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Attracting Investors: How the Partnership for Global Infrastructure and Investments Can Encourage Private Investment in Low- and Middle-Income Nations Infrastructure Projects Through the Creation and Use of Project Preparation Facilities.

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By: Donald Irons

I. Introduction

During his first two years in office, some of President Biden's most significant achievements have been on infrastructure. The Infrastructure Investments and Jobs Act and the Inflation Reduction Act have provided much-needed funds for U.S. infrastructure projects.[1] But President Biden's emphasis on infrastructure extends beyond the U.S. borders and into his foreign policy.

On June 22, 2022, President Biden announced to the G-7 nations the Partnership for Global Infrastructure and Investment ("PGII").[2] A rebrand and revamp of his previously proposed Build Back Better World ("B3W"), the PGII is envisioned both as a U.S. supported alternative to China's Belt and Road Initiative ("BRI") and as an answer to the International Infrastructure Funding Gap.[3] Currently, there is a gap in international infrastructure funding, with an estimated $15 trillion deficit between infrastructure needs and actual investment by

[1] *See* Jim Tankersly, *Biden Signs Bill For Bolstering Infrastructure,* N.Y. TIMES, Nov. 15, 2021, at A1; *see also* Jim Tankersly, *Biden Signs Bill Expansive Health, Climate, and Tax Law,* N.Y. TIMES, (Aug. 16, 2022), https://www.nytimes.com/2022/08/16/business/biden-climate-tax-inflation-reduction.html.
[2] Tamara Keith, *Biden announced a $600 billion global infrastructure program to counter China's Clout*, NPR, (June 26, 2022, 1:38 PM ET), https://www.npr.org/2022/06/26/1107701371/biden-announced-a-600-billion-global-infrastructure-program-to-counter-chinas-cl.
[3] *Id.*

2040.[4] Partially as a response to this gap, President Xi Jinping announced the BRI in 2013.[5] The BRI has emerged as one of the most significant foreign infrastructure investment initiatives the world has ever seen, with the Chinese Government spending $932 billion cumulatively.[6] That money has gone to funding infrastructure projects in 149 countries, such as Pakistan, Nigeria, South Korea, and Israel.[7] China's goal with this funding is to connect itself with the world.[8] Not just with infrastructure, but also in the areas of policy, investment, trade, and culture.[9]

Over the years, the U.S. response to the BRI has ranged from downplaying to critical hyperattention.[10], while its overlapping response to the infrastructure funding gap has been focused on providing low-and middle-income countries with access to private investments.[11] As the latest in this series of responses, the PGII is positioned to be a multilateral endeavor aimed to offer an alternative to the BRI.[12] President Biden hopes to raise $600 billion by 2027 for projects focused on clean energy, health systems, gender equality, and information and communications technology.[13] And this money, President Biden states, will not just come from government

[4] Global Infrastructure Outlook, *Forecasting infrastructure investment needs and gaps*, Global Infrastructure Hub (Oct. 17, 2022, 6:10 PM), https://outlook.gihub.org/?utm_source=GIHub+Homepage&utm_medium=Project+tile&utm_campaign=Outlook+GIHub+Tile.

[5] Lutz-Christian Wolff, *Legal Responses to China's "Belt and Road" Initiative: Necessary, Possible or Pointless Exercise?*, 29 Transnat'L & Contemp. Probs. 249, 252-3 (2020).

[6] *Id.*

[7] *Id.* at 259-60.

[8] Min Ye, *How Can The United States Live With China's Belt And Road Initiative?,in* THE CHINA QUESTIONS 2: CRITICAL INSIGHTS INTO US-CHINA RELATIONS 119, 121-2 (Maria Adele Carrai, Jennifer Rudolph, and Michael Szonyi ed., 2022).

[9] *Supra*.

[10] *Supra* at 119-20; *see also* Wolff, 29 Transnat'L & Contemp. Probs at 263-65.

[11] *See Blue Dot Network*, U.S. DEPT. OF STATE (last visited Oct. 21, 2022). https://www.state.gov/blue-dot-network/; *see also Memorandum on the Partnership for Global Infrastructure and Investment,* THE WHITE HOUSE (June 26, 2022), https://www.whitehouse.gov/briefing-room/presidential-actions/2022/06/26/memorandum-on-the-partnership-for-global-infrastructure-and-investment/.

[12] Keith, *supra* note 2.

[13] *FACT SHEET: President Biden and G7 Leaders Formally Launch the Partnership for Global Infrastructure and Investment*, THE WHITE HOUSE (June, 26, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/26/fact-sheet-president-biden-and-g7-leaders-formally-launch-the-partnership-for-global-infrastructure-and-investment/

spending, but from private investors as well.[14] President Biden argues that the PGII is "a chance for us to share our positive vision for the future. And let communities around the world see for themselves the concrete benefits of partnering with democracies."[15]

While both the PGII and the BRI utilize public funding, a critical difference between the two is that the PGII plans to use and encourage private financing.[16] Yet, despite the PGII goals and previous U.S. efforts, the role of the private sector in international infrastructure funding is small. Private financing makes up only seventeen percent of international infrastructure funding.[17] Moreover, the G7 nations, including the U.S., private sectors were only able to invest $22 billion in infrastructure projects for developing nations from 2015-2019.[18] With an estimated $15 trillion deficit between infrastructure needs and actual investment by 2040, the need for more funding is there.[19] But, it's unclear how the PGII will incentivize the private sector to fill that need.

This article will offer a path the PGII can take to encourage private investment in infrastructure projects by establishing and using Project Preparation Facilities (PPFs) targeted at the PGII's focus areas. This article will first examine the relevant context that gave rise to the PGII, such as the funding gap in global infrastructure, the BRI, the previous U.S. responses to both the Gap and the BRI, and the PGII as it currently exists. This article will then show how the PGII can encourage private investment in infrastructure projects by establishing Project Preparation Facilities (PPFs) that assist projects during their planning phases. Finally, this article will raise several public policy concerns related to private investment in infrastructure projects

[14] *Id.*
[15] THE WHITE HOUSE, *id.* note 11.
[16] THE WHITE HOUSE, *id.* note 13.
[17] THE WORLD BANK AND THE PUBLIC-PRIVATE INFRASTRUCTURE ADVISORY FACILITY, WHO SPONSORS INFRASTRUCTURE PROJECTS? DISENTANGLING PUBLIC AND PRIVATE CONTRIBUTIONS. (2017) at 2.
[18] *Id.*
[19] Global Infrastructure Outlook, *supra* note 4.

that any PPFs created should keep in mind when providing assistance to low-and middle-income countries.

II. Background

The PGII is not the United States' first foray into helping fund foreign infrastructure projects in recent years. Contextualizing the announcement of the PGII is the International Community's awareness of a funding gap in infrastructure across the globe, China's Belt and Road Initiative providing funding for infrastructure projects, and the U.S. previous efforts, in particular those that occurred under the Trump Administration. These three developments are integral to understanding the PGII because the PGII is President Biden's continuation of efforts to have the United States become more involved in funding foreign infrastructure projects. The PGII is also a response to both the International Infrastructure Funding Gap and China's BRI. To understand the PGII and its proposals, it's essential to understand these three aspects that gave rise to the partnership.

The Funding Gap in International Infrastructure

Infrastructure, the underlying structure of fixed installations, such as roads, bridges, water systems, information technology, and energy systems, is critical to any country. Whether it be in the form of the aqueducts that let water flow to Ancient Rome or the airports, highways, and broadband that make our current society possible, infrastructure is vital to support and enable trade, economic growth, and human development. Yet infrastructure's fruit is not produced without struggle. All countries must maintain existing infrastructure, develop new projects that take advantage of innovative technology, and adapt both old and new to changing economic patterns. But low- and middle-income countries face the additional difficulty of quickly expanding their total infrastructure stock as they meet the demands of their growing populations and economies. Yet infrastructure needs to be funded, and lower- and middle-income countries have difficulties obtaining that funding. The Global Infrastructure Hub, a G-20 Initiative, estimates a $15 trillion deficit between infrastructure needs and actual investment by 2040.[20] And low- and middle-income countries typically face a $1-1.5 trillion gap in annual infrastructure funding.[21]

The reason behind this deficit is multi-faceted. For governments, servicing pre-existing debt imposes a significant hurdle in funding infrastructure projects, especially in the wake of the COVID-19 pandemic. In 2020, low-income countries' debt burden rose to a record $860 billion, their indebtedness far outpacing the growth of their gross national income and exports.[22] This, in addition to other fiscal obligations in healthcare, education, and pensions, makes it difficult for the governments of low- and middle-income countries to burden their treasuries and state-owned enterprises (SOEs) with infrastructure investments.[23]

The private sector has not come in to fill the deficit. Private investment makes up only 17% of global infrastructure funding.[24] In contrast, public investment makes up 83% of international infrastructure funding, with 34% coming from public entities (treasuries, ministries, departments, etc.) and 66% coming from SOEs.[25] Of course, the public-private investment ratio varies from nation to nation, region to region, and sector by sector. While 95% of investments in

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[20] Global Infrastructure Outlook, *supra* note 4.
[21] UNITED NATIONS DEPT. OF ECONOMIC AND SOCIAL AFFAIRS FINANCING FOR DEVELOPMENT OFFICE, ADDIS ABABA ACTION AGENDA OF THE THIRD INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT (2015) at 8.
[22] World Bank Group, *International Debt Statistics 2022*, 33, (2021)
[23] Anita George, Rashad-Rudolf Kaldany, Joseph Losavio, *The world is facing a $15 trillion infrastructure gap by 2040. Here's how to bridge it*, World Economic Forum (Apr. 11, 2019), https://www.weforum.org/agenda/2019/04/infrastructure-gap-heres-how-to-solve-it/
[24] THE WORLD BANK AND THE PUBLIC-PRIVATE INFRASTRUCTURE ADVISORY FACILITY, *supra* note 17 at 2.
[25] *Supra*

countries located in Sub-Saharan Africa were from public sources, Latin-American and Caribbean nations had 40% of their infrastructure funding come from private sources, with nations such as Mexico and Brazil having more private investment in infrastructure than public investment.[26] And while public investment dominates the transportation, energy, and water sectors, private investment funds 77% of global information and communications technology infrastructure.[27] Nevertheless, generally, public investment makes up most of international infrastructure funding.

Attracting private investors to infrastructure projects is notoriously tricky. Infrastructure projects are often high-risk ventures, and while they serve the public good, they are not always profitable. But compounding this for low- and middle-income nations are two distinct issues: 1) the enhanced perception of political risk derived from local's attitude towards private investments, changes in government, deficiencies in contract enforcement measures, etc., and 2) a lack of adequate mechanisms to mitigate financial risks such as fluctuations in exchange rates, the cost of raw material, or more complex challenges such as implementing ways to make local currency financing available.[28] Furthermore, private investors are often unsure how, where, and when to commit capital because governments often cannot present projects in a programmatic way.[29]

Yet, as the UN acknowledged in the 2015 Addis Ababa Action Agenda, encouraging private investment in infrastructure is crucial to meet low- and middle-income countries' needs.[30]

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[26] *Supra* at 4.
[27] *Supra*
[28] Ricardo De Vecchi Galindo, *Unlocking private investment in infrastructure in developing countries*, Global Infrastructure Hub (Apr. 29, 2022), https://www.gihub.org/articles/unlocking-private-investment-in-infrastructure-in-developing-countries/.
[29] George, *supra* note 23.
[30] *See* UNITED NATIONS DEPT. OF ECONOMIC AND SOCIAL AFFAIRS FINANCING FOR DEVELOPMENT OFFICE, *supra* note 21.

As their moniker suggests, low- and middle-income countries do not have a high yearly gross national income ("GNI") and thus lack a sufficient tax base to meet all their infrastructure funding needs.[31] This, in addition to the common political and economic issues that come with raising taxes, makes pursuing private investment for infrastructure projects an attractive proposition for many governments.[32]

The BRI

As countries have responded to the global infrastructure investment deficit in various ways, China has emerged as a leader in providing foreign investment to low-and middle-income countries' infrastructure projects. The BRI was first announced in 2013 by President Xi Jinping during a visit to Astana (renamed in 2019 to Nur-Sultan), the capital of Kazakhstan.[33] Inspired by the historical silk road, the BRI has emerged as the biggest foreign infrastructure investment initiative the world has ever seen, with China having spent $932 billion cumulatively.[34] The BRI has 6 transnational corridors that serve as focus areas to build infrastructure for the purpose of logistic connectivity: 1) the New Eurasia Land Bridge Economic Corridor, 2) the China-Mongolia-Russia Economic Corridor, 3) the China-Central Asia-West Asia Economic Corridor, 4) the Indochina Peninsula Economic Corridor, 5) the Bangladesh-China-India-Myanmar Economic Corridor, and 6) the China-Pakistan Economic Corridor.[35]

China has five cooperation priorities for the BRI: 1) policy coordination, 2) facilities connectivity, 3) unimpeded trade, 4) financial integration, 5) people-to-people bonds.[36] The BRI

[31] *World Bank Country and Lending Groups,* THE WORLD BANK, (last visited Nov. 30, 2022), (defining low- and middle-income countries as those with a GNI per capita of $ 1,085 or less and $1,086-$13,205 respectively), https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups
[32] *See* Ellen Dannin, *Crumbling Infrastructure, Crumbling Democracy: Infrastructure Privatization Contracts and Their Effects on State and Local Governance?,* 6 Nw. J. L. & Soc. Pol'y 47, 48-52 (2011).
[33] Wolff, 29 Transnat'L & Contemp. at 252.
[34] *Id.* at 253.
[35] *Id.*
[36] *Id.* at 254.

is overseen by the "Leading Group" for promoting its work hosted by the National Development and Reform Commission (NDRC) which oversees and coordinates all BRI projects (including inter alia with the Ministry of Commerce (MOFCOM), the Ministry of Foreign Affairs (MFA), and the Development Research Centre of the State Council (DRC)).[37] BRI investment projects are estimated to add over USD 1 trillion of outward funding for foreign infrastructure over the 10-year period from 2017.[38] While new mechanisms have been formed to help with the financing, such as the Silk Road Fund, most of the Chinese funding for these projects will actually come from state-directed development and commercial banks.[39] China is also supporting a multilateral approach to investment, including MDBs and private-public partnerships.[40]

Rather than there being a general and specific of BRI law, the legal components that BRI are not unified either internationally or within nations own domestic laws. China and participating countries have entered into memoranda of understanding (MoUs) and other cooperative agreements, with many of these agreements are listed on China's official BRI website.[41] However, these agreements are general, and many do not even relate to or explicitly mention the BRI.[42] Many bilateral agreements have been concluded amongst different countries. Examples are bilateral investment treaties (BITs), double taxation treaties, and judicial assistance treaties.[43] However, hardly any of these agreements are BRI-based or provide BRI-specific

[37] THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, CHINA'S BELT AND ROAD INITIATIVE IN THE GLOBAL TRADE, INVESTMENT AND FINANCE LANDSCAPE (2018) at 3.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] Wolff, 29 Transnat'L & Contemp at 265-66.
[42] *Id.*
[43] *Id.*

elements.[44] And neither China or countries participating in the BRI have has enacted real BRI law or rules and regulations with specific BRI relevance.[45]

Previous U.S. Policy on International Infrastructure Funding Pre-PGII

The United States' policy on international infrastructure funding has been shaped by both its reaction to the BRI and its efforts to help solve the infrastructure funding gap. Ever since the BRI's announcement in 2013, the U.S. response to it has ranged from downplaying to a critical hyperattention[46] Broadly, the U.S. response can be broken down into 3 distinct periods: 2013-2015, 2016-2018, and 2019 up to the present day.[47]

From 2013 to 2015, the U.S. responded to the BRI with dismissal.[48] Feeling President Xi's announcement was hollow, the U.S. concluded the BRI had little substance.[49] This conclusion led the U.S. to decline China's invitation to join their new Asian Infrastructure Investment Bank.[50] The U.S. also advised its allies to not participate in the bank as well.[51]

However, between 2016 and 2018, it became clear that China was serious about the BRI with growing outbound investments and infrastructure contracts.[52] As result, the U.S. began to give hyper attention to the BRI, deeming it the premier example of Chinese expansionist foreign policy and geared to undercut U.S. geopolitical interests.[53] During period, common criticisms the U.S. often directs towards the BRI began to emerge, such as "debt-trap" and "economic statecraft" accusations.[54] Ironically, U.S. criticisms aided China in adjusting how the BRI was

[44] *Id.*
[45] *Id.*
[46] Ye, *supra* note 8 at 121-2.
[47] Ye, *supra* note 8 at 120.
[48] Ye, *supra* note 8 at 121-2.
[49] Ye, *supra* note 8 at 120.
[50] Ye, *supra* note 8 at 120.
[51] Ye, *supra* note 8 at 120.
[52] Ye, *supra* note 8 at 120.
[53] Ye, *supra* note 8 at 120.
[54] Ye, *supra* note 8 at 120; *see also* Wolff, 29 Transnat'L & Contemp. Probs at 263-65.

implemented, convincing them to adding new provisions to prevent risky and irresponsible projects.[55] And despite U.S. criticisms, the host countries of BRI funded projects generally found them useful and described the US charges as self-serving and patronizing.[56]

In 2019 and 2020, U.S. continued their critical hyperattention towards the BRI with new adaptations in the wake of the Covid-19 pandemic.[57] The U.S. often underscored China's "weaponization" of BRI, emphasizing its military involvement in projects.[58] This made it possible for the U.S. to penalize a wide range of commercial actors under the pretense of defending national security.[59] However, this characterization is inaccurate and mostly serves to isolate the financiers, builders, and trading companies the BRI has incorporated in both China and abroad.[60]

But not content to simply criticize China and interested in reducing the infrastructure funding gap, the U.S. has participated in both directly funding foreign infrastructure projects and encouraging investment in infrastructure projects. During President Trump's time in office, the U.S. state department launched the Blue Dot Network in collaboration with Australia's Department of Foreign Affairs and Trade and Japan's Bank for International Cooperation.[61] The Blue Dot Network is a multilateral effort to certify infrastructure projects that meet certain quality standards.[62] Projects certified by the Blue Dot Network, by virtue of their certification, are supposed to signal that they are sustainable, transparent, market-driven, and aligned with the Paris Agreement.[63] These standards involve ten elements:

[55] Ye, *supra* note 8 at 120.
[56] Ye, *supra* note 8 at 120.
[57] Ye, *supra* note 8 at 120.
[58] Ye, *supra* note 8 at 120.
[59] Ye, *supra* note 8 at 120.
[60] Ye, *supra* note 8 at 120.
[61] U.S. DEPT. OF STATE, *supra* note 11.
[62] *Id.*
[63] *Id.*

1. Promoting sustainable and inclusive economic growth and development
2. Promoting market-driven and private sector led investment, supported by judicious use of public funds
3. Supporting sound public financial management, debt transparency, and project-level and country-level debt sustainability
4. Projects that are resilient to climate change, disasters, and other risks and aligned with the pathways toward 2050 net-zero emissions needed to keep global temperature change of 1.5 °C
5. Ensure value-for-money over an asset's full life-cycle cost
6. Building local capacity, with a focus on local skills transfer and local capital markets
7. Promoting protections against corruption, which encouraging transparent procurement and consultation processes.
8. Upholding international best practices of environmental and social safeguards, including respect for labor and human rights.
9. Promoting the non-discriminatory use of infrastructure services
10. Advance inclusion for women, people with disabilities, and underrepresented and marginalized groups.[64]

By certifying and auditing infrastructure project under a common standard, the Blue Dot Network hopes to encourage private investors to fund infrastructure projects in low- and middle-income nations, closing the infrastructure funding gap.[65]

The U.S. has also passed legislation meant to support international infrastructure development. In 2018, Congress passed two pieces of legislation the Better Utilization of Investments Leading to Development Act ("BUILD Act") and the AGOA and MCA Modernization Act.[66] The BUILD Act mobilizes private-sector dollars to support economic development in low- and middle income countries by establishing the United States International Development Finance Corporation (DFC), authorizing a higher exposure cap for the DFC than the exposure cap for the former Overseas Private Investment Corporation, and providing new tools to attract investors to help low- and middle-income countries access private resources to

[64] THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, THE BLUE DOT NETWORK: A PROPOSAL FOR A GLOBAL CERTIFICATION FRAMEWORK FOR QUALITY INFRASTRUCTURE. (2022) at 14.
[65] U.S. DEPT. OF STATE, *supra* note 11.
[66] THE WHITE HOUSE, *supra* note 11.

generate economic growth.[67] The AGOA and MCA Modernization Act authorized the Millennium Challenge Corporation (MCC) to make concurrent regional compacts under specified conditions, which can include investments in regional infrastructure.[68] Congress also reauthorized the Export-Import Bank of the United States (EXIM) for 7 years in 2019.[69] The EXIM's reauthorization legislation also took steps to advance American leadership in transformational exports, which can include support for goods and services necessary for open, secure, reliable, and interoperable information and communications technology.[70]

But while the U.S. has taken steps in promoting funding for infrastructure projects in low- and middle- income countries with Blue Dot Network and previous legislation, these efforts lacked a comprehensive approach and were unilateral.[71] This led to inefficiencies and missed opportunities for coordinated investments to deliver at scale.[72] Biden then sought to create a more comprehensive and multilateral approach by announcing the PGII in Summer 2022.[73]

The PGII is an effort by the U.S. and other G-7 nations to "offer low- and middle-income countries a comprehensive, transparent, values-driven financing choice for infrastructure development to advance climate and energy security, digital connectivity, health and health security, and gender equality and equity priorities."[74] President Biden hopes to raise $600 billion by 2027 for projects focused on these priorities.[75] In creating this choice, the U.S. aims, through the PGII, to:

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[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] Keith, *supra* note 2.
[74] THE WHITE HOUSE, *supra* note 11.
[75] THE WHITE HOUSE, *supra* note 13.

1. partner with low- and middle-income countries to finance infrastructure across key sectors that advances the four key priorities critical to sustainable, inclusive growth: climate and energy security, digital connectivity, health and health security, and gender equality and equity;
2. promote the execution of projects in a timely fashion in consultation and partnership with host countries and local stakeholders to meet their priority needs and opportunities, balancing both short- and longer-term priorities;
3. pursue the dual goals of advancing prosperity and surmounting global challenges, including the climate crisis, through the development of clean, climate-resilient infrastructure that drives job creation, accelerates clean energy innovation, and supports inclusive economic recovery;
4. support the policy and institutional reforms that are key to creating the conditions and capacity for sound projects and lasting results and to attracting private financing;
5. boost the competitiveness of the United States by supporting businesses, including small- and medium-sized enterprises in overseas infrastructure and technology development, thereby creating jobs and economic growth here at home;
6. advance transparency, accountability, and performance metrics to allow assessment of whether investments and projects deliver results and are responsive to country needs, are financially sound, and meet a high standard;
7. mobilize private capital from both the United States private sector and the private sector in partner countries;
8. build upon relationships with international financial institutions, including the multilateral development banks (MDBs), to mobilize capital;
9. focus on projects that can attract complementary private-sector financing and catalyze additional market activity to multiply the positive impact on economies and communities;
10. coordinate sources of bilateral and multilateral development finance to maximize the ability to meet infrastructure needs and facilitate the implementation of high standards for infrastructure investment;
11. uphold high standards for infrastructure investments and procurement, which safeguard against bribery and other forms of corruption, better address climate risks and risks of environmental degradation, promote skills transfer, generate good jobs, mitigate risks to vulnerable populations, and promote long-term economic and social benefits for economies and communities; and
12. align G7 and other like-minded partners to coordinate our respective approaches, investment criteria, expertise, and resources on infrastructure to advance a common vision and better meet the needs of low- and middle-income countries and regions.[76]

To accomplish this more comprehensive approach, Biden created the position of Special Presidential Coordinator for the PGII.[77] This Special Coordinator has been charged with

[76] THE WHITE HOUSE, *supra* note 11.
[77] *Supra.*

overseeing the execution of the PGII and as central communicator between the U.S. and G-7 nations, partners, the private sectors, and other actors.[78] The Secretary of State, the Secretary of the Treasury, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Energy, the Administrator of the United States Agency for International Development (USAID), and other agency heads were charged with implementing efforts consistent with the PGII.[79] In particular, the Secretary of State was charged with addressing partner countries needs within the PGII priority areas, identifying potential priority infrastructure projects for the PGII, coordinating diplomatic efforts to expand the PGII beyond G7 Nations, and leading interagency efforts regarding international coordination on infrastructure development standards and metrics, including on labor and environment, and certification mechanisms, including through the Blue Dot Network.[80] The Secretary of Commerce was charged with promoting the use of United States equipment and services in international infrastructure development. The Secretary of the Treasury was charged with implementing a strategy to catalyze private-sector investment and engaging with multilateral development banks (MDBs) to foster high-quality infrastructure investment to support low- and middle-income countries across the PGII's four key priority areas.[81] The Secretary of Transportation was charged with developing and implementing a strategy to promote high-quality, sustainable, and resilient transportation infrastructure in low- and middle-income countries.[82]

[78] *Supra.*
[79] *Supra.*
[80] *Supra.*
[81] *Supra.*
[82] *Supra.*

The Biden Administration has already begun several projects and initiatives to fulfill the goals of the PGII. These efforts have largely taken the form of financial aid in the form of government grants and loans, such as a $3 million grant to a Vietnamese renewable energy developer, AMI AC Renewables, to build a utility-scale battery energy storage system at a solar farm it operates in southeastern Vietnam and a $500 million loan to First Solar, an American solar manufacturing company, to support its solar module manufacturing activities in Tamil Nadu, India.[83] The exception to this trend is the Department of Transportation (USDOT) announcement of MOMENTUM, a global technical assistance and capacity-building program.[84] As described by Sec. Buttigieg in the MOMENTUM announcement video[85], the program seeks to provide transportation planners and officials with USDOT transportation expertise through both publicly available digital resources, such as toolkits, USDOT publications, research, and manuals[86], as well as direct technical assistance in areas such as transportation infrastructure projects.[87] Nevertheless, the Biden Administration has focused most its efforts in the months following the PGII announcement on meeting its public funding commitment[88] rather than laying out a comprehensive plan to encourage private investment.

[83] *Additional PGII Projects,* THE WHITE HOUSE, (June 30, 2022) https://www.whitehouse.gov/wp-content/uploads/2022/06/Other-PGII-projects.pdf
[84] *Supra.*
[85] *Momentum: A Global Engagement Program of the United States Department of Transportation,* U.S. DEPT. OF TRANSPORTATION, (last visited Nov. 29, 2022) https://www.transportation.gov/momentum.
[86] *Momentum Resources,* U.S. DEPT. OF TRANSPORTATION, (Nov. 10, 2022), https://www.transportation.gov/mission/office-secretary/office-policy/momentum/momentum-resources.
[87] *What We Do,* U.S. DEPT. OF TRANSPORTATION, (June 24, 2022) https://www.transportation.gov/office-policy/momentum/what-we-do.
[88] THE WHITE HOUSE, *supra* note 80.

III. To Encourage Private Investment, the U.S., under the PGII, should focus on the planning stage of Infrastructure Projects and use Project Preparation Facilities to provide financial, but especially technical assistance, during the planning stage.

A key distinction between the PGII and BRI is the former's commitment to encourage private investment in infrastructure projects. The $932 billion the BRI has provided to projects is mostly public investment from the Chinese Government, whether it be directly from their treasury or state-directed commercial and development banks.[89] While the PGII does hope to provide $600 billion in public investment by 2027, it clearly imagines and plans to set forth a greater role for the private sector in funding infrastructure projects.[90] Yet, as previously discussed, private financing currently plays a minor role in the funding of infrastructure projects.[91]

While there are multiple reasons for the difficulty getting the private investors to finance infrastructure projects, one of the most consequential is poor project planning. Most projects require years of design, cost-benefit analyses, and technical, environmental, legal, and social impact studies before they can be built.[92] Without adequate planning, issues such as unclear roadmaps, inaccurate costing, political interferences, and many others can compound on one another and lead a project to failure.[93] For private investors, such planning is particularly important, as it makes clear to them how risks are being allocated, the likelihood of a return on their investment, and when and where to invest their money.[94] While International

[89] THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *supra* note 35 at 3.
[90] THE WHITE HOUSE, *id.* note 13.
[91] *See* THE WORLD BANK AND THE PUBLIC-PRIVATE INFRASTRUCTURE ADVISORY FACILITY, *supra* note 17 at 2.
[92] Daniel Zelikow, Fuat Savas, *Mind the Gap: Time to rethink infrastructure finance*, WORLD BANK BLOGS (May, 20, 2022), https://blogs.worldbank.org/ppps/mind-gap-time-rethink-infrastructure-finance.
[93] King Matthew Eja, Manu Ramegowda, *Government Project Failure in Developing Countries: A Review with Particular Reference to Nigeria*, 19 Global J. of Soc. Sci. 35, 35 (2020).
[94] Zelikow, *supra* note 89.

Organizations, like the G-20, have established project preparation facilities (PPFs) to provide funding and technical assistance during the project planning phase in developing countries and emerging markets, they aren't focused or tethered to the objectives of the PGII, such as health infrastructure and digital connectivity.[95] As part of efforts to encourage private investment for low- and middle-income countries infrastructure projects under the PGII, the U.S. and its G-7 partners should create PPFs or a functionally similar entities to provide aid in project planning.

Project Planning is a major impediment to Private Financing of Infrastructure Projects yet a redressable one

One of the most cited difficulties in completing infrastructure projects in low-and middle-income nations is poor project planning and management. To use Nigeria as an example[96], research into the country's infrastructure projects across a variety of economic sectors have revealed six aspects of project planning as reasons for a project failure.[97] These are 1) Inaccurate costing, 2) Lack of Expertise, 3) Poor Scheduling and Estimation, 4) Lack of Communication, 5) Poor Contracting Practices and 6) Political Interference.[98] Inaccurate costing occurs when the actual costs of a project exceed the estimated costs.[99] This can occur when a project scope is expanded without adjusting the estimates or economic conditions cause the total price of the project to rise, such as raising the price of construction materials.[100] Nigeria, and other developing nations, can often suffer from a lack of adequately skilled professionals to plan and

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[95] *Id.* (identifying that the G-20 started a PPF known as the Global Infrastructure Facility); *About GIF*, GLOBAL INFRASTRUCTURE FACILITY, (last visited Nov. 29, 2022), https://www.globalinfrafacility.org/about-gif.
[96] Nigeria was chosen as an example because it's emblematic of many of the project planning and management problems developing countries have that serve as a barrier to private investment. Obviously, not every low-and middle-income country suffers all the problems of Nigeria, or to the same extent. Nevertheless, Nigeria suffers many of the problems these countries face to varying extents and degrees, just serving as an expedient example for the purposes of this article.
[97] *See* Eja, 19 Global J. of Soc. Sci. at 39-40.
[98] *Id.*
[99] *Id.* at 39.
[100] *Id.*

manage infrastructure projects.[101] One of the major reasons for this lack of expertise is migration, as skilled professionals in developing countries, like Nigeria, often leave to other countries for more income and a higher standard of living.[102] This leaves Nigeria and other nations with a lack of core knowledge of project management tools, often causing them to use foreign project management professionals for a higher cost.[103]

Partially due to the lack of expertise, most projects in Nigeria have poor scheduling and estimation, features that are critical for the execution of successful projects.[104] In particular, the lack of developed objectives and clear-cut roadmaps has often left projects devoid of structured progressions, causing significant failures in Nigerian projects.[105] Lack of communication, in particular between government actors and private parties, have been linked to project delays and abandonments.[106] When communication breaks down, contractors are uncertain when to continue their work and private investors are uncertain when and where to place their investment.[107]

Nigeria also suffers from poor contracting practices.[108] Oftentimes, Nigerian State Actors will award contracts to build a project to the lowest bidder, without consideration of the bidder's experience and competency.[109] Other practices, such as the acceptance of a contractor's non-performance and embezzlement of allocated budgets to contractors, have resulted in projects being delivered late or sub-par and even project failure across all of Nigeria.[110] Finally, Nigeria projects can often suffer from political interference as well.[111] Oftentimes, succeeding

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[101] *Id.*
[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.* at 40.
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*

governments will fail to allocate funds for projects started by their predecessors, preventing them from being completed.[112] One particular instance is the Gelegale Seaport Project in Edo State, which has failed to start despite an initial readiness by the government due to the opposition parties taking power and interfering with the project.[113]

The combination of these project planning failures has severe fiscal, economic, and political consequences in Nigeria. For instance, in road construction Nigeria has wasted 2 trillion Naira ($5.517 billion) due to project planning failures between the years 2000 and 2019.[114] These failures have been a major impediment in improving Nigeria's road system with less than sixteen percent of road construction projects being completed despite heavy investment.[115] When these projects fail, the local community hosting the project suffers because they lose out on the economic gains these projects would have reaped, whether it be in terms of business activity or employment.[116] And more broadly, widespread project failure can result, as it does in Nigeria, in slow economic growth, sector-centric underdevelopment, and withdrawal of foreign aid and finance both private and public.[117]

For private investors, these planning failures makes investing in projects incredibly risky. Broadly speaking, private investors need infrastructure projects to be "bankable" or investment ready.[118] A project is bankable when its risk-return profile meets the targeted investor's expectations, allowing the project to secure funding from said investor.[119] Assessing whether a project is bankable differs between investors, but generally they are looking at the project's

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112 *Id.*
113 *Id.*
114 Id. at 41.
115 *Id.*
116 *Id.*
117 *Id.* at 41-42.
118 *What is Bankability?* CITIES CLIMATE FINANCE LEADERSHIP ALLIANCE (Apr. 28, 2022) https://citiesclimatefinance.org/publications/what-is-bankability/.
119 *Supra.*.

likelihood of meeting its financial, environmental, and social goals, that the estimated cash flows the project is seeking will cover its costs, that the product will produce returns that satisfies the investors expectations, and the entity implementing the project is creditworthy.[120] Investors look at these metrics for confidence that regulatory, environmental, social, and economic factors will not prevent the project from being completed, and that they will be able to make a return on their investment.[121]

The project planning phase, where costs are estimated, impact studies are conducted, and the project's scope and goals are established, is critical in making a project bankable to private investors. As discussed when examining Nigeria, the cause of project delays and abandonment is often attributed back to failures in planning, such as poor estimation and scheduling, lack of communication, and inaccurate costing.[122] Such failures would lead most if not all investors to determine that a project is not bankable. If a project has poorly developed roadmaps, such as those seen in Anambra State[123], then investors will not be confident that the project will be able to meets its goals.[124] The same is true for inaccurate costing[125], as it creates doubt that the project's estimated cash flows will cover the costs or produce a return that satisfies the investor's expectation.[126]

Recognizing that deficiencies in project planning is a major impediment to private investment in infrastructure projects, many international organizations, such as G-20 and Inter-American Development Bank[127], have created PPFs to help develop bankable projects. A PPF

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[120] *Supra.*
[121] *Supra.*
[122] Eja, 19 Global J. of Soc. Sci. at 39.
[123] *Id.*
[124] *See* CITIES CLIMATE FINANCE LEADERSHIP ALLIANCE, *supra* note 115.
[125] Eja, 19 Global J. of Soc. Sci. at 39.
[126] *See* CITIES CLIMATE FINANCE LEADERSHIP ALLIANCE, *supra* note 115.
[127] GLOBAL INFRASTRUCTURE FACILITY, *supra* note 92; *Project Preparation Facilities,* INTER-AMERICAN DEVELOPMENT BANK, (last visited Nov. 29, 2022), https://www.iadb.org/en/about-us/project-preparation-facilities.

provides financial and technical assistance to project owners, concessionaries, governments, and public agencies during the planning stages of projects.[128] This assistance provided by the PPF includes: 1) undertaking project feasibility, social, and environmental studies; 2) developing procurement documents, project concessional agreements and bid documents; 3) managing the bidding process; 4) assisting with evaluation, awards, and negotiations; and 5) creating awareness among the stakeholders.[129] The PPF's goal in this assistance is to make projects bankable, that is to develop projects to the point where they attract sufficient private investors' attention.[130]

With their focus on project planning, PPFs have proven a useful tool in ensuring successful project planning and the creation of bankable projects. The planning of a project requires that several questions be answered: "How to pay for a project?"; "How to allocate risk?"; "How much environmental and social disruption is acceptable?" If these questions aren't satisfactorily answered during the project planning phase, then the likelihood that the project is delayed or even abandoned is increased. This is true not only in Nigeria[131], but in other low-to-middle income countries as well.[132] PPFs, with their focus on addressing these questions, significantly reduces the risk that projects will be delayed or abandoned and have clear goals and roadmaps to make them bankable to private investors.

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[128] Oshani Perera, David Uzsoki, Fida Rana, *Project Preparation Facility: Enabling local governments access to private finance*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, 2, (2017), https://www.iisd.org/system/files/publications/project-preparation-facility-government-access-private-finance.pdf.
[129] *Id.* at 2-3.
[130] *Id.* at 3.
[131] *See* Eja, 19 Global J. of Soc. Sci. at 35.
[132] INTER-AMERICAN DEVELOPMENT BANK, Towards an Efficient and Sustainable Preparation of Infrastructure Projects, 3, (2020). (finding that that a lack of environmental, social and governance oversight can generate cost overruns between 15 and 70 percent, and delays from 12 months to 13 years.)

The U.S. and other G-7 nations should create a Project Planning Facility for each of the PGII Focus Areas

As the PGII seeks to encourage private investment in infrastructure projects, the U.S., in collaboration with other G-7 nations, should establish several PPFs respectively targeted at the focus areas of the PGII.[133] PPFs are a crucial tool in creating bankable projects because they are focused on providing technical assistance during the planning phase of projects, where many of the criteria investors use to determine if a project is investment-ready are established.[134] Making projects bankable is in line with the U.S. long term objective to give low-and middle-income countries access to private investment for infrastructure funding. An objective the U.S. has pursued in other efforts, such as the blue dot network and its certification system.[135] The U.S. has also taken steps in recognizing that to implement the PGII goals a focus on project planning is required, as seen with the Department of Transportation's MOMENTUM Program.[136] PPFs are also a tool the U.S. has a familiarity yet, as through the U.S. Trade and Development Agency (USTDA) the U.S. has created PPFs to provide assistance with individual initiatives, such as Power Africa.[137]

Given U.S goals and familiarity with PPFs, establishing several PPFs specifically tailored to the infrastructure focus areas of the PGII[138] will allow it to encourage private investment in these areas, complementing U.S. other efforts. For example, a PPF focused exclusively on digital

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133 *See* THE WHITE HOUSE, *id.* note 11. (Identifying the focus areas of the PGII as climate and energy security, digital connectivity, health and health security, and gender equality and equity.)
134 CITIES CLIMATE FINANCE LEADERSHIP ALLIANCE, *supra* note 115.
135 U.S. DEPT. OF STATE, *supra* note 11.
136 U.S. DEPT. OF TRANSPORTATION, *supra* note 84.
137 *Project Preparation Facilities Toolbox*, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, 1, (April 2016), https://2012-2017.usaid.gov/sites/default/files/documents/1860/PPF%20Toolbox%20REVISED.pdf.
138 *See* THE WHITE HOUSE, *id.* note 11. (Identifying the focus areas of the PGII as climate and energy security, digital connectivity, health and health security, and gender equality and equity.)

connectivity and related projects[139], such as broadband towers and networks, would both be able to provide partners with the assistance needed to effectively plan these projects and connect them with private investors.[140] Similarly tailored assistance can also be provided to projects that fit the other PGII focus areas[141] through these specific PPFs.

While there are other PPFs offered by both public and private entities[142], the Biden Administration should still create PPFs tailored to the PGII's goals. Collective financing mechanisms aimed at addressing global needs can be vulnerable to fragmentation as participants views on how to address them diverge.[143] Research into the Global Environment Facility ("GEF"), a trust fund design to fiscally assist developing countries address global environmental concerns[144], has shown that disagreements over priorities[145] and the failure of donors to honor their pledges[146] can fragment[147] a once unified funding effort. As PPFs are partially funding mechanisms, providing financial assistance during the planning phases of projects[148], they are subject to this trend. With this in mind, the PGII would be best served by the Biden Administration and its G-7 partners to create PPFs tailored to the partnership rather than relying on other PPFs exclusively. However, the U.S. and its G-7 partners should be willing to partner with other PPFs when they can, like the PPF collaboration in the Power Africa Partnership.[149]

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[139] *Id.*
[140] INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, *supra* note 124 at 2-3.
[140] *Supra*
[141] *See* THE WHITE HOUSE, *id.* note 11. (Identifying the focus areas of the PGII as climate and energy security, digital connectivity, health and health security, and gender equality and equity.)
[142] U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT *supra* note 132 at 1.
[143] Sophie Smyth, *A Practical Guide to Creating a Collective Financing Effort to Save the World: The Global Environment Facility Experience*, 22 Geo Int' Envtl. L Rev. 29, 36 (2009)
[144] *Id.* at 33.
[145] *Id.* at 57-8.
[146] *Id.* at 71.
[147] *Id.* at 56.
[148] INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, *supra* note 124 at 2-3.
[149] U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT *supra* note 132 at 1.

To create these PGII-focused PPFs, the Biden Administration should use the USTDA. The USTDA is an independent agency hosted and guided by the Dept. of State.[150] The purpose of the USTDA is to promote U.S. private sector participation in development projects in developing and middle-income countries.[151] To this end, the USTDA has been granted authority to work with foreign countries by providing fiscal and technical assistance to development projects, so long as they provide opportunities for the use of U.S. Exports.[152] Under their authority, the USTDA has already created PPFs for U.S. supported projects, such as Power Africa.[153] Biden Administration can then enter into an executive agreement with the other G-7 nations to shape the governance and burden sharing of these PGII focused PPFs.

IV. PGII PPFs should consider, in addition to providing financial and technical assistance, whether Private Investment to fund a project would be in project country's best interest.

Finally, as the Biden Administration pursues greater involvement for the private sector in infrastructure funding, it shouldn't do so blindly and without regard for the best interest of the countries seeking infrastructure funding. Our own states have seen the ill effects that may come when private investors seek to secure their investment. For example, in 2008 Indiana reimbursed a private toll road operator $ 447,000 for waiving tolls of people evacuated during severe flooding.[154] If the toll road was public, the state would have waived the tolls and collected less revenue. [155] The State may have recovered the loss later in the form of increased taxes or tolls, though that recovery would likely not be the same as a profitable return. The contract, however,

[150] 22 U.S.C. § 2421(a)
[151] *Id.*
[152] 22 U.S.C. § 2421(b)
[153] *See* U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT *supra* note 132 at 6.
[154] Dannin, 6 Nw. J. L. & Soc. Pol'y at 55.
[155] *Id.*

put the private investor in better financial situation than the state, because it did not lose toll revenues, making Indiana effectively an insurer.[156] Thus, to ensure the private investor's return, the state, and by extension the public, had to pay more than they otherwise would. And this could be true for a developing country that, in seeking private funding for a project, signs a contract with an investor that requires them to ensure their return. If that developing country is prone to flooding, pursuing private investment for a road construction project might be untenable. Furthermore, other contractual provisions, such as non-compete agreements, can constrain developing nation's ability to develop their infrastructure across various sectors.[157]

This isn't to say that private investment in infrastructure should not be pursued by the PGII, only that the partnership shouldn't pursue it without regard to the public interest of low-to-middle-income countries. In her article, *Crumbling Democracy: Infrastructure Privatization Contracts and Their Effects on State and Local Governance*, Prof. Ellen Dannin outlined six factors that governments should consider when considering involving private parties in infrastructure funding: 1) protecting the public welfare; 2) ensuring value for money; 3) taking all contingencies into account; 4) establishing principles to justify the inclusion of each contract term; 5) demonstrating the superiority of privatization over public provision; and 6) establishing a process that ensures all relevant information is presented and properly evaluated, before choosing to accept private investment for a project.[158] While her article was focused on State and Local Governments, a similar disposition should be adopted by the PGII and the PPFs assisting with project planning. Otherwise, private investors' concern about collecting a profitable return may bind developing countries' ability to make critical infrastructure policy decisions.

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156 *Id.*
157 *See Id.* at 60-6.
158 *Id.* at 82

V. Conclusion

While encouraging private investment lacks a simple answer, an answer must be provided to ensure that funds are available for low- and middle-income nations. One of the most significant barriers to private investment for these countries and projects is difficulties in project planning.[159] Without proper planning, private investors will not regard these projects as bankable and invest money into them. The U.S., via the PGII, can address these issues. By using PPFs to provide technical assistance in planning these projects, the PGII can encourage private investment in infrastructure projects. However, any PPFs that the U.S. creates under the PGII, to avoid the risks of private investment, should encourage host countries to take into account (1) protecting the public welfare; (2) ensuring value for money; (3) taking all contingencies into account; (4) establishing principles to justify the inclusion of each contract term; (5) demonstrating the superiority of privatization over public provision; and (6) establishing a process that ensures all relevant information is presented and properly evaluated, before choosing to accept private investment for a project.[160]

[159] Conor Savoy, *Future Considerations for the Partnership on Global Infrastructure and Investment*, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES (June 29, 2022), https://www.csis.org/analysis/future-considerations-partnership-global-infrastructure-and-investment.
[160] Dannin, 6 Nw. J. L. & Soc. Pol'y at 82.