Leveraging Public Private Partnerships in the GCC post COVID-19

A comparative guide to the legal frameworks of Public Private Partnerships (PPPs) in the region

pwc.com/me/gcc-public-private-partnerships

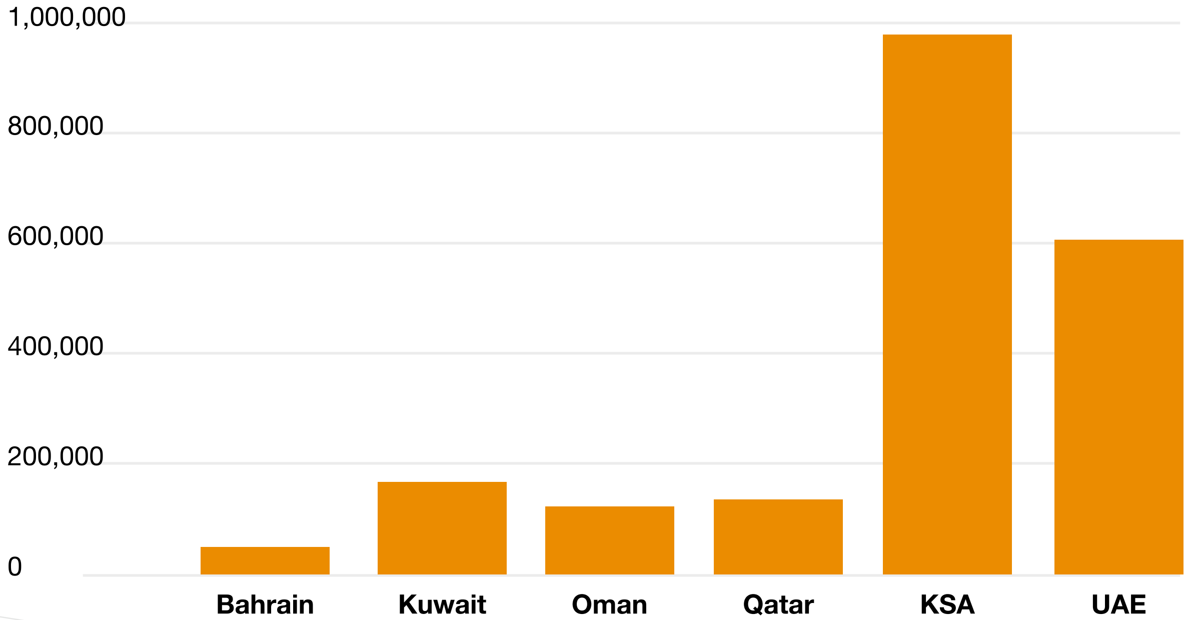
Introduction

The current economic climate and the expected residual impact of the COVID-19 pandemic will have long-term financial consequences on government budgets. GCC economies are facing unprecedented challenges due to the dual shock of the COVID-19 pandemic and the steep fall in oil prices.

Although, most countries in the GCC have placed the provision of modern infrastructure and world-class public services at the heart of their respective national visions, our Capital Projects & Infrastructure Survey,[1] published in the third quarter of 2020, revealed that the region is finding it challenging to implement infrastructure projects efficiently and that increased market volatility, oil price volatility and the economic cost of COVID-19 are putting a strain on government resources across the region.

With the total value of planned and unawarded projects in the GCC countries expected to reach USD 2 trillion,[2] and given the challenges that governments in the region are operating under, it is clear that governments will seek private sector support in infrastructure projects delivery and look to attract private sector participation and funding to reduce the burden on the already stretched public finances.

Value of planned and unawarded GCC projects by country (USD m)



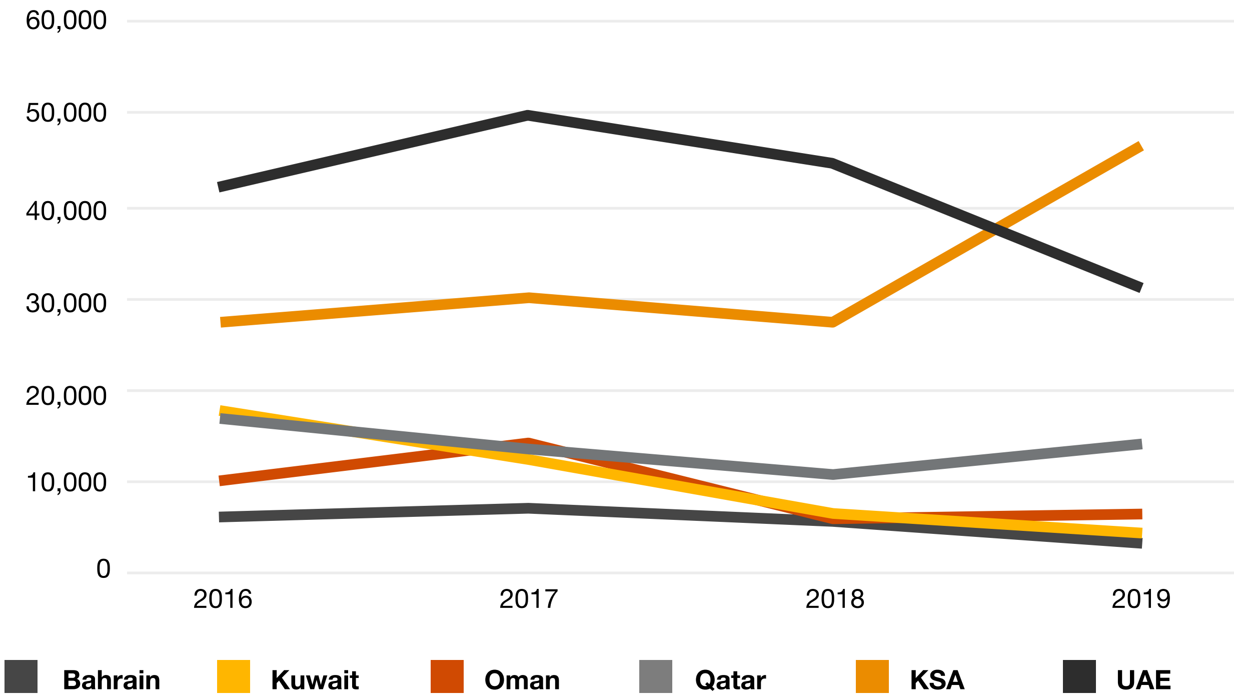
Source: MEED Projects, Middle East contract awards: October 2020
PwC Analysis

[1] https://www.pwc.com/m1/en/publications/capital-projects-infrastructure-survey-2020.html

[2] MEED Projects, Middle East contract awards: October 2020. PwC Analysis

Despite significant efforts to diversify their economies, GCC revenues are still largely petrodollar based and economic activity is still heavily dependent on domestic consumption and consumer spending. With economic diversification still very much a work in progress, the region has struggled with oil price volatility in recent years, which has impacted the availability of government funds for infrastructure spending. As evidenced from the graph below, barring Saudi Arabia (KSA), the value of contracts awarded in the GCC region has declined since 2016.

Value of GCC contract awards by country, 2016 - 2019 (USD m)



Source: MEED Projects, Middle East contract awards: October 2020
PwC Analysis

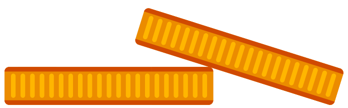
The fiscal balance has been impacted further with the announcement of stimulus packages to sustain economic activity and protect against job losses, as well as to cover the rising costs of healthcare and vaccination programmes. According to the International Monetary Fund (IMF), the total value of the stimulus packages in the GCC region currently stands at USD 70 billion,[3] and given the focus on addressing the health and economic crises, no investments have been allocated to infrastructure projects through these stimulus packages.

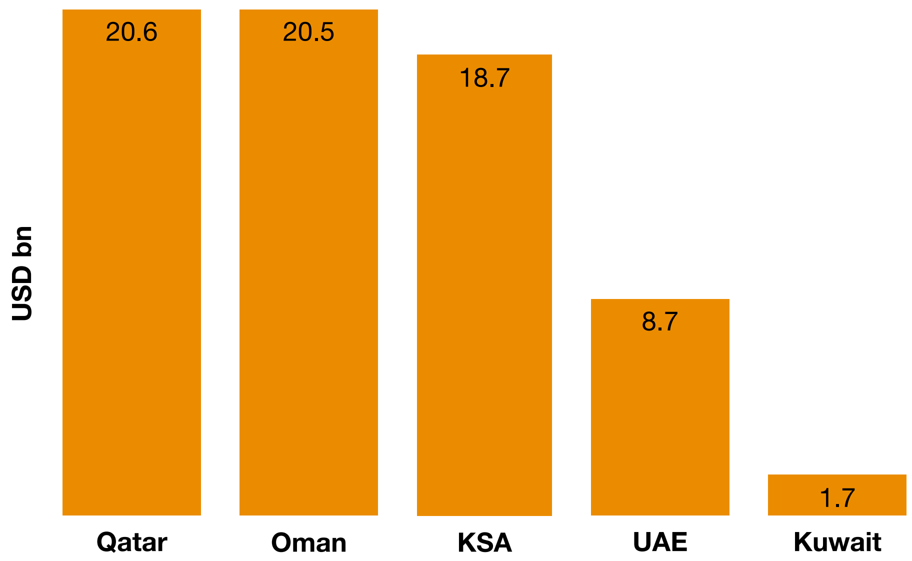
Undoubtedly, this will further constrain the ability of governments to drive the development of infrastructure projects, which in turn will impact economic recovery as the infrastructure sector is highly correlated with economic growth and has a significant multiplier effect. According to the Global Infrastructure Hub, public investment – which is a proxy for government investment in infrastructure – has an average fiscal multiplier of about 0.8 within one year and about 1.5 within two to five years.[4]

Public Private Partnerships (PPPs) will play a critical role in the region's post-COVID-19 recovery phase. PPPs can offer a number of key benefits to governments and authorities. They can take a variety of forms, ranging from management or operating contracts to concessions through to full privatisation, depending on the level of private sector involvement.

Stimulus Packages as of March 2021 (USD bn)

In the GCC region, the total value of the stimulus packages amount to USD 70 billion.





Source: IMF

[3] https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19
[4] https://www.gihub.org/infrastructure-monitor/insights/fiscal-multiplier-effect-of-infrastructure-investment

Fiscal and non-fiscal benefits of Public Private Partnerships

Fiscal Benefits of PPPs

Value for money
PPPs provide value for money for public funds as the risk adjusted whole life costs of PPPs are lower than conventional procurements

Increase budget certainty
Capital and most of the operating cost of the project are pre-agreed with the private sector and are spread over a 20-30 year period

Attract foreign direct investment
A well-structured PPP projects pipeline and PPP friendly political and legal frameworks will attract foreign direct investments

Flexibility to manage cost of funding
PPPs allow government the flexibility to optimise the timing and amount of debt they raise from the market

Non-Fiscal Benefits of PPPs

Appropriate risk allocation
A well drafted PPP contract allocates each risk to the party who is best positioned to manage it

Innovation
Private players innovate to meet project requirements to minimise capital and operation costs

Develop the local private sector
Created through joint ventures with large international firms, as well as sub-contracting opportunities for local firms across the overall projects life cycle

Public Private Partnerships' frameworks in the GCC region

PPPs or any other form of alternative provision or financing is not necessarily new and the GCC region has a long history of using the PPP method, specifically in the Energy and Utilities sector where numerous gas and coal-fired power plants, solar power plants and desalination projects have been implemented in the UAE, KSA, Qatar, Kuwait and Oman.

In the majority of cases, the legal regime for undertaking such projects is contained in the legislation related to electricity and water generation. Where this is the case, the trend (as noted later) is to explicitly omit these assets from any PPP law so as not to introduce any ubiquity or additional processes. The situation is different in other sectors, where the PPP method has been slower to implement. Several factors are responsible for this, and one of them is the uncertainty surrounding the supporting legal framework for PPPs.

In this paper we examine aspects of the various laws and frameworks to compare the similarities and differences and highlight areas that would benefit from further clarity.

Key attributes of a legal Public Private Partnership framework

The legislative approach to PPP procurement varies across the GCC, with some countries excluding certain sectors. However, as all countries in the region are still in the early stages, the new PPP laws should be considered alongside existing sector or tender laws.

01 Clear instructions on private sector participation; including selection criteria and procedures. Unsolicited proposals should also be encouraged.

02 Established legislative and institutional framework that permits 100% private sector involvement.

03 Repatriation of profits should be permitted for international investors.

04 Dispute resolution appropriateness: Arbitration in a neutral jurisdiction would provide investors' confidence that issues will be solved fairly and efficiently.

05 Consistency with other legislations issued before in the country in order to avoid collisions of multiple laws and inconsistency in their application.

06 Clear definition on the scope of PPP law's application, i.e., the legal associations to which the law extends and its applicability on each sector.

07 Step-in rights provisions that would give more confidence to the financiers/lenders.

08 Allowing for government support and undertakings, including project guarantees, public loans, subsidies, tax and customs incentives and other related government support.

Based on UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects and the EBRD Core Principles for a Modern Concessions Law

Public Private Partnership laws examined in this paper

UAE

Abu Dhabi - Law No. (2) of 2019 on organising Public Private Partnerships

Dubai - The Dubai Law 22 of 2015 On the Organisation of Public Private Partnership in the Emirate of Dubai (the Dubai PPP Law)

Federal - Cabinet Resolution (#1/1) for 2017 on the procedures manual for partnership between federal entities and private sector (federal entities only) and the UAE Cabinet Resolution (#4/8) for 2019 on the procedures manual for partnership between public and private sectors in the UAE (local and federal entities)

Oman

Law on Public and Private Partnerships (promulgated by Sultani Decree 52/2019) and repealing the law establishing the Omani Authority for Partnership for Development (SD 9/2014)

KSA

Private Sector Participation Law (PSP Law) approved under Council of Ministers Resolution 436, dated 16.03.2021

Kuwait

New PPP Law (Law No. 116 of 2014) issued in August 2014 (the New Kuwait PPP Law), replacing the old PPP Law (Law No. 7 of 2008) and Decree No 78 of 2015 issuing the Executive Regulations

Qatar

Law No. (12) of 2020 Regulating Public Private Partnerships

KSA PSP Law: The analysis carried out is on the basis of the review of the Draft PSP Law and the published PSP Law. Once the implementing regulations are published, we will review and issue an update, if required.

How these laws address key attributes

Key Attributes of Legal Frameworks	UAE Dubai	UAE Abu Dhabi	UAE Federal	Oman	KSA	Kuwait	Qatar
Clear instructions on private sector participation	●	●	●	●	●	●	●
Established legislative framework permitting 100% private sector involvement	●	●	●	●	●	◐	●
Repatriation of profits permitted	●	●	●	●	●	●	○
Dispute resolution appropriateness	◐	●	●	●	◐	●	◐
Consistency with other legislations	◐	●	●	●	◐	◐	●
Clear definition on the scope of PPP law	●	●	●	●	●	●	●
Step-in rights provisions	○	○	○	○	○	●	◐
Allowing for government support/ guarantees	◐	◐	●	◐	●	◐	◐

● Covered ◐ Partially covered ○ Not covered

UAE

With the introduction of the Abu Dhabi PPP Law in January 2019, there are now two PPP laws in the United Arab Emirates in addition to the federal PPP Manual developed by the Ministry of Finance at the federal level:

01 The Abu Dhabi PPP Law

02 The Dubai PPP Law

03 The Public Private Partnership Provisions & Procedure Manual

PPPs are not new in the UAE, both at the federal and municipal levels. The public sector has a history of collaboration and engagement with private sector companies. The UAE Constitution of 1971, as amended (the "Constitution"), identifies cooperation between the Public and Private Sectors as the foundation of the country's economy.

We have examined the three different PPP laws/manuals expounded by government entities in the UAE. A comparison is summarised in the next pages. It is also worth mentioning that the PPP Procedures Manual developed by the UAE federal government is available in two different versions: 2017 and 2019. The committees referred to in this paper correspond to the 2019 manual, but the same would apply to the corresponding committees under the 2017 manual.

Key stakeholders in the 2017 Ministry of Finance Manual

- Cabinet
- Financial & Economic Committee
- Technical Office
- Project Committee

In substance uniform in both Ministry of Finance manuals in terms of roles and responsibilities

Key stakeholders in the 2019 Ministry of Finance Manual

- Government
- Higher Committee
- Technical Committee
- Bid & Award Committee/Monitoring Committee

Abu Dhabi PPP Law (Law No. (2) of 2019) [5]

PPP Definition	A contractual relationship within a socio-economic and administrative concept, which is based upon the concept of distributing and organising roles between the Public and the Private Sectors in terms of identifying and implementing the sustainable socio-economic development programs and schemes, through a complementary and contractual relationship between them, in order to share responsibilities and benefits and thus raise economic efficiency and achieve developmental objectives for society.
What is it trying to achieve?	Private sector participation in public assets
Procuring Authority	• The Abu Dhabi Investment Office; or • Relevant Government Entity proposing the project
Approval process and procurement approach	• Any PPP Project must get the approval of Abu Dhabi Investment Office (ADIO) • Government concerned entity to monitor projects and submit periodic reports to ADIO
Type of PPP Agreements Permitted	Open if suggested by ADIO
Exclusions / Exceptions	Partnership agreements signed prior to the enforcement of the law's provisions

[5] https://investinabudhabi.gov.ae/-/media/Project/TAMM/ADIO-V2/Documents/Partnership-Projects-GuidebookENG-v11.pdf

Dubai PPP Law (Law 22 of 2015) [6]

PPP Definition	Contractual relationship between the public and private sectors created according to this law, the decisions issued thereunder and the partnership contract which purpose is the whole or partial execution of the project to secure quality of services or raise revenues of governmental body or any other matter through utilisation of the private sector's efficiency and financial and technical potentials and others.
What is it trying to achieve?	Private sector participation in public assets
Procuring Authority	• Public sector entity proposing the project in cooperation with the Dubai Department of Finance (DOF) if the project has a capital value of AED 200 million or above.
Approval process and procurement approach	• Special committee shall be formed in the concerned Government Entity and will be responsible for the procurement • The committee shall include representative from DOF if project's value is above AED 200 million Each project is approved by: • The Director General if the project generates revenues • The Director General if the project is less than AED 200 million • DOF if the project is above AED 200 million • Higher Committee if total project value exceeds AED 500 million
Type of PPP Agreements Permitted	• Service contracts • Management contracts • Leasing contracts • Concession contracts • Build Operate Transfer (BOT) • Build Own Operate Transfer (BOOT) • Build Own Operate (BOO)
Exclusions / Exceptions	The PPP Law does not apply to: • Electricity and water projects that are governed by the Electricity & Water Sector Law (No 6. of 2011) • Simple works contracts or supply contracts that are governed by the Procurement Law (No 6. of 1997)

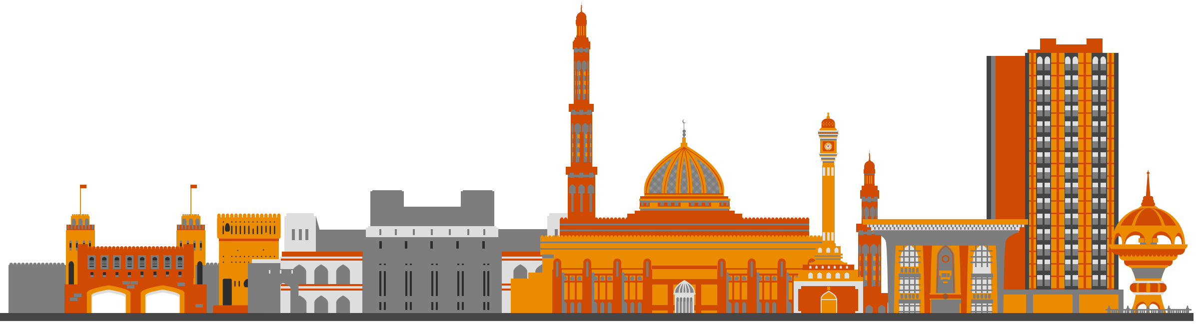
[6] https://www.dof.gov.ae/en-us//pnp/Pages/law.aspx

Procedures Manual for PPP (#1/1) for 2017 and (#4/8) for 2019 [7]

PPP Definition	A contractual relationship between the public and private sectors, established in accordance with the provision of this manual and the partnership contract, aiming at implementing the project in whole or in part, to ensure the quality of services or the development of state revenues or any other matter by taking advantage of the efficiency of the private sector and its financial and technical capabilities.
What is it trying to achieve?	Private sector participation in public assets
Procuring Authority	• Government: Federal – Cabinet and/ or Local Emirate Government representative if applicable • Public sector entity proposing the project • PPP higher committee • Project Technical Committee • Bidding & Awarding Committee • Performance Monitoring Committee
Approval process and procurement approach	• Government provides initial approval of project ideas, tender, contract terms and guarantees, follow up on execution. • If the value of the project is less than AED 200 million the relationship will be direct between the PPP Higher Committee and the Ministry of Finance (at the federal level) and the Emirate Department of Finance if the Emirate is a party to the project and any entity chosen by the Emirate. • If the value of the project is AED 200 million or more, the PPP Higher Committee will present it to the Government for initial approval of the project idea and final approval after completing the necessary studies.
Type of PPP Agreements Permitted	• Service contracts • Management contracts • Leasing contracts • Concession contracts • BOT • BOOT • BOO
Exclusions / Exceptions	• Outsourcing of minor services or operations • Franchising contracts • Military or security nature procurement contracts • If a case of conflict arises between the provisions of the Manual, or the implementation of the PPP contract and any other law applicable in the State, the provisions of the Federal Law or the Federal Decree-Law shall prevail

[7] https://www.mof.gov.ae/en/lawsAndPolitics/CabinetResolutions/Documents/UAE-PPP-Manual-Eng%5B1%5D.pdf
https://www.mof.gov.ae/en/lawsAndPolitics/CabinetResolutions/Documents/UAE%20Cabinet%20Resolution%201-1-2017.pdf

Oman



Oman has implemented PPP projects, particularly in the Energy and Water sectors, tendered by Oman Power & Water Procurement Company (OPWP) in accordance with Royal Decree 78/2004 (the “Energy Sector Law”) and Royal Decree 36/2008 (the “Tenders Law”).

In July 2019, Oman put into force a PPP Law creating a high-level framework for PPP projects and establishing the Public Authority for Privatisation and Partnership (“PAPP”) in the Sultanate. The implementing Regulations of the PPP Law, promulgated by the PAPP’s Decision No. 3/2020 (the PPP Regulations), were published in June 2020.

More recently, as per the Royal Decree No. 110/2020, the PAPP (together with its specialisations, assets, rights, obligations and its employees) was transferred to the Ministry of Finance, and all references of the PAPP wherever mentioned in the laws were replaced with the Ministry of Finance (MOF).

Law on Public and Private Partnerships (promulgated by SD 52/2019) [8]

Definition	A project whose objective is undertaking works or providing public services of economic or social importance in line with the strategy of the Sultanate and its development plan, or improving or enhancing an existing public service, or improving its efficiency, that is floated in accordance with the provisions of this Law.
What is it trying to achieve?	Carry out, improve or develop an existing public service or public works or raise the efficiency thereof through private sector participation in the development process of these services and assets.
Procuring Authority	MOF in coordination with the relevant Competent Authority (Competent Authorities description: Ministries, public authorities, public establishments and other public legal entities concerned with the partnership project).

[8] https://www.oman.om/wps/wcm/connect/724841fd-e8a3-42da-9214-67857a0f4fc7/PPP+Law.pdf?MOD=AJPERES&CACHEID=724841fd-e8a3-42da-9214-67857a0f4fc7

Law on Public and Private Partnerships (promulgated by SD 52/2019)

Approval process and procurement approach	MOF will take the lead in preparing, evaluating, negotiating and awarding tenders for PPP projects; in consultation with the relevant Competent Authority and the relevant Competent Authority is to manage the PPP project. MOF shall, before tendering or announcing the Partnership Project, coordinate with the Competent Authority and obtain the Ministry of Finance's approval. The Partnership Project may be executed by direct award, following the Council of Ministers' approval.
Type of PPP Agreements Permitted	Open if suggested by MOF in coordination with the Competent Authority. It is worth to note that, the Partnership Contract shall include the provisions governing the rules of repossession or transfer of ownership of the Project after the termination of the contract. This would advocate that the Build - Operate - Transfer (BOT) or Build - Own - Operate - Transfer (BOOT) type arrangements be used in Oman which comprises the transfer element of PPP.
Exclusions / Exceptions	The contracts concluded under this PPP Law shall not be subject to the provisions of the Tender Law and the Privatisation Law. Does not have any implication on public utilities as well, which suggests that the Energy Sector Law will stay intact by this Law.

KSA

In July 2018, the Saudi National Centre for Privatisation (NCP) released its discussion draft of the “Private Sector Participation Law” (PSP Law) which regulates both PPP projects and sale-of-asset transactions (privatisations) and invited the public to comment.

In March 2021, the PSP Law was approved by the Council of Ministers and thereafter was published. It is anticipated that the Law will come into force 120 days after its publication. KSA has long implemented PPPs and privatisation projects, however, these projects fell under the scope of the Government Tenders and Procurement Law, if not specifically exempted. The PSP Law will provide a framework for the public sector to participate directly in a project company while protecting the rights of the private partners.

The PSP Law will be implemented in conjunction with the PSP’s Supervisory Committees Targeted Sectors code of conduct, Privatisation Projects Manual, and the Rules of Practise for Supervisory Committees, its teams and advisors. The Implementing Regulations of the PSP Law as well as the “Governing Rules”, which are yet to be issued, will provide important additional detail and clarity.

Private Sector Participation Law (PSP Law) [9]

Definition	Any Contractual arrangement related to Infrastructure or Public Service which results in a relationship between the Government and a Private Party that lasts for five (5) or more years; includes design, construction, management, operation, maintenance or finance of assets (whether these assets are government-owned or owned by the Private Party or both); and provides a qualitative and quantitative distribution of risks between the Government and the Private Party. The financial considerations for the Private Party are directly linked to the performance of its contractual obligations.

[9] https://www.ncp.gov.sa/en/Pages/Private_Sector_Participation_Law.aspx
The analysis carried out is on the basis of the review of the Draft PSP Law and the published PSP Law. Once the implementing regulations are published, we will review and issue an update, if required.

Private Sector Participation Law (PSP Law)

What is it trying to achieve?	Assist in realising the strategic objectives of Governmental Entities and raising the efficiency of the national economy and increase its competitiveness to meet regional and international challenges and competition. The Law also aims to increase private sector participation in infrastructure projects, to enhance the provision of public services to citizens and residents, and to increase the optimal utilisation of the national workforce.
Procuring Authority	"The Governing Rules", which are yet to be issued by the Council of Ministers, will define the entity(ies) responsible for the procurement of PSP projects, and such entity(ies) will be referred to as the 'Contracting Authority'.
Approval process and procurement approach	"The Governing Rules", which are yet to be issued by the Council of Ministers, will define the approval process of PSP projects, identify the entities responsible for the initiation and procurement of PSP projects, and their powers and functions.
Type of PPP Agreements Permitted	Council of Economic and Development Affairs (CEDA) may, based on the recommendations of NCP, assess any Infrastructure or Public Services project, and classify it as a PPP or Divestment project subject to the provisions of the Law, or classify it as a project that is not subject to the provisions of the Law, irrespective of whether the definition of PPP or the definition of Divestment contained in the Law applies or not. The Implementing Regulations shall set out the applicable PSP models for PPP or Divestment, and the conditions linked to each of these models.
Exclusions / Exceptions	The PSP Contracts settled under this Law shall not be subject to the provisions of the Government Tenders and Procurement Law, as well as the Competition Law. This Law gives non-Saudis right to own real estate (except in Makkah and Madinah) and a right to lease real estate in Makkah and Madinah as an exception to the Law of Real Estate Ownership and Investment. The Law also permits exemptions from the Labour Law and from Saudisation requirements in relation to certain PSP projects, subject to approvals from the Ministry of Human Resources and Social Development. The Law shall not apply to Contracts entered into before the Law comes into force unless such Contracts are modified, extended, or renewed after the Law comes into force.

Kuwait

Kuwait enacted Law No. 116 of 2014 in August 2014, replacing Law No. 7 of 2008.

While not substantially different, the new Law did address some of the deficiencies the market had highlighted in the old Law. It is also noted that unlike some jurisdictions this law covers all asset classes including projects in the electricity sector and is currently being used for the Al Zour North 2 & 3 IWPP procurement.

New PPP Law (Law No. 116 of 2014) and its Executive Regulations (Decree No 78 of 2015) [10]

Definition	A project to implement an activity through which the State targets to provide a public service of economic, social or service importance, or to improve an existing public service or to develop, reduce the costs or increase the efficiency of any such service.
What is it trying to achieve?	Private sector participation in public assets
Procuring Authority	Kuwait Authority for Partnership Projects (KAPP) proposing the project in cooperation with relevant Public Entity, or Public Entity proposing the project in cooperation with KAPP.

[10] http://www.kapp.gov.kw/en/PPP-Project-Guidebook

New PPP Law (Law No. 116 of 2014) and its Executive Regulations (Decree No 78 of 2015)

Approval process and procurement approach	KAPP will take the lead in preparing, evaluating, negotiating and awarding tenders for PPP projects in consultation with the relevant Public Entity; and the Higher Committee for Public-Private Partnership Projects will approve all steps necessary for the procurement including the Project budget. KAPP shall, before tendering or announcing the PPP Project, coordinate with the Public entity and obtain the Higher Committee's approval. Following the approval of the Higher Committee, a committee for each PPP Project named "Competition Committee" shall be formed. The PPP Project may be executed by direct award, following the Higher Committee's approval. For a PPP Project with a value of KWD 60 million or less, the private investor can set up the Project company, and for the PPP Projects with a value of over KWD 60 million, KAPP is responsible for the establishment of the Project Company under certain conditions: • From 6 to 24 percent of the shares shall be allocated to the Public Entities • No less than 26 percent of the shares shall be allocated to the private investor • 50 percent shall be allocated for subscription through an Initial Public Offering (IPO) Exceptionally, for the PPP projects with a value of up to KWD 250 million, the private investor can set up the Project company if the Council of Ministers issues a justified decision for the procurement of such a project.
Type of PPP Agreements Permitted	Open if suggested by KAPP in coordination with the relevant Public Entity. It is worth to note that, the PPP Agreement shall include the provisions regarding the ownership transfer of the asset to the government at the end of the concession period; and the regulation of Public Entity's right to amend the terms of construction, O&M, and other obligations of the Project company. PPP Agreements shall be drafted in the Arabic language and may be drafted in a foreign language subject to the approval of the Higher Committee.
Exclusions / Exceptions	Partnership contracts signed prior to the enforcement of the Law's provisions until the expiry of such contracts' term. However, they may not be amended or extended in contradiction with this Law.

Qatar

Qatar issued Law No. 12 of 2020 in May 2020 to regulate the partnership between the private and public sectors (the PPP Law).

The initiative to develop a PPP law has been long standing in Qatar. The PPP Law had been announced several times in the past only for it to be delayed.

Qatar has a history of PPP transactions, most notably by the Qatar Electricity and Water Authority (Kahramaa). It is expected that the PPP Law will provide a legal framework for regulating the contribution of the private sector to the implementation of large development projects in Qatar.

Law No. (12) of 2020 Regulating Public Private Partnerships [11]

Definition	An agreement between the Government Entity and the Private Sector for the implementation and financing of the works or the provision of services in accordance with the models set out in article (3) of the Law.
What is it trying to achieve?	To enhance private sector participation in development of public assets and to streamline and accelerate the conception and design of PPP projects.
Procuring Authority	Any Qatari governmental entity, including government agencies, public authorities, public corporations and the Ministry itself may sponsor a PPP project under the PPP Law. The Ministry of Commerce and Industry is the statutory authority responsible for the administration of the PPP Law and, within the Ministry, the PPP department has supervisory duties over the PPP programme in Qatar and oversight over individual PPP projects.

[11] https://www.eversheds-sutherland.com/documents/sectors/energy/PPP%20Law%2012%20of%202020%20-%20Eversheds%20Sutherland%20Translation-%20updated.pdf

Law No. (12) of 2020 Regulating Public Private Partnerships

Approval process and procurement approach	Unlike other Gulf countries, there is no permanent and dedicated authority in charge of approving all PPP projects. The PPP Law prescribes the establishment of a project committee for each PPP Project. This project committee is to be formed in coordination with representatives of the PPP department, the relevant contracting authority and the State Audit Bureau. Any Government Entity may identify a project for implementation as a PPP project and submit it to the Minister of Commerce and Industry for approval in principle. Once approved in principle, the relevant Procuring Authority will prepare and submit a Project Concept Report to the Minister of Commerce and Industry, who in turn will present it to the Council of Ministers along with his recommendation. Once approved by the Council of Ministers, a formal Project Business Case will then be developed by the Procuring Authority and the PPP Committee. Once the Business Case is complete it will then be presented by the Minister of Commerce and Industry to the Prime Minister for approval, along with the Minister's recommendation. Once the Business Case has been approved, the Procuring Authority will circulate a prospectus to potential bidders with details of the tender process, requirements and timetable. Once the project goes to tender, it will then be the responsibility of the Project Committee to evaluate bids, negotiate the project contracts and to recommend a successful/ preferred bidder to the Procuring Authority at the conclusion of the bid process.
Type of PPP Agreements Permitted	The following PPP models are expressly recognised under the new PPP Law: • Allocation of lands through a lease or a usufruct, for development by the Private Sector • Build - Operate - Transfer (BOT) • Build - Transfer - Operate (BTO) • Build - Own - Operate - Transfer (BOOT) • Operation and Maintenance The Law however provides flexibility to the Council of Ministries to adopt any other model upon the proposal of the Minister of Commerce and Industry.
Exclusions / Exceptions	The PPP Law is silent as to whether it is of retroactive effect, leaving some ambiguity as to whether PPP projects in Qatar which are currently in various stages of procurement need to comply with its provisions.

Conclusion

Each GCC country has its own legal framework driven by political, cultural and historical differences; however, all have similar core principles. Most of the jurisdictions we have compared in this paper have embraced a Civil Law system where codified laws prevail rather than relying on precedents. Therefore, the publication of PPP legal frameworks is a very promising development and creates a more predictable environment for those seeking investment opportunities in the region. This is indeed a good first step, but one that needs to be backed up by a pipeline of bankable projects as well as the development of institutional capability.

It is important to remember that national infrastructure, such as large transportation projects, power plants, hospitals and schools, which can attract long term private financing against a government backed performance based unitary charge, should always be prioritised as PPP projects. On the other hand, the marginal, more difficult but necessary, socio economic projects which are not able to attract private financing will logically fall back to the public sector for funding through traditional budget allocation of capital expenditures (Capex).

Having PPP laws in place helps bring structure, governance and transparency to public procurement on these large-scale projects while attracting much needed long term, non-speculative foreign direct investment.

The only GCC country not to have a specific PPP law is Bahrain. However, the implementation of PPPs is still a focus for the government, for example, the Bahrain Metro and the Causeway project, both of which are supported by existing Tender and Procurement Laws.

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Appendix-1: Key features of PPP enabling legislation by Country - Comparison Table

Key Features of PPP Laws	UAE Abu Dhabi	UAE Dubai	UAE Federal	Oman	KSA	Kuwait	Qatar
Unsolicited proposals allowed	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Various models of PPPs allowed	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Designated PPP Unit	ADIO	PPP Unit under DOF	Various Committees for PPP Projects	MOF (Previously PAPP)	NCP	KAPP	PPP Department in Ministry of Commerce and Industry
100% foreign ownership allowed for private sector	Yes	Yes	Yes	Yes	Yes	No - Foreign ownership allowed but not 100%	No - Foreign ownership allowed but not 100%
Provisions addressing change of control on Project company	Requires ADIO's approval	Requires Partnership Committee's approval	Requires Higher Committee's approval	Requires MOF's approval	Requires CEDA and the relevant Supervisory Committee's approval	Requirement for public shareholding of the 50% shares of the Project Company through an IPO (for the projects with a value of over KWD 60 million)	-

KSA PSP Law: The analysis carried out is on the basis of the review of the Draft PSP Law and the published PSP Law. Once the implementing regulations are published, we will review and issue an update, if required.

Key Features of PPP Laws	UAE Abu Dhabi	UAE Dubai	UAE Federal	Oman	KSA	Kuwait	Qatar
Government guarantee types	Not explicitly mentioned	Not explicitly mentioned	Not explicitly mentioned	Not explicitly mentioned	multiple - revenue guarantee, subsidies, tax exemptions, loans on certain conditions, FX and interest rate fluctuation guarantees, etc.	Not explicitly mentioned	Not explicitly mentioned
Dispute resolution	Free to agree by means of arbitration	Arbitration is not permitted outside of the Emirate	• National litigation Method (litigation before the relevant courts inside the state of UAE) • Arbitration (inside the state) • Mediation • Expert Report	Free to agree by means of arbitration	Free to agree by means of arbitration after CEDA's approval, except real estate disputes	In exception to the Emiri Order issued by Law No. 12 of 1960, and based on the Higher Committee's approval, disputes arising between the contracting Public Entity and the Investor may be settled through arbitration	Governed by the provisions of Qatari Law and Qatari courts shall be competent to decide on disputes between the parties. The contract may, with the approval of the Prime Minister following the recommendation of the Minister, include another dispute mechanism to settle such disputes

Key Features of PPP Laws	UAE Abu Dhabi	UAE Dubai	UAE Federal	Oman	KSA	Kuwait	Qatar
Any exempt sectors	-	Electricity and water projects	-	Public utilities	Any sector other than "PSP Targeted Sectors" *	-	-
Concession Duration	Not explicitly mentioned	up to 30 years	up to 30 years	up to 50 years	5 to 30 years	up to 50 years	Up to 30 years. However, as an exception it is possible to enter into longer duration contracts

*The Rules of Conduct of the Supervisory Committees of PSP Targeted Sectors approved by the Resolution No. 665 announced in July 2017 includes housing, healthcare, transport, municipalities, education, religious tourism, labour, environment, water, agriculture, IT, telecommunications, energy, industry, and minerals.

Glossary

ADIO: Abu Dhabi Investment Office

BOO: Build - Own - Operate

BOOT: Build - Own - Operate - Transfer

BOT: Build - Operate - Transfer

BTO: Build – Transfer - Operate

Capex: Capital expenditures

CEDA: Council of Economic and Development Affairs

DOF: Department of Finance

GCC: Gulf Cooperation Council

IPO: Initial Public Offering

KAPP: Kuwait Authority for Partnership Projects

MOF: Ministry of Finance

NCP: National Centre for Privatisation

OPWP: Oman Power & Water Procurement Company

PAPP: Public Authority for Privatisation and Partnership

PPP: Public Private Partnership

PSP Law: Private Sector Participation Law http://www.pwc.com/me

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