

FIDIC Latin America Users' Conference

Lima, Peru
12 & 13 September 2017



International Federation of Consulting Engineers





Using FIDIC Contracts in Latin America

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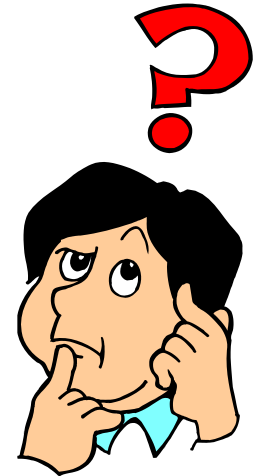




FIDIC Contracts

The best global practices

Since the first edition of the FIDIC “Red Book” in 1957 the FIDIC Conditions of Contract have become the standard for contracting works.



Balance among the obligations and risks between the parties, wide acceptance by its users, a long history of successful projects and its clear and transparent clauses are some of the reasons why the “FIDIC Books” have become the choice standard for contracting works.



FIDIC Contracts - Advantages



CLEAR, COHERENT

Essential clauses.
Detailed definitions.
Consistent structure.

FAIR, EQUITABLE

Risk allocated to party best placed to control it, bear it, and deal with it.

THIRD PARTY

Drafted by consulting engineers who design and manage projects.

COMPLETE, FLEXIBLE

Range covers most needs.
Readily adaptable to fit requirements.

RECOGNISED

Positive FIDIC image.
World-wide acceptance.
Tested for more than 50 years.

Works Contracts – Rainbow Collection



FIDIC publishes internationally recognized forms of contract for infrastructure works. Hard copy documents, electronic files, e-book's

More than 40,000 copies supplied each year





Infrastructure in LA

Lack of investments in infrastructure



During the last thirty years public and private infrastructure investments in Latin America have shown a decreasing tendency and during the last ten years they reflect a flat growth.

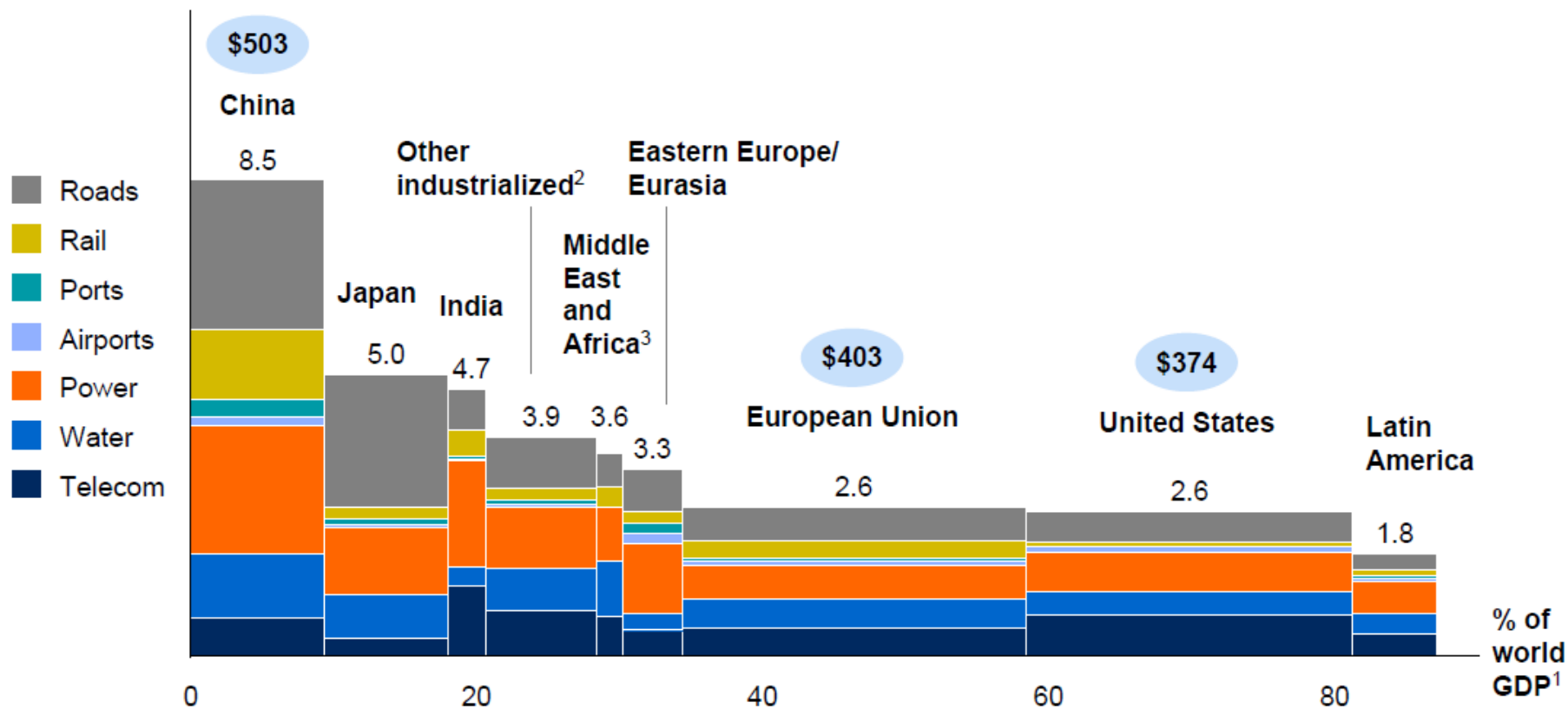


Currently, the level of infrastructure investment in Latin America amounts to approximately **120 billion** usd per year and about **2%** of the region's GDP.



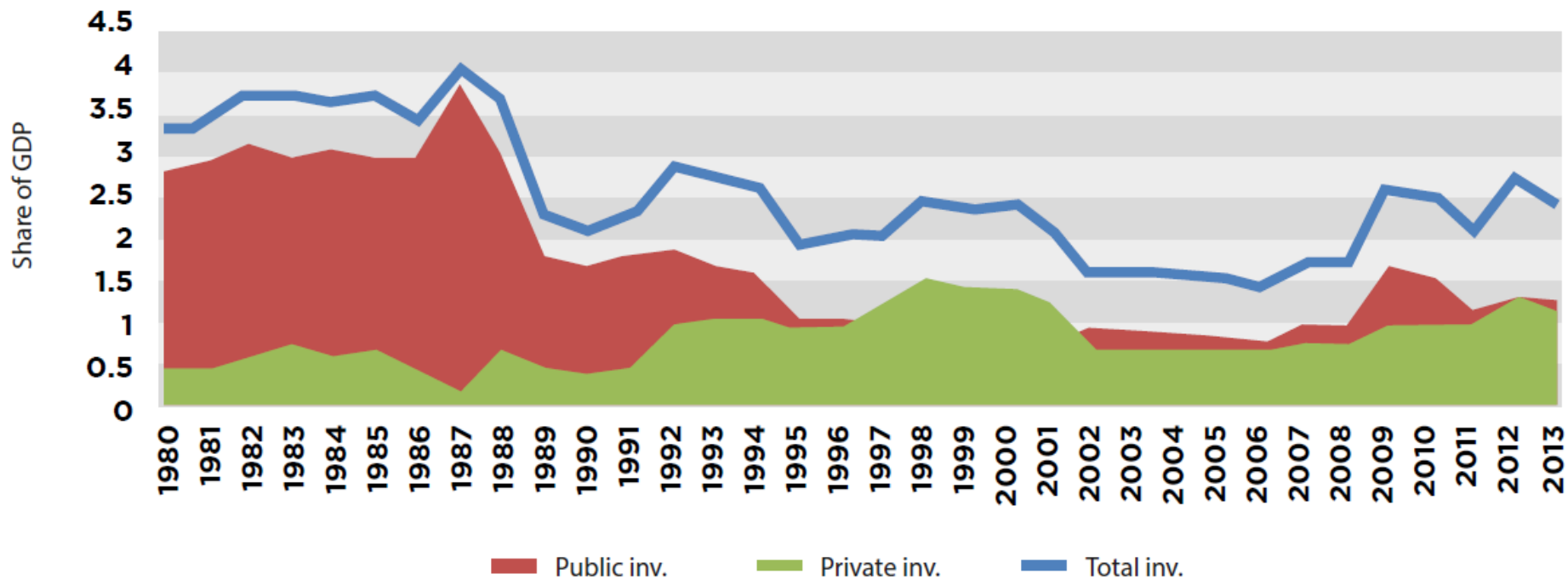
Amount spent on infrastructure, 1992–2011

Weighted average % of GDP



sources: IHS Global Insight; GWI; IEA; ITF; McKinsey Global Institute

Annual public and private investment in infrastructure in Latin America and the Caribbean



source: CAF 2013; Calderón and Servén 2010, ECLAC 2014; IDB 2015

Infrastructure Approvals for LAC 2016



4.3 bill USD



3.3 bill USD



2.1 bill USD




Corruption

Corruption is a major constraint for infrastructure growth. Not only investments have decreased but also large amounts of potential investment are lost to bribes, collusion, fraud, coercion, extortion and conflicts of interest.

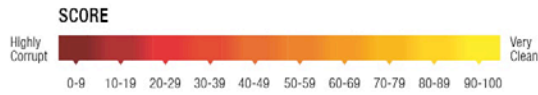
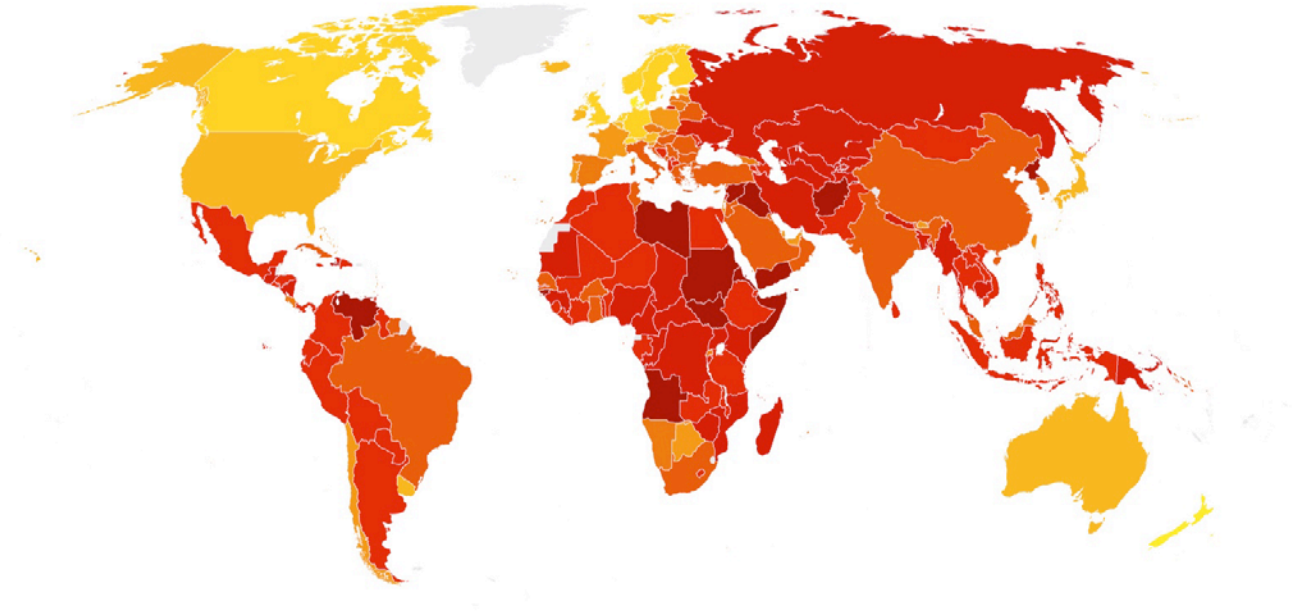
The World Bank estimates the total volume of bribes paid annually at over USD 1 trillion – more than 5 percent of the global Gross Domestic Product.



 **TRANSPARENCY INTERNATIONAL**
the global coalition against corruption

CORRUPTION PERCEPTIONS INDEX 2016

The perceived levels of public sector corruption in 176 countries/territories around the world.



#cpi2016

www.transparency.org/cpi

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	<u>2016</u>	<u>2000</u>
Chile	66	74
Costa Rica	58	54
Brazil	40	39
Mexico	30	33
Peru	35	44
Colombia	37	32
Argentina	36	35
Ecuador	31	26
Venezuela	17	27

*Corruption Perception Index (T.I.); 2016: Denmark, New Zealand – 90.

¿The combat against corruption?



Rampant corruption

*According to Moody's: "the "Odebrecht case" has not only damaged the confidence on Latin American institutions, governments companies and banks but, also, has had an important negative impact on the infrastructure and energy investments in the region, as many projects have been cancelled in Colombia, Peru and Panama".
(5/may/2017)*

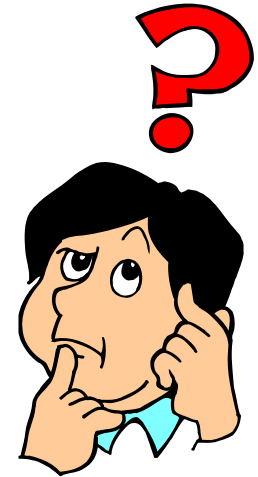




Challenges and Opportunities

The Challenge

Latin America urgently requires to increase its investments in infrastructure while project delivery needs to be improved drastically; in particular, project planning and project contracting must immediately be redesigned.

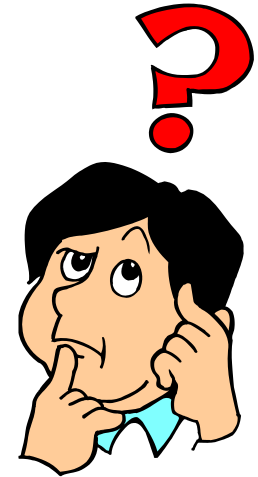


A study of infrastructure projects in Mexico concluded that projects financed by government agencies have average delays of 1.6 years. A similar study for IDB-financed projects in the region showed delays of 2.6 to 3 years.



The Challenge

In many cases, public procurement in LA is based not only on distinct contract models but, sometimes, the executing agencies change procurement models frequently and utilize diverse contract conditions even for different areas of the same agency.



As mentioned previously, contract standardization must be adopted to achieve efficiency, transparency and balanced risks. FIDIC contracts may be used for that purpose.





FIDIC Contracts in LA

FIDIC Contracts Nowadays

With the exception of IFIs-financed projects, some privately funded investments and selected public sector projects, FIDIC contracts in Latin America are not yet widely accepted or frequently utilized as in other parts of the world.

Some of the reasons for the limited acceptance of FIDIC contracts in the Latin American procurement practices include the following:



The Red Book (1)

The most common method of construction delivery in Latin America is the “design-bid-built” process where projects are designed by “The Employer” and tendered on a “unit price” basis.

Contracts are based on a bill of quantities, estimated after the design is completed. Site measurements, along with contract unit prices, are used then as the basis for payment.



The Red Book (2)

However, again and again, infrastructure projects are influenced by political or financial decisions and the procurement process is not driven by the project's technical requirements.

In such cases incomplete designs are used during the tender, selection and contracting stages of a project, becoming a major hurdle to the utilization of a FIDIC contract.

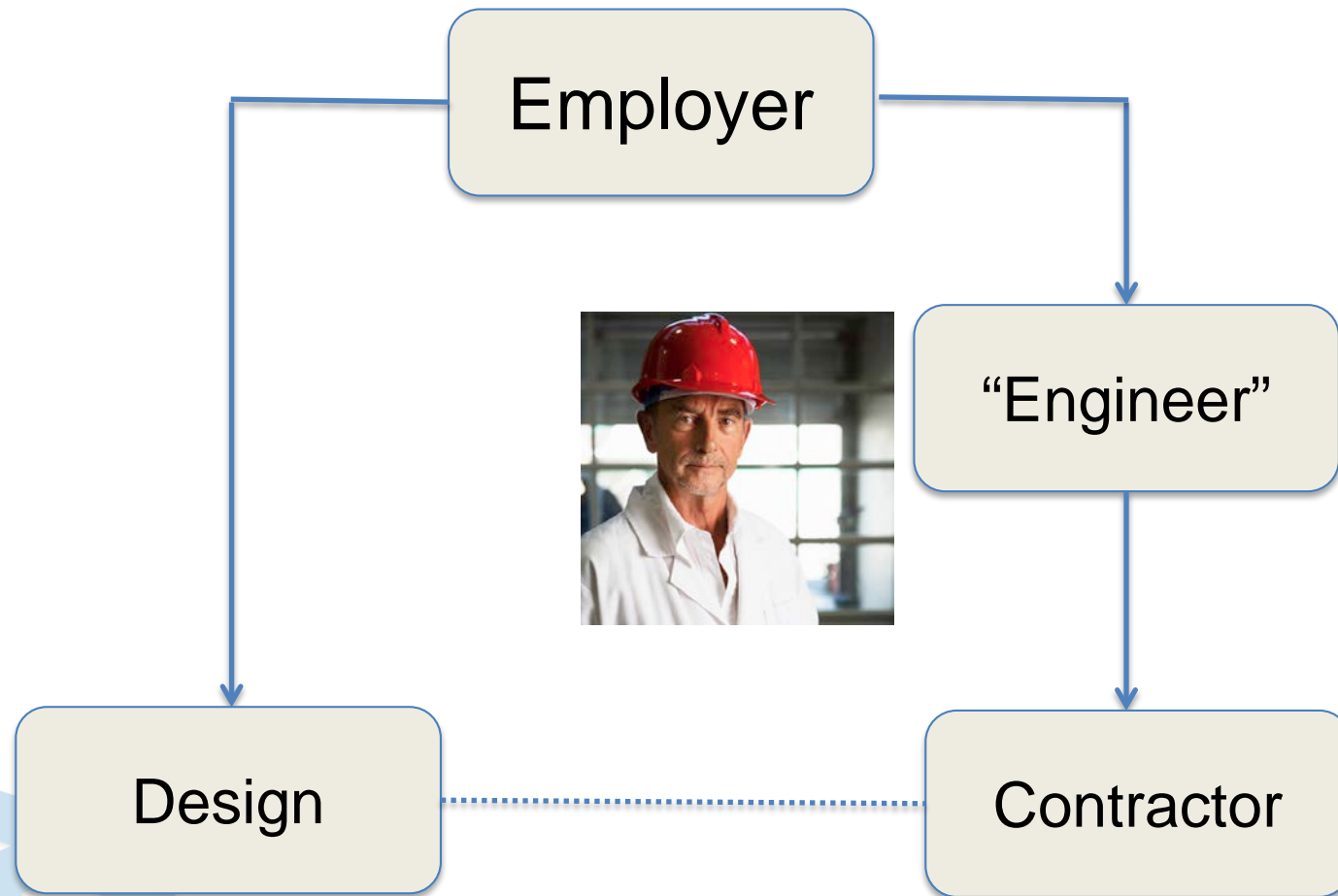


The Red Book (3)

The FIDIC “Red Book” is drafted for DBB projects and since its first edition in 1957, it supports the concept of “The Engineer” as a third person to the contract with authority to certify payments, completion of works and to determine claims.

The revised edition of the “Red Book” was published in 1987 including the provision for “The Engineer” to act impartially in any action which affect the rights and obligations of the parties, whereas the previous versions assumed this implicitly.





The Red Book (4)

Impartiality, lack of conflicts of interest and ethical behaviour of “The Engineer” becomes a fundamental component of a FIDIC contract. “The Engineer” becomes the link between the employer and the contractor in solving claims and disputes by holding balance between his client and the contractor. In many cases this may become a major difficulty for the use of FIDIC.



The Red Book (5)

SC 3.5 Determinations

“.... The Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination, taking due regard of all relevant circumstances”



SC 3.7 Agreement or Determination

“Whenever these conditions provide that the Engineer shall proceed to agree or determine any matter or Claim, the following procedure shall apply:

3.7.1 Consultation to reach agreement

3.7.2 Engineer's Determination

3.7.3 Time Limits

3.7.4 Effect of the Agreement or Determination

3.7.5 Dissatisfaction with Engineer's determination



The Yellow Book (1)

An alternative delivery system is the “design and built” process where the employer develops a conceptual plan for a project and then solicits bids that include the design and construction responsibilities for the project.

This type of procurement is becoming popular in the private sector since it has proved to reduce risk to the project owner and to cut down delivery time.



The Yellow Book (2)

Under a traditional construction contract, soil investigations and the design of the works are prepared in more detail than under a design and build contract.

In this case, the initial phase of the procurement includes the “Employer’s Requirements” which describes the purpose, scope, and/or design, and/or other technical criteria for the works.



The Yellow Book (3)

A contractor who wishes to participate in a bid will then formulate a proposal that usually includes a preliminary design.

The conceptual design, developed by the employer, is used to define the works' performance and usually includes less than 10% of the design input. The final design, prepared by the contractor, will only be developed after the contract has been formalized.



The Yellow Book (4)

It should be emphasized that the success of projects based on this type of delivery system depends on the conceptual design and the specifications developed by the employer. However, in many cases, due to poor capacity or lack of experience of the executing agencies the developing of the “Employer’s Requirements” becomes a major difficulty while using a “Yellow Book”.



The Yellow Book (5)

SC 4.1 Contractor's General Obligations

"The Contractor shall design, execute and complete the Works in accordance with the Contract, and shall remedy any defects in the Works. When completed the Works shall be fit for the purposes for which the Works are intended as defined in the Contract".



SC 4.1 Contractor's General Obligations

"The Contractor shall execute the Works in accordance with the Contract. When completed, the Works (or Section or Part or major item of Plant, if any) shall be fit for the purpose(s) for which they are intended, as defined and described in the Employer's Requirements".



In Summary (1)

Because of low productivity factors such as red tape and corruption in addition to infrastructure deficits, Latin America's economy shows a poor performance.



Development and diminishing poverty are key to the region's stability and social welfare. To this end, infrastructure investments are fundamental and contract standardization is one of the mechanisms to achieve these goals. FIDIC contracts may be used for this purpose.



In Summary (2)

“By scaling up best practice in selecting and delivering new infrastructure, and getting more use out of existing infrastructure, nations could obtain the same amount of infrastructure for 40 percent less - or, put another way, deliver a 60 percent improvement in infrastructure productivity” (McKinsey).

Streamlining project procurement, contracting and tendering has been identified as a major component to raise project delivery productivity. FIDIC contracts have proved its value for this objective.



In Summary (3)

Long-term, private financing is key to closing the existing gap for infrastructure deficits. Private investors, seeking to minimize risks, have a tendency to utilize standard forms and prefer the use of FIDIC contracts.

Contracts need to encourage private sector innovation in design and construction. FIDIC contracts contribute significantly to achieve an efficient, balanced and transparent project delivery process.



“Muchas gracias por su atención.”

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