

2ND EDITION

Delivering Infrastructure Projects under a Public-Private Partnership Model

A guide to achieving success in transportation and social
infrastructure PPP projects in the Middle East

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Overview

We are pleased to provide this White Paper as a reference guide to participants involved in Public-Private-Partnership projects, particularly in transport and social infrastructure. This is the second edition of the White Paper first published in 2017, and incorporates further insights and lessons learned from our teams' collective experience advising clients over the last eight years.

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Foreword

We are pleased to provide this white paper as a reference guide to participants involved in public-private partnership (PPP) projects, particularly transport and social infrastructure projects. This is the second edition of the white paper prepared by Tim Burbury and first published in 2017, and incorporates further insights and lessons learned from our teams' collective experience advising clients over the past eight years.

We refer to transport and social infrastructure projects in this white paper to illustrate points. However, the essential principles of PPPs can generally be applied across all types of infrastructure projects.

Since 2017, governments across the Gulf Cooperation Council (GCC) have embraced the use of PPPs on a much larger scale, and in recent years, the model has begun to be applied to a wider range of projects. The increase in the number of PPPs is spurred by numerous factors, including the establishment or further development of legal frameworks (all GCC countries have now promulgated a specific PPP law) and the implementation of national economic strategies requiring the rapid delivery of large amounts of infrastructure (e.g., Saudi Arabia's Vision 2030 initiative and the UAE's 2040 vision). Please refer to our recent publication *Third Wave of PPPs in the GCC* for more information.

The procurement of infrastructure using the PPP model can result in significant benefits for procurers. This white paper discusses a number of those benefits, including whole-of-life costing, optimal transfer of risk, innovation in design and improved service delivery – all of which drive value for money for procurers.

This white paper discusses each stage of procuring a PPP project, from the preliminary assessment and feasibility study to the bid process to execution of the PPP contract and, finally, post-award capacity building. This white paper explores each stage and all relevant issues.

Given the complexities of PPP projects and the lengths of their terms, all participants in PPP projects should engage experienced PPP advisers to assist with each stage of the process. Each project implemented using the PPP model will face unique challenges, risks and issues, all of which can be overcome with careful planning and advice.

King & Spalding has extensive experience advising both public-sector procurers and private-sector participants on the procurement and delivery of infrastructure projects, including under PPP models. Our lawyers have advised on more than 60 PPPs throughout the Middle East and internationally (see Appendix 7). We would be pleased to discuss the contents of this white paper further with parties interested in developing such projects.

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Glossary

| | |
|---------------------|--|
| EOI | Expression of interest |
| EPC | Engineering procurement and construction |
| FM | Facilities management (sometimes described as “operations and maintenance” or “O&M”) |
| GCC | Gulf Cooperation Council |
| PPP | Public-private partnership |
| PPP contract | The contract between the government procurer and the private-sector SPV granting the rights to undertake the project. This agreement can have a variety of names; in the GCC, it is often called a “concession agreement.” |
| PSC | Public-sector comparator, used to inform the VFM assessment |
| RFP | Request for proposal |
| SPV | Special-purpose vehicle (often referred to as a “project company”) |
| VFM | Value for money |



1.

Traditional Procurement versus PPP

1.1 Procurement Options for Infrastructure Projects

Broadly speaking, there are three different procurement models that may be considered for delivery of transportation and social infrastructure projects, as follows:

| Procurement Model | Description of Model |
|-------------------------|---|
| 1. Fully public | <ul style="list-style-type: none">Government retains full responsibility for designing, constructing and financing the infrastructure and for both core and non-core services during the operations phase. |
| 2. Semi-private | <ul style="list-style-type: none">Government engages the private sector to design, construct and finance the facilities. Responsibility for the provision of services during the operations phase is split between government (core services requiring interface with the public) and the private sector (non-core services). |
| 3. Fully private | <ul style="list-style-type: none">Government engages the private sector to design, construct and finance the facilities and the delivery of both core and non-core services during the operations phase. |

Traditionally, public projects such as roads, airports, rail, hospitals, schools and housing were procured by government contracting directly for the design and construction of the relevant infrastructure. Under this fully public model, government itself finances, or borrows to finance, the design and construction of the infrastructure and related services. Once construction is completed, government is responsible for the operation and maintenance of the asset and related services. This approach requires government to spend or take on debt to deliver infrastructure, as well as retain the majority of the risk in the project, including ongoing operation and maintenance risk over the life of the asset.

Semi-private and fully private models aim to leverage the strengths of both the public and private sectors. The public sector provides necessary oversight to ensure that the project serves the identified societal needs, while the private sector contributes expertise, resources and efficiency in delivering and operating the project. This approach allows government to allocate risks to private-sector entities, which are often better placed to manage or mitigate them, and to spread the cost of delivering infrastructure over a lengthy term.

This white paper focuses on the semi-private model, which lends itself to the delivery of PPP projects.

1.2 Description of PPP

Many countries, including GCC members, have an established record of procuring infrastructure projects using a PPP model. Different jurisdictions take different approaches when utilizing a PPP model. However, across the board, these approaches amount to a method of procurement whereby the private sector provides long-term services to the public sector in relation to the finance, design, construction, operation and maintenance of defined infrastructure.

PPPs almost always involve the establishment of a long-term relationship between the public procurer and the private-sector participants, with the latter assuming typical project risks (i.e., for financing, developing and operating the asset) in exchange for remuneration. The

involvement of the private sector in the financing of the infrastructure is one of the fundamental differences compared with traditional procurement models. Unlike traditional procurement, where government finances all infrastructure development and also performs all related services, under a PPP model the private sector finances and undertakes the development of the infrastructure. Responsibility for the services in relation to the infrastructure is then split between the public and private sectors, depending on the type of infrastructure being procured and other factors. These factors include the division of responsibilities during operations, the way revenue is derived, how land use rights are granted and the level of assistance that government may be required to provide to the project.

1.3 Why PPP Might Be Chosen Instead of Traditional Procurement

In countries where PPPs have been successful, the key benefit to the public sector in adopting a PPP approach over traditional procurement methods has been where the project delivers value for money (VFM). VFM is assessed by benchmarking private-sector bids against public-sector assessments to determine the cost of the private sector delivering and operating the infrastructure, compared to the public sector doing this itself.

If this assessment demonstrates that the private sector can deliver and operate the infrastructure more cost-efficiently, then the use of the PPP model will deliver VFM. Beyond this assessment, other relevant factors in determining whether the public sector achieves VFM include:

- a. **Risk allocation:** Risks associated with owning and operating infrastructure are transferred to the private sector, which is the party that can best manage and mitigate against such risks. Optimal risk transfer is the key in determining whether a project achieves VFM.
- b. **Whole-of-life costing:** The payment by government of a service fee (sometimes called a “unitary” payment) that incorporates the up-front design and construction costs by a single party, as well as predefined operation, maintenance and refurbishment costs and a return on equity.
- c. **Innovation:** The private sector is encouraged to use innovative solutions to meet government’s service requirements.
- d. **Alternative asset use:** The private sector may be encouraged to explore alternative revenue-generating uses of the infrastructure. This can have the effect of reducing the overall cost to the public sector in the delivery of the services, thereby achieving greater VFM. An example in a road or rail PPP might be the monetization of airspace advertising above toll gates or stations. An example in a student accommodation PPP might be the short-term rental of accommodation units during semester breaks.



1.4 PPP Regulatory Frameworks

A key consideration for all entities looking to embark on PPP projects is aligning their proposed procurement process with existing laws and regulations and internal procurement rules for traditionally procured infrastructure. In most cases, governments will be subject to specific tendering and procurement laws where government funds are being used to pay for the development of the assets. This requires the competitive tendering of contracts for government-initiated projects over certain financial thresholds. These tendering laws are predominately designed for traditional capex procurement, not privately financed infrastructure projects, including PPPs. For example, in Saudi Arabia, consideration must be given to the Government Tenders and Procurement Law and the associated Implementing Regulations.

In the GCC, specific PPP legislation has been developed that either takes precedence over or complements traditional procurement laws. This provides certainty for both the public and private sectors in the delivery of infrastructure and provides the necessary policy guidance to create a PPP legislative framework. Governments also publish guidance on the PPP framework process to assist procuring agencies and private-sector participants.

Given the inherent complexities of undertaking PPP projects, expert legal advice should be sought to ensure that the requirements of the relevant PPP legislation have been addressed. This issue is further addressed below in Section 3, and a summary of the status of laws and policies in each GCC country is included in Appendix 1. A more detailed summary of the various PPP regulatory frameworks around the GCC is available on our website or please send an email to ppp@kslaw.com

2.

Planning Infrastructure PPP Projects

2.1 Government's Objectives

The starting point in any infrastructure project is to determine government's objectives for that project. This articulates the service need and is the foundation for any preliminary assessment of the project's feasibility.

The objectives will vary from project to project. For example, there will be different considerations when determining the objectives for an education project versus a road project. However, the following three broad objectives are considered applicable to all infrastructure projects.

- a. **Meeting development needs**
 - i. Overcoming the shortage of available facilities or space in existing infrastructure
 - ii. Improving the condition of existing infrastructure by upgrading and refurbishing
 - iii. Taking over and completing existing infrastructure that government has started
- b. **VFM**
 - i. Reducing government's capital costs associated with the development of such infrastructure
 - ii. Allocating risk away from government and to the private sector
 - iii. Streamlining operations and reducing government's ongoing operation and maintenance costs (including the operation and maintenance of related equipment and systems)

- c. **Harnessing the expertise of the private sector**
 - i. Encouraging innovation in design and a whole-of-life approach
 - ii. Encouraging private-sector participation in the delivery of non-core services, i.e., facilities management (FM), but still retaining ultimate control in the delivery of some or all "social" or core services

Other specific objectives may exist depending on the type of project. For example, in a road project, objectives may include the enhancement of safety in design to reduce the number of road fatalities, stimulate economic growth by improving transport efficiency and reducing travel times, or improve access to underserved areas.

2.2 Benefits to Government under a PPP Model

Above, we looked at government's stated objectives in infrastructure delivery. We have also considered what benefits PPP can bring to infrastructure delivery. The table below consolidates these and illustrates how a PPP model can meet government's stated objectives:

| Government Objective | Benefits to Government under a PPP Model |
|---|---|
| <p>Meeting development needs by establishment of new facilities, completion of partly constructed facilities and/ or refurbishment of existing facilities</p> | <ul style="list-style-type: none"> • Reduced capital expenditure for government as the private sector finances the capital expenditure. Government pays the private sector over the life of the project, not by way of up-front capital expenditure or during the construction phase, as would be the case in traditional procurement such as engineering procurement and construction (EPC) contracting. • Assets delivered more cost-effectively and efficiently through private-sector innovation and expertise in designing and constructing facilities. • Facilities are maintained to a specified standard for the duration of a project, thereby providing facilities of a high standard for the long term. |
| <p>Achieving VFM by streamlining operations and reducing government's ongoing operation and maintenance costs.</p> | <ul style="list-style-type: none"> • Private sector assumes responsibility for operation and maintenance of the facilities (excluding delivery of core services). • Private sector incentivized to provide its designated services in the most cost-efficient manner. • Private sector incentivized to take a whole-of-life approach to facility design and development (as the private sector will receive reduced services payment if its services are not delivered in accordance with government requirements during the operational phase). |
| <p>Harnessing the expertise of the private sector by encouraging innovation in design, a whole-of-life approach and delivery of non-core services while maintaining responsibility for core services</p> | <ul style="list-style-type: none"> • Sufficient flexibility to allow government to define the division of services between public and private sectors. • Government retains ultimate responsibility for the delivery of core services. • Private sector best positioned to deliver ancillary support services and manage risks arising from the delivery of such ancillary services, resulting in a more efficiently operated facility. |

2.3 Key Features of Infrastructure PPP Projects

An infrastructure project procured under a PPP model will typically have these features:

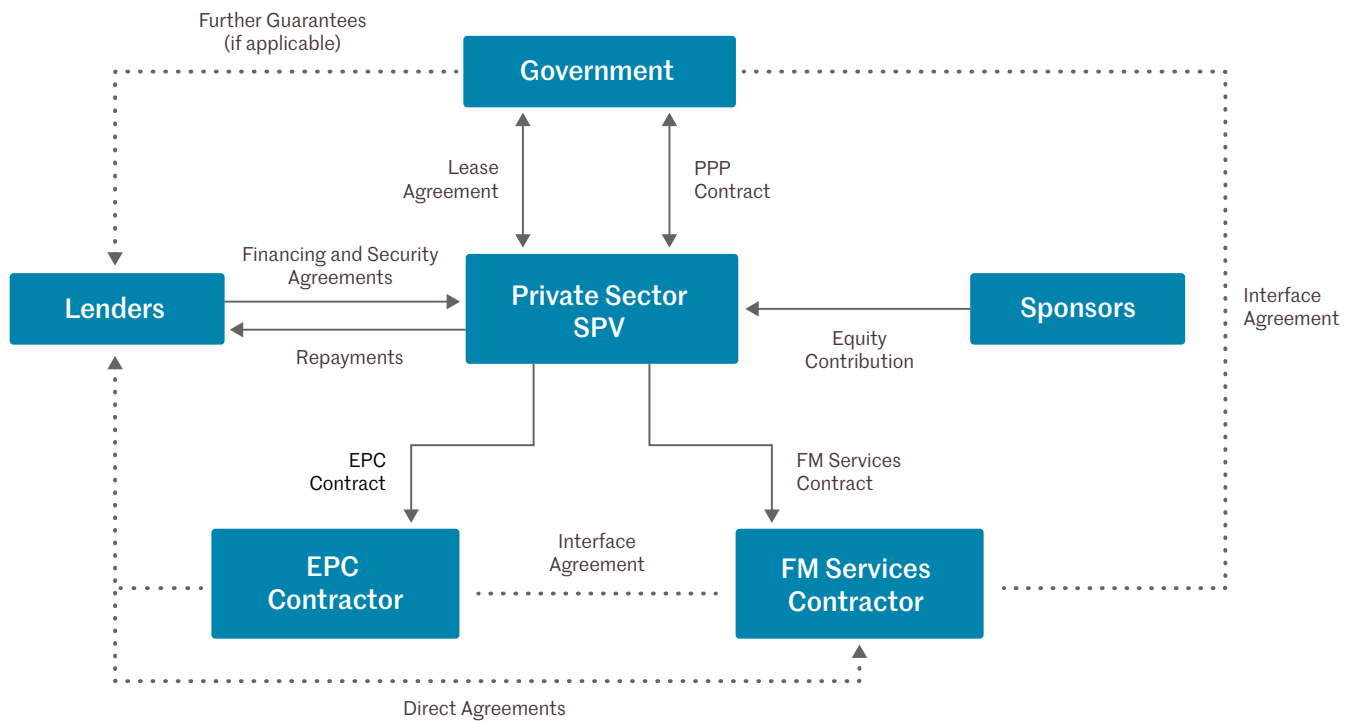
- a. The private sector is awarded the right to finance, design and construct the infrastructure and perform certain services over the life of the contract (typically between 15 and 30 years, with 20 years being common).
- b. An output specification is developed, where government focuses on outcomes but does not prescribe the method of achieving the outcomes, leaving this to the private sector.
- c. Government pays the private sector a service fee (or unitary charge) for the private sector's role in delivering the infrastructure and performing certain services. Government does not start paying the private sector until practical completion of the infrastructure has been certified, all tests have been passed and operations are ready to start.
- d. Core and non-core services are performed, with responsibility for such services depending on the nature of the PPP model. Generally speaking, government typically remains responsible for providing core services (i.e., public-facing services), while the private sector performs non-core services. Examples of what constitutes core versus non-core services are set out below, in Section 2.5. In some cases, the private sector may also perform some or all of the core services.
- e. At the end of the contract term, the infrastructure is usually handed back to government in a prescribed condition.

It should be noted that in some sectors (e.g., healthcare), there might be slight variations in the private sector's development role. This is illustrated in the table below.

| Development Role | Description of What the Private Sector Does |
|---------------------|--|
| Build | The private sector constructs a new healthcare facility. |
| Complete | The private sector assumes a partly built (e.g., 75% completed) healthcare facility, and then proceeds to complete the construction of the rest of the facility. |
| Rehabilitate | The private sector acquires an existing operating healthcare facility as a going concern that may require some rehabilitation of existing infrastructure. |
| Co-locate | The private sector co-locates a private wing within or beside an existing public healthcare facility. |

2.4 Contractual Elements of Infrastructure PPP Projects

The diagram below represents a typical contract model for a transport PPP or social infrastructure PPP project. It should also be noted that there can be variations to this model (mainly around revenue collection), but this is the most common PPP model.



As shown in the diagram above, an extensive suite of contractual arrangements are required to document the delivery of a project under a PPP model. All of these documents are further described in Appendix 4 of this white paper.



2.5 Core and Non-core Services

At the heart of all transport and social infrastructure PPPs is the delineation between what services will be provided by government and what services will be provided by the private sector.

public is required (e.g., doctors with patients in a hospital, teachers with pupils in a school). “Non-core services” are those services that are not core services (e.g., facilities management).

For the purposes of this white paper, “core services” are defined as those where direct interaction/contact with the

Some examples of **core services** are set out in the table below.

| Type of Facility | Core Services (representative examples) |
|--|---|
| Transportation – airports, toll roads, car parks | <ul style="list-style-type: none"> • Provision of train operators (rail), parking staff (parking lots), and air traffic controllers and other airside staff (airports) • Provision of aviation training, cargo or catering training (airports) • Provision, operation and maintenance of toll gates |
| Education – school, university, college | <ul style="list-style-type: none"> • Teaching services • Employment, management and training of teaching staff and learning support staff • Provision of ongoing teacher training (i.e., continuing professional development) • Provision of teaching materials – including national curriculum • Employment of administrative and financial support staff • Management of payroll and pensions • Maintenance of a teacher registration and accreditation system (at the national level) |
| Healthcare – clinic, hospital | <ul style="list-style-type: none"> • Provision of primary care at the clinic level • Surgical procedures, specialty services and diagnostic procedures, and nursing services • Management of patient admission and discharge and related policy • Employment and management of consultants, nurses and healthcare professionals • Provision of professional training to all employees providing healthcare services • Management of patient records and dispensing of medicines • Patient transport services |
| Housing – affordable social housing (apartments and villas) | <p>In social housing projects, there may not be a delineation between core and non-core services. There may be some non-core services (e.g., landscaping areas), but there are usually no core services per se (compare this with employment of teachers or doctors in education and healthcare PPPs, respectively).</p> <p>In this regard, social housing projects are closer to real estate development projects than other PPPs. There will be a 12- or 24-month defects warranty period on each apartment or villa once it is first occupied, but there may not be a long-term, 25-year facilities management contract for each and every apartment and villa. Additionally, housing projects do not have “operations” in the same way hospitals and schools are required to operate to serve the public.</p> <p>The key question in housing projects is which party is responsible for leasing/selling the houses to the public. In our experience, the social service provided by government in housing projects in order to make them bankable is to offtake (or guarantee the offtake of) a substantial portion or all of the housing units from the private sector. Government then provides such accommodation to the public.</p> |

Non-core services typically comprise (i) infrastructure services and (ii) “hard” and “soft” facilities management services. Examples are set out in the table below.

| Type of Non-core Services | Non-core Services (representative examples) |
|--------------------------------|---|
| Infrastructure services | <p>These are generally regarded as services related to design, construction, infrastructure and fitting out the asset. They relate to the main facility (e.g., hospital, school) but also to administrative and reception areas, kitchens, laundry, security rooms, utility rooms, staff accommodation, and potentially landscaped areas.</p> |
| Hard FM services | <p>Maintenance, upgrading and refurbishment services relating to:</p> <ul style="list-style-type: none"> • The exterior of the buildings, structures and facilities (including the outside perimeter area and walls, specific road networks, parking areas, and/or areas located outside the secure areas of the facility) • Building services and electrical and mechanical equipment and installations (including all equipment, furniture, bedding) • Security systems, telecommunication systems and IT networks |
| Soft FM services | <ul style="list-style-type: none"> • Cleaning, landscaping and decorating of common areas (e.g., staff accommodation areas) and/or areas located outside the facility • Contractor staff and equipment transportation • Contractor staff catering • Contractor staff health and medical services, including psychological and counseling services • Contractor staff educational and training services • Monitoring of IT networks • Waste removal |



2.6 Crossing Over between Core and Non-core Services

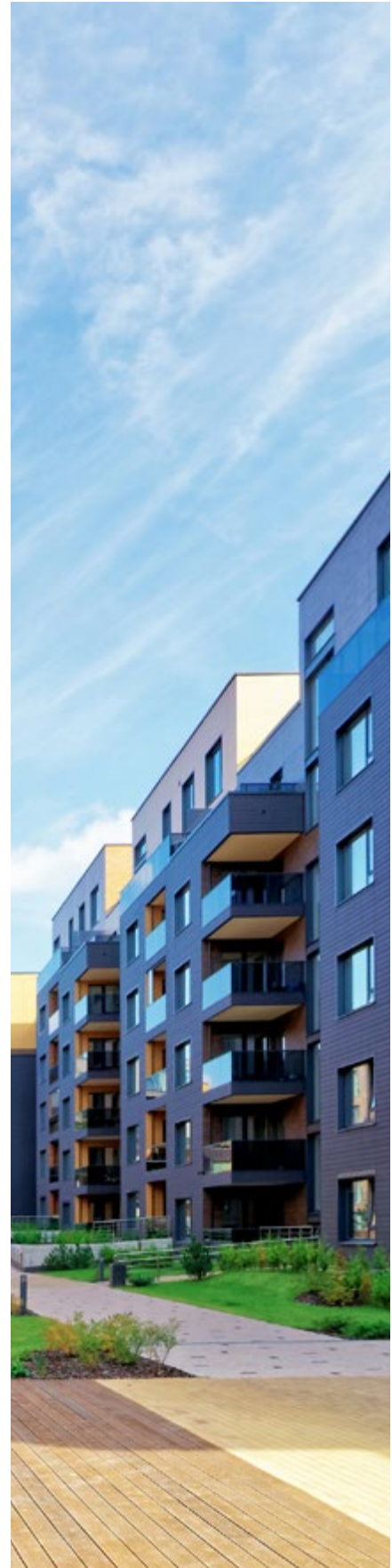
For some assets with a large public-facing component (e.g., schools or hospitals), it is not uncommon for governments to decide that the private sector should be responsible only for non-core services after construction is completed, with government retaining responsibility for all core services.

While government's default position may be that core services will continue to be provided by the public sector, certain operational services may be considered for delivery by the private sector. In the context of a transport project, for example, this could include the management of ticketing/toll systems, operating retail outlets within a transportation hub or at rest areas along a road, rolling stock maintenance for rail projects, or the provision of real-time system monitoring services.

Inviting the private sector to carry out some core services can be beneficial to government and provide additional flexibility. This is particularly the case where the private sector has expertise in delivering those core services that government does not have. In the context of a transport PPP, for example, some additional core operations that could be considered for provision by the private sector include:

- a. an additional private transport terminal or station that shares core services (ticketing systems/staff) and non-core services (cleaning and other FM);
- b. operation of private service areas (e.g., ride-share bays, premium lounges or luggage storage areas) located within the public facility that also share core and non-core services; and
- c. the collection systems on a toll road.

Similar flexibility can occur in almost any PPP project, and it is up to government to decide how much or how little of the core services it would like a private-sector participant to provide.



3.

Delivering Infrastructure PPP Projects

3.1 Key Stages of a PPP Project

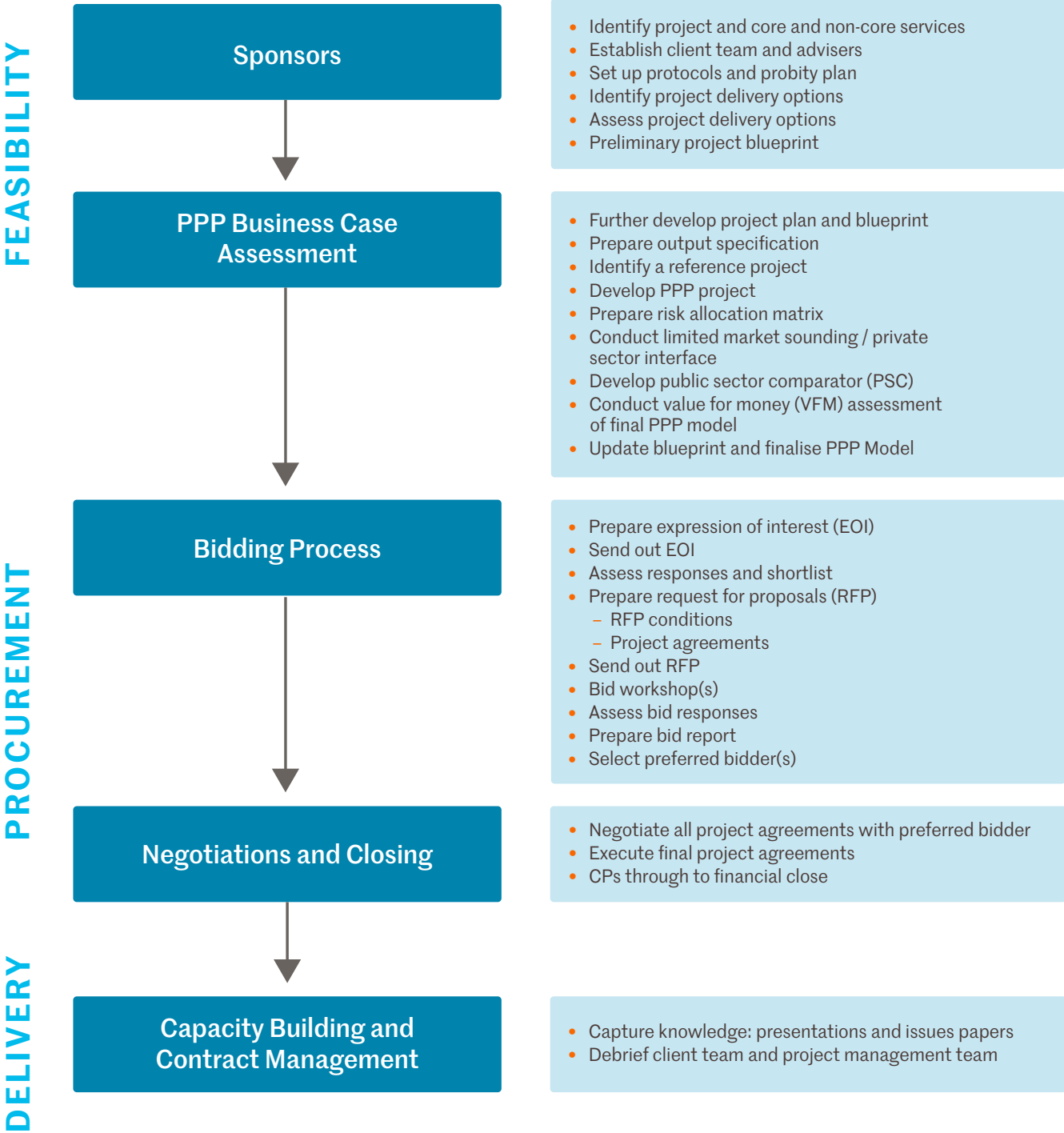
Undertaking a PPP project starts with an idea. That idea develops into a plan with objectives. That plan is then tested and further developed to ensure the project is feasible and delivers VFM to government. At this point, tendering commences, and thereafter delivery occurs.

A PPP project can therefore be broken down into three phases:

- a. **Feasibility stage:** The work performed includes a preliminary project assessment and a PPP business case assessment.
- b. **Procurement stage:** The work involves the bidding process and negotiations with the winning bidder through to financial close.
- c. **Delivery stage:** The asset is developed and then operated.



Set out below is a detailed process map with a description of these three stages. Appendix 2 of this white paper also contains a process map with a brief explanation of how we can assist clients during each of these stages.



3.2 Feasibility Stage (Stage 1)

Different countries have adopted different models for PPP projects. Many jurisdictions around the globe have created dedicated PPP units that work with procuring authorities to oversee the delivery of these projects. Where no dedicated PPP unit exists, the procuring authority typically develops a dedicated team of personnel with extensive procurement and technical experience, who are tasked with delivering the project (the “Client Team”). The Client Team plays an important role in all stages of a PPP project. It may also call upon stakeholders from other relevant government departments, who engage with external financial, legal and technical advisers to determine the feasibility of the project and ensure that the procurement process is structured efficiently.

The speed with which a project can progress from an idea to signing a PPP contract depends largely on how much pre-procurement preparatory work is undertaken by the procuring authority in the feasibility and business case stages prior to the release of the expression of interest (EOI) and the request for proposals (RFP).

Undertaking preparatory work, such as preliminary studies, facility studies and investigations, prior to any bid process will significantly increase the efficiency and the likelihood of success of the competitive bidding phase of the procurement process.

As the feasibility stage draws to an end, the Client Team engages with its external PPP advisers to prepare key bid documents, including the output specification that will be released as part of the EOI and RFP. Before releasing the project to the market for EOIs, it is important that, among other things, government has signed off on the feasibility studies and business case, all advisers have been engaged, a tentative timeline for the project is in place, the site has been identified (along with a clear strategy on how the private-sector special-purpose vehicle (SPV) will be granted rights to develop that site), and the key risk allocations have been determined (e.g., limits of liability, requirements to provide bonds, shared risks). Failure to address key issues like these from the outset can lead to significant delays during the procurement stage, as these points will need to be negotiated with bidders.

3.3 Procurement Phase (Stage 2)

Government-mandated competitive tendering exists due to the overriding duty of all governments to manage public finances effectively and transparently. A central component of PPP procurements is to achieve VFM. This can generally be described as obtaining the best blend of commercial and technical quality for the least financial outlay over the life of the project.

A well-managed competitive tendering process helps illustrate that the procuring governmental entity has a commitment to openness and transparency. This serves to increase the level of interest in future partnering opportunities. Finally, in selecting a private partner, efficiency is another key objective. By using clear time frames and competitive tension to its advantage, governmental entities can deliver major infrastructure projects quickly and minimize the risk of delayed bilateral negotiations.

A key consideration for all government entities looking to embark on major infrastructure projects using a PPP model is ensuring that the relevant PPP legislation is followed. As noted above, each country in the GCC has now enacted specific PPP legislation, and all PPP legislative frameworks and processes must be followed during the procurement phase.

During the procurement phase, the Client Team's role in the bid process is to run the EOI/RFP processes; assess each bid; recommend a preferred bidder; and negotiate with that preferred bidder through to financial close, all while following these PPP legislative processes.

The Client Team will also need to support the feasibility and the business case for the PPP project, including by preparing the public-sector comparator (PSC) to inform the VFM assessment based on the expected net present value of future cash flows over the life of the project.

Unlike in the European Union, there is no single platform in the GCC that advertises tender opportunities for upcoming projects across the entire region. However, most GCC countries now have their own central tender platform where pre-qualified vendors can register and monitor upcoming tendering opportunities. These pre-qualification requirements help improve the efficiency of the bidding process by ensuring that all tenderers responding through the national platform meet a baseline set of requirements.



3.4 Delivery Phase (Stage 3)

After completion of the procurement phase, there are several distinct delivery stages over the life of the project. The first of these is the construction phase, during which the actual construction of the project is undertaken, leading to the commissioning and the commencement of regular payments from government. The next stage, and the longest one, is the operational phase, during which the project is operated to the agreed standards and the core and non-core services are delivered according to the pre-determined division of responsibilities. As the term of the PPP contract draws to an end, the parties complete their obligations and the private sector hands over the project in an agreed condition to government.

Government will be required to allocate appropriate resources for the project during the delivery stage. Essential to these is the appointment of a strong contract manager during the construction phase. The contract manager's key role is to ensure that the project is being developed in accordance with the requirements of the PPP contract. As is common with significant construction projects, claims for variations and additional time or cost relief during the construction phase will occur, and these should be managed proactively by the contract manager to ensure that the project continues to meet government's time, cost and quality objectives. Some of these construction risks can be mitigated by:

- a. ensuring the contractor fully wraps the risk of defects in construction and design of the project, and assumes these as the ultimate operator of the project (thus, a robust design is critical, as is adopting a long-term life cycle philosophy for asset replacement); and
- b. selecting bidders that propose to use contractors with proven track records in delivering successful projects, preferably within the GCC.

Following completion of the construction phase, there is an opportunity for government to expand its capacity knowledge for the procurement and delivery of future infrastructure projects. This is done by requiring advisers to develop presentations and papers on lessons learned throughout each stage of the project and ensuring that the experience gained through the procurement of the project is used to avoid pitfalls and increase efficiency on subsequent projects.

4.

Risk Allocation and Commercial Principles

Risk allocation is based on the premise that a given project risk should be allocated to the party that can best manage that risk. Excessive risk allocation to the private sector should be avoided, as this is likely to result in (i) increased costs to government (i.e., increased bid costs and also increased service payments), and (ii) potential failure by the private sector to meet its contractual obligations (which is bad for the project).

Appendix 3 of this white paper contains an extract of a risk allocation matrix elaborating on a number of the key project risks that may arise in a project. This matrix, which is not intended to comprehensively cover all risks in all projects, has been prepared on the basis of the likely allocation of those identified risks based on experience on infrastructure projects in the Middle East. Ultimately each risk will be identified, assessed, negotiated, allocated and mitigated by the parties at an early stage, and then monitored throughout the project.





4.1 Some Specific Risks for Social Infrastructure PPPs

In addition to the risks identified in the risk allocation matrix in Appendix 3, several risks are particularly important for social infrastructure PPPs. These include:

a. **Public relations management**

Public relations management is critical to the success of any PPP project, especially social projects that provoke a degree of community concern. To ensure the successful delivery of a project, government should ensure that:

- i. all stakeholders (including the community) are adequately consulted throughout the duration of a project, especially prior to and during the bid process;
- ii. a PSC test is conducted as early in the procurement process as possible to ensure VFM can be achieved and demonstrated to the public; and
- iii. the bid process is conducted openly and transparently.

b. **Interface risk**

Where there is a division of responsibility between government and the private sector for the delivery of core and non-core services, it is essential that delivery by one party does not unduly interfere with delivery by the other party. This is known as “interface risk,” and it can also occur at the subcontract level, between the EPC contractor and the FM services contractor.

The PPP contract will set out detailed arrangements for interface, including access rights to the site and an effective communication strategy. In addition, this white paper recommends the creation of interface agreements between relevant parties (see diagram in Section 2.4 and the description of this type of agreement in Appendix 4).

Where government performs all core services, it is recommended that government bear the risk that the provision of those core services adversely impacts the private sector’s ability to deliver non-core services. This is because government will be operating the facilities on a daily basis and will have control over the ability of the private sector to access the facility. However, this will ultimately be an issue for negotiation during the final stages of the bid process.

4.2 Commercial Principles

Specific examples of key commercial principles applicable to transportation and social infrastructure projects are set out below.

| Commercial Principle | Description |
|---|--|
| <p>Payment mechanism and availability</p> | <p>Fundamentally, government will make a regular service or unitary payment to the private sector for making the asset and services available. Such payment will be subject to deduction for any failure to meet performance standards and key performance indicators (KPIs). Please see Appendix 5 and Appendix 6 for further details on performance standards and KPIs and the payment mechanism.</p> |
| <p>Demand risk</p> | <p>Linked to the payment mechanism, the risk in the demand for the services is usually retained by government on social infrastructure projects, as these types of projects often are not economically viable if the private sector is asked to assume demand risk based on the number of users. For transportation PPPs, particularly pathfinder PPPs such as the first road PPP in a country, a certain level of demand risk should be guaranteed by government to ensure the project is bankable (however, demand risk on subsequent toll roads is not typically guaranteed by government). This is because there is often limited data on the number of passengers who have used existing roads and zero data on greenfield highways. However, demand risk is usually heavily negotiated in transportation PPPs. Another way to approach these projects is to pay the service charge on the basis of availability; this means if the assets and services are 100% available for use at a given time, then 100% of the payment is made. Deductions are made for no performance (as above).</p> |
| <p>Relief, compensation and force majeure events</p> | <p>Upon the occurrence of certain prescribed events, the private party shall be entitled to relief in the form of extension of time to complete the project and/or relief from the requirement to perform its obligations for the appropriate period of time. Examples of such events include:</p> <ul style="list-style-type: none"> • force majeure events; • a breach by government of its contractual obligations; • variations to the output specification or the works requested by government; and • potentially other events (e.g., site condition risk). <p>In addition, the private party will be entitled to recover its lost revenues or increased costs as a result of certain events (e.g., political force majeure, breaches by the government party, variations and changes in law). The payment of money/lost revenues is heavily negotiated in PPP contracts.</p> <p>Generally, the principle is that no relief (whether time or money) will be given to the private sector for delays when the occurrence or effects of such delays are within the private sector's control. However, the private sector will negotiate for an extension-of-time regime in the PPP contract and a wider definition of the types of force majeure events that will entitle it to relief under the PPP contract. Government will seek to place the risks of delays due to such things as non-availability of materials and labor on the private sector, on the basis that the private sector is best able to control these risks. The private sector would then pass these risks through to its subcontractors.</p> |

| Commercial Principle | Description |
|---------------------------------------|--|
| Insurance | The private party is required to maintain insurance in respect of the project. The required insurance will be project specific but would typically include those required by law and those set out in the project agreements. Some relief may be granted for risks that become uninsurable. |
| Default and termination events | While some default events may be immediate and incapable of cure (e.g., insolvency), others will typically require government to give notice to the private party and allow the private party a certain period of time to implement a cure prior to the event being declared a default leading to termination. Termination rights arise if a default is incurable or remains uncured after a cure period. Lenders are also afforded step-in rights in project-financed PPPs to cure defaults by the private party. |
| Termination payments | Upon termination of a PPP contract due to government breach or neutral events (but not necessarily private-party breaches), government is required to make payments to the private party. The determination of such payments depends on the nature of the project (e.g., BOO vs. BOT; conventional vs. project financing) and the reason for the termination. This is often heavily negotiated in PPP contracts. |
| Government step-in | Government may wish to retain the right to “step in” and assume (all or a portion of) the project or the services in certain events, such as emergencies, matters of public health, etc. The contractual arrangements will be clear on when such rights can be exercised and state that these are often subordinated rights to the rights of lenders to the PPP project. |
| End-of-term arrangements | Typically, all rights in the project (assets, services, etc.) are handed over to government free of encumbrances at the end of the term (or on early termination). The PPP contract will set out the condition of the assets that must be handed over. Typically, an independent certifier is appointed to ensure that the requirements for handover in the PPP contract are met. |

5.

Value for Money

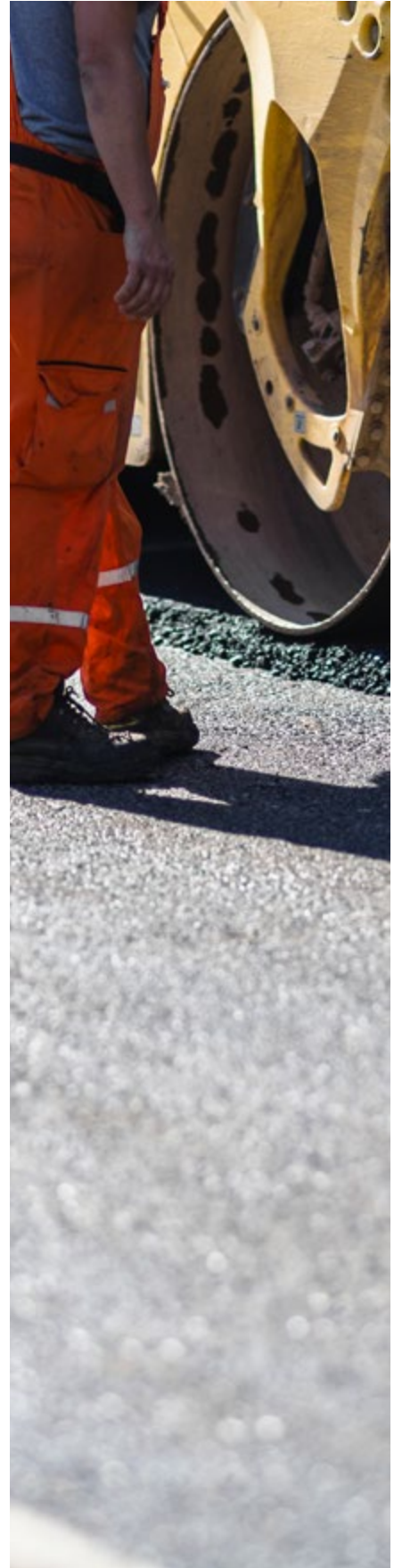
5.1 How Government Achieves VFM

A successful PPP requires government to use the most efficient skills of both the public and private sectors to achieve VFM. This requires government to ensure that:

- a. a project is awarded in a competitive environment;
- b. economic appraisal techniques are applied rigorously, including a proper appreciation and valuation of risk;
- c. risk is allocated between government and the private sector so that the expected VFM of non-core services is maximized; and
- d. comparisons made between publicly and privately financed options for delivery of the facility are fair, realistic and comprehensive.

A competitive bidding process encourages tenderers to provide their most efficient bids, but there is still a need to compare the best proposal under the PPP process against a traditional procurement benchmark. This is the VFM assessment, a complex task that requires input from specialist advisers. Ideally, a thorough, hypothetical costing (based on the output specification prepared during the feasibility stage) will be prepared as a comparative benchmark that can be used to assess bids. Whether bids are above or below this benchmark will allow government to form a judgment on the potential VFM of the bids.

Terminology for this public-sector comparator, or PSC, varies across jurisdictions. However this comparative benchmark is termed, the key point is that government needs to assign some metric to determine whether a project (and bids) represent good VFM. For those interested in understanding how PSCs can be derived, Section 5.3 explains PSCs in further detail.

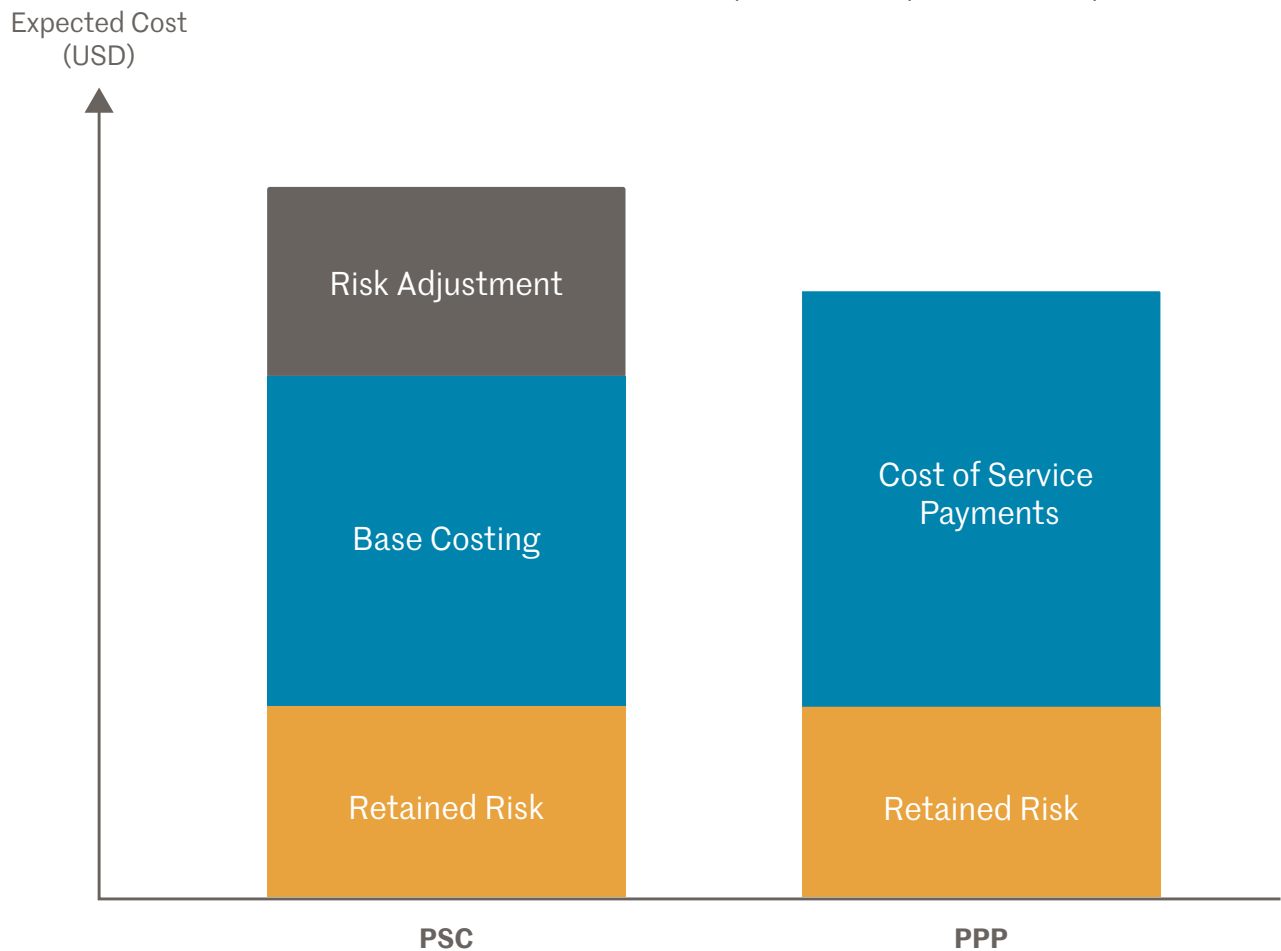


To be a useful benchmark and a fair comparison for private-sector bids, a PSC should:

- a. be expressed in net present value terms;
- b. reflect procurement costs and the cost of government providing the required services (ideally, based on a recent actual procurement undertaken by the public sector); and
- c. take into account the risks that may arise pursuant to that style of procurement, including:
 - i. the probability of those risks arising; and
 - ii. the anticipated costs of managing those risks.

The process of creating the PSC can often be iterative and require adjustments to original cost estimates to arrive at the final risk-adjusted PSC. Comprehensive accounting for risk is required to ensure that valid and informed comparisons can be made both among the bids and between the bids and the PSC. Selecting advisers with a solid understanding of the risks that government assumes during a traditional procurement process is a key element to ensuring that a useful PSC is prepared.

The following diagram illustrates the VFM comparison between a PSC and a PPP bid, and shows an aggregate total (including risk adjustments) to demonstrate how this aggregate figure can be critical in determining whether the net present value of the PSC is more or less than the net present value of the best PPP bid. In reality, risk adjustments are derived from the detailed costings, which are required to build up the overall net present value.



The assessment should also consider all other relevant factors of bid evaluation, including (but not limited to):

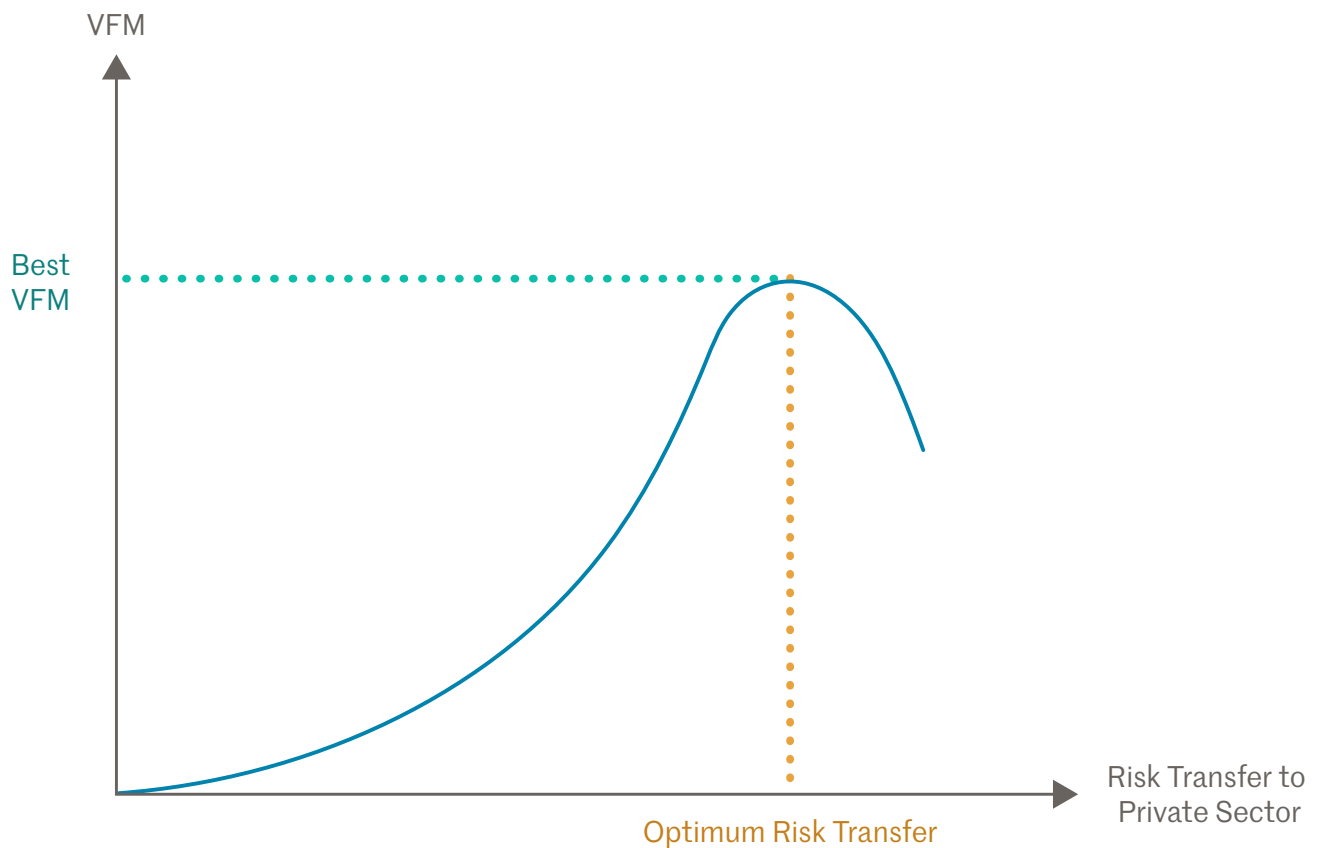
- a. the value to the public sector of the risk the private sector accepts through the proposed PPP arrangement;
- b. any differences in service deliverables between the PSC and PPP bids; and
- c. the wider consequences to the public sector of (possibly) first receiving service from a different date under the PPP compared to that in the PSC.

Adjustment or standardization of these and other factors is often needed to ensure a fair comparison between the PSC and PPP bids. Some factors may be difficult to quantify, such as differences between the standards of service or the methods and dates of delivery. These may require the conclusion to be made on a qualitative basis. Achieving VFM does not necessarily mean accepting the lowest-cost bid.

5.2 How Risk Allocation Helps Achieve VFM

As discussed above, when considering risk allocation, the guiding principle is that the party best able to manage a particular risk should carry that risk and receive the rewards or losses associated with that risk.

In PPP projects, optimum risk transfer can lead to dramatic improvements in VFM, as illustrated in the following diagram:



VFM is improved by the transfer of optimum risk to the private sector. The private sector will be able to reduce either (i) the probability of the specific risks occurring, (ii) the financial consequences if they do occur, or (iii) both.

At some point, however, if risk that cannot be best managed by the private sector continues to be transferred, VFM will decline because the premium demanded by the private sector will outweigh the benefit to government. Indeed, seeking to transfer risk beyond the optimum level may simply not be bankable.

Optimum, rather than maximum, risk transfer is the objective of PPP projects.

Most risks and uncertainties involved in delivering a service are common to both conventional public-sector procurement and PPP procurement processes. However, the identification and costing of risks is particularly important in PPP projects, as risk allocation and its financial consequences will play a key role in contract negotiations with the private sector and its financiers.

Once a risk matrix is produced, it is necessary to quantify and assess the timing of the possible consequences. The best methods for quantifying the impact of identified risks will depend on the information sources available. Usually, the best approach is to use empirical evidence whenever it is available. When it is not, commonsense approximations should be used rather than aiming for unrealistic or spurious levels of accuracy. The objective is always to obtain an unbiased estimate of the cost of the procurement plans (i.e., an estimate where the chance of the cost outcome being too optimistic is the same as the chance of it being too pessimistic).

The PSC must be based on expected costs rather than planned costs. Typically, arriving at expected costs would involve adding on a percentage of the original estimate to take account of systematic optimism bias in estimating costs. The adjustments should be based on experience and relevant databases and applied to detailed cost headings.

Quantifying the impact of project risks can be made easier by banding the risks into a smaller number of categories according to their impact (e.g., catastrophic, critical, serious, marginal, negligible).

It is important to include risks that are difficult to value and knock-on effects, including:

- a. the cost of renting alternative premises or continuing to use existing premises;
- b. the costs of servicing the property;
- c. lost management time as a result of litigation;
- d. increased insurance premiums, if appropriate, or self-insurance; and
- e. inability to meet contract commitments.

The ultimate objective is to add up the consequences of all risk elements in order to obtain the net present expected value of the costs and benefits in a project, taking care to avoid double-counting.

Having identified the risks and assessed the potential consequences, it is then necessary to assess the likelihood of each of the possible consequences occurring. A key practical issue is how to arrive at the relevant probabilities in a manner that is reasonable, consistent and transparent. A database of out-turn costs in previous, similar procurements (and comparisons with original estimates) is an ideal source of information. However, in most cases, this type of information may not be available.

5.3 How to Implement a PSC Process

The PSC documentation for a typical infrastructure PPP project would include:

- a. an overview of the project;
- b. an estimation of basic procurement costs, including:
 - i. capital costs, such as purchase, construction, project management (both internal and purchased from consultants), professional fees and fitting-out costs; and
 - ii. an estimation of operating costs;
- c. a report on the approach taken in relation to third-party revenues;
- d. a section dealing with the approach taken on asset values on transfer, disposal and termination of the PPP contract;
- e. a risk matrix showing the various sources of risk, their costs, the likelihood of their occurrence and the consequences for the project;
- f. a discounted cash flow forecast showing the timing of costs (both basic procurement and risks) that are discounted to yield an overall net present value of costs of a project; and
- g. sensitivity analyses showing the consequences of varying key assumptions.

Typically, the PSC is most effective when prepared as part of government's evaluation of the suitability of an infrastructure project for PPP procurement.

It is important to avoid post-bid adjustments to the PSC, which might distort the outcome of the bid process and disincentivize bidders from participating in the bid process.



6.

Key Obligations of the Parties

6.1 Design and Construction Obligations

The following risk areas represent the key design and construction obligations of the private sector under a PPP model:

a. **Site conditions and suitability**

The private sector may be asked to accept overall responsibility for site conditions, including the adequacy of the site for delivering the project. There may be exceptions to this general principle on a case-by-case basis. See Appendix 3 to this white paper for additional details on risk mitigation strategies.

b. **Design**

The private sector will be responsible for designing the facility so as to achieve the performance standards stated in the output specifications. The private sector will provide a warranty that the facility, once designed and constructed, is (and will be during the contract term) fit for the intended purposes outlined in the government's requirements.

c. **Construction and commissioning**

The private sector will be responsible for the construction and commissioning of the facility within a required period. Payment of the service fee will commence only once construction of the facility is completed and all commissioning tests have been passed.

d. **Completion and extension of time**

The facility will be built in accordance with a construction program, with completion scheduled to be achieved by a set "date for completion." Failure to achieve completion of the facility by the date for completion may give government the right to impose liquidated damages for each day of delay (see Section 4.2, above, for further details on time and cost relief).

6.2 Facilities Management Obligations

The following risk areas represent the key facilities management obligations of the private sector under a PPP model:

a. Service requirements and specifications

Payment to the private sector is based on private-sector delivery of non-core services (and potentially some core services) to agreed performance standards rather than on the actual government use of the service. Payment will be abated to the extent the contracted service is not delivered to these agreed performance standards. The private sector's services will be monitored and any failures self-reported to government. The private sector will be required to monitor its performance against the output specification using a comprehensive performance management methodology. This is further illustrated in the example output specifications in Appendix 6 of this white paper.

b. Maintenance and refurbishment

The private sector must maintain and refurbish the facility so as to ensure it delivers its services to the agreed performance standards throughout the term of the PPP contract. The service fee will be abated to the extent that those obligations are not satisfied.

6.3 Financing Obligations

The private sector's obligation to obtain financing, both debt and equity, for a project will be a condition precedent to the effectiveness of the PPP contract. Section 7, below, describes the expected finance plan that private-sector bidders will procure for a project and also outlines the typical capital structure and standard security packages that will typically be required by lenders.

6.4 Government's Key Obligations

Government's primary obligation during the operational phase of the contract term is to make payments to the private sector in accordance with the PPP contract. If government elects to perform core services, then this is another of its primary obligations. For example, in the establishment of a transportation hub, this may be government retaining responsibility for the scheduling of public transportation and employing drivers/transportation officers.

The PPP contract will usually contain flexible mechanisms allowing government to transfer responsibility for the performance of some core services over the course of the PPP contract term or during any extensions.

This will be at government's discretion, taking into account political sensitivities and community objections. Government will also be responsible for appointing a representative who will monitor and supervise the project from its start to the expiry of the contract term.



7.

Financing PPPs

7.1 Purpose of the Finance Plan

The finance plan sets out the required funding for the facility and the sources of funds to be used. The finance plan will be submitted by each bidder as part of their respective submissions, to demonstrate the amount and availability of each category of funding and/or the plan for completing the necessary financial arrangements. This approach instills confidence that 100% of the funding requirement will be available to meet the project cost.

7.2 SPV/Capital Structure

The private sector will form an SPV, which will be solely responsible for the finance and development of the project and for the delivery of defined services to government under the PPP contract. This allows for the use of project financing whereby the SPV raises the debt and has the obligation to repay this debt (rather than the shareholders in the SPV having this obligation to repay the debt).

The SPV enters into the PPP contract, the EPC contract, the FM services contract, and the financing and security agreements.

The shareholders in the SPV contribute capital (or loans) to the SPV and typically receive their return on investment during the operations phase after operating costs have been paid, long-term debt has been serviced and appropriate reserves have been created. Shareholders suffer the first loss in respect of shortfalls in contract payments and/or increased costs in running the SPV and will consequently require a higher level of return than the lenders to compensate for this increased risk assumption.

In considering the finance plan, the overall cost of capital and ultimately cost of service provision will be reduced by increasing the leverage in the project's financing – i.e., increasing the amount of lower-cost debt finance that is utilized. The level of leverage that can be achieved will be determined by the risk





allocation proposition that is set out by the PPP contract. The higher the level of risk transferred to the private sector, the higher the level of equity that lenders will expect in the deal to provide an adequate buffer against downside risks.

Factors such as the GCC country where the project is located (and its track record of closing transport or social infrastructure PPPs), the reliability of the technology being employed for the project and the creditworthiness of the counterparty to the PPP contract will impact the ratio of debt to total project costs; the riskier the project, the lower this ratio will be. However, in nearly all cases, the shareholders in the SPV can expect to be required to contribute at least 15%-25% of the equity in the SPV for the PPP. The factors noted above will also determine whether the lenders will require all of the equity to be contributed before or pro rata with the debt. Finally, the lenders will typically require the shareholders to commit to providing further equity in the event the total costs of the project are greater than initially expected.

Recognizing that the lenders' sole recourse is to the assets of the SPV and there is no creditworthy guarantee standing behind such obligations, the SPV is also subject to considerable covenants under the financing agreements. These include restrictions on sale of assets, restrictions on incurring any debt or providing security over assets of the SPV, requirements to maintain insurance (and use of any insurance proceeds) and interest rate hedges, and requirements to provide frequent reports on construction and operation.

7.3 Security That Lenders Will Require for a PPP

In order to secure competitively priced, long-term debt, and given that the SPV (and not its shareholders) is obligated to repay the debt, an appropriate security package will need to be made available to the lenders. Security requirements can be expected to include:

- a. a charge over physical assets, including bank accounts;
- b. an assignment of contractual rights, including the PPP contract (discussed further below);
- c. an assignment of project insurances; and
- d. direct agreements with government and each of the EPC and FM services contractors, providing banks with notice and cure opportunities before the applicable contract is terminated.

The PPP contract should be structured to accommodate the lenders' requirements. Absence of these items will jeopardize the financial plan and result in increased costs and reduced VFM for government. It should be noted, however, that the ability to provide and/or perfect all or part of the security may be limited by the laws of the jurisdiction in which the PPP is located.

Further, the presence of a creditworthy counterparty to pay the unitary payment remains one of the single most important factors in banking PPPs. Ideally, this would be enhanced by a government guarantee, comfort letter or similar credit enhancements, which are commonly sought in Middle East project finance markets.

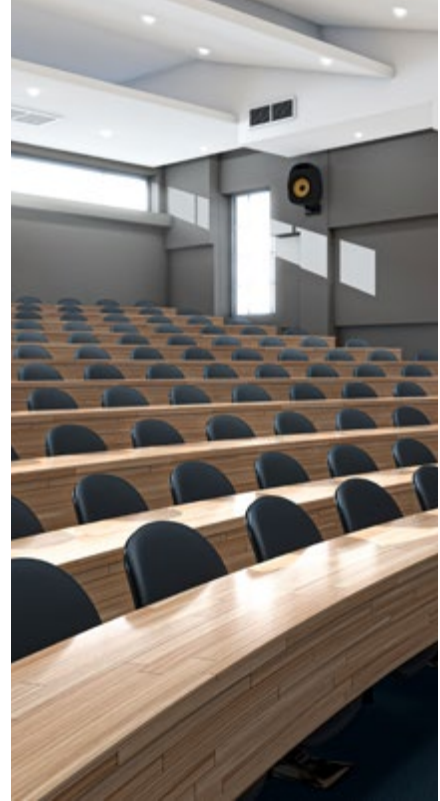
In addition, the lenders will enter into direct agreements with counterparties to the principal agreements of the SPV, including the counterparties to the PPP contract, the EPC contract, the FM services contract and any land lease (unless either the land on which the PPP is constructed is owned by the SPV or no lease is issued, e.g., a license only). These direct agreements afford the lenders certain rights in the event of a default by the SPV under the applicable contract, require information to be provided directly to the lenders of certain material events, and direct the applicable counterparty to remit any payments owed to the SPV to one of the accounts over which the lenders have a security interest.

7.4 Lender's Step-in Rights

To protect against the possibility of an SPV default leading to the premature termination of the project, lenders in PPPs typically insist on the inclusion of a right to step into the SPV's role (i.e., obtain rights under the project documentation) with a view to remedying the default, or to exercise their rights to novate the key contracts in exchange for a new substitute SPV.

Common practice is to include step-in rights in the direct agreements entered into between government, the SPV and the lenders. This means that for an agreed period of time, government's right to terminate the PPP contract on an SPV default comes secondary to the lender's right to step in and cure the default or otherwise take control of the project. There may also be direct agreements with other key parties in the project (e.g., the EPC contractor, the FM services contractor).

The PPP contract will be terminated if the lenders fail to, or choose not to, step into the project and the SPV is unable to cure the default. Lenders would then seek compensation through exercising security rights and the termination payment provisions in the project documentation (if the debt is not assumed by government).



8.

Conclusion

In recent years, governments around the GCC have become much more experienced in the use of the PPP model. Experiences both within the GCC and farther afield continue to demonstrate that government can derive significant benefits from adopting a PPP model to deliver infrastructure projects.

This white paper has analyzed a number of those benefits, including whole-of-life costing for a project, optimal transfer of risk, innovation in design and improved service delivery, all of which drive VFM.

The white paper has also analyzed the three stages of a PPP project: feasibility, procurement and delivery. It is important to remember the complexities inherent in the PPP process and that each project will face unique challenges, risks and issues. Accordingly, governments should engage experienced PPP advisers to ensure they are adequately prepared and advised through each stage of the project in order to maximize efficiencies and avoid pitfalls.

King & Spalding has extensive experience in advising clients – in both the public and private sectors – on the procurement of infrastructure projects, including under PPP models. Our lawyers have advised on more than 60 PPPs throughout the Middle East and internationally. We would be pleased to discuss the contents of this white paper further with parties interested in developing such projects.



Appendix 1





Middle East PPP Law and Policy Status




Set out below is a summary of the status of existing laws and policy development in selected GCC countries. This is current as of the date of this white paper. Please contact us for a copy of our separate paper *Middle East PPP Law Report (2nd Edition)* (2025) for more detail on each country's PPP regime.

| | PPP Law | PPP Guidance Material | Delivered Transportation/ Social Infrastructure PPP Projects | PPP Pipeline |
|--------------------|---------|-----------------------|--|--------------|
| UAE (Federal) | ✓ | ✓ | ✓ | ✓ |
| UAE (Abu Dhabi) | ✓ | ✓ | ✓ | ✓ |
| UAE (Dubai) | ✓ | ✓ | ✓ | ✓ |
| KSA | ✓ | ✓ | ✓ | ✓ |
| KUWAIT | ✓ | ✓ | ✓ | ✓ |
| QATAR | ✓ | ✓ | ✓ | ✓ |
| OMAN | ✓ | ✗ | ✓ | ✓ |
| BAHRAIN | ✓ | ✓ | ✓ | ✓ |

Appendix 2

Example of K&S PPP Process Map

| Process Flow | 1.  PPP Scoping and Strategy | 2.  Expression of Interest (EOI) | 3.  Request for Proposals (RFP) | 4.  RFP Evaluation (continued on next page) |
|-----------------------|--|--|---|--|
| Client's role | <ul style="list-style-type: none"> Identify prospective projects Set goals and objectives for a pathfinder PPP project (and pipeline) Identify the client's deal team, stakeholders and key contacts Identify and engage financial and technical advisers Attend workshops with advisers Continue to develop business case for PPP project | <ul style="list-style-type: none"> Identify EOI recipients/ manage procurement portal Agree on selection criteria to move to RFP stage Approve final RFP short list | <ul style="list-style-type: none"> Provide precedents – e.g., RFP; policy and procedure schedules; technical schedules for roads, bridges, schools, etc. Manage internal approvals process for launching RFP Participate in workshops pre-RFP launch (risk matrix, schedules, legal forms) Approve RFP package (recipients, technical and commercial schedules, legal forms, evaluation criteria and methodology) | <ul style="list-style-type: none"> Attend bid workshops Input into bidders' clarifications Attend workshops to finalize evaluations Manage internal approvals process and approve first- and second-ranked bidders |
| K&S's role | <ul style="list-style-type: none"> Briefings with client executives to understand prospective projects, pipeline Assist in identifying pathfinder PPP project and advise on pipeline Assist in identifying financial and technical advisers Workshops with client and other advisers (questionnaires/ checklists to extract key project information, timelines, etc.) Assist with management packs to support business case | <ul style="list-style-type: none"> Prepare legal aspects of EOI with other advisers Prepare NDAs Evaluate legal elements of EOI responses, and coordinate technical and financial reviews In conjunction with other advisers, propose short list of bidders to receive RFP | <ul style="list-style-type: none"> Review client forms and develop RFP terms and conditions Develop legal forms (partnership agreement, Musataha/lease) Facilitate workshops to align commercial, technical and legal principles Recommend RFP package (technical and commercial schedules, legal forms) Inputs into client board briefings | <ul style="list-style-type: none"> Host bid workshops Assist with responses to bidders' clarifications Review bids and undertake risk analysis Review third-party contracts (e.g., terms sheets for EPC, O&M, financing) Provide legal inputs into each bid based on evaluation criteria and methodology and coordinate technical and financial aspects Recommend first- and second-ranked bidders |

| Process Flow | 5.  Negotiation | 6.  Signing | 7.  Financial Close | 8. Lessons Learned |
|-----------------------|---|---|--|---|
| Client's role | <ul style="list-style-type: none"> • Guidance in negotiations, commercial direction • Liaise with key stakeholders as necessary (e.g., finance ministry, other departments and agencies) • Manage internal approvals process and approve final legal forms | <ul style="list-style-type: none"> • Execute legal forms • Control/issue/approve press releases (as appropriate) | <ul style="list-style-type: none"> • Progress each condition precedent (CP) • Address extensions to scheduled CP satisfaction date • Control/issue/approve press releases (as appropriate) • Hand over to implementation teams | <ul style="list-style-type: none"> • Participate in lessons learned sessions |
| K&S's role | <ul style="list-style-type: none"> • Attend negotiations • Review and finalize technical schedules with technical and financial advisers • Finalize all legal documentation • Prepare board briefings (as required) | <ul style="list-style-type: none"> • Prepare and distribute legal forms for signature, and provide signing instructions • Manage execution of legal forms • Assist with registration of land interests (if applicable) | <ul style="list-style-type: none"> • Prepare CP checklist • Facilitate regular CP progress meetings • Assist with satisfaction of client CPs (if any) • Assist with post-award issues | <ul style="list-style-type: none"> • Prepare legal form bindings • Consider electronic/AI implications • Hold debrief/lessons learned session with client for future PPPs • Capture knowledge for future PPPs |

Appendix 3

Example of PPP Risk Allocation Matrix

Set out below is a sample of the key risks that typically arise in infrastructure PPP projects. This is a suggested risk allocation. Each PPP project is different.

| Risk | Description and Consequence | Risk Allocation | Mitigation Strategies |
|--------------------------------------|--|-------------------------------|--|
| Site Risks | | | |
| Latent site conditions | Risk that latent conditions are encountered, which may cause delays to the progress of the works and additional costs. | Government/ private sector | Government can conduct a preliminary site study to identify latent site conditions. Private sector can pass risk through to the EPC contractor, who will rely on ground experts' reports and other due diligence. |
| Approvals | Risk of delays and additional costs if approvals are not obtained or are obtained late. | Government/ private sector | Specify clearly the division of approvals between the parties. Private sector can pass risk through to the EPC contractor. |
| Design and Construction Risks | | | |
| Design | Risk that the private sector's design is not sufficient for its intended purposes or is unable to deliver the contracted services. | Government/ private sector | Government can use output specifications rather than input specifications. Private sector can pass risk through to the EPC contractor. Professional indemnity insurance may be obtained. |
| Defects | Risk of defective construction work leading to extra costs and delay. | Private sector | Private sector can pass risk through to the EPC contractor. |
| Suspension of works | Risk of delays and extra costs due to works being suspended. | Government/ private sector | The allocation of risk will depend on the cause of the suspension. Private sector can pass risk through to the EPC contractor if the suspension is caused by acts or omissions of the EPC contractor. |

| Risk | Description and Consequence | Risk Allocation | Mitigation Strategies |
|---|---|-------------------------------|--|
| Design and Construction Risks | | | |
| Late completion | Risk of delay in completion of the facilities. Payments do not start until the facilities have been completed and commissioned. | Government/ private sector | Private sector can pass risk through to the EPC contractor. However, government assumes any risks of late completion where the delay entitles the private sector to an extension of time. |
| Practical completion facility tests | Risk that the tests at practical completion are not passed. Payments are not started until the facilities have been completed and commissioned. | Private sector | Private sector can pass risk through to the EPC contractor. |
| Contractor failure | Risk that the EPC contractor becomes insolvent. | Private sector | Private sector is responsible for the acts and omissions of EPC contractor. Government/lender step-in rights. Replacement or termination of EPC contractor. Abatement of payments. |
| Change in law | Risk arising from discriminatory or specific changes in laws that have a material and adverse impact on the cost of delivering the project. | Government/ private sector | Government to minimize discriminatory or specific changes in laws. Share risk, or risk to private sector if change in law is generic to all persons. |
| Force majeure | Risk of a force majeure event preventing the EPC contractor from completing the facilities. | Government/ private sector | Insurance (if risks are insurable). Shared risk. Note split between “political” force majeure and “natural” force majeure in some jurisdictions in the Middle East. Follow market practice. |
| Financing Risks | | | |
| Financing | Risk of private sector being unable to obtain financing, both debt and equity. | Private sector | Require private sector to obtain fully committed debt and equity financing at bid stage. |
| Change in lending market risk (refinancing) | Risk (upside) that a project debt is refinanced leading to “windfall profits” to the private sector. | Government/ private sector | Require private sector to share refinancing gains with government (either as a lump sum or a reduced service payment). |

| Risk | Description and Consequence | Risk Allocation | Mitigation Strategies |
|--|--|-------------------------------|--|
| Operating/Facility Management Risks | | | |
| Demand | Risk that there is insufficient demand for the facilities and services over the contract term. | Government | Government to conduct due diligence at feasibility stage and throughout a project to assess needs for additional facilities. |
| Changes in output specifications | Risk arising from changes required by government. | Government | PPP contract flexibility. Government to devise flexible specifications; formulae to incorporate some form of benchmarking or market testing; break clauses after a period of time; renegotiation clauses; periodic review mechanisms; referrals to mediation or arbitration. |
| Changes in laws | Risk arising from discriminatory or specific changes in laws that have a material and adverse impact on the cost of delivering the services. | Government/ private sector | Government to minimize discriminatory or specific changes in laws. Share risk, or risk to private sector if change in law is generic to all persons. |
| Increase in the costs of services | Risk that the costs of providing the services increases over the contract term. | Private sector/ government | Private sector can pass risk through to the FM services contractor, unless government assumes risks by agreeing to increase payments to match costs. |
| FM services failure | Risk that the FM services contractor becomes insolvent or repeatedly fails to perform services to performance standards. | Private sector | Private sector is primarily responsible for FM services contractor's acts and omissions. Government/lender step-in rights. Abatement of payments. Replacement or termination of FM services contractor. |
| Force majeure | Risk of a force majeure event preventing the FM services contractor from performing the services at all or to performance standards. | Government/ private sector | Insurance (if risks are insurable). Shared risk. Note split between "political" force majeure and "natural" force majeure in some jurisdictions in the Middle East. Follow market practice. |

| Risk | Description and Consequence | Risk Allocation | Mitigation Strategies |
|--------------------|--|-------------------------------|--|
| Other Risks | | | |
| Project transition | Risk that the transition from the existing facilities/service providers to the new facilities/private sector is delayed or results in increased costs. | Government/ private sector | Careful planning during the pre-bid and bid stages, review of existing contracts for exit strategies for government. Private sector can pass risk through to EPC contractor/FM services contractor. |
| Interface risk | Risk that the provision of core services will affect the private sector/FM services contractor's ability to provide the non-core services. | Government/ private sector | Specify clearly the division between core services and the non-core services provided by the private sector and/or its subcontractors. Government is in a better position to manage risk given its greater role in operation of the facilities. Formal interface arrangements. |
| Political risk | Risk that a political event will affect the private sector and/or the FM services contractor's ability to perform the non-core services. | Government | Manage political interference. |



Appendix 4

Example of Key PPP Legal Agreements

Set out below is an overview of the key legal agreements that would be entered into in respect of an infrastructure PPP project that (i) requires the SPV to perform non-core services and (ii) is financed by means of a combination of project finance debt and equity contributions.

| Legal Agreement | Description |
|---|--|
| <p>PPP contract (sometimes called a project agreement, master agreement or concession agreement)</p> | <ul style="list-style-type: none"> • Government grants the SPV a right to design, build, maintain and finance a project and to provide specified non-core services during the PPP contract term. Government performs core services and operates the facility. • Documents the allocation of risk between government and the SPV. • Specifies the responsibilities of the SPV and government in respect of the facilities over the PPP contract term. • Includes mechanisms by which the SPV is paid for the delivery of non-core services. • Private sector singularly responsible to government for the performance of all of its obligations specified in the PPP contract for the duration of the contract term (i.e., even if it subcontracts obligations, it is still singularly responsible to government). |
| <p>Site lease agreement</p> | <ul style="list-style-type: none"> • Government grants a long-term lease of the land to the SPV. • Lease expires at the end of the contract term (or on earlier termination of the PPP contract). • The SPV grants a sublease of the land back to government sufficient to allow government to perform the core services and operate the facility. This could be a license or lease. • All improvements on the site (i.e., the bricks and mortar comprising the facilities) will be owned by the SPV for the duration of the PPP contract term to facilitate the SPV's financing of the project. Ownership has different legal meanings in some GCC countries (e.g., Musataha, lease, freehold) • All interests in the land and facility vest in government at the end of the contract term or termination of the PPP contract, whichever occurs earlier. • Note: In some sectors, there may be no lease agreement and instead contractual license provisions are included within the PPP contract. |
| <p>EPC contract (sometimes called a construction contract, D&B contract or D&C contract)</p> | <ul style="list-style-type: none"> • A contract between the SPV and the EPC contractor to design, construct and commission the facility by an agreed date in return for a fixed lump sum payment from the SPV. • The design, construction and commissioning risks assumed by the SPV under the PPP contract will be passed through to the EPC contractor, thereby achieving optimal risk transfer for government. |

| Legal Agreement | Description |
|--|---|
| <p>FM services contract (sometimes called a facilities management agreement, operating agreement, or operation and maintenance agreement)</p> | <ul style="list-style-type: none"> • A contract between the SPV and the FM services contractor to perform hard FM services and soft FM services during the contract term. • Unless otherwise agreed, the FM services contractor will not perform any core services and will have limited involvement in the operational aspects of the facility. |
| <p>Subcontract direct agreements (sometimes called tripartite agreements or multiparty collateral agreements)</p> | <ul style="list-style-type: none"> • Two main agreements: <ul style="list-style-type: none"> – Between EPC contractor, SPV and government – Between FM services contractor, SPV and government • Government has step-in rights (subject to the lenders' step-in and cure rights) against each of the EPC contractor/FM services contractor in the event the EPC contractor/FM services contractor fails to perform its obligations under the EPC contract/FM services agreement with the SPV. • Also provides for the novation to government in the event of the SPV's insolvency or default under the PPP contract (subject to balancing the rights of the lenders under the lenders' direct agreement). |
| <p>Finance and security agreements including lenders' direct agreements</p> | <ul style="list-style-type: none"> • Governs the rights of the lenders in respect of finance provided to the SPV to fund the design and construction of a project. • Lenders and SPV also enter into lenders' direct agreements with each of government, FM services contractor and the EPC contractor, which govern the relationship between the lenders and the other parties in the event of default by the SPV (i.e., notice, cure, step-in rights). |
| <p>Interface arrangements</p> | <ul style="list-style-type: none"> • Between government, EPC contractor/FM services contractor, under which government secures an interface between the non-core services provided by the EPC contractor/FM services contractor and the core services supplied by government (if applicable, through a different state-owned entity). • This ensures clear coordination and cooperation between each service provider on a day-to-day basis. The interface risk between government and the SPV (and EPC contractor/FM services contractor) will be determined under the PPP contract and also documented in the interface arrangement. |

Appendix 5

Example of PPP Output Specification

In procuring an infrastructure project on a PPP basis, government is advised to specify the outputs it requires (both in terms of the facility and the non-core services the SPV will provide). Payments to the SPV are linked to the satisfactory delivery of such outputs. An illustrative regime of an extract of a PPP output specification is set out below.

| Cleaning Services | | | |
|--|---------------------------------------|-------------------------|--|
| <p>Scope of Service</p> <p>The SPV shall provide cleaning services on the site (except within secured areas for the facility), including cleaning of all external building surfaces, parking lots, roads, pavements, signs, bins and receptacles to the performance standard.</p> | | | |
| <p>Performance Standard and Specific Service Requirements</p> <p>The SPV shall ensure:</p> <ol style="list-style-type: none"> the external building surfaces are clean – for the purposes of this performance standard, “clean” includes, without limitation, free from graffiti and substantially free from marks and stains; the exterior of windows, frames and glass with a face external to the facility are clean – for the purposes of this performance standard, “clean” includes, without limitation, substantially free from smears, streaks and marks and corners and edges substantially free from buildup of dirt and cleaning materials; the landings, ramps, stairwells, handrails, steps, entrances, porches, patios, balconies, eaves and external light fittings are clean – for the purposes of this performance standard, “clean” includes without limitation, substantially free of dust, grit, dirt, leaves, cobwebs, rubbish, cigarette butts and bird excreta. | | | |
| KPI | Frequency of Monitoring and Reporting | Type of Service Failure | Monitoring Method |
| 1. The external building areas must be clean in accordance with the performance standard in clause (a) of this schedule. | At all times | Failure event | |
| 2. Exterior of windows, frames and glass must be clean in accordance with the performance standard in clause (b) above. | At all times | Failure event | Private sector communicates with the help desk. Third-party audit review. |
| 3. The landings, ramps, stairwells, handrails, steps, entrances, porches, patios, balconies, eaves and external light fittings must be clean in accordance with the performance standard in clause (c) above. | At all times | Failure event | Private sector communicates with the help desk. Third-party audit review. |

Appendix 6

The Payment Mechanism

For this illustration, we will again assume the SPV performs only non-core services.

The primary objective of the payment mechanism is to incentivize the SPV to provide to the performance standards prescribed consistently over the lifetime of a project. The payment mechanism should be easy to understand and operate.

The key attributes of the payment mechanism proposed are that it:

- i. has adequate provision for dealing with failures in the provision of non-core services;
- ii. incorporates appropriate abatement provisions; and
- iii. incorporates a simple but effective mechanism to trigger recourse action.

The mechanism will refer to a regime to monitor performance, which will support the payment mechanism. The direct link between service delivery, performance monitoring and payment will encourage the SPV to deliver non-core services to the prescribed standard.

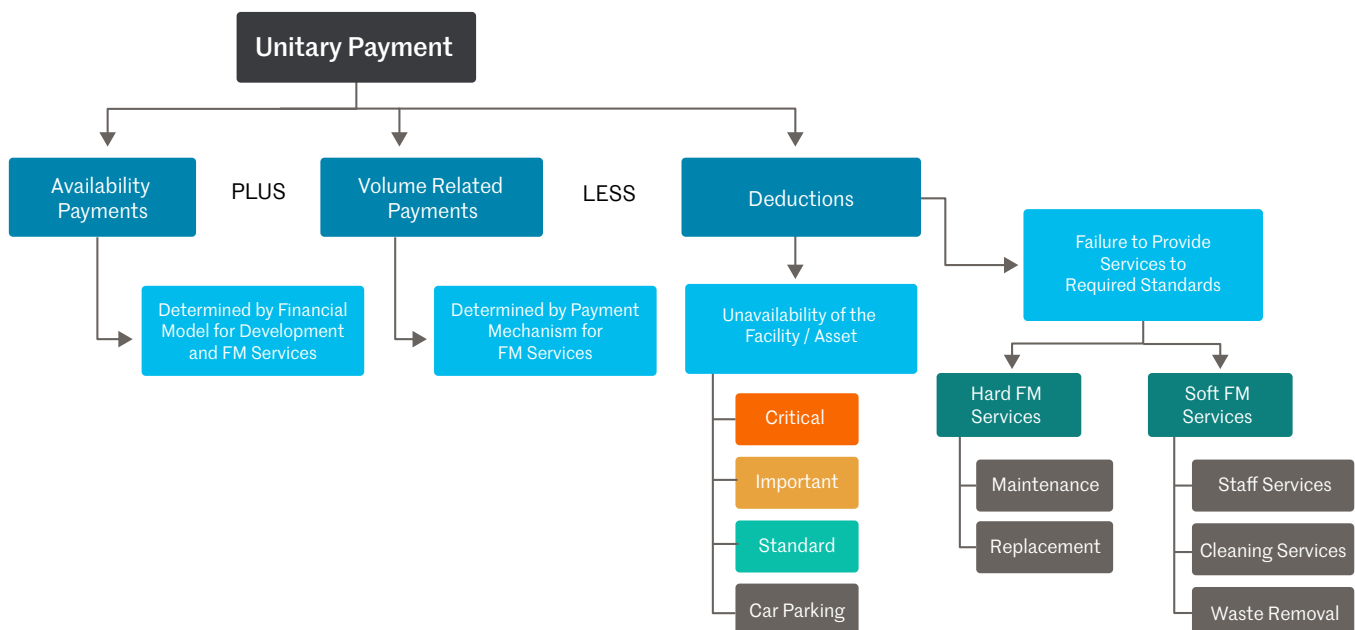
The payment mechanism will also need to address the commercial considerations of third-party funders. The example output specification in Appendix 5 provides examples of performance monitoring.

The payment mechanism will have a number of components to incentivize the SPV to provide non-core services to the prescribed standards.

The service payment is made up of an availability component that assumes the SPV has provided the agreed scope of non-core services to the prescribed standards, with the following adjustments:

- i. add volume-related payments for items to be reimbursed according to their quantity consumed either according to a rate per item that is fixed (subject to indexation) or that is passed through at cost; and
- ii. deduct amounts incurred for unavailability or substandard provision of non-core services.

The figure below illustrates the components of a hypothetical payment mechanism.



The Unitary Payment (UP) for each contract period is calculated as:

$$\mathbf{UP = AC + VRP - AD - PD}$$

where:

AC = Availability Component

VRP = Volume-Related Payment

AD = Availability Deduction

PD = Performance Deduction

“Availability” concerns whether the facilities are free to be used by government. Should any part of the facility become unavailable, the SPV must correct the fault within the prescribed period to avoid incurring any deduction. Should the SPV be unable to make the facility available within the rectification period, then it will be subject to an unavailability deduction. Regular unavailability of the facilities may, over a period of time, lead to recourse action and could result ultimately in contract termination.

“Performance” concerns whether the non-core services are being provided in accordance with the standards set out in the output specifications. If the service provided is not to the prescribed standard, then the SPV may not earn all the performance points achievable. If it fails to achieve the prescribed upper threshold, it will not earn the full financial payment. Regular substandard service performance may lead to recourse action and could result ultimately in contract termination.

Multipliers may be applied in the case of repeated failure to meet required services standards.



Appendix 7

K&S's Middle East PPP Practice

Industry Leaders with Vast Experience

PPP Experts

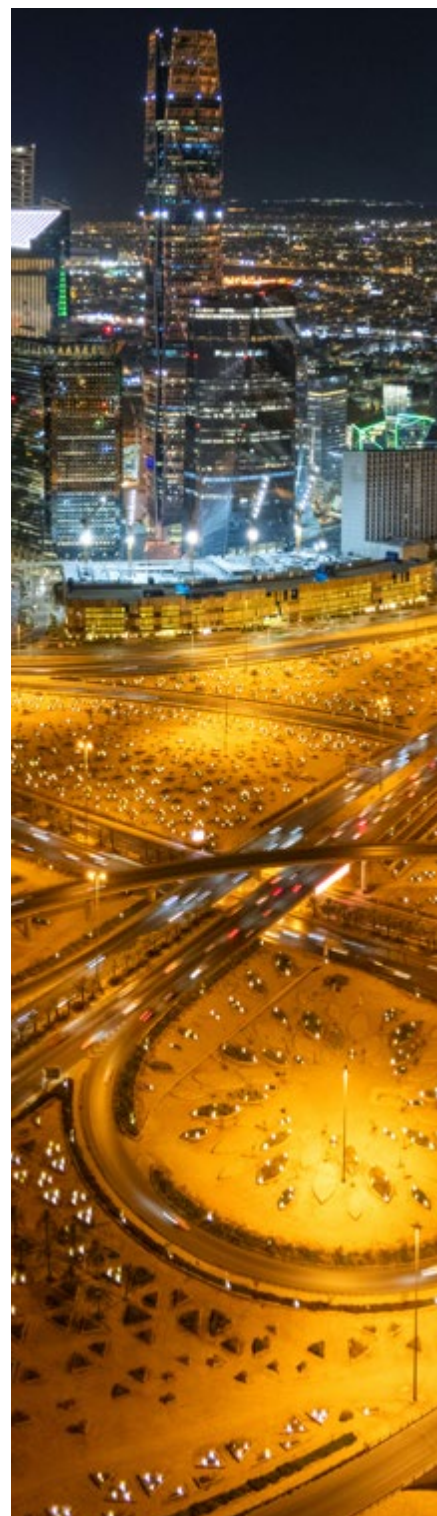
King & Spalding's Middle East-based lawyers have experience in all aspects of PPP projects. We use a multidisciplinary approach to meet clients' needs by drawing on the skills of lawyers with real estate, construction, corporate, infrastructure, PPP, regulatory and finance experience. We provide seamless services from our global offices to tap into international PPP best practices. We regularly represent and understand the needs of governmental entities, sponsors, developers, financial institutions, FM service providers and contractors in the PPP arena, particularly with regard to how Middle Eastern PPP deals are structured.

Structuring Deals

Our lawyers are well-versed in the wide range of techniques used to structure PPPs. They have advised on PPPs developed following the UK's Private Finance Initiative (PFI) and Australia's state and now national PPP regimes. They have a detailed understanding of the UK's Standard Operating Principles/Code of Conduct and Australia's PPP policy and commercial principles regimes (and their state predecessors). Partners at King & Spalding have contributed to the development of PPPs in numerous markets, including by advising:

- The World Bank on its first PPP Global Risk Allocation Tool covering all PPP sectors (and contributing to all subsequent editions of this tool).
- The UK's Department of Health and Treasury on the design of the procurement strategy and structure for the NHS Express LIFT procurement model.
- The Government of the Australian State of Victoria on the development of its PPP commercial principles.

In new international markets, we often work on pathfinder PPP projects, helping clients to structure unique PPPs that address the varying needs of governments, financiers, developers and other project participants in multijurisdictional international transactions. These include PPP and quasi-PPP projects under both end user/concession models and unitary payment models.



PPP Sector Expertise

- Schools, Universities, Colleges
- Social/Affordable Housing
- Student Accommodation
- Labor Accommodation
- Desalination
- Water Treatment
- Sewage Treatment
- Waste to Energy
- Power
- District Energy
- Industrial
- Airport
- Catering and Cargo
- Port
- Rail
- Road
- Telco

Representative PPP/Infrastructure Experience

Power

- Represented a bidding consortium on Sakaka IPP, Saudi's first utility-scale solar IPP.
- Represented a bidding consortium on Dumat Al Jandal, Saudi's first utility-scale wind IPP.
- Represented the project company in relation to DEWA III Solar PV.
- Represented the local shareholder within the project company on Hamriyah IPP.
- Represented the local shareholder within the project company on Hamriyah IWP.
- Represented the sponsors with regard to Shuaibah IWPP, the first IWPP in Saudi Arabia to reach financial close.
- Represented the lenders regarding Al-Ezzel IPP.
- Represented the lenders regarding Shuweihat 2 IWPP original project financing and bridge.
- Represented the lenders regarding the Mirfa IWPP bid.
- Represented Taiwan Power Company, Khurayef and Al Rashed regarding Ras Azzour IWPP.
- Represented the lenders and underwriters on the \$500 million refinancing regarding Fujairah 1 IPP.
- Represented the lenders to the ACWA Power and Mitsui consortium regarding Ibri and Sohar 3 IPPs.
- Represented the lenders to the Marubeni-Jinko Solar consortium regarding Sweihan PV Solar project.
- Represented the lenders on the Oman Oil Musandam Power project.
- Represented the commercial lenders on the Mesaieed A IPP.
- Represented the lenders to the ACWA Power and Mitsui consortium on Salalah 2 IPP.
- Represented the sponsors to the 1,000 MW Karapinar Solar project.
- Represented the arrangers on the development and financing of 250 MW JEC/SADAF co-generation plant.
- Represented EWEC in relation to the development of a new generated reverse osmosis independent water project located on land adjacent to the Shuweihat S4 project.

Water

- Represented the bidder in the Dammam STP.
- Represented GHD International on its bid to develop a WWTP on a PPP basis in the Hamriyah Free Zone, UAE.
- Represented the consortium of bidders on Rabigh III.
- Represented the consortium of bidders on Shuqaiq III.
- Represented sponsors up to financial close on the King Khalid International Airport Potable Water project.
- Advised with respect to restructuring the deal regarding the Sadara Reverse Osmosis Potable Water project.
- Represented the sponsors and the project company on the Muharraq Wastewater Treatment Plant project.
- Represented the lenders on the Salalah IPP.
- Represented the sponsors on the Abu Dhabi Sewerage Services Company Sewage Treatment Project (ISTP 1).
- Represented the lenders on the Shuqaiq Independent Water and Power project.
- Represented a confidential client on the Jeddah Industrial City Sewage Treatment project.
- Represented a government entity or sponsor on more than 50 BOT/BOO district cooling water projects
- Represented TDIC as master developer/grantor on the Saadiyat Island STP 1.
- Represented VEOLIA in the Jubail 3B IWP in Saudi Arabia, the fourth IWP under that country's Vision2030 PPP program.

Social Infrastructure

- Representing the sponsors on a Middle Eastern labor PPP project.
- Representing a Middle Eastern government master developer on a 20,000-bed labor PPP project under a PPP model (following the UK's SOP4 PFI principles).

- Representing a Middle Eastern government on its school PPPs.
- Represented the sponsors on the Middle East-located New York University PPP.
- Represented the sponsors on the Middle East-located Zayed University PPP.
- Represented the sponsors on the Middle East-located Al Ain University PPP.
- Represented the sponsors on the Middle East-located Paris Sorbonne University PPP.
- Represented a short-listed education and training institution in relation to its tender for the development of a Middle Eastern student and military technical education college.
- Represented a university on all aspects of the development of a student residence project under the UK's PFI change to scheme.
- Represented a consortium member on the SEQ Schools PPP project.
- Represented the FM services contractor on the NSW Schools PPP project.
- Advising Equitix on the Kingston University accommodation PPP project.
- Advising Balfour Beatty on the Sussex University East Slopes accommodation PPP project.
- Advising Balfour Beatty on the Sussex University West Slopes accommodation PPP project.
- Advising Assured Guaranty on Essex Phase 1, Phase 2 and Phase 3 accommodation PPP project.
- Advising Engie on Birmingham University accommodation PPP project.
- Advising Balfour Beatty on the Leicester University accommodation PPP project.
- Advising Balfour Beatty on the Durham University accommodation PPP project.
- Advising the procuring authority on the pathfinder Lewisham BSF PPP scheme in London.
- Advising Ferrovial on the first three waves of the Bradford Schools PPP project.
- Advising Vinci on the first 12 projects delivered under Sheffield Schools BSF (four PFI projects and eight D&B projects).
- Advising lenders to Ajwad Knowledge Company for Education and Training and Al Bawani Company Limited, on the Wave 1 Saudi Schools project.
- Advising Bilfinger Berger on the design, construction and financing of the Kent Schools PFI project.
- Advising Galliford Try on the design, construction and financing of the Northants Schools PFI project.
- Represented the sponsors and FM services contractor on a children's hospital PPP project.
- Represented a government health authority on the redevelopment of multiple healthcare facilities under a PPP model.
- Represented a local shareholder within sponsors on the Fadhili workers' accommodation PPP project.
- Represented the grantor on the Saadiyat Island workers' accommodation PPP project.
- Represented the bidder on a Middle East Military Technical College.
- Represented the grantor on Danat El Emarat Hospital.
- Represented an international UK private school Abu Dhabi's PPP program.
- Advising European Investment Bank and Talanx on the financing of 14 hospital PPP projects in Ireland.
- Advising Balfour Beatty Investments on the Sandwell Hospital PPP project.
- Advising sponsors on the design, construction, financing and subsequent restructuring of the CHUM Super Hospital PPP project in Montreal.

Waste

- Represented the grantor on the Eastern Province Waste PPP project (construction demolition waste (CDW)).
- Represented the grantor on six waste PPP projects (landfill, recycling, CDW).
- Represented the grantor on four major cities' waste PPP projects (waste-to-energy (WTE), landfill, recycling, CDW).
- Represented the grantor on 10 minor cities' waste PPP projects (landfill, recycling, CDW).
- Represented the project company on Abu Dhabi Industrial Cities PPP project (industrial effluent waste).
- Represented Masdar and Bee'ah on the development and financing of the Sharjah WTE project.
- Represented ADCB Macquarie on the AED 437 million greenfield ICAD Industrial Effluent Treatment Plant PPP project, UAE.
- Represented ACWA Power on the first PPP wastewater project in Saudi Arabia, including negotiating the concession agreement.
- Represented the Ministry of Municipal and Rural Affairs of Saudi Arabia in relation to the proposed procurement of a suite of waste PPPs, including waste treatment facilities.
- Advising lenders on the financing of the Southeast Sussex WTE PPP project.

- Advising sponsors on the design and construction of the Eco hive WTE PPP project in Malta.
- Advising sponsors (Balfour Beatty and Urbaser) on the design, construction, financing and operation of the Gloucestershire WTE PPP project.
- Advising sponsors (Balfour Beatty and Urbaser) on the design, construction, financing and operation of the Essex WTE PPP project.
- Advising lenders on the design, construction, financing and operation of the Wakefield WTE PPP project.
- Advising lenders on the design, construction, financing and operation of the Cumbria WTE PPP project.
- Advising lenders on the design, construction, financing and operation of the Derbyshire WTE PPP project.
- Advising sponsors (Corey and Wheelabrator) on the design, construction, financing and operation of the Norfolk WTE PPP project.
- Advising lenders on the financing of the Project Omega wastewater treatment PPP project in Northern Ireland.
- Advising the Ministry of Public Works on the Umm Al Hayman wastewater treatment PPP project in Kuwait.
- Advising the EIB and EBRD on the Zadar wastewater treatment PPP project in Croatia.

Transportation

- Represented a Middle Eastern government department on a cross-border visa PPP project.
- Represented a bidder on a Middle Eastern airport PPP project.
- Represented a consortium bidding for a Middle Eastern highway PPP project.
- Represented a Middle Eastern airport owner on retail, F&B and cargo PPP projects.
- Represented an airport authority on its Airside Vehicle Examination PPP project.
- Represented a bidder on a greenfield light rail PPP project.
- Represented the successful consortium on a PPP hotel project at an airport.
- Advising the EIB and Allianz on the financing of the Western Peripheral Route Highways PPP project in Scotland.
- Advising lenders (including EIB) on the financing of the Irish Roads PPP projects throughout Ireland.
- Advising sponsors on the design, construction and financing of the Western High Speed Diameter PPP project in Saint Petersburg, Russia.

Utilities

Represented sponsors in relation to over 50 district cooling, water (desalination, sewage, wastewater) and power projects in the Middle East, many of which have been procured under a PPP model following the UK's SOP4 PFI principles. Examples are:

- Represented Masdar and EDF on their successful bid to finance, design, build and operate a multi-plant integrated utility system including solar PV, BESS, RO and wastewater treatment plants (WWTP), ancillary facilities and network systems as part of the AMAALA giga project.
- Representing a Saudi government entity on seven waste PPP projects.
- Advising Jeddah Economic Company on a suite of four captive utilities (district cooling, water, power, STP) to support the one-kilometer-high multibillion USD Jeddah Tower project, which will be the world's tallest tower on completion.
- Advising a Dubai government entity on a district cooling PPP project to support infrastructure at Dubai EXPO2020.
- Advising a Saudi government entity on a district cooling BOT/PPP concession.
- Represented a solar fund on a solar IPP in Jordan.
- Advised the Dubai government on a new "Green Free Zone" for a Middle Eastern government.
- Advising a Qatari government-owned entity on a waste management PPP project.
- Advising a UAE government-owned entity on multiple WWTP concessions.
- Represented the project company on a Middle East industrial effluent treatment PPP project.
- Represented the winning bidder on a biosolids PPP project.
- Represented an infrastructure fund on a WTE PPP project.
- Represented a government department on a desalination project.

Representative Privatization Experience

Utilities and Energy

- Handled several confidential privatization mandates as part of the National Transformation Program and Vision2030.
- Representation of a GCC government in connection with the privatization of electricity and water distribution and water/wastewater services.
- Representation of a GCC government in relation to the privatization of a power company and the development, ownership and operation of a power and desalination project. This deal was highly commended in the Global Water Intelligence, Global Water Awards, Power and Water Deal of the Year category.
- Representing Mubadala Development Company on the privatization of an energy asset in Abu Dhabi.
- Represented Sarawak Energy, the public power utility in the Malaysian state of Sarawak, on all aspects of (i) the unbundling of a full vertically integrated utility into separate independent businesses dedicated to power generation, transmission and distribution, and (ii) privatization of a 7,390 MW portfolio of 15 hydro/coal/gas power generation projects (both existing and under development), the largest power sector privatization going forward today in the Asia region.
- Represented the government of the Philippines on the restructuring and \$10 billion privatization of the Philippine power sector, which included (i) the formation of a wholesale electricity spot market, (ii) the privatization by concession of the nationwide electric power transmission system, (iii) divestment of 41 state-owned power generation facilities with an aggregate capacity of 5,000 MW, (iv) the appointment of private administrators to trade power, sourced from the government's legacy IPP commitments, in the electric spot market, and (v) the restructuring of approximately USD 5.5 billion of sovereign guarantee-backed power sector loans.
- Served as special privatization counsel to the government of Guam for the assessment of a public-private partnership by concession over the water and wastewater systems that service Guam's civilian population.
- Counsel to the bank that serves as the main source of multilateral financing in Latin America in the proposed privatization and development of the water and wastewater treatment systems in Acuna, Mexico.
- Represented a Fortune 10 company in the privatization of Elektro Electricidade e Servicos S.A., Brazil's sixth-largest electricity distributor.
- Participated in the privatization of Bahia Las Minas, a 355 MW electric generation plant and one of the largest thermal power plants in Central America.
- Advising on several privatizations in France (Transdev, Gaz de France, SANEF, Semmaris).
- Served as lead counsel to the State Committee on State Property of the Russian Federation, State Committee on Land Resources and Ministry of Economy on a number of privatization matters.

Aviation/Transportation

- Represented A.K. Al Muhaidib & Sons Company in its US\$660 million acquisition of 30% of the cargo and ground-handling services in a privatization.
- Represented Injaz Projects, Hokair Group, Al Fozan Group and Newrest in the US\$200 million privatization of the catering business of Saudi Arabian Airlines.
- Represented Prince Sultan Aviation Academy/Saudi Arabian Airlines in the privatization of Prince Sultan Aviation Academy.
- Advising lenders (Deutsche Bank, UniCredit, EIB and IFC) on the financing of the Zagreb Airport PPP project.
- Advising sponsor (Hermes) on the design, construction, financing and operation of the Cyprus PPP airports project (Paphos and Larnaka).
- Advising Astaldi on the design, construction and financing of the Pulkovo airport PPP project, Saint Petersburg.
- Advising sponsors on the design, construction and financing of the Lekki Airport PPP project in Nigeria.
- Advising Balfour Beatty Investments on the design, construction and financing of the Blackpool airports PPP.

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