



BUSINESS CLIMATE DEVELOPMENT STRATEGY

Phase 1 Policy Assessment

EGYPT

DIMENSION I-2

Privatisation Policy and Public Private Partnerships

July 2010

Partner: European Commission

This report is issued under the authority of the Steering Groups of
the MENA-OECD Initiative

TABLE OF CONTENTS

| | |
|---|----|
| EXECUTIVE SUMMARY | 3 |
| Achievements in Privatisation and Public-Private Partnerships | 3 |
| Challenges in Privatisation and Public-Private Partnerships | 4 |
| Recommendations in Privatisation and Public-Private Partnerships | 5 |
| INTRODUCTION..... | 9 |
| THE ASSESSMENT FRAMEWORK FOR PRIVATISATION POLICY AND PUBLIC PRIVATE PARTNERSHIPS | 15 |
| Sub-Dimension 2.1.: Privatisation | 16 |
| 2.1.1. Privatisation Strategy | 16 |
| 2.1.2. Consultation and Communication | 23 |
| 2.1.3. Foreign Ownership Restrictions..... | 25 |
| Sub-Dimension 2.2.: Public Private Partnership (PPP) | 27 |
| 2.2.1. PPP Units..... | 28 |
| 2.2.2. PPP Legislation | 31 |
| 2.2.3. PPP Consultations | 33 |
| 2.2.4. Approach to Cost-Benefit Assessment for PPP Projects..... | 33 |
| 2.2.5. PPP Monitoring..... | 34 |
| CONCLUSION | 36 |
| Notes | 37 |
| ANNEX | 40 |
| A1. ASSESSOR INFORMATION | 41 |
| A2. KEY DATA | 42 |
| A3. GENERAL OBSERVATIONS..... | 43 |
| A4. OVERVIEW OF SCORES | 44 |
| A5. ASSESSMENT FRAMEWORK FOR PRIVATISATION AND PPP PROJECTS..... | 45 |
| A5.1. MEASURES | 47 |
| Notes to Annex | 57 |

EXECUTIVE SUMMARY

This chapter analyses two aspects of the Egyptian government's efforts to improve Egypt's business climate in order to spur economic growth and job creation through greater private sector involvement in the economy. The current Egyptian government has pursued economic reform since coming to power in 2004, and a stated objective of the reforms has been to diversify the economy and increase the role and scope of the private sector.

One way to achieve that objective this is through privatisations: the government divests itself of enterprises that formally belong to the state and bring in private investors and managers to own and run the company. Within the OECD member states it is becoming increasingly rare for the state to be an active economic agent in most sectors outside of utilities and natural monopolies.

Another way to increase private-sector involvement in the economy is through public-private partnerships (PPP). These are partnerships between governments and private entities typically formed with a view to delivering more efficiently certain public goods and services, such as infrastructure development. In the case of Egypt in particular, PPP schemes are intended to help upgrade, modernise, and expand the country's dilapidated infrastructure (a separate chapter deals exclusively with infrastructure development).

The government renewed its commitment to **privatisation** in 2004, with a positive effect on the number of privatisation transactions and the value of proceeds during the period 2004-7. The objectives of the privatisation programme have been outlined in the Asset Management Programme (AMP) guidelines which were updated in late 2009. AMP guidelines state that transparency of the programme is enhanced by publishing the annual sales programme and the minutes of the annual meetings of the nine public holding companies. Foreign participation in privatisation in Egypt has been strong, and most of the government stakes in Joint Ventures have been sold to foreign investors. The largest privatisation transaction in Egypt was the sale of an 80%-share of Bank of Alexandria for around USD 1 billion to the Italian Bank Saopalo. Non-discrimination has been strengthened by Egypt's adherence to the OECD Declaration on International Investment in 2007.

Egypt has undertaken **PPP projects** in infrastructure since 1990. The most successful of these have been within the transport sector. A new PPP strategy was launched in 2006 and a new framework PPP law was finally adopted by parliament in May 2010 and came into force in July 2010. A Central PPP Unit has been established in the Ministry of Finance. Since its establishment, the PPP Unit has been working on five pilot projects: a PPP schools project (Education), an Alexandria University Hospitals project (Health), a Cairo Wastewater Treatment Plant, and two transport projects (Shubra/Banha Highway Project and Rod El Farag Access Project). The first successful PPP tender for a waste-water treatment plant in New Cairo was signed in mid-2009 and construction will begin in 2010. There are other pilot projects in the pipeline where three tenders have been opened, four are currently under preparation, and 10 projects are in the pipeline across sectors.

Achievements in Privatisation and Public-Private Partnerships

A clear legal framework

Egypt has had some success with its privatisation programme, having established a clear legal framework for the process. A series of laws and regulations from the early 1990s¹ set out guidelines for the privatisation programme. Initially, 314 state-owned enterprises (SOEs)* were put up for sale and grouped into 27 holding companies, each one with a specialisation.² In addition, since September 2002, it has also

been possible for the government to sell state-owned shares in joint-venture companies.³ From 1993-2004, nearly 200 SOEs were fully or partially privatised.⁴

In addition to SOEs and government stakes in joint ventures – which are sold under the Asset Management Programme (AMP) operated by the Ministry of Investment – other companies can be privatised, too. These are referred to as “non-law 203” companies and they are dealt with by their line ministries, rather than the Ministry of Investment. Essentially, non-law 203 companies are so-called “strategic” companies in sectors such as electricity, telecoms, aviation, banks, all companies under the Suez Canal Authority, and large companies like the Arab Contractors.⁵

A positive result from initial privatisations

The first wave of privatisations yielded positive results, allowing the state to gradually withdraw from the economy and usher in more private-sector initiative, competition, and a more transparent investor climate, especially in the manufacturing and banking sectors.

Privatisations accelerate under the new government 2004-8

Under the Ahmed Nazif administration the privatisation programme was revived and brought under Ministry of Investment. In 2005-6 and 2006-7 privatisation receipts represented 2.5% and 1.9% of GDP respectively. This increase was primarily due to the two large non-law 203 privatisations: the sale of a state-owned bank, the Bank of Alexandria, and the part-privatisation of Telecom Egypt, which alone accounted for 0.9% and 1.3% of GDP respectively.

No restrictions on foreign ownership of privatised companies

There are no restrictions on foreign investor participation in privatisation projects in Egypt. There remain some sectors where foreign investment is only allowed in the form of joint-venture companies in which foreign equity does not exceed 49%. Such sectors are construction, maritime transport, air transport and courier services, all considered strategic and associated with national security issues.

Foreign participation in privatisation in Egypt has generally been strong, and most of the government stakes in joint ventures have been sold to foreign investors.

The PPP programme finally has its legal framework

Egypt’s results with regard to its PPP programme have been slower to emerge. However, some important results have been achieved. These include the formulation of an overall PPP strategy in 2006 and the putting in place of a number of mechanisms, such as the PPP Central Unit which is in charge of planning and managing PPP projects. The progress of PPP in Egypt will be greatly enhanced by the passing of the PPP framework law in June 2010.

Challenges in Privatisation and Public-Private Partnerships

The privatisation programme has stalled and the government’s plans remain unclear

The privatisation programme stalled in 2008, against the backdrop of the mounting international financial crisis. The programme was halted, pending the reformulation of the government’s privatisation strategy, and this has brought some confusion to the investor community. A scheme to distribute, free of charge, a number of shares to Egypt’s adult citizens, was shelved in late 2009. A new strategy is under formulation and a new draft law, which maps out the responsibilities of the Asset Management Fund and the new Fund for Future Generations, was made public in late 2009. However, until the new law has been

passed – most likely during the 2010-11 – parliamentary session, confusion will continue to surround the direction of the government’s policy.

The scope of the privatisation programme is too wide

Egypt’s privatisation policy framework in its current format is too ambitious. It seeks to meet multiple and at times conflicting objectives, such as both improving efficiency and creating jobs, which gives rise to a large number of cross-cutting policy issues. These need to be identified, prioritised, and adequately addressed. As regards the overall strategy and objectives, these have still not been made public, continuing to create suspicion among the population.

The privatisation programme lacks transparency

With regard to the privatisation process itself, an overall lack of transparency is also problematic. There is a lack of important details, such as exactly how many public enterprises are to be privatised and when they will be offered for sale. The government does indicate on its website that it guarantees transparency through the distribution of fact sheets and summaries of the companies and major assets governed by Law 203. However, investors and the private sector community have reported cases where the government had announced that it was putting public enterprises up for privatisation, only to withdraw them without justification or explanation.

The key principle of the AMP is to operate within a “clearly announced and well communicated programme”. Although the government has communicated the benefits of the privatisation process before and attempted to address public concerns over employment, it will need to clarify its intentions and the key elements of its strategy in order to revitalise the process again.

The PPP Central Unit has encountered resistance from line ministries

With regard to the government’s PPP programme, the Central PPP Unit has encountered some initial problems. These include ensuring the buy-in of portfolio ministries and the successful establishment of satellite PPP units; finalising the draft PPP legislation; providing capacity building to other government entities, and finalising and completing the initial pilot projects. There has been resistance from the line ministries against the idea of a central unit with an overall co-ordination function. This may well signal a communication problem. The line ministries have not yet seen the value added of the PPP Central Unit and are uncertain of the benefits that it can provide.

Some PPP pilot projects have failed to attract investor interest

Issues have also arisen regarding the choice of pilot projects – an initial, and very ambitious, project to find a private investor to build and manage 150 schools failed to attract any interest. There are also question marks over the availability of sufficient funding through local commercial banks, while the strict independence of outside consultants has also been raised.

Recommendations in Privatisation and Public-Private Partnerships

In view of the challenges that still remain if Egypt is to successfully implement its privatisation and PPP programmes, the MENA-OECD Investment Programme has a number of suggestions.

A clear privatisation strategy is needed

The government should put in place and make public a clear privatisation strategy, which would spell out the objectives and details of its privatisation programme. It should also insert the programme into

Egypt's broader economic reform effort and, in particular, look at ways for private sector involvement to improve the economic performance of the chosen companies and sectors. The new strategy should be made public through an effective communication plan which would target both the general public and private investors in order to ensure support for the programme and mobilise investors. Moreover, a full public debate prior to the passing of the new framework law would enhance the government's image and improve transparency.

Transparency of all processes should be enhanced

The transparency and efficiency of the privatisation programme should be enhanced by announcing the sales schedule in official newspapers and on the Ministry of Investment's website to ensure it is made public and reaches all investors. Other means of increasing transparency are: select advisors and buyers through a competitive process; put conflict-of-interest guidelines in place; and ensure that competition and regulatory frameworks are in place prior to sale (e.g. enact a new competition law or amend the existing one, if necessary).

Adequate and resources should be given to carry out the privatisation programme

Sufficient resources should be made available to address the challenges of the new privatisation programme identified in the strategy. These can relate to staffing, to staff training, to communication, and to the drawing up of the proper guidelines and regulatory framework.

Proper competitive processes should be instated

To ensure the best market access for investors, advisors should be hired openly and transparently through a competitive bidding process. In this respect the government needs to ensure that advisors represent its or the holding company's interests only and that they do not work with potential bidders and are not related to them in any capacity. The government also needs to ensure that the pay structure does not create incentives for advisors to work against it, in particular when it comes to commissions that could skew the advice in favour of options that are against government objectives. In all dealings with external advisors the government needs to develop an intelligent "customer capability" to avoid being taken advantage of. This is achieved by developing sufficient knowledge of the issues at hand with the aid of OECD guidelines and expertise.

Effective communication with stakeholders

Prior to launching privatisations, the Egyptian government would benefit from designing and implementing a more co-ordinated, formal approach to consultation with a broad cross-section of stakeholders on a regular basis. Moreover, the results of consultations should be made public. The timing and availability of official bulletins should be shared, along with seminars and other conferences on the issue organised by the government. To ensure support from the trade unions and minimise resistance, more effort should be put into working closely with the unions in the affected companies and proposing the retraining and redeployment of staff where applicable. This could be part of a wider approach to upgrading and retraining Egypt's manufacturing workers, as Denmark did when it undertook a privatisation programme in the late 1980s and early 1990s.

Improving the performance of the PPP Central Unit

It is recommended that the government should formalise co-ordination between the central PPP unit and satellite units in the line ministries, as well as with the Ministry of Investment which remains in charge of other aspects of PPP in Egypt. The roles and responsibilities of the Central Unit in the Ministry of

Finance and the PPP unit in the MOI should be clearly assigned. The PPP unit could, for instance, be given a well defined portfolio for promotional activities.

In order to build the capacity of the PPP Central Unit and improve its performance, competent advisors should be hired to help select PPP projects. Further measures could be to improve the PPP unit’s human capital capacity through more training and hiring staff with wider expertise in PPP. (The expertise should come from sectors that are likely to benefit from PPPs, such as road, rail sea freight and passenger transport.)

A full cost-benefit analysis of the projects undertaken

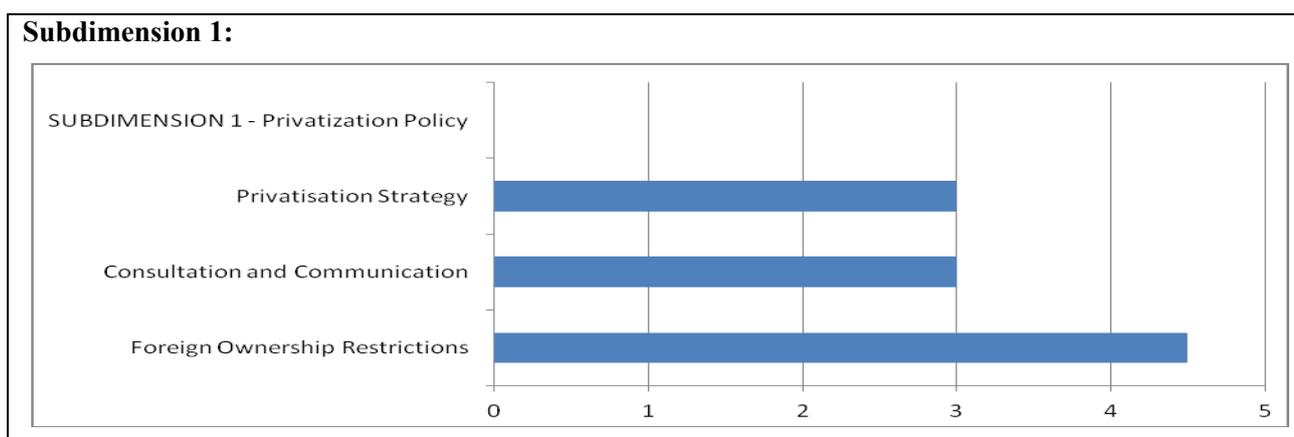
A cost-benefit analysis should take into account all alternative modes of delivery (e.g. divestiture, concessions, management and service contracts) as well as costs and benefits over a project’s life cycle, whether financial or non-financial (e.g. sustainable development). The cost-benefit assessment should include analysis of the degree to which costs can be recovered from end-users and, in the event of shortfalls, what other sources of finances can be mobilised.

The cost-benefit analysis should also include a risk assessment based on the public interest – for example, shifting too much risk on to the private sector may result in higher prices for consumers to offset that risk. Finally, there should be an assessment of the potential public finance implications of sharing responsibilities with the private sector – e.g. the fiscal implications of issuing guarantees, even in the event of macroeconomic crises.

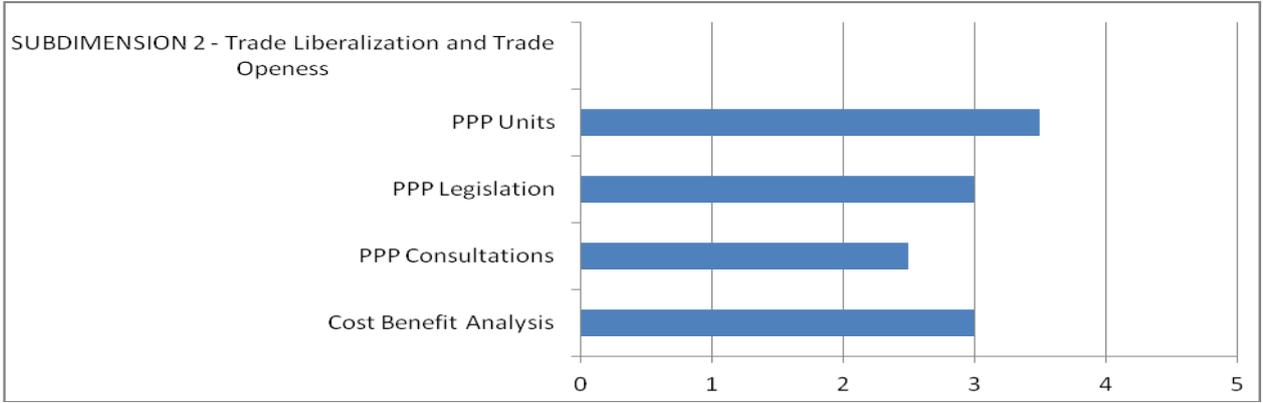
An assessment of alternative modes of delivery is lacking from the economic feasibility studies currently conducted in Egypt. It should be added to the cost-benefit analysis.

The preparation and procurement of PPP projects is more complex and costly than publicly procured infrastructure projects. The costs often put a burden on the budgets of line ministries that are involved in implementing PPPs. To that end, the government is encouraged to establish a PPP Project Preparation Fund as a means of strengthening the supply side of the market for PPP projects.

Scores by Subdimension: Egypt



Subdimension 2:



INTRODUCTION

Since the early 1980s privatisation⁶ has established itself as a main component of economic reform packages throughout the world, alongside other reforms such as trade and market liberalisation.⁷ In both the OECD and developing countries, privatisation has been part and parcel of a structural reform agenda. Many developing countries, however, have inherited privatisation programmes as a conditionality feature attached to IMF structural adjustment loans and economic liberalisation programmes, as is the case of Egypt.⁸

Some of the widely accepted economic benefits of privatisation include improving enterprise efficiency and performance; creating efficient and competitive markets for goods and services; increasing access to capital, know-how and markets which permit growth; achieving corporate governance; and broadening and deepening capital markets.⁹

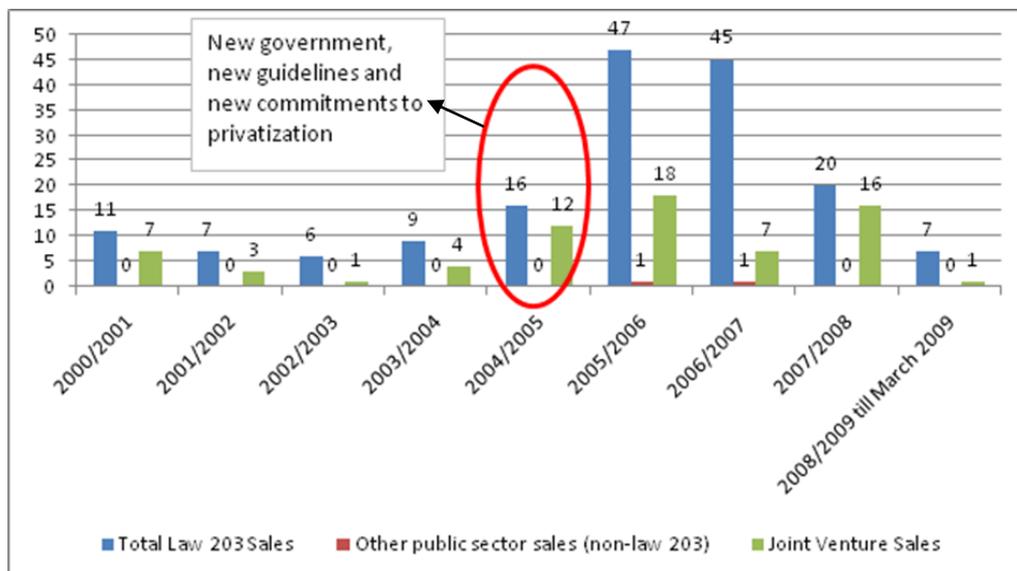
Privatisation was first introduced to Egypt in 1991 and formed part of the first steps in the economic reform process that had begun in 1990. Privatisation aimed to solve the issue of poorly performing state-owned enterprises (SOEs)¹⁰ and boost private investment. It did indeed have a positive impact on Egypt's economy – on the development of markets, competition, investment climate, and trade. It also played a significant role in strengthening the stock market. Market capitalisation rose from USD 3.2 billion in 1992 to almost USD 20 billion in 2003. The successful privatisation of SOEs had a significant impact on Egypt's economy as they represented 37% of GDP and accounted for 14% of employment opportunities during that period.¹¹

Public Sector Law 203/1991 – which governs the SOEs in addition to the guidelines of the Asset Management Programme (AMP) launched in 1993 – paved the way for the privatisation programme in Egypt. The government began by slating 314 SOEs for privatisation and grouping them into 27 holding companies, each one with a specialisation.¹² In September 2002, the Prime Minister issued decrees 1500/2002 and 1502/2002 which allowed the Ministry of Public Enterprises¹³ to sell public shares in joint-venture companies. During the period 1993-2004, nearly 200 SOEs were fully or partially privatised through different methods.¹⁴ Companies privatised to date encompass a broad range of industries and activities, such as agriculture, real estate and construction, milling, pharmaceuticals, chemicals, textiles, and tourism.

In addition to SOEs and government stakes in joint ventures, sold under the Asset Management Programme which is operated by the Ministry of Investment, other companies may also be privatised. They are referred to as “non-law 203” companies and are privatised not by the Ministry of Investment but by their respective ministries. Non-law 203 companies are considered “strategic”. They include utilities, banks, big corporations like the Arab Contractors, all businesses under the aegis of the Suez Canal Authority, and companies in sectors like electricity, telecommunications, and aviation.¹⁵

Egypt witnessed a slow-down in the privatisation process in the late 1990s. The programme was later revived in 2004 with the appointment of the new, business-oriented cabinet under Prime Minister Ahmed Nazif and the transfer of the privatisation portfolio to the newly established Ministry of Investment (see Figure 1).

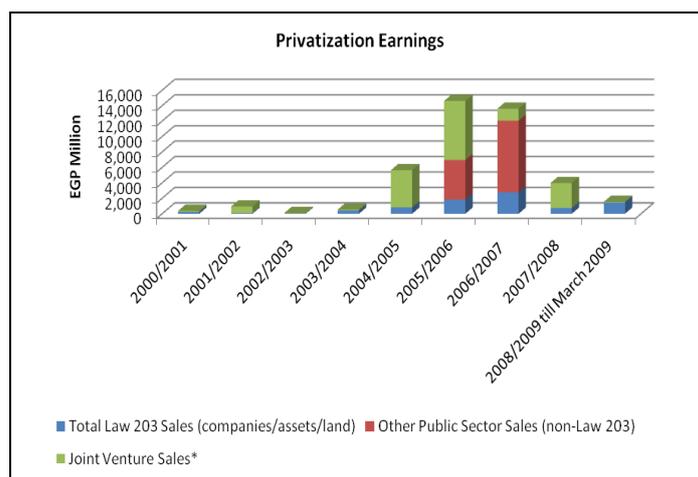
Figure 1. Number of Privatisation Transactions (2001-2009)



Source: Ministry of Investment, 2009.

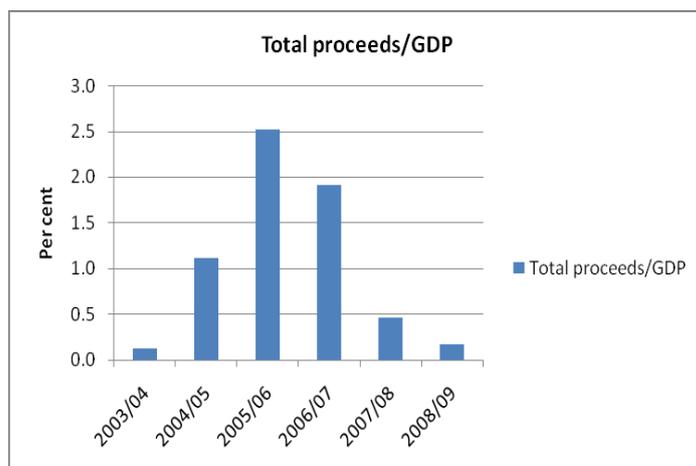
Privatisation in Egypt has generated modest earnings which only reached their maximum in 2005-6 and 2006-7, representing 2.5% and 1.9% of GDP respectively. This increase was primarily due to two large non-law 203 privatisations: that of the smallest state-owned bank, the Bank of Alexandria, and the sale of Telecom Egypt, which accounted for 0.9% and 1.3% of GDP respectively (see Figure 2).

Figure 2. Egypt's earnings from privatisation between 2000 and 2009



Source: Ministry of Finance.

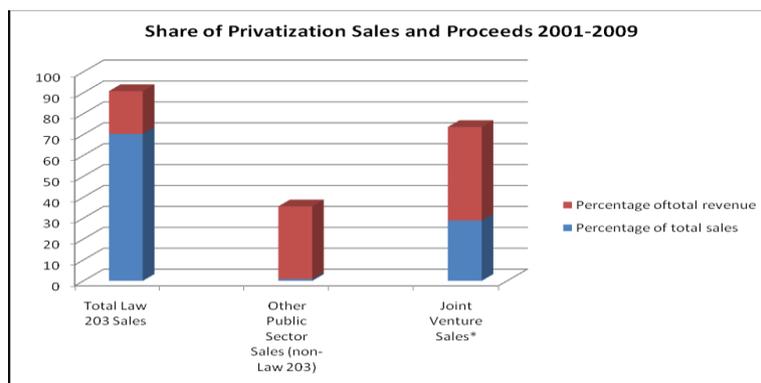
Figure 3. Egypt’s total proceeds from privatisations as a share of GDP



Source: Ministry of Investment, 2009.

While the privatisation of law 203 companies constitutes the highest share of total sales, non-law 203 companies and the sale of government stakes in joint-venture companies account for the highest shares of total revenue (see Figure 4).

Figure 4. Proceeds from privatised companies as shares of total revenue and total sales



Source: Data provided by the Ministry of Investment, 2009.

However, with privatisation slowing down again in 2007-8, and with discussions emerging around a new privatisation plan,¹⁶ ambiguities over the future of privatisation in Egypt have spread in the private sector community. In late 2009 it was officially announced that free distribution of shares to the public, a possibility mooted as part of the so-called “Citizen Ownership Programme”, had been called off. The programme had been publicly debated for almost one year through a process of wide public consultation. The government has announced its intention of pursuing its privatisation programme through stock-market share offerings of minority stakes in some of the remaining publicly owned enterprises in 2010 (although which enterprises has yet to be determined).

Public-Private Partnerships (PPPs) – joint ventures between governments and private entities – are formed with a view to delivering more efficiently certain public goods and services, such as infrastructure development. Although the global financial crisis is a challenge to the use of PPPs, countries in the MENA region still have great potential for making effective use of this model. Some projects are being re-assessed and delayed, while for other projects alternative government sponsors can be brought in. Generally, however, governments continue to show commitment to their PPP programmes.¹⁷ Emphasis on state-of-

the-art PPP frameworks and efficient governance are important for reassuring financial investors. As a matter of fact, state-of-the-art regulatory frameworks for infrastructure development PPPs have become an important comparative advantage for countries seeking to attract international investors in infrastructure services. Given estimates that MENA governments will spend considerable resources in infrastructure development over the coming years, regulators will have to be extremely efficient in the way they use available resources, which including technical and material implementation capacity and private investment prepared to engage in long-term risks. This is a strong argument for delivering the transparent, predictable regulatory environment which ensures that PPPs work. Experience from OECD and non-OECD countries laid out in the 2006 *OECD Policy Framework for Investment* and the 2007 *OECD Principles for Private Sector Participation in Infrastructure* underlines that private investors interested in PPP projects must be able to depend upon a reliable political, administrative, and regulatory framework.

Like other MENA governments, the Government of Egypt faces the challenge of translating its PPP policy into sustainable projects that not only guarantee economic viability but political support, too. Market openness and effective communication of the benefits of PPPs and of privatisation in general remain the number one challenge. Number two is to reassure private investors by formulating realistic expectations as to their risk management capacity. While it is now common knowledge that private companies are often better at building on time, within budget, and to superior quality specifications, and that they apply rigorous feasibility studies and modern principles of planning and performance-based management, nevertheless, they still have to be brought to the project in the first place.

In 2006, the Government of Egypt launched a new PPP strategy. The strategy fully acknowledged that:

“Egypt needs to move quickly to remove the barriers that prevent, or discourage private investment in basic services such as water, electricity, gas, waste management, road building and transportation. Failure to act is retarding development, arresting social change and threatens to jeopardise the positive results of privatisation in other sectors.”

To remove obstructions to private investment, the strategy acknowledged, a series of economic, financial, legal, and institutional reforms were necessary:

- reform and upgrade the laws governing private investments in infrastructure facilities;
- reform and improve the institutional framework;
- develop a communications strategy.

More than three years after the strategy was announced, a first project is under way. In 2009 a consortium of Orascom Construction Industries, the Spanish group Aqualia, and Aqualia Infrastructure were awarded a PPP contract to build and operate a wastewater facility in New Cairo, with a 20-year concession.¹⁸ This should be the first of several new infrastructure projects to be awarded.

Another wastewater treatment plant, at Abu Rawash, is under tender. The project consists of upgrading the level of treatment from primary to secondary treatment for the entire capacity of the existing plant. By March 2010 five international consortia had qualified and the tender was launched in May 2010. Financial closure is projected for the first quarter of 2011. Prequalification for a wastewater plant in Alexandria has also been launched. The project consists of increasing capacity at the existing plant and upgrading the level of treatment. The tender is projected to be launched in the third quarter of 2010 with financial closure expected in the first half of 2011.

In the hospital sector, invitations to bid for the construction of two university hospitals in Alexandria went out in October 2009. The date for submitting bids has been fixed for the third quarter of 2010. A third

project will include the design, finance, construction, maintenance, equipping, furnishing and the provision of non-clinical services for two general hospitals and one oncology centre, all in the governorate of Cairo. These projects are expected to be tendered in a single bid, divided into two lots, according to the Ministry of Investment. However, no date for the invitation to bid has been set.

Despite the increase in PPP activity, and the many projects in the pipeline, interviews have indicated that, judging by the cash flow, funding remains a major problem in Egypt when it comes to larger infrastructure projects. Commercial banks in Egypt can only provide funding for up to five years, which is not an attractive or viable financing option for many of the larger PPP projects where cash flow is generated only after a few years. Another problem that has been highlighted is the government's unwillingness to guarantee the convertibility of profits from PPP projects. Currently the government is not providing any convertibility guarantees to the private sector, which results in less demand.

Although it has embarked on a new PPP policy, the Egyptian government is not entirely unfamiliar with the concept of PPPs. It undertook a few projects in infrastructure prior to 2004 (see Table 1). The framework and the vision have changed since then, however.

Table 1. Private Participation in infrastructure projects in Egypt during the period 1990-2004

| Primary Sector | Sub-sector | Number of PPP Projects in Infrastructure | Total Value of PPP Investments (USD million) |
|----------------|-------------|--|--|
| Energy | Electricity | 3 | 1 158 |
| | Natural Gas | 1 | 220 |
| Total | | 4 | 1 378 |
| Telecom | | 4 | 3 964 |
| Transport | Airports | 6 | 398 |
| | Seaports | 2 | 461 |
| Total | | 16 | 6 208 |

Source: Ministry of Investment, 2009

The global economic downturn has prompted Egypt to invest heavily in infrastructure projects in order to maintain GDP growth rates and increase employment. It is estimated that Egypt should allocate between 5.5% and 7% of its annual GDP – or USD 13 billion – to meeting its infrastructure needs (new investment and maintenance). Egypt estimates that it will mobilise capital through PPPs to meet 10-15% of its infrastructure needs.¹⁹

One of the main tools in Egypt's new PPP policy is the PPP Central Unit. It has worked on five pilot projects since it was established. They are a school project, a project at Alexandria University Hospital, a Cairo wastewater treatment plant, and two transport projects – the Shubra to Banha Highway and the Rod El Farag access road. Tenders have been opened for three other projects, four are under preparation, and ten are in early stages of preparation across different sectors (data correct as of June 2010). Of the pilot project, only the Cairo wastewater treatment plant has so far reached financial closure.

This assessment does not seek to explain the rationale behind privatisation or PPPs in Egypt or their general impact on the Egyptian economy, as this lies outside the scope of this publication. However, it does aim to provide Egyptian policy makers with a means of assessing the progress they have made in their privatisation and PPP reforms by that progress against international best practices. (OECD countries have a wealth of experience in both privatisation and PPP projects.) This evaluation is influenced by two primary documents: 1) 2003 OECD report *Privatising State-Owned Enterprises: An Overview of Policies and Practices in OECD countries*,²⁰ and ii) the *OECD Principles for Private Sector Participation in Infrastructure*²¹.

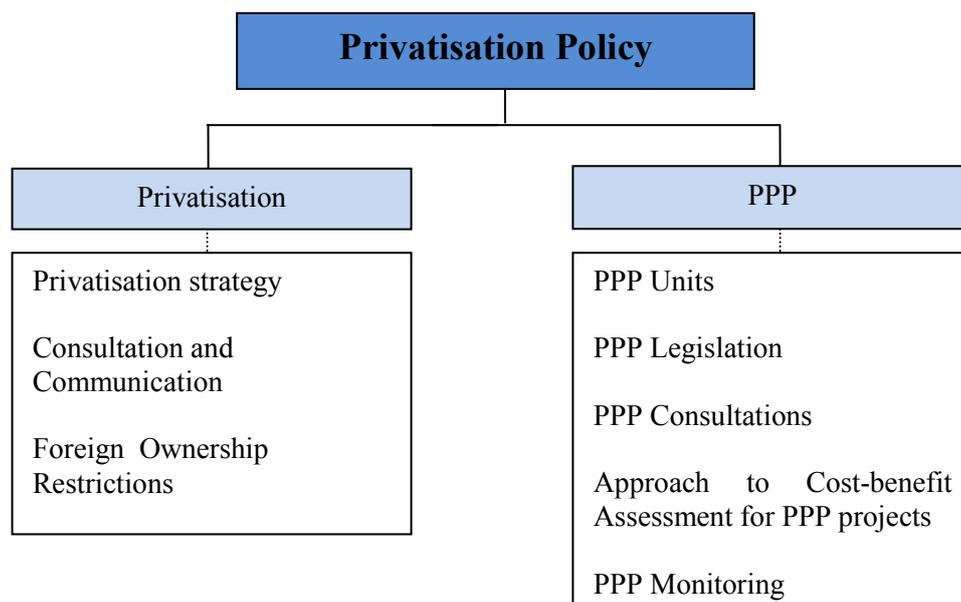
THE ASSESSMENT FRAMEWORK FOR PRIVATISATION POLICY AND PUBLIC PRIVATE PARTNERSHIPS

The assessment framework for this policy dimension covers both privatisation and public-private partnerships (PPP). The indicators covering privatisation were designed to assess three specific elements: 1) the features of a privatisation strategy; 2) the ability of the government to consult with stakeholders and to communicate its strategy to the public; and 3) the degree of ownership restrictions in privatisation projects. However, there are other components in a privatisation policy that are difficult to score without a much more rigorous analysis that is beyond the scope of this exercise. Nevertheless, this analysis can be useful for more comprehensive, better informed understanding of privatisation in Egypt and for comparison with the experience of other OECD countries in dealing with the same issues.

The additional elements that have been included in this exercise all relate to the content of a privatisation strategy and have been added to the Privatisation Strategy Indicator. They are not themselves scored, however. As Figure 5 below shows, the content of a government's privatisation strategy includes elements such as: management and administrative responsibility; the adoption of a formal programme versus an *ad hoc* approach to privatisation; the methods of privatisation approval; addressing labour issues; privatisation methods; and the role of external advisors.

The indicators relating to PPP projects are constructed to address five key elements: whether there is a specific unit within the government to co-ordinate and develop PPP policy; the legislative framework covering PPP projects; the use of consultations to build buy-in from stakeholder groups; undertaking cost-benefit analysis prior to making a decision on PPP projects; and monitoring the progress of PPP projects over their lifetime.

Figure 5. Assessment Framework for Privatisation Policy and PPP Projects



Sub-Dimension 2.1.: Privatisation

As the OECD notes, there is no one right or wrong approach to privatisations. However, lessons learned from countries' experience in dealing with privatisation can serve as general guidelines for other countries with common features. Although there are various elements to be considered in the process and implementation of privatisation, this evaluation concentrates on those which give a general, preliminary idea of privatisation policy in Egypt.

This sub-dimension focuses on an identified set of three main indicators:

1. Privatisation Strategy, which has two components:
 - (i) Features, *i.e.* such key features as strong political commitment; identified and prioritised objectives, and a transparent privatisation process;
 - (ii) Content, which takes in key components like management and administrative responsibility; the adoption of a programme versus an *ad hoc* approach to privatisation; methods of approving privatisation; addressing labour issues; privatisation methods; the role of external advisors; and measures of accountability.
2. Communication and Consultation.
3. Ownership Restrictions.

2.1.1. Privatisation Strategy

Implementing privatisation policies is a complex issue and, therefore, requires an effective, well co-ordinated approach to the formulation of its strategy, which ultimately paves the way to effective, successful privatisations. This indicator seeks to assess key features and elements of a privatisation strategy.

2.1.1.(i) Features of a Privatisation Strategy (scored)

An effective privatisation strategy includes: a) a strong political commitment; b) clearly identified and prioritised objectives; c) a transparent privatisation process²².

Political Commitment

Without strong political commitment to privatisation at the highest level, issues such as bureaucratic inertia and inter-institutional rivalries hamper the privatisation process.

Political commitment to privatisation in Egypt has been strong since its launch, although it lost some of its momentum in the late 1990s. Privatisation as part of the IMF structural adjustment programme was backed by very strong political support on the part of the then government. The President, Hosni Mubarak, the NDP, Egypt's ruling political party, together with Parliament were all highly committed to seeing the privatisation process move forward. The government secured the participation of interested groups and stakeholders – labour, academia, the media, the general public – through direct dialogue. To further legalise²³ its commitment, the government passed clear licensing legislation and new laws to govern privatisation processes.²⁴ During that initial period of 1992 to 2003, the government privatised 188 SOEs for a total of USD 3.4 billion in revenues, which representing approximately 0.4% of GDP in 2007-8.

The privatisation process began to slow down in the late 1990s as the government ran out of steam. The new administration, which came to power in mid-2004, rapidly reiterated its commitment to privatisation as part of the Asset Management Programme which was brought within the newly established Ministry of Investment's portfolio. Accordingly, the number of SOEs privatised during the period 2004-6 picked up again. In 2005-6 and 2006-7 came Egypt's two largest privatisations in terms of proceeds, namely the privatisations of Bank of Alexandria and Telecom Egypt. However these were non-law 203 companies. With the drop in privatisations in 2007 and the cancellation of bids for Banque du Caire in July 2008, doubts over the future of privatisation in Egypt started to gather. Moreover, when the government initially announced its new plan for "mass privatisation", the political commitment to what may be termed "conventional" privatisation appeared to be waning. However, in October 2009, it was officially announced that the Citizen Ownership Programme had been called off. Traditional stock market offerings will resume in 2010 in line with prevailing market conditions.

Prioritised Objectives

Privatisation policies in Egypt over the past decade or so have sought to meet multiple and sometimes conflicting objectives. Their implementation has given rise to a large number of cross-cutting policy issues that need to be identified, prioritised, and adequately addressed. Egypt still does not appear to have fully defined the overall strategy and objectives of its new privatisation policy. This is reflected in the fact that, since the withdrawal of the "mass privatisation" scheme, the new policy has still not been made public. A clear strategy, which situates the privatisation programme within broader economic reform, would be a useful measure, as would the establishment of firm guidelines with time-bound objectives.

Transparency

A transparent privatisation process is needed to enhance integrity and gain credibility with potential investors and political support from the public.

Considering only the transparency of the AMP²⁵, its guidelines state that one of the key principles of the privatisation programme is a publicly shared, transparent framework designed to encourage demand on the buy side of assets and stocks that are being prepared for issue. In addition, the Ministry of Investment is publishing the minutes of the annual general meetings of the assemblies of the nine holding companies. They are available on the ministry's portal and in hard copies, according to ministry officials. The meetings are the basis of the annual privatisation programme.

However, there is a lack of detail on the exact planning, e.g. the number of public enterprises to be privatised and when they will come up for sale. The government does indicate on its website that it guarantees the transparency of the process to potential investors by posting on the ministry portal fact sheets and summaries of the companies and major assets governed by Law 203 (included in the sales program). However, investors and the private sector community have reported cases where the government had announced that it was putting public enterprises up for privatisation, only to withdraw them without justification or explanation.

BCDS Score for Features of a Privatisation Strategy: 3

Egypt's privatisation strategy has undergone several permutations since the late 1990s. Despite the clear improvements implemented since 2004 by the new cabinet backed by the government's renewed commitment to privatisation, the road ahead is not as clear as it should be and political commitment is not as strong as it was. Nor do the objectives of privatisation seem as clear as in the 2004-7 period. The government does not appear to have as yet identified a firm set of objectives for its future programme or found a way to revive it amidst the financial turmoil. Transparency is one of the features of Egypt's

privatisation strategy and is highlighted in its guidelines. However, information sharing with the private sector and potential investors could be strengthened.

Recommendation

For Egypt to improve its BCDS score, the government should put in place a clear strategy for privatisation going forward. The strategy should clearly define objectives, timelines, and details and how the new privatisation programme will co-exist with the conventional one. The strategy should also insert privatisation into Egypt's broader economic reform programme and, in particular, look at ways for private sector involvement to improve the economic performance of the chosen companies and sectors.

The new strategy should be made public through an effective communication plan aimed at the general public and private investors in order to ensure public support for the programme and mobilise investors. Transparency should be further increased by making sure that the sales programme is widely publicised in official newspapers and on the Ministry of Investment's portal so that it reaches not only specific investors but all investors. In addition, when an SOE privatisation is cancelled after the process has been set in motion, clear justification should be provided to all investors so as to increase the predictability of the investment climate in Egypt. Finally, resources should be allocated for addressing the challenges of the new programme identified in the strategy. Other means of increasing transparency are selecting advisors and buyers through a competitive process; putting conflict-of-interest guidelines in place; and ensuring that competition and regulatory frameworks are in place prior to sale (*e.g.* enact a competition law if necessary).

2.1.1.(ii) Content of a Privatisation Strategy (not scored)

The content of a privatisation strategy is made up of elements like management and administrative set-up; a clearly identified privatisation programme versus a more *ad hoc* approach; approval mechanisms; and how to address labour issues.

Management and Administrative Responsibility

Privatisation policy involves many decisions and a multiplicity of different players.²⁶ Establishing an institutional framework which identifies the management and clarifies the administrative responsibility of privatisation policy is crucial for smooth, efficient execution. OECD countries use three different models of management: 1) the centralised model – used chiefly by OECD countries with large privatisation schedules; 2) the decentralised model – used by OECD countries which take an *ad hoc* approach to privatisation; and 3) the mixed model, used by countries with holding company structures and diversified assets.²⁷

Egypt pursues a mixed approach to the management of privatisation. The mixed model combines, to varying degrees, elements from the centralised and decentralised models. In Egypt, the Ministry of Investment is the ministry in charge of managing and supervising the AMB, which it manages through the Committee for Asset Management²⁸ and the Asset Management Unit,²⁹ both under the aegis of the Ministry of Investment. However, holding companies are responsible for the preparation of the annual privatisation programme, which is approved by the Ministry of Investment. They then fully implement and execute³⁰ the approved programme with the assistance of the Committee for Asset Management and the Asset Management Unit.

The adoption of the mixed approach is often the result of a country's existing arrangements for ownership and management of state-owned assets, where holding company structures are already in place. This arrangement is very common in many OECD countries, including Egypt where the holding company structure of SOEs is embedded in the system. For the mixed management system to produce efficiently

implemented privatisation, the mandates, roles and responsibilities of those involved should be clearly defined. Egypt has given authority over privatisation to the Ministry of Investment which is responsible for decision making. Other key players (discussed below) are involved in the approval process. Putting the Ministry of Investment in charge of privatisation demonstrates to investors that there is political commitment at the highest level. For institutional players it is a demonstration of the power to arbitrate.

The responsibility for implementation given to the holding companies has its advantages. It enables, for example, flexibility in the handling of such complex tasks as allocating resources and appointing and using external experts or consultants. The risk however lies in the transparency, accountability, independency, and allocation of resources implemented by the holding companies. Transparency and accountability may be addressed by making sure the privatisation approval is clearly and transparently expressed and benefits from a maximum degree of public disclosure and supervision by the Ministry of Investment.

The Framework for Privatisation Approval

In order to ensure a maximum degree of public disclosure, the privatisation approval process must be as clearly identified and understood as possible. Egypt has involved a number of key and high level entities in overseeing the privatisation process and approving it stage by stage. The approval process is generally done on an annual basis – in other words, an annual sales programme is approved as opposed to a case by case approach. This method is usually adopted by countries with large privatisation programmes. An annual privatisation programme is approved first by the Minister of Investment, then by the Ministerial Cabinet. It then goes before Parliament. Finally, the Ministerial Economic Group approves the sales procedures that will finally be adopted for the privatisation programme.

Privatisation Programme vs. *ad hoc* Approach

It has been argued that when the scope and scale of privatisation is large or in cases where privatised companies are so large that they have an impact on the market, then it is advisable to put in place a well ordered, medium-term, multi-year programme rather than an *ad hoc* approach. This helps ensure “an orderly, well co-ordinated and executed privatisation schedule”.³¹

Since Egypt is involved in a large-scale privatisation process, the multi-year programme approach is preferable. In fact Egypt does have a general programme of privatisation for which the Cabinet sets the framework. In addition, it has annual privatisation programmes for its SOEs prepared by the holding companies and approved by the cabinet. The benefits of a multi-year programme are many, ranging from enabling the government to plan and develop a strategy to ensuring that the market is ready, “so that the sales can proceed under favourable conditions and in an orderly manner” and “potential investors [can be sure of] the government’s commitment to privatisation and that policy debates have already taken place and been resolved”. However, Egypt needs to strengthen its communication of the multi-year programme to investors and the public at large, or it will not be able to take full advantage of the benefits of the programme approach. Moreover, without an overall, well-defined strategy for the entire programme, the very usefulness of the multi-year approach is significantly diminished.

In some cases it is more beneficial for the government to be flexible and wait for the right offers when market conditions are perceived to be optimal. Egypt has left room for the flexible approach by not including in the AMP those non-law 203 companies which it considers strategic. Non-law 203s are not included in programmes but sold off in an *ad hoc* manner according to the government’s needs and prevailing market conditions.

Addressing Labour Issues

Among the key stakeholders in the privatisation process are the employees of the SOEs. They are often the fiercest opponents of the policy owing to its likely effects on employment and, sometimes, on working terms. Many OECD countries have used various schemes to ensure employee participation in privatisation which have proved successful. General OECD guidelines³² for effective labour strategies include:

- The need to establish appropriate labour market policies and regulations in order to promote job creation by the private sector and to promote labour mobility.
- The need to manage and implement the process in a manner that involves consultation with and the participation of trade unions at the earliest possible stage. This would also include the establishment of a communication strategy directed at employees to explain the need for reform, its broader benefits as well as the measures that would be in place to help mitigate against the possible adverse impacts.
- The need to consider the timing of restructuring of the privatised company (with an impact on labour), and the consideration of options for dealing with the impact on employment along with its costs and benefits, in order to help develop a pragmatic approach to balance both commercial and business considerations as well as social and political issues.
- The need to establish the necessary compensation and adjustment measures, such as severance pay, worker retraining, as well as potential redeployment.

Egypt's privatisation programme did not gain public acceptance when first launched because of widespread fears of job losses. However, the government embarked on several initiatives with the aim of tackling labour issues. Their success is debatable and several studies with different outcomes have been undertaken to assess the impact of privatisation on Egypt's employment and labour market. An example of this study is the USAID Post Privatisation Impact Assessment (see Box 1). Although USAID painted a positive picture of privatisation's impact on the labour force, many other studies have taken different views.

Egypt's response to the challenge of labour has been threefold: 1) engage in dialogue with trade unions and committees; 2) allow the possible sale of majority stakes in companies to employee shareholders' associations (26% of privatisations have used this method); and 3) implement the early retirement programme³³ whose success remains questionable. In addition to this, the holding companies' choice of SOEs to be privatised is based on several criteria defined in the Asset Management Programme guidelines, one of which concerns the social impact and employees' interests.³⁴

Box 1. USAID Post-Privatisation Impact Assessment

Impact of Privatisation on Labour Enhancement:

Out of the 17 companies assessed in this study:

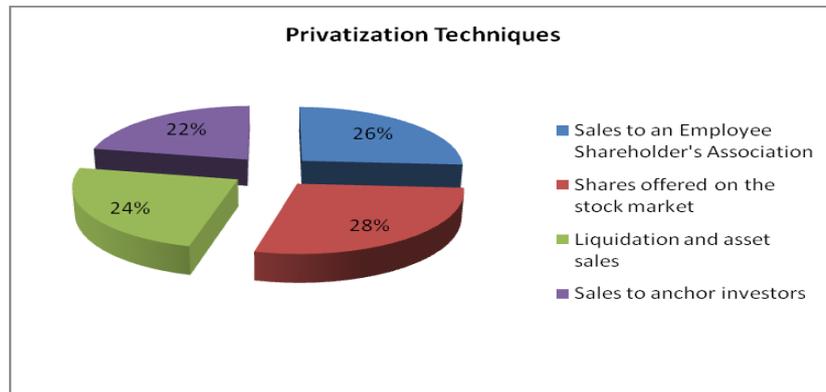
- Retirement programme were implemented according to the Egyptian law and none of the samples reported any strikes or labour strife as a result of layoffs.
- Based on the 16 companies which have reported, the overall number of workers has increased from 27,182 to 28,234 representing a net increase of 4% from pre-privatisation.
- Overall salaries at current prices have increased substantially for the remaining workers.
- Make up of new hires is changing to more value added positions.
- Most of the companies have invested heavily in training and skills development.
- New medical and social benefits have been enacted.

Privatisation Methods

The privatisation method used depends on the government’s policy objectives, the domestic market environment, and the size and characteristics of the company being sold. Privatisation objectives are inter-related and often conflicting, and it is the role of the government to balance out these objectives by choosing the right privatisation method.

From the inception of the privatisation programme up to 2004, the Egyptian government resorted to various privatisation techniques (see Figure 8)³⁵. It preferred privatisation through initial public offerings (IPOs) as it activated the then dormant stock market (Figure 1). However, as noted in the USAID report *Post Privatisation Impact Assessment*, sales to anchor investors exhibited the strongest increase in competitiveness of SOEs – the result of changes that were brought about in management and investment allocation into human, physical and financial resources. Companies that were privatised by IPOs and other privatisation techniques did not attain as much perceived competitiveness.

Figure 6. Privatisation techniques



Source: Carnegie Middle East Center

There is a need to assess objectives against the privatisation method used to ensure that it is the most effective. If the method is an IPO, then it requires a relatively well developed financial and legal infrastructure. This means stock markets that are comparatively liquid and deep, and a sufficiently sophisticated set of laws governing property rights, company law, and insolvency and bankruptcy (see the chapter on Dimension II-3, “Business Law and Commercial Conflict Resolution”). However, privatisation has in itself served as a vehicle for promoting the development of the equity market in countries where it is not well developed.

Box 2. The new Egyptian asset management programme

The New Egyptian Asset Management Programme *Update on events in 2008/2009*

In 2008, the Egyptian Government embarked on the study of a new technique of privatisation, in order to channel part of the benefits of privatisation directly to the public while also increasing the pace of sales. The so-called Citizen Ownership Programme (also called "mass privatisation scheme") had three components:

- Distribution of shares in a few of the state-owned-enterprises – essentially those falling under mainly public enterprises under Law 203 – to the public for free.
- Establishing the responsibility of the Asset Management Authority (AMA) as solely in charge of the supervision of the 9 public enterprise holding companies and the implementation of the various aspects of the asset management programme, including restructuring, investments, governance, and privatisations.
- Establishing the "Future Generations Fund" (FGF) to receive and manage an allocated percentage of the shares in those SOEs that were to be part-privatised, as well as other shares/assets at a later stage, all with the aim of investing them with interest, for the benefit of future generations.

The Egyptian Government and the ruling party (National Democratic Party) decided to put the entire programme with its three components out for public consultation starting in the last quarter of 2008. During this process, the original privatisation programme was put temporarily on hold. According to the Ministry of Investment (MOI) it subsequently carried out an extensive awareness and feedback campaign targeting constituencies and stakeholders such as political parties, universities, various types of media, think tanks, labour organisations and other interest groups through "numerous" direct visits and public and press conferences by the minister of investment, Mahmoud Mohieldin. These visits went as far as Upper Egypt (the southern, poorest part of Egypt). In addition, and to ensure transparency concerning the process, TV and satellite channels were widely used for spots and discussion forums. Ads were also taken out in the most widely circulated newspapers, and a fully fledged website was launched, covering all the details with a list of Q&As about the Citizens' Ownership Programme.

During 2009, there was a heated debate in domestic circles among stakeholders, regarding the proposed programme. The global financial crisis further added an element of uncertainty to the discussions, as it was unclear what would happen following the suggested distribution of free shares to the public. In the end, and taking economic factors and the feedback obtained into consideration, the government decided in late 2009 to exclude the first component of the programme – the distribution of free shares – and to proceed with the two other components.

Currently, as announced by the government and by NDP officials, the privatisation scheme will include:

1. an offer of minority stakes in public enterprises under Law 203 for sale to the public through the stock market, while
2. a percentage of shares will be allocated to the FGF, and
3. another percentage ((tentatively 3%) will be allocated to the workers of the company being offered.

A new law has been drafted and approved by the Egyptian Parliament in May 2010, setting out the detailed procedures and regulatory framework for the establishment of the new AMA as well as the FGF, and the implementation of the above-mentioned programme.

Performance of Public Enterprises

At the same time, the government has pursued its efforts to restructure the remaining SOEs, including injections of cash to renovate and modernise the assets before putting them up for sale. According to the MOI, the remaining 150 public enterprises have continued to show broadly positive results, "even under the impact of the worldwide financial crisis":

- The year 2008-9 witnessed the injection of investments amounting to EGP 5 billion, bringing total investments in public enterprises since July 2004 to around EGP 14 billion.
- The net profit after deducting the losses from loss-making companies for the fiscal year 2008-9 (with some figures still un-audited) amount to EGP 3.7 billion, compared to EGP 5.1 billion for 2007-8. More than 60% of the decline comes from large companies, such as Misr Aluminum Co., whose profits have deteriorated mainly as a direct result of the impact of the financial crisis on Egypt's export performance.
- Despite the impact of the crisis on some of the SOEs, total operating revenues of the 150 public enterprises remained stable at EGP 61 billion, compared to around the same figure in 2007-8.

Role of External Advisors

Privatisation of SOEs requires skills and expertise that are sometimes not available in the public sector. Experience from the OECD member countries shows that most privatisation transactions have entailed some degree of involvement from private sector advisors. Typically, the hiring of advisors is one of the tasks carried out during the very early stages of the programme, and developing expertise in selecting and monitoring the performance of advisors has proven to be a critical part of preparing for privatisation.

In Egypt, the holding company is responsible for preparing and implementing the sales programme. Accordingly, it is given complete freedom to hire the necessary external expertise to perform tasks such as assessing, valuating, promoting and representing SOEs on the sale side. Reports prepared by experts should include the promotional and sales techniques and the time frame for putting the company on the market.³⁶ The holding company is responsible for preparing the framework for an external advisor's work and might hire other external advisors to perform the same tasks. The holding company must choose the best available expert from the list of consultants approved by the Ministry of Investment. Selecting an expert should be a transparent process that considers the best technical expertise for the best price.

Special consideration should be given to making sure the same advisor does not value the asset and execute the sale (put the asset on the market). Combining the two functions could compromise the independence of advice and pose issues such as conflict of interest. In Egypt there is no separation between the advisory and sale mandates of external advisors, whereas Italy, the UK and Germany have all adopted different approaches to keeping them separate. Other issues include separating the advisors used by the government (or, in Egypt, the Ministry of Investment) and the holding companies. In Egypt the AMP guidelines state that the holding company should choose an external advisor from a pre-approved Ministry of Investment list, which could pose some difficulties in achieving the separation.

Open and transparent competitive processes should be used for hiring advisors. The current AMP guidelines follow OECD recommendations and stress the importance of a transparent bidding process and of giving priority to technical capacity over price. Moreover, the government needs to ensure that an advisor represents its interests or those of the holding company only and that he or she does not work with potential bidders and is not related to them in any capacity. The government should also ensure that its pay structure does not create incentives for advisors to work against it, in particular when it comes to commissions that could skew advice in favour of options that run counter to government objectives. In all dealings with external advisors the government needs to develop an intelligent "customer capability" that allows it not to be taken advantage of. This is achieved by building sufficient knowledge of the issues at hand.

2.1.2. Consultation and Communication

A key lesson drawn from OECD experience is that a communication strategy should be put in place to explain the privatisation policy and address stakeholder concerns.¹ An effective communication campaign directed particularly at stakeholders explains the policy objectives of privatisation and the means by which they will be achieved. The purpose is to respond to public concerns and to gain support for the policy.

The *OECD Principles for Private Sector Participation in Infrastructure*¹ recommend to policy makers ways to increase consultation with stakeholders. A consultation mechanism should address a wide spectrum of stakeholders, which may include but not be limited to domestic and foreign businesses, academia, NGOs, civil society, and trade unions. Consultations should be regular as opposed to *ad hoc* and, to avoid perceptions of impropriety, potentially affected third parties should be invited to participate.

Egypt's current privatisation strategy incorporates a communication plan that was put in place in 2004. However, features of this plan have not been sufficiently shared with the MENA-OECD Investment Programme. It is therefore difficult to make any particular recommendations in this regard. As for communicating its divestment programme to the public, Egypt's AMP guidelines indicate that one of the AMP's key principles is to operate within a clearly announced, well communicated programme. This is achieved by advertising the sales programme and making available all the necessary technical and financial information that allows investors to prepare their evaluations. However, there seem to be ambiguities over which SOEs the government intends to privatise. The government has experience of communicating the benefits of privatisation and has attempted to address public concerns over employment. But in order to revitalise the process once more it must clarify its intentions and the key elements of its strategy.

As emphasised throughout the chapter, communication with investors and the public could be taken further so as to eliminate all ambiguities over Egypt's privatisation strategy. Investors are greatly concerned about the ambiguities that surround the introduction of the next phase of the privatisation programme and its coexistence³⁷ with the earlier one.

As for consultation with stakeholders, advisors in the Ministry of Investment state that the government does consult stakeholders and constituencies such as workers, parliamentarians, think tanks and academics, and that it does so through conferences, seminars, media events, and direct meetings, particularly when it consults labour representatives. Information about when these meetings take place, their frequency, and who initiates them remains sketchy, however. It appears that this is not an institutionalised process and consultations are rather *ad hoc*.

BCDS Score for Consultation and Communication: 3

Egypt's privatisation strategy seems to lack an effective communication plan that clearly sets out and defines the government's intentions. The government does consult stakeholders and civil society, but consultation is *ad hoc* and not institutionalised. However, the government has started a process to improve its communication and, once the mechanisms are in place, its BCDS score could move up to 4 or 5.

Recommendation

To improve its BCDS score, the Egyptian government should design and implement a more co-ordinated, formal approach to consultation, targeting a broad cross-section of stakeholders. Consultation should be formalised and take place regularly and outcomes should be made public.

The government should share the details of its communication plan with the public. For example, if it already publishes periodical information bulletins, then the time and place they can be obtained should be made public. The government should also inform the public about seminars and other conferences it is organising well in advance.

Finally, to ensure support from the trade unions, a greater effort should be made to work closely with labour representatives in affected companies, and staff retraining and redeployment should be proposed where applicable. This could be part of a wider approach to upgrading and retraining Egypt's manufacturing workers, much as Denmark did when it launched its privatisation programme in the late 1980s and early 1990s.

2.1.3. Foreign Ownership Restrictions

As noted in *Privatising State-Owned Enterprises: An Overview of Policies and Practices in OECD Countries*, policy on foreign ownership of privatised state-owned enterprises (SOEs) can be a sensitive issue, particularly in the context of industries that are considered of national and strategic importance. The rationale for opening up privatisation transactions to foreign investors is that they can be an important source of capital, especially where the domestic pool is too small to absorb the offerings. This is particularly relevant to emerging market economies and former transition economies where domestic financial resources are insufficient. The result may be transactions where state-owned companies are sold to other public bodies or government departments to detrimental effect on their corporate governance and performance.

The experience of OECD countries has shown that only very narrow limitations on foreign ownership are required to address specific national security and public interest concerns.

Generally, there are no restrictions on foreign investor participation in privatisation projects in Egypt. There are, however, some sectors where foreign investment is only allowed in the form of joint-venture companies in which foreign equity does not exceed 49%. Such sectors are construction, maritime transport, air transport, and courier services, considered economically strategic and associated with national security issues.

Foreign participation in privatisation in Egypt has been high, and most government stakes in joint ventures have been sold to foreign investors. The largest privatisation transaction in Egypt was the sale in October 2006 of Bank of Alexandria (BoA), the smallest of the four dominant state-owned banks. In that deal an 80% stake was sold for USD 1.6bn to Sanpaolo IMI (Italy), which outbid three other contenders (two consortia of Arab banks and French bank BNP Paribas) after the local Commercial International Bank and Greek bank EFG Eurobank had withdrawn. A further 5% stake has been kept for the employees of the bank, and the remaining 15% will be divested through an initial public offering (IPO) on the Egyptian Stock Exchange. The authorities indicate that foreign investors have played an important role in the privatisation programme, being involved in 11 of the 29 sales which went to majority investors.³⁸

Governments can put in place provisions and arrangements at the time of sale in order to retain some degree of control over privatised SOEs and to protect newly privatised companies from the rigours of the competition for corporate control. Such “post-privatisation control devices” have typically been adopted where the government has sought to prevent foreign takeover of companies in sectors that are deemed to be of national interest such as defence or the protection of public interest.

Given that the main objective of privatisation is to enhance corporate efficiency and performance, while also increasing the share of the private sector in the economy, it is necessary to ensure that privatisation also includes major changes in the corporate governance of companies and not just ownership changes. This means that post-privatisation control devices should be used with caution as their effectiveness depends on their scope, their duration, and the manner by which the powers have been exercised.

One common post-privatisation control device is the use of so-called “golden shares”. Golden shares provide governments with special powers and veto rights in fully or partially privatised companies. This control device has been used by governments to protect the newly privatised company from hostile takeovers. The golden shares approach has been widely adopted by OECD countries including France, the Netherlands, Spain, Portugal, Belgium, New Zealand, Italy, the Czech Republic, Poland, Hungary and Turkey. However, it has been argued that they can act as an impediment to improving efficiency in the privatised company, in the sense that they allow for government intervention in company decisions.

Governments reply that without the golden shares they would not have been able to privatise strategic sectors in the first place. In such cases, it is advisable to operate within a well-defined, effective regulatory framework that would protect public interest from abuses of monopoly powers. If an effective regulatory framework is lacking and golden shares have to be used, then they should not serve as a vehicle for the government’s interference in the privatised company unless there is a violation that necessitates such interference. It is also useful to define a scope for the use of golden shares and to set a time limit for their use.

With the exception of Telecom Egypt, the Egyptian government does not have much of a track record in keeping golden shares. Egypt’s holding companies do have the right to retain minority shares in cases where most of an SOE’s shares have been sold in the stock market. These stakes are agreed upon with the investors buying the companies and are clearly defined in advance. This approach is particularly used for SOEs representing strategic sectors of the economy. In this case, the SOE is converted to a joint venture company, allowing the government to maintain majority control. Egypt can also retain minority shares in the SOEs that are of specific importance to the government. However, it hardly ever uses the real “golden shares” approach.

BCDS Score on Foreign Ownership Restrictions 4.5

Even though Egypt does not restrict foreign investors from full participation in privatisation projects, the government does use some post-privatisation control devices, mainly in the form of maintaining minority shares in part-privatised companies. Government monopolies exist in some sectors such as fixed-line telecommunications, electricity distribution, gas distribution, railway infrastructure, and postal and delivery services.

Recommendation

It would enhance the privatisation process and make Egypt’s offer more attractive, if the government were to assure potential buyers that minority holdings do not entail continued government interference in the management process of the privatised companies. Where applicable, the government should carefully communicate its required minimum stake and clearly publicise any restrictions.

Table 2. Summary of scores for the Privatisation Strategy Sub-Dimension

| Indicator | Privatisation Strategy | Public Private Consultations | Ownership Restrictions |
|-----------|------------------------|------------------------------|------------------------|
| Score | 3 | 3 | 4.5 |

Sub-Dimension 2.2.: Public Private Partnership (PPP)

A key challenge to successfully managed PPPs in many OECD and MENA countries lies in setting the right institutional and regulatory frameworks, *i.e.* building capacity for appropriate laws and regulations, with regulatory authorities managing complex concessions, assessing the cost and benefits of such projects, and monitoring their implementation. Budgetary constraints and existing PPP frameworks and guidelines can be prohibitive, while technical skills can be scarce and significant time investment might be needed to build up such skills. What has been found paramount in the past is political buy-in at the highest level. Furthermore, regulatory frameworks need to allow for sufficient flexibility, and transparent and predictable procedures must be complemented by institutional negotiation and implementation capacities on both the public and the private sides.

In 2006 the Government of Egypt published a PPP strategy which fully acknowledged that:

“Egypt needs to move quickly to remove the barriers that prevent, or discourage, private investment in basic services such as water, electricity, gas, waste management, road building and transportation. Failure to act is retarding development, arresting social change and threatens to jeopardise the positive results of privatisation in other sectors.”

To effectively lift impediments to private investment, the strategy acknowledged, a series of economic, financial, legal, and institutional reforms were necessary:

- reform and upgrade the laws governing private investments in infrastructure facilities;
- reform and improve the institutional framework;
- develop a communications strategy.

Although it has embarked on a new PPP policy, the Egyptian government is not entirely unfamiliar with the concept of PPPs. It undertook several projects in infrastructure prior to 2004 (Fig 8). The framework and the vision have changed since then, however.

Figure 8. Private Participation in infrastructure projects in Egypt during the period 1990-2004

| Primary Sector | Sub-sector | Number of PPP Projects in Infrastructure | Total Value of PPP Investments (USD Million) |
|----------------|-------------|--|--|
| Energy | Electricity | 3 | 1 158 |
| | Natural Gas | 1 | 220 |
| Total | | 4 | 1 378 |
| Telecom | | 4 | 3 964 |
| Transport | Airports | 6 | 398 |
| | Seaports | 2 | 461 |
| Total | | 16 | 6 208 |

Source: Ministry of Investment.

The global economic downturn has prompted Egypt to invest heavily in infrastructure projects in order to maintain GDP growth rates and increase employment. It is estimated that Egypt should allocate between 5.5% and 7% of its annual GDP – or USD 13 billion – to meeting its infrastructure needs (new investment and maintenance). Egypt estimates that it will mobilise capital through PPPs to meet 10-15% of its infrastructure needs.³⁹

More than three years after Egypt announced its new PPP strategy, a first project was finalised. In mid-2009, Orascom Construction Industries, the Spanish group Aqualia, and Aqualia Infrastructure formed a partnership to build and operate a wastewater facility in New Cairo.⁴⁰ Despite the success of the project, which took a long time to finalise, interviews have indicated that, judging by cash flow, private sector funding for PPP continues to be a major constraint, particularly for larger infrastructure projects. Commercial banks in Egypt cannot finance projects for longer than five to seven years, which is not an attractive or viable financing option for many larger PPP projects where cash flow is generated only after several years of operation.

Another problem that has been highlighted is the government's unwillingness to guarantee the convertibility of profits from PPP projects. The authors were told that the government does not currently provide convertibility guarantees to the private sector, so pushing down demand. This is deplorable, since PPPs are supposed to open up new opportunities for the financing sector. The government is strongly urged to address these issues. However, it should be noted that an infrastructure financing fund has been created as a non-banking institution with minority equity participation from the government in order to hedge against exchange rate and convertibility risks faced by private investors.

This sub-dimension covers five key elements: 1) whether there is a specific unit within the government to co-ordinate and develop PPP policy; 2) the legislative framework governing PPP projects; 3) the use of consultations to build buy-in from various stakeholder groups; 4) undertaking cost-benefit analysis prior to making a decision on PPP projects; and 5) monitoring the progress of PPP projects over their lifetime. Egypt's performance is assessed against the five indicators on a rising scale of one to five, level five being the closest to OECD good practice.

2.2.1. PPP Units

PPP units have been created in response to a weakness in government machinery for managing PPP programmes effectively. As noted in the *OECD Principles for Private Sector Participation in Infrastructure*:

“authorities responsible for privately operated infrastructure projects should have the capacity to manage the commercial processes involved and to partner on an equal basis with their private sector counterparts.”

World Bank analysis suggests that successful examples of PPP units share similar traits. Their staff show a mix of expertise (lawyers, economists, project finance experts, engineers, etc.) and they tend to be attached to departments or ministries with a horizontal policy co-ordinating function, such as treasury or finance ministries. They also have a real overall policy co-ordination function supported by high-level political commitment.

This indicator looks at: 1) whether there is a PPP unit in place within the government; 2) the implementation stage of the PPP unit; 3) the capacity and co-ordination functions of the PPP unit; 4) how formal the PPP unit's co-ordination role is; and 5) the degree of political support it enjoys.

One of the main tools in Egypt's new PPP policy is the PPP Central Unit. It has worked on five pilot projects since it was established. They are a school project, a project at Alexandria University Hospital, a

Cairo wastewater treatment plant, and two transport projects – the Shubra to Banha Highway and the Rod El Farag access road. Tenders have been opened for three other projects, four are under preparation, and ten are in the early stages of preparation across different sectors.

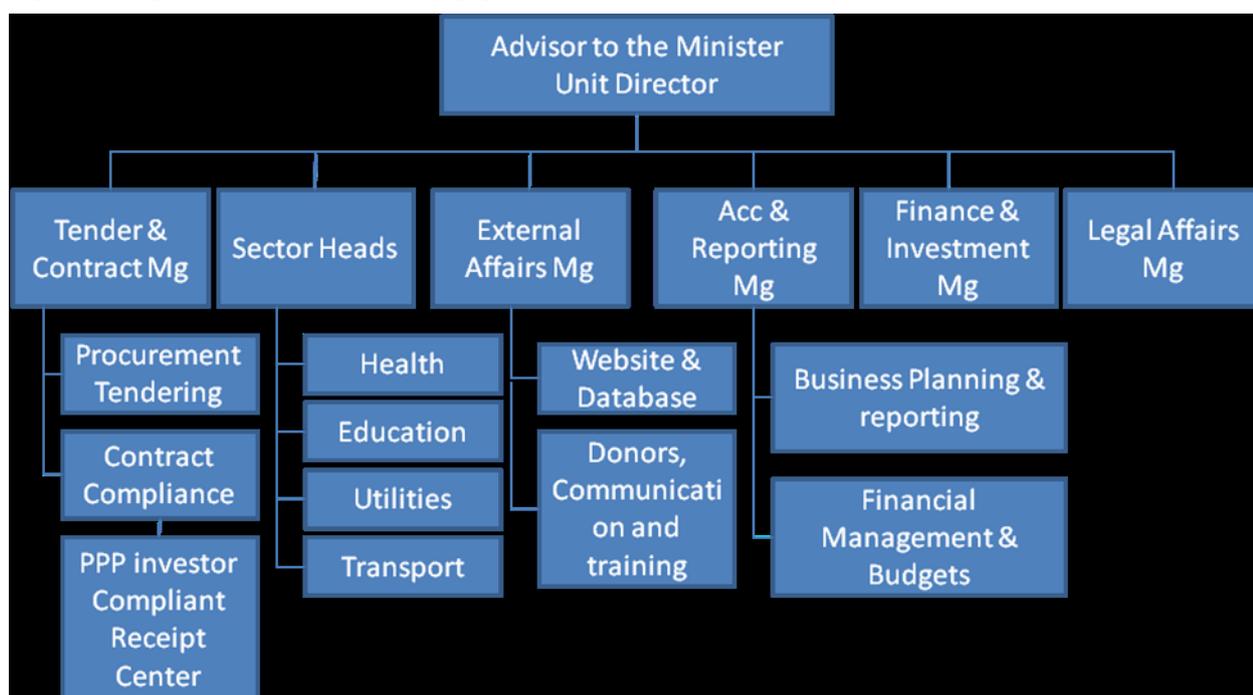
The establishment of the PPP Central Unit signals a clear political commitment designed to assure investors of the seriousness of the Egyptian government’s efforts to increase private participation in infrastructure financing. It also points to the need to develop inter-governmental capacities.

The government's 2006 PPP strategy provided for the establishment of a central PPP unit within the Ministry of Finance to oversee and co-ordinate PPP policy. The PPP Central Unit was modelled on similar structures in countries such as the UK, South Africa and India. It was commissioned to produce initial guidance material, draft the PPP law, establish satellite PPP units within line ministries, build the capacity of all government entities working on PPPs, handle communications and public awareness, and initiate five pilot PPP projects. Article 16 of the PPP law, which was approved in May 2010,⁴¹ provides the legal basis for the unit. The PPP Central Unit is considered the financial, technical and legal expert with regard to PPP and houses the Supreme Committee for PPP Affairs. This is a body created by the law that is charged with overseeing the national policy and general approaches towards PPPs (see articles 14- 17 of the PPP law). It is chaired by the Prime Minister.

According to interviews, the Central PPP Unit has encountered initial problems with ensuring buy-in from portfolio ministries, successfully establishing satellite PPP units, finalising draft PPP legislation, providing capacity building to other government entities, and finalising and completing initial pilot projects. The difficulty in setting up the satellite PPP units⁴² can be attributed to the resistance of line ministries to the idea of a central unit with an overall co-ordination function. This signals a communication problem.

The line ministries have not yet seen the value added of the PPP Central Unit, are uncertain of the benefits that it can provide, and not entirely convinced that it should co-ordinate PPP projects. For fuller understanding of the problem, Figure 7 illustrates co-ordination on PPP projects between line ministries and the Central Unit. It clearly shows that the role of the central PPP unit is embedded in the system, so its co-ordination role could not be anything but formalised.

Figure 7. Organisational structure of Egypt’s PPP Central Unit



The issue of co-ordination between the two lead ministries, Finance and Investment, is another case in point. Both have been assigned the roles of promoting PPPs in Egypt under the terms of the overall PPP strategy. The MOI may want to restrict its role to investment promotion aspects.

Another issue raised in interviews relates to the problems the PPP Central Unit encounters in assisting ministries and public bodies to develop PPP proposals (business cases). This could be attributed to the technical capacities of the unit which requires highly technical staff. It does, in fact, have the right mix of expertise but it might be that staff number is not sufficient. The unit's inability to retain and attract highly skilled staff could also be behind some of the difficulties it has been facing. This in turn negatively impacts on processes within the unit like the one for selecting projects, which prevents the successful completion of pilot projects.⁴³ The IFC's expertise was sought by the government in pilot project implementation. Despite that, projects have been facing completion problems, prompting the government to seek technical expertise from other organisations. However, it has been argued that the delay in the completion of projects is due to inefficient project selection and not to the implementation process.

BCDS Score for PPP Units: 3.5

The new PPP law, which came into force in July 2010, sets out clearly the powers of the different PPP units. According to the new bill, any government department which is willing to engage in a PPP project must get the approval of the Supreme Committee for PPP Affairs, which takes its decisions in the light of the recommendations submitted by the PPP Central Unit (articles 4 and 17). The government department that is willing to engage in a PPP contract must provide the PPP Central Unit with all information necessary for the preparation of its report and recommendations (Article 17). Article 18 gives further prerogatives to the PPP Central Unit:

“A government department that has received an approval for PPP projects must take into account the application of the PPP Central Unit's recommendations in all its procedures. The publication of any advertisement or document related to the tendered projects; including expressions of interest, prequalification invitations, information memorandums, and calls for tenders shall be done after obtaining the approval of the PPP Central Unit. The convening of committees to determine criteria and qualification, or to receive and evaluate bids shall not be valid unless a representative of the PPP Central Unit is present”.

The new law has thus formalised the role of the PPP Central Unit by granting it all necessary powers to oversee and co-ordinate all PPPs projects. Moreover, the new law seeks to appease the resistance of line ministries and to garner a high political support for the Supreme Committee by assigning its chairmanship to the Prime Minister with the membership of the ministers of “the economic cabinet” (the ministers of Finance, Investment, Economic Development, Justice, Housing and Utilities, and Transportation).

With the new law approved, it seems that the PPP Central Unit and the PPP Supreme Committee together would be able to overcome difficulties and fulfil the “overall policy co-ordination function”. Thus, they seem to fulfil all the conditions required for a Level 5 score. However, the high level-support within government remains unsure since the Supreme Committee has not been formed yet. Hence the score of 3.5 on the BCDS scale.

Recommendation

For Egypt to improve its score, it should ensure that the new law is implemented fully. The government should set up the Supreme Committee for PPP Affairs as soon as possible in order to provide the PPP Central Unit with the necessary political support. Action should be taken to formalise the co-ordination mechanism between the PPP Central Unit and the satellite units in the line ministries and in ministries, like

the Ministry of Investment, that handle other aspects of PPPs. In order to build the capacity of the PPP Central Unit, competent advisors should be hired to help it select PPP projects. Further measures could be to boost its human capital capacity through training and hiring staff with more diversified PPP expertise (e.g. in different industries).

2.2.2. PPP Legislation

The 2007 *OECD Principles for Private Sector Participation in Infrastructure* ask governments engaging in any form of PPPs to establish:

“a sound enabling environment for infrastructure investment, which implies high standards of public and corporate governance, transparency and the rule of law, including protection of property and contractual rights.”

The legal environment for PPPs may include several layers: national legislation; regulations and ordinances at the sub-national level; and the specific contractual obligations between public and private partners in the project. This indicator focuses on the legislative framework at the national level.

Laws authorising and regulating PPPs may take the form of a single horizontal law covering multiple sectors or there may be several sector-specific pieces of legislation. Experience has shown that the development of consistent national legislative and regulatory structures greatly facilitates the identification, development, and implementation of PPPs. A legislative framework on PPP-related projects should include provisions on granting concessions and cover the entire lifetime of the project (*i.e.* the design, build, finance, ownership, and operation stages, and the eventual transfer back to the public sector).

The need for an explicit legal basis follows from the fact that legal systems based on civil law qualify concession agreements as special agreements with a public character. A legislative basis for the transfer of infrastructure assets to the private sector is therefore required. This approach can also have an impact on the powers of the parties to amend the agreement. For example, the French Civil Law system bases its definition of concession agreements upon the doctrine of *contrat administratif*, thereby treating the parties to a *contrat administratif* unequally and enabling the government to unilaterally amend its provisions. The idea of a “subordination relationship” between the public and the private parties in a public contract (*öffentlich-rechtlicher Vertrag*) can lead to similar consequences under German law.

The ability of the public sector to grant concessions is in many jurisdictions the most critical uncertainty faced by lenders and investors and they may argue that this uncertainty is best removed by a horizontal PPP/concession/privatisation law independent of the legal tradition of a country. The argument made by investors is that it is far more difficult to change a law than administrative guidelines.

This indicator looks at: 1) whether sector-specific or horizontal legislation covers PPP projects and whether there are plans to introduce legislation; 2) whether the law identifies the roles and responsibilities of the public and private sectors; and 3) elements covered in the law, such as concessions and other forms of PPPs.

BCDS Score for PPP Legislation: 3

The government of Egypt has drafted a horizontal PPP law which was approved by the Parliament in May 2010 and came into force in July 2010. It is for this reason that Egypt scores Level 3 on the legislation indicator. The draft stated that the aim of the law will be:

“to ensure the presence of a legal framework to govern the partnership with private sector and guarantee the investor selection in a transparent, fair and competitive manner as well as determining

the scope of partnership projects and the role of various government entities to chose, certify and follow up on the performance of PPP projects and facilitate the private sector role to finance such projects.”

The law is meant to regulate most projects in Egypt that are partly financed by the private sector and to standardise all related procedures. The law clearly defines PPP regulation and once enacted there would be no need for Parliament to approve each individual project. For Parliament this would be another significant loss of power to the government, having already lost influence over decisions on how to manage and finance larger infrastructure projects.. From the private investor’s point of view, however, transparency and predictability would be significantly increased once the new law is implemented.

The challenge of balancing the interests of the administration with those of the private investor is another consideration to be borne in mind during the monitoring and operating phase of a PPP project. Article (5) of the law reaffirms that the government department that is party to a PPP must supervise and regulate the project’s execution phase. To that end it creates a project performance monitoring committee during the operational phase of the project. The committee is obliged “to ensure the adequacy of the product or service provided to the required level and to submit a periodical report of its work to the competent authority”.

When it comes to implementation, a crucial factor for the contracting parties to a PPP is that the legal basis should clearly identify their roles and responsibilities. For the implementation of a PPP project, Egyptian administrative law provides some guidance as to the parties’ rights and obligations. The Supreme Administrative Court considers PPP contracts between a government body and a private contracting party as administrative contracts which it defines as contracts “entered into by a moral person of public law for the purpose of managing a public utility”. In accordance with this definition of a PPP contract or concession as an administrative contract, the contracting government party may penalise the private contracting party for non-compliance with the terms of the contract. This can include the appropriate government body stepping in (Article 9) and appointing a substitute or terminating the contract. Article 7 of the PPP law confirms the right of the government entity not only to amend the conditions of construction, rehabilitation, or any other related work or services stipulated under the contract, but also to amend the basic terms of operation and concession, including payment for the product or service available. Administrative courts supervise the execution of a contract in accordance with its terms. The balance is tilted strongly in favour of the government and against investors.

Recommendation

Administrative contracts are based on the concept of good faith. If a government body chooses to terminate a contract on the basis of public interest, compensation should be granted to the private contracting party. Furthermore, amendments caused by the government entity should not alter the financial equilibrium of the contract, or the other party may have the right to terminate the contract. These principles are important guarantees of stability to the private contracting party.

Another critical point is that, outside the 2006 strategy, the law does not provide for all forms of PPPs. It does not, for instance, include BOO (build, own, operate) contracts. This runs counter to the government’s own objective, stated in the 2006 strategy document, of developing a clear legal framework for all forms of private involvement.

2.2.3. PPP Consultations

The *OECD Principles for Private Sector Participation in Infrastructure* states that:

“private participation in infrastructure is unlikely to be successful unless authorities have assured themselves beforehand that the envisaged undertakings are in the public interest and are acceptable to consumers and other stakeholders.”⁴⁴

Open, transparent, consistent consultation with relevant stakeholders, including, but not limited to, consumers (*i.e.* domestic end users), domestic businesses, potential foreign investors, etc. helps the authorities secure buy-in for PPP projects.

This indicator considers: 1) whether the government undertakes consultations prior to engaging in a PPP project; 2) whether the government consults consumers, domestic firms and private foreign investors; and 3) how often the government consults stakeholders ahead of PPP projects – consistently or on an *ad hoc* basis).

BCDS Score on PPP Consultations: 2.5

The 2006 PPP strategy document states that a communication effort should be undertaken and that it should be “directed at key stakeholders including officials of the public services procuring agencies, employees in sectors where PPPs will be developed and the general public”.

The Egyptian government does consult PPP experts about PPP projects, but it appears to do so only after the projects have been chosen by the authorities. Moreover, there is no mention at all of consultations of any kind in the new PPP law. Having ratified the PPP law does not in itself change the sporadic and informal nature of consultations in which the government engage since the law does not formalise consultation process.

Recommendation

It appears that broader consultations in the selection process of projects are still not conducted. A more formalised consultation process should be put in place. This process should involve domestic end users as well as local, regional and foreign investors.

2.2.4. Approach to Cost-Benefit Assessment for PPP Projects

The decision to involve the private sector in PPP projects should be guided by an assessment of the relative long-term costs and benefits. The *OECD Principles for Private Sector Participation in Infrastructure* provides important four important guidelines in this regard. The cost benefit analysis should include:

1. all alternative modes of delivery (*e.g.* divestiture, concessions, management and service contracts) including financial and non-financial (*e.g.* sustainable development) costs and benefits over a project’s life cycle
2. analysis of the degree to which costs can be recovered from end-users and, in the event of shortfalls, what other sources of finances can be mobilised;
3. a risk assessment based on the public interest (*e.g.* shifting too much risk on to the private sector may result in higher prices for consumers to offset the risk).

The fourth OECD recommendation is that the potential public finance implications (*e.g.* the fiscal implications of issuing guarantees, which includes in the event of macroeconomic crises) of sharing responsibilities with the private sector should be fully understood.

This indicator first establishes whether the government undertakes cost-benefit analyses for PPP projects, then uses the four OECD guidelines to assess Egypt's approach to cost-analysis assessment.

BCDS Score for Approach to Cost-Benefit Assessment for PPP Projects: 3

Egypt's PPP Central Unit conducts financial and economic feasibility studies as well as market-demand and project-risk analyses. Moreover, Article 8 of the PPP law regulates the consequences of the private contracting party defaulting on its obligations under a PPP agreement. The article stipulates the right of the lender to step in and demand remedy.

Recommendation

An assessment of alternative modes of delivery is lacking from currently conducted economic feasibility studies. It should be added to the cost-benefit analysis.

The preparation and procurement of PPP projects is more complex and costly than publicly procured infrastructure projects. The costs are often a burden for the budgets of line ministries involved in implementing PPPs. To this end, the government is encouraged to establish a PPP project preparation fund as a means to strengthen the supply side of the market for PPP projects.

3.2.5. PPP Monitoring

To ensure that a PPP project meets its stated policy objectives, it should be monitored throughout its lifetime. The *OECD Principles for Private Sector Participation in Infrastructure* advise that:

“formal agreements between public authorities and the public sector should be specified in terms of verifiable infrastructure services to be provided to the public on the basis of output or performance based specifications.”⁴⁵

An additional component of a monitoring mechanism should include access to information about the financial and technical status of a PPP project and the future business and budget plans of the project partners.⁴⁶

This indicator examines the following: 1) whether a mechanism to monitor the performance of PPP projects is in place; 2) which financial and technical aspects of a PPP project which are monitored; 3) whether or not the government monitors all PPP projects and how often; and (4) whether or not the private partner in a PPP project is required to submit business and budget plans on an annual basis.

Article (5) of the PPP law provides for the creation of a project performance monitoring committee to oversee the operating phase of project and to ensure the “adequacy of the product or service at the required level including a periodical report of the committee's work to the competent administrative entity”.

In the light of Egypt's little experience with PPP projects to date, the Monitoring PPP Indicator cannot be assessed and scored.

Table 3. Summary of scores for the Public-Private Partnerships Sub-Dimension

| Indicator | PPP Unit | PPP Legislation | PPP Consultation | Cost Benefit Analysis | Monitoring |
|------------------|-----------------|------------------------|-------------------------|------------------------------|-------------------|
| Score | 3.5 | 3 | 2.5 | 3 | X |

CONCLUSION

Egypt has made great strides with regard to its privatisation programme and has been successful in divesting a large number of state-owned companies under Law 203. This has had a beneficial impact on the role of the private sector in the Egyptian economy and has stimulated competition, transparency and accountability in Egypt's business environment.

However, the privatisation programme has stalled in recent years, partly owing to the impact of the global financial crisis, which has reduced liquidity available for investments, and partly as a result of the government's decision to reformulate and repackage its privatisation programme. While there is nothing wrong *per se* with the government taking time to reassess the scope and objectives of its privatisation programme – especially against a backdrop of slower economic growth and rising unemployment – this has created confusion for investors. The Egyptian government is, therefore, urged to improve the way it communicates its privatisation programme and to ensure that the Egyptian public and the foreign investor community fully understand the goal, scope and means of the new privatisation programme.

With regard to its public-private partnership (PPP) programme, Egypt has initially been less successful than expected in attracting investment to selected projects. Part of the reason has been the choice of pilot projects which have not immediately appealed to investors because of their complex nature. In addition, the government's financing model and the lack of long-term project funding have also been obstacles to the success of Egypt's PPP programme.

There is some hope that things will improve now that a new PPP law finally has been approved by parliament. The new law came into force in July 2010 and establishes the legal framework and the guarantees that investors require, while lending credibility and predictability to the PPP process. Even so, a number of grey areas remain, and it is important that the law is implemented fully and as quickly as possible in order to minimise uncertainty.

The PPP Central Unit needs to co-ordinate more closely with line ministries. It would also be useful if the roles and responsibilities of the unit and the line ministries were clearly communicated to investors, as they are confused over who does what.

What transpires most clearly from this assessment of Egypt's privatisation and PPP policies is that the government needs to make a greater effort to communicate its policies and objectives clearly and efficiently. Investors constantly reiterate their desire for predictability and visibility. The Egyptian business climate would greatly benefit from clearer communication from the Ministry of Investment. Better co-ordination between ministries in the PPP process would also help enhance the attractiveness of the programme.

Notes

¹ The main law is Public Sector Law 203/1991, which governs the State-Owned Enterprises (SOEs), in addition to the guidelines of the Asset Management Programme (AMP) from 1993.

* For detailed discussion of SOEs refer to the Chapter II-2, “Corporate Governance”, and in particular to Sub-Dimension 2.5, “Corporate Governance of State-Owned Enterprises”.

² World Trade Organisation (WTO) (2005), Trade Policy Review, Egypt.

³ The Ministry of Public Enterprises was responsible for the privatisation programme until 2004 when the Ministry of Investment was established and took over the entire Asset Management Programme.

⁴ World Trade Organisation (2005), Trade Policy Review, Egypt.

⁵ Information provided by the Ministry of Investment, 2009.

⁶ For the purposes of this assessment, privatisation will be broadly defined as the transfer of ownership from the state to the private sector. In much literature, privatisation may also comprise partial ownership transfers and concessions to provide a specific service.

⁷ OECD (2003) Privatising State-owned Enterprises: An Overview of Policies and Practices in OECD Countries, OECD, Paris

⁸ Ibid.

⁹ International Finance Corporation (IFC) (1995), Privatisation: Principles and Practices, 1995

¹⁰ As discussed in the chapter on the Corporate Governance Dimension, the guidelines define SOEs as “enterprises where the state has significant control, through full, majority or significant minority ownership.” For the purposes of data collection, the OECD uses a 10% state ownership threshold in classifying SOEs. It is noteworthy that in Egypt, state-owned entities are differentiated on the basis of government ownership of 51% as per the Public Business Sector Law. A lower 25% threshold applies in classifying entities for the purposes of audit by the supreme audit body.

¹¹ “Privatisation in the MEDA region: Where do we stand?” OECD, 2007

¹² World Trade Organisation (WTO) (2005), Trade Policy Review, Egypt.

¹³ The Ministry of Public Enterprises was responsible for the privatisation programme until 2004 when the Ministry of Investment was established and took over the entire Asset Management Programme.

¹⁴ Trade Policy Review, Egypt, World Trade Organization, 2005.

¹⁵ Information provided by the Ministry of Investment, 2009.

¹⁶ Egypt has been thinking of a new approach to privatisation whereby the shares of state-owned enterprises are allocated in three ways: (i) A free transfer of shares to the public at large. This is actually a very new method of privatisation in Egypt known as “mass privatisation. The government intends to distribute shares for 86 SOEs out of the 153 remaining. (ii) Retained ownership through holding companies for restructuring and debt settlement. (iii) Investment in a domestic future generations fund. Shares will be traded on the stock market. (IMF IV Consultation, Egypt, 2009).

¹⁷ PPIAF, Assessment of the Impact of the Crisis on PPI Projects, March 5, 2009, http://www.ppiaf.org/documents/Impact_of_the_crisis_note_June09.pdf.

¹⁸ “Egypt selects consortium for first infrastructure PPP,” Zawya, 6 July 2009

¹⁹ Ministry of Finance, June 2009

²⁰ OECD (2003) Privatising State-Owned Enterprises: An Overview of Policies and Practices in OECD countries, OECD, Paris

²¹ OECD Principles for Private Sector Participation in Infrastructure, www.oecd.org/dataoecd/41/33/38309896.pdf

²² Elements of such a transparent privatisation process include: selecting advisors and buyers through competitive process; conflict of interest guidelines in place; competition and regulatory frameworks are in place prior to sale (*e.g.* enact a competition law if necessary); efforts to restructure state-owned enterprises before privatisation; policy on foreign investor participation; sequencing sales (*e.g.* beginning with assets in more competitive sectors); labour issues resolved within the soon-to-be-privatised enterprises; treatment of privatisation proceeds; methods to be used (*e.g.* public offerings, trade sales, mixed sales, management and employee buyouts); and policy on post-privatisation control devices (*e.g.* use of golden shares), if any.

²³ See Annex for laws and decrees governing privatisation in Egypt.

-
- ²⁴ Washington Institute for Near East Policy.
- ²⁵ Information on the procedures of privatising non-law 203 companies is lacking.
- ²⁶ Key players inside the government include ministries in charge of the company to be privatised, the state owned asset, central and financial ministries, and labour and consumer protection agencies.
- ²⁷ OECD (2003) *Privatising State-owned Enterprises: An Overview of Policies and Practices in OECD Countries*, OECD, Paris.
- ²⁸ Committee for Asset Management within the MOI identifies the priorities of the privatisation of SOEs.
- ²⁹ Asset Management Unit within the MOI serves as the link between MOI and the holding companies and SOEs. The unit assists the holding companies in preparing the annual privatisation programme in light of the general public policy and the framework that is set by the Cabinet.
- ³⁰ Other responsibilities include co-ordinating with the Capital Market Authority for reviewing the fair market price for company stocks that will be issued for the first time and following-up on the investors responsibilities after sale.
- ³¹ OECD (2003) *Privatising State-owned Enterprises: An Overview of Policies and Practices in OECD Countries*, OECD, Paris.
- ³² Ibid.
- ³³ The optional early retirement system was implemented in SOEs subject to liquidation or sold as assets or separate units, and to the loss-making companies under restructuring prior to sale. This system offered workers early retirement in return for a termination bonus of at least EGP 15 000 (USD 4 420) and a ceiling of EGP 35 000 (USD 10 320). Overall, since the inception of the early retirement system this, together with privatisation, has resulted in a decline in the work force employed by the holding companies of about 50%.
- ³⁴ OECD (2007), "Privatisation in the MEDA region: Where do we stand?", Development Centre Working Papers, OECD, 2007
- ³⁵ Source: Carnegie Middle East Center.
- ³⁶ Guidelines of the Asset Management Programme, 2008.
- ³⁷ This remains unclear and questions are being asked as to whether the government will continue its conventional privatisation programme even if it launches the mass privatisation plan, and if so how they will run at the same time.
- ³⁸ Trade Policy Review, Egypt, World Trade Organization, 2005.
- ³⁹ Ministry of Finance, June 2009
- ⁴⁰ "Egypt selects consortium for first infrastructure PPP," *Zawya*, 6 July 2009
- ⁴¹ An English translation of "The law regulating partnership with the Private Sector in infrastructure Projects, Services and Public Utilities" can be obtained from the website of the PPP Central Unit
- ⁴² As reported by the PPP Central Unit, a satellite PPP unit has been established in the Ministry of Transport.
- ⁴³ See note on the current standing of these projects.
- ⁴⁴ OECD Principles for Private Sector Participation in Infrastructure, Principle 8
<http://www.oecd.org/dataoecd/41/33/38309896.pdf>.
- ⁴⁵ Ibid. principle 16,
- ⁴⁶ Ibid, annotation to principle 23.

ANNEX

DIMENSION I-2: Privatisation Policy

A1. ASSESSOR INFORMATION

| | |
|-------------------------------|--|
| Name: | |
| Organisation/Ministry/Agency: | |
| Title/Position: | |
| E-mail: | |
| Phone: | |
| Fax: | |
| Mailing Address: | |
| Date of Assessment: | |

A2. KEY DATA

| | 2004/2005 | 2006/2007 | 2008/2009 |
|--|------------------|------------------|------------------|
| Number of privatisations undertaken (not including joint-ventures) | 16 | 45 | 15 |
| Total value of privatisations, not including joint ventures (LE mill) | 824 | 2,774 | 1,130 |
| Number of PPP projects undertaken | | | |
| Total value of PPP | | | |

A3. GENERAL OBSERVATIONS

To be filled in by the assessors:

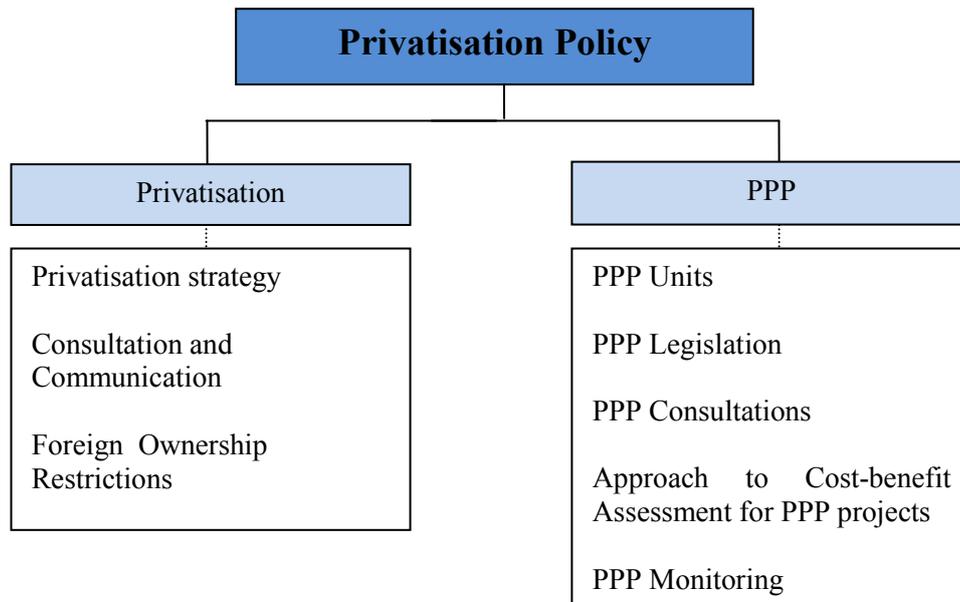
Please use this space to include any additional observations regarding the assessment of this policy dimension.

A4. OVERVIEW OF SCORES

| I-2 PRIVATISATION POLICY | | SCORE |
|---------------------------------|--|--------------|
| 2.1 | Privatisation | |
| 2.1.1 | Privatisation Strategy | 3 |
| 2.1.2 | Consultation and Communication | 3 |
| 2.1.3 | Foreign Ownership Restrictions | 4.5 |
| 2.2 | PPP | |
| 2.2.1 | PPP Units | 3.5 |
| 2.2.2 | PPP Legislation | 3 |
| 2.2.3 | PPP Consultations | 2.5 |
| 2.2.4 | Approach to Cost-Benefit Assessment for PPP projects | 3 |
| 2.2.5 | PPP Monitoring | - |

A5. ASSESSMENT FRAMEWORK FOR PRIVATISATION AND PPP PROJECTS

Figure A1. Assessment Framework for Privatisation and PPP Projects



Introduction

Privatisation is an important means by which governments create efficient and competitive markets for goods and services. The form of privatisation is not limited to a full transfer of ownership from the state to the private sector, but may also comprise partial ownership transfers or concessions to provide a specific service.

Public Private Partnerships (PPP) are closely related in that joint ventures between governments and private entities can be formed with a view to delivering more efficiently certain public goods and services, such as infrastructure development.

OECD countries have a wealth of experience in both privatisation and PPP projects. This background note is influenced by two primary documents: 2003 OECD report, *Privatising State-Owned Enterprises: An Overview of Policies and Practices in OECD countries* and the OECD *Principles for Private Sector Participation in Infrastructure*.⁴⁷

Objective and Scope

The objective of this evaluation framework is to provide policy makers with a means of assessing progress on reforms related to privatisation and PPP projects benchmarked against international best practices.

The indicators covering privatisation are designed to assess three specific elements: i) a comprehensive privatisation strategy; ii) the ability of a government to communicate its strategy to stakeholders; and, iii) the degree to which foreign investors are able to participate in privatisation exercises.

The indicators related to PPP projects are constructed to address five key elements: i) the existence of a specific unit within government to co-ordinate 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) undertaking cost-benefit analysis prior to making a decision on PPP projects; and v) monitoring the progress of PPP projects over their lifetime.

A5.1. MEASURES

Sub-Dimension 2.1.: Privatisation

Indicator 2.1.1.: Privatisation Strategy

Since the early 1980s privatisation has established itself as a main component of economic reform packages throughout the world, alongside other reforms such as trade and market liberalisation. For the purpose of this evaluation framework “privatisation” will be broadly defined as the process of transferring ownership of business from the public sector to the private sector. Regardless of its policy roots, implementing privatisation policies is complex and requires an effective and well co-ordinated strategy to produce the desired outcomes. As noted by the OECD, there is no one right or wrong approach. Nevertheless, effective privatisations exhibit common elements: i) a strong political commitment; ii) clearly identified and prioritised objectives; iii) a transparent privatisation process⁴⁸; iv) an effective communication campaign directed a key stakeholders; and, v) allocation of adequate resources to meet the policy demands and many tasks associated in a privatisation.⁴⁹ This indicator is intended to assess the key features – not the specific content – embodied in a privatisation strategy.

Questions

Has the government undertaken a process for formulating a privatisation and PPP strategy?

Has this process included defining: key objectives; potential constraints to meeting these objectives; a process for sequencing necessary reforms; and a communication plan?

| 2.1 – PRIVATISATION | | | | | |
|------------------------------|--|--|---|--|---|
| | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| 2.1.1 Privatisation strategy | Government does not have a privatisation strategy. | Strong political commitment to privatisation at the highest level (e.g. through policy statements by head of government) and clearly identified and prioritised objectives (e.g. creating efficient enterprises; budgetary and financial improvements; reducing the role of the state; etc). | Level 2 plus the government has outlined a transparent process to enhance the integrity of the privatisation process, gain credibility with potential investors, and political support from the public. | Level 3 plus a communication campaign is created to be directed at stakeholders (consumers, unions, employees of SOEs, private sector) to explain policy objectives of privatisation and means by which they will be achieved. | Level 4 plus allocation of resources (including human and financial resources) to meet the demands of policy for the skills and resources required to accomplish many of tasks involved in a privatisation. |

Indicator 2.1.2.: Consultation and Communication

A key lesson based on OECD experience is that a communication strategy/programme should be in place to explain the privatisation policy and to address stakeholder concerns.⁵⁰ An effective communication campaign directed at stakeholders in particular, explains the policy objectives of privatisation and the means by which they will be achieved in order to respond to public concerns and to gain support for the policy. The OECD *Principles for Private Sector Participation in Infrastructure*⁵¹ provides policymakers with recommendations on means to which increase consultation with stakeholders. A consultation mechanism should address a wide spectrum of stakeholders, which may include but not be limited to: domestic and foreign businesses, academia, NGOs, civil society, trade unions etc.). Consultations should be regular as opposed to *ad hoc*, and to avoid perceptions of impropriety potentially affected third parties should be invited to participate.

Questions

Does the government undertake communication and consultation activities to inform and educate stakeholders about its privatisation objectives and policies?

Are communications materials and consultations directed at a broad cross-section of stakeholders?

Are consultations announced in advance and are summaries published afterwards?

| 2.1 – PRIVATISATION | | | | | |
|---|--|--|---|---|--|
| | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| 2.1.2 Consultation and Communication | The government does not undertake any consultations with stakeholders. | The government is developing a communication process to consult and explain its objectives and policies with respect to privatisation. | The government undertakes <i>ad hoc</i> communications and consultations, and only at the behest of a limited number of stakeholders (<i>e.g.</i> only the domestic business community; foreign investors are not involved, nor are other third parties such as academia, labour organisations or NGOs). | The government undertakes regular and timely consultations with only those stakeholders directly involved in a possible privatisation process (<i>e.g.</i> domestic and foreign businesses but does not include interested third parties). Consultations are announced in advance providing participants with time to prepare. | Level 4 but interested third parties are included in the consultations; this includes but is not limited to academia, labour organisations, NGOs and other civil society groups. |

Indicator 2.1.3.: Foreign Ownership Restrictions

As noted in *Privatising State-owned Enterprises: An Overview of Policies and Practices in OECD countries* the policy on foreign ownership of privatised state-owned enterprises can be a sensitive issue, particularly in the context of industries that are considered to be of national and strategic importance. The rationale for opening up privatisation transactions to participation by foreign investors is that they can be an important source of capital, especially where the domestic pool of capital is too small to absorb the offerings. This is particularly relevant to emerging market economies and former transition economies where domestic financial resources are insufficient, resulting in transactions involving sale of assets to other publicly owned bodies or other levels of government, with detrimental effects on corporate governance and performance of these companies.⁵² The experience of OECD countries has shown that only a very narrow limitation has been required to address specific national security and public interest concerns.⁵³

Questions

Are foreign investors permitted to participate in privatisation projects?

Do restrictions exist on foreign investor participation in privatisation projects?

Is a foreign investor permitted to fully own and control a privatised entity?

Does the government apply or use post-privatisation control devices when a foreign investor successfully obtains control of a privatised entity?

| 2.1 – PRIVATISATION | | | | | |
|--------------------------------------|---|--|---|--|---|
| | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| 2.1.3 Foreign ownership restrictions | Foreign investors are denied participation in privatisation projects. | Government is reviewing its position on restricting all foreign investors from privatisation projects. | Foreign investors may participate in privatisation projects, but, foreign investors are restricted to owning a minority position. | Level 3 plus foreign investors may hold or own a majority position in privatisation projects. However, the government retains the use of post-privatisation control devices such as “golden shares.” | Nearly all restrictions on foreign investor participation have been removed. Limited and narrow restrictions exist to address national security and public interest concerns. These restrictions are applied on case by case basis. |

Sub-Dimension 2.2.: PPP projects

Indicator 2.2.1.: PPP Units

PPP units have been created in response to a weakness in government machinery for managing PPP programmes effectively. As noted in the *OECD Principles for Private Sector Participation in Infrastructure*:

“authorities responsible for privately operated infrastructure projects should have the capacity to manage the commercial processes involved and to partner on an equal basis with their private sector counterparts.”

World Bank analysis suggests that successful examples of PPP units share similar traits. Their staff show a mix of expertise (lawyers, economists, project finance experts, engineers, etc.) and they tend to be attached to departments or ministries with a horizontal policy co-ordinating function, such as treasury or finance ministries. They also have a real overall policy co-ordination function supported by high-level political commitment.

.

Questions

Has the government created a PPP unit to oversee and co-ordinate PPP policy?

Is the PPP unit adequately staffed with a mix expertise?

Is the PPP unit located in a central/horizontal government ministry such as a treasury department or finance ministry?

Does the PPP unit enjoy high-level political support within the government?

| 2.2 – PPP | | | | | |
|-----------------|---------------------------------------|--|--|--|---|
| 2.2.1 PPP Units | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| | No PPP unit exists in the government. | The government has initiated a process of creating a PPP unit. | The government has created a PPP unit which is staffed with multidisciplinary teams consisting of lawyers, project finance experts, economists etc. However, the unit has only an advisory role in PPP policy and projects and does not have an overall policy co-ordination function. | Level 3 plus the PPP unit has a formalised role to co-ordinate overall PPP policy and is attached to a treasury department (or Ministry of Finance). | Level 4 plus the PPP unit has high-level political support within the government. |

Indicator 2.2.2.: PPP Legislation

The legal environment for PPPs may include several layers: national legislation; regulations and ordinances at the sub-national level; and the specific contractual obligations between public and private partners in the project. This indicator focuses on the legislative framework at the national level. Laws authorising and regulating PPPs may take the form of a single horizontal law covering multiple sectors or there may be several sector-specific pieces of legislation. Experience has shown that the development of enabling, consistent national legislative and regulatory structures greatly facilitates the identification, development, and implementation of PPPs. A legislative framework on PPP-related projects should include provisions on granting concessions and cover the entire lifetime of the project (*i.e.* the design, build, finance, ownership, and operation stages, and the eventual transfer back to the public sector).

Questions

Has the government approved sector-specific and/or horizontal legislation covering PPP projects?

Does the legislative framework included laws and regulations covering concessions?

Do the legal and regulatory frameworks covering PPPs clearly identify the roles and responsibilities of all parties involved in a PPP project?

Does the government’s legislative and regulatory framework covering PPPs go beyond concessions and include other forms of PPPs?

| 2.2 – PPP | | | | | |
|-----------------------|--|---|--|--|--|
| | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| 2.2.2 PPP Legislation | There is no sector-specific and/or horizontal legislation or regulatory framework covering PPPs. | Government is in the process of drafting sector-specific and/or horizontal legislation covering PPPs. | The government has approved sector-specific and/or horizontal legislation covering limited forms of concessions (<i>e.g.</i> only the operation and management of infrastructure projects). The concession law clearly identifies the roles and responsibilities of the public and private sectors. | The government is in the process of expanding its sector-specific and/or horizontal legislation to make room for additional forms of PPPs. | The government has approved sector-specific and/or horizontal laws providing a legal and regulatory framework for PPPs covering the entire lifetime (<i>e.g.</i> design, build, finance, ownership, operate and transfer) of the project. |

2.2.3. PPP Consultations

The *OECD Principles for Private Sector Participation in Infrastructure* states that: “private participation in infrastructure is unlikely to be successful unless authorities have assured themselves beforehand that the envisaged undertakings are in the public interest and are acceptable to consumers and other stakeholders.”⁵⁴ Open, transparent, consistent consultation with relevant stakeholders, including, but not limited to, consumers (*i.e.* domestic end users), domestic businesses, potential foreign investors, etc. helps the authorities secure buy-in for PPP projects.

Questions

Does the government undertake consultations prior to engaging in a PPP project?

Does the government include consumers (i.e. end users), domestic firms and private foreign investors in its consultations?

How often does the government undertake PPP-related consultations (e.g. consistently or on an ad hoc basis)?

| 2.2 – PPP | | | | | |
|-------------------------|---|--|--|--|---|
| | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| 2.2.3 PPP Consultations | The government does not undertake any consultations with stakeholders prior to launching a PPP project. | The government has begun a process of consultations but only restricts it to selected domestic business interests. | Level 2 plus the government includes domestic end-users of PPP projects in sporadic consultations. | Level 3 plus the government has a strong track record of consistently consulting domestic private interests and end-users. | Level 4 plus the government opens all PPP consultations to foreign investors. |

Indicator 2.2.4. Approach to Cost-Benefit Assessment for PPP Projects

The decision to involve the private sector in PPP projects should be guided by an assessment of the relative long-term costs and benefits. The *OECD Principles for Private Sector Participation in Infrastructure* provides important four important guidelines in this regard. First, the cost benefit analysis should include:

1. all alternative modes of delivery (*e.g.* divestiture, concessions, management and service contracts) including financial and non-financial (*e.g.* sustainable development) costs and benefits over a project's life cycle
2. analysis of the degree to which costs can be recovered from end-users and, in the event of shortfalls, what other sources of finances can be mobilised;
3. a risk assessment based on the public interest (*e.g.* shifting too much risk on to the private sector may result in higher prices for consumers to offset the risk).

The fourth OECD recommendation is that the potential public finance implications (*e.g.* the fiscal implications of issuing guarantees, which includes in the event of macroeconomic crises) of sharing responsibilities with the private sector should be fully understood.⁵⁵

Questions

Does the government undertake a cost-benefit analysis for PPP projects?

As part of its analysis does the government take into account all alternative modes of delivery including financial and non-financial costs and benefits over the PPP project lifecycle?

Does the cost-benefit assessment should include analysis on the degree to which costs can be recovered from end-users and, in the case of shortfalls, what other sources of finances can be mobilised?

Does the cost-benefit analysis include a risk assessment based on the public interest?

Are the public finance implications of sharing responsibilities with the private sector should be fully understood?

| 2.2 – PPP | | | | | |
|---------------------------------|---------|---|---|--|---|
| 2.2.4 PPP Cost Benefit Analysis | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| | | Government does not undertake a cost-benefit analysis prior to undertaking a PPP project. | As part of its cost-benefit analysis the government takes into account all alternative modes of delivery including financial and non-financial costs and benefits over the PPP project lifecycle. | Level 2 plus the cost-benefit assessment includes analysis of the degree to which costs can be recovered from end-users and, in the case of shortfalls, what other sources of finances can be mobilised. | Level 3 plus the cost-benefit analysis includes a risk assessment based on the public interest. |

Indicator 2.2.5: PPP Monitoring

To ensure that a PPP project meets its stated policy objectives, it should be monitored throughout its lifetime. The *OECD Principles for Private Sector Participation in Infrastructure* advise that “formal agreements between public authorities and the public sector should be specified in terms of verifiable infrastructure services to be provided to the public on the basis of output or performance based specifications.”⁵⁶ An additional component of a monitoring mechanism should include access to information about the financial and technical state of a PPP project as well as the future business and budget plans of the project’s partners.⁵⁷

This indicator examines the degree to which a monitoring mechanism is in place, whether the mechanism consistently (*i.e.* on an annual basis) monitors the financial and technical state of PPP projects, and whether future business and budget plans of the project’s partners are open to scrutiny.

Questions

Is there a mechanism in place to monitor the performance of PPP projects?

What aspects of PPP projects are monitored (e.g. financial and technical details)?

Does the government monitor all PPP projects and how often?

As part of the monitoring process, is the private partner in a PPP project required to submit on an annual basis its business and budget plans for the following year?

| 2.2 – PPP | | | | | |
|----------------------|--|---|--|--|---|
| | Level 1 | Level 2 | Level 3 | Level 4 | Level 5 |
| 2.2.5 PPP Monitoring | There is no mechanism in place to monitor the performance of PPP projects. | The government is in the process of designing a mechanism to monitor the performance of PPP projects. | The government monitors on an <i>ad hoc</i> and inconsistent basis the financial and technical state of some but not all PPP projects. | The government monitors on a consistent basis (<i>e.g.</i> on an annual basis) the financial and technical state of every PPP project that it embarks upon. | Level 4 plus the government requires the private partner in the PPP project to submit at least on an annual basis its business and budget plans for the following year until the end of the PPP contract. |

Notes to Annex

⁴⁷ OECD Principles for Private Sector Participation in Infrastructure, www.oecd.org/dataoecd/41/33/38309896.pdf

⁴⁸ Elements of such a transparent privatisation process include: selecting advisors and buyers through competitive process; conflict of interest guidelines in place; competition and regulatory frameworks are in place prior to sale (*e.g.* enact a competition law if necessary); efforts to restructure state-owned enterprises before privatisation; policy on foreign investor participation; sequencing sales (*e.g.* beginning with assets in more competitive sectors); labour issues resolved within the soon-to-be-privatised enterprises; treatment of privatisation proceeds; methods to be used (*e.g.* public offerings, trade sales, mixed sales, management and employee buyouts); and policy on post-privatisation control devices (*e.g.* use of golden shares), if any.

⁴⁹ OECD (2003) Privatising State-owned Enterprises: An Overview of Policies and Practices in OECD Countries.

⁵⁰ *Ibid.*

⁵¹ OECD (2007) Principles for Private Sector Participation in Infrastructure.

⁵² OECD (2003) Privatising State-owned Enterprises: An Overview of Policies and Practices in OECD Countries.

⁵³ *Ibid.*

⁵⁴ OECD Principles for Private Sector Participation in Infrastructure, Principle 8
<http://www.oecd.org/dataoecd/41/33/38309896.pdf>.

⁵⁵ *Ibid.*, Principles 1, 2, 3, 4.

⁵⁶ *Ibid.*, Principle 16.

⁵⁷ *Ibid.*, annotation to principle 23.