



GCC PPPs 2016





Public Private Partnerships across the GCC – Taking Stock

Many long-term observers of the public private partnership (**PPP**) market in the GCC have developed a healthy degree of scepticism over the years. Too many false dawns have unsurprisingly led them to believe that the PPP model of procurement is one that simply won't ever take off in this market – at least outside of the power and water sectors. The increased interest in PPP over the past 24 months is, in the minds of the sceptics, a short term blip that will be forgotten as soon as the oil price begins to climb or structural changes on the expenditure side allow regional governments to balance their budgets by other means.

Despite this, approaching the end of 2016, it appears that most if not all GCC governments are seeking to implement PPP procurements or have announced their intention to do so. The oil price remains stubbornly low and expectations of future rises have been dampened. There is also an increased awareness of the need for structural change in many of the local economies. Although many challenges remain before there is a healthy pipeline of PPP deals across the region – and we don't expect many of the sceptics to have been converted – there is a real feeling that the stars have never been better aligned to allow that pipeline to develop.

Of course, the GCC is not a single market and the situation varies markedly between the different countries. It is increasingly clear that each country will develop its own approach, including as to the legislative framework, implementing bodies and types of projects undertaken. Sponsors, funders, contractors and consultants need to be aware of these differences to ensure they are best placed to capitalise on the opportunities presented.

This paper takes a high-level look at each of the GCC countries and considers the progress they have made to date in developing a PPP market and how they might progress in 2017. One of the challenges in addressing this topic is that there are many different understandings of what constitutes a PPP. Whilst a variety of different models is healthy, in this paper we are primarily referring to long-term contract (typically 15 years or more) between a private partner and a government partner in which the private partner provides a public asset or service, including its financing, design, construction, operation and maintenance with the bulk of its remuneration being based on the availability or condition of the asset and/or the quality of the service over the operating period. This paper does not address the power (including renewables), water or natural resources markets in any detail as these are generally progressing – very successfully – along a parallel track, often based on sector specific legislation.



BAHRAIN

Backdrop

Bahrain was an early-mover in the PPP market and has maintained a steady commitment to PPP procurement over the years, albeit with mixed results. Bahrain closed its first partnership project in 2013, when the Ministry of Housing signed a PPP Contract with a consortium led by real estate developer Naseej to develop 2,800 social and affordable homes. This success saw another public private venture launched in 2015 with developer Diyar Al Muharraq for the development of 3,100 residential units, as well as primary and secondary infrastructure and community centres.

The structure of these deals as we understand them is based on a construction period financing with bullet repayment arrangements, rather than the PPP model as we have defined it above. As such, it will have been easier to procure these deals under the auspices of the general Decree Regulating Government Tenders and Purchases, without the need for specific PPP legislation. Nevertheless, they represent a useful partnership model and a valuable point of departure for the development of a PPP market.

In 2011, the Ministry of Finance tendered the Askar waste to energy PPP project which had a capacity to treat 390,000 tonnes of waste per year and generate 25 MWs of power to feed into the national grid. It was to be developed on a 25 year BOT basis. A bidder seems to have been appointed but the project was cancelled and retendered in early 2015 by the Bahrain Ministry of Works, with the outcome unknown.

Outlook

Bahrain was rumoured to be developing a PPP law in 2014, but there has been little visible progress since then. It is possible that the completion of the first phase of the affordable housing PPP could reinject energy into the exploration of PPP models in the Kingdom, especially in meeting the government need to provide further housing. However, and as discussed above, the housing schemes so far have not used long tenor debt to help avoid the Government having to produce one large purchase price sum. As a result, although it is possible that we will see further construction financing based project, we suspect there will be limited progress on long term structures until formal PPP legislation is introduced.



KUWAIT

Backdrop

Kuwait had made the most progress of any GCC country in establishing a legislative and institutional framework for PPPs, passing the first PPP law in the region in 2008, and subsequently reviewing and updating its laws in 2014. The update of the PPP laws was based in large part on experiences on the Az-Zour North 1 IWPP scheme, which was procured under the separate IWPP Law. Az-Zour North 1 reached financial close in January 2014, but only after amendments to the IWPP Law and it was the inclusion of those amendments in the 2014 PPP Law, that gave a relatively high degree of confidence that the legal hurdles to closing PPP schemes in Kuwait had been removed.

The 2014 PPP law established two key institutions for the overseeing of PPP implementation, including the supervisory Higher Committee for Public Private Partnerships and the Kuwait Authority for Partnership Projects (**KAPP**) mandated with assessing the feasibility of and implementing projects.

Through 2015 and 2016, Kuwait released a number of new projects into the market including a PPP schools programme, Az Zour North 2 IWPP, Umm Al Hayman Wastewater PPP, Kabd Waste-to-Energy Facility PPP and Al Abdelyah ISCC IPP. Highly complex PPP structures were also floated for the Kuwait Rail and the Kuwait City Metro schemes.

Unfortunately, the Kuwait PPP schemes seem to have been beset by major delivery problems. Bid submission dates have been delayed on most schemes, the Rail and Metro projects have gone back to the drawing board (with a decision pending on whether they will follow a PPP model or not), no major awards have been made and no new schemes were released in 2016. KAPP experienced a turbulent year internally with a number of changes in key personnel and this has led to significant frustration and had an undeniable impact on investor confidence.

Frustration has also stemmed from the fact that differing PPP models with different risk allocations have been used on largely similar projects at similar times. This has made it difficult for bidders and funders to understand the fundamental government requirements in the projects.

Outlook

Despite having the most progress in its legal and institutional frameworks, Kuwait remains a source of frustration. Of course, seasoned Kuwait-watchers will recognise that the Kuwaiti democratic political model means that there will always be a degree of unpredictability in this market, but it seems essential to ensure that the delivery model is improved and that deals that come to market are realistic, well-defined and have a consistent risk allocation. The tenders need to have realistic timescales that are then adhered to. 2017 will be a critical year for the Kuwait PPP market as it is hard to believe that sponsors and funders will sustain their interest if real progress – defined by deals closing and more coming to market – is not achieved.



OMAN

Backdrop

Like a number of other GCC countries, Oman has a long history in the successful private sector funding, development and operation of power and water projects. However the Sultanate has not translated this success to other sectors such as transport, healthcare or education. In early 2015, the Oman Tourism Development Company announced its intention to open up to 49% of the project company set to undertake the USD 1.3bn development of Port Sultan Qaboos Waterfront to international investors, however the arrangements seem more akin to a private real estate development rather than the provision of essential public services.

In 2016, a consortium of advisers was mandated to help develop the country's PPP law and assist in the creation of a central PPP unit. We understand that as at October 2016, the draft PPP law is in the final stages of review and a set of executive regulations is being prepared. It is understood that the consultants advising the Omani government have recommended the establishment of a central PPP authority to co-ordinate the tendering of PPP projects. It is also understood that the Omani government is currently identifying possible pilot social infrastructure PPP projects to be used to test the proposed PPP framework.

It was reported in June 2016 that the Oman Ministry of Health and OIF were partnering with Carillion for the PPP development of the Sultan Qaboos Medical City, which would offer a total of 1,200 beds across a specialty hospital, children's hospital, trauma and neurology hospital, rehabilitation, health sciences and health specialty hospital. The project would also involve the development of some commercial areas to provide another income stream to the project, including for private hospitals, specialist clinics, hotels, retail outlets and residential areas for patients and

staff. It is not clear whether this arrangement requires the PPP law to have been implemented or whether it will be pursued under the existing laws, perhaps based on OIF's special status.

Outlook

The procedures, time periods, values, bond values, restrictions on negotiations, etc. contained in the current Tenders Law are all geared towards conventional procurements and are unlikely to work for a PPP structured along conventional lines with long-term debt and a long operating period. The development of a sustainable broad PPP market in Oman is therefore likely to depend on the successful introduction of the PPP Law and regulations.

The Sultanate's ninth five year plan (2016-2020) specifically recognises the importance of public private partnerships in acquiring, financing and developing government projects and generally driving economic growth. The country's relative lack of oil & gas reserves means that the financial driver behind implementing a PPP market is likely to remain notwithstanding any future recovery in the oil price. Oman is also well-placed as a market known by international power and water developers and their lending banks since 1994, so if the Law is introduced, we believe this is a market that will offer strong potential.

The healthcare market in Oman is one area that offers particular potential because, similar to other successful healthcare markets, the MoH has a constitutional obligation to provide free access to universal healthcare and a mandate under Royal Decree to "**encourage the private sector to contribute to the support of health services**". However, social housing, education and transport are also thought to be sectors that the Omani government may be open to developing through the PPP model.



QATAR

Backdrop

Qatar is another country with a track record of partnering with the private sector to deliver power and water projects, but little experience outside of those sectors. The Qatar power and water projects are also based on a model of bringing private developers together with strategic national investors as shareholders in the project delivery vehicle, adding a further dimension to the partnerships in these sectors.

Early in 2016, Qatar's Ministry of Economy and Commerce engaged a consortium of legal, financial and technical advisers to develop the country's PPP law. It is understood that a draft law was placed with cabinet over the summer for consideration with potential implementation by the end of the year, but there has been little public announcement since then.

In October 2016, the Ministry of Economy and Commerce and Ministry of Education and Higher Education jointly invited private sector developers to express their interest in constructing and operating public schools on a PPP basis in the State. Ten plots have been earmarked by the Private Sector Development and Partnership Technical Committee, a sub-committee of the Ministerial Working Group for PPP, for their development. Bidders were given a broad mandate to propose the project constraints, being asked to undertake a survey on the plots of land and to then subsequently provide details of the kind of education facility they would propose developing, as well as the timeframe to design and build the facility, indicative costs involved in the development, a feasibility study, financing plan and marketing mechanism.

It has also been reported that the Supreme Committee for Delivery & Legacy may be looking to bring in private partners to develop some of the stadia for the 2022 World Cup and the related legacy schemes, though the structure of any such partnership is not yet clear.

Outlook

Although Qatar has recently introduced a new Law Regulating Tenders and Bids, it is still based very heavily around conventional procurements and is not thought to be fit for the purpose of implementing a long term PPP scheme. The implementation of a well drafted PPP law and the necessary institutional framework and support therefore seem key to the future development of the market.

The release of the schools program is a positive sign, but it will be important to understand whether it is structured on the basis of the Law Regulating Tenders and Bids or would require a PPP law to be in place before it could be implemented. Where projects are procured in parallel with the development of an overarching legislative regime, there is a risk of inconsistencies developing between project documents and statutory rights and obligations. The existence of the Ministerial Working Group for PPP suggests that a co-ordinated approach will prevail and shows a key advantage to a jurisdiction that enacts PPP policy centrally.

Qatar has signalled a wide variety of projects that it may be interested in procuring on a PPP basis, including hospitals, healthcare, sporting facilities, housing and mixed use real estate projects. Qatar could offer a strong pipeline if progress is maintained, provided genuine long-term political support exists for the PPP model: working out whether that is the case will be critical.



SAUDI ARABIA

Backdrop

The Kingdom reached financial close on its first PPP project in June 2012, when a consortium of TAV Airports, Saudi Oger and AL Rajhi Holding Group won the right to build, transfer and then operate the Prince Muhammad Bin Abdulaziz International Airport in Al Madinah Al-Munawarah under a 25 year concession. In contrast to many international PPPs which compensate investors through availability payments, the Medina airport PPP saw the consortium and its lenders accept passenger demand risk, sharing the revenues generated under the concession with the General Authority of Civil Aviation (**GACA**). In November 2015, excitement for a repeat of the Medina PPP model was raised when GACA announced its intention to begin privatising its 27 airports in the Kingdom. However, since then progress in the sector has been stop-start with schemes such as Taif being floated and subsequently withdrawn.

However, interest in PPPs was again reinvigorated when in April 2016 the strategic Saudi Vision 2030 was approved by Cabinet. By the beginning of June, the vision had been translated into first steps of implementation in the National Transformation Program 2020. Privatisation of Government assets and the promotion of investment by the private sector were key objectives of the Saudi Vision 2030, and these were translated into clear strategic objectives across multiple ministries, together with key performance indicators by which the Kingdom set itself ambitious 2020 targets. Highlights in the National Transformation Program included targets that by 2020:

- the Ministry of Health would increase the private sector contribution to total healthcare spend to 35%, the private sector will generate SAR 4 billion from utilising government health resources and one of the medical cities will be privatised using a PPP model;
- the Ministry of Education would increase private sector participation in the education sector; backed up with SAR 240,000 earmarked to attract private investments to finance school construction;
- the Ministry of Transport would increase private sector contribution to developing and operating roads (5%), railways (50%) and ports (70%);
- the Ministry of Housing involving private sector in the development of government land, including an initial allocated budget of SAR 13,500,000 to create affordable, large-scale residential projects (noting that the Ministry of Social Affairs was also allocated SAR 52,800 to provide affordable housing through PPP models); and
- the Civil Service, who must achieve five activated new PPP Projects by 2020.

Having set the strategic direction, the Kingdom has in the last quarter made announcements of several projects on a PPP basis. Feasibility studies in the education, health and transport sectors are reportedly on-going, with a focus on adapting those projects already planned into models which attract the private sector. Specific projects that have been announced include:

- Tatweer Building Company using a PPP model to finance and construct educational institutes worth over SAR 45 billion over five years and issuing a request for proposals for transaction advisors to develop a schools PPP scheme.
- Four or five universities in Saudi Arabia are thought to be considering using PPP for training hospitals, utilities and student housing.

- The National Water Company (**NWC**) reissuing its Jeddah airport phase 2 sewage treatment plant as a PPP Project. It is possible that another wastewater PPP plant near Taif may also be in the pipeline and further projects are expected to be announced by NWC at the end of November. The water sector as a whole will also be undergoing a significant restructuring in 2017.
- the Jeddah Development & Urban Regeneration Company receiving bids in August from international consultants to advise on the PPP development of ring road.

Outlook

With the strategic objectives and measurable targets set, the outlook for PPP opportunities in the Kingdom going forward is positive. However, what is not yet clear is the shape that the PPP models will take and at present there is a sense that “**PPP**” is being used as a catch-all phrase covering everything from service contracts all the way through to full privatisations. In order to meet the Kingdom’s strategic objectives, there will undoubtedly be

a place for all of these models, but it remains to be seen how many projects will follow the PPP model as we have defined it in the introduction to this paper.

At present, Saudi Arabia does not have either a PPP law or a central implementing unit. The success of the Medina airport PPP is commonly highlighted as evidence that such facilitating measures are not pre-requisites to successful PPPs in the Kingdom, but given the targets and objectives set in the National Transformation Program 2020, there seems little doubt that putting these components in place would help to ensure that the PPP model is rolled out with consistency and with fair risk allocation to attract international developers.

It must also be borne in mind that for international sponsors unfamiliar with doing business in Saudi Arabia, there will be a steep learning curve to become familiar with the legal and regulatory frameworks and the general business environment and it seems likely that at some point a leap of faith will be required given the unique environment: strong strategic partnerships with the right local players may be seen as critical.



UNITED ARAB EMIRATES

Backdrop

PPP has had a particularly checkered history in the UAE, with the pursuit and ultimate cancellation of the Mafrq-Ghweifat Highway project in Abu Dhabi representing a particular low point. So far it appears that Dubai is the only Emirate that has sought to kick-start a PPP programme and optimism was high at the beginning of the year following the introduction of a PPP law in the Emirate in November of 2015, (our article, '**Dubai's New PPP Law**' can be accessed through www.dlapiper.com).

It was reported that Dubai Courts successfully signed the first PPP Agreement in Dubai under the PPP law, for the development of the world's largest automated car park facility at the Supreme Court Building including operations over a 30 year term.

The Dubai Roads and Transport Authority (**RTA**) began the year by releasing the request for qualification for its first PPP to the market, the Union Oasis Project. Union Oasis will be developed over land owned by the RTA, who are looking for a private sector developer to create five towers with a mixed use of residential, commercial and retail, as well as green areas, in close proximity to the existing Metro Station. Whilst originally the RTA had hoped that the transport oriented development would generate enough revenue to finance the construction and 30 year operation costs of the development, it has been reported that after extensive market sounding and

commercial discussions, the RTA updated the financial package to provide a minimum revenue guarantee to the developer.

Further RTA projects including a truck rest area are understood to be coming to market imminently.

Outlook

Within the UAE, the best current opportunities appear to be in Dubai. However, the theme that seems to be emerging for Dubai projects is a focus on exploiting government real estate in order to create potential revenue streams. Car parking aside, we are not yet seeing traditional PPP opportunities as defined in this paper, whereby the private partner provides a public service. No major schemes have been announced in the health or education sectors, perhaps because there is already a high incidence of pure private provision in both of these areas.

It is too early to try to draw any conclusion about the effectiveness (or otherwise) of Dubai's PPP law, particularly when the implementing regulations and guidebook, which are referred to extensively in the law, have yet to be released. However, we remain of the view that the principal benefit of the PPP law is the flexibility it provides to public authorities in the procurement of schemes, and it is expected that a stronger pipeline will emerge through 2017, albeit that it will most likely focus on revenue generating rather than cost-based schemes.



CONCLUSION

2017 is a make or break year for PPPs across the GCC. It is possible that at the end of the year the sceptics will be saying “**told you so**” and the developers and funders will be moving on to other regions. However, for the optimists amongst you we would say that it is equally, if not more, likely that a much more positive picture will have emerged. It will not be a consistent picture across the region and there will inevitably be markets that make more progress than others. The trick is working out which those will be.

We hope that this paper provides some initial food for thought. We plan to issue more detailed papers on the legal and regulatory situation in each market over the coming months, so please let us know if you would be interested in receiving those.

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