

MENA-OECD Investment Programme

Expert Roundtable on PPPs *Executive Privatisation Commission*

“Regulatory Framework for Successful PPPs”

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Different forms of PPPs

Option	Asset ownership	Operation and maintenance	Capital investment	Commercial risk	Duration (years)
Service contract	Public	Public and private	Public	Public	1–2
Management contract	Public	Private	Public	Public	3–5
Lease	Public	Private	Public	Shared	8–15
<i>Build-operate transfer</i>	Private (bulk services)	Private	Private	Private	20–30
<i>Concession</i>	Public	Private	Private	Private	25–30
Privatisation	Private	Private	Private	Private	Indefinite



Source: Cohen, Shams, Attia, 2002

Multilevel Regulatory Framework

I. International Level:

- Anti-subsidy provisions WTO, EU Commission for state guarantees
- Bilateral Investment Treaties – Dispute Settlement

II. National Level:

- General legal framework (rule of law, contractual rights)
- Procurement laws/Privatisation laws
- Concession laws
- Sectoral regulations

(III. Municipality Laws)

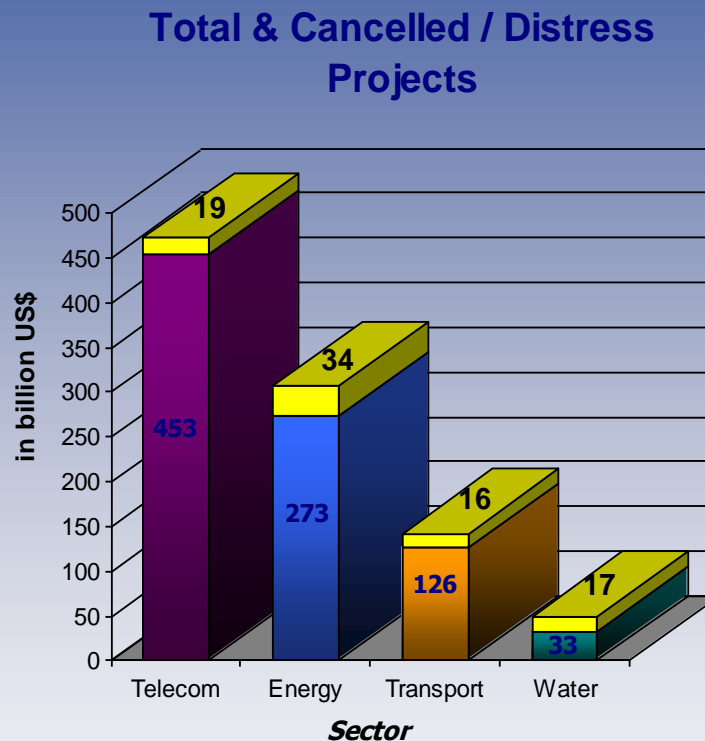
IV. Contractual arrangements for individual projects

V. Internationally recognised Best-Practice Guidelines



I. International Level - What happens if a project goes wrong?

- Recent OECD Study “International Investor participation in infrastructure”
 - 28 arbitrations and settlement agreements
 - Majority had parties’ consent contained in BITs
 - Out of 28 cases:
 - 4 settlement agreements
 - 10 pending
 - 14 cases final decision: 7 rejected, 8 awarded pecuniary damages
 - On substance: tariff adjustment, breach of contract, final payments, breach of service agreements



Source: World Bank PPI Database, 1990-2005



II. National Level: Benefits of a PPP/Concession Laws

Benefit	Public Sector	Private Sector	
		Bidders	Funders
Transparency of policy	✓	✓	✓
Certainty	✓	✓	✓
Government Commitment	✓	✓	✓
Clarity and cost control	✓	✓	✓
Ring-fenced from general legal framework	?	✓	✓



Source: Stephenson Harwood

II. National Level: Key challenges

- A clear and well established policy in form of government strategy
- Difficulty to identify the legislation applicable to the award of a concession in a particular sector because of:
 - Unclear boundaries between the general concession law and sector specific laws
 - Unclear boundaries between the concession and the public procurement law
- Problem of reliable security instruments for lenders regarding the assets and cash flow of the concessionaire
- Un-sufficient guidance on competitive procedures for the selection of the concessionaire



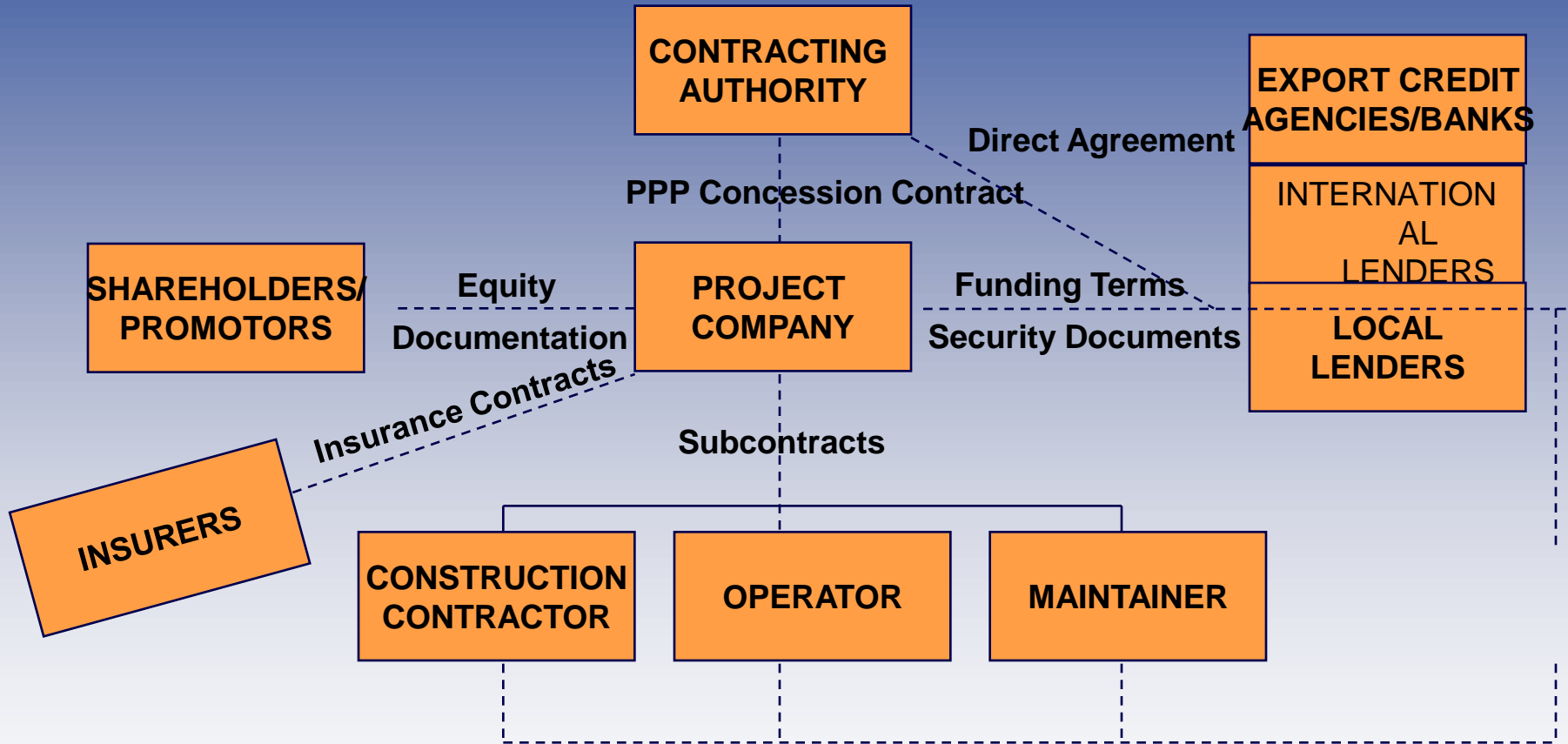
II. National Level: Key Recommendations and Assessment

- **Assessment from Investor Perspective:**
 - **Fair Selection process?**
 - **Fair implementation of concession?**
 - **Possibility to recover?**

- **Recommendations:**
 - **Apportioning of risks should be defined in the concession agreement**
 - **Procedural fairness while awarding the concession**
 - **The Formal agreement between authorities and private sector needs to be specific and performance based**
 - **Re-negotiation is inevitable and contract should allow for it**



IV. Project Level: Parties and Legal Documents



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For information about the MENA-OECD
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