

Private Public Partnerships to Shape Saudi Arabia's Future

Public Private Partnerships (PPPs) are a critical element of Saudi Arabia's Vision 2030, a bold and ambitious roadmap for the Kingdom's future. The legislative framework to enable PPPs continues to evolve and we consider the current state of play and the growing expectation that a stand-alone PPP law may be the missing piece in the regulatory jigsaw to facilitate the roll-out of PPP, and to attract foreign investment, across the Saudi economy.

To date, the National Transformation Program (NTP) stands out as the most visible of the Vision Realization Programs (VRPs) that starts to spell out in further detail, the large amount of private sector participation that will be required to achieve the vision and deliver key infrastructure and services to the Kingdom. The NTP directs 24 government bodies to achieve detailed KPIs in relation to the strategic objectives by 2020. For example, it mandates that by 2020, five PPP projects need to have been activated; the Ministry of Justice is required to ensure that 10% of its judicial facilities are operated by the private sector; and the Ministry of Transportation must achieve certain private participation targets in the construction and operation of its road (5%), rail (50%) and port (70%) projects.

Under the NTP, each ministry is provided with significant flexibility as to how it chooses to achieve its 2020 targets. PPPs may prove to be the preferred delivery model in achieving many of those targets, if the legislative framework can facilitate it. However, there has not to date been any clear definition of what will constitute a PPP for these purposes, but experience to date seems to indicate that this will be defined quite broadly and cover the spectrum from full privatization through to service contracts. The international model of private partners designing, building, financing, operating and maintaining the facilities - the DBFOM model - on a long-term (15 year plus) basis, will be part of this, but not by any means the sole solution.

The release of the Privatization Program (one of the remaining nine unreleased VRPs) in the near future will hopefully provide further detail of the PPP opportunities and the ways in which they may be structured.

Institutional Framework

Within the first 12 months after the release of Vision 2030, the National Centre for Privatization and PPP (NCP) was established. The NCP's role includes both full privatization and PPPs and it has a mandate that includes formulating regulations to improve the procurement, financing and development of PPP projects. The NCP reports directly to the Council of Economic and Development Affairs (CEDA) and has been given a year before its role will be reviewed, with both the possibility of its expansion or its extinguishment being contemplated.

A Project Management Office (PMO) has also been established under CEDA to monitor and follow up on the progress of individual Projects and Vision 2030 more generally. The

Ministry of Finance has a key oversight role over all PPP projects through the Finance Committee established under Vision 2030. The Finance Committee is responsible for approving funding programs and initiatives, and preparing and updating detailed mechanisms for examining the financial requirements of programs and initiatives, planning cash flows and for reporting on progress.

However, under the NTP, it is clear that it is the ministries who will be responsible for developing and implementing their own deal pipeline to achieve their targets. It is anticipated that some ministries will delegate these responsibilities to other subsidiary organizations, but they will retain primary responsibility.

Legal Framework

The principal legal framework applicable to government bodies when procuring major projects remains the 2006 Government Tenders and Procurement Law (GTP Law) and its implementing regulations. Like many GCC countries, this mandatory framework regulates key aspects of the procurement cycle, including the preliminary processes that government bodies must complete prior to launching public tenders, the terms and conditions of those tender documents, the evaluation processes and the resulting contracts. The GTP Law is currently under review and a consultation draft of a new law has been published. On a day-to-day basis, the GTP Law delivers a workable framework for the procurement of routine government supplies, works and services and it is anticipated that a new law based on the consultation draft will do the same job in an improved way. However, the application of the GTP Law to complex DBFOM type schemes is far more difficult and presents notable limitations. For instance, contracts must be governed by the Arabic language, certain values for bid bonds and performance bonds are defined based on overall contract values, specific evaluation criteria must be followed. Ministries are limited in their ability to negotiate with shortlisted bidders and the form of contracts must be prepared by Ministry of Finance and approved by the Council of Ministers.

Despite the restrictions of the GTP Law, the Kingdom has already successfully implemented many projects on a PPP basis, most notably within the power and water sectors. Key to these procurements has been the fact that the GTP Law does not apply to companies regulated by the Commercial Companies Law. Hence entities such as Saudi Electricity Company, the National Water Company and the Water & Electricity Company, which hold commercial licenses have not had to follow the GTP Law and have been afforded more flexibility in structuring their procurement of DBFOM schemes. An increasing number of PPP procurements have been started in other sectors such as airports and waste water treatment plants but again, by entities that are not subject to the GTP Law. However, under the consultation draft of the new GTP Law, its application may extend to all companies with a 51% government ownership, which could limit the scope for procuring PPPs outside of the GTP Law.

What is clear is that a PPP procurement, particularly on the DBFOM model, by any entity that is subject to the GTP Law, will be considerably more challenging. In other GCC markets and many international markets, this issue has been addressed through the introduction of a specialized PPP law. Although it may be possible to implement PPP schemes without a PPP law, there is no doubt that it would be far easier to do so with such a law. A PPP law that provides either a mandatory framework or discretionary course that government bodies can follow when procuring new infrastructure in more flexible ways, would help facilitate the introduction of deals to the market in a more consistent manner. A consensus appears to be building that a stand-alone PPP law is critical to unlocking the true potential of the PPP

model and encourage a broader pipeline of projects, including in the healthcare, education, social housing and infrastructure sectors.

Not only would a PPP law help provide a more consistent common framework, it would also be seen as a further statement of political support for PPP procurement and another step down the path towards a fully transparent procurement process.

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