticity), finance, monetary conditions, the regulatory framework, legislation, and the political landscape.

The legal structure of *Project Finance* is usually composed of the following types of contracts:

CONCESSION AGREEMENTS OR LONG-TERM PURCHASE AGREEMENTS (OFFTAKE AGREEMENTS)

To ensure predictability of a project's revenues and returns, the project's contractual arrangements should provide for a minimum level of revenue generation, whether through Concession Agreements, which establish the demand parameters for the public service to be rendered, or through Long-Term Purchase Agreements. The latter are purchase-and-sale agreements under which the buyer (the offtaker) undertakes to purchase a specific quantity of product from the supplier over a defined period, generally before the product is produced or extracted.

Particularly in the energy, infrastructure, and transportation sectors, this type of contract is often a prerequisite for structuring the financing, as lenders would otherwise be exposed to greater demand risk and may be unwilling to extend credit without additional third-party guarantees.

Among Offtake Agreements, two main types are particularly relevant. The first one is take-or-pay agreements, whereby the buyer undertakes to pay for a previously agreed quantity of production regardless of whether the buyer actually takes or uses that quantity. The second type are the take-and-pay contracts, the buyer pays only for products actually delivered or received, though penalties may apply if the buyer fails to reach a minimum purchase volume.

By their nature, *Offtake Agreements* typically address, at a minimum: (i) price determination and tariff structure; (ii) minimum purchase volumes and buyer's obligations; (iii) adjustment and renegotiation terms; and (iv) penalties for breach and early termination.

IMPLEMENTATION AGREEMENTS

Implementation Agreements also form part of the basic contractual structure of Project Finance. They govern the allocation of construction risk and establish the mechanisms for determining and monitoring CAPEX, among other aspects.

The terms of these agreements may vary depending on the type of project and the risk appetite of the parties involved. Accordingly, there are numerous ways of allocating the consequences of construction delays, unforeseen costs, and deviations from contractual specification, all of which are common in complex projects.

Given the greater predictability afforded by this structure, lenders are more inclined to choose *Engineering, Procurement and Construction* contracts ("*EPC Agreements*"), particularly on a *turnkey* basis, under which the contractor assumes overall responsibility for delivering the



completed project. Such agreements typically include fixed-price (*lump sum*) provisions, performance guarantees, and liquidated damages or other penalties for delays or failure to meet contractual specifications.

In any event, it is worth noting that, in exchange for the budget certainty they provide, *turnkey lump* sum contracts may result in pricing inefficiencies due to the inclusion of contingency amounts to account for risks whose occurrence and potential impact are uncertain. Therefore, the use of more collaborative contractual mechanisms aimed at promoting mutually beneficial outcomes and encouraging joint optimization has been growing, albeit modestly.

In addition, mechanisms such as Dispute Boards (DBs) are gaining popularity as means of minimizing disputes and avoiding project disruptions. These boards serve a preventive function by monitoring contract performance and facilitating the prompt resolution of disputes, thereby reducing the need for protracted litigation that could jeopardize the project's viability.



It should be emphasized that the evolution of construction contracts must be regarded not merely as a legal matter, but as a strategic element in ensuring the sustainability, efficiency, and attractiveness of infrastructure investment in the country.

OPERATION AND MAINTENANCE AGREEMENTS (O&M AGREEMENTS)

In addition to Implementation Agreements, Operation and Maintenance Agreements are also essential to ensuring the projected revenue generation. As a rule, Operation and Maintenance Agreement are executed between the project owner and a specialized operator to ensure the efficient management of the asset throughout its useful life.

From the project's standpoint, O&M Agreements are important for defining maintenance and operating services, as well as for establishing performance indicators, quality standards, and rules and penalties for any non-conformities. Such instruments also help prevent interruptions in revenue generation and extend the asset's useful life by reducing replacement costs.

INPUT SUPPLY AGREEMENTS

In projects that depend on the continuous supply of inputs or essential services, Supply Agreements are essential to reducing the risk of input shortages and ensuring adequate, predictable levels of price and quality.

Examples include gas supply agreements for thermal power plants, as well as agreements for the supply of chemicals and raw materials in general for industrial plants.

FINANCING AGREEMENT AND CREDITOR AGREEMENTS

Financing Agreement usually provide terms and conditions of the debt incurred to fund the project. It details matters such as the capital structure, collaterals, and the protective mechanisms afforded to creditors.

In addition, there are various ancillary agreements that ensure the proper implementation of the project's financing and govern the relationship among the interested parties. These include, in particular:

(i) Shareholders' and/or Cooperation Agreement: an agreement setting forth investors' rights and obligations in the project (SPE);

(ii) Intercreditor Agreement: an agreement governing payment priorities among the various lenders; and

(iii) Collateral-Sharing Agreement: an agreement specifying how the project's assets will be distributed and liquidated in the event of default.

The soundness of the contractual structure is one of the determining factors in the feasibility of project financing. A clear allocation of risks and responsibilities among project participants enhances legal certainty and reduces the exposure of both creditors and investors.



SOURCES OF INFRASTRUCTURE FINANCING IN BRAZIL

The Project Finance structure enables the use of multiple sources of third-party financing as an alternative to equity contributions or direct public-sector financing.

In practical terms, sponsors turn to the players in the financial and capital markets (external financiers) for financing purposes, who have both interest in and capacity to invest in the presented projects.

Third-party financing sources may be classified into 3 main groups: (i) **bank financing**, comprising credit lines offered by commercial banks, development banks, federal programs, and multilateral institutions; (ii) financing via **investment funds**; and (iii) the issuance and distribution of **debt securities**, particularly tax-incentivized debentures and infrastructure debentures.

3.1. BANK FINANCING

Since its founding in 1952, BNDES has been Brazil's leading public development institution supporting and financing infrastructure projects.

Therefore, BNDES typically offers a range of financing lines with differentiated terms regarding amortization periods and interest rates. Historically, BNDES has offered credit lines covering up to 70% (seventy percent) of the CAPEX of infrastructure and capital projects.

Due to the complexity of the concession-granting process, BNDES may initially provide a bridge loan, consisting of a short-term credit facility designed to fund the project's initial implementation until the main financing is disbursed.

The main financing structures are known as long-term loans and are structured to ensure the project's complete financing, with extended terms and more favorable rates. This type of financing usually provides

differentiated terms, as well as technical support from the bank's in-house teams.

Usually, financing for infrastructure projects contemplates rates such as the Long-Term Rate (TLP), the Selic rate, or fixed rates, as well as spreads charged by BNDES and the intermediary financial agent. Depending on the project and the sector, special terms may be offered, such as reduced rates for priority areas, including sanitation and renewable energy.

Amortization periods vary depending on the type of financing. Generally, bridge loans have short terms ranging from 12 to 36 months. Long-term loans, on the other hand, may have tenors of 15 to 30 years, with grace periods ranging from 2 to 5 years to allow the project to generate revenue before amortization begins.

Alongside BNDES, multilateral banks also play a significant role in financing Brazilian infrastructure. Institutions such as the Inter-American Development Bank (IDB) and the World Bank (WBG) provide funding and technical assistance to enable projects with substantial social and environmental impacts, particularly those that promote regional integration, sustainability, poverty and inequality reduction, and improvements in public services.

In addition to loans, both the IDB, in Latin America, and the WBG, through the International Bank for Reconstruction and Development (IBRD), provide guarantees, counter-guarantees, and hybrid financial instruments aimed at mitigating credit risk and enabling credit lines from other financing providers, whether domestic or international.

Over the past several decades, participants in the financial and infrastructure markets have developed relatively standardized approaches to structuring long-term loans tied to the projects they are intended to finance. The essential elements of such bank financing are

reasonably uniform and are complemented by similarly standardized guarantee structures designed specifically to support the development and operation of the financed project.

There is also increasing participation by private financial institutions in providing ancillary credit lines, beyond their traditional role of intermediating transactions arranged with BNDES and multilateral entities. This trend may contribute to further reductions in spreads charged in the market.



3.1.1 Repositioning of BNDES: from Lender to Project Structurer

Over the past several decades, a combination of factors, including Brazil's fiscal crisis, the need to diversify sources of financing, and the modernization of the infrastructure sector, has required a shift in BNDES's role. Whereas the bank previously acted predominantly as a direct lender to projects, it now focuses more on project structuring, actively participating in their conception, planning, and technical, economic, and financial feasibility assessment to create an attractive environment to private capital.

This process was accelerated by fiscal constraints faced by the Federal Government and the pursuit of a more sustainable financing model. This shift reinforced the need for a structuring agent able to develop new financing models. BNDES naturally filled that gap due to its expertise.

Currently, BNDES participates directly in several key preparatory stages, including:

(i) Opportunity assessment: assessment of strategic sectors and identification of projects that require structuring to become viable and attractive to investors;

(ii) Business model development: creation of financial, contractual, and regulatory structures that ensure project sustainability enhance their competitiveness in the market;

(iii) Preparation of studies and projects: development of feasibility studies, technical designs, and environmental and social impact assessments;

(iv) Financial structuring: determination of financing sources, collateral, and other financial risk-mitigation mechanisms, such as counter-guarantees, to enhance protection for investors and creditors;

(v) Regulatory and licensing support: assistance in obtaining permits and ensuring compliance with the applicable regulatory framework, including proposing improvements to sector-specific legislation to facilitate project execution;

(vi) Promotion and investor outreach: presentation of opportunities to potential private partners, organization of auctions, and structuring of concessions; and

(vii) Monitoring and management: oversight of project implementation to ensure that projects are carried out as planned, meet established objectives, and deliver the projected economic outcomes.

In light of this shift in BNDES's role, the bank currently undertakes several key initiatives, including:

(i) Structuring of concession and PPP projects: dozens of auctions have been held in recent years accross strategic sectors such as transportation, sanitation, and energy, contributing to the modernization of Brazil's infrastructure. BNDES has played a key role in structuring these auctions and strengthening risk-mitigation mechanisms to provide greater legal certainty and predictability for investors. BNDES has also strengthened cooperation between the public and private sectors by helping establish better terms that support long-term concessions;

(ii) Creation of the Project Structuring Fund (BNDES FEP): BNDES FEP was designed as a strategic mechanism that uses non-reimbursable funds to support technical studies and the project structuring aimed at promoting economic and social development. The fund supports concessions and investments of significant public interest, particularly in the urban infrastructure, tourism, technology, and public administration sectors. BNDES FEP also finances comprehensive assessments of the financial sustainability of concessions and public-private partnerships (PPPs), helping ensure that projects are more robustly structured before being brought to market.

(iii) Promotion of complementary financial instruments: BNDES has expanded its initiatives to encourage capital raising through innovative alternatives, such as structured funds for infrastructure investment. These instruments are essential for diversifying funding sources and enabling greater participation by institutional and private investors in the sector. In addition to traditional Receivables Investment Funds (FIDCs) and Infrastructure Private Equity Funds (FIP-IE), the bank has encouraged the structuring of new financial vehicles, such as tax-incentivized-debenture funds and structured-credit funds, which allow greater flexibility in raising capital for long-term projects; and

(iv) Focus on social infrastructure: BNDES has channeled efforts toward promoting essential sectors, such as sanitation, urban mobility, and public lighting, which traditionally attract less private-capital interest given their long maturation periods and regulatory and operational challenges. The bank has used its technical and financial capacity to structure projects that ensure economic viability and legal certainty, making these segments more attractive to investors.

3.2. INVESTMENT FUNDS

Investment funds play an essential role in the development of infrastructure projects, as they help raise and channel capital toward large-scale projects. These projects typically require substantial upfront investment and generate returns over the long term, which can make traditional financing sources, such as bank loans, less suitable.

In Brazil, investment funds were historically unable to participate directly in public auctions or hold controlling interests in concessions. Over time, however, these legal barriers were removed, allowing asset managers to establish dedicated teams focused on investing in the infrastructure sector.

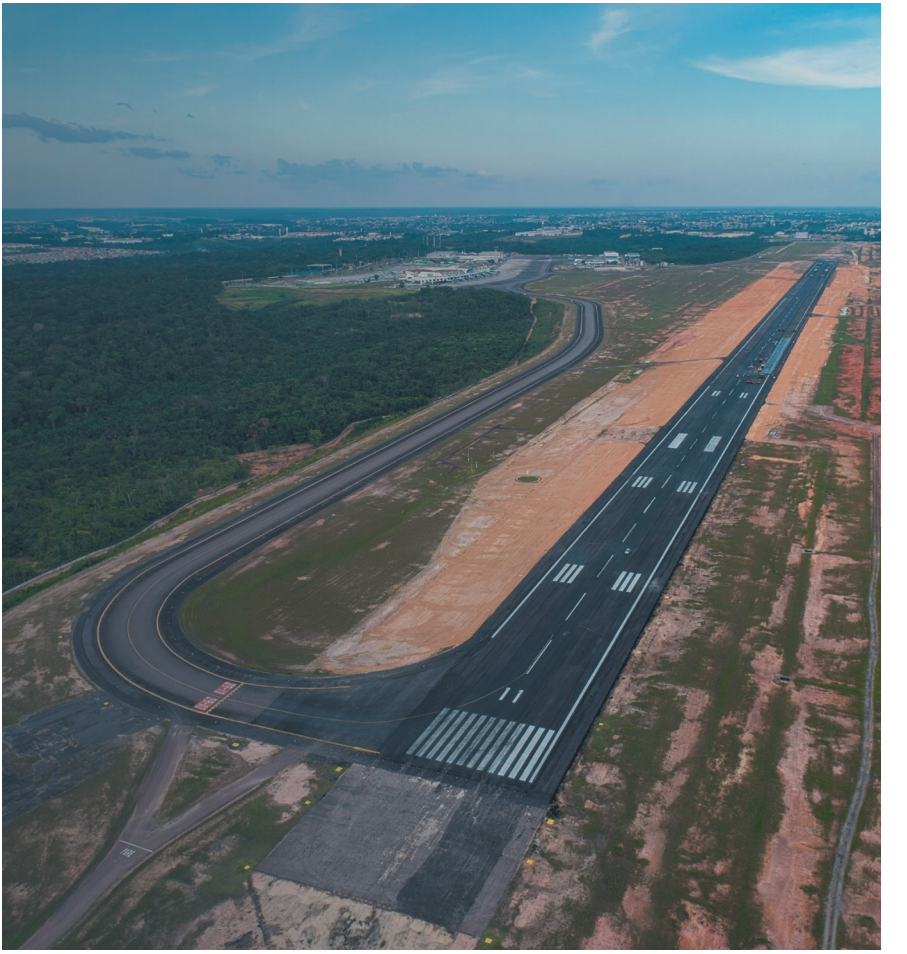
The Brazilian infrastructure market is expected to attract a new wave of financial investors, particularly in the highway sector, which has attracted growing interest from asset managers. This interest is driven, in large part, by the availability of new concessions with attractive structures, as well as by the current competitive environment, in which some traditional operators are facing financial constraints after securing numerous contracts in recent years.

The participation of investment funds in infrastructure projects and concessions is not new and has been particularly significant in the energy sector. This trend has intensified in recent years, driven by improvements in project quality, which started incorporating more efficient risk-sharing mechanisms, alternative out-of-court dispute resolution mechanisms, and clearer rules.

In addition to the growing diversity of asset management companies operating in this segment, there are currently many funds with a wide range of risk profiles. Sponsors and investors may choose lower-risk funds focused on projects that are already operational, or funds that take on additional risk by financing the construction phase, commonly

referred to as *greenfield* funds. There are also funds focused on developing new projects,and those seeking opportunities in assets that require financial or operational restructuring, known as special situations funds.

The most relevant fund types in the infrastructure sector include the following:



INFRASTRUCTURE PRIVATE EQUITY FUNDS (FIP-INFRA)

Infrastructure Private Equity Funds (FIP-Infra) focus on acquiring equity interests in infrastructure-sector companies, allowing investors to influence the management of the projects. Unlike FIs-Infra and FIDCs-Infra, which primarily invest in fixed-income securities and receivables, FIPs-Infra seek to generate returns through the appreciation of portfolio assets, business growth, and profit distributions by the portfolio companies.

The management of these funds is legally required to participate in the decision-making processes of their portfolio companies and to exercise effective influence over the definition of their strategic policies and management. The participation of FIPs-Infra in a portfolio company's decision-making process may be achieved through a controlling equity interest, a shareholders' agreement, or any other contract, agreement, legal transaction, or arrangement that enables the fund to effectively influence the definition of the company's strategic policies and management, including through the appointment of the members portfolio company's board of directors.

This type of fund is generally suited for long-term investors, as returns depend on value creation by the portfolio companies, whether through operational growth or through the restructuring or sale of equity interests to third parties. In Brazil, FIPs-Infra may also benefit from tax incentives, making them an alternative for investors seeking exposure to the sector with the potential for higher returns.

INFRASTRUCTURE INVESTMENT FUNDS (FI-INFRA)

Infrastructure Investment Funds (FI-Infra) invest predominantly in debt securities linked to infrastructure projects, such as *tax-incentivized debentures*. These funds provide an alternative for investors seeking relatively predictable returns, as they generate income from interest payments made by the issuers of these securities.

One of the key characteristics of FI-Infra funds is cash-flow predictability, as the assets in their portfolios have defined terms and rates of return. These funds do not, however, provide investors with control over the underlying projects and are generally suited to investors seeking a passive exposure to the infrastructure sector.

INFRASTRUCTURE RECEIVABLES INVESTMENT FUNDS (FIDC-INFRA)

Receivables Investment Funds (FIDC-Infra) are structured to invest in receivables generated by infrastructure projects, such as toll charges, energy bills, and concession payments. These funds enable the securitization of future revenues, providing capital to companies that operate public services or large infrastructure projects. They can improve the liquidity of portfolio companies and support the development of new projects.

FIDC-Infra funds have an intermediate risk profile, as their returns depend on the timely payment of the acquired receivables by the underlying obligors. Their liquidity may also vary depending on how the receivables are structured. Accordingly, they are generally suited for qualified investors who understand the risks involved in asset securitization.

3.3. DEBT SECURITIES: TAX-INCENTIVIZED DEBENTURES AND INFRASTRUCTURE DEBENTURES

As an alternative to the financing sources described above, infrastructure project sponsors may also raise funds by issuing debt securities.

Among the various types of debt securities, *tax-incentivized debentures* and *infrastructure debentures* stand out as financing instruments that are attractive to both issuers and investors. These instruments

were created to diversify sources of financing and facilitate the implementation of projects in strategic sectors, providing a viable funding alternative for infrastructure projects.

When investors subscribe to a debenture, they are essentially lending money to the issuer with the expectation of receiving the principal amount at maturity, together with the interest provided for in the issuance documents.

Tax-incentivized debentures and infrastructure debentures have gained increasing popularity since their introduction. In 2025, the volume of funds raised through these instruments reached their highest annual volume since the historical series began in 2018, totaling R$177.97 billion and surpassing the previous record of R$135.11 billion set in 2024. By sector, the infrastructure sector accounted for a record R$62.12 billion, equivalent to 34.90% of the total annual volume. The electric power sector accounted for R$57.38 billion (32.24%), while the sanitation sector accounted for R$17.70 billion (9.95%). Other sectors included information technology and telecommunications, bioenergy, and oil and gas sectors, with volumes ranging between R$6.6 billion and R$7.7 billion.

The secondary market for these securities has also grown significantly in recent years, as a result of increased liquidity and growing investor interest in these instruments. In 2025, the volume traded reached R$343.81 billion, corresponding to approximately 36.29% of the total amount traded during the period.

3.3.1. Tax-Incentivized Debentures

In 2011, Law No. 12,431/2011 introduced the *tax-incentivized debentures*, which attracted market attention due to their potential appeal to individual investors. Their key advantage is the income-tax exemption available to individual investors, as well as the reduced tax rate applicable to corporate investors on returns from their

investments. These incentives have made *tax-incentivized debentures* an attractive source of financing.

More recently, Decree No. 11,964/2024 amended the regulations applicable to *tax-incentivized debentures* and set forth objective criteria for determining which projects qualify as priority projects and are therefore eligible to raise funds through such instruments. The decree also had a positive impact on the *tax-incentivized debentures* market by simplifying the issuance process and eliminating the need for prior ministerial approval for projects in sectors already listed in Decree No. 8,874/2016. This change removed a regulatory requirement that had previously added complexity to issuance process.

In addition, investors were permitted to issue both *tax-incentivized debentures* and *infrastructure* debentures for the same project, providing greater flexibility and diversification in fundraising. However, the cumulative application of tax benefits to a single debt security remains prohibited.

3.3.2. Infrastructure Debentures

Law No. 14,801/2024 introduced *infrastructure debentures* to complement the financing framework established by *tax-incentivized debentures*. The law was introduced with the expectation of attracting additional investment and improving the environment for private-sector financing of infrastructure projects.

The regulatory framework limits the issuance of infrastructure debentures exclusively to finance projects in 15 (fifteen) sectors considered priority sectors: (i) logistics and transportation; (ii) urban mobility; (iii) energy; (iv) telecommunications and broadcasting; (v) basic sanitation; (vi) irrigation; (vii) public education; (viii) public health; (ix) public safety and the prison system; (x) public urban parks and conservation units; (xi) public cultural and sports facilities; (xii) social housing, through public-private partnerships (PPPs); (xiii) urban

renewal; (xiv) processing of strategic minerals for the energy transition; and (xv) public lighting.

With the goal of promoting the effective completion only of infrastructure projects, the regulation imposes specific restrictions on certain sectors, including logistics and transportation, urban mobility, and energy:

(i) Logistics and transportation: only projects involving highways, railways, waterways, organized ports, and port-support facilities, aerodromes and supporting airport facilities, are considered priority projects, except for private-use aerodromes;

(ii) Urban mobility: only projects involving public mass-transit infrastructure and the acquisition of mass-transit vehicles; and

(iii) Energy: only projects involving renewable source generation, electric power transmission and distribution, natural gas, biofuel and biogas production (excluding the agricultural phase), production of low-carbon synthetic fuels, low-carbon hydrogen, capture, storage, transport, and use of carbon dioxide, and pipelines for fuel transport.

Unlike the incentive structure of *tax-incentivized debentures*, which benefits investors, *infrastructure debentures* offer tax benefits to the issuing companies to encourage these companies to offer higher interest rates and make the security more attractive to investors. Therefore, infrastructure debenture issuers are allowed to deduct: (i) the total interest expenses paid on the debenture issuance, in determining net income; and (ii) 30% (thirty percent) of that same total interest amount, to determine the tax base for corporate income tax (IRPJ) and the Social Contribution on Net Income (CSLL) paid during the fiscal year.

In addition to these core benefits, the new framework also introduces an incidental improvement. As a rule, proceeds from *infrastructure debentures* must be allocated to the payment or reimbursement of costs, expenses, or debts related to investment projects. Under the previous

framework applicable to *tax-incentivized debentures*, the reimbursement period was limited to 24 months. The current framework, however, gradually extends this period to up to 60 months from the closing of the public offering, according to the following schedule: (i) 24 months in 2024; (ii) 36 months in 2025; (iii) 48 months in 2026; and (iv) 60 months from 2027 onward.

The regulations governing infrastructure debentures also introduced the possibility of issuing these securities with an exchange-rate variation clause. This new feature is intended to facilitate foreign investment by providing investors with a more predictable investment environment.

3.3.3. Differences Between Tax-Incentivized Debentures and Infrastructure Debentures

Although substantially similar, the main difference between infrastructure debentures and tax-incentivized debentures lies in the allocation of the applicable tax benefits, which, in the case of infrastructure debentures, are concentrated on the issuer rather than on the purchaser. By way of illustration, a brief comparison of these two types of debentures is set out below:

	TAX-INCENTIVIZED DEBENTURES	INFRASTRUCTURE DEBENTURES
Regulatory framework	Law No. 12,431/2011, regulated by Decree No. 8,874/2016 (as amended by Decree No. 11,498/2023)	Law No. 14,801/2024, regulated by Decree No. 11,964/2024
Issuers	Special purpose entities, concessionaires, permit holders, authorization holders, or lessees, organized as corporations	Special purpose entities, concessionaires, permit holders, authorization holders, or lessees, organized as corporations

Use of Proceeds and Sectors Covered	Investment projects in the infrastructure sector or in intensive economic production in research, development, and innovation. Sectors defined in Decree No. 8,874/2016	Investment projects in the infrastructure sector or in intensive economic production in research, development, and innovation. Sectors defined in Decree No. 11,964/2024
Tax Benefits	**Investor** benefits: (i) **Individuals**, reduction to 0% of the income tax rate applicable to income earned by the investor; and (ii) **Legal entities**, reduction to 15% of the income tax rate applicable to income earned by the investor	**Issuer** benefits: (i) Deduction, for IRPJ and CSLL purposes, of the total amount of interest incurred; and (ii) Exclusion of 30% of the interest incurred by the issuer when determining taxable income and the CSLL calculation basis
Taxation of Foreign Investors	Capital gains and income tax at a 0% rate for foreign investors	General Rule: 15% income tax rate on income earned. Investors resident in a jurisdiction with favorable taxation: 25% income tax rate on income earned.
Target Investors	Due to the tax benefits they offer, tax-incentivized debentures are particularly attractive to individual investors, although they are available to all types of investors.	Institutional investors, such as pension funds, seeking profitable long-term investments may also find these securities attractive, particularly where the issuers offer favorable interest rates.

Issuance Requirements	Qualification under the priority sectors and criteria set forth in Decree No. 8,874/2016, without the need for prior ministerial approval. A priority ordinance may be required for other projects	Qualification under the priority sectors and criteria set out in Decree No. 11,964/2024, without the need for prior ministerial approval
Exchange-Rate Variation Clause	Not allowed	Allowed, pursuant to Decree No. 11,964/2024



OUR FIRM

WE ARE SPECIALIZED IN THE

INFRASTRUCTURE AND CAPITAL PROJECTS MARKET

Toledo Marchetti was founded as a law firm specialized in infrastructure and capital projects, structured around a collaborative and innovative approach.

The cornerstone of our practice is a collaborative culture and our **TM Principles**. We work closely with a diverse range of clients within the infrastructure market, such as investment funds, concessionaires, financial institutions, multilateral organizations, construction companies, and major investors, to come up with solutions that bring efficiency and success in their business endeavors.

Our highly qualified team allows us to offer customized legal solutions that support projects throughout what we call as the "**Infrastructure Cycle**", which starts with planning all the way to maturity ensuring technical precision and a strong commitment to ESG principles.

Our innovative approach is driven by the **TM Methodology**, a unique suite of processes and tools specifically designed to tackle the main challenges faced by sector players. This strategy combines our extensive technical expertise with a streamlined and contemporary approach, ensuring agile legal solutions that are tailored to the complexities of the market.

Toledo Marchetti is renowned both in Brazil and internationally for its continuous innovation and proactive approach to anticipate challenges.

Methodology

DEVELOPMENT

This phase starts with the investment decision and covers all **planning stages** until the **effective start of the project**

- EXECUTION OF A PERFORMANCE BOND
- CONSTRUCTION CONTRACTS
  - COLLABORATIVE
  - OWNER SIDE
  - CONTRACTOR SIDE
- TAX ENHANCEMENT
- PARTNERSHIPS FOR STRUCTURING PUBLIC PROJECTS
- STRATEGIC ADVISORY SERVICES IN PUBLIC PROCUREMENT
- INFRA M&A

IMPLEMENTATION
CAPEX

This is the most cost-sensitive phase, which involves the execution of project implementation contracts and **start of construction until the asset is operational**

OPERATION
OPEX

This phase focus on **investment maturity** phase, for asset revenue generation

EXECUTION OF PERFORMANCE BOND

LEGAL-CONTRACTUAL MANAGEMENT

PERFORMANCE BOND CLAIM ADJUSTMENT

ARBITRAL PROCEDURES

LITIGATION MANAGEMENT

INFRA M&A

INFRASTRUCTURE CYCLE

We approach infrastructure from a lifecycle perspective, which we divide into three main phases:



We create tailored solutions to meet the varied demands within each phase of the “Infra Cycle.”

MARKETS

A PRACTICE FOCUSED ON THE INFRASTRUCTURE SECTOR

We are committed to deliver effective legal solutions tailored to each infrastructure market segment, with a deep understanding of its unique challenges. Our team is composed of professionals with extensive experience in:

- ENERGY
- RAILWAYS
- HIGHWAYS
- AIRPORTS
- PORTS
- OIL AND GAS
- URBAN MOBILITY
- BASIC SANITATION
- SOCIAL INFRASTRUCTURE
- FORESTS AND PARKS
- SMART CITIES
- INDUSTRIAL PLANTS
- MINING

Our work has been widely recognized and awarded by leading legal rankings, including:

PRACTICE AREAS

Our practice provides a range of specialized services tailored to our client`s complex and strategic needs, including:


CONTRACT MANAGEMENT


STRATEGIC LITIGATION


ARBITRATION AND DISPUTE RESOLUTION


PUBLIC AND REGULATORY LAW


TAX AND CUSTOMS LAW


CONSTRUCTION PROJECTS


INSURANCE AND GUARANTEES


CORPORATE AND M&A



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