

Middle East Vision 2030

PPP Legal Report 2017

An overview of PPP legislative frameworks
and activities throughout the Middle East

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Foreword

We are pleased to provide this report as a reference guide to all participants considering investing in Public-Private-Partnerships (**PPPs**) in the Gulf Cooperation Council (**GCC**).

Recent economic and legislative developments have led to Governments in the GCC region re-examining traditional procurement in favour of a range of alternate options for the procurement of their infrastructure projects. This has led to a number of policy initiatives (e.g. Saudi Arabia's *Vision 2030*), many of which identify public-private-partnerships (**PPP**) as a preferred procurement method.

PPPs are fundamentally different to the traditional procurement model by virtue of the role that the private sector plays in the project. Unlike traditional procurement, where Government finances all infrastructure development and also performs all core and non-core services, in a PPP model, the private sector finances the development aspects and performs certain services.

Understanding the PPP legal landscape in the GCC is critical for those considering investing in infrastructure projects. Further, the GCC is not a single market. As such, we are seeing a diverse approach from Governments on how they are planning to procure their infrastructure assets and services.

Practices differ by country, and also in some cases by sector. For example, power and water projects have, in some countries, been carved out of the scope of new PPP laws. In other cases, new PPP laws are horizontal (i.e. they apply across multiple sectors), but must be read together with existing sector laws. In the event of inconsistencies, or where legislation is silent on a particular issue, the provisions of the new PPP Law are expressed to apply, in some countries. Accordingly, it is important that the new PPP laws are not read in isolation.

We have reviewed the new PPP laws and regulations throughout the GCC and we have prepared this report as a reference guide for potential sponsors and financiers. The report summarises the current PPP legislative activities in each GCC country. It highlights some of the cross-sector differences identified above, and provides high level comments on what sponsors and financiers will need to consider as they prepare their bids for Middle East PPP projects. Finally, it lists several upcoming PPPs in each GCC region.

Examples of select PPPs at, or shortly coming to market, throughout the GCC include:

GCC	PPPs by Sector (see Report for details)
UAE	Water, Waste, Transport, Leisure
KSA	Water, Power, Airports, Waste, Healthcare, Education
Kuwait	Water, Power, Education, Waste, Labour, Road, Rail
Qatar	Sport/Leisure, Water, Waste
Oman	Water, Power, Healthcare, Leisure
Bahrain	Water, Rail, Waste

Given the complexities and length of PPP projects, the emerging legal PPP landscape, and the fact that very few PPPs have been successfully closed in the Middle East, sponsors and financiers will need to engage experienced PPP advisers to advise them on each stage of the PPP process. Each project will face its own unique challenges, risks and issues. Each of these issues can be overcome with careful planning and expert advice.

We have extensive experience in advising clients – both procurers and private sector parties – on the procurement of major infrastructure projects, including under PPP models. Our lawyers have advised on more than 40 PPP projects throughout the Middle East and internationally. We are active on a number of “first mover” PPP projects in key GCC markets. We would be pleased to discuss the contents of this report further with parties interested in participating in PPP projects.

For further information, please visit www.kslaw.com or contact the authors.

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Disclaimer: This Report is a reference guide for public and private clients and their advisers interested in PPP projects in the GCC and expresses the opinions of the authors. It should not be construed as legal advice or legal opinion on any specific projects. It should not be treated as a substitute for professional advice, which would include detailed legal, financial and technical evaluation of any proposed project.

United Arab Emirates

Dubai's adoption of a specialised PPP law in the autumn of 2015 has served to reignite interest in PPPs in the region. There are some reports that Abu Dhabi may follow suit in the near future. In the meantime, analysis of the current state of PPPs in the UAE focuses on the Emirate of Dubai.

Status of Dubai's PPP Law

Dubai's PPP Law (Law No.22 of 2015) was passed on 20 September 2015, and came into force on 19 November 2015 (the "**Dubai PPP Law**"). It was the first piece of specific overarching PPP legislation in the UAE. Both Dubai and Abu Dhabi have previously enacted laws to deal with private sector participation in the power and water sectors, but Law No 22 of 2015 provides an overarching framework for PPPs generally. The Dubai PPP Law applies to all public-private agreements entered into by a government agency, with the notable exception of independent power producer projects ("**IPPs**") and independent water and power projects ("**IWPPs**") and contracts for works, materials or services.

Key Features of the Dubai PPP Law

- **Procurement Procedures:**

The Dubai PPP Law contains a high level description of the permitted procurement procedures for use in PPP projects. There is a notable commitment to core World Trade Organisation principles, including transparency, freedom of competition and equality. Competitive bidding is required for all PPP projects, except unsolicited approaches for projects from the private sector, which entitle the procuring agency to make a direct award to the proposer if the project is feasible.

Each procurement process contains stages requiring bidder qualification, selection rounds, and evaluation of bids. Provisions concerning the award of the PPP project agreement are also prescribed. It is anticipated that further supplementary guidance and regulations will be issued to flesh out how the procurement procedures will be conducted in practice.

- **Project Company Governance and Ownership:**

The Dubai PPP Law does not supersede foreign ownership restrictions under UAE law. The Dubai PPP Law does, however, address the issue of ownership of project companies by differentiating between where the public sector takes equity and where it does not. Where it does, the project company must be constituted as a limited liability company. Any bidder that can demonstrate that it has the requisite technical and financial capabilities (and is also willing to offer financial security to the Dubai Government's satisfaction), can undertake the project itself without the need to establish a separate project company. Notably, unlike some other PPP laws in the GCC region, there is no requirement for an initial public offering of shares in the project company.

The Dubai PPP Law requires an ownership lock-up period during which no transfer of ownership in the project company will be permitted. The actual timeframe is to be determined on a project-by-project basis.



- **Financing and Other Incentives:**

The private sector's ability to secure external debt finance is a critical aspect of PPP projects, as most PPPs internationally attract project finance. The Dubai PPP Law includes an express right on behalf of the project company to seek authorisation for debt finance from the procuring Government entity and the Department of Finance. Further regulations will be issued relating to financing as projects approach their bid stage.

- **The PPP Project Agreement:**

The PPP Project Agreement is the key legal agreement between the public sector and private sector. It regulates all aspects of the partnership. The Dubai PPP Law provides the Dubai Government and its procuring entities with a degree of flexibility in the negotiation of the commercial terms of the PPP Project Agreement. A list of mandated provisions in PPP Project Agreement are set out in the Dubai PPP Law. These requirements concern matters which would generally be included within PPP arrangements as a matter of course, such as ownership of assets, intellectual property and insurance.

The governing law of the PPP Project Agreement must be the laws of the Emirate of Dubai. The use of arbitration (conducted within the jurisdiction) is permitted.

The duration of the PPP Project Agreement is limited to 30 years. Any longer period requires the approval of the Supreme Committee for Fiscal Policy.

The Dubai PPP Law envisages the transfer of the project back to the Government. Where this is at the end of the at the end of the project term, this would indicate a preference by Government towards the build-operate-transfer or “BOT” model. Where this happens earlier, this would indicate a preference towards the build-transfer-operate or “BTO” model. Both models are mentioned in the legislation. To allow future development of a secondary PPP market, the Government is expressly permitted to transfer its interest in an existing project to a private sector entity.



Central PPP Unit

The Dubai PPP Law does not establish a specialist PPP authority of PPP Unit. Instead, the approval and management of the Dubai PPP programme falls under the remit of the Supreme Fiscal Committee. The extent of delegated authority to approve PPP projects relates to the overall value of the project in question.

PPP projects with a “total cost to be borne by the government” of less than AED 200 million (approx. USD 55 million) can be approved by the CEO of a Government entity.

PPP projects with a total cost between AED 200–500 million (approx. USD 55–135 million) can be approved by the Department of Finance.

Other Relevant Legislation

Whilst the Dubai PPP Law is intended to simplify the development of PPP projects in the Emirate of Dubai, potential sponsors and funders should be mindful of other relevant legislation which has a bearing on such projects.

The most notable exception to the scope of the Dubai PPP Law are IPPs and IWPPs; these projects are expressly excluded from the ambit of the PPP statute and are instead subject to Law No. 6. of 2011.

Contracts for works, materials or services are also subject to Law No. 6 of 1997 (the Emirate of Dubai’s procurement law). Further, Federal Law No.2 on Commercial Companies applies in relation to the ownership restrictions for the companies established for the purpose of delivering projects.

Recent Developments

The Dubai Supreme Court PPP project, the first deal to reach commercial close under the Dubai PPP Law, is reported to reach financial close during the second quarter of 2017.

Reports also indicate that supplementary guidance and regulations relating to the Dubai PPP Law will be published in the second half of 2017.

Deal Pipeline (select deals)

PPP Name	Details
RDF Facility in UAQ	The UAE’s Ministry of Climate Change and Environment is in the initial stages of tendering a municipal solid waste treatment plant in the Emirate of Umm Al Quwain, which will see the selected private sector participant enter a joint venture agreement with the procuring ministry.
Union Oasis PPP	The Dubai Government is proposing to develop a mixed-use development PPP to transform Union Oasis station into a transit oriented development. Proposal for the construction of 15,000m2 of mixed use towers - residential, commercial and retail. The RTA are also administering the procurement process.
Mohammed Bin Rashid Stadium	Development of a 60,000 seat sports venue situated in Al-Awir area of Dubai. The project will be the world's first air conditioned and raised above ground level stadium. The plans include a training complex, 5,000 space car park, sports museum and conference halls. Latest market information indicates that the project will be procured by the Roads and Transport Authority (“RTA”) which has taken a lead on the procurement of many recent PPP projects in Dubai
Dubai Taxis PPP Project	The Dubai Government is proposing to develop three adjacent plots in Dubai to include taxi depots and accommodation for over 1000 drivers. The project is being procured by the Dubai Taxi Corporation (a subsidiary of the RTA).

Kingdom of Saudi Arabia

Status of PPP Law

The Kingdom of Saudi Arabia does not currently have a specific PPP law. Government infrastructure projects have traditionally been undertaken in accordance with the Government Tenders and Procurement Law (Royal Decree No. M/58 4 Ramadan 1427H / 27 September 2006) and its related Implementing Regulations (the “**Procurement Law**”) and a set of privatisation guidelines published around the turn of the millennium by the now defunct Supreme Economic Council .

The Procurement Law is principally concerned with regulating the procurement of traditional works, services and goods contracts and does not deal with the complexities of a PPP project. One example is that certain “continuing service contracts, such as maintenance, cleaning, operations” are not permitted to exceed a period of 5 years. Another example is that the duration of public works contracts are only permitted to extend to a term which is proportionate to the nature of the works, and to the approved annual funds allocated for the project. These requirements would need to be extended (to periods of between 20 - 25 years) to match the typical length of long term PPP projects.

The publication of the “*Saudi Vision 2030*” strategy document released in April 2016 and the subsequent approval of the “*National Transformation Plan*” (NTP) demonstrates the Government’s determination to place public sector participation at the heart of its reform agenda. The most notable objective set out in the NTP was the requirement that five new PPP projects must be implemented by 2020. Additionally, ambitious targets for private sector investment into healthcare, transport, education and social housing were set for the relevant departments.

The NTP targets have already served to ignite the Saudi PPP market, with opportunities coming shortly in sectors such as transport, healthcare, education, power and water. These opportunities will be for both “greenfield” and “brownfield” PPP projects, with many PPP programmes requiring the adoption of assets currently in construction and/or the rehabilitation of existing assets in need of substantial redevelopment.

To build on the foundations laid down by *Saudi Vision 2030* and the NTP, the Government will reportedly publish a PPP legislative framework before the end of 2017. It is hoped that this legislation facilitate the development of the PPP market in the Kingdom by creating clear and streamlined procurement processes for PPP projects.



Central PPP Unit

The organisation likely to shoulder much of the responsibility for delivering on the targets set out in the *Saudi Vision 2030* and the NTP is the recently established “National Centre for Privatisation” (**NCP**).

The NCP will form the country’s central PPP unit, acting as the driving force behind the planning and oversight of PPPs in the Kingdom. The NCP operates under the Ministry of Economy and Planning and reports to the Economic and Development Affairs Council.

The NCP is expected to take the lead on delivery of the new PPP legislation, develop policies, strategies and regulations as well as identifying potential projects for private sector involvement. Specifically, the NCP is charged with the execution of twelve key tasks by virtue of its founding statute, Cabinet Resolution 355 of 2017:

1. *“Develop policies, strategies, programs, regulations, plans and tools that achieve the objectives related to the projects of privatization in accordance with the applicable regular regulations and follow up executing the same.*
2. *Propose the sectors and activities that can be privatized and the opportunities of its investment and develop it to complete all required acts to that regard.*
3. *Identify standards and frameworks required for target sectors to be privatized when preparing the relevant studies and researches.*
4. *Develop the appropriate rules that help to manage the projects related to privatization in coordination with the relevant authorities.*
5. *Develop the requirements required to establish entities in which the private sector participates from inside and outside of the Kingdom with the government authorities through the proposed privatization projects to be developed, executed and reviewed.*
6. *Coordinate with the sectors to be privatized to make sure of its readiness and its implementation of technical and financial requirements including determining the best method for privatization and participation of private sector from inside and outside of the Kingdom and appropriate execution and governance plans, timelines in order to complete the required regular procedures.*
7. *Review the progress of work plans for any of projects to be privatized and control and review it and conduct periodic evaluation of the results of privatization programs and intervene if required to resolve any problem.*
8. *Evaluate the readiness of macroeconomics of the privatization program and manage the relevant risks.*
9. *Identify the key performance indicators related to privatization and other indicators in coordination with the relevant authorities.*
10. *Conduct the studies require to analysis the benefits and risks in sectors to be privatized and evaluate the developmental and economic effects and propose what is necessary in this regard.*
11. *Contribute in training and qualifying the cadres in the field of privatization to ensure raising the level of its performance in order to achieve the developmental objectives.*
12. *Represent the Kingdom in regional and international conferences and seminars related to privatization, to enter into agreements with the international specialized entities to utilize of the best practices, regulations, researches and studies in this regard in accordance with the applicable regular procedures.”*

Notably, the second recital to the Cabinet Resolution creating the NCP sets out a one year strategic performance review which is to commence on the first anniversary of the organisation’s formation. The purpose of the review is for the Economy and Development Affairs Council to consider whether the Centre needs “*expansion or whether it will continue its works or not*”. The relatively short review period reinforces the view that the Government is committed to the development of a PPP market.

Other Relevant Legislation

Until a new PPP law is published (or a series of enabling sector specific laws), PPP projects will need to take into account the Procurement Law and other relevant sector laws.

Projects in the electricity and water (cogeneration) sector are governed by the Electricity Law (Issued by Royal Decree No. M/56 20 Shawwal 1426 / 22 November 2005) and its Implementing Regulations. It is not known whether the new PPP law will include electricity and water projects, or leave those to be procured under existing (or revised) legislation.

Recent Developments

Market participants and consultants alike are eagerly awaiting the release of the long-awaited legal framework for PPPs. Recent reports in the Middle East Economic Digest suggest that the Saudi Government is aiming to finalise legislation governing PPPs by the end of 2017. At the time of writing, it is unclear what form the PPP legislation will take.

Deal Pipeline (select deals)

PPP Name	Details
IWP/IWPP Programme	SWCC is considering new and expanded desalination projects (some involving the production of power). SEC has also indicated it is considering new IPPs and REPDO has announced two renewable projects to the market.
Sewage Treatment Plants	Plans are in place for STPs in Jeddah, Makkah, Taif and Riyadh.
“Privatisation” Of Airports	GACA is seeking to undertake a privatisation programme of the Kingdom’s airports. This is anticipated to involve a number of PPPs and privatisations.
Waste Management	Plans are in place for waste management PPPs with private sector development and operation of landfill and other waste management assets and services.
Healthcare PPP Programme	Plans indicate the privatization of many hospitals and the creation of a range of privately operated primary care centres.
Education PPP Programme	The Ministry of Education, through Tatweer Building Council, is planning a multi-billion USD program for schools PPPs.

Status of PPP Law

In 2008, Kuwait enacted Law No.7 of 2008 regarding the “Regulation of Build, Operate and Transfer (BOT) Operations and Similar Operations”. This was accompanied by a PPP guidebook outlining how PPP projects were to be undertaken.

In 2014, Kuwait updated this with Law No 116 of 2014 “Regarding Public Private Partnerships”. This was followed in March 2015 with Decree No. 78 of 2015, related Executive Regulations (collectively, the **Kuwait PPP Law**).

The Kuwait PPP Law governs the procurement of all PPP projects in the state of Kuwait, including IPPs. This is notably different from the approach taken by other GCC states who have sought to address power and water projects through mutually exclusive legislation.

Key Features of the Kuwait PPP Law

- **Procurement Procedures:**

The procurement procedures within the Kuwait PPP Law are prescriptive, with the Executive Regulations detailing a process commencing with an Expression of Interest, proceeding to an Invitation for Qualification, a pre-qualification selection stage, submission and evaluation of bids resulting in a final award decision.

Unsolicited approaches for projects from the private sector are permitted, but remain subject to a competitive process; however, the proposer is given an advantage and an underwriting of costs incurred in undertaking feasibility studies.

- **Project Company Governance and Ownership:**

The Kuwait PPP Law provides that:

- for projects under 60 million Kuwaiti Dinar (**KD**) (approx. USD197 million), the project company may be fully owned by the consortium members; and
- for projects exceeding 60 million KD, a public joint stock company must be established, of which 50% of the shareholdings must be offered to the general Kuwaiti public. The remaining 50% will be jointly held by the successful bidder (with a minimum guarantee of 26% shareholding) and the relevant Kuwait procuring authority.

- **Financing and Other Incentives:**

The Kuwait PPP Law allows lenders to take security over certain assets of the project company. Share pledges over the project company, step-in rights (subject to Higher Committee approval), a charge over the project company’s assets, and to book debts and/or income generated are permitted. However, sales/ mortgages of the land on which the project is established are prohibited. The term of any security must match the project term. The borrowing level is capped to a pre-agreed amount.

The Kuwait PPP Law envisages certain incentives for the private sector such as exemptions from tax, duties or fees, which are to be specified on a project specific basis.

- **The Project Agreement:**

The Kuwait PPP Law sets out a list of mandated provisions which must be contained within the PPP Project Agreement, including the requirement that the governing law is the laws of Kuwait. The use of arbitration (conducted within the jurisdiction) is permitted.

PPP Project Agreements can last up to 50 years from the completion date of construction.

The Kuwait PPP Law envisages the transfer of the project back to the Kuwaiti Government at the end of the project term, which follows the BOT model.

Recent Developments

In autumn 2016, the Kuwait Authority for Partnership Projects (**KAPP**) signed a deal with the World Bank to assist it in the production of a PPP guidebook. The PPP guidebook will reportedly detail the standard contractual provisions to be included in all PPP agreements and will provide guidance to all public sector procuring entities and private sector participants on the approaches to restructuring and implementing PPP projects.

Central PPP Unit

The Kuwait PPP Law created “KAPP”, which is mandated with responsibility for managing the implementation of PPP projects and is the country’s Central PPP Unit. KAPP replaces Kuwait’s previous incarnation, the Partnerships Technical Bureau. KAPP operates under the supervision of the “Higher Committee for Public Private Partnerships.”

KAPP is responsible for establishing project delivery vehicles, developing standardised PPP documentation and conducting feasibility studies for PPP projects. The Higher Committee’s role is to sanction and oversee the operations of KAPP.

Other Relevant Legislation

The Kuwaiti PPP Law is a horizontal law (applying across multiple sectors). However, it is important for any parties looking at involvement in the Kuwaiti PPP market to note that there is a degree of interaction with the existing power and water law. Law 39 of 2010 (as amended by Law 28 of 2012 and Law 19 of 2015) and related Executive Regulations regulate the structure and procurement of power and water projects. However, where this legislation is silent on a particular issue, the provisions of the PPP Law will apply.

Additionally, in relation to labour city projects, a 2010 statute entitled the Labor Cities Law (Law No. 40/2010) sets out the tendering process, bid contents and a number of other provisions with respect to the building of housing for expatriates in Kuwait on a BOT basis.

Deal Pipeline (select deals)

PPP Name	Details
Kuwait 1GW Solar Project	Kuwait National Petroleum Company (KNPC) is currently seeking to procure 1 GW of photovoltaic (PV) solar under a BOO model at the Al-Ahagaya renewable energy complex.
Al Abdaliyah Integrated Solar Combined Cycle	KAPP is procuring a 220MW combined-cycle gas plant and 60MW solar photovoltaic facility on a 25 year Build-Operate-Transfer basis.
IWPPs	KAPP is seeking bids for a 50 year 1.5GW IWPP under a DBFOT model at Az Zour North, Phase 2 . KAPP is also seeking bids for a 1.8 GW IWPP under a DBFOT model for Al-Khairan IWPP
Kabd Waste-to-Energy Facility	KAPP is seeking bids for a greenfield 25 year W2E project to treat 3,000 tonnes of waste per day under a DBFOT model.
Umm Al Hayman WWTP	KAPP is seeking bids for a 25 year 700,000 m3/day WWTP under a BOT model.
Kuwait Metropolitan Rapid Transit System, Phase 1	KAPP has announced its intention to tender a 160km inner-city transport network with four lines using a DBFOT model.
Kuwait National Rail Road System (KNRR)	KAPP has announced its intention to tender a 574km freight and passenger transport line between Kuwait and neighbouring countries using a DBFOT model
Kuwait Schools Development Programme	KAPP is seeking private sector participation for 9 schools PPPs under a 25 year DBFOT concession.
South Al-Jahra Labour City	Initial plans have been drawn up for a 1,015,000m2 “labour city” to house 20,000 labourers.

Status of PPP Law

The Sultanate of Oman has been long associated with a pipeline of successful implemented public-private projects in the form of power and water projects, especially IPPs and IWPPs tendered by the Oman Power & Water Procurement Company (**OPWP**) pursuant to Royal Decree 78/2004 (the “**Energy Sector Law**”) and Royal Decree 36/2008 (the “**Tenders Law**”).

Oman has not passed a PPP law. However, the development of a PPP law has been identified in the Government’s most-recent 5 year plan, and the Omani government has commissioned consulting firms to deliver a PPP law and advise on the structuring of PPP governance. We understand a draft PPP law is with the Oman Government and is expected to be published before the end of 2017.

It is unknown whether and how the Energy Sector Law and Tenders Law will be affected when the PPP law is passed.

Recent Developments

The Middle East Economic Digest has reported that the Omani PPP legislation could be enacted by the start of Q3 2017.

Central PPP Unit

We anticipate that, once a PPP law is passed, a Central PPP Unit will be considered to prepare tenders and manage competitive processes.

Other Relevant Legislation

As noted above, the highly successful power and water projects pipeline has been regulated by the Energy Sector Law. The majority of non-PPP government procurements are likely to continue to be procured under the Tenders Law.

Deal Pipeline

PPP Name	Details
Muscat IPP	A 800 to 1000MW power plant to be tendered as an IPP.
Oman Desert Solar Farm	A 200MW solar farm using a IPP delivery structure.
Duqm Desalination Plant	OPWP is procuring a desalination plant with capacity of 60,000 cubic metres of water per day, using the IWP model.
Khasab Desalination Plant	Desalination plant with capacity of 16,000 cubic metres of water per day. Procured by OPWP and structured as an IWP.
Muscat/Barka Area Desalination Plant	Desalination plant with capacity of between 225,000 – 325,000 cubic metres per day, also under a IWP model.
Salalah Desalination Plant, No.3	Desalination plant with capacity of 100,000 cubic metres per day. IWP model.
Salalah Desalination Plant, No.4	Desalination plant under a IWP. The confirmed capacity has not yet been announced.
Sharqiyah IWP Desalination Plant	Desalination plant with capacity of 80,000 cubic metres per day, using the IWP model.
Sultan Qaboos Medical City	Proposal to develop three hospitals and a rehabilitation centre with a total of 1,250 beds. Reportedly valued in excess of \$780m, let under a build-operate-transfer model on a term of up to 30 years.
Port Sultan Qaboos Waterfront	A \$1.3bn mixed-use development project over 451,000 square metres. PPP model will be used but the exact structure is to be decided.

Status of PPP Law

Whilst successfully procuring projects using a variant of the PPP model, in the form of several IPPs and IWPPs – notably the Ras Laffan IWPP Phases A, B and C and the Mesaieed A IPP project, the Qatar government has not formally undertaken any PPP projects outside of the power and water sector. The *2030 National Vision* document published by the Qatari government established the objective to expand its healthcare, education and tourism sectors through the increased participation of the private sector.

The Ministry of Economy and Commerce (**MOEC**) has been charged with development of the PPP law which was reportedly passed to the Council of Ministers in Qatar for review in Q1 of 2017.

Recent Developments

Reports in the media have suggested that the new PPP law is due to be enacted in Q3 2017.

Central PPP Unit

We anticipate that, once a PPP law is passed, a Central PPP Unit will be considered to prepare tenders and manage competitive processes. The alternative may be that MOEC will assume overall responsibility.

Other Relevant Legislation

Qatar recently enacted a new tenders and procurement law with related executive regulations in the form of The Tenders and Bids Regulatory Law Promulgated by Law No. (24) of 2015, and Ministerial Resolution No. (22) of 2016 Promulgating Executive Regulation of Tenders and Bids. In common with many other public procurement laws in the GCC, the intention of this legislation is to govern traditional procurements by Government rather than the procurement of PPP projects.

Deal Pipeline

PPP Name	Details
Ras Abu Fontas A4 IWP Desalination Plant	Proposed development of 36 million-imperial-gallon-a-day plant in Doha. Procured by the General Electricity & Water Corporation (Kahramaa) using the IWP delivery model.
Solid Waste Management Centre, Doha	Following the success of the Doha Domestic Solid Waste Management Centre plans are being drawing up a new waste treatment facility in the city. The proposed initial treatment capacity is 3,000 tonnes a day with potential to increase capacity to 5,300 tonnes per day by 2022.
Ras Abu Abood stadium (also known as the Fourth Precinct stadium)	The Supreme Committee for Delivery & Legacy handling the preparation for the 2022 World has suggested that it is exploring PPP models as a potential delivery approach for the stadium.
Hospitality PPP	The first Qatari PPP in the hospitality sector. Under the proposed hotel development scheme, the government will lease the development land to its chosen developer who will be responsible for securing sources of private finance for the hotel works.

Bahrain

Status of PPP Law

Bahrain has not passed a PPP law. However, in 2002, Bahrain introduced a law to govern privatisation of state-owned entities in the form of Legislative decree No. 41, “*With Respect to Policies and Guidelines of Privatization*”. This law does not specifically apply to PPPs.

Historically, Bahrain’s PPP project pipeline has been strong in terms of residential housing projects. In 2012, a five-year PPP agreement for the construction of 3,110 social housing units and more than 1000 affordable homes was signed to develop North Bahrain New Town, Al Buhair, and Al Lawzi.

Central PPP Unit

Bahrain currently does not have a centralised PPP unit.

Other Relevant Legislation

In addition to Legislative decree No. 41 Decree By Law No. 12 of 1971 promulgating the Civil and Commercial Procedures Law sets out the restraints on enforcement proceedings relating to real estate owned by the crown.

Deal Pipeline

PPP Name	Details
Hidd Solar	The Bahrain Electricity & Water Authority has recently announced its intention to tender an IPP project to produce solar energy from the Hidd water tanks project.
Askar Waste-to-Energy	The Ministry of Finance has indicated it will tender a greenfield BOT project on a 25 year concession period in Manama. The electricity generated from the 25MW plant will be fed into the grid.
A-Dur 2 IWPP	The Bahrain Electricity and Water Authority is in the initial stages of tendering a 1.2 – 1.5 GW and 50 MiGD capacity IWPP.
Light Rail PPP	This project’s initial phase will cover 25,000km with a passenger capacity of 8,000 to 10,000 per hour in either direction. It is being procured by the Department for Transport under a BOT model.



Status of PPP Law

PPPs in Jordan are governed by Law Number (31) of 2014 “Public-Private Partnership Law 2014” (the “**Jordan PPP Law**”) and Regulation Number (98) of 2015 “Public Private Partnership Regulation” (the “**PPP Regulation**”) and a Public Private Partnership Policy Paper prepared by the Public Private Partnership Unit (the “**PPP Policy Paper**”). Together, these three publications set out the general framework for regulating PPP Projects in Jordan.

Key Features of the Jordan PPP Law

- **Procurement Procedures:**

The PPP Regulation sets out a prescriptive tender process for PPPs. Any government entity seeking to launch a PPP procurement process must first receive approval from the Jordanian PPP Unit (see further below). Upon receiving approval, the procurement process must generally include the issuance of an expression of interest document to interested bidders, a pre-qualification selection round, publication of an invitation to tender to prequalified bidders followed by an award to the preferred bidder.

The PPP Regulation permits a degree of post-tender negotiation with the preferred bidder occurring between award and contractual close, however substantial changes to the risk allocation, deviations from items stated as “non-negotiable” in the tender documents and modifications which could impact on the bid evaluation exercise, are not permitted.

As in Kuwait, unsolicited proposals can be submitted by the private sector for innovative projects which are not already under consideration by a government body. If a proposal is accepted, any award remains subject to a competitive tendering exercise. However, the proposer can be given an exemption from pre-qualification, and if unsuccessful, the PPP Regulation requires the winning bidder to compensate the originator for the cost of any feasibility studies/initial expenses incurred.

- **Project Company Governance and Ownership:**

The Jordanian PPP law requires project companies to be “Jordanian and registered in accordance with Jordanian laws”. Consequently, the project company will be subject to the provisions of the Jordan Companies Law.

The share capital of the project company must also align with the minimum requirements set out in the tender documentation. The PPP Regulation does permit a Jordanian procuring authority to take a minority equity stake in a project company. Such equity interests must not exceed 25% of the shares which have voting power and the procuring authority is not permitted to possess a controlling share of the project company.

- **Financing and Other Incentives:**

Jordan’s PPP law provides that lenders to the project company may obtain security over the cash flows of the project, subject to Jordanian law.

- **The PPP Project Agreement:**

Jordan’s PPP law contains a defined high-level list of general provisions which must be included in a PPP Project Agreement. These are market standard for PPP projects, and address issues such as change in law, force majeure and early termination consequences. The most notable stipulations are that the duration of the project agreement cannot exceed 35 years. Further, the PP Project Agreement must contain a clear statement on ownership of the project assets and transfer of ownership at the end of the project must be included in the contract. Although notably, the Jordan PPP Policy Paper does contain reference to the potential to conduct BOO projects which may involve the permanent transfer of ownership.

Recent Developments

The PPP Policy Paper stated that the Jordanian Government intends to publish a PPP Guidebook to accompany the PPP legislation, PPP Regulation and PPP Policy Paper. There is no date stated for this release.

Central PPP Unit

Jordan has taken a unique approach to the administration of its PPP programme by establishing three principal entities. Each assumes responsibility for a different aspect of the PPP agenda:

PPP Unit: The Jordan PPP Law established the PPP Unit under the Ministry of Finance. The PPP Unit is charged with developing and implementing the program for all PPP projects, coordinating with all concerned ministries, institutions, and stakeholders and to develop and enhance the enabling environment for PPPs.

PPP Council: The PPP Council is the supreme authority responsible for PPP related decisions and policy making in Jordan. The PPP Council has the responsibility for general oversight of the PPP program and relies on the PPP Unit to undertake the operational enforcement of its decisions.

Technical Committee for Financial Commitments: The Technical Committee was also established by the Jordan PPP Law and is heavily involved in the procurement of PPP projects. The Committee has the authority to review, identify, and monitor financial commitments relating to PPP projects, especially those that require government budget support. The Technical Committee reports to the Minister of Finance and the PPP Council.

Other Relevant Legislation

The Jordanian PPP Law is intended to act as a horizontal law, stated to apply to all “economic sectors”. However, the PPP Council has authority to recommend sectors where the PPP legislation should not apply.

Additionally, Jordan has sector-specific laws which relate to activities deemed “privatization”. It is noticeable that the prior PPP legislation in Jordan, Privatisation Law No. 25 of 2000, and Regulation No.80 of 2008 implementing Privatisation Transactions, interpreted privatisation to include PPP delivery models such as BOT, BOO and BOOT in Jordan. Therefore, parties interested in the undertaking of PPP projects (or variants thereof, IPPs/IWP/IWPPs) in the utilities sector should also be familiar with the provisions of the Water Authority Law No 18 of 1988, Public Electricity Law No 64 of 2002 and the Telecommunication Law No 13 of 1995.

Deal Pipeline

PPP Name	Details
Jordan Red Sea-Dead Sea Canal (RSDSC) Phase 1 PPP (Desalination Plant in Aqaba and Canal to Dead Sea)	Jordan’s Ministry of Water and Irrigation is developing a BOT project comprising a desalination plant in Aqaba, a hydro-electric plant and a 112 mile water canal pipeline to transport water from the Red Sea to Dead Sea.
Jordan Greater Amman Municipality – Solid Waste to Energy Facility	Greater Amman Municipality (in conjunction with the European Bank for Reconstruction and Development) is seeking to develop a landfill gas recovery system at the Al Ghabawi solid waste landfill facility in Amman under a design, build and operate contract.
Jordan Airport PPP programme	The Jordanian Ministry of Transport is examining the feasibility of 3 potential airport PPP projects in excess of \$300 million in value. Airport projects under consideration include: North Shouneh airport in Madaba, Amman Civil airport in Marka and King Hussein Airport in Aqaba. Projects likely to be let under a BOT model.
Irbid Waste to Energy	Ministry of Energy and Mineral Resources is currently procuring a private sector partner to develop a waste to energy facility with capacity of 1000 tonnes per day on a build-operate-own basis.

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