

PUBLIC PRIVATE PARTNERSHIP



SAFEGUARDING LEBANON'S INTERESTS...
... AT FAST FORWARD DEVELOPMENT

Fransa Invest Bank Research
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This Public Private Partnership Report (hereinafter “PPP” and the “Report”) is published by Fransa Invest Bank SAL (hereinafter “FIB”), for the sole purpose of providing information and analysis related to the PPP law in Lebanon and the business environment related thereto. This Report has been prepared for the purpose of providing an overview of PPP laws and regulations, their benefits, challenges and the importance of the PPP legal framework in Lebanon. It also details the provisions of the PPP law enacted and includes a comparative analysis with currently applicable laws and regulations in several Arab countries.

This Report is the result of independent research and consultations, and sources include: The World Bank, OECD, ADB, IMF, and UN. It was prepared by Fransa Invest Bank, an investment bank based in Lebanon and regulated by the Lebanese Central Bank, and its parent company, Fransabank, the third largest bank in the country, together with international law firm CMS, represented by Me Malek Takieddine. The Report contains a review of the PPP law in Lebanon and specific recommendations, in consultation with CMS and input from Lebanon’s High Council for Privatization. This Report cannot be copied, transmitted, or reproduced in whole or in part by anyone without the prior written consent of Fransa Invest Bank. Each person, by accepting delivery of this Report, agrees to the foregoing.

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FOREWORD

I have a strong vision and sincere belief in the importance of public and private sector partnership as the right means to lift our country's development and prosperity.

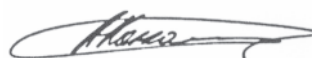
It was this conviction that led me, in 1999, when I chaired the International Chamber of Commerce (ICC), to call for a partnership between the United Nations and the World Business Organization. I had the ICC, in the name of its millions of member companies and business associations throughout the world, take up the UN's Challenge and I signed the launch of the Global Compact with then Secretary General Kofi Annan. The goal, at a time of anti-globalization and attacks on global companies by NGOs and governments, was to promote shared values in the areas of human rights, labour standards, environmental protection and fighting against corruption and it has since then, effectively reinforced the partnership between the UN and businesses.

Today, we are calling for more public private partnership in Lebanon to launch key projects that are needed to develop the country's infrastructure and enable it to reclaim its missed role as a commercial, trade, business and financial center for the region. We have faith in our country and its ability to overcome all obstacles and challenges. In fact, it is based on the resilience of the Lebanese private sector, which continued to prevail and grow over the past decades, in spite of severe, largely threatening and persistent political crises.

This resilience comes from:

- A history and a legacy of a free enterprise and market economy system which dates back to the inception of Lebanon.
- The ability of Lebanese companies to maintain a minimum production level under the worst circumstances, enough to sustain the enterprise and preserve the fundamentals of the national economy.
- Sufficient human resources with exceptional skills and efficient resourcefulness and reach onto both regional and international markets.
- The backing of a sound financial sector that continued, without interruption, playing its role of providing the required financing for the various economic sectors. The Central Bank of Lebanon, under the leadership of HE Mr. Riad Salame, has played an important role in contributing to the private sector's resilience, reflected in the wise and prudent monetary policy in both currency stabilization and interest rate management, and by providing subsidies for eligible projects in the various productive economic sectors.

With established political and economic stability, Lebanon's economy has the capabilities and abilities to grow in double digits numbers. We have and will always maintain our faith in the economic future of Lebanon and are confident in the future of our country. We hope that stability and security will continue to prevail, as they are the preconditions for businesses to prosper and for the economy to grow.



Adnan Kassar

Chairman of Fransabank Group
President of the Lebanese Economic Organizations



The World Bank Group applauds the government for the recent Parliamentary approval of the PPP law. This is a potentially game-changing legislation, with wide-ranging impact on the economy and on citizens at large. Across the world, private-public partnerships are the key driving force for easing the burden on public finances and expanding the private sector and, consequently, creating more jobs.

The World Bank Group has been working intensively with the Government of Lebanon and has provided upstream technical advice in the run-up to the law. We are pleased to be associated with this endeavor, and stand ready to support the implementation of the law in close collaboration with the government and with private and financial sector partners.

Creating a stronger enabling environment for greater private sector investment in key infrastructure projects that can improve national competitiveness. This is a necessity world-wide, but particularly important to Lebanon as it develops its Capital Investment Plan in the face of severe fiscal constraints. The implementation of a carefully selected set of priority investments will be fundamental to Lebanon's long-term growth and job creation prospects. Lebanon's dynamic private sector and highly liquid financial sector are also key national assets that can contribute to a significant mobilization of private investment, provided the country can put in place the right institutional arrangements to give effect to the new law.

Critical in this regard will be complementary actions across the different government ministries and agencies to develop a robust pipeline of PPP projects to take to the market and to further develop the government's management of the fiscal commitments and obligations that can come with PPP arrangements. These actions should go hand-in-hand to signal to the market the government's readiness to implement the PPP law in a fiscally accountable manner. The development of the capital market will also be a critical medium-term goal if the country is to best channel private investment funds into the PPP program.

We continue to look forward to further collaboration with the private sector in general, and with Fransabank in particular, to explore new opportunities that would vitalize Lebanon's economy and further the country's development ambitions.

Saroj Kumar Jha

Regional Director, Middle East Department
Iraq, Iran, Jordan, Lebanon, Syria

A. PPPs - Definitions and Applications

Public-Private Partnerships (PPPs) are long term agreements between governments and private companies, aiming at taking advantage of the private sector's efficiency, expertise and financial resources when providing a public asset or service. These are partnerships in risks in which risks are shared between the two parties according to their ability to best manage them. The public entity remains accountable for service provision and authorizes the remuneration that is conditional upon performance. The private sector partner assumes the responsibility for supplying a public service including investing, maintaining, enhancing or constructing the necessary infrastructure and managing the operation. PPPs, as per international practice, have covered mainly the following sectors:

Physical Infrastructure

- Water (dams, distribution, water treatment, irrigation, waste water treatment)
- Electricity (power generation and distribution, renewable energy)
- Transportation (airports, ports, railways, roads)
- Public transportation (metros, buses and sea ferries)
- Solid waste treatment
- Telecom and ICT

Social Infrastructure

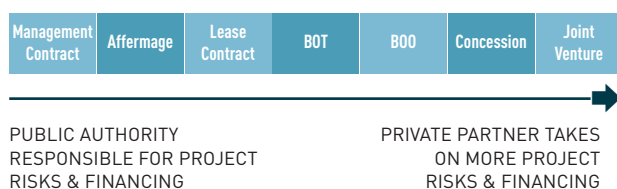
- Healthcare
- Education
- Postal services
- Prisons
- Public Housing

There are several types of PPP agreements and the scope of definitions varies by country. Each form of PPP has a set of prerequisites for successful implementation and the selection of the most appropriate type is function of the government's specific objectives. According to the Asian Development Bank (ADB), the deeper forms of PPP that transfer greater risk to the private sector, the more sophisticated legal and regulatory structures that are required, and the more crucial is the availability of local skills to implement and monitor the transactions.

Risk sharing is one of the main reasons governments choose PPPs for long term projects, as there is significant uncertainty given the long time frame and given the chronic inability of governments to deliver on-time, on-budget projects.

B. What are the main types of PPPs used?

The types of PPPs, listed by order of increasing involvement and risk-taking by the private sector, include:



MANAGEMENT CONTRACTS

Definition: The private partner provides managerial and operational services (such as utility, hospital, port authority) for a limited period. They are used for services such as healthcare facilities. This method is used in case the private sector is not willing to invest, or in case the government is not willing to make a long-term commitment.

Financing: This is provided by the public authority.

Risk Sharing: The private sector may bear the risk of asset condition and replacement of minor components.

Private Sector Remuneration: this may be fixed fee, or linked to the performance of the service, based on incentives for efficiency or improved bill collection.

Duration: 2-5 years.

Example: A local example is the management contract between the government and mobile operators, Zain (Touch) and Orascom (Alfa).

AFFERMAGE

Definition: Affermage and lease contracts are very similar, where the private partner is responsible for the service in its entirety including financial risk for operation and maintenance. The difference is in the compensation for the private sector, and therefore, who bears the risk of bill collection and revenues. In affermage contracts, the operator is assured of its fee and the public authority bears the risk of bill collection and revenues.

Financing: The public authority finances all investments, and the private sector is sometimes requested to manage the investment program. Maintenance and some replacement cost may be passed on to the private sector.

Risk Sharing: The private sector bears the operating risk and some commercial risk. The public authority bears the risk that the balance of the revenues collected from customers, after deduction of the affermage fee, might not cover its investment commitments.

Private Sector Remuneration: Revenue is collected from customers/users and an affermage fee is retained by the private operator. A surcharge that is charged to the customers/users is paid to the public authority, to cover infrastructure investments that the government has made.

Duration: 8-15 years.

Example: An affermage contract commenced in 2008 in Cameroon for the provision of water services in the country.

LEASE CONTRACTS

Definition: The private partner is responsible for the service in its entirety including financial risk for operation and maintenance. Leases are generally used for existing infrastructure assets and when the public authority wants to combine public financing with private efficiency. They are commonly used in operating airport terminals or seaport container terminals

Financing: The initial investment is financed by the public authority. Maintenance and some replacement cost may be passed on to the private sector.

Risk Sharing: The private operator bears the operating risk and takes a risk on bill collection and on revenues covering

its operating costs. Therefore, the lease operator will usually require assurances as to tariff levels and increases over term of lease.

Private Sector Remuneration: Revenue is collected from customers/users and the private operator pays a fixed lease fee to the government, while the remainder is retained by the operator. This lease fee is fixed irrespective of the level of tariff collected.

Duration: 8-15 years.

Example: Lease contract involving the Rajiv Gandhi Container Terminal, India

BOT (BUILD-OPERATE-TRANSFER)

Definition: The public sector entity grants to a private company the right to develop and operate a facility or system, usually a greenfield new-build project. It may involve revenue guarantees by the government. On expiration of a BOT, ownership of the asset is returned to the public sector. BOT projects include new power plants, dams, and solid waste transfer facilities (station and trucks). There are many other variants such as ROT, BROT, BOT, and BOOT. For example, the Build Transfer Operate (BTO) model is similar to BOT model except that the transfer of the ownership of assets to the public authority takes place when construction is completed, rather than at the end of the contractual period.

Financing: The private operator is responsible for all capital investment.

Risk Sharing: This model has the advantage of allocating to the private sector the risk of delivering new infrastructure assets on time and on budget. In case of a user-pay structure, the demand risk is largely borne by the private partner. Alternatively, the demand risk may be shared by the public authority by underwriting a minimum level of usage or by making a minimum payment for a service.

Private Sector Remuneration: The revenues generated from the operation phase are intended to cover operating costs, maintenance, repayment of debt principal, financing costs and a return for the shareholders of the special purpose company established.

Duration: 15-30 years.

Example: KSA's Prince Mohammed Bin Abdulaziz International airport was a US\$1.2 billion BOT agreement, completed in 2015. The Umm Al Haiman Sewage Treatment Plant in Kuwait is a US \$2.2 billion Design-Build-Finance-Operate-Maintain-Transfer (DBFOMT) project currently underway.

BOO (BUILD-OWN-OPERATE)

Definition: The private Partner develops and operates a facility or system, usually starting as a greenfield project. BOO contracts are similar to BOTs except that they do not involve transfer of the assets to the public sector after a pre-determined period. Airports commonly operate under BOOs. Licensing may be considered as a variant of the BOO model, leading to competitive pressure in the market by allowing multiple operators, such as in mobile telephony. Its other variants include Design-Build-Finance-Operate.

Financing: The private operator is responsible for all capital investment. Although the government does not provide direct funding in this model, it may offer other financial incentives such as tax exemptions.

Risk Sharing: The Private Partner assumes the operation and commercial risk.

Private Sector Remuneration: The government usually provides revenue guarantees through long-term take-or-pay contracts for bulk supply facilities or minimum-traffic revenue guarantees.

Duration: indefinite.

Example: The US\$2.2 billion Beni Suef Power Plant in Egypt, a 4.4 GW combined-cycle power plant. Another example is the Mohammed Bin Rashed Al Maktoum Solar Park (Phase 3) in the UAE.

CONCESSIONS

Definition: The private sector operator (concessionaire) is responsible for the full delivery of services, including operation, maintenance, collection, management, and construction and rehabilitation of the system.

Financing: The private operator is usually responsible for financing and managing all capital investment, but the assets remain publicly owned. The public authority is typically responsible for replacement of larger assets through the concession fee, which is usually earmarked for asset replacement and expansion.

Risk Sharing: The private partner takes on the risk for the condition of the assets and for investment.

Private Sector Remuneration: Revenue received by the private sector operator will be based on fees paid by the consumers. The private partner then pays a concession fee to the public authority. Projects include building/managing motorways (toll roads), airport services, ports, and water distribution networks.

Duration: 15-30 years.

Example: In 2013, the Lebanon Government granted GulfTainer, a private UAE company, a 25-year concession to develop and operate a new container terminal at the Tripoli port. The facility is intended to become a hub for import export business for Lebanon with Europe/Far East routes, trade regionally in the Mediterranean, potentially some Europe/China routes, and transit cargo to Iraq.

JOINT VENTURES

Definition: Alternative to full privatization in which the infrastructure is co-owned and operated by the public sector and private operators and capital is shared usually through a special purpose company (SPV). The ownership and controlling authority of each entity varies. In this way, synergies and efficiency result as the private partner has incentive to control costs since its future earnings depend on it. Joint Ventures are common in various sectors such as oil & gas.

Financing: Capital commitments are shared, based on the joint venture agreement

Risk Sharing: The risks of design and construction are usually transferred to the private sector.

Private Sector Remuneration: Revenue is shared between the private and public sector.

Duration: Indefinite.

Example: National highway projects implemented by the Gol through National Highway Authority of India (NHAI).

“When managed properly and with a supportive legal and institution framework, PPPs have been shown to be potentially cost effective and to create value for money for governments and citizens.” **OECD**

C. What makes PPPs so popular?

PPP is one of the most popular methods used for infrastructure development globally. All governments have limited financial as well as human resources, making it difficult to meet multiple competing priorities. Developing infrastructure is a complex and lengthy process that places demands on these resources, particularly in the MENA region and in similar areas of high-population growth rates.

Procuring by PPP allows the government to focus on its core role and responsibilities as a regulator and provider of goods and services, rather than a project manager, while benefitting from the skills and technology of the private sector. As a result, PPPs usually result in better project design, implementation including construction, superior choice of technology and better service delivery. In many cases, the private sector partner provides the financing for the project, reducing the burden of upfront costs, and takes on the project risks.

According to the European Investment Bank, a key advantage of well-structured project financed PPPs, as opposed to traditional procurement methods, is the project discipline created in terms of due diligence and thorough planning. It adds that although most MENA countries already have had some success with PPPs and/or are preparing to introduce the necessary structural reforms, there are numerous prerequisites for a successful PPP programme including institutional and legal frameworks and high-level political commitment.

PPPs allow private sector innovation, competition, and transfer of know-how through international expertise and best practices to cut costs and improve public service delivery. Public companies are by nature not profit-seeking and this is especially the case for basic infrastructure including airports, ports, telecom, and electricity. Therefore, PPPs have been found to outperform traditional procurement in terms of both cost and time overruns, with outperformance on cost being the most significant, according to the OECD.

A summary of the main benefits of PPPs are presented hereafter.

Benefits of PPPs are summarized here below:

Innovation	Introduce technology and innovation from private sector leading to improved operational efficiency and better public services.
Budgeting Certainty	Provide certainty of budget as present and future costs are set at the onset of the project and in many cases, the private sector is responsible for cost overruns.
Avoidance of large initial capital contributions	Project costs are amortized over a long time frame, reducing the size of the initial contributions.
Improve Capabilities	Partnering with international firms develops local private sector capabilities and know-how, increasing expertise and efficiency in the country.
Infrastructure Development	Improved infrastructure will make the country more competitive, boosting investment by local and international sources, creating employment and development.
Attract Capital	Supplementing budget requirements for development of infrastructure by attracting private sector capital, without which, many projects would not be possible, especially in heavily indebted, developing countries.
Risk Transfer	Transfer to the Private sector a portion of the risks over the life of each project, from design to operations to management, allowing on-time, on-budget project delivery.
Revenue Generation	The efficient practices of the private sector minimize waste and boost revenue levels. Private sector projects contracted with a revenue sharing agreement tend to bring revenues to the government while providing reliable services to the public.
Job Creation	Attracting private sector capital means more projects could be taken on, creating new jobs.
Economic Growth	Studies have shown that a 1% percent increase in PPP investment increases GDP per capita by 0.3%.

D. What are the Challenges Related to PPPs?

Many studies have examined the effectiveness of Public Private Partnerships. In cases where PPPs did not meet expected objectives, reasons attributed to the failure include inadequate or non-existent feasibility studies, including unrealistic forecasts and undefined public contribution of funds. Specifically, common reasons for failures include:

- Inexistent or weak legal and institutional framework and enforcement
- Unrealistic revenue/cost estimations
- Insufficient financial and economic analysis
- Inappropriate risk sharing between public and private partners
- Lack of transparency in bidding and procurement resulting in choosing inappropriate and ineffective private partners, leading to time and cost overruns and possibly discontinuation of a project at the public's expense.
- Public resistance (willingness to pay not assessed)

Misconceptions involving PPPs are summarized below:

Higher Costs	PPP project Costs may be perceived to be higher than for government funded projects, however, these are cheaper on a risk-adjusted basis.
Control Shared	The Private partner will expect significant control over projects, given significant risk-transfer. However, the government remains a partner and a decision maker.
Political Considerations	Some projects may be politically or socially challenging, such as tariff increases to public and land issues, loss of public sector jobs or transfer of jobs to the private sector. However, these issues are assessed prior to tendering at the feasibility study stage and a plan to mitigate them is put in place.
Consumer Protection	Without proper protection to the consumer, some citizens may end up not receive proper services or may pay higher costs. However, the government remains accountable and responsible for public service provision and continues to play its regulatory role.
Responsibility	The Public authority will still be responsible for public services and therefore must monitor private sector performance.
Expertise Imbalance	Private Sector may have more expertise related to project and data reporting, which the public authority may not effectively monitor, and could lead to constant delays and cost overruns. Training and knowhow transfer are an integral component of PPP agreements to ensure that the public authority's staff are skilled enough to monitor and manage the project.
Incentives	Private sector will require subsidies and/or incentives when projects alone do not provide an adequate return on investment, which is normal: the private sector would not be interested in a project which does not provide a fair rate of return.

PPPS AND RELATED LAWS IN THE MENA REGION

A number of jurisdictions in the Middle East and North African ("MENA") have introduced Public Private Partnerships (PPP) laws, including:

Country/Jurisdiction	Year
- Egypt	2010
- Jordan	2014
- Kuwait	2014
- Morocco	2015
- Tunisia	2015
- United Arab Emirates	2015

Within the GCC, Oman and Abu Dhabi have taken the lead on privately financed infrastructure projects, and particularly in the power and water sector.

The first PPP in the Gulf region was concluded in 1994 and consisted of Al Manah power plant in Oman.

A .Type of PPP Projects in the MENA Region include:

	Ports/ airports	Education	Electricity	Health	Public Housing/ Govt buildings	Tourism	Transport/ Infras'ture	Waste	Water/ waste water/ desalination
Bahrain	X		X		X				X
Egypt			X	X					X
Jordan	X		X					X	X
Oman	X		X						X
Saudi Arabia	X		X			X	X		X
UAE			X				X		X

B. PPP Laws by MENA Country

EGYPT

The key regulation is Law No 67 of 2010, regulating Partnership with the Private Sector in Infrastructure Project Services and Public Utilities and is applicable to all sectors. Under the law, two PPP bodies were introduced:

- The Supreme Committee for PPP Affairs, with such mandates as to integrate the national PPP policy. Its members consist of the prime minister, various ministers and the head of the PPP Central Unit. This committee must approve all PPP projects; and
- The PPP Central Unit by the Ministry of Finance, with such mandates as to initiate and implement PPP projects including to negotiate and execute PPP bids and contracts;

Key features include:

- Sets the minimum value of the PPP project at EGP 100 million;
- Sets a minimum and maximum period for the term of the partnership;
- Permits certain security over project company's assets and possibility of direct guarantee by the relevant government authorities;
- Prohibits the confiscation of project assets by the government;
- Specifies that the Supreme Committee for PPP Affairs is to carry out the feasibility study for the project, which has to be reviewed by the PPP Central Unit; and
- Establishes a grievance committee which is composed of various government officials.

JORDAN

PPP Law No. 31 of 2014 provides a legal framework for PPP projects in Jordan, preceded with the establishment of a PPP unit in 2013, within the Ministry of Finance, serving as a coordination body for PPP projects and whose role was formalized by the enactment of the PPP law.

In 2015, Regulation No. 98 of 2015 on PPP projects was issued. This regulation deals with:

- The procedures inherent to the various stages of the PPP projects' procurement and tender process.
- The Instructions for the Regulation of the Work of the Partnership Council (or PPP Council), which define the mechanisms for the decision-making process of the PPP Council established.

Jordan, since 1994, has completed several PPP projects in various sectors. Several new and ongoing PPP projects are being carried out, including the Red Sea desalination project and Amman solid waste-to-energy facility project.

KUWAIT

The old Kuwait PPP Law of 2008 was replaced by an updated law in 2014. Under the new law two PPP bodies were introduced:

- Higher Committee for PPP with mandates such as approving PPP models and the location of the project; and
- Kuwait Authority for Partnership Projects with mandates such as establishing the project company to execute the project and assisting the Higher Committee.

Key features include:

- Security over project contracts, with the approval of the Higher Committee
- Permitting project company to be foreign owned
- New tax incentives to encourage investments
- Allowing negotiation and amendment of the PPP agreement.

MOROCCO

Key regulation is the Law No. 86 of 2012 (enacted in 2015). The law created a PPP Unit which is attached to Ministry of Economy and Finance, which has the mandate to establish the framework for the development of PPPs.

Key features include:

- PPP contracts are subject to three different tender procedures: competitive dialogue, call for tenders and a negotiated procedure;
- Public authorities can accept unsolicited innovative offers at any time from private bidders;
- The minimum and maximum term of PPP projects are specified
- Winning bidders must present the most economically advantageous tender.

TUNISIA

The recent PPP law, No. 2015-49 of 2015, is the main legal instrument governing PPP projects in Tunisia. This law coexists with other legal acts, namely, Decree No. 2014-1039 which covers PPPs and concession contracts, as well as the Concession Act of 2008.

Details include:

- The PPP framework does not specify the PPP procuring authority.
- However, there are different organizations that facilitate the development of PPP projects such as the Strategic Commission for PPP, the PPP Head Office at the Ministry of Finance, the General Directorate of PPP, and the Concessions Follow-up Unit.

The experience of Tunisia encompasses user-based concession projects and private involvement in infrastructure financing, construction and management, with transport and electricity having received many PPP awards over the last decade.

ABU DHABI (UAE)

Abu Dhabi does not have a PPP law but its approach has been particularly successful for a number of reasons:

- The Privatization Committee, which was established in 1997, approached the restructuring of the old Water and Electricity Department in a sensible and well thought out manner.
- Appropriate professional and experienced advisers were appointed from the outset of the unbundling process, and they have advised the Abu Dhabi Water and Electricity Authority (ADWEA) throughout the projects to date.
- The negotiations and implementation of these projects have been undertaken on a fast track basis. ADWEA has tended to stick to its self-imposed deadlines for closing of these projects.

DUBAI (UAE)

The first legislation of its type in the UAE dealing specifically with PPPs came into form in 2015, with the aim to regulate the private and public relationship and procure the best services at best price and quality.

The Factors considered in selecting projects subject to PPP include:

- The cost benefit analysis of the project;
- The economic feasibility and the extent to which it positively influences Dubai's development plans;
- The environmental risk element of the project; and
- How the scope of capital investment and technical expertise may improve the performance of public utilities and ensure the quality of services.

Different government departments, public authorities or agencies may approve the projects depending on the total cost of the project and there is a clear selection criteria to ensure compliance with the principles of transparency, competitiveness and equality.

The Dubai PPP Law is not a perfect as it has a number of shortfalls including:

- The availability of Government Guarantees is not mentioned
- Foreign ownership of the project is subject to the UAE Commercial Companies Law; and
- The Government entity responsible for the project can cancel the tender process in certain circumstances with no compensation to the potential bidders.

TURKEY

There is no PPP-specific legislation in Turkey. A draft PPP law was prepared and is seeking to address some shortcomings of the existing procurement rules. The PPP unit in Turkey is based in the Ministry of Development.

Some ministries have taken an active step toward PPPs. A new legislation was enacted recently which deals with the PPP agenda of the Ministry of Health. Despite this, Turkey's PPP framework requires a coordinated approach across sectors and flexibility as to permitted PPP models.

Many PPP projects have been implemented as of 2015 in the sectors of energy, transport, sewerage, water, and healthcare.

ALGERIA

There is no PPP-specific legislation in Algeria. PPP projects are subject to the Code of Public Procurement of 2015, while Sector-specific regulations stipulate that the procuring authority is responsible for procurements.

With the absence of a PPP-specific unit, the Ministry of Finance plays a significant role in the decision-making process related to PPP projects, derived from its control of the budget. In addition, the National Committee of Transactions (CNM) is vested with the authority to manage PPP projects; and CNED has broad authorities in implementing large infrastructure projects, sourcing financing, and increasing efficiency in public spending.

Despite the absence of PPP-specific framework, Algeria has a significant PPP experience mainly in power generation and desalination projects. From 1990 to 2015, Algeria carried out several PPP projects amounting to US\$13.2 billion, 70% of which involved infrastructure development.

FINANCIAL RELEVANCE OF PPP PROJECTS

PPP Projects vs. Traditional Procurement: Relevance and Challenges

Comparing the cost of PPP projects to traditional procurement options has been the main concern for public officials. In many cases, the required investments in infrastructure, the lack of financial means and the malfunctioning of public administrations (including inefficiencies, limited resources, poor governance and corruption) make PPPs a more appropriate tool for tendering infrastructure projects. This section assesses the financial relevance of PPP vs. traditional procurement.

Governments strive to achieve economic growth and meet the needs of their growing population, sometimes with limited resources. Therefore assessing the financial benefits and the relevance of an investment for a government differs from the private sector as it involves quantitative and qualitative assessments including maximizing value for money while serving the public interest.

It is important for projects under consideration to include a risk adjusted cost analysis, financial assessment of PPPs vs. traditional procurement, which constitute the Value-for-Money assessment.

I –Value for Money Assessment and Challenges:

Traditional Government Procurement – the costs for the Government

An initial capital outlay to cover the capital costs of construction is borne entirely by the Government.

- This initial investment is usually higher than if a private sector operator was involved in financing the project as the private operator can obtain preferential pricing from equipment suppliers, given the substantial business between private companies and suppliers.
- Traditionally procured projects suffer from cost overruns during the construction phase due to the inefficiency of the government work practices and the waste of resources. These cost overruns are exacerbated by time overruns, which are often associated with the increase in the price of raw material and accumulation of interest expense. A study by Mott Macdonald, covering the performance of a wide range of infrastructure projects publicly procured in the UK over a period of 20 years, showed that capex overruns average around 47% of the initial capital outlay.

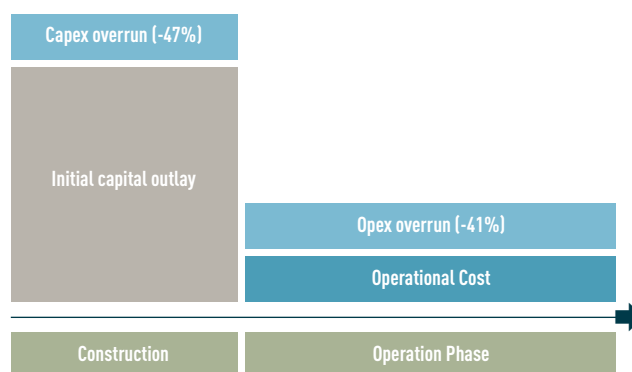
Operation and maintenance expenditures.

- Time overruns in the operational and maintenance phase, after construction is complete, are very costly, due to:
 - The need to carry out another tender to find an operation and maintenance company, following the construction phase, which would have to accept the risk of the construction company's output;
 - Insufficient feasibility studies, which sometimes overlook some technical requirements for the operation of the projects. A specialized and experienced private sector, which would be responsible for the construction and operation of the project (i.e. PPP basis), would pinpoint

issues early on during the tendering phase, when they can still be mitigated.

- The same study by Mott Macdonald showed that traditionally procured projects suffer from cost overruns during the operational phase averaging 41% of the initially estimated operational expenses.
- In countries where corruption is widespread, tenders are awarded to politically affiliated companies that, more often than not, are not capable of managing and operating the project, resulting in additional costs.

Traditional Procurement Illustrated:



PPP Project - the costs for the Government

The cost to the government of a PPP tendered project would typically include:

- Availability or capacity charge which covers the debt repayment (principal and interest), the return on equity and the fixed operation and maintenance expenditures.
- Usage charge which covers the variable operation and maintenance expenditures.

It is worthwhile to note that these payments are made by the government during the operation phase, leading to the amortization of project costs over a long period of time. Consequently, the government is able to avoid making large initial capital contributions that increase public debt and negatively affect the credit profile of the country, without having any positive impact on growth.

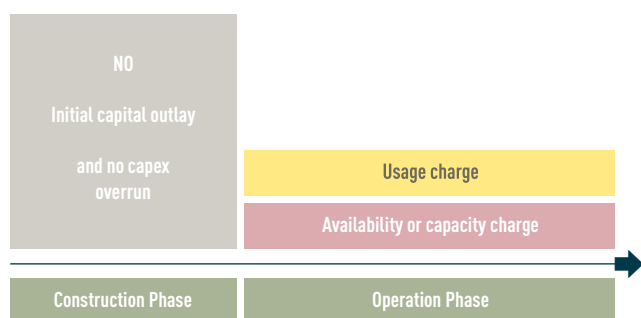
Moreover, on an aggregate basis, the comparison between the project costs of the tendering methods requires the calculation of their Net Present Value (or NPV), given the unequal distribution of payments throughout the project. This requires the use of a discount rate representing the opportunity cost of investing these funds for the government. Since the government will be borrowing these funds, the interest rate of government issued bonds can be used as a proxy for the discount rate.

However, comparing the NPV of the two tendering methods has proved to be deficient and to suffer from problems, such as narrowing the decision of whether to tender the project traditionally or on a PPP basis to a single number, which is the difference in project cost for the government. Moreover, given that these cost estimations are based on long term forecasts and assumptions, it makes them highly vulnerable to errors and casts a doubt on the transparency and robustness of these figures. Furthermore, these esti-

mates are usually based on historical data for comparable projects, which may not be available or outdated.

In light of the above, a mere comparison of the cost to the government of a traditionally procured project vs. a PPP procured project is not a solid standalone decision factor for assessing value for money. Risk analysis and management detailed in the next section should also be undertaken.

PPP Procurement Illustrated:



II – Identifying and Measuring Risk: the Challenges of a Successful Risk Transfer

To achieve substantial and sufficient Value-for-Money in PPP, significant risk must be transferred successfully to the private sector. The risk transferred should be manageable and measurable. There are several criteria other than pure

financial that enter into consideration and are mainly considered in the calculation of risks. Such criteria include:

- Timely completion
- Cost certainty
- Price competition
- Flexibility and the ability to make changes to the initial project
- Project complexity
- Responsibility for design and cost

The government should determine the importance of transferring such risks to the private sector and the price it is ready to pay for such a transfer. However, a successful and effective transfer of risk requires competition in the bidding process to ensure enough alternatives for the government both during bidding and operations.

Therefore, in deciding between traditional procurement and PPP, the government should address the following questions:

- Can the project risks be defined, clearly identified and measured?
- Can the right types of risks be transferred to the private sector?
- Is the risk to be transferred large enough to justify the costs (Value for Money)?
- How big is the appetite for such risk from the private sector? What would be the level of competition?
- Whole-of-Life: how large are the benefits from combining construction and operation in one contract?

FUNDING OPTIONS AND THE ROLE OF CAPITAL MARKETS

PPP projects will involve funding from various sources, in some combination of equity and debt. The equity/debt ratio depends on the nature and structure of the project, its tenor, and the negotiations between the creditors and the equity holders. There are two types of funding:

- Traditional Funding: Equity, Debt (including Bank Guarantees/ Letter of Credit/ Performance Guarantees)
- Capital Markets Funding (including bonds and IPOs)

A. Traditional Funding of PPP projects

Equity Contributions

The Sponsors of the project are the investors in the project company that are likely to be providing the technical and management expertise. Sponsors provide some of the equity contributions to the Company through share capital and other shareholder funds.

Equity contributors in project-financed transactions might include, in addition to the Sponsors: other project participants, local and/or international investors, host government or governments for regional projects, institutional investors and bilateral or multilateral organizations.

Debt Contributions

Debt can be obtained from many sources, including commercial banks, institutional investors, export credit agencies, bilateral or multilateral organizations, bondholders and sometimes the host country government.

Commercial banks are desirable as long-term debt providers, given their flexibility in renegotiating loans and reacting to new or unforeseen conditions. This flexibility may not be available, for example, from bondholders. Another source of financing is equipment suppliers, which may provide more favorable terms.

B. Funding through Capital Markets

Recent history shows that a robust capital markets opportunity exists in PPP transactions; the structures are disciplined and time-tested.

Funding Structures

Capital markets participation in PPP has been centered mainly on longer-term funding structures (equity, mezzanine or debt). Those long term structures may involve a lump sum payment from the public agency once construction of

the infrastructure asset is complete, as well as periodic service payments as compensation for maintenance /operations services over the balance of the contract term (typically 25–35 years).

With increased interest in PPPs, the available supply of long-term capital markets funding has increased globally. Starting and building a track record for funding through capital markets is essential for a country like Lebanon, as it helps diversify the sources of funds at progressively favorable terms and conditions (i.e. longer maturities and better interest rates).

Bonds

In bond financing, the borrower accesses debt directly as he sells the bonds to the investors. It generally provides lower borrowing costs than traditional debt financing, particularly if the credit rating for the project is sufficiently strong. It also provides longer term funding and more liquidity. Bond financing has seen limited usage for initial PPP project financing, but is commonly used for refinancing, once construction risks have been largely mitigated.

Initial Public Offerings

The offering of a company's shares for public subscription is common practice in PPPs. This has been widely seen in the GCC and other Arab countries as well as other Emerging markets. Relevant examples include:

a) The overwhelming majority of telecommunication companies around the world are listed entities in their home markets. Some have foreign ownership restrictions, many have government ownership presence in the form of board seats and blocking minority but all are heavily traded companies in their local exchanges (Regional Telecoms: STC, Mobily, Etisalat, Du, MTC, Mobinil, Vodafone Egypt, Maroc Telecom, etc.).

b) In Iraq, all three telecom players have been required to list their shares and are now publicly traded companies.

c) Floated blue chip companies providing public services/products or hold strategic assets are found in various sectors, including: Real estate (Emaar, Aldar Properties, Ad Doha, and SOLIDERE), oil and gas and fertilizers (SABIC, National Industries, and soon Aramco), power (Saudi Electricity, Qatar Electricity), Ceramics (RAK Ceramics), and ports (Dubai Ports-Dubai World).

Why should the government favor floating private partner companies?

Floating and listing a percentage of the capital of local private partners would encourage the private sector to contribute to the development of public services and facilitate funding of PPP projects. The ideal shareholder mix would include, in addition to the floated portion, a minority interest held by the state and a significant stake held by a strategic, technical partner.

The benefits of such equity structures include:

- Boosting the development of local capital markets and creating jobs: Economies financed largely through capital markets have had higher growth rates than those relying mainly on traditional banking for funding (US and UK compared to Japan, Germany and France).
- Well-developed capital markets lead to many economic benefits, including higher productivity growth, greater employment opportunities, and better access to and distribution of capital.
- The floated entity will be subject to strict transparency, disclosure and governance rules (business continuity, succession planning, reduced corruption risk, accountability, etc.).
- Floating provides an opportunity to the public to participate in the returns on investment in public services.
- The development of capital markets activities encourages private sector investment in the country because it provides viable exit strategies. It facilitates risk-taking and speeds up the pace of innovation and the flow of private initiatives in the economy.

PARTNERSHIP WITH THE PRIVATE SECTOR TO SAFEGUARD LEBANON'S INTERESTS

A. Snapshot of The Local Economy

Lebanon's economy continues to struggle, with Gross Domestic Product growth of 1% in 2016, following a similar rate in 2015. The fiscal deficit widened considerably last year to \$4.94 billion as of December 2016, compared to \$3.96 billion in 2015. Total government revenues stood at \$9.92 Billion by December 2016, while expenditures reached \$14.87 billion. Transfers to state-owned Electricite du Liban totaled to \$927 million, while interest payments related to government debt reached \$4.77 billion for the year.

Lebanon continues to face strains on its resources. Public infrastructure is crumbling, while rehabilitation and development projects are put on hold mainly due to budget constraints.

The Syrian crisis continues to put an additional strain on the country. In particular, it is estimated that as a result of the crisis, some 200,000 additional Lebanese have been

pushed into poverty, adding to the already 1 million poor. An additional 250,000 to 300,000 Lebanese citizens are estimated to have become unemployed, most of them unskilled youth, according to the World Bank.

Public finances remain structurally weak and in urgent need of reforms. The government has relied on issuing debt to finance the budget. Public debt (as a ratio to GDP) continues to be high, at about 145% of GDP, due to low growth and a relatively high cost of debt financing. Private investment in the country continues to drop due to instability, rampant corruption and up until now, a lack of proper reforms, including a legal framework for major projects.

Applying the World Bank's findings to the Lebanese case, the High Council for Privatization estimated in 2014 that spending \$6.22 billion on PPP projects would increase Lebanon's GDP by an average of 4.38%. It also estimates that skilled labor jobs overall could reach 89,000, which include jobs for university graduates and expected to be filled by Lebanese citizens, estimated at 40% of the total jobs created.

“The passing of a PPP law would create over 200,000 jobs through building infrastructure and putting us on the right path to growth and development.”

Mr. Ziad Hayeck, Secretary General of the High Council for Privatization

B. Identifying Projects for PPP in Lebanon

Projects in Lebanon that need to be addressed urgently and that would benefit from PPPs include: Water, roads and electricity infrastructure, waste management, renewable energy projects, transport, airports, telecom, schools and railways.

Public projects may involve charging minimal fees to cover costs which are even sometimes subsidized by the government (public utilities) but in Lebanon's case, are losing money because of corruption, nepotism, lack of investments in upgrades/maintenance and especially inefficient management and operations.

Water

Lebanon, a water-rich country, continually faces water shortages, especially in the dry summer months, due to improper management and distribution. Despite high precipitation levels in the winter, most of the water is lost due to defective distribution, ending up in the Mediterranean Sea. Numerous studies have been done in the past four decades, which have recommended several solutions including dams and hill lakes, but the investment environment has hindered potential projects from being executed. Dams needed have an estimated cost of USD 920 million.

Transportation and Logistics

Similarly, despite Lebanon's strategic location for international trade, this has not translated into increased investment due to lack of proper infrastructure, especially in the transportation and logistics sectors. Identified projects include a railway, with an estimated cost of USD 350 million, and A2 Highway with an estimated cost of USD 538 million.

Airports and deep sea ports have been singled out as perhaps the projects that are currently most amenable to PPP procurement, according to the OECD. They are predominantly built within strict international guidelines and standards to ensure all the proper functions as the users tend to be international airlines or maritime companies.

Furthermore, developers and operators with international experience can more effectively construct, operate and develop these airports and ports while ensuring the necessary upgrade and operation within continuously evolving standards and technology.

The High Council for Privatization is laying the groundwork for the establishment of the International Center of Excellence in PPP for ports, in cooperation with the United Nations Economic Commission for Europe (UNECE). This center aims at promoting best practices in PPP for the ports sector and stimulate the sustainable development of port infrastructure worldwide. As such, it would enhance the

interaction between private sector and public sector stakeholders internationally bringing together the most important global players in the port industry, which could lead to tremendous opportunities for Lebanon as an international and strategic hub.



Power Generation and Distribution

Electricite du Liban (EdL), Lebanon's public utility, the electricity sector has not only been widely identified as Lebanon's most pressing bottleneck, but it also remains a major drain on the budget.

According to a 2017 IMF report, EdL has been producing electricity from fuel oil at a loss, requiring larger government subsidies. These used to average about 4 percent of GDP (around \$2 billion) prior to the oil shock in mid-2014. EdL transfers declined to 2.8 percent of GDP in 2015 (and are projected at 1.5 percent of GDP in 2016).

Lebanese businesses lose millions annually due to daily power outages and the cost of using private generators and private citizens suffer as well from the high costs. Problems at EDL include insufficient bill collection, inefficient power plants and an improperly managed distribution network.

The current energy deficit in Lebanon is estimated at 3,000 MW. The Independent Power Producers (IPP) scheme, which consists of power generation BOT projects, can cover such capacity through conventional power generation and renewable energy (wind, photovoltaic, hydro, etc...) with a total estimated cost of approximately \$3 billion.

Despite these opportunities, local and international companies have been hesitant to invest without a clear legal and regulatory framework that would ensure transparency and professionalism in the tender award.

Although the country has up to this point remained without a legal PPP framework, the concept is certainly not new in Lebanon, as seen in the next section.

C. Lebanon has a history of utilizing PPPs, including:

Beirut-Damascus road (Concession, 1958)	Amongst the first successful PPP-like concessions in the history of the Middle East was the Beirut-Damascus road in 1858.
Beirut Port (Concession, 1960)	A 30-year concession was given to a Lebanese company called "Compagnie de Gestion et d'Exploitation du Port de Beyrouth" to expand and develop the port.
Electricity of Zahle (Concession, 1960s)	Founded in the 1920s, Electricité de Zahlé (EDZ) is a private electric utility that operates under a concession agreement with the Lebanese government. But following a decree issued in late 1960s by the government and Electricité du Liban, EDZ turned into an electrical distribution utility that develops, operates and maintains the electric power networks in Zahle and 15 surrounding regions.
Libancell and FTML (BOT, 1994)	The BOT license in 1994 was granted to LibanCell and FTML, which built one of the two GSM networks in the country and served 400,000 mobile subscribers. These operations contributed significantly to Lebanon's GDP.
Solidere (1994)	For the development and re-construction of Beirut City District (BCD) following the Lebanese civil war which destroyed much of the infrastructure, Solidere was established as a private company in 1994, listed in 1996. Against financing and construction of the infrastructure and public domain for the entire BCD on behalf of the State, Solidere was granted ownership of 291,800 sq m of development land in the New Waterfront District.
LibanPost (BOT, 1998)	Through a BOT agreement with Canada Post and SNC Lavalin, the National Postal Services was transformed from an inefficient government-owned entity into a private multi-service operator.
Tripoli Water Authority (Management Contract, 2002)	The Ministry of Energy and Water and the Council for Development and Reconstruction (CDR) awarded Onda, a French organization, a 4-year management contract for the Tripoli Water Authority in December 2002 at a cost of 8.9 million euros, financed by the French Development Agency.
Beirut International Airport (Concession, 2000)	Several concessions were agreed on to expand the airport, including the car park and the aircraft refueling facilities, completed on the basis of a concession in the year 2000.
Beirut Duty Free (Concession, 2003)	Beirut Duty Free operated on the basis of a 15-year concession granted by the Government to Phoenixia- Aer Rianta Company (PAC), which is a joint venture between Phoenixia Trading - Afro Asia, Aer Rianta International (Middle East) W.L.L and a number of local partners. In April 2017, the contract was awarded again to PAC for 4 years.
Mecanique (BOT, 2003)	Awarded in 2003 to the Saudi company FAL, this 10-year DBOT contract (with a possible extension of 3 years) consisted of financing, building and operating a vehicle inspection facility for 10 years. In 2012, the contract was extended on a 6-monthly basis, and included a 30% revenue share of the inspection fees collected by FAL Mecanique.
Mobile Operators (Management Contract, 2004)	A 4-year renewable Management contract for Lebanon's mobile operators, Touch and Alfa, which are operated by Kuwait-based Zain Group and Egypt's Orascom, respectively.
Power-Generating ships (Lease, 2012)	Lebanon decided in February 2012 to lease power-generating ships to help reduce severe electricity rationing in the country. Karpowership was awarded a contract by the Lebanese Electricity Utility (EDL) to provide 2 Powerships totalling 270 MW of base load generation capacity. In 2016, EDL increased the contract capacity to receive over 370 MW of reliable power from the Powerships for another 2 years. This lease came with a sovereign guarantee.
Mecanique (BOT, 2016)	The tender was launched in April 2015, and following multiple delays, it was awarded in August 2016 to Autospect/SGS/Securitest/Autosécurité. This 10-year contract consists of modernizing the 47 centers for vehicle inspection and building 10 new centers and operating and maintaining them.

Jeita Grotto (BOT, 1994)	Awarded in 1994, for an initial duration of 21 years, and renewed for 4 years (twice) with an expected expiry in 2022, to MAPAS company to restore, expand, and operate the Jeita touristic complex. Based on a revenue sharing arrangement, the Ministry's share stands at 35%, while the municipality receives a share of 10%-15%. This project was awarded based on a decision issued by the Minister of Tourism, and was not backed by any law or decree.
Solid waste treatment plant in Saida (BOT, 2002)	The contract was signed between the municipality of Saida and IBC in 2002 for a 20-year period.
Beirut Port container terminal (Management Contract, 2004)	The contract was awarded to Beirut Container Terminal Consortium (BCTC) in 2004 (4 years after the construction of facilities was completed). In 2005, the port began handling transshipment vessels for the first time in the history of Lebanon. The management contract is based on a per container fee paid to the operator with a guarantee of handling 500,000 containers annually. Current traffic exceeds 1.2 million containers annually and necessitates the expansion of the container terminal very soon.
Gulftainer (Concession, 2013)	Gulftainer, an Emirati operator, was awarded a 25-year concession to develop and operate a new container terminal at the Port of Tripoli in Northern Lebanon. The initial investment of over \$60 million was earmarked for new equipment and machinery.

Several PPP projects are under preparation or tendering including:

CEDRO Project (2013)	This project involves the Lebanese Center for Energy Conservation (LCEC) in partnership with the Lebanese Government and the UN. Projects range from Photovoltaic (PV) technology that allows users to produce electricity from solar energy, microwind systems and picohydro. Private operators may sell electricity to EDL.
Exploration and Production Agreement (EPA) (BOT, 2017)	The EPA is a contract between the State and international or Lebanese oil companies, providing the companies with the right to explore for, develop and produce oil and gas reservoirs offshore in Lebanon's Exclusive Economic Zone. Companies that sign the EPA must produce oil and gas during a 25 year Phase, which can be extended by 5 years.
Akkar Wind Project (BOO, 2017)	A wind-farm PPP project is being negotiated with the Ministry of Energy and Power and Water Resources. Several private partners will be included in the project.

“A solid legal framework for PPP is needed to specify the “rules of the game” for the private sector and reduce the project risk, thus improving the success rate of PPP projects”

World Bank

D. The Importance of a PPP Law

Lebanon is in urgent need of infrastructure development, with numerous major potential projects identified above. However, without a proper legal framework in place for existing and new projects before the passing of the PPP law in August of 2017, planned investments have been delayed and even cancelled. Lebanon competes with up to ten countries in the region to attract international developers and lenders, and they will usually only go to markets where the legal framework is clear and supports the development of these projects.

As mentioned in previous sections, the lack of a PPP regulatory framework over the years has led to many projects failing to deliver as promised. With regards to the Mecanique example above, the project was not successfully implemented, leading to long waiting hours and widespread consumer dissatisfaction at vehicle inspection centers. The 2017 tender result for Mecanique was contested by several disqualified bidders, claiming that the tender process was flawed. Additionally, the Jeita Grotto project was awarded by the Ministry of Tourism and a tense relationship prevailed between the operator and the municipality throughout the contract. The Solid waste treatment plant in Saida is another example of a badly implemented project without the proper consultations between concerned parties, leading to several delays and tensions between the Saida Municipality and the Ministry of Transportation and Public Works.

The recent passing of Lebanon's PPP law is urgently needed in order for the country to become more competitive, attract much-needed foreign direct investment, bring expertise to the country, create thousands of jobs, and ultimately increase revenues and stimulate economic growth.

Lebanon should benefit from private sector partners that could obtain lower cost financing from International Financial Institutions (European Investment Bank, International Finance Corporation, DEG, the private arm of the German Development Bank KfW, Agence Française de Développement (AFD) and its private arm, Proparco) for development projects in Lebanon. Other Institutions that also consider such development loans or even grants include the European Bank for Reconstruction and Development (EBRD), the OPEC Fund for International Development (OFID), and UN agencies.

The public sector is in also in dire need of involvement by the private sector as the country's structural deficiencies take an increasing toll on the economy and budgetary constraints leave the government with little alternatives.

In Lebanon, the PPP law was ten years in the making before it was enacted. The delay of passing the law had been due to the lack of a functioning Government prevailing in the past few years, instability and disagreement over the decision making process in the proposed tendering mechanism, and misperceptions by some as eroding the Ministers' powers.

E. PPP Law in Lebanon – passed August 16, 2017

In order to create an adequate environment capable to foster private investments in various infrastructure projects, the passing of the PPP law is crucial for the State to establish an effective and appropriate legal framework.

The PPP law answers a genuine concern: Lebanon is in crucial need of infrastructure development but its legal framework for PPP projects, prior to the law enactment, did not offer the customary guarantees which foreign investors and international financial institutions often seek in order to have visibility on the rules of the game and reduce the project risk. The absence of these parameters has impeded the success rate of PPP projects to date.

As Lebanon re-enters the PPP market, it will be treated with caution by the international lender and developer community. Consideration therefore needs to be given to breaking projects down into smaller operations to run multiple ones and give Lebanon the “deal flow”.

Lebanon PPP Law: Key Provisions

In general terms, the PPP law details the tendering mechanism for PPP projects, including the general institutional framework which calls for the creation of a project committee and assisting working teams for each project. Such structure, which ensures the involvement of all stakeholders, aims at enhancing the transparency of the tendering process and Private Partner selection.

The PPP law also details the main elements of the PPP Project Agreement, which will be part of the tender document and which includes, among others, available disputes settlement mechanisms. This approach would boost the success rate of executing PPP projects, especially since most past failures were due to a flawed tendering mechanism or improper contract structuring. A summary of the PPP law's key provisions is set out below.

Scope of the PPP Law

The PPP law defines ‘PPP Projects’ as projects of public interest in which the private sector participates through (i) financing and administration and (ii) carrying out at least one of the following activities: designing, building, constructing, developing, restoring, equipping, maintaining, rehabilitating and operating.

The scope of application of the PPP law extends de jure to all PPP Projects carried out by the State, public institutions, or any entity considered as ‘public’. This includes without limitation all PPP Projects provided for under the laws governing the telecommunications, electricity and civil aviation sectors (Article 2-2 of the draft law). Such scope may also be extended to PPP Projects carried out by municipalities and unions of municipalities, provided certain conditions set out in the PPP law are complied with.

PPP Project Agreement

One of the key features of the PPP law is that it defines the 'PPP Project Agreement' as the main PPP contract together with all annexes, undertakings and guarantees related thereto which govern the contractual relationship between the public entity, the project company and all other third parties, including international financial institutions and foreign investors.

The law outlines the key provisions to be included in the PPP Project Agreement, as follows:

- The parties' respective rights and obligations;
- The basis for financing the PPP Project;
- The duration of the partnership, which should not extend beyond 35 years;
- The respective revenues to be received by the project company from the public entity or by the public entity from the project company depending on the nature of the common project, and the corresponding means of payment;
- The fees and dues which the project company can collect on behalf of the public authority and for its account;
- Key performance indicators;
- The reports to be submitted by the project company;
- The allocation of project risks and mitigation measures;
- The rules governing the potential amendment to the basic terms of the contract;
- The guarantees, undertakings, and commitments which may be provided for the fulfillment of the PPP Project;
- The public assets put at the disposal of the project company;
- The transfer procedures, whenever the nature of the PPP project calls for it;
- The procedures guarantying the continuity of the PPP project and its related operations upon termination or expiry of the Project Agreement or breach of its contractual obligations;
- The procedures and remedies in case of breach as well as detailed enforcement procedures in respect to these remedies;
- The dispute settlement mechanism, including mediation as well as domestic and international arbitration.

Relevant Authorities

The PPP law renames the 'High Council for Privatization' instituted by virtue of the Privatization Law No. 228 dated 31.05.2000 as the 'High Council for Privatization and PPP' and vests in it the authority to:

- Assess and evaluate potential 'PPP Projects' submitted to it by the President of the 'High Council for Privatization and PPP' or by the relevant minister;
- Establish a 'PPP Project Committee' for every approved PPP Project;
- Decide on the prequalification outcome and approve the final version of the tender document following consultation with the prequalified bidders; and
- Confirm the winning bidder who submits the best offer based on the evaluation of the PPP Project Committee.

The PPP law institutes a PPP Project Committee presided by the secretary general of the High Council for Privatization and PPP and has among its members representatives of the relevant ministry, the Ministry of Finance, and, where applicable, the commission regulating the relevant sector. The PPP Project Committee is in charge of preparing an all-encompassing study governing the technical, economical,

legal and financial aspects of the PPP project, including the pre-qualification criteria, assessment of investors' interest and the likelihood of attracting the required financing. It is aided in its functions by a team of financial, legal and technical consultants.

The High Council for Privatization and PPP then examines the study and the recommendations of the PPP Project Committee and determines whether to reject or to pursue the project; in the latter case, the Prime Minister submits the project to the Council of Ministers for approval. In case the project is approved by the Council of Ministers, the PPP Project Committee launches the process of selecting a private partner.

The PPP Project Committee

In addition to its duties outlined above, the PPP Project Committee is also in charge of:

- Managing and administering the application process
- Evaluating the prequalification applications and providing its recommendations in relation thereto and in relation to the PPP project in general to the High Council for Privatization and PPP
- Preparing and sharing the draft tender document with the prequalified candidates, which includes a draft of the Project Agreement and its annexes
- Consulting with all prequalified candidates and lenders in a transparent and neutral manner in order to reach a comprehensive and final delineation of technical requirements, the technical means and the financial structure most suitable for the project; the PPP law provides that the draft tender document may be amended in light of these consultations
- Sharing the final tender document with the prequalified candidates
- Examining and evaluating the submitted bids and making recommendations in respect thereto to the High Council for Privatization and PPP
- Negotiating with the best bidder to improve the technical aspects of the bid, if mandated to do so by the High Council for Privatization and PPP
- Announcing the tender results which identify the successful 'private partner' and notifying the non-successful bidders of the reasons why their bids were not retained.

The selected private partner is required to incorporate a Lebanese joint stock company which will be the PPP Project Company and in charge of executing the PPP project. The PPP Project Company will be exempted from the nationality restrictions set out in the Lebanese Code of Commerce as well as from the requirements to appoint an additional auditor or to obtain a work permit for its Chairman should he/she be non-Lebanese.

The PPP law distinguishes between the establishment phase and the operation phase of the PPP project and provides that the private partner may not without the approval of the Council of Ministers transfer its shares in the PPP Project Company to third parties before the start of the operation phase.

The Public Party may participate in the establishment of the PPP Project Company and may contribute to its capitalization; its in kind contributions are exempted from the verification treatment provided for in Article 86 of the Code of Commerce.

F. PPP Lebanese Law: Commentary

The PPP Law clearly defines the procedures for the parties involved, their duties and the processes of every PPP project, from the initial phases of bidding through execution to monitoring, specifically the ministries' involvement in the envisaged PPP Project. It also subjects the process to clear economic evaluation/feasibility studies, identifies the key provisions of the PPP Project Agreement and makes specific reference to the possibility of resorting to arbitration or to other alternative dispute resolution mechanisms in case of disputes with the private partner.

The main purpose of the PPP Law is not to regulate the numerous management contracts that are currently favored in Lebanon. Rather, the Law is aimed at the major infrastructure projects that fall under risk/return sharing schemes, excluding concessions, which could have been included under the PPP law's scope, under two scenarios:

- The PPP law itself could have served as an equivalent to the parliament's approval with respect to concessions; under this scenario, concessions falling under the PPP law would not require parliament's approval (which, arguably, is the case in the offshore oil and gas industry regulated by Law 132/2010 enabling the Government to grant petroleum licenses without going back to the parliament).
- Extending the scope of the PPP law to include concessions, and in all cases, the approval of the parliament remains a requirement for the validity of the concessions.

The PPP Law also provides for increased accountability and transparency for various PPP projects, reducing chances of corruption.

However, the PPP law has certain limitations, and specifically does not:

- Provide for specific timeframes to be respected from the moment the PPP project is proposed until the PPP Project Agreement is ultimately signed; The Private Party should be able to anticipate the timeframes of the main milestones – if not all – leading to the award of the PPP Project Agreement.
- Deal specifically with PPP Project financing nor does it give the sufficient means to seek such financing, which is very important in long term, sizeable projects.
- Explicitly grant the PPP Project Company the right to create security or pledge neither its assets nor its equity shares.
- Institute a grievance committee or a similar body in charge of examining potential recourses by the private partner against the decisions of the relevant authorities involved in the PPP project processes.
- Specifically delineate various models of PPP Agreements depending on project nature and specific risk and does not include clear force majeure rules.

- Expressly provide for “step-in” rights for lenders (not requiring re-tendering), termination compensation for assets transferred to the public entity including employer termination or stability clauses protecting against discriminatory changes in law. However nothing in the PPP draft law excludes the incorporation of provisions to this effect into each individual PPP Agreement.

In addition, in order to alleviate some concerns from the public, there should have been a requirement that a minimum percentage of the jobs created from a PPP Project be allocated to Lebanese workers, as this is one of the main benefits of PPPs, especially when unemployment is around 25% nationally and even higher in some areas.

Aside the limitations outlined above, the PPP law institutes a comprehensive legal framework for PPP projects largely in line with international standards.

The PPP Law in Lebanon will give assurance to potential private partners that Lebanon is open for transparent tendering of PPP projects and draw much needed investment to this country to spur development and prosperity.

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FRANSA INVEST BANK | CORPORATE PROFILE

Fransa Invest Bank SAL ('FIB') is incorporated in Lebanon as an investment banking institution and licensed by the Lebanese Central Bank. FIB is the investment banking and asset management arm of Fransabank Group, benefiting from both retail distribution capability through the branch network and institutional and ultra-high net worth client base.

Its activities include private banking, asset management, capital markets, corporate finance and direct investments, supported by in-house research capability.

FIB Business Lines – Full Service Platform

Private Banking	Asset Management	Capital Markets	Investment Banking	Direct Investments
<p>Tailored Solutions: FIB provides investment expertise and professional advice and tailors investment solutions for optimal returns.</p> <p>Product Range: Cross asset class coverage including: equities, fixed income, commodities, futures, options, mutual funds, hedge funds, structured products and deposits.</p> <p>Structuring: FIB has structured capital protected notes distributed to HNWI and the branch network.</p>	<p>Fund management: FIB provides global and local collective investment vehicles to tap into market opportunities.</p> <p>Fransa Invest Beehive Fund: The diversified global balanced fund is geared towards retail clients providing access to regional and global debt, equity and money markets.</p>	<p>ECM Primary Issues: A total of US\$ 450 million have been arranged and lead managed by FIB mainly related to Fransabank Group preferred shares.</p> <p>DCM Primary Issues: FIB has lead managed more than US\$ 7.2 billion in Lebanon sovereign issues in the past four years with the latest issue amounting to US\$ 1.6 billion.</p> <p>Global Execution: FIB has built a global execution capability in MENA region and major international market (North America, Europe and Asia). Local Brokerage: Member of the Beirut Stock Exchange.</p>	<p>Advisory Services: Mergers and acquisitions, divestments, valuations, restructuring, private placements, public offerings, mezzanine and long-term financing.</p> <p>Project Finance: Services focus on engineering the right financing structures to maximize rates of return value.</p> <p>Securitization: FIB has participated in several securitization transactions for a total transactions size exceeding US\$ 45 million.</p>	<p>Venture Capital Funds: FIB has taken an active role in the launching of several local Venture Capital funds that invest in knowledge economy (under BDL circular 331).</p> <p>Direct Investments: Direct Investments through either FIB or FSB balance sheets are often managed and advised by FIB.</p>

FRANSABANK GROUP | CORPORATE PROFILE



A leading financial and universal bank, Fransabank Group offers tailored retail, commercial, corporate, investment and international banking products that meet the evolving needs of the societies it serves, through its 158 branches in 10 countries across the world, namely in Lebanon, France, Algeria, Belarus, Cyprus, Sudan, Iraq, Cuba, UAE, and Ivory Coast.



Established since 1921 in Lebanon and listed 1st amongst registered banks, Fransabank Group has the largest local branch network and 124 branches spread over the Lebanese territory. The Group enjoys today the ranking of a top 3 leading Lebanese Financial Group.

Throughout its history, Fransabank developed high level and strong cooperation with Development Banks such as IFC, EIB, DEG, AFD / Proparco, etc. It also maintains strong relations with major banks whether in the US, Europe, GCC and Asia more particularly Chinese top banking groups.

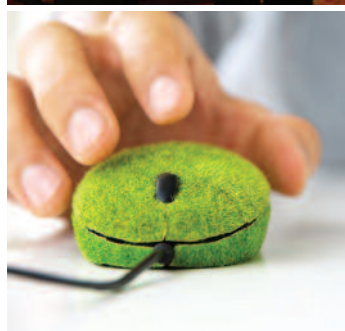


In 2013, Fransabank established China Desk with the objective to promote and facilitate exchanges between Lebanese and Chinese businessmen. Fransabank China Desk launched the Platinum Union Pay card, organized the Arab Chinese Business Conference, a Familiarization Tour targeting Chinese tourists to Lebanon, a roundtable encouraging the Arab-Chinese Banking Dialogue as well as Beirut to Beijing and Beijing to Beirut events.



Fransabank has launched the Sustainable Energy Finance and Youth Initiatives confirming its strategic positioning as a Young and Green Bank. Being at the forefront of technology and innovation, Fransabank thrives to answer its clients' needs and the community's in general in order to serve them with the best and most complete products and services offer.

With more than 95 years of financial legacy, Fransabank Group aims to create value for its customers and serve sustainable economic development in its markets of operation, playing the role of a responsible group whether in its organization and structure, its commitment to conformity with Compliance laws and regulations, its sound corporate governance and risk management or its dynamic, competitive and client-driven approach.



FRANSABANK GROUP | GLOBAL REACH





Welcome to Your World

CMS is the 6th largest law firm in the world, and the largest law firm in Europe with an annual revenue over €1billion. It is a powerhouse of more than 4,500 lawyers in 69 offices across 39 countries including China (Beijing and Shanghai) and numerous Middle East and North Africa countries.

With our focus on client service, we were one of the first international law firms to embrace the need to structure our business along industry sector group lines. We have eight industry sector groups; consumer products, energy, hotels & leisure, infrastructure & projects finance, insurance and funds, life-sciences, real estate & construction, and technology, media & communications.

Our practice and sector group focus gives us a comprehensive understanding of our clients' businesses and markets and allows us to constantly deliver sound and commercial relevant advice from any of our offices. We focus on relationships, not deals, and we are considered more approachable and accessible than many of our competitors. Our clients tell us we are the best, but we keep working harder.

As the legal market is rapidly changing, we are also constantly looking at how to meet the challenges of tomorrow. We have recently established an office in Tehran. We have also merged with Olswang and Nabarro as of 1 May 2017 to create a modern legal powerhouse.

In terms of rankings, we have achieved 80 Band 1 rankings across Chambers and Legal 500, and we have been awarded top 5 Most Innovative Law Firm (FT Innovative Lawyer Awards 2015).

Our Al-Jad offices in Lebanon and Iraq open a gateway to assisting CMS clients in the Middle East region and globally.

We encourage you to get in touch to discover what we can do for you.

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