The Investment Security in the Mediterranean Newsletter

December 2014, Issue 5

*The **Investment Security in the Mediterranean (ISMED) Programme**, implemented by the MENA-OECD Investment Programme with financial support from the European Union, seeks to increase infrastructure investment in the region. ISMED provides a forum where governments, international financial institutions, development agencies, private sector operators, lenders and investors, work together toward the objective of facilitating private-sector investment in infrastructure projects in the MENA region with a focus on legal investment protection and public-private partnerships (PPPs). ISMED provides policy support to governments, helps them engage in public-private dialogues on reducing legal risks for specific infrastructure projects and fosters integrated approaches to innovative policy and financial tools to develop PPPs.*

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ISMED: The Way Forward

On 4 December 2014, ISMED held its Annual conference in Paris on "Defining a New Way for Infrastructure Investment in the Middle East and North Africa". The meeting, described in further detail on page 5, was a turning point for the ISMED initiative as it marked the end of the ISMED pilot-project stage and the beginning of a transition to a renewed ISMED Programme. In the months ahead, ISMED will build upon ISMED's conclusions and findings to:

- Strengthening legal and institutional frameworks for private-sector investment in infrastructure in the Middle East and North Africa,
- Promote greater understanding of PPPs and provide assistance to build professional expertise in MENA-region governments to ease implementation of infrastructure projects,
- Provide country and sector level analysis of barriers to private sector investment in infrastructure in the MENA-region.

As we move forward we look forward to the continued cooperation and participation of our partners in the MENA region, at international financial institutions and international organizations.

Newsletter of the MENA-OECD Investment Programme.
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With the financial assistance of the European Union

ISMED in Jordan (2/2): "Optimising the Incentives Framework for Renewable Power Infrastructure"

Jordan benefits from great potential for the development of solar and wind power. Yet despite boasting a relatively solid policy framework for private sector participation in clean energy projects, new renewable energy capacity has been slow to come online.

Early in 2014, it was agreed that the ISMED Jordan project would focus on enhancing the legal and regulatory framework for renewable power in the Kingdom. With ambitious targets defined in the 2007 Energy Master Plan and a dedicated Renewable Energy and Energy Efficiency Law (REEL) adopted in July 2012, Jordan is a leader in the clean energy field in the region. Nonetheless, progress has been slow and the first clean energy projects are still under construction and have seen much delay (e.g. Tafilah wind project).

Against this backdrop, the ISMED team undertook an assistance mission to Amman in October 2014, in order to advance ISMED's study of Jordan's Renewable Energy Incentives Framework (see previous Newsletter editions).

Public-Private Dialogue in Amman

After a period of assessment and active consultations, the ISMED Support Programme held a formal Public-Private Dialogue on Jordan's Renewable Energy Sector, in collaboration with the Ministry of Environment, on 26 October 2014. The event was intended to examine and discuss the key findings and recommendations resulting from the draft *Assessment Report on Jordan's Incentives Framework for Renewable Power Infrastructure*, and collect comments and input from participants prior to the report's finalisation.

The event gathered around 30 participants drawn from the public and the private sectors, including: H.E. Mr Ahmed El-Qatarneh, Secretary-General of the Ministry of the Environment, along with senior officials from the Ministry of the Environment, Ministry of Energy and Ministry of Water and Irrigation; renewable energy project developers and investors; international financial institutions, development agencies and the EU Delegation to Jordan.

Chaired by Ms. Nicola Ehlermann-Cache, Head of the MENA-OECD Investment Programme, the meeting started with a presentation of the OECD *Policy Guidance for Investment in Clean Energy Infrastructure,* developed jointly by the Investment and Environment Policy Committees of the OECD (see Project Insight). Philip Gradwell, Consultant for the Jordan Project, then presented the Draft Assessment Report and introduced the rationale behind each of the recommendations. This was followed by a Roundtable Discussion, with a panel consisting of four experts:

- Mr Raouf Dabbas, Senior Advisor, Ministry of Environment ;
- Dr Heike Harmgart, Jordan Resident Office, EBRD;
- Dr Wissam Rabadi, Jordan Competitiveness Program, USAID ;
- Mr Ennis Rimawi, Chairman of Millenium Energy Industries (private sector).

Topics discussed included the need to:

- Update references to the existing legal framework to take into account the recent Investment Law passed in October 2014 and a recent study developed by the Ministry of Environment ;
- Emphasize the role of institutional arrangements in promoting renewable energy across Ministries and interested parties, potentially via a dedicated renewable energy agency (as is the case for nuclear energy) ;
- Foster predictability, transparency and enforceability of regulations as key drivers for an effective incentives framework, especially with regards to the procurement process ;
- Clarify Jordan's position on local-content requirements (LCRs), and stress the need for renewable energy to create jobs across the value chains, not only in downstream segments but also in manufacturing and engineering activities.

Jordan's Ministry of Energy and Mineral Resources

OECD Policy Analysts and experts involved in the Project also held informal discussions with Dr. Ziad Jibril Sabra, Director of the Renewable Energy Department at the Ministry of Energy and Mineral Resources (Jordan). The objective was to hear the views of the Ministry on the draft Assessment Report, and introduce the clean energy component of the new MENA Transition Fund project.

Dr Ziad Jibril Sabra welcomed the Report as timely and insisted on having his comments included in the final version, so as to better reflect the recent efforts made by the Government of Jordan in advancing the renewable energy agenda through several rounds of direct proposals for RE projects.

Looking Ahead: Achieving the 2020 renewable target

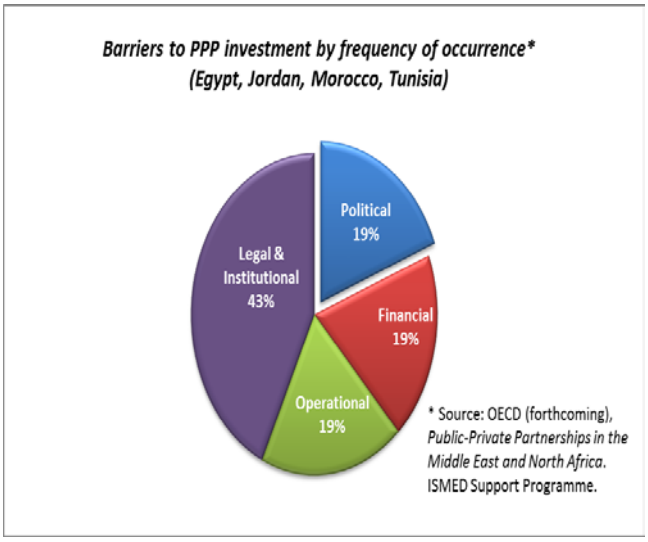
Overall, the incentives framework in Jordan was acknowledged as being relatively advanced, with some gaps in the way it is implemented to specific projects. Participants highlighted the necessity of an integrated whole-of-government strategy, involving all stakeholders, starting with the Ministry of Energy.

The frank discussion that took place between private-sector representatives and public officials was noted as especially fruitful. It was suggested by officials from the Ministry of Environment that when finalised, the report's recommendations would be communicated to Cabinet for approval.

Public-Private Partnerships in the Middle-East and North Africa: A Handbook for Policy-Makers

Faced with significant infrastructure needs, caused by population growth, urbanisation and economic expansion, MENA governments are increasingly resorting to public-private partnerships (PPPS) as an alternative to conventional public procurement. PPPs require a certain framework and approach to attract private sector investors, and this is not always in place in the MENA-region, especially in countries new to PPPs.

Against this backdrop, the "PPP handbook" publication, launched under the ISMED initiative, builds on existing OECD instruments and extensive consultations with international financial institutions (IFIs) as well as local stakeholders to identify the most relevant barriers and obstacles to private sector participation in PPP projects and ways to overcome them. While this handbook can be used by policy makers for PPPs across all sectors, the ISMED team chose to focus on two sectors for which the use of PPPs may have the most development impact: transportation and renewable energy.



In terms of methodology, the OECD selected key infrastructure projects in Egypt, Jordan, Morocco and Tunisia[1] involving private sector participation in the last decade (starting in 2005). For each project, the main risks and barriers faced were identified through OECD assessment missions in the applicable country, consultations with IFIs involved, and desk research. Seventeen types of risks and barriers were identified and grouped into four categories: political, financial, legal and institutional (including government capacity), and operational risks.

In each of the focus countries, legal and institutional risks were the most frequent barriers identified: together with operational risk, legal and institutional barriers make up the majority of obstacles encountered, with a low of 52% in Egypt, 64% in Jordan, 65% in Tunisia and a high of 71% in Morocco. This is consistent with the major findings of ISMED consultations but runs contrary to the view sometimes expressed that political risk is the most important factor inhibiting investment in the region. Political risk is cited as a barrier in a low of 11% of projects in Morocco, rising to 16% in Jordan, 24% in Egypt and 25% in Tunisia, the percentages for the latter two reflecting political events since 2011.

Professional capacity and political buy-in

One of the most striking and recurring issues was the capacity of governments and public officials. This goes beyond the ability to execute and manage PPP arrangements and reaches to all levels of government and the need to understand what a PPP is and how it operates. Governments must realise

[1] The G7 Deauville Partnership process recognises these four countries, alongside Libya and Yemen, as "Arab countries in transition".

that PPPs are not appropriate for all projects and that when they are appropriate a great deal of preparation and resources must be dedicated to their execution.

Strong legal and institutional frameworks

One of the most important aspects of PPPs is the legal regime. These are long-term arrangements and it may take many years for investors to recoup their investment. Therefore transparency and predictability are very important requirements for investors. PPPs also require an overall and comprehensive strategy including intergovernmental coordination and a whole of government approach. For the PPP legal framework to be appropriate and suitable to private sector operators and investors, steps to be taken by governments include:

- Development of a comprehensive PPP law addressing all aspects of PPP procurement ;
- A transparent and predictable bidding processes ;
- Enhanced legal security and guarantees against expropriation ;
- Robust dispute resolution provisions, both contractual and treaty based ;
- Develop overall strategies that include all areas of government.

De-risking selected projects

As for project selection and de-risking, preparation is key and what has been observed is the lack of resources dedicated to project selection and to the preparation phase. As a result, inappropriate risk allocation with regards to the private sector and the choice of location often made on a political basis come out as the most frequently cited obstacles. The measures that need to be taken by MENA governments include: conducting feasibility studies prior to the involvement of potential investors; choosing location on the basis of demand or volume of services required (this is essential in transport-concession based projects) and assessing realistically the risks the private sector is willing to take.

A whole-of-government approach

An important issue for PPP investment in transport and renewable energy projects lies in economically-distorting energy subsidies, prevalent in the MENA region. This again illustrates the need for a whole-of-government approach which may include the necessity to reform these subsidies as a perquisite for a successful PPP project.

The OECD will continue to work closely with local stakeholders and disseminate the findings and recommendations resulting from the Handbook.

The ISMED Closing Conference: "Defining a Way Forward for Infrastructure Investment"

On 4 December 2014, ISMED held its Annual conference in Paris entitled "Defining a Way Forward for Infrastructure Investment in the MENA Region". The meeting gathered 80 participants, including senior officials from MENA and OECD governments and representatives of IFIs, development agencies and the private sector.

Four major publications were discussed at the Conference:

- Protecting Investments: Legal Frameworks for Investment in Egypt, Jordan, Morocco and Tunisia;
- Public-Private Partnerships in the Middle East and North Africa: A Handbook for Policy-Makers;
- Egypt Assessment Report: "Promoting Nile River Transport";
- Jordan Assessment Report: "Optimising the Incentives Framework for Renewable Energy.

The European Commission has been a key partner of ISMED and was one of the first to address the conference. The Commission's intervention noted emphasised that infrastructure can help to unleash the region's potential but that support was required to implement reforms, improve cooperation and coordination among IFIs and international organisations and to strengthen legal frameworks and improve investment protection.

The Conference benefited from the participation of a number of senior officials including Mr. Abdelghni Lakhdar, Economic Advisor to the Moroccan Head of Government, H.E. Dr. Sami Al-Araji, Chairman of the Iraqi National Investment Commission, Mr. Jacques Villemain, Deputy Permanent Representative of France to the OECD, and H.E. Mr. Fareed Yasseen, Ambassador of Iraq to France. H.E. Mr. Noureddine Zekri, Tunisia's Secretary of State in charge of Development and International Cooperation, thanked ISMED for providing a forum where MENA

governments can share experiences and ideas on how to improve their investment framework and all emphasised the timeliness and importance of ISMED's work.

Mr Carlos Conde, Head of the Middle-East and Africa Division at the OECD, concluded the meeting by summarising key ISMED findings:

- There is a need for enhanced co-ordination among institutions involved in accelerating infrastructure development in the region. Based on OECD expertise in policy dialogue, ISMED can serve as a platform to exchange experiences and enhance the coherence, efficiency and co-ordination of actions.
- Clear, stable legal frameworks are essential. In order to restore investor confidence, MENA governments need to guarantee legal security by: accelerating reforms of the legal and institutional investment regimes and foster protection, transparency and predictability; strengthening the rule of law, streamlining procedures and improving dispute resolution processes including via alternative mechanisms (arbitration, mediation); ensuring better coherence between domestic and international investment frameworks and considering investment treaty networks as a tool to further reassure foreign investors.
- With regard to PPPs, capacity and institutional knowledge at all levels of government is essential. Leadership and political commitment are key as all successful projects have strong political backing. At the more technical level, officials (from central and sectorial government institutions) must have the skills necessary to select, prepare execute and manage PPPs from the procurement phase throughout the up to 30-year life of the contract.
- ISMED's sectorial and country-specific work indicate that horizontal frameworks are necessary. The desire of the private sector to work with knowledgeable and empowered government officials, and the need for integrated strategies and a whole of government approach, does not change from sector-to-sector or country-to-country.

Looking ahead ISMED will continue to play a role in strengthening legal frameworks and building capacity including: a four-day training event being held in co-operation with the IMF Center for Economics and Finance in Kuwait in March 2015, and participation in a similar event planned for Tunisia; wide dissemination of, "Public-Private Partnerships in the MENA Region: A Handbook for Policy Makers," and activities to support implementation of its recommendations; and the continued work of the ISMED Working Group to develop innovative solutions to leverage financial and policy tools in support of infrastructure projects.

PROJECT INSIGHT:

The OECD Policy Guidance for Investment in Clean Energy Infrastructure

The OECD *Policy Guidance for Investment in Clean Energy Infrastructure* (OECD, 2014) is a non-prescriptive tool to help policy makers identify ways to mobilise private investment in clean energy infrastructure. It raises key issues for policy makers to consider, including in the areas of:

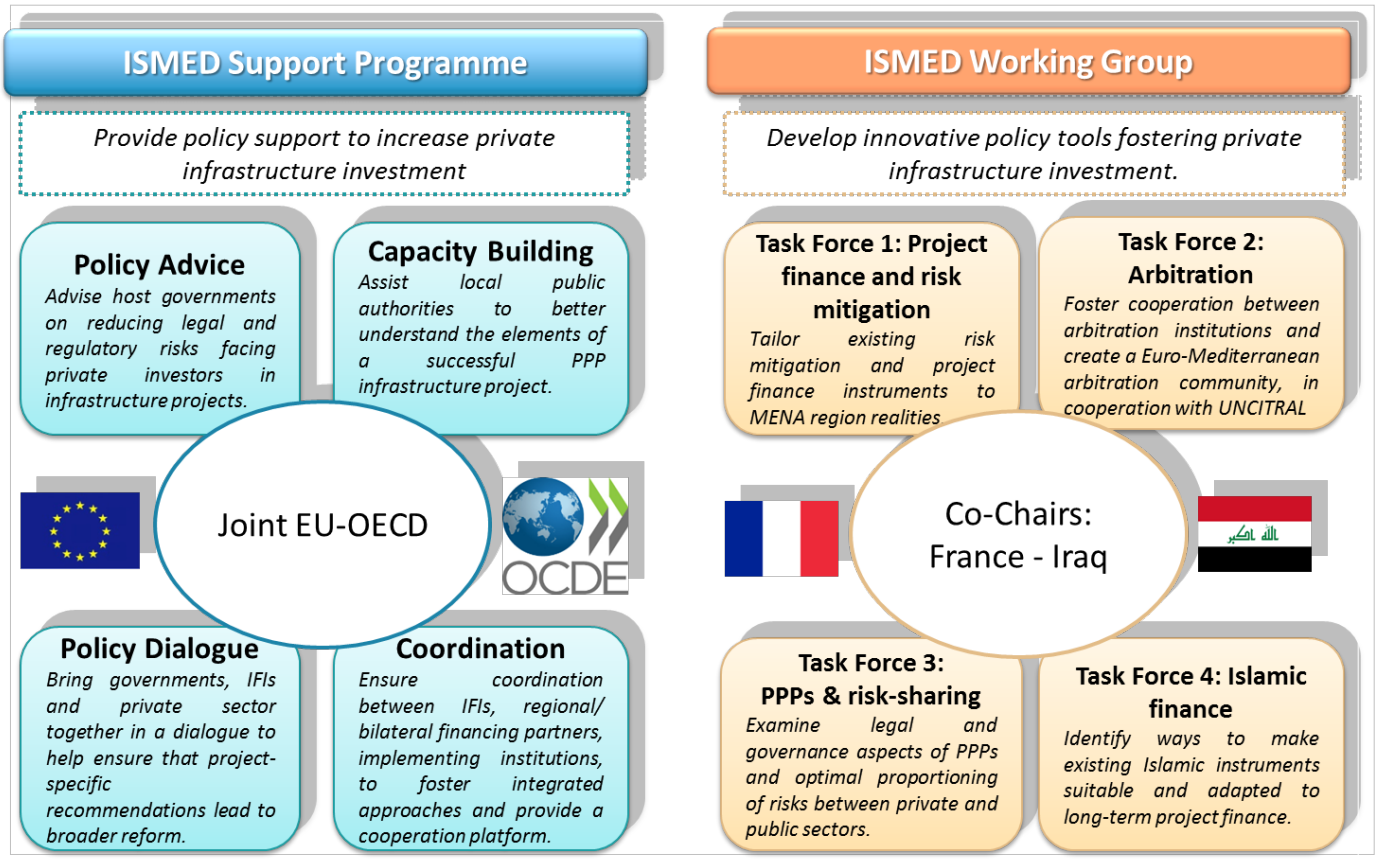
- **Investment policy:** applying investment policy principles such as non-discrimination of international versus domestic investment, investor protection and intellectual property protection, contract enforcement and transparency;
- **Investment promotion and facilitation:** improving coherence of the broad system of investment incentives and disincentives, e.g. by setting long-term goals, setting well-targeted and time limited incentives (e.g. feed-in tariffs), and facilitating the licensing of renewable energy projects;
- **Energy market design and competition policy:** levelling the playing field between independent power producers (IPPs) and state-owned enterprises (SOEs) and between national and foreign actors to tackle market rigidities that favour fossil fuel incumbency in the electricity sector;
- **Financial market policy:** strengthening domestic financial markets and providing specific financial tools and instruments to facilitate access to long-term finance;
- **Governance of energy market institutions:** enhancing co-ordination between different levels of governance (e.g. to align national and sub-national policies), ensuring the independence of the electricity market regulator, and coordinating the planning and deployment of the electricity grid with that of clean energy generation; and
- **Other policies and cross-cutting issues:** regional co-operation; making and implementing the choice between public and private provision of clean energy infrastructure; and ensuring that clean energy policies are compatible with World Trade Organization (WTO) rules.

The *Policy Guidance* benefited from substantial contributions by the World Bank and the United Nations Development Programme (UNDP) and was annexed to the Communiqué of G20 Finance Ministers and Central Bank Governors at their meeting in October 2013.

The OECD is now going to apply the *Policy Guidance* to specific country contexts, in partnership with interested countries and international organisations, to help governments assess and reform their domestic policy framework for clean energy investment. One of the main outcomes of this project will be the publication of *Clean Energy Investment Policy Reviews* which would include a road map of actionable reforms for participating countries.

Source: OECD (2014), *Policy Guidance for Investment in Clean Energy Infrastructure : Expanding Access to Clean Energy for Growth and Development,* Report submitted to the G20 with inputs from the World Bank and UNDP, OECD Publishing, Paris

About ISMED



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