



CORPORATE GOVERNANCE
DEVELOPMENT FRAMEWORK

Greenfield and Project Finance Corporate Governance Assessment Tool



Greenfield and Project Finance CG Tool

Introduction / Purpose of the Tool

In project finance, infrastructure and industrial projects are provided with long-term financing to be repaid with the cash flows generated by the project themselves, rather than the sponsors. It generally involves equity investors as sponsors and a number of lending institutions. A special-purpose-entity (SPE) is usually created for each project, to hold the assets that are the subject of the financing, to segregate them from other assets held by the sponsors, as a protection against failure of the project and bankruptcy risks of sponsor's related companies. The SPE is usually restricted from incurring liabilities other than the transaction debt and is limited in its purposes and activities that it may engage.

Governance for project finance and generally for greenfield projects, comprises relationships among sponsors, contractors and an SPE, with the aim at ensuring that the project is well managed in terms of financial and non-financial risks. In particular, assessment of the governance framework should seek to identify whether (i) sponsors have the capacity, experience and commitment to undertake the project, (ii) the SPE has sufficient sponsor support, internal controls and risk management capabilities (iii) conflicts of interest in related party transactions are identifiable, addressed and monitored and (iv) the SPE develops and constantly adapts and improves its own corporate governance structures as the project advances and becomes operational.

This tool is primarily designed to address governance risks during construction and pre-operational phases of a greenfield or project finance transaction. Other risks may exist in pre-construction phases (concession bidding or PPP structuring, for example), which are not covered herein. When the SPE reaches full operational phase, other more traditional corporate governance tools may be used to assess development (traditional progression matrix for corporates for example).

Disclaimer: This Tool has been developed in a collaborative effort of the DFI CG Working Group's Committee on Project Finance, composed by Marta Viegas (IDB Invest) as Chair, Elizabeth Fiona Alpe (ADB) and Charles Canfield (IFC). Although this Tool aims to be as comprehensive as possible in the breadth of its analysis, it should not be relied upon as professional advice on legal, governance or compliance related matters. The actual practices of each of the institutions involved in the development of this Tool may differ from what is described or recommended. The Project Finance Committee would like to thank Mike Lubrano, from Valoris Stewardship Catalysts, as well as the DFI CG Working Group for the overall support for this project.

Greenfield and Project Finance CG Tool

Completed by:

Date:

[] approval by:

Date:

Project

Project/client name	
Project type	
Sponsor pattern	
Project Company name	
Jurisdiction of incorporation	
Project sponsor/s; Countries of origin and operations	

Governance issues identified for follow-up

No.	Explanation of Issue	Follow Up	Resolution

Questionnaire

No.	Question	Relevant Documents	Response	Explanation; Rationale for Question	Evaluation of Response
1. Quality and Experience of Sponsors					
1.1	Who controls / takes strategic decisions on behalf of the project? If more than one sponsor, explain how decisions are taken. Are sponsors bound by voting agreement at the level of the Project Company/ies or its/their holding/s? Are there supermajority/veto/consent requirements in the Shareholders Agreement, or similar? For what matters?	Shareholders Agreement; Voting arrangements; Project company bylaws	[Explain]	Understanding the decision-making processes and relevant voting arrangements is a critical element of project evaluation. Ultimately, you should be able to identify the principal/controlling sponsor/s. Supermajority/veto requirements can afford protections to non-controlling sponsors against substantial changes by the controller. It is important to identify what areas are covered by such requirements.	
1.2	What is each sponsor's (local and international) previous experience in this country/region with this type of project (in terms of size, magnitude, complexity)?	Catalogue of previous projects of each project partner/sponsor.	[Explain]	A key determinant of a project's success is sponsors' previous relevant experience.	
1.3	What on-the-ground capacities are envisaged for the Project Company [as opposed to those capacities expected to come from the sponsor or other entities] in each phase of the project?	Table of authorities.	[Explain]	What functions will actually be delivered by the company itself and which covered by other parties (including sponsors) needs to be well understood to ensure effective monitoring and accountability.	

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1.4	What parties (project sponsors; others) will be responsible for identifying relevant stakeholders and formulating and executing appropriate stakeholder engagement in each phase of the project, including: (a) project design; (b) project construction/execution; and (c) project operation?	Stakeholder mapping; stakeholder engagement policies; external consultation process; grievance procedures.	[Explain]	Lack of, or poorly conceived and executed stakeholder engagement is a common cause for project failures or delays. Assigning clear responsibility during each phase of the project and having comprehensive policies in place help mitigate the risks in this area. It is important to recognize that identification of stakeholders and formulation of engagement strategies needs to be revisited at each phase of the project.	
1.5	Do the sponsors currently have on-the-ground capacity to engage with local stakeholders in each phase of the project?	Identity of local and international sponsors' local staff and/or agents; examples of engagement/outreach activities.	Yes <input type="checkbox"/> No <input type="checkbox"/> [If No, explain how such capacity will be built up over the life of the project.]	A stakeholder engagement policy needs to be supported by adequate on-the-ground resources to ensure effective implementation.	
1.6	Will the principal sponsor's risk management, control and compliance policies and practices (including regarding conflicts of interest) be applied and enforced at the project/Project Company level in each phase of the project?	Risk management, control, and compliance policies to be applied at the project/Project Company level.	Yes <input type="checkbox"/> No <input type="checkbox"/> [If Yes, explain what controls the sponsor will have to ensure that the policies are properly applied. If No, explain what risk management, control and compliance policies will be applied and enforced at the project/Project Company level and why this is adequate.]	Adequate policies should be in place for these areas at the project level. The most straightforward way to do this is to ensure that the controlling sponsor's relevant policies apply. If this is not the case, it is important to identify what other policies apply in the three areas.	

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1.7	Will the principal sponsor's E&S/sustainability policies and practices be applied and enforced at the project/Project Company level in each phase of the project?	E&S/sustainability policies to be applied at the project/Project Company level.	Yes <input type="checkbox"/> No <input type="checkbox"/> [If Yes, explain what controls the sponsor will have to ensure that the policies are properly applied. If No, explain what E&S/sustainability policies will be applied and enforced at the project/Project Company level and why this is adequate.]	Similar to point 1.6, it is important that adequate policies are in place for these areas at the project level. Please note that the stakeholder engagement policies mentioned under 1.4 are an important part of the E&S policy framework.	
1.8	Where are the roles, responsibilities, and protections of each project entity (sponsor/s, Project Company, others) with respect to the design, construction/execution and operation of the project spelled out?	Project documents; Charter of Project Company; Shareholders agreement; Chart of authorities/responsibilities; relationship agreements.	[Specify documents; explain any gaps and how these will be resolved.]	Lack of clarity around which project entity is responsible for each element of the project is a frequent underlying cause of disputes.	
1.9	What are the procedures for resolving differences between project partners during each phase of the project (e.g., consultation, escalation, mediation, UNCITRAL, ICC arbitration, buyout of one party, etc.)?	Project documents; Charter of Project Company; Shareholders agreement; National laws.	[Specify]	In addition to clearly defining the roles of project stakeholders, robust procedures to resolve differences should be in place to avoid disruption or delay.	

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2. Relationship with Government and Integrity					
2.1	Has any sponsor experienced significant integrity or reputational issues?	Integrity Due Diligence (IDD) screening report and related information.	Yes <input type="checkbox"/> No <input type="checkbox"/> [If Yes, provide details and explain ultimate resolution and remedial measures undertaken.]	Integrity and reputational issues may include allegations or proven cases of corruption/bribery, regulatory/supervisory investigations and penalties, bankruptcy or material litigation alleging wrongdoing.	
2.2	Have projects of a similar nature or undertaken by the same parties experienced increased risk of political pressure or interference in the project?		Yes <input type="checkbox"/> No <input type="checkbox"/> [If Yes, provide details and discuss any possibilities for mitigation.]	Examining past experiences/track record of projects of a similar nature can help to identify potential issues early on.	
2.3	Will the principal sponsor's anti-corruption policies and procedures (including monitoring and audit) be applied and enforced at the project/Project Company level at each phase of the project?		Yes <input type="checkbox"/> No <input type="checkbox"/> [If No, explain what anti-corruption policies will be applied and enforced at the project/Project Company level and why this is adequate.]	Similar to points 1.6 & 1.7, it is important that adequate policies are in place for these areas at the project level.	
2.4	Do the owners or management of the sponsors or the Project Company include Politically Exposed Persons (PEPs)?		Yes <input type="checkbox"/> No <input type="checkbox"/> [If Yes, provide details and discuss any possibilities for mitigation.]	The presence of PEPs at any level of the project is a key compliance risk indicator.	

No.	Question	Relevant Documents	Response	Explanation; Rationale for Question	Evaluation of Response
3. Conflicts of Interest					
3.1	Are any of the sponsors providing services to the project (EPC, O&M or other)?	Concession agreement; Project contracts		This is crucial for understanding the overall role played by sponsors and their interests in the project and evaluating potential conflicts of interest	
3.2	What conflict of interest framework and/or code of ethics applies to each sponsor, the Project Company and other project partners?	Conflicts of interest policy; Codes of ethics; Project documents; applicable legislation/regulation.	[Detail for each sponsor, the Project Company and each project partner at each phase of the project.]	All project stakeholders should be subject to a robust and comprehensive Conflicts of Interest regime. All parties should be required to avoid, identify, mitigate and (if necessary) declare conflicts of interest before and during the project.	
3.3	What foreseeable conflicts of interest may arise with respect to project sponsors and other key project partners in each phase of the project?		[Detail for each sponsor / project partner at each phase of the project.]	All parties should be required to declare conflicts of interest up front and as they arise. For instance, they should declare if sponsors are providing services as EPC or O&M Contractors, if the EPC Contractor is a related party to the Project Manager or the O&M Contractor or any subcontractor.	
3.4	Is there a clear and well-articulated related-party transaction (RPT) policy applicable to all sponsors and project partners (including definition of RPT, transparency and disclosure, commitment to arms-length equivalent pricing, independent review and approval)?	Codes of ethics; Project documents; applicable legislation/regulation.	[Detail]	Infrastructure projects are often subject to RPTs and there therefore needs to be a robust RPT framework applicable to all project stakeholders. These rules should be part of the broader framework governing conflicts of interest.	

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3.5	What entities will have authority to resolve cases of conflicts of interest?		Project Company Board <input type="checkbox"/> Board Committee <input type="checkbox"/> Regulatory authority <input type="checkbox"/> Project Company shareholders <input type="checkbox"/> Other body <input type="checkbox"/> [Explain]	The framework governing conflicts of interest needs to identify a body with ultimate decision-making powers regarding conflicts (e.g. to approve certain transactions or outside activities of staff).	

4. Project and Project Company Governance

4.1	What are the expected/existing governance structures (including, inter alia, the shareholders meeting, Board of Directors, shareholder, Board and management committees, any advisory board or consultative body)? How (and in what documentation) will delegation within the Project Company of key authorities be defined? Are there different CG rules specified for the construction vs. O&M phases?	Project Company charter; Chart of authorities of Project Company	[Explain]	A target governance structure should be defined well in advance including the necessary on-the-ground resources. Power and responsibility for making binding commitments on behalf of the firm should be clearly and carefully conscribed. Clarity of responsibility for oversight and governance of stakeholder engagement is particularly important for Project Companies. [Refer to the IFC governance of stakeholder engagement matrix.]	
4.2	How will the senior management team be composed and what parties will participate in the selection of the key executives, including the C-Suite and the head of sustainability/E&S?		[Explain]		

No.	Question	Relevant Documents	Response	Explanation; Rationale for Question	Evaluation of Response
4.3	Have the sponsors and project partners identified an experienced, capable professional who will be responsible for the company's finances and reporting (CFO)?		Yes <input type="checkbox"/> No <input type="checkbox"/> [If Yes, identify individual, if No, explain]	Quality of the control environment and financial transparency require competent professionals.	
4.4	When is it expected that the company have a Board? What is its expected composition, structure and evolution? What will be the principal duties of the Board of Directors of the Project Company in each phase of the project?			Board of Directors of Project Companies will have specific duties based on local law and the project agreement. These might differ from duties of regular commercial companies' Boards and it is important for all project stakeholders to have clarity on what they are. Board's role include finance oversight; review and approval of material project amendments; review and approval of RPTs; resolution of conflicts of interest; resolution of disputes among shareholders; relations with third parties; selection of management and contractors, etc.	
4.6	What is the process for selection and replacement of the principal officers of the Project Company?	Project Company charter; Shareholders agreement;	[Explain]	Succession is a key risk in Project Companies. There needs to be clear and transparent process in place.	
4.7	Does the legal/regulatory framework applicable to the project or the concession agreements with the authorities impose any special requirements with respect to the composition and duties of the Project Company's Board?		[Explain]	Special rules regarding Board composition may be applicable to the project.	

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4.8	Have the project's insurers (and other insurers who have considered the project) requested any measures related to project governance, sponsor behaviour, control environment or special transparency and disclosure requirements?	Evaluations, reports, recommendations, and other communications with all insurers who have evaluated the project.	[Explain]	Insurers often perform a detailed project assessment that may already identify significant governance issues.	
4.9	Will the Project Company have a conflict management framework as part of their stakeholder engagement process?	Project Company charter; Shareholders agreement; Concession Agreement.	Yes <input type="checkbox"/> No <input type="checkbox"/> [If No, explain any gaps and how these will be resolved.]	In conjunction with point 1.4, this area is key for ensuring adequate stakeholder engagement throughout the project.	

5. Control Environment and Processes (Project Company)

5.1	How will key operational processes be documented?	Operations manuals	[Explain]	All key operational process should be documented. Operations manuals should ideally originate with international partners or other best practice sources.	
5.2	Who will be responsible for internal controls in each phase of the project?		[Identify sponsor/s; Project Company; which individuals]	Responsibility among the project participants for oversight of key processes and updating and improving processes should be clearly assigned.	
5.3	Who will bear responsibility for monitoring, assessing, and analysing operational risks and controls, and reviewing and confirming information and compliance with policies, procedures and rules clearly assigned (internal audit)?		[Identify sponsor/s; Project Company; which individuals]	Internal audit functions in the company can be carried out by employees of the company, employees of one or more partners, or by outsourced professionals.	

No.	Question	Relevant Documents	Response	Explanation; Rationale for Question	Evaluation of Response
5.4	Who will be responsible for internal and external compliance in each phase of the project?		[Identify sponsor/s; Project Company; which individuals]		
5.5	Who will be responsible for the project's business continuity/disaster management planning? What parties will review and/or approve the business continuity and disaster management policies?		[Identify sponsor/s; Project Company; which individuals]		
5.6	How will key accounting policies of the company be determined and documented?	Project Company charter; Shareholders agreement; Concession Agreement; Applicable law.	[Explain]	IDB Invest ordinarily requires financial reports to be prepared in accordance with IFRS and that key accounting policies be consistent with IFRS and disclosed to IDB Invest.	
5.7	Have the sponsors identified a respected independent firm to perform the annual audit of the Project Company?		Yes <input type="checkbox"/> No <input type="checkbox"/> [If No, explain]		
5.8	To whom will the internal audit and the independent external auditors report?	Internal audit policy or bylaw; auditor selection policy or bylaw.	Project Company shareholders <input type="checkbox"/> Project Company Board <input type="checkbox"/> Project Company Audit Committee <input type="checkbox"/> Other <input type="checkbox"/>	Both the head of internal audit and the independent external auditors should have independent lines of accountability to the [Board].	
5.9	Will the external auditors prepare an annual Management Letter with observations and suggestions regarding areas for improvements in the company's accounting and controls? Will such document be shared with IDB Invest?		A. Yes <input type="checkbox"/> No <input type="checkbox"/> [If No, explain] B. Yes <input type="checkbox"/> No <input type="checkbox"/> [If No, explain]	Management Letters can provide investors, the Board and management with invaluable insights into the adequacy of the company's control environment.	

No.	Question	Relevant Documents	Response	Explanation; Rationale for Question	Evaluation of Response
6. Transparency and Disclosure					
6.1	Will periodic unaudited financial statements be prepared and presented to the Project Company's shareholders, Board, and IDB Invest?		Yes <input type="checkbox"/> No <input type="checkbox"/> [If No, explain]		
6.2	What policies will govern information sharing between all project parties?		[Detail]	There should be clear rules around information sharing between all project stakeholders.	
6.3	What reporting on ESG/sustainability and other information relevant to the public and outside stakeholders will the project and the Project Company undertake? To whom will such reporting be directed? Who will be responsible for providing input, coordination, approval, and delivery of disclosures?	Local legal/regulatory framework; Sponsor and Project Company policies.	[Explain]	There should also be clear rules around disclosing information to the public.	
6.4	Does the legal/regulatory framework applicable to the project or the concession agreements with the authorities impose any special requirements with respect to transparency and disclosure to the public?	Local legal/regulatory framework; concession documents.	[Explain]		

No.	Question	Relevant Documents	Response	Explanation; Rationale for Question	Evaluation of Response
7. Equity Structure; Transfers of Ownership and Obligations					
7.1	Are any of the sponsors providing both equity and debt to the project? In what proportion and amounts?	Financing arrangements and documentation.	[Explain]	Equity and debt holdings have different economic profiles and can deal to potentially conflicting economic interests.	
7.2	Does/do the sponsor/s commit to controlling the project company during construction and operational phase? Does any sponsor have the intention to sell any portion of the investment?	Shareholders Agreement; Voting arrangements; Project Company charter.	[Explain]	The transfer of a stake in the project might lead to delays or disruptions. There need to be clear and transparent rules for the transfer of positions/obligations by project stakeholders.	
7.3	What approvals or other conditions are included in the project documents with respect to sale or transfer of sponsor/s interest?	Shareholders Agreement; Voting arrangements; Project Company charter.	[Explain]	There need to be clear and transparent rules for the transfer of positions/obligations by project stakeholders.	