MENA-OECD INVESTMENT PROGRAMME

Public Private Partnerships for Infrastructure Financing

Elements to consider

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Meeting of Working Group 1 and 2
- Investment Policy and Promotion -
Paris, 28-29 October 2008

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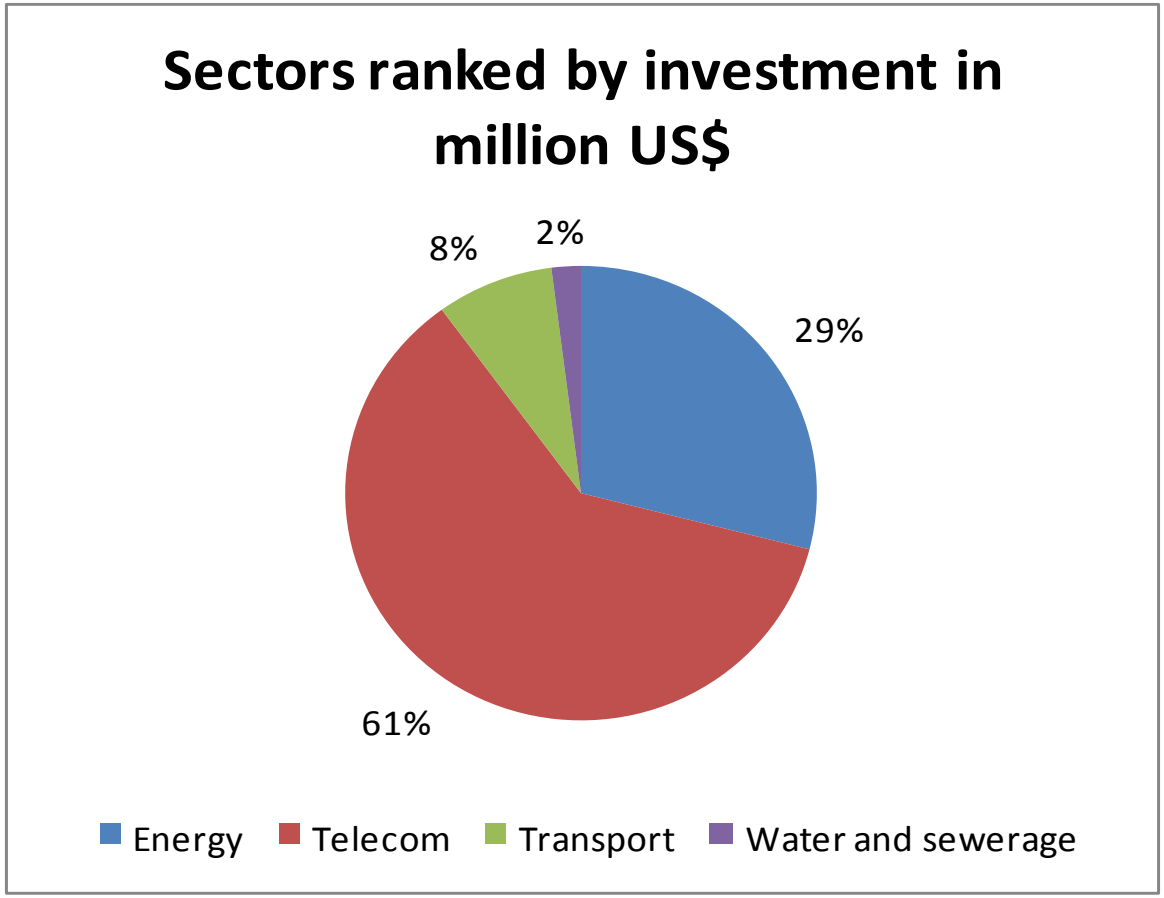
Privatisation/PPP: Choice of Methods



In the MENA Region, the dominance of the ***energy*** and ***telecom sector*** is even more obvious than on average (90%).

Projects in the ***transport sector*** comprised: airports (US$ 2,103), railroads (US$ 343), roads (US$ 104), seaports (5,406).

Moreover, the ***water and sewerage*** sectors count 2% of the total vestments

Source: World Bank PPI Database, 2008.

This page provides a snapshot of infrastructure projects in low- and middle-income countries by developing region. Projects included are management or lease contracts, concessions, greenfield projects, and divestitures. On MENA the database contains data from 1990 to 2007.

PPPs: Value For Money Arguments

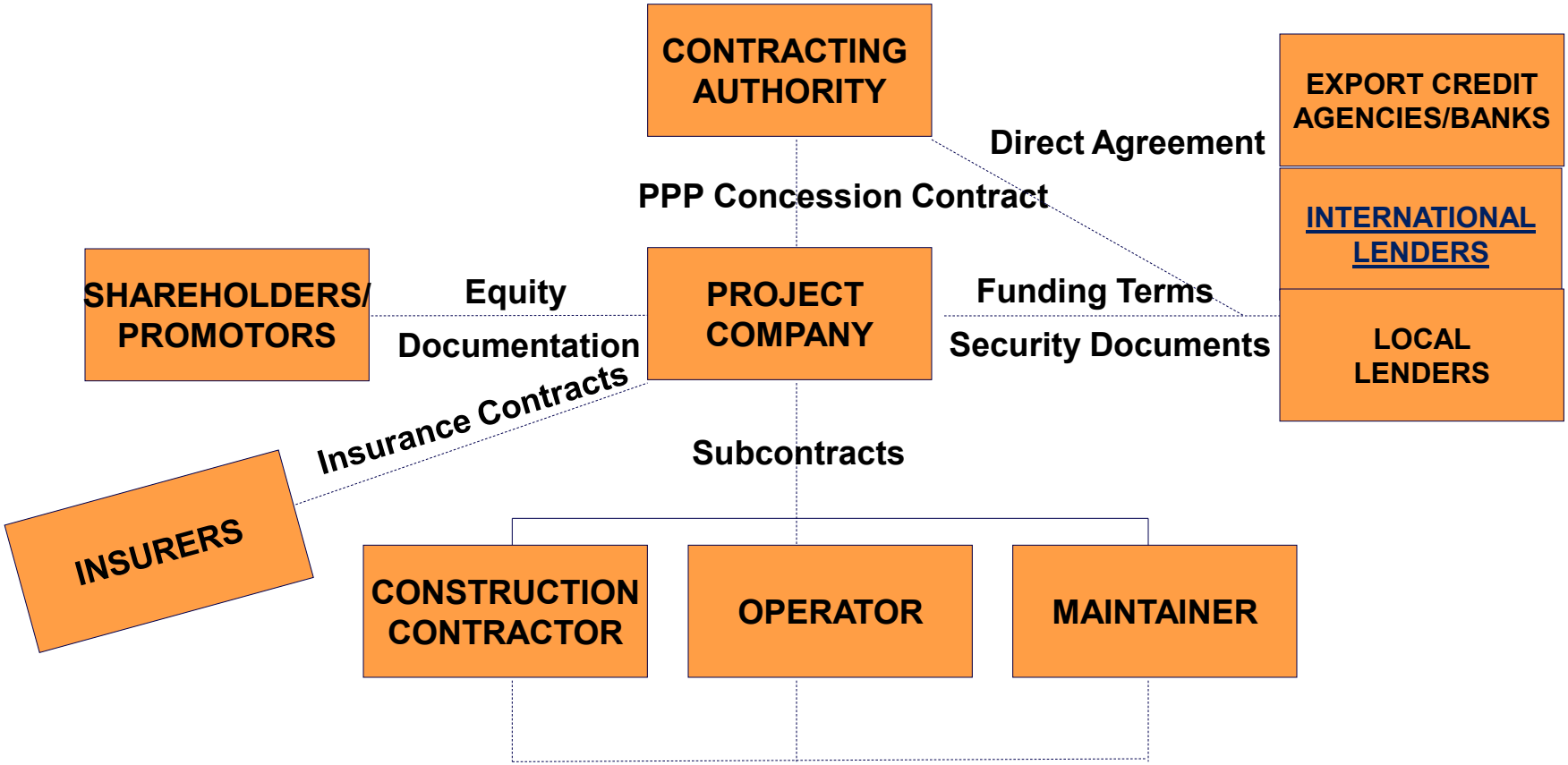
- PPPs allow private sector financing
- PPPs make projects affordable
- Private sector takes life cycle cost risk
- PPPs make use of private sector skills
- PPPs force partners to price risks
- Public sector focus on outputs from start
- Providers incentivised to optimise over project duration

Different forms of PPPs/Privatisation

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

Source: Cohen, Shams, Attia, 2002

Project Level: Parties and Legal Documents



Regulatory Frameworks for Public Private Partnerships in MENA countries

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Two approaches

TRANS-SECTORAL
Privatization/ Concession/
Public Private Partnership legislation

operative

- Algeria (2001)
- Bahrain (2002)
- Djibouti (1997)
- Jordan (2000)
- Lebanon (2000)
- Morocco (1989/98)
- Oman (2004)
- Yemen (1999)

in approval process

- Tunisia

planned

- Egypt
- Iraq

SECTORAL
Sector regulations/
Sector authorities (only)

- Egypt
- Libya
- Qatar
- Kingdom of Saudi Arabia
- Syria
- United Arab Emirates/ Abu Dhabi

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Multilevel Regulatory Framework

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I. International Level:

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

II. National Level:

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

(III. Municipality Laws)

IV. Contractual arrangements for individual projects

V. Internationally recognised Best-Practice Guidelines

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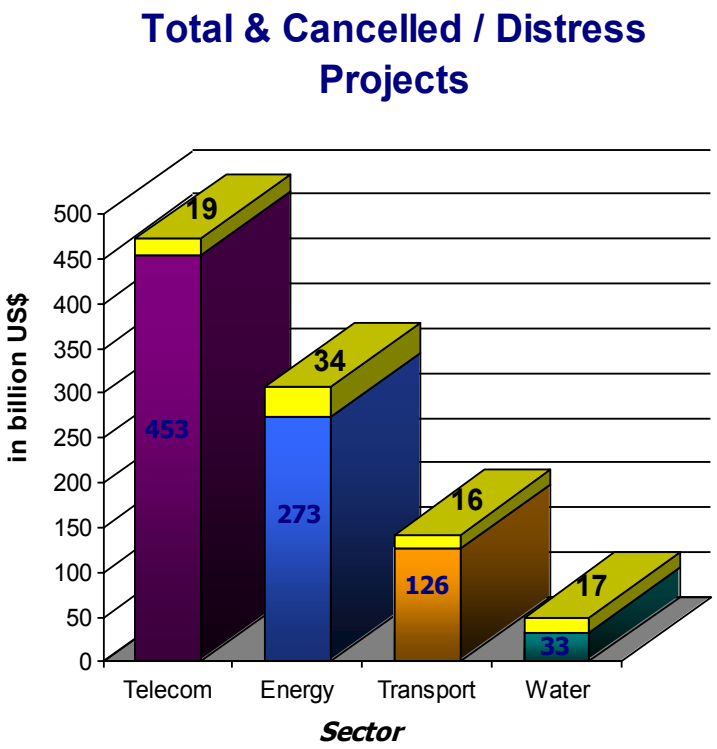
What happens if a project goes wrong?

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



Source: *World Bank PPI Database, 1990-2005*

Investor's questions

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- Does the law permit the private provision of infrastructure services?
- Are foreigners legally entitled to hold concessions?
- Are there limits to the foreign operation or ownership of public utilities or services?
- Are foreigners excluded from certain sectors or are there other forms of discrimination against foreigners such as preferences given to domestic bidders?
- Are foreigners permitted to own land and exercise all related ownership rights?
- Are government rights to expropriate limited in scope and subject to judicial review?
- In case, property rights are affected by government action, are investors compensated, and what standards apply to compensation?
- Do labor and immigration laws present an environment conducive to operation of the project, does the law mandate the use of local employees?
- Are there restrictions on the use of foreign managers, what are the visa requirements for foreign personnel?
- Does the law require environmental impact studies, environmental permits, or licenses?
- If project revenues are in local currency, does the concessionaire have the ability to exchange local currency into foreign currency and how will the rate be determined?
- Can project revenues be transferred offshore or repatriated to the country where the ownership of the project company is domiciled?

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Fiscal integration of PPP

- PPP is most effective when implementation is closely coordinated with the Ministry of Finance

- Why is this?

  - Line ministries are very comfortable with traditional public procurement

  - The ministry of finance has the incentive: transparent procurement focused on outputs and efficiency

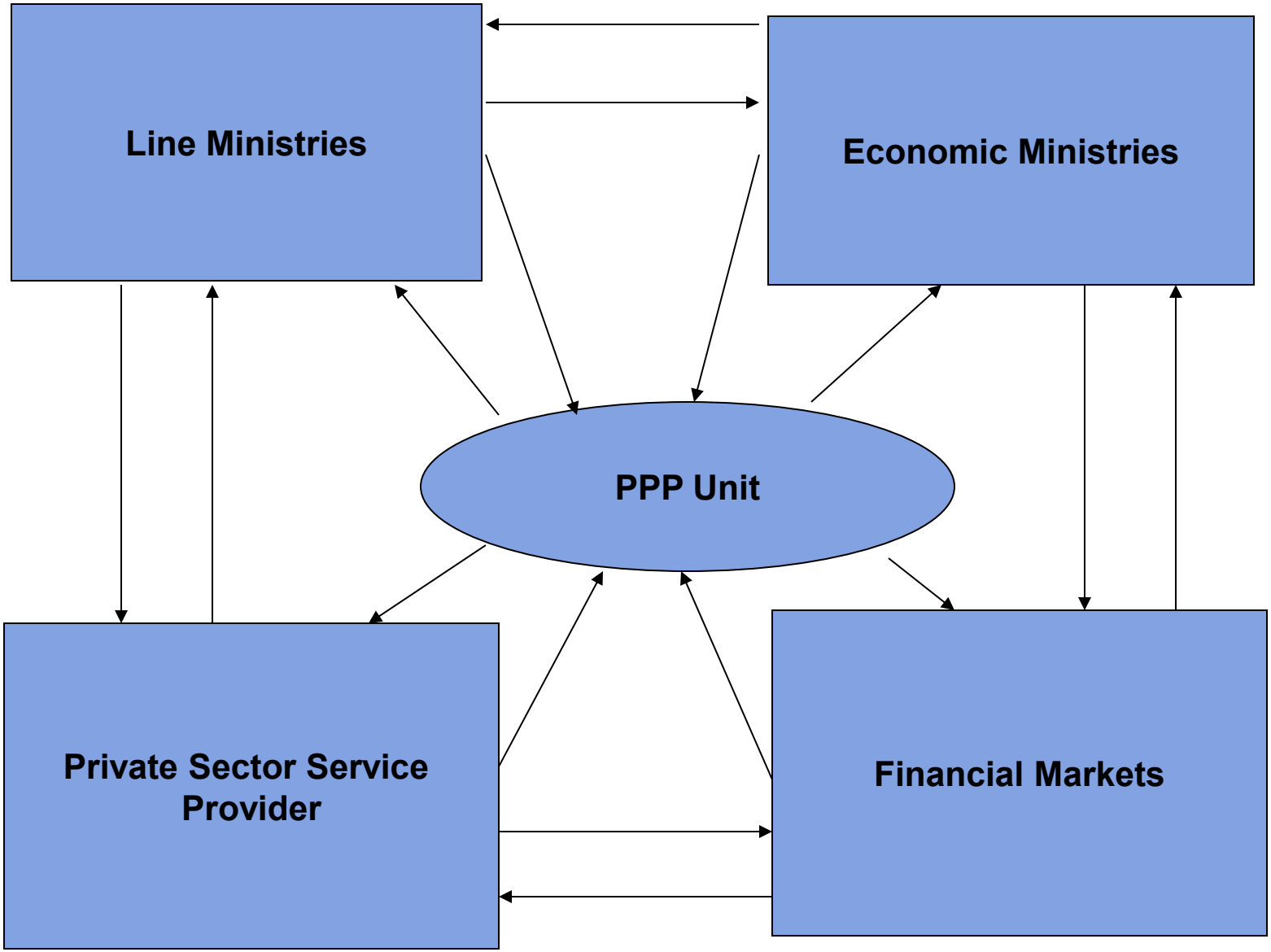
Location of PPP units is important

Source: World Bank, 2007

Strong PPP Unit

- ✓ Sets policy and strategy
- ✓ Project management – initiation to closing
- ✓ Project analysis

Strong PPP Unit



PPPs : Put it Simple

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- Need for clearly articulated, high level policy commitment
- Privatisation is a different debate! Seperate communication strategy for PPPs
- PPP requires a strong ”champion” within the government
- Avoid large ”iconic” transactions at early stages (backlash risk)
- Be not paralyzed by debates about needed reforms, but get some initial, well planned PPPs off the ground

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OECD's Relevance

- **Range of policy guidance developed by 30 member countries over the last 20 years in implementing successful PPPs.**

- **2007 OECD Principles for Private Sector Participation**

- **Regulatory framework/Institutional set up**

  - Sound regulatory environment for PPPs: aspects of regulatory simplification and the regulatory and administrative capacity to enforce laws, regulations and contracts.
  - Focus on horizontal concession, PPP, privatisation or sectoral legislation, but also on the general legal environment including procurement laws.
  - Regulatory enabling environment for PPPs is relevant on an international level, a national level, potentially on the level of municipalities and finally encompasses the contractual arrangements of the specific project, namely the PPP/concession agreement.
  - For the project level the regulator has to decide which degree of control over infrastructure assets the public sector should retain and following from this decision which organisational model of PPP would be most relevant.

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I. Short assessment benchmarking existing PPP frameworks on international good practice

II. Definition of priorities for improvement in form of a general capacity development proposal

III. Specific follow-up and coaching on priority issues identified

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For information about the MENA-OECD Programme and its Activities, please refer to:
www.oecd.org/mena/investment

ANNEXES

Financial Crisis Challenge: Overview

- **FDI and portfolio investment into the region suffers**
- **Intra-regional investment flows affected**
- **Capital markets in MENA countries**
- **Capital for needed infrastructure investment (project finance market)**
- **But: commodity price correction, strengthened US dollar will benefit GCC => inflation pressures ease, oil importers benefit from lower prices**

  => Risk perception again crucial

  => Regulatory frameworks important

Financial Crisis Challenge: 2009

- Growth forecast for Middle East for 2009 is 5.9%, stronger than the 0.1% growth forecast for the G7 Countries group and matching the 6% growth forecast for emerging markets (IMF-WEO, October 2008).
- GCC Governments' large fiscal surplus (forecasted at around USD 300 billion in total for 2008) provides fiscal flexibility to manage any risks
- The recent drop in crude oil price will impact the fiscal surplus; however, even in a lower price scenario, the surplus will remain 'large enough' to follow expansionary fiscal policies.
- The break-even price for crude oil to balance Government budgets ranges between USD 25 and USD 35 per barrel for individual GCC Countries

Financial Crisis: Project Finance

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- **Project finance has dried up, deals struggling to secure funding**
- **Almost all commercial banks operate in region unable to offer long-term financing**
- **Water and power plants projects, 6 economic cities in KSA are suffering, but must go ahead if growth to be sustained**
- **Pressure on governments to take action**
- **Governments either to guarantee financing or step in themselves, problems of capacity**
- **Set back for drive to private sector led growth and reduction of role of state in the economy**

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