



# Key elements of a public- private partnership framework

## Recommendations for discussion

**3<sup>rd</sup> Meeting of the Working Group on Infrastructure Finance in Iraq  
4-5 November 2010, Paris**

**Alexander Böhmer**  
Head of Unit  
MENA-OECD Investment Programme

# Agenda

- 1. Public-private partnerships: an effective tool to support Iraq's reconstruction**
- 2. Why a PPP law?**
- 3. Current basis for the implementation of PPPs in Iraq**
- 4. Best practices for PPP laws**

# The use of PPPs attracts investors to Iraq

- Financial, human and technical support relieves the Government's budget...
    - Private parties can offer **better performance** to build on time, within budget, and with superior quality specification;
    - The **risks are distributed** between the different sides of the partnerships;
    - The **administrative capabilities** of the public sector are improved;
  - While preserving its prerogatives:
    - The government has **the right to regulate** according to changing economic or political circumstances;
    - It retains **some control** over sectors regarded as sensitive or of strategic interest while benefiting from the know-how and capital of investors.
- The burden on the Government budget is relieved and private sector know-how can be accessed.

# What are PPPs?

- **Traditional procurement:** full control by the State over the concessionaire
- **Pure PPP model:** low control (a more 'hands-off' approach)
- **Between the two:** differing degrees of control by public & private parties:
  - Service contracts
  - Management contracts
  - Leasing arrangements
  - Build-operate-transfer models
  - Concessions
- PPP models also differ as to:
  - Asset ownership
  - Operation and maintenance obligations
  - Commercial risk allocation
  - Project duration

**The long-term duration of many PPP projects provides the number one argument for a sound regulatory and institutional framework.**

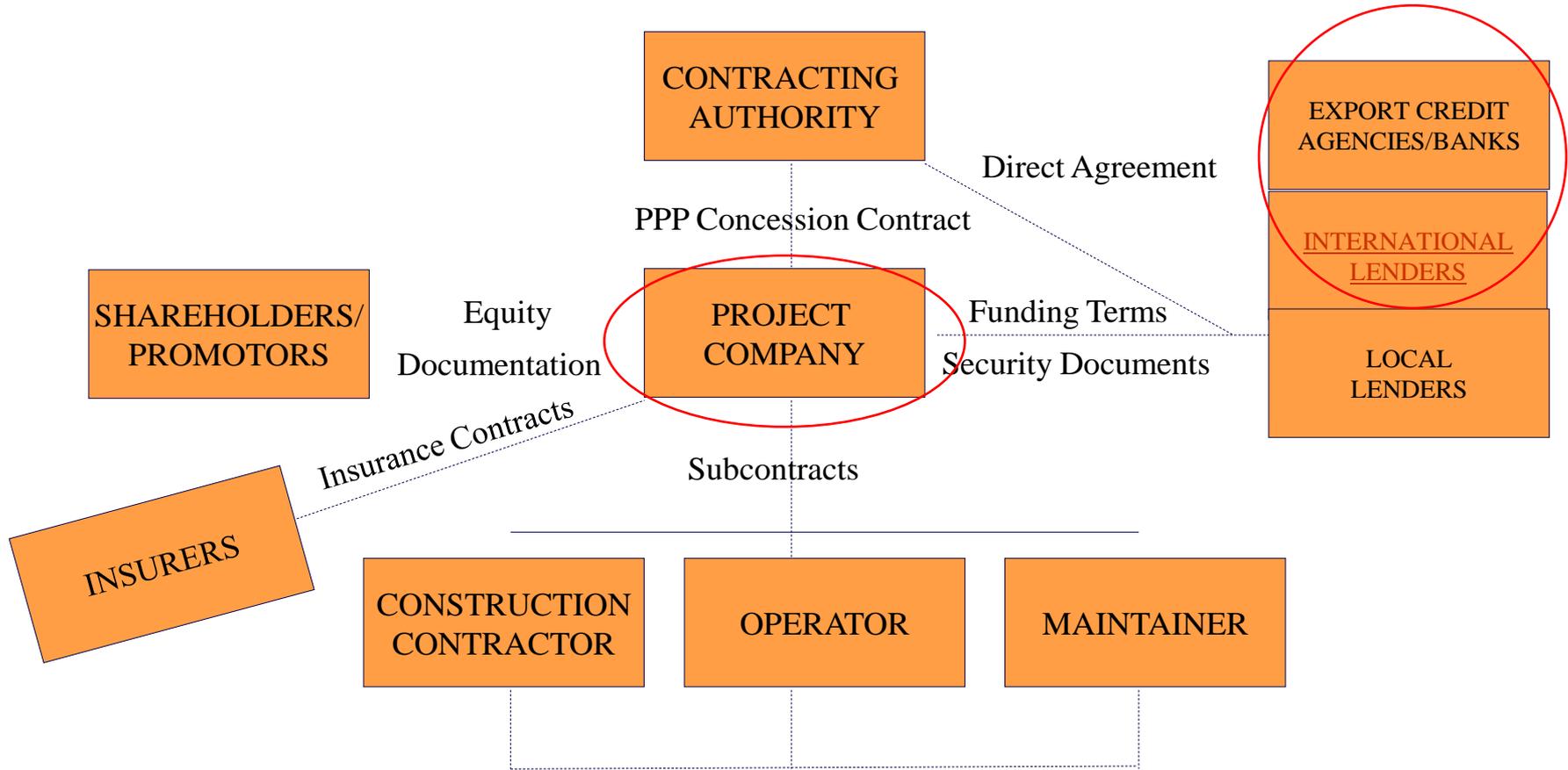
# What are PPPs?

- Only two categories of PPP involve complex public-private arrangements:
  - The various forms of BOT, BOO, BOOT, etc
  - Any operations involving temporary control and/or investment commitment (concessions)
- These are the models most PPP literature refers to with the term ‘PPP’.
- These PPPs often use project financing models in which the long-term debt is raised against the cash flow generated by the project alone.

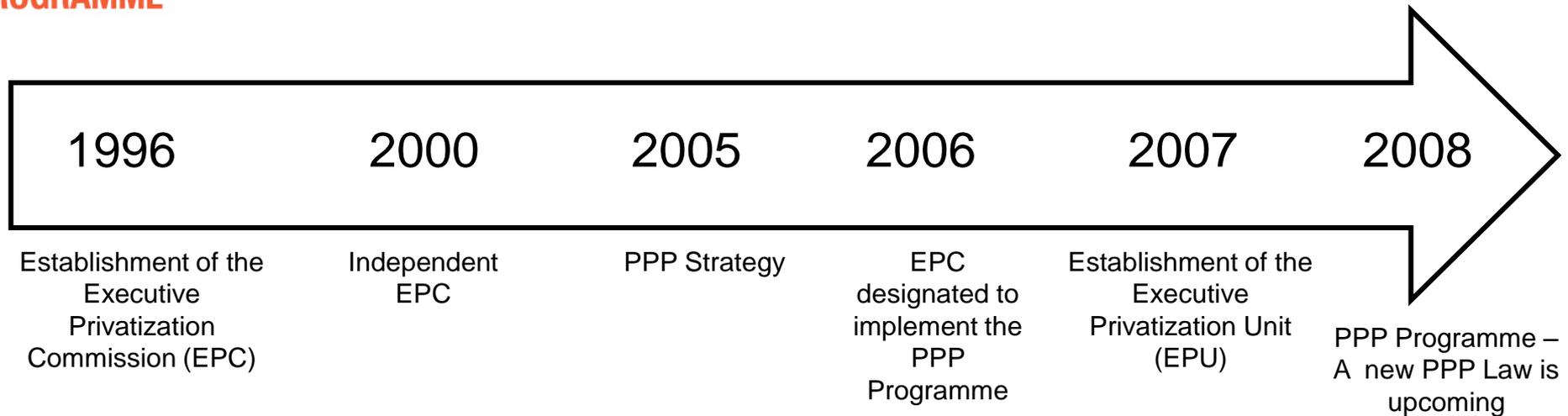
# What are PPPs?

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

# What are PPPs?: Parties and Legal Documents



# Recent trends in MENA - Jordan



- Some of the PPP projects that are currently being implemented are:
  - Jordan National Railway Network;
  - Light Rail system (Amman –Zarqa);
  - Amman Ring Road;
  - Facility Management System;
  - Medical and Industrial Waste Treatment Plant;
  - Solid Waste Management and Recycling/ GAM;
  - Small pilot projects: Municipalities and Tourism sector.
  
- On July 12<sup>th</sup>, 2010, the draft PPP law was submitted to private businesses for comments.

# Recent trends in MENA - Egypt

- A **horizontal PPP law** was approved by the Parliament in May 2010 (Law No. 67).
- The **PPP Central Unit**, which is a department of the Ministry of Finance, was charged by the Government with implementing and overseeing the PPP strategy in the country in different sectors: **education, utilities, health, transport, oil and gas and facilities** (buildings and solid waste).
- Several PPP projects are currently being implemented: 2 hospitals in Alexandria, sewage treatment plants in Cairo, Abu Rawash and Alexandria, and the Rod El Farrag access that will connect the existing ring road around Cairo with the Cairo-Alexandria highway.
- The PPP Central Unit issued “**A guide for making successful PPPs in Egypt**” – it advises:
  - A strong political backing;
  - A well structured , transparent, and competitive procurement process;
  - A determination by all parties and stakeholders to make the PPP work for all the stakeholders...

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# Why a PPP law?

- Provide a predictable framework for promotion and implementation of PPP projects;
- Describe clearly the eligible sectors as part of the overall economic development strategy;
- Define clearly the rights and obligations of the public and the private party;
- Establish institutional capacities within the government to match knowledge of private sector - PPP unit;

# What are key regulatory alternatives for PPPs?



## Two approaches

### TRANS-SECTORAL Privatization/ Concession/ Public Private Partnership legislation

operative      in approval process      planned

- Morocco (1989/98)
- Djibouti (1997)
- Yemen (1999)
- Algeria (2001)
- Bahrain (2002)
- Jordan (2000)
- Lebanon (2000)
- Oman (2004)
- Egypt (2010)

•Tunisia

•Iraq

### SECTORAL Sector regulations/ Sector authorities (only)

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

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# Iraqi current legislation: Overview

- Currently, the Government of Iraq uses several legal instruments to implement PPPs:
  1. The **1986 Law of State-owned Property Sale and Lease # 32** to implement partnerships between the public and the private sector:
    - A **special agreement** is given by the Minister (Article 2)
    - to **the Iraqi or foreign private party** (Article 5: foreign parties require the authorization of the competent authority)
    - after a **mandatory public auction** (Article 3)
    - which is **detailed in the 1986 Law** (Chapter 2 – Articles 6 to 20).
  2. **Article 15 (3) of the 1997 Company Law #22** which allows the State-owned enterprises to enter into partnerships with **Arab and foreign companies** specialized in the same sector of activity that fall within the same specialization inside Iraq, with the consent of the Council of Ministers.
  3. **Investment law 13, 2009 Amendment:** extending land allocation benefits to PPPs, especially those involving SOEs

# Iraqi current legislation: Procurement

4. **The CPA Order No. 87 of 2004 “Law on Public Contracts”** completed by the Implementing Regulations for Governmental Contracts were issued in 2007 and the Governmental Contracts Implementing Regulation No. 1 in 2008 under the authority of the Office of Government Public Contract Policy (OGPCP) to better disseminate and explain the procurement procedures.
  - Responses to a 2007 OECD “Survey on Current Public Procurement Legislation in Iraq” showed that it is important to redefine the terms of reference for co-operation to enhance co-ordination to achieving results in the fight against corruption in the field of public procurement.

# Iraqi current practice

- Iraq launched a 5 years National Development Plan (2010-2014) on July 4<sup>th</sup>, 2010 which comprises using PPP models for infrastructure financing.
  - The Plan develops a classification of models based on organizational pattern, type of sector, nature of activity and form of contract.
  - This description would need further specification in a horizontal PPP law.
  - A draft of a horizontal PPP law and guidelines on PPP law have been presented by UNIDO to the **Task Force on Economic Reform and Private Sector Capacity**.
- *The adoption of a PPP law should complement the work of the Working Group on Infrastructure Finance on the project.*

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- A **comprehensive procurement law** is of central importance - a competitive public procurement process covering **all investments** is required by law in many countries when public or multilateral development bank funding is provided. It should foresee:
  - The **right to appeal** against a procurement decision to an independent judicial body, and
  - **An independent monitoring authority/auditor** to investigate PPP procurement practices and help rule out any conflict of interest in the dealings of the contracting authority.
- The OECD Principles for Enhancing Integrity in Public Procurement key recommendations are:
  - Transparency for fair and equitable treatment (Principles 1 and 2);
  - Good management (Principles 3 and 4);
  - The prevention of misconduct, and compliance and monitoring (Principles 5, 6 and 7);
  - Accountability and control (Principles 8, 9 and 10).

## ...and a PPP law specifies rights/duties

The PPP law should clarify **private investors and government rights and obligations** in PPPs project:

- Definition of infrastructure sectors open to private participation;
- Definition of agencies responsible for approving private projects or contracts;
- Issues regarding tariff adjustment;
- Rules regarding contract amendment and termination;
- Competitive bidding and other procurement related provisions;
- Availability of dispute settlement, namely international arbitration;
- Other issues not treated by general law, but relevant for private participation in infrastructure.

The **contractual relationship between public and private parties in a PPP** is the final level of legal relationship impacting on the success or the failure of the PPP.

These contracts should include:

- 1 - Step in rights,
- 2 - Termination rights,
- 3 - The possibility of a re-negotiation, and
- 4 - A basic description of the dispute resolution mechanism.

# Thank you for your attention!

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**Mr. Alexander Böhmer**

Head of Unit

MENA-OECD Investment Programme

E-mail: [alexander.boehmer@oecd.org](mailto:alexander.boehmer@oecd.org)

Telephone: +33 1 45 24 19 12