

# Demystifying Contracting for Social Outcomes

## HYBRID WORKSHOP REPORT

5 December 2024

**invest4health**

### Demystifying Contracting For Social Outcomes

05 December 2024

Cape Town | Online



## INTRODUCTION

**On December 5, 2024, the South African Medical Research Council (SAMRC), in collaboration with the Invest4Health Learning and Action Network (LAN) and key partners, hosted a hybrid workshop titled 'Demystifying Contracting for Social Outcomes.'** The in-person component took place in Cape Town and was accessible online, attracting a diverse group of participants from the public sector, academia, and private sector organizations.

This workshop aimed to unpack the complexities of outcomes-based contracting (OBC) and relational contracting, providing both theoretical frameworks and practical insights. Through presentations, interactive sessions, and breakout discussions, participants explored the challenges and opportunities of adopting formal-relational contracts in complex public service delivery environments.

# Demystifying contracting for social outcomes

## Workshop Agenda

Session	Speaker / facilitator
Formal relational contracting – theoretical framework	Felix-Anselm van Lier (GoLAB, UK)
Challenges of outcomes-based contracting in Brazil	Vera Monteiro (Fundação Getulio Vargas, Brazil)
Relational contracting and risk management under the IMAGINE SIB	Fareed Abdullah (SAMRC, SA)
Breakout room discussions	<b>Relational contracting:</b> <ul style="list-style-type: none"><li>• <u>Online:</u> Felix-Anselm van Lier</li><li>• <u>In-person:</u> Alma Purcell</li></ul> <b>Risk management:</b> <ul style="list-style-type: none"><li>• <u>Online:</u> Nikki Griffiths (RMB)</li><li>• <u>In-person:</u> Nevilene Slingers</li></ul>



**Expert speakers delivered insightful presentations, followed by interactive breakout discussions that allowed participants to dive deeper into specific themes.** These sessions were led by experts such as Felix-Anselm van Lier from GoLAB (social policy and public service delivery expert), Alma Purcell from SAMRC (legal and public procurement expert), and Nikki Griffiths from Rand Merchant Bank (business management and strategy expert). The breakout groups explored critical topics, including **relational contracting** and **risk management**, providing a platform for participants to share their experiences, ask questions, and discuss practical strategies for overcoming challenges in outcomes-based contracting.

The hybrid event was attended by 51 participants online, and 14 participants in person.

Figure 1: Participant distribution by Sector

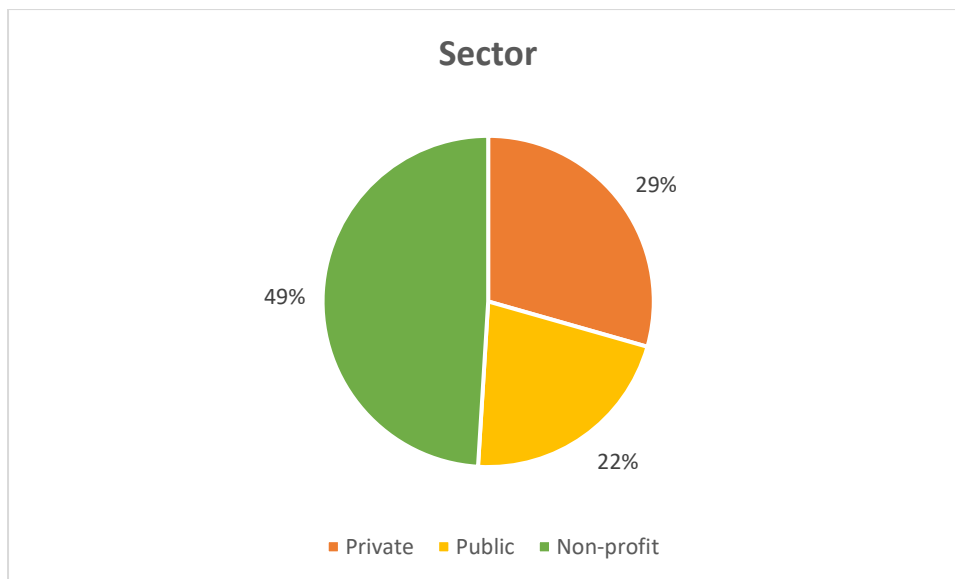
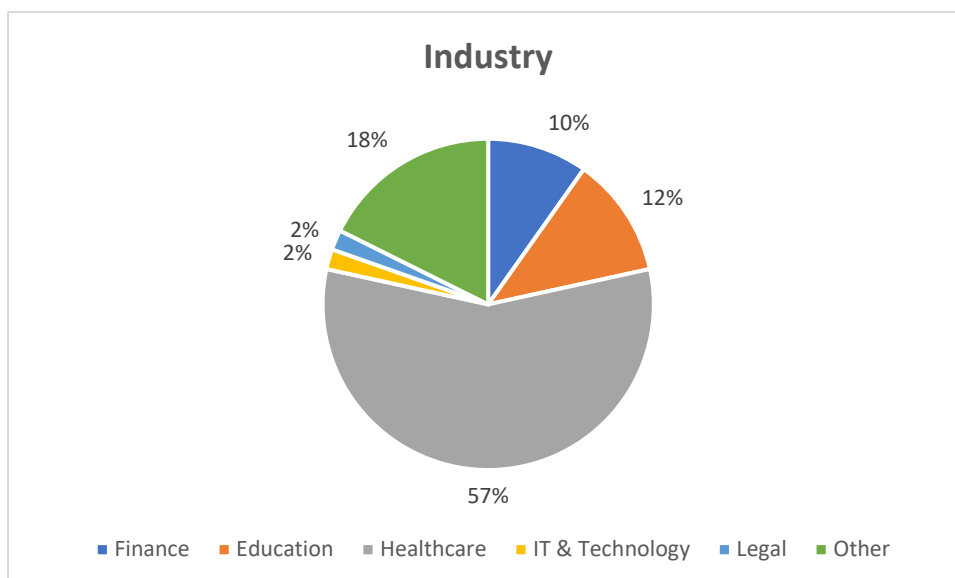


Figure 2: Participant distribution by Industry



## PRESENTATIONS AND SUMMARY OF KEY POINTS

### 1. Setting the scene

The workshop was facilitated by Nevilene Slingers, Executive Programme Manager for Social Impact Bonds at the Office of AIDS and TB Research, and Director of the SAMRC's invest4health Learning and Action Network (LAN).

She provided an overview of the **invest4health LAN** that was established in 2023 with the purpose of building a community of interest around outcomes-based financing approaches for health and development in South Africa and in Africa more broadly. It is run by a core team within the SAMRC, and is supported by Genesis Analytics, the University of Cape Town Bertha Centre and the Government Outcomes LAB (GO Lab) at the University of Oxford.

The LAN is a core component of invest4health which aims to:

- Facilitate learning including peer-to-peer learning and knowledge sharing.
- Provide an African-centric knowledge hub for OBCs, that comprises virtual and live learning events, publications, data sets, toolkits and guidelines.
- Provide a platform for professionals to exchange ideas, share best practices, and collaborate on research and projects.



## 2. Formal relational contracting – theoretical framework

**Felix-Anselm van Lier** from the Government Outcomes Lab (GoLAB), University of Oxford, delivered an insightful presentation on the theoretical framework of formal-relational contracting. He explained how this innovative approach to contracting combines the structure of formal agreements with the flexibility of relational principles to navigate the complexities of public service delivery.

Figure SEQ Figure \\* ARABIC 1: Elements of formal relational contracts

### Rules of Relationships: Elements of Formal Relational Contracts



Frydlinger, D., Hart, O. and Vitasek, K. (2019). A New Approach to Contracts. Harvard Business Review;  
Frydlinger, D., & Hart, O. (2023). Overcoming contractual incompleteness: The role of guiding principles. Journal of Law, Economics, and Organization

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Felix emphasized the challenges inherent in traditional contracting practices, which often rely on rigid, highly specified agreements that struggle to accommodate unpredictable and evolving environments. He introduced the concept of formal-relational contracts, which aim to embed trust, shared principles, and collaborative

decision-making within legally enforceable terms. This approach allows for greater adaptability while maintaining accountability between parties.

Figure 2: Challenges, risks and limits of relational contracting

## Challenges, risks, and limits of relational contracting

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- **Unequal power dynamics** (see e.g., Spiller 2008)
- **Continued gaming challenges** (e.g., “collaborative gaming” see Pierre & De Fine Licht, 2020)
- **Procurement/Corruption** (e.g. arms-length legal principles, open-market tender processes, and transparency requirements)
- **Cultural Challenges**
- **Enforceability**
- **High Transaction Costs and Negotiations** (Vincent-Jones 2012; FitzGerald et al. 2019)

See also Ball, N., & Gibson, M. (2022). Partnerships with principles: Putting relationships at the heart of public contracts for better social outcomes. Government Outcomes Lab.

Drawing on examples from recent research and practical applications, Felix highlighted the challenges and risks associated with formal-relational contracting, such as gaming behaviors and unequal power dynamics. He further emphasized the importance of shared decision-making forums and codifying relational intent into legally enforceable terms as key tools to foster cooperation and mitigate risks.

### 3. Challenges of outcomes-based contracting in Brazil

**Vera Monteiro** from the São Paulo Law School of Fundação Getulio Vargas provided an in-depth analysis of the challenges associated with outcomes-based contracting (OBC) in Brazil. She highlighted the complexities of implementing OBC within the country’s socio-economic, regulatory, and institutional landscapes.

Brazil’s progress in OBC was illustrated with examples of federal-level projects. Vera noted that 247 OBC projects have been completed across various sectors, including transport (132 projects), energy (52 projects), and urban infrastructure (27 projects).

Figure 3: Overview of Brazil's OBC progress



Source: <https://ppi.gov.br/projetos/>

She discussed the key regulatory and legal barriers, emphasizing that Brazil’s intricate public procurement framework often prioritizes procedural compliance over flexibility and outcomes.

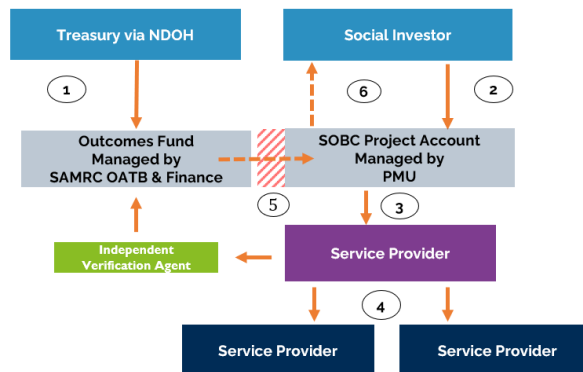
Vera also explored the challenges related to measurement and verification of outcomes, citing the lack of robust data infrastructure and the difficulties in defining clear performance indicators in sectors like healthcare and education. To address these issues, she underscored the importance of capacity building to empower public officials, overcome the risk-averse culture, and adopt independent verification mechanisms to enhance credibility and transparency.

#### 4. Relational Contracting and the Regulatory Environment: The Case of the Imagine SIB in South Africa

**Fareed Abdullah**, Director of the Office of AIDS and TB Research at the South African Medical Research Council (SAMRC) provided a comprehensive overview of the regulatory environment and its implications for relational contracting in South Africa. Using the Imagine Social Impact Bond (SIB) as a case study, he illustrated the complexities of designing and implementing outcomes-based contracts within a stringent regulatory framework.

Figure 4: Structure of the Imagine SIB

## Structure of the Imagine SIB



The Imagine SIB served as a practical example, showcasing how multi-stakeholder collaboration including the SAMRC, private investors like Rand Merchant Bank (RMB), and implementing partners like NACOSA enabled the project to navigate South Africa’s complex regulatory environment. Fared discussed how the project addressed legal requirements, such as obtaining approvals from the SAMRC Board, Treasury, and the Ministry of Health, while adhering to the Public Finance Management Act (PFMA).

### BREAKOUT ROOM DISCUSSIONS

To stimulate discussion, breakout rooms were formed around two topics namely, 1) risk management and 2) relational contracting. Both online and in-person participants selected a topic of interest, joining the corresponding group to share their experiences and insights.

Some of the key discussion points and takeaways from the break-out room discussions are summarized below:

#### Risk management

##### **Types of risks encountered:**

- Delivery risk - the risk of not achieving intended results, alongside the potential loss of investment
- Compliance risks - tax regulations in contexts like South Africa restrict philanthropic funders, limiting opportunities for innovative finance mechanisms.
- Design risks – ensuring the correct indicators for payment are selected, and that counterfactual data is accurate.
- Tension between accountability and flexibility and the risk that presents.
- Reputational risk – to all stakeholders if the programme underperforms

##### **Financial and Operational Tensions:**

- **Investor Expectations:** High investor expectations can create tension between implementers and financiers, as downside risks in outcomes-based contracts (OBCs) can be substantial.
- **Reporting Misalignment:** Differences in reporting timelines (e.g., yearly vs. annual cycles) complicate stakeholder coordination.

### **Active performance mgt/stakeholder management**

- Regular monitoring and willingness to review performance data frequently are critical to addressing risks and maintaining alignment among stakeholders/tweaking targets where possible.
- Ensuring full visibility of targets across all parties helps mitigate misunderstandings.
- Frequent and structured meetings help stakeholders stay on the same page, (balance/manage expectations)

### **Milestone clauses in contracts**

- Contracts with flexibility to adjust targets (e.g., after Year 1) based on updated baselines/results allow for better alignment with actual conditions/on-ground realities.
- Regular stakeholder engagement.
- Adopt regular reporting intervals (e.g., monthly) to improve alignment

### **Context-Specific Challenges**

- **United Kingdom:**
  - **Budget Cycles:** Budgeting cycles and procurement processes pose challenges, especially at the municipal level where contracts span different fiscal years.
  - **Political Changes:** Shifts in political leadership create unpredictability, affecting long-term contracts.
- **South Africa:**
  - **Tax Constraints:** Complex tax exemptions and exclusions restrict philanthropic funders, limiting flexibility in OBC structures.

### **Relational contracting**

#### **Safeguards against corruption:**

- Can offer a mechanism to bypass or protect against corruption in public procurement.
- However, there is a risk of stakeholders colluding or “collaborating on corruption”—finding the right balance is crucial.
- Provides opportunities for greater public transparency in contracting processes.

#### **Balancing relationships and structure:**

- While contracts cannot rely solely on relationships, they should be designed to foster strong relationships rather than create barriers.
- Managing different stakeholder expectations is challenging but important part of relational contracting.
- Building in non-negotiable clauses as well as cancellation clauses is critical.
- Important to include investors in the project management unit to make sure they are involved and that relationship extends beyond quarterly reporting.



### Performance management in outcomes-based contracting:

- A relational approach to performance management can make it less punitive, more collaborative, and encourage shared responsibility for outcomes.
- However, objectivity and independence of the performance manager remains critical.

### Transactional costs in relational contracting:

- Designing 'rules' within relational contracting can lead to significant transactional costs (expertise and time required), which should not be overlooked.

### Cultural and legislative constraints:

- Contracting operates within existing cultural norms and legislation, which may limit flexibility.
- However, participants noted early signs of cultural shifts.

### Other discussion points

- **Community-Centric Design:** Outcomes should be based on thorough research into community needs, with flexibility to adapt interventions. Eye Cataract Bond and *Side Bond for Spectacles* were highlighted as illustrative examples of how innovative financing mechanisms address specific social needs by ensuring interventions meet community-level requirements
- **Ensuring alignment among stakeholders:** Regular stakeholder consultations and performance reviews ensure continued alignment among stakeholders.
- **Collaborative Research:** Joint research into community needs helps ensure interventions are both impactful and adaptable.

### USEFUL LINKS AND FURTHER READING

- [Invest4health website](#)
- [Invest4health prior webinars](#)

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