The Intersection of Global Standards and Local Realities: Project Finance in Colombia's Infrastructure Development

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Abstract

Project finance has become the dominant vehicle for infrastructure development in Colombia. However, its local implementation diverges significantly from the classic non-recourse model of Anglo-Saxon jurisdictions. This Article analyzes the structural adaptations—termed "tropicalization"—that the framework has undergone to accommodate Colombia's distinct legal, institutional, and socioeconomic context. The Article identifies four key areas of divergence: (1) the transition from non-recourse to limited-recourse financing; (2) the modernization of the secured transactions regime, which contrasts with the fragmented perfection rules of UCC; (3) heightened social risks resulting in project delays and concession terminations; and (4) the tension between Colombia's civil-law emphasis on party intent and extrinsic evidence and the common-law "four corners" doctrine. The Article concludes that the sustained viability of project finance in Colombia demands a careful equilibrium between international investor standards and local realities, requiring sophisticated financial structuring alongside proactive management of social, political, and regulatory risks.

Keywords: project finance; public-private partnerships; Colombia; secured transactions; prior consultation; limited recourse; infrastructure concessions; contract interpretation

1. Introduction

Project finance is a globally established mechanism for mobilizing the capital required to develop, construct, and operate large-scale infrastructure projects (Yescombe 2013, 1-3). Its defining characteristic is that debt service and loan disbursements under financing agreements

are repaid exclusively from the project's own cash flows, rather than from the sponsors' corporate balance sheets (Gatti 2023, 1-30).

Originating in the United Kingdom and the United States, project finance has since become a standard model across both developed and emerging economies (Esty 2004, Module 4). This approach stands in sharp contrast to conventional corporate borrowing, in which repayment obligations rely on the sponsors' assets and overall creditworthiness, regardless of whether the financed project itself generates sufficient returns to cover its debt obligations (Nevitt and Fabozzi 1995, 1-5).

It is common for the securities granted under these financing arrangements to be *in rem* guarantees—that is, rights established over specific assets rather than over the sponsors' personal or corporate estates (Vinter 2006, 176–250). The most typical security package requested by lenders encompasses both the tangible and intangible rights associated with the project (Vinter 2006, 176–250). Accordingly, the special purpose vehicle (SPV) usually grants pledges or security interests over its contractual rights, fiduciary rights, shares and the project's commercial establishments or business units (Madykov 2015, 278).

For this reason, it is also common in project finance structures to find the participation of a SPV, a company established solely for the purpose of developing and operating the project, with no other business activities or obligations beyond those strictly related to its execution (Sainati et al. 2020, 243–55). In certain cases, the SPV may also be complemented by a trust, for which the SPV acts as the settlor. This trust serves as a centralized channel for project funds and costs, administered by a trust company —typically a third party subject to stringent professional, technical, and regulatory standards (Kashyap and Sharma 2024, 65–76). Such institutions are often part of the financial system and are therefore subject to a higher degree of supervision by governmental authorities (Kashyap and Sharma 2024, 65–76).

This arrangement provides additional security for lenders, who gain assurance that the project's financial resources are managed by an independent trustee acting in accordance with expressly defined contractual instructions (Kashyap and Sharma 2024, 65–76). Moreover, in many jurisdictions, these types of vehicles offer what legal doctrine refers to as *bankruptcy remoteness*: in the event that the SPV itself faces financial distress or insolvency, the trust structure—through the principle of asset segregation—ensures that the assets held within the trust remain distinct from those of the SPV (Committee on Securitization and Structured Finance 2022). As a result, such assets are not automatically affected by the SPV's bankruptcy and are instead prioritized for distribution to project lenders, ahead of other creditors of the settlor, whose claims would remain subordinated in any insolvency proceedings (Committee on Securitization and Structured Finance 2022).

These types of financing arrangements are inherently complex and costly (Müllner 2017). In addition to requiring legal structuring across multiple jurisdictions, they demand the participation of various stakeholders capable of assuring lenders that the project's cash flows—and its potential social or environmental impacts, such as those affecting local communities within the project's area of influence—do not pose excessive risks that could result in financial contingencies or disrupt project execution (Müllner 2017).

Accordingly, beyond the debtors themselves (the SPV and the trustee), these structures typically involve several additional participants (Engel, Fischer, and Galetovic 2020). Among them are governmental entities that enter into *offtake agreements* with the SPV, which establish the principal terms under which the SPV will receive project revenues once it has fulfilled its delivery obligations. While government agencies have traditionally been the counterparties to such agreements, the growing openness of many economies to private investment in public infrastructure has expanded the range of participants (Engel, Fischer, and Galetovic 2020). Today, it is increasingly common for *offtake contracts* to be executed between private parties—

particularly in renewable and non-conventional energy projects—where the power purchase agreement serves as the fundamental source of project revenue and is entered into between a private seller and buyer (Müllner 2017).

It is also quite common to find a variety of technical contractors engaged by the SPV to carry out the project's design, procurement, construction, operation, and maintenance obligations. These activities are often undertaken by entities affiliated with the SPV's shareholders, although depending on the project's nature, they may also be contracted to independent third parties. In either case, lenders seek assurance that, since the costs arising from these material contracts are to be paid with priority over debt service, such contracts are executed at market terms and within cost thresholds that do not endanger the project's repayment capacity. This is typically ensured through a thorough review of project budgets, the continuous assessment of the SPV's debt service ability using various financial ratios, and the inclusion of specific rights under the credit agreement allowing lenders to authorize amendments to material contracts or exercise remedies if such modifications occur without their consent (Gatti 2023, 1-30).

Furthermore, it is common for these financings to involve independent third-party experts with the technical expertise to verify that the funds are being allocated in accordance with the terms of the material contracts and the budgets agreed upon with the lenders. Before any disbursement can be applied toward project payments, it usually undergoes rigorous review and approval processes. The project's budgets and financial models are also audited and validated by specialized auditors or investment banks, as well as reputable accounting firms—often including members of the "Big Four." Insurance advisors and brokers also play a critical role in these structures. They provide assurances to lenders—prior to each disbursement—that the assets essential to the project are properly insured under enforceable policies that guarantee compensation sufficient to replace or repair any asset affected by an insured event. This requirement is fundamental, as the primary collateral granted to lenders consists of these very

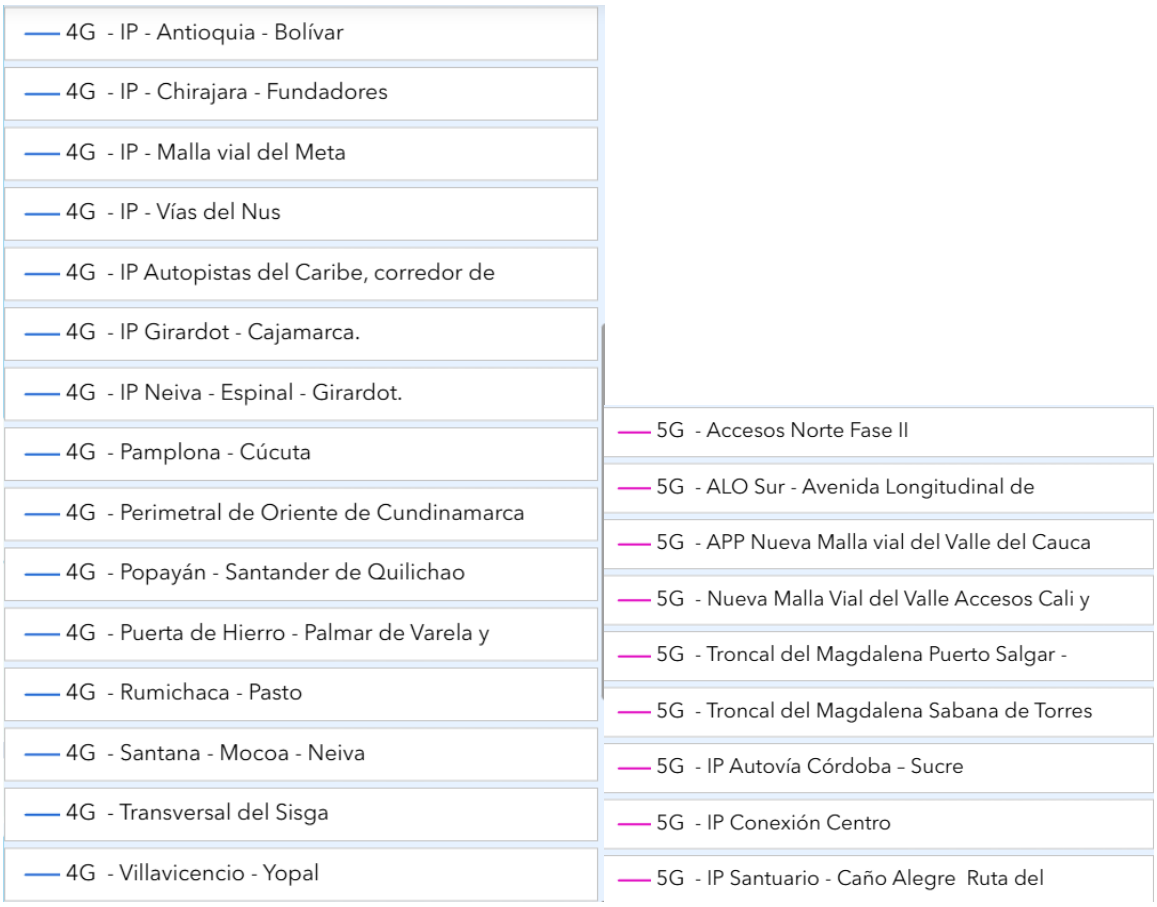
assets. Ensuring that they remain in good condition and adequately covered reinforces the lenders' ability, in the event of a borrower default, to exercise their *step-in rights*, remove the SPV from control, and assume ownership of the project and its assets, appointing qualified third parties with the technical expertise necessary to continue operating it (Gatti 2023, 1-30).

In Colombia, the use of project finance has become the prevailing market standard for funding the development of infrastructure projects, including transportation systems, power generation facilities, hospitals, and others. Notably, beginning in 2012, legislation was enacted to enable the creation of public–private partnerships (PPPs), granting the State the authority to promote and facilitate the execution of such projects by awarding concessions to private entities with the requisite technical, financial, and legal expertise (González-Ruiz et al. 2014).

This trend was further strengthened by the infrastructure development plan advanced under President Juan Manuel Santos, which significantly expanded the country's road network. Under this program, the construction of more than 5,000 km were concessioned to private consortia (Larrahondo C. 2017). To date, five successive generations of road concession contracts have been awarded and are currently under development, as illustrated in the following chart (Agencia Nacional de Infraestructura 2026, "Concesiones viales por generación").



- 1G - Bogotá (Fontibón) - Faca - Los Alpes
- 1G - Desarrollo Vial Armenia - Pereira -
- 1G - Desarrollo Vial del Oriente de Medellín -
- 1G - Santa Marta - Riohacha - Paraguachón
- 1G - Santafé de Bogotá (Puente el Cortijo) -
- 3G - Briceño - Tunja - Sogamoso
- 3G - Córdoba - Sucre
- 3G - Ruta del Sol - Sector 3
- 4G - APP - Conexión Norte.
- 4G - APP Autopista al Río Magdalena 2.
- 4G - APP IP - Cambao - Manizales.
- 4G - APP Mulaló - Loboguerrero.
- 4G - Autopista al Mar 1
- 4G - Autopista al Mar 2
- 4G - Autopista Conexión Pacífico 1
- 4G - Autopista Conexión Pacífico 2
- 4G - Autopista Conexión Pacífico 3
- 4G - Bucaramanga - Barrancabermeja - Yondó
- 4G - Bucaramanga - Pamplona
- 4G - Cartagena - Barranquilla y Circunvalar de
- 4G - Honda - Puerto Salgar - Girardot
- 4G - IP - Accesos Norte a Bogotá
- 4G - IP - Ampliación a tercer carril doble



Despite its widespread use, the project finance model has faced several challenges in its implementation in Colombia and, as a result, has not been adopted in its original form as developed under comparative law. The country's unique economic, legal, and institutional realities have led to a certain "tropicalization" of the structure—an adaptation process aimed at making it viable within the local context. Consequently, market standards and applicable methodologies have undergone an innovative process of evolution over the years (Mariño, Caicedo De Castro, and Velasco 2018, "The Colombian scenario").

The following section presents a comparative overview of the most challenging aspects of the project finance model as applied in Colombia, in contrast to its conventional use in Anglo-Saxon legal systems.

2. The Impact of Country Risk on the Shift Toward Limited Recourse Project Finance Structures.

The risk matrix associated with infrastructure projects in Colombia is highly robust and encompasses a wide range of risk categories that lenders must carefully evaluate when considering the extension of credit (Sastoque and Chamorro 2016). For instance, the latest fifth-generation (5G) road concession projects incorporate detailed risk allocation frameworks designed to account for Colombia's specific political, economic, and operational conditions (Agencia Nacional de Infraestructura n.d.):

No.	Risk Area	Risk Description (Synthesized)	Allocation	Probability	Impact
1	Land	Delays and costs in land management by concessionaire	Private	Med-Low	Med-Low
2	Land	Variations in estimated land value (incl. expropriation) and socioeconomic compensation	Public-Private	Med-Low	High
3	Environmental & Social	Costs and delays in obtaining environmental licenses, permits, and prior consultations with communities	Private	High	High
4	Environmental & Social	Variations in estimated socio-environmental compensation costs	Public-Private	Med-High	Med-High
5	Environmental & Social	Cost of minor works requested by ANI or environmental authority post-licensing	Public-Private	Med-Low	Low
6	Environmental & Social	Non-installation or relocation of toll booths; impossibility of toll collection	Public	Low	Med-High
7	Environmental & Social	Right-of-way invasion	Private	Low	Low
8	Utilities/Networks	Variations in estimated cost of utility relocation/intervention	Public-Private	Med-High	Med-High
9	Design	Changes in studies and designs (schedule modifications, cost overruns)	Private	Low	Med-High

10	Design	Design change overruns due to ANI decisions or environmental processes	Public	Med-Low	Med-High
11	Construction	Variations in work quantities	Private	Med-Low	Med-Low
12	Construction	Variation in input prices	Private	Med-Low	Med-Low
13	Construction	Cost variations from early/late handover of existing infrastructure	Private	Low	Med-High
14	Construction	Cost variations for prevention/resolution of geological events	Private	Low	Med-Low
15	O&M	Variations in maintenance work quantities and operations	Private	Low	Low
16	O&M	Input price variations for maintenance and operations	Private	Med-Low	Med-Low
17	O&M	Cost variations from early/late infrastructure handover	Private	Low	Med-High
18	O&M	Condition of delivered existing infrastructure	Private	Low	Med-Low
19	Commercial	Revenue variation due to traffic changes	Public-Private	Low	High
20	Commercial	Revenue loss from toll evasion	Public	Low	Med-High
21	Commercial	Revenue variation from commercial exploitation	Private	Low	Low
22	Commercial	Effects of Mobility Restriction events (ANI compensation obligation)	Public	Low	High
23	Financial	Failure to obtain project financing	Private	Low	High
24	Financial	Changes in financing conditions/liquidity costs from market variations	Private	Med-High	High
25	Liquidity	Insufficient funds for supervision and contractual support (not attributable to concessionaire)	Public	Low	High

26	Liquidity	Liquidity variations from traffic changes	Private	Med-Low	Med-High
27	Liquidity	General project liquidity conditions	Private	Med-Low	High
28	Liquidity	Variations in project profitability (incl. IRR)	Private	Med-Low	Med-High
29	Liquidity	Macroeconomic condition variations affecting the project	Private	Med-Low	Med-High
30	Currency	Exchange rate variation (COP vs. other currencies)	Private	Med-High	Med-Low
31	Regulatory	Variations in tariff structure and new differential tariffs	Public	Med-Low	Med-High
32	Regulatory	Changes in general regulations	Private	Med-Low	Med-High
33	Regulatory	Changes in tax regulations	Public-Private	Med-Low	Med-High
34	Sovereign	Changes in technical specifications	Public	Low	Med-High
35	Force Majeure	Land acquisition affected by force majeure / exempting events	Public	Low	High
36	Force Majeure	Delays in land availability due to force majeure	Public	Low	High
37	Force Majeure	Idle costs from extended on-site permanence due to exempting events	Public	Low	High
38	Force Majeure	Delays exceeding 50% of max time for environmental licenses/permits (not attributable to concessionaire)	Public	Low	High
39	Force Majeure	Delays in prior consultation with communities exceeding 180 days, or recognition of new communities	Public	Low	Med-High
40	Force Majeure	Utility network interference as exempting event	Public	Low	Med-High

41	Force Majeure	Delays exceeding 150% of legally established max time for government procedures	Public	Low	Med-Low
42	Force Majeure	Occurrence of insurable events	Private	Low	Low
43	Force Majeure	Occurrence of non-insurable events	Public	Med-Low	Med-High

As previously discussed, the global trend in project finance favors *non-recourse* structures, under which lenders have no legal claim against the project sponsors beyond the project's own assets and cash flows (Vinter 2006, 176–250). However, due to the elevated risk profile of Colombian projects—including macroeconomic volatility, regulatory uncertainty, and construction-related contingencies—lenders often require that, under certain conditions, the sponsors assume limited recourse obligations. In practice, this means that sponsors may be required to inject additional equity into the project should specific trigger events occur (Arias Barrera 2012).

This requirement becomes even more pronounced when project financiers include multilateral institutions such as the IFC, the World Bank, or the IDB, whose involvement is quite common in Colombian projects. Their primary objective is to promote the improvement of living standards in emerging economies by supporting and facilitating the financing of projects with public interest. Moreover, their risk appetite is lower—or at least differs—from that of commercial banks, which further shapes the structuring and oversight requirements of these financings (World Bank et al. 2017).

These obligations are not included directly in the loan agreement—so as to preserve the non-recourse nature of the financing—but are instead formalized through *Equity Contribution Agreements (ECA)* or *Subordination and Support or Retention and Subordination Agreements (SSRSA)*. Such contracts are designed to ensure the enforceability of the sponsor's obligation to

provide equity funding upon the occurrence of defined events that materially increase the lenders' exposure (Gatti 2023, 1–30).

Moreover, because the sponsor's identity and creditworthiness are often *sine qua non* conditions for financing approval, lenders typically impose restrictions on changes in control or shareholding composition without prior consent (Committee on Project Finance 2024). Subordination provisions are also established to ensure that any repayment or return on equity occurs strictly after, and subordinated to, the repayment of senior debt obligations—hence the designation of such lenders as "Senior Creditors" (Committee on Project Finance 2024).

Common examples of events that may trigger the sponsor's obligation to contribute equity include the failure to reach the operation and maintenance phase within the period projected in the financial model; the inability to achieve a minimum revenue threshold within a given execution year; or, in the case of energy projects, the failure to obtain required regulatory approvals confirming that the plant has achieved commercial operation status or the contractually agreed installed generation capacity (Caselli, Corbetta, and Vecchi 2015).

In addition to the foregoing, and depending on the adequacy of the project's expected returns and the credit rating of the sponsors' parent companies, it is common for lenders—after completing their due diligence processes—to also require the issuance of corporate guarantees (*Parent Company Guarantees*, or *PCGs*) or the provision of on-demand instruments such as standby letters of credit or first-demand guarantees (Ruster 1996).

Another event that may trigger sponsor liability to lenders is the potential occurrence of extraordinary events that are not covered by insurance policies. In Colombia, the ongoing armed conflict often represents a material risk to infrastructure assets. In certain instances, illegal armed groups have attacked and damaged pipelines, toll roads, and hydroelectric facilities through acts of terrorism, thereby increasing the vulnerability of rural populations. Given the frequency and

magnitude of such occurrences, it is common for insurance policies to either exclude coverage for these events or subject them to high deductibles and stringent proof requirements (Crossin and Banfield 2006).

Accordingly, in the event that such circumstances occur, lenders typically negotiate contractual rights under the loan agreement to accelerate repayment and enforce collateral, often triggered by the occurrence of a defined “Material Adverse Effect”. It is common practice to provide borrowers with a remediation period to repair or replace the affected asset. However, addressing such contingencies almost invariably requires additional equity contributions from the sponsors, as the extraordinary costs associated with these events frequently exceed the pre-approved budget variances allocated for project expenditures (Vinter 2006, 176–250).

3. The Development of a Sophisticated Secured Transactions Framework in Colombia to Ensure the Perfection and Enforceability of Security Packages

In the United States, the principles of Article 9 of the Uniform Commercial Code (UCC) have governed secured transactions over personal property in all 50 states since the 1950s (and revised several times ever since) (Bradley 2019, 967-969). Article §1-201(b)(35) of the UCC defines a "secured interest" as an "*interest in personal property or fixtures which secured payment or performance of an obligation*." To be enforceable against the debtor, these interests must be "attached," a process requiring the compliance of specific requirements set out in Article 9 set forth in Articles § 9-203(a) and (b) of the UCC (Whaley and McJohn 2010). The most common way of achieving attachment is the execution of a security agreement between the creditor and debtor, including a description of the collateral (Whaley and McJohn 2010). However, this attachment only ensures enforceability against the debtor; to be enforceable against third parties, the security interest must be "perfected” (Bradley 2019, 967–969). In the United States, perfection is generally achieved by filing a financing statement with a governmental entity, such as the

applicable state's secretary office, department of licensing, or a county recorder's office (Picker 2018). The lack of a simple, user-friendly and centralized filing system hinders the primary goal of filing, in our view. This goal is to inform third parties of a lien's existence, thereby safeguarding creditor rights and providing a reliable source of information for third parties acting in good faith regarding other creditors' rights which is fundamental in terms of understanding priority (Picker 2018). It is therefore noteworthy to examine how Colombia has successfully addressed this challenge.

In Colombia, although the concept of pledges over movable property *(prenda sobre bienes muebles*) had long existed and was commonly used—first regulated under the Civil Code enacted in 1887 and later reaffirmed in the Commercial Code enacted in 1971—a major reform took place in 2013 with the enactment of Law 1676 ruled by Decree 1835 of 2015, which replaced traditional pledges with a modern *secured transactions* regime known as *garantías mobiliarias*.

The major innovation introduced by the aforementioned legislation was the creation of a centralized registry for secured transactions to ensure enforceability against third parties. While, initially, pledges were registered in the commercial registry corresponding to the debtor’s domicile, these records could not be consulted with sufficient speed either nationally or internationally, and not all departments (local geographic and administrative divisions) maintained commercial registries operating under the standards of the capital, Bogotá.

Considering the country’s growing technological capacity and the increasing internet access in rural areas, the law established the **National Registry of Movable Guarantees (Registro Nacional de Garantías Mobiliarias, RNGM)**, administered by Confecámaras. Through this system, the creditor creates an account and registers all the guarantees granted by its debtors. In addition to providing publicity and accessibility, this mechanism helps mitigate

disputes over priority rights among creditors, as the system evidences the chronological order of registration, granting superior rights to those who register first.

Another key innovation under this law is the existence of diverse mechanisms for enforcing movable guarantees. Specifically, enforcement may be **extrajudicial** (such as direct sale, appropriation, or adjudication) or **judicial**, depending on the contractual terms. Typically, a special procedure is established in which an independent investment bank—selected from a list provided by the creditor—values and adjudicates the collateral through multiple rounds to maximize its value. If a sale is unsuccessful, the creditor may take ownership of the collateral as payment in kind, applying progressive discounts. This approach accelerates the process, allowing the debtor to mitigate the financial impact of settling the debt with assets, while the creditor benefits from reduced timelines and the ability to assign the collateral to a third party capable of covering a substantial portion of the outstanding debt.

Moreover, **Law 1116 of 2006**, which regulates insolvency proceedings in Colombia, provides that creditors holding movable guarantees enjoy preferential rights to payment and may exercise separation and preferential enforcement rights over encumbered assets, even in reorganization or liquidation processes.

Finally, movable guarantees offer significant flexibility, as they may secure present or future obligations and can encumber present or future assets, making them a critical instrument for structuring complex financings in which the relevant assets may not yet be developed or available at the time of the credit agreement's execution.

One example of the use and importance of *garantías mobiliarias* in Colombia when it comes to infrastructure projects is the refinancing agreement executed in 2021 by Concesión Vías del Nus S.A.S. (Escobar Escobar 2022). This concession, under financial pressure, was required to restructure construction-phase debt and repay subordinated shareholder loans.

Consequently, the concessionaire successfully obtained a syndicated loan of COP$1.4 billion (approximately US$350,000,000) by pledging movable collateral—specifically shares, subordinated debt, and economic rights in the event of concession contract nullity (Escobar Escobar 2022). This case highlights how the existing legal framework for movable guarantees provides lenders with security to support complex financing structures and maintain project continuity. It also shows that collateral under this regime can be flexibly structured, encompassing a wide range of assets (such as funds derived from an eventual nullity of the concession agreement) tailored to the needs of each transaction.

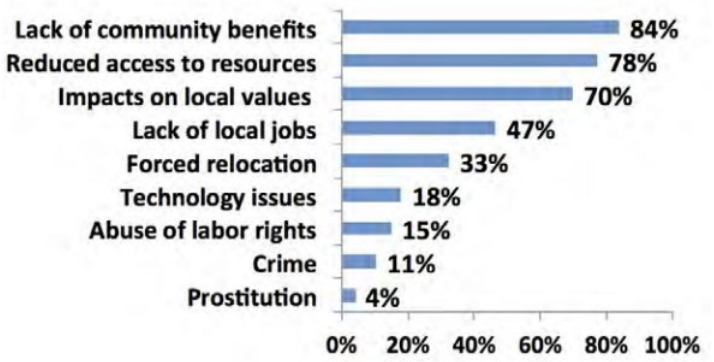
4. **Considerations in connection with the human element, the importance of effectively managing social risk in Colombia to ensure the project's success.**

To secure a return on investment in Project Finance, effective risk management is essential. Nevertheless, pursuing projects in developing nations such as Colombia intensifies investor risks, especially regarding social factors. Within Colombia, these factors present considerable challenges, even more so than in countries like the United States, due to the presence of diverse ethnic groups and vulnerable, culturally distinct local communities (Koh 2018, 101).

Colombia boasts a rich and diverse society, sustained by a legal framework dedicated to protecting its pluralism. The nation is home to various communities, including Indigenous, Black, and Rrom peoples (Cuchumbé Holguín 2012). Their engagement and consent—both legally mandated and practically essential—are vital for the success of any project. However, securing this support often presents numerous challenges.

First, local community opposition presents a significant and challenging hurdle. Dissatisfaction among local communities can lead to public order issues and blocked access, causing construction delays and cost overruns (Inter-American Development Bank 2017, 19). During the operation and maintenance phase, damage to project property and service restrictions

are also problematic (Inter-American Development Bank 2017, 19). According to a 2017 study by the International Development Bank focusing on Latin American and Caribbean countries, the main causes of this dissatisfaction are a lack of community benefits, reduced access to resources, and the project's impact on local values, as detailed below (Inter-American Development Bank 2017, 14).



Community opposition frequently poses a high-impact risk. A 2024 study by Control Risks and JA&A, which interviewed infrastructure sector experts in Colombia, revealed that 64% of the country's infrastructure projects experienced disruptions from social protests or access blockages during 2024 (Control Risks and JA&A 2024, 12). The impact of community opposition is particularly high for road concessions, where local communities may refuse the installation of new tolls or vandalize existing ones. For instance, in May, Autopistas del Caribe concessionaire reported community vandalism against one of its tolls in Turbaco (Zona Cero 2024). This incident, which caused damages and revenue loss, occurred after the suspension of charges at that specific toll was terminated (Zona Cero 2024).

Second, a prior consultation process is required when there are ethnic groups residing in a project's area of influence (Agencia Nacional de Mineria 2017, 1). This is a fundamental right, designed to safeguard their cultural, economic, and social integrity, and to ensure their participation in project development decisions (Agencia Nacional de Mineria 2017, 1). For every infrastructure project, a certificate from the Colombian Ministry of the Interior's Office of Prior

Consultation is required to confirm the presence of such communities (Rodríguez Zambrano 2023, 32). If an ethnic community is identified, the prior consultation process begins, necessitating additional legal steps to secure their free and informed consent for project execution, this is a prerequisite for the obtention of the environmental permit necessary for the development of the project (Rodríguez Zambrano 2023, 32). The risk associated with this matter materialized in the delays or difficulties in obtaining this consent, which have impacted 13% of fourth-generation public-private partnership road projects (CMS and Esfinanzas 2019, 33). Social risks of this nature have, in certain cases, resulted in project cancellations. For example, the Cesar Guajira public-private partnership road project faced liquidation of its concession agreement due to delays caused by difficulties in obtaining prior consultation approval from a local indigenous community in the area of influence of the project (Morante 2017).

Finally, as mentioned earlier, infrastructure projects in Colombia commonly rely on syndicated loans, often from multilateral development banks, which impose strict social compliance covenants, many times exceeding local regulations and presenting challenges for project companies. These requirements typically mandate a minimum percentage of local labor, established grievance mechanisms, transparent information disclosure, gender equality, and high standards for working conditions and safety (Inter-American Development Bank 2021). Meeting these demands requires meticulous planning and resources, as exemplified by Puerto Antioquia, a greenfield port project in Colombia's Uraba region receiving an IDB Invest Loan (IDB Invest 2021). The port is currently training over 200 locals to fulfill workforce requirements and support port operations (Galeano 2025).

In conclusion, Colombian infrastructure projects consistently highlight the need for investors and stakeholders to understand and manage unique social risks. This requires meticulous attention to ethnic groups and local communities during project structuring, proactive investment in prior consultation when mandated, and the establishment of a strong social management department as an essential requirement for the construction and O&M of the project.

This department is crucial for maintaining open communication, cultivating positive relationships, ensuring community satisfaction, and integrating local populations into daily project activities, from structuring to O&M. Furthermore, adherence to social covenants requires planning and assumption of additional costs that need to be prioritized by project companies. While some situations present greater challenges than others, these collective efforts are essential for successful project development.

5. Country risk constitutes a determining factor in preserving investment stability and the financing of infrastructure projects.

Legal certainty becomes the key concept when investors and financiers of large-scale infrastructure projects conduct their due diligence in order to decide whether to fund such projects. Within this assessment of certainty lies, fundamentally, the need for effective coordination between formal statutory law and the preservation of the separation and balance of powers, including the recognition that the executive branch is subordinated to existing laws and must not only comply with them but also ensure and promote their effectiveness and enforceability (Casady and Suárez-Alemán 2025).

Under such conditions, laws designed to protect investment—whether by domestic or international actors—are not placed at risk with each change in government. While this represents the ideal scenario, in multiple countries, including the United States and Colombia, the reality is that the incumbent government is not neutral with respect to how existing rules are implemented, applied, and enforced. This reality further evidences how governments employ a variety of instruments to advance regulatory measures through executive decrees aimed at supporting and pursuing their political agendas, which do not necessarily guarantee the aforementioned level of investment protection (OECD 2013).

In Colombia, there have recently been multiple examples of this phenomenon in the context of the execution of various infrastructure projects (OECD 2013). **Decree No. 50 of 2023,**

pursuant to which the national government ordered that toll rates applicable to vehicles transiting through the national territory not be increased at toll stations operated by the National Institute of Roads (Instituto Nacional de Vías – INVIAS) and the National Infrastructure Agency (Agencia Nacional de Infraestructura – ANI), had a significant impact on the cash flows of infrastructure projects. Such projects had incorporated the expected toll increases into their financial models in order to cover capital expenditures (CAPEX), operating expenditures (OPEX), and debt service obligations, particularly in the case of privately initiated projects that did not benefit from any state-guaranteed revenue in the event that this risk materialized.

By contrast, public-initiative contracts that did include risk-compensation mechanisms to address the non-adjustment of toll rates by the relevant public entity faced substantial difficulties in obtaining the disbursement of such compensation amounts, which in several cases became subject to dispute resolution mechanisms prior to payment (Suárez-Alemán et al. 2019).

Another illustrative example is the draft amendment to **Article 2.2.2.1.11.8 of Decree 1082 of 2015**, which seeks to adopt a less restrictive mechanism for the rescheduling of vigencias futuras (future fiscal appropriations), which constitute state-guaranteed contributions of the Colombian government in the execution of infrastructure concession contracts. Specifically, the currently applicable provision of **Decree 1082 of 2015** conceives the rescheduling vigencias futuras in a restrictive manner. Rescheduling is permitted solely to modify the initially approved term, provided that the total authorized amount remains unchanged.

If the contracting authority requires adjustments beyond the payment schedule—for example, changes to the annual distribution of installments—it must obtain a new authorization for vigencias futuras from the National Council for Fiscal Policy (Consejo Superior de Política Fiscal – CONFIS) prior to assuming new obligations or modifying existing ones. The proposed decree would expand the scope of rescheduling, no longer limiting it to term adjustments but also allowing the rescheduling of the authorized annual installments without the need for a new

comprehensive authorization from CONFIS, provided that certain requirements are met (CMS Colombia 2025).

This situation has generated significant concern among project sponsors and financiers, as one of the primary incentives for their participation in both equity and debt investments was the strength derived from having a guaranteed state-backed revenue stream, which theoretically enjoys a certain degree of irrevocability at both the contractual and legal levels (CMS Colombia 2025).

As a result, these actors now face, on the one hand, the risk to the source of repayment of their debt, and on the other, the concern that they may be unable to recover their investments in accordance with the financial models that initially justified their participation and served as the fundamental incentive for engaging in these highly complex project structures (CMS Colombia 2025).

6. Clashing doctrines: the civil law interpretation rules v. the four corners doctrine.

The parol evidence rule, which exists in every United States jurisdiction, governs the evidence admissible in court regarding the terms of a written contract (Summers, Hillman, and Hoffman 2016, 772). This rule bars extrinsic evidence (outside of the contract) as a proof of the parties' intentions prior to the execution of a written agreement (Summers, Hillman, and Hoffman 2016, 772). This rule mandates that a court must interpret a complete written contract based solely on the words within the document, generally barring extrinsic evidence as proof of the parties' intentions prior to the agreement's execution (Summers, Hillman, and Hoffman 2016, 773).

In contrast to the United States' parol evidence rule, the Colombian law on contract interpretation permits and encourages the admission of extrinsic evidence. The Colombian Civil Code mandates that when the true intention of the contracting parties is established, the judge must adhere to that proved intention over the literal wording of the contract (Article 1618 of the Colombian Civil Code). Furthermore, Colombian law provides a set of interpretative principles to

guide judicial review, including: (i) favoring the interpretation that renders a contractual clause effective over one that makes it inoperative (Article 1620 of the Colombian Civil Code); (ii) absent a clear contractual stipulation to the contrary, preferring the interpretation consistent with the contract's nature and common practices (Article 1621 of the Colombian Civil Code); and (iii) requiring systematic interpretation, wherein all clauses are construed as a whole, compared with other agreements between the parties, and informed by the practical application given to the contract by the parties (Article 1623 of the Colombian Civil Code). Subsidiarily, if none of these primary principles can be applied, ambiguous contractual provisions must be interpreted in favor of the debtor (Article 1624 of the Colombian Civil Code).

Colombian public procurement law (Law 80 of 1993) allows state entities to include "exceptional clauses" in concession agreements, such as unilateral contract interpretation, to guarantee the continuous provision of public services like transportation or energy (Article 14 of Law 80 of 1993). This permits the state entity to unilaterally interpret, by administrative decision, contractual provisions that hinder or halt public service delivery when a contract interpretation dispute with the concessionaire remains unresolved (Article 15 of Law 80 of 1993).

Although rarely exercised, this right presents a distinctive risk for infrastructure projects in Colombia, unlike many other jurisdictions. Furthermore, the admissibility of extrinsic evidence to interpret contractual provisions necessitates a thorough and meticulous analysis of conduct and negotiations during the pre-contractual stage.

7. Conclusion

The implementation of project finance in Colombia represents a complex "tropicalization" of the standard non-recourse model, which is required by the country's unique legal, institutional, and socioeconomic landscape. While the local framework has successfully modernized aspects like the secured transactions regime—introducing the centralized Registro Nacional de Garantías Mobiliarias (RNGM) to enhance collateral enforceability and creditor priority—infrastructure

projects remain exposed to elevated risks. These include macroeconomic volatility, regulatory uncertainty (as evidenced by governmental actions on toll rates and *vigencias futuras*), and significant social risk from local communities and ethnic groups, often leading to required limited recourse obligations from sponsors, formalized through agreements like ECAs and SSRSAs.

Ultimately, the viability of Colombian project finance depends on balancing global expectations of investment stability with local realities. Lenders and sponsors must navigate a civil law tradition that prioritizes party intent over the strict *four corners doctrine*, which, combined with the state's reserved right of unilateral contract interpretation, introduces distinctive legal uncertainty. Therefore, success requires not only robust financial and legal structuring but also meticulous management of social compliance and political risk to safeguard the cash flows essential for debt service and investment return.

References

Agencia Nacional de Infraestructura (ANI). n.d. "Matriz de Riesgos del Proyecto - Adenda 2 - Accesos Norte II." Agencia Nacional de Infraestructura. Accessed June 15, 2026. https://www.ani.gov.co/sites/default/files/16._matriz_de_riesgos_del_proyecto_adenda_2_acce norte_ii.pdf.

Agencia Nacional de Infraestructura (ANI). 2026. "Proyectos ANI - Modo Carretero." Agencia Nacional de Infraestructura. Accessed June 15, 2026. https://www.ani.gov.co/proyectos-ani-modo-carretero.

Agencia Nacional de Minería. 2017. Prior Consultation. https://www.anm.gov.co/sites/default/files/DocumentosAnm/prior_consultation.pdf.

Arias Barrera, Ligia Catherine. 2012. "Perspectiva Legal de la Financiación de Proyectos 'Project Finance' y el Manejo del Riesgo." Revista de Derecho Privado, no. 3308. https://revistas.uexternado.edu.co/index.php/derpri/article/view/3308.

Bradley, Christopher G. 2019. "Disrupting Secured Transactions." *Houston Law Review* 56 (5): 967-969. EBSCOhost.

Casady, Carter B., and Ancor Suárez-Alemán. 2025. "Evaluating the Impact of Public-Private Partnerships-Enabling Conditions on Infrastructure Development: Evidence from Latin

America and the Caribbean." Stanford University and Inter-American Development Bank, Infrastructure and Energy Department. July.

Caselli, Stefano, Guido Corbetta, and Veronica Vecchi, eds. 2015. *Public Private Partnerships for Infrastructure and Business Development: Principles, Practices, and Perspectives*. New York: Palgrave Macmillan. https://doi.org/10.1057/9781137541482.

CMS Colombia. 2025. "Todo sobre el Proyecto de Decreto que pretende modificar la reprogramación de vigencias futuras." CMS Law, September 9. https://www.cms.law/es/col/publication/todo-sobre-el-proyecto-de-decreto-que-pretende-modificar-la-reprogramacion-de-vigencias-futuras.

CMS and Esfinanzas. 2019. "3.2.1. Problemáticas encontradas en el análisis general del Programa 4G." In *Contrato de servicios de consultoría DNP No DNP-OR-045-2019 - Producto 4*. https://colaboracion.dnp.gov.co/CDT/Participacin%20privada%20en%20proyectos%20de%20infraestructu/Evaluaci%C3%B3n%20esquema%20APP%20en%20proyectos%20viales%204G.pdf

Committee on Project Finance, American Bar Association, Business Law Section. 2024. "Model Equity Contribution Agreement for Project Finance Transactions." The Business Lawyer 79 (Spring). https://www.americanbar.org/groups/business_law/resources/business-lawyer/2024-spring/model-equity-contribution-agreement-for-project-finance-transactions/.

Committee on Securitization and Structured Finance. 2022. "Bankruptcy Remoteness: A Summary Analysis." The Business Lawyer 77 (4): 1105–1127.

Control Risks and JA&A. 2024. "RESULTADOS Encuesta a expertos sobre los riesgos para el sector de la infraestructura en Colombia." https://issuu.com/eleditorcolombia/docs/ppt_pulso_de_la_infraestructura.

Crossin, Corene, and Jessie Banfield. 2006. *Conflict and Project Finance: Exploring Options for Better Management of Conflict Risk*. Background Paper. London: International Alert. January. https://www.international-alert.org/app/uploads/2021/09/Institutions-Conflict-Project-Finance-EN-2006.pdf.

Cuchumbé Holguín, Nelson Jair. 2012. "Constitutional Openness in 1991, Ethnic and Cultural Diversity, and Political System: A Philosophical-Political Approach." *Universitas Humanística* 74. http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0120-48072012000200004.

Engel, Eduardo, Ronald D. Fischer, and Alexander Galetovic. 2020. "When and How to Use Public-Private Partnerships in Infrastructure: Lessons from the International Experience." NBER Working Paper no. 26766. Cambridge, MA: National Bureau of Economic Research. https://www.nber.org/papers/w26766.

Escobar Escobar, Nicolás. 2022. "Concesión Vías del Nus obtuvo préstamo de $1,4 billones para refinanciar su deuda." *La República*, September 22.

https://www.larepublica.co/empresas/concesion-vias-del-nus-obtuvo-prestamo-cerca-a-1-4-billones-para-refinanciar-deuda-3453488.

Esty, Benjamin C. 2004. *Modern Project Finance: A Casebook*. N.p.: Wiley.

Galeano Balaguera, Paula. 2025. "Puerto Antioquia capacita a más de 200 personas en operación portuaria en Urabá." *Portafolio*, September 17. https://www.portafolio.co/economia/infraestructura/formacion-portuaria-en-uraba-puerto-antioquia-capacita-a-217-personas-en-operacion-logistica-640135.

Gatti, Stefano. 2023. *Project Finance in Theory and Practice: Designing, Structuring, and Financing Private and Public Projects*. N.p.: Academic Press. https://books.google.com.co/books/about/Project_Finance_in_Theory_and_Practice.html?id=CJqhEAAAQBAJ&redir_esc=y.

González-Ruiz, Juan David, Miguel D. Rojas, Carlos A. Arboleda, and Sergio Botero. 2014. "Project Finance y Asociaciones Público-Privada para la Provisión de Servicios de Infraestructura en Colombia." Obras y Proyectos 16: 61–82. https://obrasyproyectos.org/index.php/oyp/article/view/3472.

Inter-American Development Bank. 2017. "Lecciones de Cuatro Décadas de Conflicto en torno a los Proyectos de Infraestructura en América Latina y el Caribe." https://publications.iadb.org/es/publicacion/17284/lecciones-de-cuatro-decadas-de-conflicto-en-torno-proyectos-de-infraestructura-en.

Inter-American Development Bank. 2021. Full Environmental and Social Policy Framework (ESPF). https://www.iadb.org/en/who-we-are/topics/environmental-and-social-solutions/environmental-and-social-policy-framework.

IDB Invest. 2021. "BID Invest firmó financiación para Puerto Antioquia en Colombia." October 12. .https://idbinvest.org/es/medios-y-prensa/bid-invest-firmo-financiacion-para-puerto-antioquia-en-colombia

Kashyap, A. K., and V. Sharma. 2024. "Project Finance through Infrastructure Investment Trust: Legal and Regulatory Analysis." Risk Governance and Control: Financial Markets & Institutions 14 (2): 65–76. https://doi.org/10.22495/rgcv14i2p7.

Koh, Jae Myong. 2018. "Social Risk." In *Green Infrastructure Financing*. Springer. https://doi.org/10.1007/978-3-319-71770-8.

Larrahondo C., Paola A. 2017. "The Fourth Generation of Road Concessions in Colombia and the New PPP Legal Model: What Have We Learnt from Over-Renegotiation and Over-Litigation Trends?" Revista de Derecho Público, no. 38: 1–32. https://doi.org/10.15425/redepub.38.2017.02.

Madykov, Murat. 2015. “Step-in Right as a Lender Protection Mechanism in Project Financed Transactions.” DePaul Business & Commercial Law Journal 13, no. 2: 273–78. https://via.library.depaul.edu/bclj/vol13/iss2/3.

Mariño, Felipe, Juan Pablo Caicedo De Castro, and Natalia Velasco. 2018. “The Road to Project Finance in Colombia.” Financier Worldwide, June. https://www.financierworldwide.com/the-road-to-project-finance-in-colombia.

Morante, Andrea. 2017. “El camino que llevó a devolver obra de carretera de $1,65 billones.” *El Tiempo*, September 11. https://www.eltiempo.com/economia/sectores/construcciones-el-condor-devuelve-obra-de-carretera-entre-cesar-y-la-guajira-de-1-65-billones-129682.

Müllner, Jakob. 2017. “International Project Finance: Review and Implications for International Finance and International Business.” Management Review Quarterly 67 (2): 97–133. https://doi.org/10.1007/s11301-017-0125-3.

Nevitt, Peter K., and Frank J. Fabozzi. 1995. *Project Financing*. N.p.: Euromoney Publications.

OECD. 2013. *Regulatory Policy in Colombia: Going beyond Administrative Simplification*. OECD Reviews of Regulatory Reform. Paris: OECD Publishing. https://doi.org/10.1787/9789264201941-en.

Picker, Randal C. 2018. “Chapter 1 - Section III. Creating and Perfecting Security Interests.” In *Security Interests in Personal Property*. https://picker.uchicago.edu/sectrans/PickerDay1.pdf.

Rodríguez Zambrano, Delia Alexandra. 2023. “El Rol del Estado Colombiano en los Proceso de Consulta Previa de los Proyectos de Infraestructura de la Nación.” Master’s thesis, Universidad Externado de Colombia. https://bdigital.uexternado.edu.co/server/api/core/bitstreams/8b7a1443-5764-48b0-9254-144b30ec191e/content.

Ruster, Jeff. 1996. “Mitigating Commercial Risks in Project Finance.” Note No. 69. Washington, DC: World Bank, Private Sector Development Department. February. https://documents1.worldbank.org/curated/en/138481468765577520/pdf/multi-page.pdf.

Sastoque, Lina María, and Edgar David Chamorro. 2016. “Risk Assessment Proposal for Social Infrastructure through Public-Private Partnerships in Colombia.” Paper presented at the CIB World Building Congress 2016, Tampere, Finland, May.

Sainati, T., G. Locatelli, N. Smith, et al. 2020. “Types and Functions of Special Purpose Vehicles in Infrastructure Megaprojects.” International Journal of Project Management 38 (5): 243–55.

https://eprints.whiterose.ac.uk/id/eprint/162053/1/Types%20and%20functions%20of%20special%20purpose%20vehicles%20in%20infrastructure%20megaprojects.pdf.

Suárez-Alemán, Ancor, Carolina Lembo, José Yitani Ríos, Gastón Astesiano, and Julio Franco Corzo. 2019. *Casos de Estudio en Asociaciones Público-Privadas en América Latina y el Caribe: La Cuarta Generación de Carreteras en Colombia*. Washington, DC: Inter-American Development Bank. https://publications.iadb.org/es/publications/spanish/viewer/Casos_de_estudio_en_asociaciones_p%C3%BAblico-privadas_en_Am%C3%A9rica_Latina_y_el_Caribe_La_cuarta_generaci%C3%B3n_de_carreteras_en_Colombia_es_es.pdf.

Summers, Robert S., Robert A. Hillman, and David A. Hoffman. 2016. *Contract and Related Obligation: Theory, Doctrine, and Practice*. 7th ed. N.p.: West Academic Publishing.

Vinter, Graham D. 2006. *Project Finance: A Legal Guide*. 3rd ed. London: Sweet & Maxwell. https://books.google.com.co/books?id=8wz4MpHS4FsC.

Whaley, Douglas J., and Stephen M. McJohn. 2010. "Attachment of the Security Interest." In *Problems and Materials on Secured Transactions*. Aspen Publishers.

World Bank, Asian Development Bank, European Bank for Reconstruction and Development, et al. 2017. *Public-Private Partnerships: Reference Guide Version 3*. Washington, DC: World Bank Group. https://ppp.worldbank.org/sites/default/files/2024-08/PPP%20Reference%20Guide%20Version%203.pdf.

Yescombe, E. R. 2013. *Principles of Project Finance*. N.p.: Elsevier Science. https://www.sciencedirect.com/science/chapter/monograph/abs/pii/B9780123910585000011?via%3Dihub.

Zona Cero. 2024. "Vandalismo contra peaje de Turbaco supera los $25 millones: Concesión Autopistas del Caribe." *Zona Cero*, May 22. https://zonacero.com/generales/vandalismo-contra-peaje-de-turbaco-supera-los-25-millones-concesion-autopistas-del-caribe.