

# Public-Private Partnerships in the MENA Region in Times of Crisis: Current Trends in Private Sector Participation and PPP Policy Evaluation in MENA

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Effective regulatory frameworks for public-private partnerships (PPPs) in infrastructure development have become an important comparative advantage for countries' ability to attract international investors in infrastructure and public services.

According to estimates from before the current economic crisis, countries from the Middle East and North Africa (MENA) region planned to spend around USD 100 billion by 2015 in the water sector alone. Given these estimates, regulators have to use available resources, including technical and material implementation capacity and private investment, to engage in long-term risks in the most efficient way. This offers a strong argument for the provision of a transparent and predictable regulatory environment to make PPPs work in the long run without wasting resources.

Given the mixed experiences with PPP models in other regions, the MENA region is faced with the challenge of translating the concept into sustainable projects, guaranteeing not only their economic viability but also political support. Effective communication of the benefits of PPPs, as well as of general privatisation and market openness strategies, to the public remains the number one challenge for many MENA governments.

## **PPPs Gain Ground in the MENA Region**

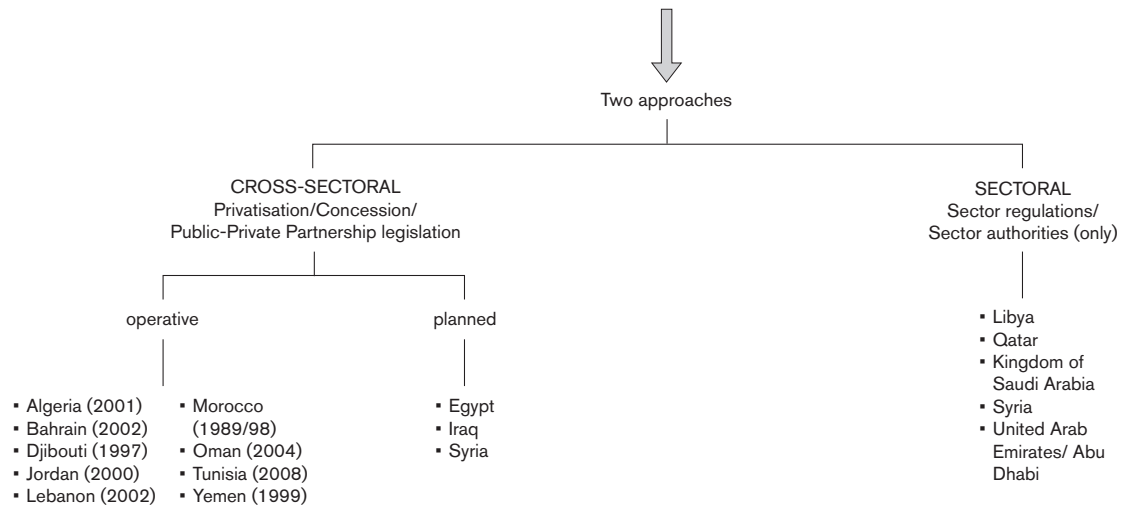
Most countries in the MENA region have already used one of the many forms of PPP tools for the financing

of new infrastructure projects. Compared to full-scale privatisation, PPPs have the advantage of allowing the government to retain some control over sectors regarded as sensitive or of strategic interest, while at the same time benefiting from the know-how and capital of investors from the private sector, especially foreign investors.

The MENA region has become more and more open to privately provided infrastructure and has started to fully embrace private involvement in formerly state-owned enterprises for the provision of infrastructure services. The dominance of the energy and telecommunications sector in this sphere is notable (60% of projects in the region), and there is an increasing interest in PPPs in the urban development and education sectors, as seen, for example, in the UAE. In countries such as Iraq, where the need for infrastructure is huge, PPP tools are increasingly considered. However, there has always been a certain reluctance to involve the private sector deeply in sensitive sectors of strategic importance, most notably the water sector, where privatisation or PPP measures have been undertaken only very cautiously.

According to the World Bank PPI (Private Participation in Infrastructure) Database, which includes data from 13 MENA countries from 1990 to 2008, more than USD 67 billion had been invested in 122 public-private infrastructure projects in the telecommunications, energy, transport and water sectors by both private companies and public parties.

Nevertheless, in a context of crisis, the project finance market in the MENA region and the reduced availability of funding have proved to be a major impediment to the carrying out of PPP projects in the region. Project finance has dried up, and interested parties have struggled to secure funding for deals. Almost all commercial banks operating in the region have been unable to offer long-term financing. Pressure



Source: MENA-OECD Investment Programme (2008).

on governments to take action, by either guaranteeing financing or stepping in themselves, has increased. Furthermore, FDI and portfolio investment in the region are suffering, as are intra-regional investment flows.

In such a situation, where risk perception is so crucial, the security of the regulatory framework is of utmost importance.

### Regulatory Framework Approaches in the MENA Region

As shown in Chart 10, two different types of regulatory frameworks for PPP projects are applied in MENA countries. MENA countries with systems informed by civil law, in particular, Maghreb countries, tend to adopt cross-sectoral (i.e. horizontal) privatisation/PPP/concession laws and regulations. MENA countries more influenced by common law traditions, in particular, the Gulf countries, tend to adopt sectoral regulations, and the corresponding authorities often have considerable discretion in the definition of contractual terms.

The evolving regulatory frameworks for successful PPPs in the MENA region are converging towards global standards and trends. The different legal traditions based on common law or civil law systems have a strong impact on the choice countries make to follow either horizontal or sectoral regulatory approaches.

Horizontal privatisation/PPP/concession laws have been implemented over the last 10 years in Algeria,

Bahrain, Djibouti, Jordan, Lebanon, Morocco, Oman, Tunisia and Yemen. Egypt is considering issuing a PPP law in the near future. Syria is also currently consulting with international donors and stakeholders to draft a PPP law.

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Except for the Tunisian concession law, the word “privatisation” is usually included in the title of the cross-sectoral laws. Yet, most of them refer both to privatisation in the narrower sense and to PPPs. This is the case in, for example, Djibouti, Jordan and Oman. In many cases, such as in Algeria, PPP-related initiatives and projects had already been conducted before special legislation was adopted.

The general laws on privatisation usually either refer to an explicit list of sectors and companies to be privatised or implemented using a PPP model or place the responsibility for defining these sectors on specific public institutions. The latter is the case with Bahrain, Djibouti, Morocco, Jordan, Algeria, Oman, Lebanon and Egypt, where specific institutions are in charge of identifying those sectors. Alternatively, some countries enforce special sectoral regulations for specific PPP/privatisation projects, for example,

Lebanon and Syria in the telecommunications sector, Qatar and Abu Dhabi in the water and electricity sectors, and Saudi Arabia in the water and telecommunications sectors.

### **Current OECD Trends in PPP Policy Evaluation**

OECD countries have a wealth of experience in both privatisation and PPP projects. That experience is laid out in the *2006 OECD Policy Framework for Investment* and the *2007 OECD Principles for Private Sector Participation in Infrastructure*, which underscore the fact that private investors' interest in PPP projects requires not only clear guidance on the financial arrangements for a potential project, but also that a reliable political, administrative, and regulatory framework be in place.

## **The objective of the evaluation framework is to provide policymakers with a means of assessing progress on reforms related to privatisation and PPP projects vis-à-vis international best practices**

Along these lines, the MENA-OECD Investment Programme has put in place a new tool to evaluate the business climate in the MENA region (the Business Climate Development Strategy or BCDS), which

takes several factors into account, including privatisation and PPP policy. The objective of the evaluation framework is to provide policymakers with a means of assessing progress on reforms related to privatisation and PPP projects vis-à-vis international best practices.

The indicators related to PPP projects are constructed to address five key elements: i) the existence of a specific unit within the government to coordinate and develop PPP policy; ii) the legislative framework covering PPP projects; iii) the use of consultations to build buy-in from various stakeholder groups; iv) the undertaking of a cost-benefit analysis prior to making a decision on a PPP project; and v) monitoring of the progress on PPP projects over their lifetime.

The first analyses have focused on Egypt and Morocco and are in the process of being published. New BCDS projects will be conducted by the MENA-OECD Investment Programme in 2010 in the MENA region, with a focus on promoting best international and OECD practices on PPP issues.

### **References**

- For more information on regulatory framework issues, see: OECD. *Making Reforms Succeed: Moving Forward with the MENA Investment Policy Agenda (Private Sector Development in the Middle East and North Africa)*. OECD Publication: Paris, 2008.
- For more information and contact information on the MENA-OECD Investment Programme and BCDS, see: [www.oecd.org/mena/investment](http://www.oecd.org/mena/investment).