

Delivering Infrastructure Projects under a Public-Private- Partnership (PPP) Model

A guide to achieving success in Road, Rail,
Airport, Port, Healthcare, Education, Housing
and Accommodation PPP projects
in the Middle East

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Foreword

We are pleased to provide this White Paper as a reference guide to all participants involved in Public-Private-Partnerships (**PPPs**), particularly transport and social infrastructure projects.

Broadly speaking, transport infrastructure projects encompass roads, rail, airports, ports, car-parks and street lighting, whereas social infrastructure projects encompass education, health, civic, judicial, and social housing/accommodation projects. We use airport and healthcare projects frequently in this White Paper to illustrate points, but the essential principles of PPP can generally be applied across all transport and social infrastructure projects. A separate White Paper is available for utility PPPs (eg water treatment facilities, waste facilities etc).

Recent economic and legislative developments indicate that Governments in the MENA region are considering a range of options for the procurement of their infrastructure projects. One of those procurement options is PPP. Indeed, we are also seeing master developers (many of whom are State-owned) using a quasi-PPP approach to the procurement of their infrastructure projects.

Experience from mature PPP markets, such as the United Kingdom, Canada, Europe and Australia, demonstrates that the procurers can derive significant benefits from procuring infrastructure assets and services through PPPs. 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.

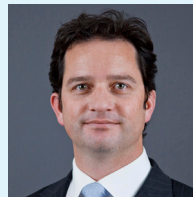
The White Paper also walks the reader through each of the stages and issues involved in procuring a PPP project: from preliminary assessment, to the bid process and then to execution of the PPP

agreements and finally, capacity building. In each stage, there are a number of issues that need to be carefully considered. This White Paper explores each stage and each issue in detail.

Given the complexities of PPP, the fact very few PPPs have been successfully closed in the Middle East, coupled with the fact PPP deals go for 25 years or more, all participants in PPP projects should engage experienced PPP advisers to advise them on each stage of the process. Each project implemented using the PPP model will face its own unique challenges, risks and issues. Each of these issues can be overcome with careful planning and expert advice.

We have extensive experience in advising clients – in both the procurers and private sector parties – on the procurement of infrastructure projects, including under PPP models. Our lawyers have advised on more than 40 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.

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Disclaimer: The White Paper is a reference guide for public and private clients and their advisers who are considering a PPP model for their projects. It should not be construed as legal advice or legal opinion on any specific projects. It should not be treated as a substitute for professional advice, which would include detailed legal, financial and technical evaluation of any proposed project.

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Focus on: Road, Rail, Airport, Port Healthcare, Education, Housing and Accommodation PPPs

1.0 Traditional Procurement versus PPP

1.1 Procurement Options for Infrastructure Projects

Historically, transport and social infrastructure projects have been procured either by central or local Governments (Government) for public policy reasons and for reasons of necessity. Despite long being the exclusive domain of the public sector, in recent times there has been a shift towards increasing private sector involvement in these sectors. Different approaches to this exist in the marketplace. These are discussed further below.

Broadly speaking, there are three different procurement models that may be considered for transport and social infrastructure projects. These are:

| Procurement Model | Description of Model |
|-------------------------------|--|
| Traditional / Fully-public | Government retains full responsibility for designing, constructing and financing the infrastructure and full responsibility for both core and non-core services during the operations phase. |
| Semi-private / PPP | Government engages the private sector to design and construct the facilities. Responsibility for the provision of services during the operations phase is split between Government (core services) and the private sector (non-core services). |
| Fully-private / Privatization | Government engages the private sector to design and construct the facilities and the delivery of both core and non-core services during the operations phase. |

There are also variants that sit somewhere in between. Also, for some social infrastructure projects, such as affordable housing projects, there may not be any core services or ‘facility’ to operate. This distinguishes housing projects from, for example, healthcare projects. For affordable housing projects, the three models remain, however, the difference in the PPP model for housing projects is that there is less emphasis on core and non-core services, and more emphasis on the level of support given to the private sector to ensure the bankability of the project. For example:

| Issue | Example of Housing Issues |
|----------------|--|
| Land issues | Whether land is granted by Government free or charge, or for de minimis payment. |
| Offtake issues | Whether the housing units are all sold back to Government master developer, or whether they are sold to the public but any unsold properties are guaranteed to be purchased by Government master developer |
| Tariff issues | Whether all revenues will come from a single unitary payment made by Government master developer (guaranteed by the finance department of Government) to the private sector |
| Other support | Whether Government master developer will pay for some or all of the required utilities infrastructure to support the housing community; or provide soft loans to the public to pay for such infrastructure |

1.2 Description of Traditional Procurement

Government has traditionally procured public infrastructure such as roads, airports, mass transit systems, hospitals, schools and housing by contracting directly for the design and construction of the relevant infrastructure. Under a traditional procurement model, which is the ‘fully public’ model above, Government itself borrows the funds, or utilises revenues (e.g., tax or other receipts), to finance the design and construction of the infrastructure. Once constructed, the infrastructure is operated and maintained by Government (itself or through outsourcing). Government therefore accepts all the usual risks associated with developing the project, including the risks associated with ownership of the asset and the ongoing operation and maintenance of the asset.

1.3 Description of PPP

In many countries, infrastructure projects are increasingly being procured under a different model, known globally as “PPP”. The acronyms PPP, Private Finance Initiative (PFI) (now superseded by PF2 in the UK), P3 and Privately Financed Projects (PFP) are often used interchangeably. They each broadly refer to a method of procurement whereby the private sector provides infrastructure services and ancillary services to the public sector.

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

1.4 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 the ability of the public sector to achieve ‘value for money’. This is covered in detail later in this White Paper, but for now, this means that private sector bids are assessed against public sector benchmarks to compare what it will cost the private sector to deliver defined services, compared to the public sector delivering the project itself.

Ultimately, the public sector will achieve value for money if this assessment demonstrates that the private sector can deliver the services more cost efficiently. However, other factors are relevant in determining whether the public sector achieves value for money. These include:

- (a) **Risk allocation:** risks associated with owning and operating a large infrastructure asset are transferred to the private sector as the party which can best manage and mitigate against such risks. Optimal risk transfer is the key in determining whether a project achieves value for money.
- (b) **Whole-of-life costing:** the payment by Government of a service fee which incorporates the up-front design and construction costs by a single party, as well as pre-defined operation, maintenance and refurbishment costs.
- (c) **Innovation:** the private sector is encouraged to use innovative solutions to meet Government’s service requirements.
- (d) **Alternative asset use:** the private sector will be encouraged to explore alternate revenue generating uses of the facility (to agreed extents). This will have the overall effect of reducing the overall cost to the public sector in the delivery of the services, thereby achieving value for money. An example in a road and a rail PPP might be the monetization of airspace above tolls or stations. An example in a student resident PPP might be the short term leasing of apartments during semester breaks.

1.5 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 procurements rules (including master community rules) for traditionally procured infrastructure. In most cases, Governments will be subject to specific tendering laws which require the competitive tendering of contracts for Government initiated projects over certain financial thresholds. Absent some sectors (eg power and water), these tendering laws are predominately designed for traditional 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 *Implementing Regulations*.

In some instances, Governments are enacting specific PPP and other laws to either override traditional tendering laws or to compliment these in a way that provides certainty for the public and private sectors. Legal advice will need to be sought to confirm the application or otherwise of such laws and rules and to confirm the procurement route. This issue is further addressed in this White Paper below in Section 3. A copy of a presentation on Middle Eastern PPP regulatory frameworks is available on request.

¹ The key differences between the above acronyms usually lies in the policy material (if it exists) that governs how PPP projects are procured in a country. Whilst some differences between approaches exist, for the purpose of this White Paper, there are no fundamental differences between PPPs, PFI/PF2, P3s and PFPs. The term ‘PPP’ will be used throughout this White Paper.

A summary of the status of the laws and policy development in GCC countries is included at Annexure 1. ²

2.0 Planning Infrastructure PPP Projects

2.1 Government's Objectives

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

The objectives for a healthcare project will be different to the objectives for a rail project. However, the following three broad objectives are considered applicable to all infrastructure projects:

- (a) **Meeting Development Needs:** For example:
 - (i) overcoming the shortage of available facilities or space in existing infrastructure;
 - (ii) improving the condition of existing infrastructure by upgrading and refurbishing; or
 - (iii) taking over and completing existing infrastructure that Government has started.

- (b) **Value for Money:** For example:
 - (i) reducing Government's capital costs associated with the development of such infrastructure;
 - (ii) allocating risk away from the Government and to the private sector; and
 - (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 Private Sector:** For example:
 - (i) encouraging innovation in design and a whole of life approach; and
 - (ii) encouraging private sector participation in the delivery of non-core services (i.e., facilities management) but still retaining ultimate control in the delivery of some or all 'social' or core-services.

Other specific objectives may exist for a sector or a given project. For example, in a housing project, one objective may be to ensure that all citizens that qualify for affordable housing are given access to suitable premises. Another example is in the healthcare sector, where a specific objective might be to ensure that a certain number of critical care and chronic disease facilities are available in heavily populated 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



² See "PPPs in the Middle East and North Africa: what is the status of the PPP legislative framework, what more can be done and where are the PPP opportunities?", 2016) (<http://www.kslaw.com/imageserver/KSPublic/library/publication/presentation/2016/PPPs-throughout-the-GCC.pdf>). See also "GCC Vision 2030 PPP Legal Report", 2017.

benefits PPP can bring to infrastructure delivery. The table below brings all of this together and illustrates how a PPP model can meet Government's stated objectives:

| Government Objective | Benefits to Government under a PPP model |
|--|--|
| Meeting Development Needs by establishment of new facilities, completion of partly constructed facilities, and/or the refurbishment of existing facilities. | <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 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 therefore providing facilities of a high standard for the long term. |
| Achieving Value for Money by streamlining operations and reducing government's ongoing operation and maintenance costs. | <ul style="list-style-type: none"> • Private sector assumes responsibility for operation and maintenance of the facilities (excluding delivery of core services). • Private sector incentivised to provide its designated services in the most cost efficient manner. • Private sector incentivised 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). |
| Harnessing the Private Sector by encouraging innovation in design, a whole of life approach and delivery of non-core services, whilst maintaining responsibility for core services | <ul style="list-style-type: none"> • Sufficient flexibility to allow Government to define the division of services between public and private sector. • Government retains ultimate responsibility for the delivery of core services. • Private sector best placed 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 The Key Features of Infrastructure PPP Projects

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

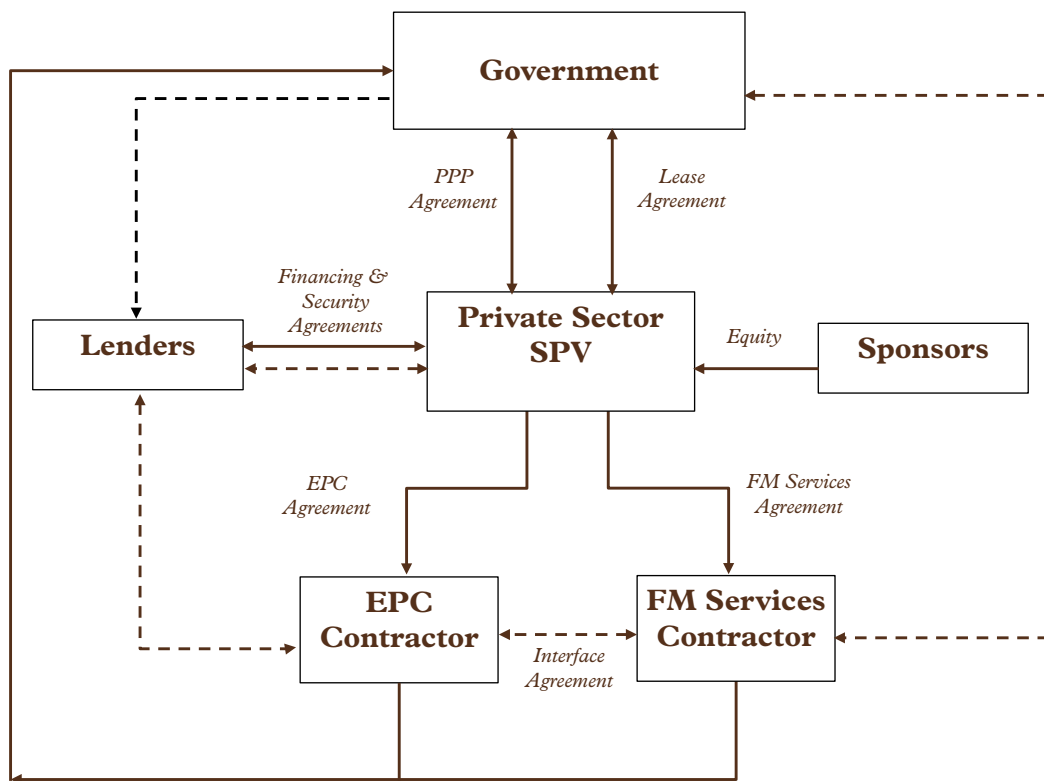
- the private sector being awarded the right to finance, design and construct the infrastructure and perform certain services over the life of the contract (typically between 20-35 years);
- the development of an output specification – Government focuses on outcomes, but does not prescribe the method of achieving the outcomes, leaving this to the private sector;
- Government pays a service fee (often called a 'unitary' charge) to the private sector for its role in delivering the infrastructure and performing certain services. Government does not pay the private sector until practical completion of the infrastructure has been certified and any tests have been passed;
- the performance of core services and non-core services, the responsibility of which can depend on the nature of the PPP model. For example, Government may elect to perform core services and the private sector would then perform only non-core services (defined below in Section 2.5), however, in other cases, the private sector may also perform some or all of the core services; and
- at the end of the life of the contract, the infrastructure is usually handed back to Government in a prescribed condition.

It should be noted that in some cases, for example healthcare, there might be slight variants on 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 would acquire an existing operating healthcare facility as a going concern, but may require some rehabilitation of existing infrastructure. |
| Co-Locate | The private sector would co-locate 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 contractual model for a transport or social infrastructure PPP project, which brings the above elements together. It should also be noted that the below diagram is only one model used in transport and social infrastructure PPP projects, but it is the most common model.



Annexure 3 contains a brief summary of the key project documents above. As shown in the above diagram and further described in Annexure 3, there is an extensive suite of contractual arrangements required to document the delivery of a project under a PPP model.

2.5 Core and Non-Core Services

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

For the purposes of this White Paper, core services are defined as those where direct interaction / contact with the public (e.g. patients in a hospital; pupils in a school, passengers in a train) is required. Non-core services are all those services required to operate and maintain the asset which are not core services.

Some examples of core services are set out below:

| Type of Facility | Core Services (representative examples may include) |
|---|--|
| 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 teacher training provision of teaching materials – including national curriculum employment of administrative and financial support staff management of payroll and pensions |
| Healthcare – clinic, hospital | <ul style="list-style-type: none"> provision of primary care at clinic-level surgical procedures; specialty services and diagnostic procedures; 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 the 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 usually no core services per se (compare this to 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> |
| Transport – airports, toll roads, car parks | <ul style="list-style-type: none"> provision of train operators (rail), parking staff (carparks) and air traffic controllers and other airside staff (airports) provision of aviation training, cargo or catering training (airports) |

Non-core services comprise infrastructure services and ‘hard’ and ‘soft’ facilities management services. Examples are set out below:

| Type of Non-Core Services | Non-Core Services (representative examples may include) |
|--|---|
| Infrastructure services | These are generally regarded as services related to design, construction, infrastructure and fitting out. They would relate to the main facility (e.g., hospital, school) but also administrative and reception areas, kitchens, laundry, security rooms, utility rooms, staff accommodation and potentially landscaped areas and roads. |
| Hard facilities management (FM) services | <p>Maintenance, upgrading and refurbishment services:</p> <ul style="list-style-type: none"> relating to 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); of building services and electrical and mechanical equipment and installations (including all equipment, furniture, bedding etc.); and of security systems, telecommunication systems and IT networks. |
| Soft FM services | <ul style="list-style-type: none"> cleaning, landscaping and decorating of common areas (eg. 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 counselling services contractor staff educational and training services monitoring of IT networks waste removal |

2.6 Crossing over between Core and Non-Core Services

It should also be noted that in some cases, for example healthcare PPPs, Government may decide for a particular public hospital, that the private sector should perform only non-core services, with Government retaining responsibility for all core clinical services. In other projects, Government may invite the private sector to perform some or all of the core services, as well as the non-core services.

While the working presumption by Government might be that core (eg clinical) services will continue to be delivered by the public sector, certain clinical services which may have been initially identified as potentially complementary to the core clinical services, could be considered for delivery by the private sector. Such services may include provision of dental services, pharmacy services, laboratory services, ophthalmological services (including cataract and related operation services), specialist clinical services (including “pain” clinics, “health and lifestyle” clinics and “early return to work” clinics), as well as aged or mental patient care.

This approach would provide flexibility in the ability to achieve Government’s objectives in encouraging private sector participation in the delivery of certain non-core (clinical support) services and core (clinical) services as discussed above.

The co-located options which can be considered include:

- (a) the establishment of an integrated private hospital facility which shares non-core (clinical support) services and non-core (facilities management) services;
- (b) the establishment of one or more specialist private medical units or wards located within the public hospital facility which also share non-core (clinical support) services and non-core (facilities management) services; and
- (c) a lease or license arrangement whereby the private sector uses surplus public hospital capacity. Similar flexibility can occur in education PPPs and transport PPPs.

Such services may include provision of dental services, pharmacy services, laboratory services, ophthalmological services (including cataract and related operation services), specialist clinical services (including “pain” clinics, “health and lifestyle” clinics and “early return to work” clinics), as well as aged or mental patient care.

3.0 Delivering Infrastructure PPP Projects

3.1 Key Stages of a PPP project

Undertaking a PPP process is not simply a matter of issuing a “request for proposals” (RFP) to a series of qualified builders to build a facility.

The process 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 viable and delivers value for money to Government. Only at this stage is a tendering exercise undertaken.

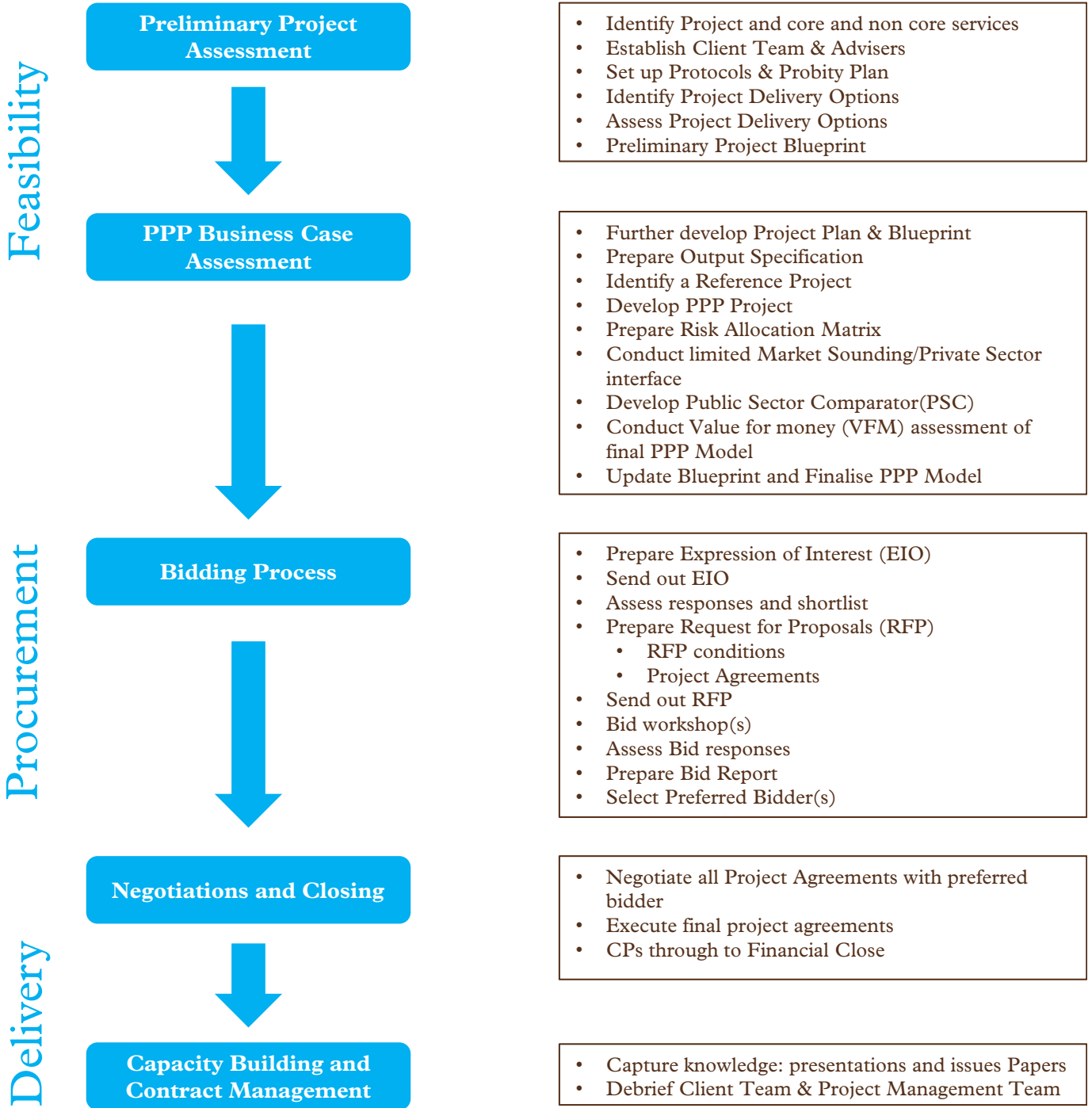
The three (3) stages in a PPP project are as follows:

1. Feasibility Stage: where the work performed is a Preliminary Project Assessment and a PPP Business Case Assessment
2. Procurement Stage: where the work involves the Bidding Process, Negotiations with the winning bidder through to Financial Close
3. Delivery Stage: where the work performed includes Capacity Building and Project Management.

Set out on the next page is a detailed process map with a description of each of these three (3) stages. Also produced in Annexure 1 is a process map showing what we do at each stage and how we do it.



PPP Process Map



3.2 Feasibility Stage

Different countries have adopted different models for the oversight of PPP projects. For the purposes of this White Paper, we have assumed that the project will be procured by a Government PPP Unit working with the relevant procuring authority (eg for a healthcare PPP, the procuring authority is the Department of Health). However, if no such Government PPP Unit exists, then the procuring authority will often develop a Client Team. The Client Team will comprise key personnel with extensive procurement experience. For specific procurements, the Client Team may also call upon stakeholders from other relevant departments. The Client Team will engage with external financial, legal and technical advisers in order to structure the procurement process 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 RFP.

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

The Client Team's role in the bid process is to support the feasibility and business case for the PPP project including developing of the public sector comparator, with a value for money assessment based on the expected net present value of future cash flows from a unitary payment over the life of the project.

The Client Team would then engage advisers to prepare key bid documents, including the output specification, the EOI and the RFP and to assess each bid, recommend a preferred bidder and negotiate with the preferred bidder through to financial close. The Client Team will effectively play a key role in all stages of a PPP project.

In contrast, under a more traditional procurement model, a Government department in need of a new school might engage a project manager, cost consultant or quantity surveyor to estimate the capital expenditure for the school and also an architect to design the school. The project manager would manage the tender process and appoint a builder on behalf of the department to build the school for a fixed lump sum price, payable in monthly arrears based on the value of work then performed.

3.3 Procurement Phase

Government mandated competitive tendering exists due to the over-riding duty of all governments to manage the public purse effectively. A central component is that all public infrastructure procurements should be focused on obtaining the best value for money. 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 to illustrate that the procuring authority has a commitment to openness and transparency. This serves to increase the level of interest in future partnering opportunities. Finally, in procuring a private partner, efficiency is the key and by using clear timeframes and competitive tension to its advantage, procuring authorities can deliver major infrastructure projects quickly and minimise the risk of delayed bilateral negotiations with entrenched providers.

A key consideration for all government entities looking to embark on major infrastructure projects is aligning their proposed procurement process with existing laws and regulations for traditionally procured infrastructure.

In most cases, Governments would be subject to specific tendering laws which require the competitive tendering of contracts for government initiated projects over certain financial thresholds. These tendering laws are predominately designed for traditional procurement, not privately financed infrastructure projects including PPPs. In some instances, Governments are enacting specific PPP and other laws to either override traditional tendering laws or to compliment these in a way that provides certainty for the public and private sectors. In any event, legal advice will need to be sought to confirm the procurement route.

Further, unlike the European Union's procurement regime, there is no centralised system to advertise tender opportunities throughout the Middle East.

Further, unlike the European Union's procurement regime, there is no centralised system to advertise tender opportunities throughout the Middle East.

This has led to a general trend of authorities

approaching a familiar set of market participants when tendering projects, particularly in the power and water sectors. Of course, and as mentioned above, procurement rules at a country level may be relevant, such as Saudi Arabia's Government Tenders and Procurement Law and the Implementing Regulations. Legal advice will need to be sought to confirm the application or otherwise of such laws and rules.³

3.4 The Delivery Stage

After the completion of the procurement phase, there are several distinct 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 the payments from Government (as applicable) for the project. The next, longest, stage is the operational phase during which the project is operated per the agreed framework and the services delivered. Finally, there is the termination stage when the contract for the project expires and the parties complete their obligations and the private sector hands over the project in agreed condition back 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 contract manager during the development stage, which role can be undertaken by the Client Team as well. The contract manager's key role is to ensure that the project is being developed in accordance with the requirements of the contracts entered into. As is common with significant construction projects, variations will inevitably be required and the contract manager must manage these to ensure that the project meets the Government's time, cost and quality objectives.

The post procurement stage is also an opportunity for Government to conduct an exercise to expand its capacity for the procurement and delivery of infrastructure projects. This is done by developing presentations and papers on lessons learned and ensuring that the learning process inherent in the procurement of any infrastructure project is reflected in the procurement of subsequent projects.

³ Please see "Saudi Arabia and the Gulf Cooperation Council: Infrastructure Delivery Including Under a Public Private Partnership Model: Top 10 Tendering Tips" (<https://kslawemail.com/77/1229/pages/article6.asp>) for key considerations for Governments when embarking on competitive tender processes for social infrastructure projects.

4.0 Risk Allocation & Commercial Principles

Risk allocation is based on the premise that a given project risk should be allocated to the party that can most appropriately manage that risk. Excessive risk allocation to the private sector should be avoided, as this is likely to result in increased costs to Government (i.e., increased bid costs and service payments) or failure by the private sector to meet its contractual obligations.

Annexure 3 to 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 project risks, 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.

4.1 Some specific risks for social infrastructure PPPs

In addition to the risks identified in the risk allocation matrix in Annexure 3, there are several risks that 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 which 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 public sector comparator is constructed as early in the procurement process as possible to ensure value for money 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 services, it is essential that the delivery of services by one party does not unduly interfere with delivery of services by the other party. This is known as ‘interface risk’. Interface risk 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 an Interface Agreement between Government, the EPC Contractor and the FM Services Contractor (see diagrammatic illustration in Section 2.4 and the description of this agreement in Annexure 3).



Where Government performs all core services, it is recommended that Government bears 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 transport and social infrastructure projects include:

| Commercial Principle | Description |
|---|--|
| Payment mechanism and availability | Fundamentally, Government will make a regular unitary payment for the project with such payment subject to partial or complete deduction for any failure to meet Performance Standards and KPIs. Please see Annexure 5 and Annexure 6 for further details on Performance Standards and KPIs and the Payment Mechanism. |
| Demand Risk | Linked to the payment mechanism, the risk in the “demand” for the services is usually retained by Government for social infrastructure projects, as these types of projects are often economically viable if the private sector is asked to assume demand risk in the number of patients, pupils or tenants. For transport PPPs, particularly pathfinder PPPs such as the first toll road PPP in a country, a certain level of demand risk should be guaranteed by Government to ensure the project is bankable. This is because there is often limited data on the number of passengers who have passed on existing roads and zero data on greenfield highways. However, demand risk is usually heavily negotiated in transport PPPs. |
| Relief, compensation and force majeure events | <p>Upon the occurrence of certain “Increased Costs” and other prescribed events, including:</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 required by Government; and • potentially other events (eg site condition risk etc), <p>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. In addition, if required, the private party will also be entitled to recover its lost revenues or increased costs as a result of the relevant event. This is usually heavily negotiated in PPP projects.</p> <p>Generally, the principle is that no relief (either ‘time’ or ‘money’) will be given to the private sector for delays, the occurrence or effects of which are within the private sector’s control. However, the private sector will negotiate for a more extensive 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 labour on the private sector, on the basis that the private sector is best able to control this risk. The private sector would then pass through this risk to its subcontractors.</p> |
| 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 the insurances 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 | The default regime is generally spelled out in detail in the project agreements. While some events may be immediate defaults (e.g., insolvency), others will typically require Government to give notice to the private party and allow the private party (or its lenders under project financed PPPs) a certain period of time to implement a cure prior to the event being declared a default. Termination rights arise if a default remains uncured. |
| Termination payments | Upon termination (whether at the end of the agreed term or earlier due to a termination event), Government shall be required to make a payment to the private party. The determination of such payments depends on the nature of the project (eg BOO v BOT; conventional v project finance) and the reason for the termination. |
| 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. These could include emergencies, matters of public health etc. The contractual arrangements will be clear on when such rights can be exercised and what (if any) compensation would be payable to the private sector. |
| End of term arrangements | Typically, ownership of the project is handed over to Government at the end of the term (or early termination). This may not apply to social housing projects. The project agreements will set out the condition the project must be handed over in and the private sector shall be required to ensure compliance with such standards. Typically, an independent certifier is appointed to ensure that the requirements for hand over are met. |

5.0 Value For Money (VFM)

5.1 How Does Government Achieve VFM?

A successful PPP requires Government to use the most efficient skills of both the public and private sectors to achieve value for money. 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 value for money of non-core services is maximised; and
- (d) comparisons made between publicly and privately financed options for delivery of the facility are fair, realistic and comprehensive.

The value for money assessment is complex and requires specialist advisers. Ideally it involves the creation of a public sector comparator (PSC). A PSC is a hypothetical risk-adjusted costing, by the public sector, to an output specification produced as part of a PPP procurement exercise. The purpose of the PSC is to provide a benchmark against which to form a judgement on the value for money of PPP bids. This exercise is distinct from the process of establishing what level of service charges is actually affordable to Government. There is no reason to presume that a good value for money project will be affordable or that an affordable project will represent good value for money.

In the Middle East, this concept is new to Governments and some advisers. Whether the process is called a PSC or something else, the point is that Government needs to determine that the project (and bids) represent value for money. The White Paper explains the PSC in further detail below for those interested in understanding how PSCs can be derived.

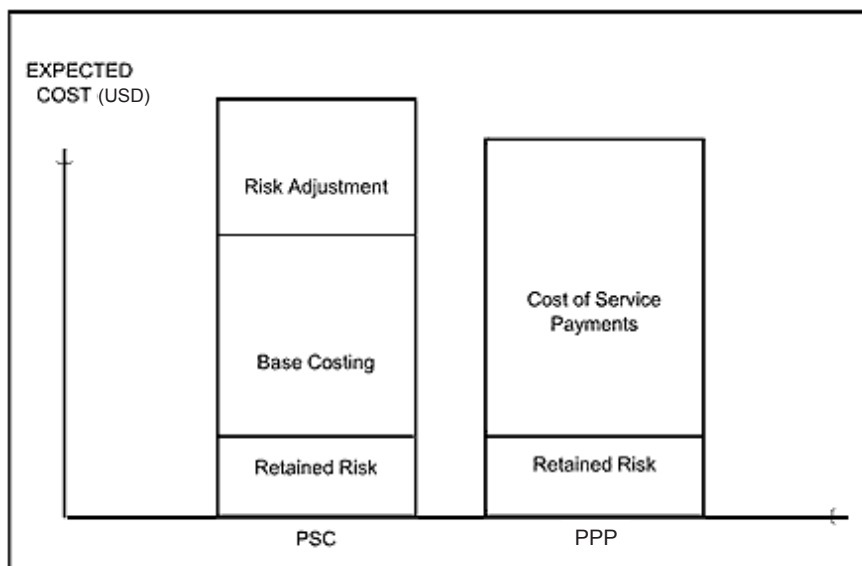
While competition ensures that bidders will provide their most efficient bids, there is still a need to compare the best proposal under the PPP process against a traditional procurement benchmark. This allows Government to make a judgement on whether they are likely to achieve value for money from a PPP project.

A PSC:

- (a) is expressed in net present value terms;
- (b) is based on the recent actual public sector method of providing that defined output (including any reasonably foreseeable efficiencies Government could make); and
- (c) takes full account of the risks which would be encountered by that style of procurement.

To be a valid benchmark against which private sector bids can be compared fairly, the PSC must reflect not only certain procurement costs but also the risk that additional costs may arise, which under a PPP model would fall to the supplier of services. During the procurement process, risks should be identified, and ways in which these risks can be mitigated considered (see Annexure 3 to this White Paper).

It is necessary to assess the impact of these risks on costs, estimate their probabilities, and explore and appreciate the sensitivity of these estimates. In many cases, adjustments to the original cost estimates will be needed to arrive at the final risk adjusted PSC. Comprehensive accounting for risk is required to ensure that valid and informed comparisons can be made amongst the bids and between the bids and the PSC. Understanding the risks that Government assumes during a traditional procurement process is a key element to the PSC process. The picture below illustrates the value for money comparison between a PSC and a PPP bid. The diagram shows the risk adjustments in aggregate to demonstrate how the aggregate 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. However in reality the 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 actors of bid evaluation including (but not exhaustively):

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

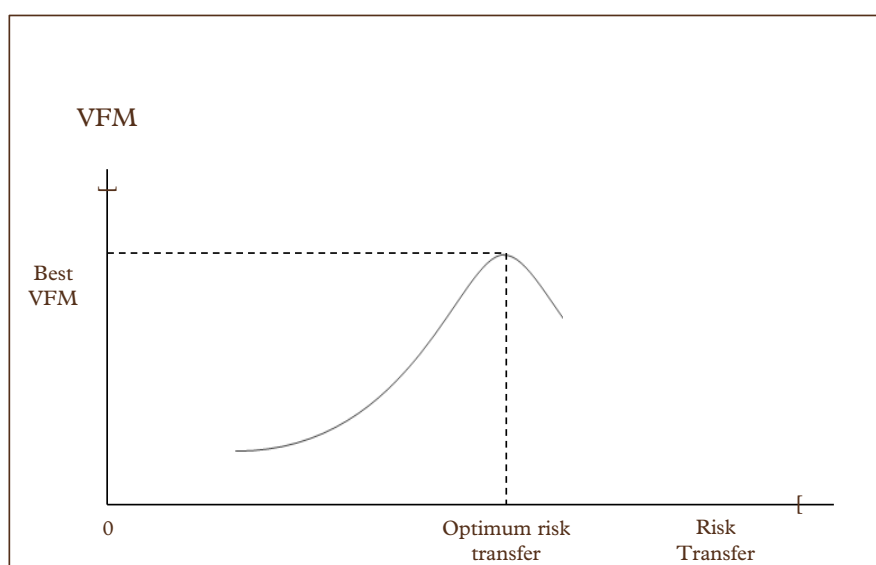
Adjustments or standardisation are often needed for the PSC to allow for these and other factors to ensure a fair comparison between the PSC and PPP bids. Some factors may be difficult to quantify; such as differences between the standards of service or methods and dates of delivery. These may require the conclusion to be made on a qualitative basis. Achieving value for money does not necessarily mean accepting the lowest cost bid.

5.2 How Risk Allocation helps achieve VFM

As indicated 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 value for money.

This is illustrated below.



Once a risk matrix is produced, it is necessary to quantify and assess the timing of the possible consequences.

Value for money 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 or (ii) the financial consequences if they do occur, (iii) or both.

At some point, however, if risk, which cannot be best managed by the private sector, continues to be transferred, value for money will decline since the premium demanded by the private sector will outweigh the benefit to Government. Indeed, to seek to transfer risk beyond the optimum level may simply not be bankable.

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

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 their 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 upon the information sources available. Usually the best approach should be to use empirical evidence whenever it is available. When it is not, common-sense 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 and negligible).

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

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

The ultimate objective is to be able to add up the consequences of all risk elements 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 or probability 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) which 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 disincentivise bidders from participation in the bid process.

6.0 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 Annexure 2 for addition 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 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.

By making the PSC available to bidders, it serves as a benchmark for the private sector in ensuring that their bids are competitive.

(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 '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 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 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 Annexure 4.

(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 standard 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 the financing, both debt and equity, for a project will be a condition precedent to the effectiveness of the PPP Contract. Section 7 describes the expected finance plan private sector bidders will procure for a project.

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 primary obligation of Government. In housing projects, such obligation may extend to Government agreeing to purchase or lease a portion of housing units.

The PPP Contract will 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 a project from its start to the expiry of the contract term.



7.0 Financing PPPs

7.1 The 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 bid submissions to demonstrate the amount and availability of each category of funding and/or the plan for completing the necessary financial arrangements giving confidence that 100% of the funding requirement will be available to meet the project cost.

7.2 Expected Capital Structure

The private sector will form a special purpose vehicle (SPV) which will be solely responsible for the development of the project and delivery of non-core 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 it (as opposed to shareholders in the SPV).

The SPV will be the entity that enters into the PPP Contract, the EPC Agreement, the FM Services Agreement and the financing arrangements with the lenders.

The shareholders in the SPV (or equity provider) will contribute capital to the SPV and typically receive their return from investment in a project after operating costs have been paid, long term debt has been serviced and appropriate reserves have been created. Equity providers will therefore 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 utilised. 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 level of equity that lenders will expect in the deal to provide an adequate buffer against downside risks.

Factors such as the 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 credit worthiness of the counterparty to the PPP Contract will impact the ratio of debt to the total project costs – the riskier the project, the lower this ratio would be. However, in nearly all cases, the shareholders in the SPV can expect to be required to contribute at least 10-15% of the equity 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.⁴

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 restrictive and affirmative 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, requirements to provide frequent reports on construction and operation, etc.

7.3 Security that Lenders will Require for a PPP

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

- (a) a charge over physical assets including bank accounts;⁵
- (b) an assignment of contractual rights, including the PPP Contract (discussed further below);

⁴ Please see "Implementing Islamic Financing for Renewable Energy Projects" (<https://kslawemail.com/77/1350/pages/article1.asp>) for a detailed description of project financing structures (including Islamic financing structures).

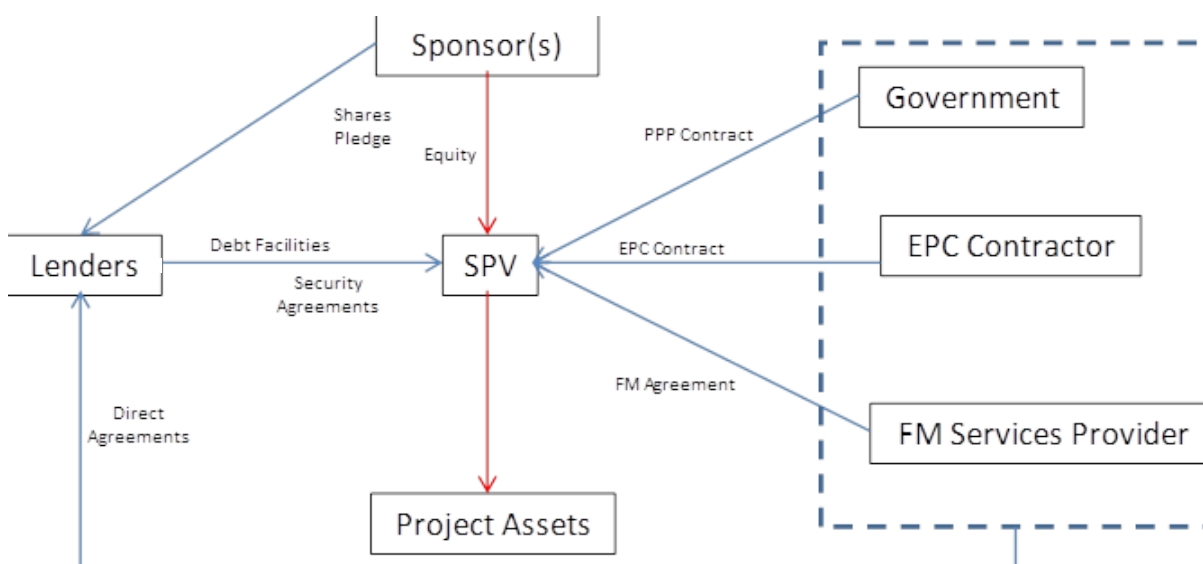
⁵ Lenders in the GCC region may be willing to forego the requirement to have charge over the physical assets on a case by case basis and the creditworthiness of Government entity responsible for making the payment under the PPP Contract.

- (c) an assignment of project insurances; and
- (d) multi-party 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 value for money for Government. It should, however, be noted 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, or other similar credit enhancements, which is commonly sought in Middle East power and water project financings.

In addition, the lenders will also enter into direct agreements with counterparties to the principal agreements of the SPV including the counter-parties to the PPP Agreement, the EPC Agreement, the FM Services Agreement and any land lease (unless the land on which the PPP is constructed is owned by the SPV). These direct agreements will give 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. The diagram below illustrates the various contractual connections.



7.4 Lender’s rights to step-in

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

Common practice is that the right to step-in is enshrined in a direct agreement 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 a SPV default comes secondary to the lender’s right to step in and take control of the project. There may also be direct agreements with other key parties in the project e.g. the EPC Contractor and the FM Services Contractor.

The PPP Contract will be terminated if the lenders fail to, or choose not to step in to 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).

8.0 Conclusion

Recent economic and legislative developments indicate that Governments in the MENA region are considering a range of options for the procurement of their transport and social infrastructure projects. One of those procurement options is PPP.

Experience internationally and also within the GCC has shown that Government can derive significant benefits from adopting a PPP approach for 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 value for money.

The White Paper has also analyzed the three stages to a PPP project – Feasibility, Procurement and Delivery. Given the complexities of PPP, the fact very few PPPs have been successfully closed in the Middle East, coupled with the fact PPP deals go for 25 years or more, Government should engage experienced PPP advisers to advise them on each stage of the process.

Each project implemented using the PPP model will face its own unique challenges, risks and issues. Each of these issues can be overcome with careful planning and expert financial, technical and legal advice, with the result that GCC Governments can procure a true pathfinder PPP project for others in the region to follow.

We have 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 40 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.



Annexure 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 at the date of this White Paper. Please contact us for a copy of our separate paper “GCC PPP Review” for details of each country’s PPP status.

| | PPP Law | Existing PSP laws (eg IPP/IWP)? | Central PPP Unit | PPP Guidance Material | Delivered PPP Law Deals | Delivered PSP Deals | Pipeline of PPPs coming ⁶ |
|---------|-----------------|---------------------------------|------------------|-----------------------|-------------------------|---------------------|--------------------------------------|
| UAE | ✓ ⁷ | ✓ | ✗ | ✗ ⁸ | ✗ | ✓ | ✓ |
| KSA | ✗ ⁹ | ✓ | ✓ ¹⁰ | ✓ ¹¹ | ✗ | ✓ | ✓ |
| KUWAIT | ✓ ¹² | ✓ | ✓ | ✓ ¹³ | ✓ | ✓ | ✓ |
| QATAR | ✗ ¹⁴ | ✓ | ✗ | ✓ | ✗ | ✓ | ✓ |
| OMAN | ✗ ¹⁵ | ✓ | ✗ | ✗ | ✓ | ✓ | ✓ |
| BAHRAIN | ✗ | ✓ | ✗ | ✓ | ✗ | ✓ | ✓ |
| JORDAN | ✓ ¹⁶ | ✓ | ✓ | ✓ ¹⁷ | ✗ ¹⁸ | ✓ | ✓ |

⁶ For details of the Pipeline of PPPs coming in the Middle East, please contact K&S for a copy of our PPP Tracker.

⁷ Law No 22 of 2015 on Public Private Partnerships (Dubai) was passed on 20 September 2015 and came into effect on 19 November 2015.

⁸ This is contemplated by the Dubai Government, but until then approval and management of PPPs in Dubai falls under the Supreme Fiscal Committee.

⁹ A PPP law is contemplated in late 2017. Until then the Government Tenders and Procurement Law (Royal Decree No M/58 27 September 2006) and its related Implementing Regulations apply.

¹⁰ In 2017, the Saudi Government established a “National Centre for Privatization” pursuant to Resolution 355 of 2017. The resolution defines “privatization” to include PPP.

¹¹ There is no formal guidance material, but the Saudi Government has published its Vision2030 strategy document and also a National Transformation Plan.

¹² Law No 16 of 2014 Regarding Public Private Partnerships and Executive Regulations through Decree No 78 of 2015.

¹³ In September 2016, KAPP and the World Bank signed an agreement for the World Bank to update Kuwait’s Guidebook to align it with the 2014 law.

¹⁴ A draft PPP law is with Qatar’s Ministry of Economy and Commerce and Council of Ministers for review.

¹⁵ The Middle East Economic Digest has reported that the Omani PPP legislation could be enacted in 2017



¹⁶ Law No 34 of 2014 “Public Private Partnership Law”; Regulation No 98 of 2015 “Public Private Partnership Regulation”; Public Private Partnership Policy Pages.



¹⁷ This is expressed to be published shortly.

¹⁸ Many PPPs are being tendered currently.

Annexure 2 – Example of K&S PPP Process Map

Example of how K&S approaches a PPP Project from start to finish

| PROCESS FLOW | 1. Instructions, Scope & Strategy | 2. K&S Project Protocols | 3. Expression of Interest (EOI) | 4. Request for Proposal (RFP) |
|---|--|--|---|--|
| <p>What we do</p>  | <ul style="list-style-type: none"> • Meet with client & its advisers to determine parameters of project & proposed strategy • Agree matter specific requirements, timelines, critical path items, communication protocols, assumptions, precedents • Agree responsibility amongst Government's Client Team • Agree probity protocols • Execute retainer & fee letter • Distribute contact list | <ul style="list-style-type: none"> • Agree resourcing • Set up K&S project team (based on proposal to the client) • Agree approach to internal communications • Set up project protocols • Brief shared services & project team | <ul style="list-style-type: none"> • Prepare EOI • Evaluate EOI responses • Short list bidders to receive RFP • Understand technical requirements • Understand political requirements • Interconnect commercial, technical, political and legal requirements • Obtain required approvals • Implement consultation strategies • Prepare briefings to client | <ul style="list-style-type: none"> • Develop commercial principles • Agree legal and risk allocation framework and develop RFP document • Develop draft legal documentation • Prepare risk matrices • Provide input on public sector comparator (PSC) |
| <p>How we do it</p>  | <ul style="list-style-type: none"> • Traps & warnings • Records of previous matters with client & structures used on Projects • Probity protocols • Confidentiality agreements • Pro forma timelines • Checklists • Industry practices - industry publications, web sites, external seminars • Technical expertise & experience • Engagement Letter | <ul style="list-style-type: none"> • Project Protocols • generic project protocol document • examples of project protocols for previous deals • Training • Technology services training on working with project documents • probity training & confidentiality deeds • Resources • Technology services • Precedents | <ul style="list-style-type: none"> • Laws & Regulations • Lists of approvals for other projects • Previous consultative strategies | <ul style="list-style-type: none"> • Previous projects & their documentation • Commercial principles documents • Risk matrixes & allocation • Prior infrastructure project financings • Drafting 'road map' • Precedents • Project/PPP agreement • Direct Agreements • Leases/licences • Research notes & guidelines |

| PROCESS FLOW | 5. Evaluation | 6. Negotiation | 7. Completion | 8. Capacity Building |
|--|---|---|--|--|
| <p>What we do</p>  | <ul style="list-style-type: none"> • Assist with pre bid clarification • Review bids & undertake risk analysis • Review third party contracts (eg EPC, Operating and Maintenance finance agreements) • Prepare recommendation to client | <ul style="list-style-type: none"> • Negotiate & draft amendments to legal documentation • Finalise legal documentation | <ul style="list-style-type: none"> • Prepare delegation & authority instruments • Satisfy conditions precedent | <ul style="list-style-type: none"> • Debrief session with client • Capture knowledge • Summarise risk allocation |
| <p>How we do it</p>  | <ul style="list-style-type: none"> • Risk matrices & allocation • Probity policies? • Guidance notes on risk allocation for specific clauses & issues • Summary of risk allocations for previous projects • Evaluation criteria • Financing structures on previous projects • Policies & research notes on financing structures, including linkage to termination payments | <ul style="list-style-type: none"> • Optimizing risk allocation • Limiting negotiations to critical items | <ul style="list-style-type: none"> • Delegation & authority instruments • Condition precedent checklist | <ul style="list-style-type: none"> • Know How contribution forms • Lessons learnt from previous projects - outline of issues considered with clients • Previous presentations • Practice update form |

Annexure 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 & 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. |
| 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. |
| 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. |
| Late Completion | Risk of completion of the facilities being delayed. 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/ender step in rights. Replacement or termination of EPC Contractor. Abatement of payments. |
| Change in Law | Risk arising from discriminatory or specific changes in laws which have a material and adverse impact on the cost of delivering the project. | Government / Private Sector | Government to minimise 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 finance, 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). |
| 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 which have a material and adverse impact on the cost of delivering the services. | Government / Private Sector | Government to minimise 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. |

| 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. |



Annexure 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 |
|--|---|
| PPP Contract (sometimes called a Project Agreement or Master Agreement) | <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 (ie even if it subcontracts obligations, it is still singularly responsible to Government). |
| Site Lease Agreement | <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 a project. Ownership has different legal meanings in some GCC countries (eg 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. |
| EPC Agreement (sometimes called a Construction Contract or D&B Contract or D&C Contract): | <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. |
| FM Services Agreement (sometimes called a Facilities Management Agreement or Operating Agreement): | <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. |
| Direct Agreements (sometimes called Tri-Partite Agreements or Multi-party Collateral Agreements) | <ul style="list-style-type: none"> • Two main agreements: <ul style="list-style-type: none"> • Between EPC Contractor, SPV, Government • Between FM Services Contractor, SPV, 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 Agreement/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). |
| Finance and Security Agreements including Lenders' Direct Agreements | <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). |
| Interface Arrangements | <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 co-ordination and co-operation 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 both under the PPP Contract and also documented in the Interface arrangement. |

Annexure 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 The SPV shall provide cleaning services on the site (except within secured areas for the facility), including cleaning of all external building surfaces, carparks, roads, pavements, signs, bins and receptacles to the Performance Standard.</p> <p>Performance Standard and Specific Service Requirements The SPV shall ensure:</p> <ul style="list-style-type: none"> (a) 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; (b) 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 build up of dirt and cleaning materials; (c) the landings, ramps, stairwells, handrails, steps, entrances, porches, patios, balconies, eaves and external light fittings are Clean. For the purpose 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. |



Annexure 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:

- (a) has adequate provision for dealing with failures in the provision of non-core services;
- (b) incorporates appropriate abatement provisions; and
- (c) 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.

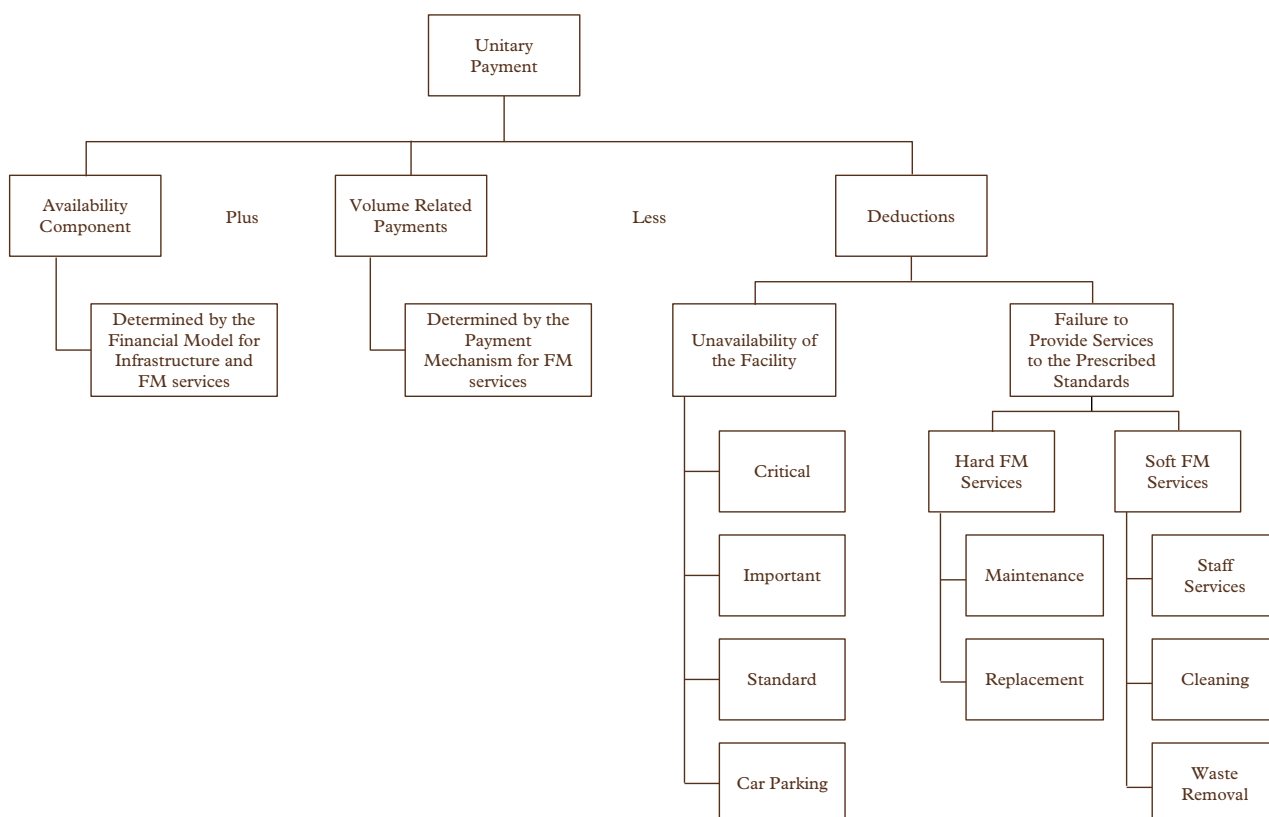
The payment mechanism will also need to address the commercial considerations of third party funders. The example output specification in Annexure 6 provides examples of performance monitoring.

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:

- (a) an availability component that assumes the SPV has provided the agreed scope of non-core services to the prescribed standards;
- (b) 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
- (c) less unavailability and performance deductions incurred for unavailability or substandard provision of non-core services.

The figure below illustrates the components of the payment mechanism.



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

$$UP = AC + VRP - AD - PD$$

where:

AC = the Availability Component

VRP = the Volume Related Payment

AD = the Availability Deduction

PD = the 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 sub-standard 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.



Annexure 7 – K&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 client’s 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 practice. 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). One of our partners contributed in the preparation of the State of Victoria’s 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 multi-jurisdictional 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
- Labour Accommodation
- Desalination
- Water Treatment
- Sewage Treatment
- Waste to Energy
- Power
- District Energy
- Industrial
- Airport
- Catering & Cargo
- Port
- Rail
- Road
- Telco

Thought Leadership and Articles

“Saudi Arabia PPP Update – Vision 2030 and the National Transformation Programme, Malaysian Economic Cooperation, and the New Saudi PPP Unit”; “PPPs in the Middle East and North Africa: what is the status of the PPP legislative framework, what more can be done and where are the PPP opportunities?”; “Planning Tendering & Closing Middle East PPP Projects”; “Middle East PPP Policy Developments: Kuwait and Dubai”; “Will the Saudi PPP Program Succeed?”; “Saudi’s Vision 2030 – The Challenge Of Implementation And Some Analysis On Institutional And Regulatory Public Private Partnership Reform”; “Will PPPs Provide the Catalyst for Waste to Energy Projects in the GCC?”; “Public-Private Partnerships In The GCC: Challenges And Opportunities In A New Economic Landscape”; “Kuwait – Public Private Partnership (PPP) Projects”; “Saudi Arabia and the Gulf Cooperation Council: Infrastructure Delivery Including Under a Public Private Partnership Model: Top 10 Tendering Tips ”; Saudi’s Vision 2030 – Why Government Capacity Building Is So Important”; “PF2 and its relevance to PPPs in the GCC”; “Back-to-back: the pass-through of construction risk under PPPs and energy infrastructure projects”; “A New Delivery Model for District Energy Projects: Public-Private-Partnerships”; “Project Procurement: designing a successful model”; “Procurement Options for LRT systems”; “PPPs structures for Healthcare and Correctional Facilities projects”; “PPPs revisited: the Output Specification”; “PPPs and the Tendering Process”; “PPPs revisited: the Output Specification”.

Public-Private-Partnerships”; “Project Procurement: designing a successful model”; “Procurement Options for LRT systems”; “PPP structures for Healthcare and Correctional Facilities projects”; “PPPs revisited: the Output Specification”; “PPPs and the Tendering Process”.”; “PPPs revisited: the Output Specification””

Social Infrastructure PPPs

- Representing the sponsors on a Middle Eastern labour PPP project.
- Representing a Middle Eastern Govt master developer on a 20,000 bed labour PPP project under a PPP model (following the UK’s SOP4 PFI principles).
- Representing a Middle East 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 Sorborne University PPP.
- Represented a shortlisted education and training institution in relation to its tender for the development of a Middle East 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 Contractor on the NSW Schools PPP Project.
- Represented the sponsors and FM Contractor on a children’s hospital PPP Project.
- Represented a Government Health Authority the re-development of multiple healthcare facilities under a PPP model.

Utilities PPPs

Represented sponsors in relation to over 50 Middle Eastern district cooling, water (desal, 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 include:

- Representing a Saudi Government entity on 7 Waste PPPs.
- Advising a Saudi master developer on a suite of captive utilities (district cooling, water, power, STP) to support a tall tower.
- Advising a Dubai Government entity on a district cooling PPP 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.
- 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 waste-to-energy PPP project.
- Represented a Government department on a desalination project.

Transport PPPs

- Represented a Middle Eastern Government department on a cross border visa PPP.
- 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 & 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.

Representative Privatization Experience

Utilities & Energy

- Several confidential privatization mandates as part of the National Transformation Program (NTP) and Vision2030.
- Representation of a GCC Government in connection with the privatization of the 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 a developer on the privatization of an energy asset in Abu Dhabi.
- Represented an Asian energy utility 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) privatisation of a portfolio of hydro/coal/gas power generation projects (both existing and under development).
- Represented an Asian government on the restructuring and privatization of its 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 State-owned power generation facilities, (iii) the appointment of private administrators to trade power, sourced from the Government's legacy IPP commitments, in the electric spot market, and (iv) the restructuring of sovereign guarantee-backed, power sector loans.
- Served as special privatization counsel to a pacific-based government for the assessment of a public-private partnership by concession over the water and wastewater systems that service its civilian population.
- Counsel to the bank which 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 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-megawatt 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).

Aviation/Transportation

- Represented a buyer on its acquisition of 30 percent of the cargo and ground-handling services in a privatization.
- Represented the buyers in a privatization of a catering business in a GCC country.
- Represented an aviation group in a privatization of a GCC aviation academy.

Abu Dhabi
Atlanta
Austin
Charlotte
Dubai
Frankfurt
Geneva
Houston
London
Los Angeles
Moscow
New York
Paris
Riyadh
San Francisco
Silicon Valley
Singapore
Tokyo
Washington, D.C.