

MiNTS – MISR NATIONAL TRANSPORT STUDY

**THE COMPREHENSIVE STUDY
ON THE MASTER PLAN
FOR NATIONWIDE TRANSPORT SYSTEM
IN
THE ARAB REPUBLIC OF EGYPT**

FINAL REPORT

**TECHNICAL REPORT 8
PRIVATE SECTOR PARTICIPATION**

March 2012

JAPAN INTERNATIONAL COOPERATION AGENCY

**ORIENTAL CONSULTANTS CO., LTD.
ALMEC CORPORATION
KATAHIRA & ENGINEERS INTERNATIONAL**

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**TRANSPORT PLANNING AUTHORITY
MINISTRY OF TRANSPORT
THE ARAB REPUBLIC OF EGYPT**

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CHAPTER 1: INTRODUCTION

1.1. BACKGROUND

The Japan International Cooperation Agency (JICA) and the Transport Planning Authority of the Ministry of Transport are cooperating in the conduct of the *Comprehensive Study on The Master Plan for Nationwide Transport System in the Arab Republic of Egypt (MiNTS – Misr National Transport Study)*, based upon agreements finalized during July, 2009¹. Oriental Consultants Company Limited, headquartered in Tokyo, Japan, is the designated lead consultant for the study. Associated firms are Almec Corporation, Japan and Katahira & Engineers International, Japan. Technical efforts in Egypt were initiated during December, 2009.

1.2. THE MiNTS FRAMEWORK

1.2.1. Study Scope and Objectives

MiNTS is comprehensive in nature, that is, approaches have been designed to mitigate transport problems and contribute to the sustainable development of the nation. Investigative efforts extend over the entirety of the Republic (Figure 1.2.1), with a particular focus being major corridors of movement for both persons and cargo. All major modes of transport are addressed including road, rail, maritime, inland waterway, civil aviation and pipeline. However, the practical master planning focus falls upon those modes falling under the jurisdiction of the Ministry of Transport; that is, the road, rail, maritime and inland waterway sectors.

Five key milestones form the foundation upon which planning efforts are based:

- Establish a nationwide, multi-modal database whose validity rests on a series of focused transport surveys and data collection exercises;
- Formulate overall strategies and policies for development of the nationwide transport fabric;
- Develop an integrated, multi-modal transport master plan with years 2017, 2022 and 2027 being short, medium and ultimate planning horizons, respectively;
- Identification, within the master plan framework, of high-priority projects; and,
- Implementation of an effective and productive technology transfer program with Egyptian counterparts.

¹ *Scope of Work - Comprehensive Study on The Master Plan for Nationwide Transport System in the Arab Republic of Egypt*, as mutually agreed upon between the Japan International Cooperation Agency and the Ministry of Transport, Government of Egypt, July 16, 2009.



Source: JICA Study Team

Figure 1.2.1 MiNTS Study Area

The transport strategy embedded within MiNTS must concurrently contribute to an efficient economic structure, strengthen linkages within Egypt as well as with neighboring countries, and provide a base for market-oriented transport activity. Economic expansion and social transformations within Egypt are well underway; continuing improvements in productivity and well-being are expected. As economic growth continues, changes in transport activities and behavior will follow suit. **Thus, the foci of transport planning must gradually shift from alleviation of present deficiencies to realization of a transport system founded upon sustainable evolution and integrated, mutually supportive transport solutions.** This strategy is particularly valid given the almost 20-year planning horizon adopted by MiNTS.

1.2.2. A Consultative Planning Process

The final structure of MiNTS, and the successful reception thereof, can only be achieved as a direct result of cooperative efforts and close liaison between the Study Team and local experts. Considerable efforts have been expended in gathering information, reviewing previous studies and holding numerous discussions to enhance knowledge of, and sensitivity to, local transport conditions, norms and practices.

The Study Team, housed in the offices of the Transport Planning Authority, Ministry of Transport, is being strongly assisted by its designated counterparts, the Special Working Group, Coordination Committee and Steering Committee. Thus, continuous and productive technical liaison is being maintained with a number of organizations including the Ministry of Transport and various entities thereof (Office of the Minister, Transport Planning Authority, Egypt National Railways, General Authority for Roads, Bridges and Land Transport, General Authority for River Transport, Maritime Transport Sector); the Ministry of Housing, Utilities and Urban Communities; Ministry of Civil Aviation; Ministry of Agriculture and Land Reclamation;

Ministry of Trade and Industry; Ministry of Industrial Development; Ministry of Interior; Ministry of Local Development; Ministry of Finance; State Ministry of Foreign Affairs, Sector of International Cooperation; Ministry of the Environment; CAPMAS (Central Agency for Public Mobilization and Statistics); as well as various Governorates and entities thereof. Close coordination has also been effected with Universities and various departments within those learned institutions.

Likewise, effective consultations are programmed with various international agencies, funding institutions, donors, and consultant groups in order to obtain an overview of previous, current, and likely future activities and/or involvement in Egypt.

1.2.3. Sustainability and Human Resources Development

The components of the Master Plan diversify beyond the traditional “hardware” concepts associated with infrastructure provision. Additional key elements of the process consist of “software” aspects, that is, available technology, international standards, and modal integration needs (cargo/passenger terminals, logistics chains, transfer points) as well as “humanware” needs. In the latter case, this represents the cultivation of human resources via the designation of training and education programs as well as other requirements for developing expertise. In other words, “sustainability”, or the notion that the planning process must allow Egyptian stakeholders to participate in visualizing and shaping their own future. **This is of substantial importance in terms of ownership building if MiNTS is to be adopted and used by the people and their elected officials both during, and following, the conduct of MiNTS.**

1.3. REPORTING STRUCTURE

The *Final Report* consists of three elements: *The Master Plan* report, *Technical Reports* and *Appendix Reports*.

- *The Master Plan* report is seen as the main document whose intent is to present, in a synoptic sense, main findings of the MiNTS investigations;
- *Technical Reports* represent a series of sector-specific reports which document the technical underpinning of *The Master Plan* document (Table 1.3.1), and,
- *Appendix Reports* represent task-specific or activity-specific documents and other data summaries, some of which have been developed in response to client group requests.

Table 1.3.1 Technical Reporting Structure

Report Number	Subject
1	Road Sector
2	Rail Sector
3	Inland Waterway Transport Sector
4	Maritime Sector
5	Civil Aviation and Pipeline Sectors
6	Demand Simulation and Scenario Testing
7	Organizational and Functional Aspects of the Transport Sector
8	Private Sector Participation
9	Environmental Considerations
10	The MiNTS Vision, Policies and Strategies
11	Transport Survey Findings
12	Project Prioritization
13	Counterpart Training Program

Source: JICA Study Team

CHAPTER 2: OVERVIEW

2.1. GENERAL PRIVATIZATION BACKGROUND

A long history of privatization dates from Ancient Greece, when governments contracted out almost everything to the private sector. In the Roman Republic private individuals and companies performed the majority of services including tax collection (tax farming), army supplies (military contractors), religious sacrifices and construction. However, the Roman Empire also created state-owned enterprises, for example, much of the grain was eventually produced on estates owned by the Emperor. Some scholars suggest that the cost of bureaucracy was one of the reasons for the fall of the Roman Empire.²

Privatization is the incidence or process of transferring ownership of a business, enterprise, agency or public service from the public sector (government) to the private sector ("business"). In a broader sense, privatization refers to transfer of any government function to the private sector - including governmental functions like revenue collection and law enforcement.³

Privatize is defined as to change (an industry or business, for example) from governmental or public ownership or control to private enterprise: *for example in Japan, the national railway system*. The term "privatization" also has been used to describe two unrelated transactions. The first is a buyout, by the majority owner, of all shares of a public corporation or holding company's stock, privatizing a publicly traded stock. The second is a demutualization of a mutual organization or cooperative to form a joint stock company.

There are three main methods of privatization:

1. Share Issue Privatization (SIP): selling shares on the stock market - the most common type of privatization.
2. Asset Sale Privatization (ASP): selling an entire organization (or part of it) to a strategic investor, usually by auction or by using the Treuhand⁴ model.
3. Voucher Privatization (VP): distributing shares of ownership to all citizens, usually for free or at a very low price.

Share issues can broaden and deepen domestic capital markets, boosting liquidity and (potentially) economic growth, but if the capital markets are insufficiently developed it may be difficult to find enough

² *International Handbook on Privatization* by David Parker, David S. Saal

³ Chowdhury, F. L. "Corrupt Bureaucracy and Privatization of Tax Enforcement", 2006: Pathak Samabesh, Dhaka.

⁴ Agency that privatized the East German enterprises owned as public property (common property). Created by the Volkskammer on June 17, 1990, it oversaw the restructuring and selling of about 8,500 firms with initially over 4 million employees. At that time it was the world's largest industrial enterprise.

buyers and transaction costs (e.g. under-pricing required) may be higher. For this reason, many governments elect for listings in the more developed and liquid markets, for example Euronext, and the London, New York and Hong Kong stock exchanges.

As a result of higher political and currency risk deterring foreign investors, asset sales occur more commonly in developing countries.

Voucher privatization has mainly occurred in the transition economies of Central and Eastern Europe, such as Russia, Poland, the Czech Republic, and Slovakia.

A substantial benefit of share or asset-sale privatizations is that bidders compete to offer the highest price, creating income for the state in addition to tax revenues. Voucher privatizations, on the other hand, could be a genuine transfer of assets to the general population, creating a real sense of participation and inclusion. If the transfer of vouchers is permitted, a market in vouchers could be created, with companies offering to pay money for them.

2.2. PRIVATIZATION AND DIFFERING VIEWS

2.2.1. Supporting views

Proponents of privatization believe that private market factors can more efficiently deliver many goods or service than governments due to free market competition. In general, it is argued that over time this will lead to lower prices, improved quality, more choices, less corruption, less red tape, and quicker delivery. Many proponents do not argue that everything should be privatized. According to them, market failures and natural monopolies could be problematic. However, some School economists and Capitalists would prefer that everything be privatized, including the state itself.

The basic economic argument given for privatization states that those governments have few incentives to ensure that the enterprises they own are well run. One problem is the lack of comparison in state monopolies. It is difficult to know if an enterprise is efficient or not without competitors to compare against. Another is that the central government administration, and the voters who elect them, have difficulty evaluating the efficiency of numerous and very different enterprises. A private owner, often specializing and gaining great knowledge about a certain industrial sector, can evaluate and then reward or punish the management in much fewer enterprises much more efficiently. Also, governments can raise money by taxation or simply printing money should revenues be insufficient, unlike a private owner.

If private and state-owned enterprises compete against each other, then the state owned may borrow money more cheaply from the debt markets than private enterprises, since the state owned enterprises are ultimately backed by the taxation and printing press power of the state, gaining an unfair advantage.

Privatizing a non-profitable state-owned company may force the company to raise prices in order to become profitable. However, this would remove the need for the state to provide tax money in order to cover the losses.

- **Performance:** State-run industries tend to be bureaucratic. A political government may only be motivated to improve a function when its poor performance becomes politically sensitive, and such an improvement can be reversed easily by another regime.
- **Increased Efficiency:** Private companies and firms have a greater incentive to produce more goods and services for the sake of reaching a customer base and hence increasing profits. A state-owned

- firm would not be as productive due to the lack of financing allocated by the entire government's budget that must consider other areas of the economy.
- **Specialization:** A private business has the ability to focus all relevant human and financial resources onto specific functions. A state-owned firm does not have the necessary resources to specialize its goods and services as a result of the general products provided to the greatest number of people in the population.
 - **Improvements:** Conversely, the government may put off improvements due to political sensitivity and special interests even in cases of companies that are run well and better serve their customers' needs.
 - **Corruption:** A state-monopolized function is prone to corruption; decisions are made primarily for political reasons, or personal gain of the decision-maker (i.e. "graft"), rather than economic ones. Corruption (or principal-agent issues) in a state-run corporation affects the ongoing asset stream and company performance, whereas any corruption that may occur during the privatization process is a one-time event and does not affect ongoing cash flow or performance of the company.
 - **Accountability:** Managers of privately owned companies are accountable to their owners/shareholders and to the consumer and can only exist and thrive where needs are met. Managers of publicly owned companies are required to be more accountable to the broader community and to political "stakeholders". This can reduce their ability to directly and specifically serve the needs of their customers, and can bias investment decisions away from otherwise profitable areas.
 - **Civil-Liberty Concerns:** A company controlled by the state may have access to information or assets which may be used against dissidents or any individuals who disagree with their policies.
 - **Goals:** A political government tends to run an industry or company for political goals rather than economic ones.
 - **Capital:** Privately held companies can sometimes more easily raise investment capital in the financial markets when such local markets exist and are suitably liquid. While interest rates for private companies are often higher than for government debt, this can serve as a useful constraint to promote efficient investments by private companies, instead of cross-subsidizing them with the overall credit-risk of the country. Investment decisions are then governed by market interest rates. State-owned industries have to compete with demands from other government departments and special interests. In either case, for smaller markets, political risk may add substantially to the cost of capital.
 - **Security:** Governments have had the tendency to "bail out" poorly run businesses, often due to the sensitivity of job losses, when economically, it may be better to let the business fold.
 - **Lack of Market Discipline:** Poorly managed state companies are insulated from the same discipline as private companies, which could go bankrupt, have their management removed, or be taken over by competitors. Private companies are also able to take greater risks and then seek bankruptcy protection against creditors if those risks turn sour.
 - **Natural Monopolies:** The existence of natural monopolies does not mean that these sectors must be state owned. Governments can enact or are armed with anti-trust legislation and bodies to deal with anti-competitive behavior of all companies public or private.

- **Concentration of Wealth:** Ownership of and profits from successful enterprises tend to be dispersed and diversified particularly in voucher privatization. The availability of more investment vehicles stimulates capital markets and promotes liquidity and job creation.
- **Political Influence:** Nationalized industries are prone to interference from politicians for political or populist reasons. Examples include making an industry buy supplies from local producers (when that may be more expensive than buying from abroad), forcing an industry to freeze its prices/fares to satisfy the electorate or control inflation, increasing its staffing to reduce unemployment, or moving its operations to marginal constituencies.
- **Profits:** Corporations exist to generate profits for their shareholders. Private companies make a profit by enticing consumers to buy their products in preference to their competitors (or by increasing primary demand for their products, or by reducing costs). Private corporations typically profit more if they serve the needs of their clients well. Corporations of different sizes may target different market niches in order to focus on marginal groups and satisfy their demand. A company with good corporate governance will therefore be incentivized to meet the needs of its customers efficiently.
- **Job Gains:** As the economy becomes more efficient, more profits are obtained and no government subsidies and fewer taxes are needed. There will be more private money available for investments and consumption and more profitable and better paid jobs will be created than in the case of a more regulated economy.

2.2.2. OPPOSING views

Opponents of privatization dispute the claims concerning the alleged lack of incentive for governments to ensure that the enterprises they own are well run, on the basis of the idea that governments are proxy owners answerable to the people. It is argued that a government which runs nationalized enterprises poorly will lose public support and votes, while a government which runs those enterprises well will gain public support and votes. Thus, democratic governments do have an incentive to maximize efficiency in nationalized companies, due to the pressure of future elections.

Opponents of certain privatizations believe certain parts of the social terrain should remain closed to market forces in order to protect them from the unpredictability and ruthlessness of the market (such as private prisons, basic health care and basic education). Another view sees some of the utilities by which government provides benefit to society at large as indirect and difficult to measure or unable to produce a profit, such as defense. Still another is that natural monopolies are by definition not subject to competition and better administered by the state.

The controlling ethical issue in the anti-privatization perspective is the need for responsible stewardship of social-support missions. Market interactions are all guided by self-interest, and successful actors in a healthy market must be committed to charging the maximum price that the market will bear. Privatization opponents believe that this model is not compatible with government missions for social support, whose primary aim is delivering affordability and quality of service to society.

Many privatization opponents also warn against the practice's inherent tendency toward corruption. As many areas which the government could provide are essentially profitless, the only way private companies could, to any degree, operate them would be through contracts or block payments. In these cases, the private firm's performance in a particular project would be removed from their performance, and embezzlement and dangerous cost-cutting measures might be taken to maximize profits.

Furthermore, large corporations can pay public-relations professionals to convince decision-makers that privatization is a sensible idea, whether or not this is actually the case. Corporations typically have far more

resources for expert testimony, advertising, conferences and other propaganda efforts than anti-privatization advocates.

Some would also point out that privatizing certain functions of government might hamper coordination, and charge firms with specialized and limited capabilities to perform functions which they are not suited for. In rebuilding a war torn nation's infrastructure, for example, a private firm would, in order to provide security, either have to hire security, which would be both necessarily limited and complicate their functions, or coordinate with the government, which, due to a lack of command structure shared between the firm and the government, might be difficult. A government agency, on the other hand, would have the entire military of a nation, whose chain of command is clearly defined, to draw upon for security. Opponents would say that this is a false assertion: numerous books refer to poor organization between government departments (for example the Hurricane Katrina incident).

Furthermore, opponents of privatization regard it is undesirable to transfer state-owned assets into private hands for the following reasons:

- **Performance:** A democratically elected government is accountable to the people through a legislature, Congress or Parliament, and is motivated to safeguarding the assets of the nation. The profit motive may be subordinated to social objectives.
- **Improvements:** The government is motivated to performance improvements as well run businesses contribute to the State's revenues.
- **Corruption:** Government ministers and civil servants are bound to uphold the highest ethical standards, and standards of probity are guaranteed through codes of conduct and declarations of interest. However, the selling process could lack transparency, allowing the purchaser and civil servants controlling the sale to gain personally.
- **Accountability:** The public does not have any control or oversight of private companies.
- **Civil-liberty concerns:** A democratically elected government is accountable to the people through a parliament or similar body, and can intervene when civil liberties are threatened.
- **Goals:** The government may seek to use state companies as instruments to further social goals for the benefit of the nation as a whole.
- **Capital:** Governments can raise money in the financial markets most cheaply to re-lend to state-owned enterprises.
- **Lack of Market Discipline:** Governments have chosen to keep certain companies/industries under public ownership because of their strategic importance or sensitive nature.
- **Cuts in Essential Services:** If a government-owned company providing an essential service (such as the water supply) to all citizens is privatized, its new owner(s) could lead to the abandoning of the social obligation to those who are less able to pay, or to regions where this service is unprofitable.
- **Natural Monopolies:** Privatization will not result in true competition if a natural monopoly exists.
- **Concentration of Wealth:** Profits from successful enterprises end up in private, often foreign, hands instead of being available for the common good.
- **Political Influence:** Governments may more easily exert pressure on state-owned firms to help in implementing government policy.

- **Downsizing:** Private companies often face a conflict between profitability and service levels, and could over-react to short-term events. A state-owned company might have a longer-term view, and thus be less likely to cut back on maintenance or staff costs, training etc, to stem short term losses. Many private companies have downsized while making record profits.
- **Profit:** Private companies do not have any goal other than to maximize profits. A private company will serve the needs of those who are most willing (and able) to pay, as opposed to the needs of the majority, and are thus anti-democratic. The more necessary a good is, the lower the price elasticity of demand, as people will attempt to buy it no matter the price. In the case where the price elasticity of demand is zero (perfectly inelastic goods) the demand part of supply and demand theories does not work.
- **Privatization and Poverty:** It is acknowledged by many studies that there are winners and losers with privatization. The number of losers which may add to the size and severity of poverty can be unexpectedly large if the method and process of privatization and how it is implemented are seriously flawed (e.g. lack of transparency leading to state-owned assets being appropriated in minuscule amounts by those with political connections, absence of regulatory institutions leading to transfer of monopoly rents from public to private sector, improper design and inadequate control of the privatization process leading to asset stripping.
- **Job Loss:** Due to the additional financial burden placed on privatized companies to succeed without any government help, unlike the public companies, jobs could be lost to keep more money in the company.

2.2.3. INTERMEDIATE views

Others don't dispute that well run for profit entities with sound corporate governance may be considerably more efficient than an inefficient governmental bureaucracy or NGO. However, many implementations of privatization can in practice lead to the fire sale of public assets, and/or to inefficient or corrupt for profit management.

2.3. PRIVATIZATION IN DEVELOPED OR MINIMALLY CORRUPT ECONOMIES

A top executive can readily reduce the perceived value of an asset due to information asymmetry. The executive can accelerate accounting of expected expenses, delay accounting of expected revenue, engage in off balance sheet transactions to make the company's profitability appear temporarily poorer, or simply promote and report severely conservative (e.g. pessimistic) estimates of future earnings. Such seemingly adverse earnings news will be likely to (at least temporarily) reduce sale price. This is again due to information asymmetries since it is more common for top executives to do everything they can to window dress their earnings forecasts. There are typically very few legal risks to being "too conservative" in one's accounting and earnings estimates.

When the entity gets taken private at a dramatically lower price, the new private owner gains a windfall from the former top executive's actions to (surreptitiously) reduce the sales price. This can represent 10s of billions of dollars (questionably) transferred from previous owners (the public) to the takeover artist. The former top executive is then rewarded with a golden handshake for presiding over the fire sale that can sometimes be in the 10s or 100s of millions of dollars for one or two years of work. This is nevertheless an excellent bargain for the takeover artist, who will tend to benefit from developing a reputation of being very generous to parting top executives.

When a publicly held asset, mutual or non-profit organization undergoes privatization, top executives often reap tremendous monetary benefits. The executives can facilitate the process by making the entity appear to be in financial crisis. This reduces the sale price (to the profit of the purchaser), and makes non-profits and governments more likely to sell.

Ironically, it can also contribute to a public perception that private entities are more efficiently run reinforcing the political will to sell off public assets. Again, due to asymmetric information, policy makers and the general public see a government owned firm that was a financial “disaster” miraculously turned around by the private sector (and typically resold) within a few years.

2.4. PRIVATIZATION IN UNDERDEVELOPED OR HIGHLY CORRUPT ECONOMIES

In a society with substantial corruption, privatization allows the government currently in power and its backers to siphon a large portion of the entire net present value of state assets away from the public and into the accounts of their favoured power brokers. Without privatization, corrupt officials would have to slowly harvest their corrupt earnings over time. As such, efficient privatization depends on there being a very low level of current corruption among the current government officials since it allows for far more “efficient” extraction of corrupt rents.

Of course, corrupt governments can also extract corrupt rents quite efficiently in other ways particularly by borrowing extensively to engage in spending on overly favorable contracts with their backers (or on tax shelters, subsidies or other giveaways). Generations of subsequent taxpayers are then left with paying back the debt incurred for corrupt transfers made decades previously. Naturally, this may lead to the sale of public assets.

In the end, the public is left with a government that taxes them heavily, and gives them nothing in return. Debt repayment is enforced by international agreements and agencies such as the IMF. Infrastructure and upkeep is sacrificed leading to a further decay in the economic efficiency of the country over time.

2.5. PRIVATIZATION OUTCOMES

Literature⁵ reviews find that in competitive industries with well-informed consumers, privatization consistently improves efficiency. Such efficiency gains mean a one-off increase in GDP, but through improved incentives to innovate and reduce costs, which also tend to raise the rate of economic growth. The type of industries to which this generally applies include manufacturing and retailing. Although typically there are social costs associated with these efficiency gains, many economists argue that these can be dealt with by appropriate government support through redistribution and perhaps retraining.

In sectors that are natural monopolies or public services, the results of privatization are much more mixed, as a private monopoly behaves much the same as a public one in liberal economic theory. In general, if the performance of an existing public sector operation is sufficiently bad, privatization (or the threat thereof) has been known to improve matters. Changes may include, inter alia, the imposition of related reforms such as

⁵ Privatization in Competitive Sectors: The Record to Date, *World Bank Policy Research Working Paper No. 2860*, June 2002 and "From State to Market: A Survey of Empirical Studies on Privatization" (PDF). William L. Megginson and Jeffrey M. Netter (Journal of Economic Literature, June 2001).

greater transparency and accountability of management, improved internal controls, regulatory systems, and better financing, rather than privatization itself.

Regarding political corruption, it is a controversial issue whether the size of the public sector per se results in corruption. The Nordic countries have low corruption but large public sectors. However, these countries score high on the Ease of Doing Business Index, due to good and often simple regulations, and for political rights and civil liberties, showing high government accountability and transparency. One should also notice the successful, corruption-free privatizations and restructuring of government enterprises in the Nordic countries. For example, dismantling telecommunications monopolies has resulted in several new players entering the market and intense competition with price and service.

Also regarding corruption, the sales themselves give a large opportunity for grand corruption. Privatizations in Russia and Latin America were accompanied by large-scale corruption during the sale of the state-owned companies. Those with political connections unfairly gained large wealth, which has discredited privatization in these regions. While media have reported widely the grand corruption that accompanied the sales, studies have argued that in addition to increased operating efficiency, daily petty corruption is, or would be, larger without privatization, and that corruption is more prevalent in non-privatized sectors. Furthermore, there is evidence to suggest that extralegal and unofficial activities are more prevalent in countries that privatized less.⁶

2.6. PARTIAL OWNERSHIP (Public-Private-Partnership (PPP))

An enterprise may be privatized, but with the state retaining a number of shares in the resultant company. This is a particularly notable phenomenon in France, where the state often retains a "blocking stake" in private industries. In Germany, the state privatized Deutsche Telekom in small tranches, and still retains about a third of the company. As of 2005, the state of North Rhine-Westphalia is also planning to buy shares in the energy company E.ON⁷ in what is claimed to be an attempt to control spiralling costs.

Whilst partial privatization could be an alternative, it is more often a stepping stone to full privatization. It can offer the business a smoother transition period during which it can gradually adjust to market competition. Some state owned companies are so large that there is the risk of sucking liquidity from the rest of the market, even in the most liquid market places: this may favor gradual privatization. The first tranche of a multi-step privatization would also in the first instance establish a valuation for the enterprise to mitigate complaints of under pricing.

In some instances of partial privatization of contracted services, some portion(s) of the state owned service are provided by private sector contractors, but the government retains the capacity to self operate at contract intervals, if it so chooses. An example of partial privatization would be some forms of school bus service contracting, such as arrangements where equipment and other resources purchased with government capital funds and/or those already owned by a governmental entity are used by the contractor for a period of time in providing services, but ownership is retained by the governmental unit. This form of partial privatization eases concerns that once an operation is contracted, the government may be unable to obtain

⁶ Privatization in Competitive Sectors: The Record to Date. Sunita Kikeri and John Nellis. World Bank Policy Research Working Paper 2860, June 2002. Privatization and Corruption. David Martimort and Stéphane Straub.

⁷ An energy corporation based in Düsseldorf, Germany, is one of the 30 members of the DAX stock index of major German companies and a member of the Global Titans 50 index. The Company came into existence in 2000 through the merger of energy companies VEBA and VIAG.

sufficient competitive bids, and be subjected to terms less desirable than the prior operation under state ownership. Under that scenario, a reverse privatization would be more feasible for the government.

Public Private Partnership (PPP) describes a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. These schemes are sometimes referred to as PPP, P3 or P³.

PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. In some types of PPP, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer. In other types (notably the private finance initiative), capital investment is made by the private sector on the strength of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government. Government contributions to a PPP may also be in kind (notably the transfer of existing assets). In projects that are aimed at creating public goods like in the infrastructure sector, the government may provide a capital subsidy in the form of a one time grant, so as to make it more attractive to the private investors. In some other cases, the government may support the project by providing revenue subsidies, including tax breaks or by providing guaranteed annual revenues for a fixed period.

Typically, a private sector consortium forms a special company called a "Special Purpose Vehicle" (SPV) to develop, build, maintain and operate the asset for the contracted period. In cases where the government has invested in the project, it is typically (but not always) allotted an equity share in the SPV. The consortium is usually made up of a building contractor, a maintenance company and bank lender(s). It is the SPV that signs the contract with the government and with subcontractors to build the facility and then maintain it. In the infrastructure sector, complex arrangements and contracts that guarantee and secure the cash flows make PPP projects prime candidates for Project financing. A typical PPP example would be a hospital building financed and constructed by a private developer and then leased to the hospital authority. The private developer then acts as landlord, providing housekeeping and other non medical services while the hospital itself provides medical services.

2.7. NOTABLE EXAMPLE

The largest privatization in history involved Japan Post. It was the nation's largest employer and one third of all Japanese government employees worked for Japan Post. Japan Post was often said to be the largest holder of personal savings in the world.

The Prime Minister Junichiro Koizumi wanted to privatize it because it was thought to be inefficient and a source for corruption. In September 2003, Koizumi's cabinet proposed splitting Japan Post into four separate companies: a bank, an insurance company, a postal service company, and a fourth company to handle the post offices as retail storefronts of the other three.

After the Upper House rejected privatization, Koizumi scheduled nationwide elections for September 11, 2005. He declared the election to be a referendum on postal privatization. Koizumi subsequently won this election, gaining the necessary supermajority and a mandate for reform, and in October 2005, the bill was passed to privatize Japan Post in 2007.⁸

⁸ Takahara, "All eyes on Japan Post "Faiola, Anthony (2005-10-15). "Japan Approves Postal Privatization". *Washington Post* (The Washington Post Company): p. A10. Retrieved 2007-02-09.

Nippon Telegraph and Telephone's privatization in 1987 involved the largest share offering in financial history at the time. Fifteen of the world's twenty largest public share offerings have been privatizations of telecoms.⁹

The United Kingdom's largest public-share offerings were privatizations of British Telecom and British Gas. The largest public-share offering in France was France Telecom. Privatization in Europe has led to genuine competition: the former state-owned enterprises lost their monopolies due to legislation and technological change, competitors entered the market, and prices for broadband access and telephone calls fell dramatically.

2.8. NEGATIVE RESPONSE

Privatization proposals in key public service sectors such as water and electricity in many cases meet with strong resistance from opposition political parties and from civil society groups, many of which regard them as natural monopolies. Campaigns typically involve demonstrations and democratic political activities; sometimes the authorities attempt to suppress opposition using violence (e.g. Cochabamba protests of 2000 in Bolivia and protests in Arequipa, Peru, in June 2002). Opposition is often strongly supported by trade unions. Opposition is usually strongest to water privatization as well as Cochabamba; recent examples include Haiti, Ghana and Uruguay (2004). In the latter case a civil-society-initiated referendum banning water privatization was passed in October 2004.

2.9. REVERSION

A reversion from contracted ownership of an enterprise or services to governmental ownership and/or provision is called *reverse privatization* or nationalization. Such a situation most often occurs when a privatization contractor fails financially and/or the governmental unit has failed to purchase satisfactory service at prices it regards as less than with state-ownership or self-operation of services. Another circumstance may occur when greater control than viable under privatization is determined to be in the governmental unit's best interest.

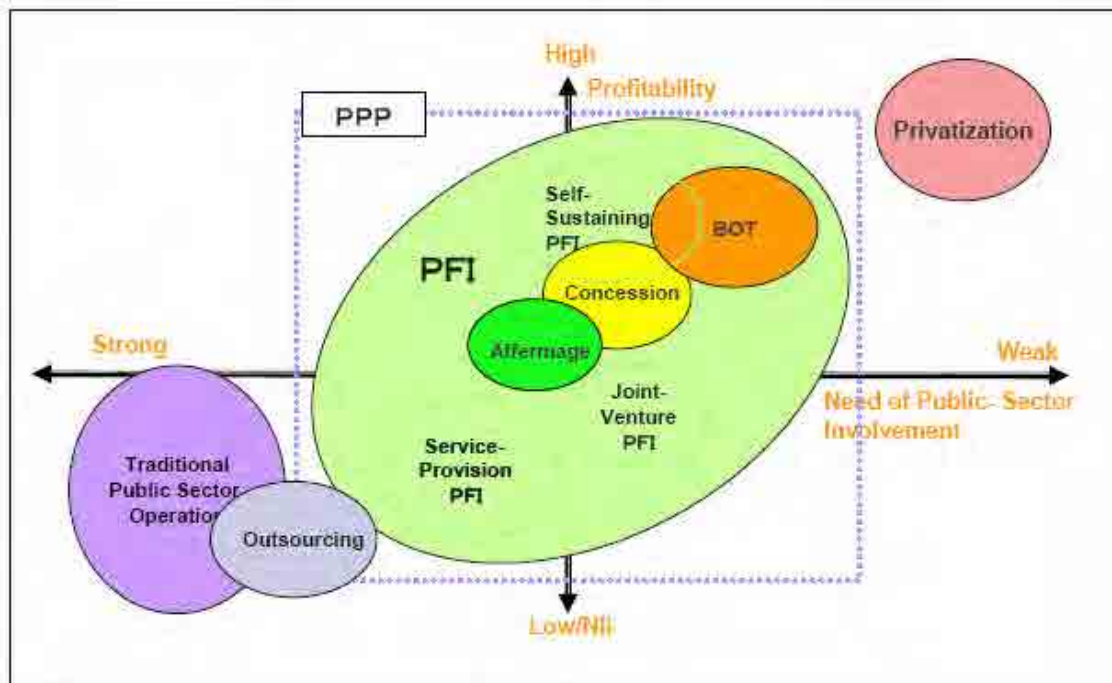
National security concerns may be the source of reverse privatization actions when the most likely providers are non-domestic or international corporations or entities. For example, in 2001, in response to the September 11th attacks, the then private airport security industry in the United States was nationalized and put under the authority of the Transportation Security Administration.

2.10. TRADITIONALLY PROCURED GOVERNMENT PROJECTS AND FULL PRIVATIZATION

The term PPP covers a range of different structures which can be used to deliver a project or a service. Depending on the country and the politics of the time, the term can cover a spectrum from relatively short term management contracts (with little or no capital expenditure); through concession contracts (which may encompass the design and build of substantial capital assets along with the provision of a range of services and the financing of the entire construction and operation); to joint ventures and partial privatizations where there is a sharing of ownership between the public and private sectors. Figure 2.10.1 illustrates that PPPs fill a space between traditionally procured government projects and full privatization, where the government no longer has a direct role in ongoing operations. PPP enables to develop projects which do not have enough profitability from revenues and are not self-sustaining.

⁹ The Financial Economics of Privatization By William L. Megginson, p. 205 -206

Under traditional public sector approach, the public sector designs, builds, operates, and maintains infrastructure, and sets the level of quantity and standards of service quality. Under the privatization approach, the private sector conducts all of these aspects in place of the public sector. Under the PPP approach, the public sector is ultimately accountable for service provisions, although the private sector designs, builds, operates and maintains the infrastructure. PPP ensures provision of services to the general public, but at lower cost and better quality by the use of private sector management skills and finance capabilities.



Source: JICA Study Team

Figure 2.10.1 Project Procured Structure

2.11. CONVENTIONAL BOT VERSUS PPP

Being a broad and flexible concept, BOT may be considered to be a variant form of PPP. But in comparison with "traditional" BOT, PPP has the following fundamental differences both in objectives and principles. In "traditional" BOT the single most important objective is to secure finance. Often BOT has been attempted where there is no alternative other than securing private finance because of budget constraints. As such, the public sector plays little role there and 'leaves it solely to the private sector.' Risks are often imposed to the private sector as much as possible regardless of their capacity and capability and that has led to the failure of many projects.

On the contrary, even though mobilizing private finance is one of the main objectives, the prime PPP objective is to achieve Value for Money (VFM). In PPP, following a transparent and competitive process, whether it will achieve higher quality services at lower cost compared with the traditional public procurement is strictly evaluated, verified and monitored, both quantitatively and qualitatively. If proved otherwise, PPP is dismissed. Risks are allocated to the party best able to manage, and therefore minimize the cost of risks. Full utilization of superior private management and expertise, not just the capability of raising finance, is highly encouraged in PPP. Allocation of risks and responsibilities between the public and private sector is clearly described in PPP contracts.

For example, under a conventional BOT scheme in road projects, the private sector takes the demand risks and recovers its investment from toll revenues. On the other hand, under a PPP scheme, the public sector and the private sector share demand risks and the private sector recovers its investment from the public sector's payments based primarily on availability and/or toll revenues. *Therefore, PPP can be applied to low-volume roads, whereas the conventional BOT is applied to high-volume roads.*

2.12. POLITICAL ENVIRONMENT FOR PPP

There exists considerable variety in development of PPP by countries and sectors. While there exists growing interest in PPP globally (including emerging countries), experience with PPP is actually limited. The UK stands out as having the longest and most substantial experience with PPP.

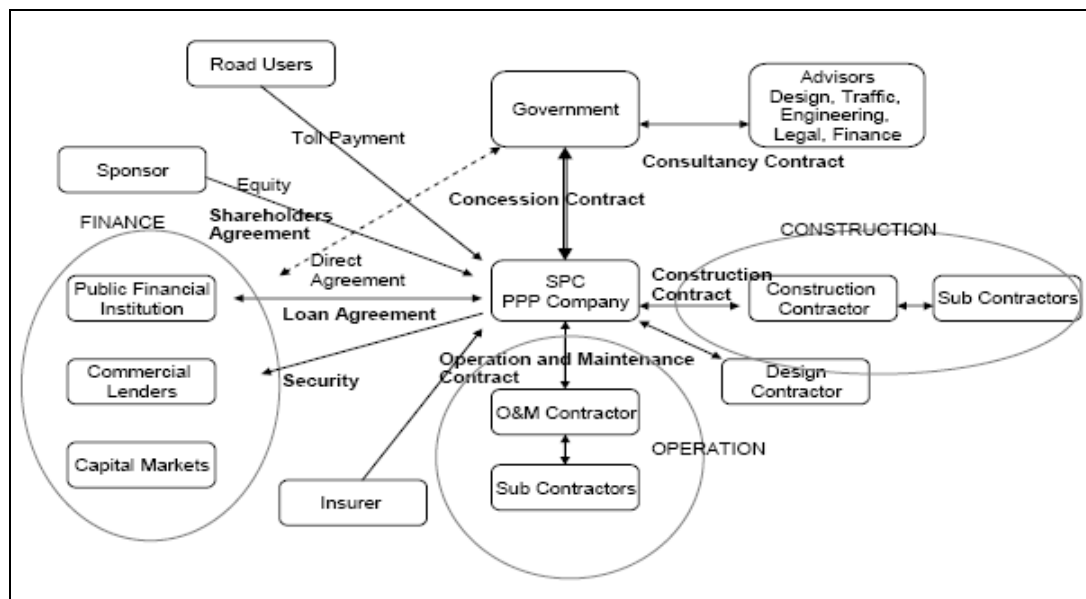
The difference in PPP progress by country appears to have more to do with the interest in PPP and the political desire to promote it, shown by individual governments than any other factor. Even where there is strong political spirit to develop PPP, however, the complexities of individual procurements and the needs to develop both an institutional capability and capacity and an "enabling environment" results in progress being slow initially. Even in the UK it took considerable time for results to come through.

This slow progress in the past has often been related to deficiencies in legal and institutional frameworks in various countries and also to questions about whether VFM is being provided in the PPP format. But with many countries now initiating legislative changes and developing institutions to encourage PPP, e.g., a new concession law in Spain (2003), a PPP Law in Portugal (2003) and a new PPP enabling legislation in France (2004), a surge in these projects elsewhere in the world may be expected.

Government structure and consistency in policy have a significant impact on PPP development. For example, one of the reasons for the slow PPP progress in Germany is attributed to its decentralized government structure, because of which effective policy implementation is hampered. On the contrary, rapid progress of PPP in Spain owes a lot to the government's strong initiative. Reflecting the private sector's needs properly, the Spanish government is effectively promoting PPP pursuant to a consistent policy agenda.

2.13. OVERVIEW OF PPP STRUCTURE

A PPP scheme is a way to implement public works and services and the public sector sets the level of service provisions. However, it involves a number of different players, and their rights and obligations are more complex than the traditional public work procurement. The details will be defined in legal agreements among participants and it is important that the country has proper legislative framework and procedures assuring the certainty of these legal agreements. Figure 2.13.1 shows an example of participants and contractual arrangements of a PPP project.



Source: JICA PPP Expressways Study

Figure 2.13-1 Contractual Arrangement

Under a PPP scheme, the private sector is in charge of design, construction, operation, maintenance, and management of public facilities. However, in most of the cases it would be difficult to find a company which can conduct all of these tasks on its own capacity. At the same time, it is important for the public sector that the business itself will not stop operations at any time. Therefore, it will be necessary to establish a consortium among several companies to share tasks. A Special Purpose Company (SPC) will be established by the consortium, while the government will award a concession agreement to the SPC.

The rights and obligations of both the government and SPC will be defined in the agreement. The SPC will allocate all the risks to consortium members who will best manage these risks. Depending on the ownership of assets, BTO, BOO, or BOT will be applied.

Depending on the project economics, the payments from the public sector to the private sector for its services will be stipulated in a contract while some projects could be only financed by its own revenues on the project finance basis. Financial institutions have a Direct Agreement in order to retain control in case the SPC has difficulty in continuing its business and obligation.

Main factors for the success of PPP projects from the legislative point of view can be summarized in three areas: (i) appropriate and effective transfer of businesses from public to private; (ii) effective and efficient selection process of proposals from the private sector; and (iii) appropriate risk allocation among public sector and private participants.

2.14. REVIEW ON PRIVATIZATION AND RELATED LEGALIZATION AND PROCEDURES

2.14.1. HISTORICAL BACKGROUND

Systems like B.O.T. or B.L.T. or other privatization methods of building and operating the utilities or public services in Egypt have existed and been applied since the middle of the nineteenth century. Perhaps; the first project executed in Egypt under a joint stock company was established under the name of the "World Company for Suez Maritime Canal". Its stocks were distributed to Egypt, France, England, other foreign countries and organizations for digging and then operating the canal by this established company for a specified concession period of ninety nine years under the Egyptian government supervision and according to the fees and duties to be agreed upon in return for an annual royalty/tribute payable by the company to the government, providing the ownership of the project shall be restored to Egypt in a suitable condition for continuing the operation and serving world navigation at the end of the concession period. There were three Royal Decrees related to this canal project. The first was issued on Nov. 30, 1854 concerning the concession for operating the Suez Canal Transit Utility. The second issued on Jan. 5, 1856 concerning the establishment of an Egyptian Joint Stock Company for operating the canal utility. The third issued on Mar. 19, 1866 ratifying the contract signed between Khediwe Ismail and Ferdinand De Lesseps.

After the Suez Canal project there were many contracts for public utility concessions such as Lebon Gas Company, Delta Limited Railways Company, Heliopolis and Ain Shams Oases Company, Al Mokattam and Al Montazah Company, Marconi Radio and Telephones Company, the Tram and Bus Company, Kafouri Delta Transport Company, Alexandria Tram Company, and Abou Regela Public Transport Company in Cairo. However; all these companies were Egyptianized and Nationalized from 1956 up to 1961.

2.14.2. REFORM ERA

Egypt has a stable economy in the Middle East and North Africa enjoying continuous growth, averaging 4%–5% in the past quarter-century. The economy embarked on various stages of development during which the public and private sectors played roles varying in relative importance:

- **Import substitution and nationalization**, 1952–1966, during which the first program of industrialization in 1957 was established and led by the public sector in heavy industries such as iron and steel and chemical industries. Nationalization reduced the relative importance of the private sector.
- **Inter-War**, 1967–1973, adversely affected the performance of the economy and public sector role in import substitution.
- **Openness Euphoria**, 1974–1982 during which policies were introduced to encourage Arab and foreign investment through a series of incentives and liberalizing trade and payment; the economy expanded but this proved unsustainable and growth consequently scaled back. The Arabic word: "Infitah", which means "open door" was Egyptian president Sadat's policy of "opening the door" to private investment in Egypt. In the years following the October war with Israel in 1973, Sadat brought a number of reforms to Egypt, including economic reforms that ended the domination of Egypt's economy by the public sector and encouraged both domestic and foreign investment in the private sector.
- **External Debt Crisis**, 1982–1990, the external debt crisis and Paris Club re-scheduling and debt reduction.

- **Economic Reform**, 1991–2007, reform policies were introduced to meet the terms of international institutions, lenders and donors, including wider incentives to the role of the private sector in all economic activities.
- **The World Food Crisis**, 2008, soaring food prices, especially for grains, led to calls for the government to provide more immediate assistance to the population, which had more than 40% in the "poverty tunnel" and to strike a "new deal" on agriculture policy and reform.
- **The World Global Financial Crisis**, 2008–present, Egypt to face the repercussions of the global financial crisis on the national economy.

Under comprehensive economic reforms initiated in 1991, Egypt has relaxed many price controls, reduced subsidies, reduced inflation, cut taxes, and partially liberalized trade and investment. Manufacturing has become less dominated by the public sector, especially in heavy industries. A process of public sector reform and privatization has begun to enhance opportunities for the private sector. Agriculture, mainly in private hands, has been largely deregulated, with the exception of cotton and sugar production. Construction, non-financial services, and domestic wholesale and retail trades are largely private. This has promoted a steady increase of GDP and the annual growth rate. The Government of Egypt tamed inflation bringing it down from double-digit to a single digit. Currently, GDP is rising smartly by 7% per annum due to successful diversification.

Gross domestic product (GDP) per capita based on purchasing-power-parity (PPP) increased four fold between 1981 and 2006, from US\$ 1355 in 1981, to US\$ 2525 in 1991, to US\$ 3686 in 2001 and to an estimated US\$ 4535 in 2006. Based on the national currency, GDP per capita at constant 1999 prices increased from EGP 411 in 1981, to EGP 2098 in 1991, to EGP 5493 in 2001 and to EGP 8708 in 2006. Based on the current US\$ prices, GDP per capita increased from US\$ 587 in 1981, to US\$ 869 in 1991, to US\$ 1461 in 2001 and to an estimated US\$ 1518 (which translates to less than US\$ 130 per month) in 2006. According to the World Bank Country Classification, Egypt has been promoted from the low income category to the lower middle income category.

Surging domestic inflationary pressures from both economic growth and elevated international food prices led the Central Bank of Egypt to increase the overnight lending and deposit rates in sequential moves since February 2008. The rates stood at 11.5% and 13.5%, respectively, since 18 September 2008.

The rise of the World Global Financial Crisis led to a set of fiscal-monetary policy measures to face its repercussions on the national economy, including reducing the overnight lending and deposit rates by 1% on 12 February 2009. The rates currently stand at 10.5% and 12.5%, respectively.¹⁰

Reform of energy and food subsidies, privatization of the state-owned Bank of Cairo, and inflation targeting are perhaps the most controversial economic issues in 2007/2008 and 2008/2009.

2.14.3. LEGALIZATION RELATED TO PRIVATIZATION

Review of legalization and procedures related to the privatization system in Egypt is a continuation of a long history that can be briefly summarized as follows:

¹⁰ Central Bank of Egypt, MPC Press Releases

Law No. 129/1947: Concerning Public Utilities Concessions

Presidential Decree Law No. 61/1958: On granting the concessions which are connected with investment in natural wealth resources and public utilities, and the amendment of concession conditions.

Civil Code No. 131/1948: Articles 668 to 673

The Constitution: Article 123

Decree-Law of President of the United Arab Republic No. 84/1968: On Public Roads.

Law No. 3/1997: On awarding the public utility concession for the establishment, management and exploitation of airports and landing grounds.

Law No. 12/1976: Establishing the Egyptian Electrical Authority.

Law No. 164 of year 2000: Transferring the Egyptian Electrical Authority into an Egyptian Joint Stock Company.

Prime Minister's Decree No. 695 of year 2001: Concerning the formation of a ministerial committee, and a work team, for reorganization of national and local projects under the B.O.T. system, and the B.O.O.T. system.

Law No. 89 for the year 1998: Foregoing law on tenders and bidding.

2.14.4. INVESTMENT CLIMATE

Before the Jan. 25, 2011 revolution, the Egyptian equity market was one of the most developed in the region with more than 633 listed companies. Market capitalization on the exchange doubled in 2005 from US\$ 47.2 billion to US\$ 93.5 billion, with turnover surging from US\$ 1.16 billion in January 2005 to US\$ 6 billion in January 2006.

Private equity has not been widely used in Egypt in the past as a source of funding for businesses. The government, however, has instituted a number of policy changes and reforms specifically intended to develop internal private equity funds and to attract private equity funding from international sources.

The major industries include textiles, hydrocarbon and chemical production, and generic pharmaceutical production. Unemployment is high at about 10.5%.

Until 2003, the Egyptian economy suffered from shortages in foreign currency and excessively elevated interest rates. A series of budget reforms were conducted in order to redress weaknesses in Egypt's economic environment and to boost private sector involvement and confidence in the economy.

Major fiscal reforms were introduced in 2005 in order to tackle the informal sector which according to estimates represents somewhere from 30% to 60% of GDP. Significant tax cuts for corporations were introduced for the first time in Egyptian history. The new Income tax Law No. 91 for 2005 reduced the tax rate from 40% to 20%. According to government figures, tax filing by individuals and corporations increased by 100%.

Many changes were made to cut trade tariffs. Among the legislators' goals were tackling the black market, reducing bureaucracy and pushing through trade liberalization measures. Amendments to Investment and Company law were introduced in order to attract foreign investors. For example, the number of days required for establishing a company was dramatically reduced.

Significant improvement to the domestic economic environment increased investors' confidence in Egypt. The Cairo & Alexandria Stock Exchange is considered among the best ten emerging markets in the world. The changes to the policy also attracted increased levels of foreign direct investment in Egypt. According to the UN Conference on Trade and Development's World Investment Report, Egypt was ranked the second largest country in attracting foreign investment in Africa.

Given the large number of amendments to laws and regulations, Egypt has succeeded to a certain extent in conforming to international standards. Very recently the Cairo & Alexandria Stock Exchange (CASE) was welcomed with full membership into the World Federation of Exchanges (WFE) the first Arab country to be invited.

Enforcement of these newly adopted regulatory frameworks remains, sometime problematic. Problems like corruption hamper economic development in Egypt.

2.14.5. EFFECT OF PRIVATIZATION ON LOCAL FINANCING SOURCES

Among the fears aroused, whether at the People's Assembly, in the press or at certain seminars concerning privatization (PPP, BOT, etc.) is the question of whether any privatization system will be liable to negatively affect the local financing sources whether in Egyptian pounds or in US\$ as available from the local bank sector based on the fact that the foreign companies with which the contract will be concluded may resort to the local banks to get all the financing necessary for implementation of the contract and then transfer their profits abroad without sustaining any self finance on their part.

The answer is that the companies that will contract with the administrative entity for implementation of a public utility concession contract under any privatization system may be foreign companies or branches of completely foreign firms without any investment of Egyptian capital. They may also be Egyptian mixed companies established according to Law No. 159 of the year 1981, Law No. 8 of the year 1997 or Law No. 203 of the year 1991, whatever the percentage of participation by Arab or foreign capital in them. It can be noticed that all types of these firms or branches shall be required to prove their fiduciary merit as applicable with the different banks, under control of the Central Bank of Egypt and according to the control set thereby as to the percentages of the reserve funds and liquidity in local currency as well as in foreign currency that should be made available with different banks. Also; rules, controls and conditions of granting the credit and the ceilings set to granting loans with the client will be adopted whatever the type of the project as long as the company or the branch will fulfil these conditions and as long as the bank granting the loan will abide by the rules, controls and percentages of the reserve funds and the liquidity determined by the Central Bank of Egypt. Therefore; there should be no fear regarding the finance sources available by the banking system and no fear that a privatization system might lay hold of a larger part of these bank resources.

Furthermore; such fear may be unjustified in the case of the wholly foreign companies or branches that are mainly funded by foreign capital or in which the percentage of Egyptian capital does not represent the majority by prescribing in the contracts concluded therewith that a specified percentage of the cost of executing the project shall be provided through self-finance of the company from its capital or from increasing its capital and the other percentages shall be obtained through loans or through floating bonds for the public whether in local or foreign currency. To obtain loans or floating bonds; a steady practical study on the project should be undertaken to ascertain its fiduciary merit in addition to obtain adequate banking guarantees vis-à-vis the company covering the loan amount, its interest and commissions as well as all the bank's dues in case the company fails or stumbles in settlement.

2.14.6. EFFECT OF THE PUBLIC UTILITIES CONCESSION CONTRACTS ON STOCK EXCHANGE AND ON THE GENERIC BUDGET OF THE STATE

It is common that a privatization system becomes a well-known method for establishment of public utilities, especially those utilities that provide public services such as airports, highways, power plants, gas, sanitary, drainage potable water, etc. In these contracts, the concessionaire sustains all costs of establishment of the project, as well as its management, operation and maintenance expenses throughout the contract

(concession) period. The concessionaire obtains its profits without participation by the State or the entity granting the concession.

When the concessionaire is committed to provide adequate financial resources to fulfil his obligations according to the contract he may access the Stock Exchange with its shares and stocks whether in the "issue market" or the "stock circulation market".

To demonstrate how this is done, if the concessionaire is going to establish a new joint stock company to undertake the project, here the "issue market" is activated as a result of issuing the new company stock, whether it's a closed end company or a public subscription company. However; if the concessionaire is an already existing company granted the public utility concession and desires to prepare self-finance for itself by increasing its capital, here also the "issue market" will be activated as a result of issuing the new stock for the capital increase.

Issuing this new stock, whether on first establishing the company, or on increasing the capital of an already existing company is liable to be followed by providing on the market new merchandise that can be circulated especially if the firm is a public subscription company, recorded on the official rolls once it has fulfilled the registration conditions and the project begins to yield a rewarding income from the stock, that encourages stock exchange dealers to buy them on the secondary market namely the "stock circulation market".

Expansion of demand for these stocks on the secondary market results in increasing Egyptian, Arab and foreign capital attraction to enter the Egyptian Stock Exchange as a result of diversifying fine and promising goods supplied of stock in circulation and will reflect its positive effect on expanding the circulation base and balance and on distributing the demand for multiple strong stocks, thereby representing a feature of stock exchange strength and health in general.

On the other hand, the issue market as well as the circulation market may be activated if the company resorts to issuing finance bonds or debentures with remunerative yield whether fixed or variable.

The foregoing will result in alleviating the burden on the general budget of the state by saving more of the public expenses that would have needs, as long as the public utility concession company will undertake fulfilling the services and needs with costs at their expense without charging anything thereof to the state. This will in turn minimize resorting to the treasury bonds, and to borrowing from banks, which might lead to reducing credit and debit interest rates. It will also encourage investment in securities and result in activating the stock exchange, increasing its efficiency in attracting further national savings and in reducing the purchasing power in the market, which is a basic factor for limiting inflation.

Increasing the circulation base and diversifying the stock in circulation which act in balance among themselves as a result of reducing the control of the market mainly by certain stocks and non-monopolizing the effect of these stocks on it, is liable to diversify the securities in portfolios of investment funds and expand choices and investment securities. This will reflect its positive effect on the performance of these investment funds and on realizing the remunerative profitability sought from the notes issued thereby whether they are of periodic or cumulative yield.

It can be concluded from the foregoing that the public utilities concession projects under the privatization umbrella will produce a positive yield and return on the stock exchange and the general budget of the state in particular and on the national economy in general if the following requirements are achieved:

- The companies to which the projects are assigned are well chosen
- The concession contracts are surrounded with the necessary guarantees
- Clear and proper conditions that guarantee providing the service and managing the project regularly, progressively and most satisfactory are established
- Effect control of the State or the entity granting the concession
- Guarantee that the necessary controls for local and foreign financing are managed

2.14.7. PROVISION CONCERNING WORKERS OF COMPANIES THAT ARE GRANTED PUBLIC UTILITY CONCESSIONS

It is noted that if the company that will be granted a public utility concession is an Egyptian firm operating in Egypt or whether it is a joint stock company, a limited liability company, a partnership limited by shares that are subject to Law No. 159 of the year 1981, the Investment and Incentives Law No. 8 of the year 1997, or the Public Business Sector Companies Law No. 203 of the year 1991 and whatever the percentages of contribution by foreigners in them is, Law No. 159 has set provisions to be observed concerning the number of workers and percentage of their wages as prescribed in its articles Nos. 174, 175 and 176 which state that:

- Article 174: The number of Egyptian workers in Egypt as employed by the companies that are subject to the provisions of this law shall not be less than 90 percent of the total workers and the wages they receive shall not be less than 80 percent of total wages of the workers as paid by the company.
- Article 175: The number of Egyptian technical and administrative workers in the joint stock companies operating in Egypt shall not be less than 75 percent of total workers employed thereby and the total wages and salaries they receive shall not be less than 70 percent of the total wages and salaries paid by the companies to the said categories of workers. This provision applies to partnerships limited by shares and limited liability companies if their capital is more than fifty thousand Egyptian pounds.
- Article 176: In exception to the forgoing provisions, the competent minister shall have the power to authorize employing foreign workers, counselors, or specialists in case it is practically difficult to find Egyptian workers to fill these positions for the period to be determined by the Minister. These foreign workers, counselors or specialists shall not be included in reckoning the prescribed percentages.

The competent minister or his delegated deputy shall issue his final decision in applications submitted by the concerned parties, where the exception is requested within two months from the date they are submitted. Failure to replay to the application shall be tantamount to accepting the exception for a period of one year or for the period determined in the application whichever is shorter.

Decree No. 62 of the year 1982 as issued by the Minister of Manpower and Training was issued concerning the conditions and procedures necessary for enforcing the provision of the aforesaid articles.

It transpires from the forgoing that an integral legal regulation exists for the protection of Egyptian workers and their wages in companies to which the execution of projects is assigned under the public utility concession system. Therefore; there is no place for any fear aroused in this respect.

2.14.8. PPP LAW

The PPP Law in Egypt obtained approval by the end of 2010 and it is shown in this report appendix in Arabic and English translation.

2.15. MAKING IT HAPPEN: PRIVATE SECTOR PARTICIPATION

Many definitions exist related with the cooperation between private and public partners (Table 2.15.1). But a closer analysis suggests only a few descriptions exist which allow differentiating between, while it is mostly a question of different names to refer to the same issue: cooperation between the public and private sector:

Table 2.15.1 Characteristics of the Definitions on Private Participation in Public Ventures

Characteristic	PSP	PPI	PPP	PSI	PFI	PFP
Name	Private Sector Participation	Private Participation in Infrastructure Development	Public Private Partnership	Private Sector Investment	Private Financing of Infrastructure	Privately Financed Project
Geographic use	USA (WB)	USA (WB)	UN / EU / all	Asia (ADB)	UK	AUS
Prime focus	Role private sector	Infrastructure development	Role private sector	Infrastructure & Financing	Financing	Financing
Description	Vague	Clearer	Vague	Vague	Clear	Clear
Application fields	Many	Few	Many	Few (infrastructure)	One	One

Source: JICA Study Team

In the USA, the World Bank in particular uses, since the middle of the nineties, the term Private Sector Participation (PSP) to refer to all possible forms of collaboration between the private and public sectors. Within more recent years Private Participation in Infrastructure development (PPI) has become frequent in documents when discussing infrastructure development projects. The use of the Private Sector Participation (PSP) and Private Participation in Infrastructure development (PPI) expressions seem specific to the World Bank and related organizations while other American authorities and private experts also frequently use the expression Public Private Partnership (PPP) intertwined with Private Sector Participation (PSP). In Europe, the relationship between the private and public sectors in setting up joint projects was from the beginning referred to as "Public Private Partnership". In 2004, the European Commission formalized its point of view by publishing a "Green Paper on Public-Private Partnerships and Community Law on Public Contracts and Concessions". A closer review of the 2003 Guidelines and the 2004 Green Paper suggest that the targets, context and structure of the Public Private Partnership (PPP) expression are equal to the Private Sector Participation (PSP) concept. In the United Kingdom the "Private Finance Initiative" or "PFI" is the preferred cooperation method which is defined as a Public Private Partnership for funding major capital investments, without immediate recourse to the public purse. The British "Private Finance Initiative (PFI)" concept is similar to Australia's idea on "Privately Financed Projects" or "PFP" which is part of the broader spectrum of Public Private Partnerships (PPP) and is a general term covering any contracted relationship between the public and private sectors to produce an asset or deliver a service. Finally, the ADB uses both the terms "Public Private Partnership" (PPP) and "Private Sector Participation" (PSP) without a real distinction albeit with a slight preference for the latter.

Dealing with the role and function of the private sector in the realization of public projects, a notable and specific term the Bank uses is the expression "Private Sector Investment" or "PSI" which has a more specific meaning that concentrates on the innovative and non-traditional project-specific finance models / agreements, focusing domestic financing and guarantee / insurance techniques underpinning these financing arrangements.

There are a number of conditions that should be fulfilled for the establishment of a Public Private Partnership:

- A legal entity must be created in the form of a project company that can act as contracting body and raise finance, prepare and develop the project, manage the assets and which is ultimately responsible for generating revenues from future operations;
- The ownership options for such a project company vary but the important factor is the legally independent character of the entity;

- The project-company must be constituted in a way that it is an acceptable party for receiving financial support from the public sector.

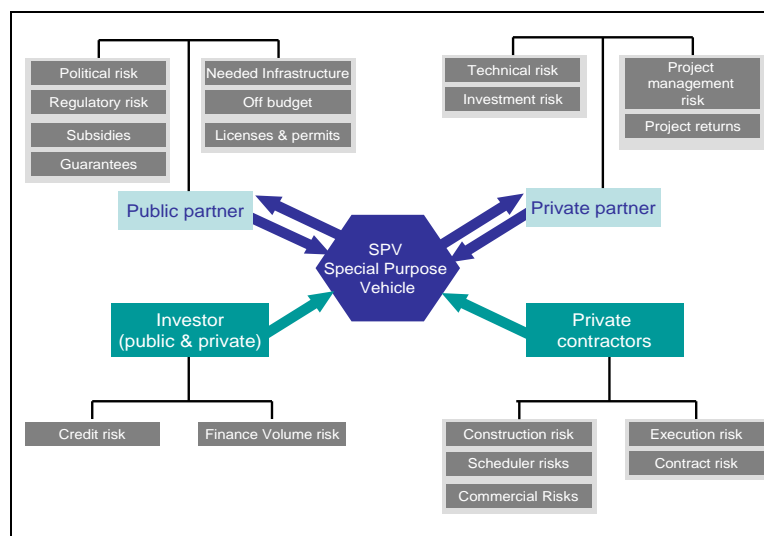
But establishing a PPP is not without risk. One can distinguish among the risks that can be borne by the private sector:

- The technical risk: using new techniques; applying existing methodologies at a larger scale or under different conditions; etc;
- The scheduler risk: delays in execution; unrealistic development schemes; etc;
- The commercial risk: failing or lack of financial resources; cost escalation; failing budget control; lower than expected incomes; etc.

There are other categories of risk or uncertainty that fall outside the control of the private sector and should be covered by the public sector:

- Planning and permits risk: delays in planning procedure, negative environmental impact assessment, refusal of construction permits; etc;
- Political risk: interventions by lower level decision makers; delays or cancellation of promised interconnected investments that are imperative for the project's success; new government imposes changes to or orders termination of the project; plans, political (public) pressure leading to intervention to change agreed upon contract conditions; etc.;
- Regulatory risk: changes in design rules; new technical requirements; new safety and environmental rules and regulations; changes in the "rules of engagement"; etc.

The Public Private Participation should anticipate this divergence in objectives and ensure a guaranteed commitment of all partners to balance the entire set of project risks between partners in an equitable way and according to the guiding principle that risks are allocated to the partner(s) which is (are) the most capable of efficiently dealing with the risk, see Figure 2.15.1 for an allocation of the various risks to the different stakeholders.



Source :JICA Study Team

Figure 2.15.1 Risk Distributions over PPP Stakeholders

2.16. THE PPP CENTRAL UNIT

In line with the Egyptian Government's strategy to promote and increase the private sector involvement in the country's economic and social development plan- particularly in the area of public utility services- the Government has taken initiative to introduce the Public Private Partnership.

Affirming the government seriousness to activate the PPP initiative, a **PPP Central Unit** was established within the Ministry of Finance reporting directly to the Minister. The Ministry of Finance PPP unit is charged with co-coordinating the PPP national program across ministries and public bodies. The upcoming period will witness the intensification of contacts with line ministries, other government bodies and with the private sector to activate this initiative. In this context, the Central Unit in the Ministry of Finance will provide support to line ministries on all forms of PPP projects.

The Ministry of Finance PPP unit is charged with co-coordinating the PPP national program across ministries and public bodies. It will be working closely with the Ministry of Planning and the Ministry of Investments to ensure a controlled roll-out of a series of significant infrastructure and public services projects. The Unit will be in charge of the study, application, and implementation as well as coordination with line Ministries and with the private sector to develop this PPP theme in a policy framework and a clear action plan.

An essential task of the unit is to ensure that PPP project proposals are supported by sound analysis as to needs and value, receive the necessary budget approvals and that partner selection takes place as a result of a rigorous and fair competition. In all cases, the unit's guidelines on project selection; appraisal and tendering will be communicated to all parties involved soon. This should coincide with the establishment and commencement of specialized units located in the line ministries who have plans to implement projects under the PPP program.

The PPP Central Unit vision is as a "center of expertise" which is vested with the Mission to introduce and communicate the Public Private Partnership policy, to develop practice and to take a vital role in the delivery of the initial projects. The centre will bring in support and experience from domestic and overseas experts. It is the department of the Ministry of Finance that is charged by Government to oversee and implement the policy.

The lead responsibilities of PPP Central Unit include:

- Articulating a single national PPP policy so that its objectives and mechanisms are understood by Ministries and State agencies, funders, contractors, the press and the general public
- Developing and sponsoring new legislation and regulations for PPP procurement and practice which must be observed by all ministries submitting PPP proposals
- Importing experience from other countries and developing guidance and methodologies that are appropriate to Egypt. The centre should be the recognized authority on the PPP process developing a "tool kit" to standardize PPP practice across Government.
- Assisting Ministries/public bodies develop/vetting PPP proposals (Business Cases). The MOF must agree that these cases are sound before procurement can proceed and BUDGET be allocated.
- Communicating the process to the professional private sector participants (banks, lawyers etc)

- Helping devise the structure of PPP funding and security packages
- Identifying issues that may impede the programme and orchestrating their resolution
- Shepherding and advising on project tenders, being a watchdog for good practice, and learning the lessons from pilot exercises. This should involve active participation in all aspects of early projects tenders (process, documentation, negotiation, evaluation and review)
- To develop and enforce the use of generic commercial terms for PPP contracts (standardized contract model)
- Being the “intelligence gatherer” to appreciate the development of concession/PPP practice in other countries
- Being a “public face” to the initiative with a newsletter and a website
- Promoting the development of concession / PPP / Project finance advisory skills for export to the Eastern Mediterranean and Gulf regions
- It must be the guardian and promoter of the new methods and a proactive agent for change. In short, in matters of PPP development and practice, it has to be both originator and final arbiter
- Communicating the process to the professional private sector participants (banks, lawyers etc)
- Helping devise the structure of PPP funding and security packages
- Building technical capacity; first its own and then that of the Line Ministries and agencies sponsoring projects, but also that of the Private Sector. This often takes the form of training sessions, publications and seminars
- Promoting the development of concession/PPP/Project finance advisory skills for export to the Eastern Mediterranean and Gulf regions. This could eventually represent a key area of high-added value business for Cairo as a regional financial center

2.17. CRITICAL ISSUES AND REQUIREMENTS FOR SUCCESSFUL PPPS IN EGYPT

- Strong National Political Backing
- Rigorous pre-procurement analysis of project feasibility: a good business case (based upon clear outputs) and a public sector comparator or benchmark exercise to ensure the Government can afford the required PPP unitary payments
- Detailed risk identification & analysis: of the project for both technical & commercial risks as well as political risks
- A well-structured, transparent, and competitive procurement process
- Willingness of the Public Client to accept innovative solutions from competing private bidders
- A detailed contract: which can also accommodate certain changes in the requirements of a project over time

- Professional and effective monitoring of the private contractor by the public client: of the entire operational phase of the contract with the spirit of making the overall Partnership work
- Selection of appropriate project candidates: not too small, should be replicable, with clear private sector interest
- Good, detailed preparation: clear business cases established (feasibility analyses), clear output specifications, and a committed, well-resourced, and experienced PPP project procurement team
- Proper advisory support: experienced PPP legal, technical and financial specialists
- A well structured, transparent, competitive PPP procurement process
- A clear and consistent methodology for evaluating value for money: based upon clear models, templates, and Standard Operating Procedures (SOPs)
- Proper monitoring of the entire (15 – 20 + years) operational phase
- A determination by all parties and stakeholders to make the PPP work for all the stakeholders (governmental, private investors, private lenders, and public users & consumers)

2.18. THE PPP GUIDE

The Central PPP Unit at The Ministry of Finance has produced a guide with the assistance of International Capital Partnerships Ltd, a London based consultancy with wide international experience in helping Governments develop PPP programs. This is the first time such a guide has been produced in Egypt.

The guide is intended to help those who will undertake the effort and bear responsibility to procure the first PPP projects in Egypt. Using the guide will help them become more familiar with the overall structure of the process of delivering a PPP project and understand better the new concepts which have been introduced. In order to achieve this objective, the guide is based on the experience gained in the UK where a diversified PPP market has flourished. It is written in a simple and practical way to ensure that what is required is understood at a managerial level as well at a very detailed and technical one.

However, the guide alone is not enough for inexperienced authorities to achieve proper structuring and procurement of PPP projects. It attempts to deal in a straightforward and comprehensible way with analytic tools and methodologies, where even if the principles are clear, there is yet no international fixed norm. Therefore and in accordance with the government's guidance, authorities must always seek experienced advice for the specific technical, financial and legal matters relevant to each project under procurement.

Following the national initiative, the public and the private sectors in Egypt expect to benefit from the gradual creation of an effective PPP market both for medium and small projects and for large project finance transactions which are currently under procurement.

The concept is new for most authorities and public bodies as well as private sector entities that will be involved in future PPP's. Privately financed projects, although large in size, have until recently been structured and managed by a limited number of public and private experts. However certain issues are new for everyone:

- A new form of contract under which the Partner/project sponsor can be paid, not by the end user (which was already permitted under the previous legislation), but by the Contracting Authority during operation;
- The introduction of PPP in the services sector;
- Completely new approach to selecting projects and evaluating their overall cost; and,
- A highly structured tendering process for PPP partner selection.

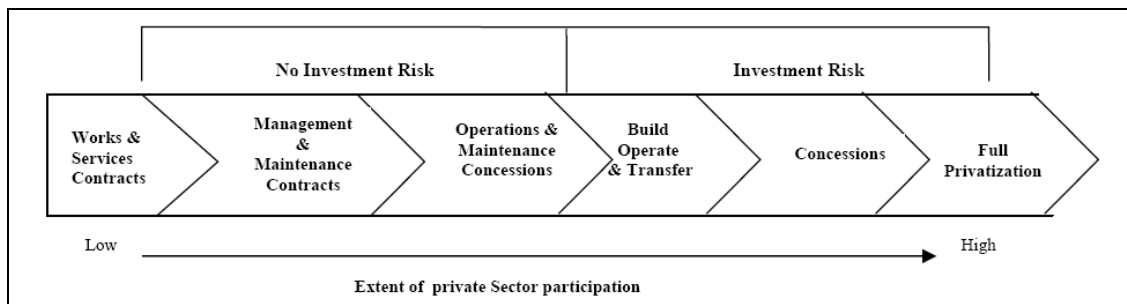
2.19. CATEGORIES OF PPP

PPP's falls into three broad categories. The majority of transport projects will be located under the first category.

- Financially self-standing concessions: these comprise tolled roads and river crossings where the traffic volumes and toll charges are sufficient to finance the investment and ongoing services and support. They also apply to certain municipal services, typically water treatment and supply, sewerage and wastewater, waste collection and management and transport services. For such concessions, which can take many of the features of privatization, it is essential that user charges should be regulated but set at economic levels to pay for the investment required as well as the ongoing service.
- Hybrid PPP's: these cover areas of service where user charges are made, but for political and/ or social reasons are maintained at levels that are insufficient to sustain the required outlays of capital and operational expense. In these cases user charges have to be supplemented by subsidy from the Public Authority.
- PFI-type PPP's: this category has seen the largest growth in recent years, particularly in the United Kingdom, and is applicable to all those sectors where no user charge is possible or politically acceptable. In public services, examples are public schools, hospitals and health centers, and for the use of the government itself, courts, prisons, municipal buildings, police and fire stations.

The nature of the partnership between the private and the public sector can range from fairly simple contractual arrangements to supply a specific service (e.g., garbage collection), to complex arrangements to design, construct, operate, maintain, finance, and provide and infrastructure service (e.g., a new airport). In other words, there are many variants of PPPs, including management contracts, leasing investment concessions, build-operate-transfer (BOT) and related versions such as Rehabilitate-Operate-Transfer (ROT), Build-Own-Operate (BOO) and Build-Own-Operate-Transfer (BOOT). In return for agreeing to provide the service, the private sponsor receives a fee (in payment for specific services rendered, or a tariff or user charge depending on the type of the PPP used) according to certain standards of service and other criteria as specified in the contract.

Figure 2.19.1 illustrates the broad spectrum of private sector participation in service delivery. As more equity and control is transferred to the private sector, so is more risk. PPP, in which the private sector can provide significant amounts of finance for the project, provides relief to government budget. With these savings the government could invest in those projects that are less amenable to PPPs.



Source: MOF, PPP Guide

Figure 2.19.1 Full Spectrum of Private Sector Participation in Service Delivery

2.20. IDENTIFYING SUITABLE PPP PROJECTS

PPP is a method of procurement of more effective investment and service delivery, not just for public services, but also for the working of the public administration. However, not all areas of investment in public service improvement are susceptible to the PPP methodology. Experience has shown that potential PPP projects should conform to the following characteristics:

- The investment required, in particular for pilot projects should be over 100 million LE. This is because the complexity and expense involved in launching such projects using proper public procurement procedures are only justified for projects of a larger-scale
- The assets and services required should be those that the private sector is capable of supplying, and there should be an actual or potential competitive market for such supply
- Projects should not have a high technology content, or require technology that is not readily available on a competitive basis
- The Public authority proposing a PPP should be able to specify in output or outcome terms the scope and scale of its needs for the life of the project
- The project proposal should be justified by a detailed analysis of needs and arguments for the suitability of the PPP approach. This is frequently called the Business Case.

It is essential that the Business Case is well argued, and receives the formal approval of senior governmental/political authorities before a PPP project be put out to formal tender.

2.21. MAKING THE BUSINESS CASE FOR PPP INVESTMENT

The Business Case should be the formal analysis document that justifies the project and the PPP procurement route. It is likely to be presented to sponsoring and budgetary ministries, as well as to political authorities. It will be a document of record, potentially subject to audit scrutiny. Its existence and approval at the appropriate governmental level will be a key factor for encouraging potential partners to tender for projects.

The Business Case is a detailed exercise, is likely to take some months of careful preparation and will frequently require input from external experts. It should address the following:

- The need for and nature of the proposed investment

- Options for investment and why the PPP route is proposed
- The risks and implications of the project as a PPP
- Estimates of annual cost and considerations of affordability
- Timing and preparedness for a PPP procurement

2.21.1. Estimating VFM – Risk, Tax and Timing

Assessing VFM is a technical exercise which requires the development of detailed financial model incorporating the Client's project estimates of both investment and operating costs. These estimates are then adjusted to arrive at comparable values for both PPP procurement and a conventional procurement.

1) Risk

The key to successful PPP contracting is the fair allocation of project risk and the financial consequence of risk between the public and private sector partners. There are many categories of risk that can affect the successful outcome of a project. Some of the most common are:

- Timing and availability of planning and licensing consent
- Unforeseen ground conditions
- Proper design and engineering
- Cost and time overruns during construction
- Compliance with technical standards
- Demand, usage
- User contributions
- Cost of services during operational phase
- Increase cost due to change of legislation
- Inflation
- Availability and cost of insurance
- Technology change and obsolescence
- Industrial action

The PPP contract's purpose is to allocate project risks between the Client and the PPP Partner. The Client should achieve the best value when each is responsible for those risks it can best manage and/or mitigate.

From the examples above, the risks fall into categories including technical, commercial, operational, financial and regulatory. For each project, these potential risks have to be identified, their likelihood of occurrence assessed, their potential impact and cost of rectification estimated and their likely aggregate financial consequences attributed to the parties to the contract.

2) Change of public sector cost base

Inevitably the switch to PPP contracting will change the cost base of the Client. The PPP Partner will now absorb certain costs that would have fallen to the client, but new client costs of monitoring will arise. It is important that these changes are properly reflected in the calculations.

3) Tax (Sales, income and property taxes)

For a proper comparison to be made between the PPP option and conventional procurement, allowance should be made for the different tax flows to the government that result from the different methods of procurement. This will involve looking beyond the net cash outflows under the alternative scenarios of the project client to gauge the overall impact on the local and national treasuries.

2.21.2. The Project Committee/Board and achieving VFM

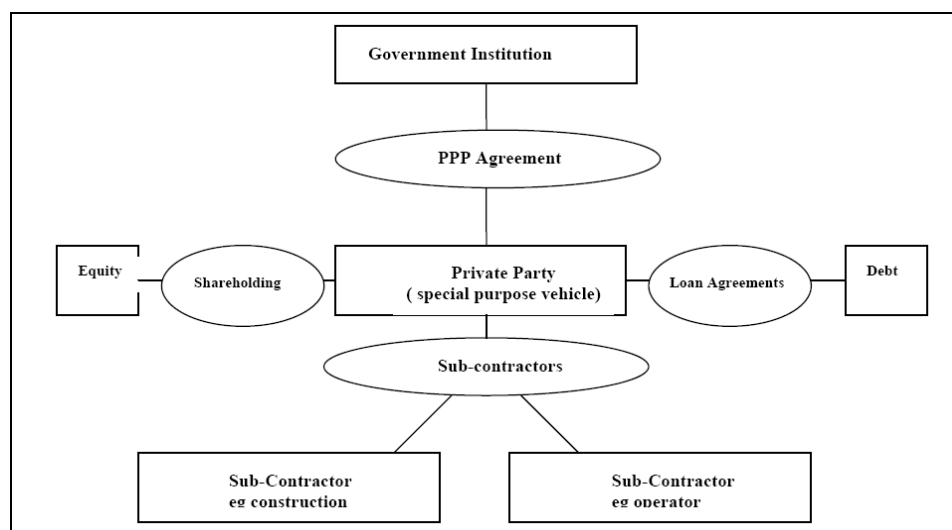
The task of the Client in a PPP project is to achieve proper VFM. This will depend upon a procurement process expertly managed to ensure that competition generates good quality bids, that the best bid is identified and that the contract determines the optimal balance of risk and responsibility between the Client and the PPP Partner.

During the procurement process, this is the role of the Project Committee/Board. After the contract is signed, the Client must exercise diligent monitoring of the Partner's performance and bring a clear and rational approach to the management of service changes, so that the VFM identified at contract signature is properly delivered during the operational phase of the project.

The PPP contract represents the rulebook for a long-term and exclusive commercial relationship. The benefits of that relationship, however, will only accrue if both parties bring a positive and collaborative approach to the management of that relationship.

2.22. THE PPP STRUCTURE

In PPPs where substantial risk is being passed to the private sector, including financing risk, the capital cost is usually funded through project finance. Project finance is the mechanism whereby projects are financed using the future revenues flowing from the projects. By involving the private sector in service delivery, the cost to the public sector is spread over the long term, rather than incurred up front, thus freeing limited public sector resources for more projects without needing to raise funds via taxation; seldom a popular alternative. In addition, concession-based project finance allows for the asset to be transferred back to the public sector at the end of concession term after a period of time sufficient for the private sector to earn a return. A diagram representation of typical PPP structure is given in Figure 2.22.1.



Source: MOF, PPP Guide

Figure 2.22.1 Typical Structure of a Project Financed Based PPP Structure

Typically, in project financing, a new company normally called a Special Purpose Vehicle (SPV) is created for specific purpose of carrying out a particular project. The SPV relies on the revenue streams it receives in return for providing the services to the client, in order to meet its debt obligation to the financiers, cover operating costs and, ultimately, produce a return on the equity for the shareholders.

CHAPTER 3: THE PPP PROCUREMENT PROCESS IN EGYPT

Based on MOF Public Private Partnership Central Unit, the current PPP procurement process consists of five steps. The steps set out the process to be followed in PPP procurement by the Client and highlights some of the issues that may arise during that process. The procedure is set out as a series of steps, which correspond to milestones and/or decision points. The steps described presuppose that the new PPP Law and any consequential amendments to public procurement law will clearly establish the legal framework for the adoption of best international tendering practice for PPP transactions.

The steps can be summarized as:

Step 1: Preparing for procurement

Step 2: Selection of candidates and short listing

Step 3: Invitation to candidates to present detailed proposals

Step 4: Dialogue/discussion phase leading to final offers

Step 5: Call for final offers on the basis of agreed proposals, evaluation and contract award

Detail of these steps is described hereunder:

3.1. STEP ONE: Preparing for Procurement

This step takes place after the project has received approval to proceed to procurement. PPP procurement is a detailed and methodical process which, from first advertisement to final contract award, will last between nine and twenty four months depending on the size, complexity and novelty of the project. To achieve these timescales it is essential that the procurement team is properly structured and resourced from the outset. The team should comprise a Project Committee or Board, and a Project Director responsible on a full-time basis for managing and coordinating the procurement process. As well as a part-time secretariat, the Project Director will need to be supported by the following:

- Technical expert(s) with knowledge and experience of the facilities to be sourced
- Public service expert(s) from the service that will be the ultimate client in the transaction
- Legal counsel experienced in public law, PPP and project finance transactions
- A PPP expert from the Central Unit or competent Ministry and/or a financial advisor

There needs to be an Evaluation Panel that comprises some or all of the team and other experts as appropriate. The Evaluation Panel will assess submissions from tenderers at various stages of the process

against pre-determined criteria. In most cases some of the expertise required by the team will be outsourced. At this stage the appropriate time commitment must be secured from those concerned and a realistic budget agreed to cover the fees and expenses of external advisors.

3.1.1. Appointment of advisors:

For those services, which are to be outsourced, external advisors must be appointed. The areas in which such support is generally required are as follows:

- Procurement process, financial analysis, financial modeling, capital markets
- Legal advice on procurement, planning, land issues and PPP powers and drafting of tender documentation and the contract
- Technical advisors to validate the tenderer's technical proposals on construction and services

As the fees charged by external advisors will be a heavy burden on the procurement team's budget, a competitive selection should be undertaken. Advisors should be chosen on a basis, which balances expertise, experience and cost. Past experience has proven that appointments should be against well-defined terms of reference in order to contain costs and avoid duplication of effort. The appointment of advisors will normally take 7-6weeks and must be factored into the overall timescale. Appointments can be made individually, by specialism, or as consortium covering the full range of services. It is important that the Project Team and principal advisors should be in place before the start of the formal procurement process.

3.1.2. Timetable:

Once the team is assembled and the procurement procedure and method is settled, a full detailed timetable should be produced for the whole planned procurement process through to contract award. This timetable should set out not only milestones but all necessary inputs from those involved in the procurement and should enable the Project Director to determine the involvement of external advisors.

3.2. STEP TWO: Selection of candidates and short listing

3.2.1. The Information Memorandum:

During the preparation for procurement, a project Information Memorandum should be drafted. The Information Memorandum should explain the project in sufficient detail, together with the method of selection, to enable contractors to decide whether they wish to apply to be short listed. The contents of the Memorandum should include:

- The scope of the project and the broad technical requirements expressed in output terms
- Clear mention should be made to the level of likely overall investment required of the prospective partner, the timescale for the procurement, the PPP nature of the eventual contract and the term of the contract
- The proposed selection process should be described and the responses required at each future stage
- The selection and award criteria at each stage should be clearly explained

- The Planning stages should be explained and any Planning consents or other licenses which are to be the responsibility of the eventual Partner made clear
- The contents of the Expressions of Interest solicited in the response to the Memorandum should be clearly set out with deadlines for responses. If a three stage process is envisaged, it should be made clear that in the first instance applicants only need to prove their good standing, and financial and technical competence to undertake the project.
- If it is proposed to select the shortlist directly from the initial responses, one method is to request that applicants submit, not only details of their general technical capacity and experience, but also submit a short paper which describes specifically how they would address the advertised project. The selection of the shortlist would be then made on the basis of the best such responses, if appropriate after dialogue, amongst all bidders who have reached the required financial and technical thresholds

3.2.2. The Three stage selection procedure:

The PPP Partner selection process should be fair, transparent and accord with the general principles of good public procurement practice. A two step or three step process can be followed which should be decided from the outset depending on whether the Client expects too many tenderers to join the procedure. A two-stage process will involve choosing a shortlist of prospective tenderers directly from the responses to the initial advertisement.

If, as is more likely to be the case, a three-stage process is envisaged, the procedure would involve in summary:

- Identifying an initial long list of candidates on the basis of the selection criteria of probity and their financial and technical strength, which must be commensurate with the scope and scale of the project [The general tests of competence]
- On the basis of a written submission by applicants selecting a shortlist of three to four applicants whose responses indicate that they are particularly well qualified to undertake the project. [Test of specific competence]
- As a result of a competitive tender, identifying the bidder that is offering:
 - A technical solution that meets the Client's requirements and standards both in engineering and operations
 - The best Value for Money, being the periodic charge to the Client as adjusted to reflect the risks assumed and any other qualitative criteria that the Client has notified in the evaluation criteria (Best Value)

3.2.3. Long and short lists:

Contracting authorities can reduce to three the number of candidates they intend to invite to discussion / dialogue provided that this is sufficient to ensure effective competition. The reason for this three-stage approach is to limit to a manageable number the bidders who are required to put in full technical and economic proposals.

The tenders required are very detailed and require a considerable investment of time and money. Private companies will not, nor can they be expected to, make that investment unless they have a reasonable chance of being awarded the contract.

From the viewpoint of the Client, it is very difficult in practical terms to manage a process to a reasonable timescale if too many detailed tenders require dialogue, discussion and evaluation. The field has to be narrowed down.

3.2.4. Bidder conference:

Depending on the level of market sounding undertaken during the project development phase, it is frequently advisable to hold a conference or seminar which all interested parties can attend. At the conference the Client presents the project and takes questions in an open forum. Questions and answers should be minted and subsequently circulated to all attendees.

The appropriate time to hold such conferences can vary depending on the nature of the project. If the project is one where it is difficult to determine in advance the precise scope, is in any way open ended or is one which is novel and the private contractor reaction uncertain, it may be advisable to hold a conference prior to the commencement of formal procurement.

If the project is clearly scoped however, it is more appropriate to hold such a conference after the initial applicants have received and had time to assimilate the contents of the Information Memorandum.

3.3. STEP THREE: Invitation to candidates to present developed proposals

3.3.1. Preparing the Invitation to present proposals (IPP):

During the short-listing period, the IPP should be prepared. This will involve considerable input from all members of the Project Team and their advisors. The IPP should clearly reflect the description of the project as set out in the original advertisements. It should be informed by the responses to the Information Memorandum, for instance by defining more precisely the service package or by re-allocating certain risks tenderers appear reluctant to bear. However the IPP should not be biased in favor of any particular tenderer or their proposed technical solution. The IPP should contain all the information and instructions necessary for the short listed tenderers to prepare a full technical and financial bid. This would include:

- Full details of what the response to the IPP should contain
- A description of the procurement process to be followed with protocols on communication and the passing of information
- A full draft contract based on the standard model contract as tailored for the circumstances of the project. This will cover the key elements of the future contractual relationship, the term of the contract, the commencement of service and what events trigger rights of early termination and what the financial and other consequences are of termination. It will also address how future changes to the contract services will be agreed and priced.
- The parameters within which variant bids are acceptable to the authority (see below)
- The evaluation criteria, which must be entirely consistent with those first published
- A fully developed output specification covering all the services required

- Detail of the standards and service levels the services should meet
- The proposed performance regime
- The proposed payment mechanism
- Contract monitoring and management arrangements
- A format for the financial model which calculates the proposed charge and which the tenderer must submit as part of the proposal.
- A risk matrix which identifies the technical, commercial and other risks for the successful delivery of the project and allocates those risks between the parties
- Detail of the financing commitment required from the tenderer's funders at proposal and final tender stages
- Proposals for the "Direct Agreement" (see below)
- Information about site availability, existing plans and designs and the planning considerations
- A detailed timetable to contract signature

3.3.2. Variant Bids:

The IPP should clearly set out the parameters for variant bids. A variant bid is an optional bid lodged together with the full standard bid which may widen (but not reduce the scope) of the services offered. A variant bid may propose alternative commercial terms which the tenderer believes can offer better value for money to the Client.

3.3.3. Direct Agreement:

It is an essential feature of PPP contracting that the Client neither directly nor indirectly guarantees the PPP Partner's financing or banking arrangements. If the prospective partner is proposing a project finance structure whereby the counterparty to the PPP contract is a special purpose project company, which raises limited recourse finance, it is conventional to enter into a direct agreement with the funders. Under such an agreement, which takes a standard form, the Public Authority accords the funders rights in circumstances of potentially catastrophic service failure to take control of the project company and to appoint new sub-contractors to replace those in default (a step-in right).

Revisiting the Public Sector Comparator (PSC):

Before issuing the IPP the original benchmark costing prepared at the business case stage should be updated in accordance with the guidelines of Chapter Three below to reflect any development in the project's scope or movement in costs since project inception. Calculations should be re-worked to establish that the likely levels of the proposals will be within affordability limits. If it appears that there have been adverse movements such that the project risks breaching affordability limits (being the annual future amounts the Client has determined it can reserve to meet the costs of the project), a re-scoping exercise should be carried out and the IPP should reflect this new revised scope.

3.3.4. Issue of the IPP and request for the submission of developed proposals Receipt of proposals

The IPP should be issued to the candidates who have qualified for short listing requesting them to submit their developed proposals which will be the subject of the Dialogue/Discussion phase of the tender. The proposals must comprise sufficient detail for the Client to be satisfied that each bidder will be in a position to offer technically compliant final tenders that represent value for money.

The developed proposals submitted should comprise several volumes:

Commercial

- A commentary on the contract terms and proposals for amendments
- A response to the proposed payment mechanism
- A response to the proposed performance regime
- A response to the proposals for performance monitoring and contract management
- A commentary on the risk matrix and insurance arrangements

Technical

- Developed technical designs, to the level specified in the IPP
- A detailed method statement of how services will be delivered post-construction
- Details of how performance will be recorded and reported

Organization and Funding

- The tenderer will set out the structure of the consortium and /or sub-contract arrangements through which the partner responsibilities are to be delivered. The response should make clear which companies will be taking technical responsibility for each element of the project.
- The tenderer will explain how they propose to finance the project and will supply initial commitment from funders.
- If a project finance model is to be followed, funders will comment on the "direct agreement" proposals

Price and Financial Model

- The tenderer will set out the indicated price by way of periodic charge from service commencement date relating the price to the payment mechanism
- The price will be supported by the financial model, which will make clear the financial assumptions, and parameters that underpin the bid. The financial model, when agreed, will be annexed to the contract and will form the mechanism for calculating price changes pursuant to service changes and eventually compensation payments in certain circumstances of early termination

Variants

If the IPP signaled that variant bids would be acceptable, one or more variant bids, in addition to the full standard proposal, documented to the same level as the standard proposal

3.4. STEP FOUR: Dialogue/Discussion Phase leading to final offers

Prior to each candidate preparing their proposals, each should be offered a number of meetings. Such meetings are designed to allow the tenderers to clarify aspects of the IPP, to test technical proposals and to discuss the commercial issues. The purpose of the meetings is to ensure that candidates fully understand the contents of the IPP and what is expected of them, so that they eventually submit acceptable proposals. Candidates may also take this opportunity to test the acceptability of variants or novel approaches to service provision.

These meetings should be minted and where a point of clarification is made or a solution rejected, this should be communicated to all tenderers.

Confidentiality: It is a core principle of PPP procurement and the Dialogue/Discussion phase that each tenderer's proposal remains confidential to that tenderer. The Client should not divulge elements from one tender to another tenderer without prior consent.

3.4.1. Receipt and checking written responses for completeness:

When the written responses to IPPs are received, the first task of the procurement team is to check for the completeness and compliance of the submissions:

- If a tenderer has clearly failed to respond to parts of the IPP, or has changed substantially the output specification or rejects the PPP risk-sharing basis to the contract or in any other way indicates that they are not prepared to undertake the project as envisaged, their proposals should be rejected and they should be informed accordingly
- If there are minor gaps in the response, it is acceptable to revert to the tenderer for them to complete the submission
- Any lack of clarity or inconsistencies should be ironed out during the dialogue exchanges

3.4.2. Dialogue/discussion of the developed proposals:

Once the submitted proposals have been checked, each tenderer should be invited to discuss the technical and financial details of their proposal. The purpose of these discussions is:

- To clarify the method and details of engineering and operational details
- To allow the tenderer to re-consider areas of their proposal that in the view of the Client could be improved
- To discuss the risk allocation
- To confirm the finance ability of the proposals

Discussions should be held bilaterally, fully minted and observe protocols that ensure fair treatment between tenderers.

3.4.3. Verifying affordability and value for money:

One critical check that should be made at this phase is whether the proposals are broadly affordable and appear to offer value for money as indicated by the PSC.

Value for money can be addressed during the dialogue phase by exploring re-allocations of the risks between the parties. If there appears to be a large affordability gap, a further analysis should be carried out to identify the reason for the discrepancy. The Client must arrive at a view whether the PSC benchmarking exercise has genuinely under priced the engineering and the costs of service provision or whether due to collusion or otherwise there has been a failure of competition. The following steps should be followed:

- If there has been a market failure, the procurement may have to be abandoned
- If the pricing gap results from an identifiable and limited part of the services, the Client should consider excluding those services from the transaction
- If the PSC costing has underestimated construction or other capital costs, the Client should consider reducing the scale of the project, so long as public service objectives can still be met

If either of the last two is to be adopted, the options should be presented to the tenderers equally, discussed during the Dialogue/Discussion phase and the final tenders compiled in the light of changes of scale or scope.

3.4.4. Evaluation of the proposals:

The object of this stage is to determine which of the proposal that participants are offering represents the best value for money solution to the authority. The judgment will be made on a balance of price, the risks assumed and any other criteria that may have been signaled to tenderers in the Information Memorandum and the IPP. All previous stages of the process will have been aimed at establishing a level playing field, so that by this stage all tenderers should be making final offers that are satisfactory in all major commercial and technical respects.

This being the case, in most procurements, the price offer will be overwhelmingly the deciding factor. If the Client is minded to accept a higher price for a proposal that exceeds the required standards or specifications, it must be able to justify that decision on the basis of criteria previously disclosed to the tenderers. The evaluation should be structured, well documented and proceed by logical steps.

Deliverability

Each proposal should be closely examined to confirm its deliverability. The Evaluation Panel must be confident that the proposals as to the organization and structure of the tenderer and the availability of and commitment of finance are sufficiently secure. Any solution that fails this examination should be rejected.

Commercial

It should be clear from the proposals that the tenderer is prepared to enter into a PPP transaction on terms acceptable to the Client with minimal further discussion or amendment.

Technical specifications

The proposals should be examined to identify changes made to the technical specifications to ensure acceptability. If the Client is not convinced that the technical solutions proposed are capable of guaranteeing the delivery of the services sought to the correct standards over time, they should be rejected.

Price, the financial model and risk evaluation

Only when each proposal has satisfied the scrutiny above should it be subject to financial evaluation.

This evaluation will have two components:

- The model should be checked to ensure that the price is properly generated from the assumptions and any inconsistencies between prices stemming from the application of indices or the incidence of payments corrected for. The prices should then all be expressed in Net Present Value terms using a discount rate that will have been disclosed to tenderers in the IPP.
- The prices should be subject to an adjustment to reflect the differences in the assumption of project risk and to reflect features of individual solutions that add value from the perspective of the Client

When the Client is in a position to confirm that it has received proposals that meet its requirements, the candidates will be asked to submit their final offer on the basis of the proposals discussed and presented during the dialogue/discussion phase. These final tenders need to contain all the elements required and necessary for the performance of the contract.

3.5. STEP FIVE: Call for final tender on the basis of agreed proposals

3.5.1. Evaluation of final tenders and contract award:

Once the Dialogue/discussion stage is completed, those tenderers who have offered acceptable proposals should be required to make a final offer based on those proposals and any development resulting from the dialogue.

These final offers should be subject to the following analytic steps as the original proposals:

- Checking written responses for completeness
- Verifying affordability and value for money
- Deliverability
- Commercial acceptability
- Technical specifications
- Price, the financial model and risk evaluation

As a result of this exercise the final tenders should be ranked according to those which offer the best value for money. It is critical that the process is approved by and the result endorsed by the Project Board.

3.5.2. Affordability and value for money:

Before appointing the tenderer who has proposed the best final offer as “preferred bidder”, one final check should be made to ensure that the best final is affordable and offers value for money. If there is still a significant gap, the Client may decide to abandon the procurement.

3.5.3. Post-tender discussions:

In looking at final tenders, the Client can ask tenderers to clarify, specify and fine tune, and provide additional information, as long as this does not involve changes to the basic features of the tender which would be likely to distort competition or have a discriminatory effect. Fundamental aspects of the offers, such as price and risk allocation, should not be altered.

3.5.4. Appointing the preferred bidder:

If the best tender passes the tests of affordability and value for money and therefore represents the most economically advantageous tender, the tenderer should be appointed the “preferred bidder” and proceed to the final stage of the procedure.

If the Client has any concern that this tenderer might for any reason be unable to enter into the contract or may be tempted to revise its terms, the Client may request of the second best tenderer, provided their final bid is acceptable, to keep their offer open for a limited period pending the successful conclusion of the contract.

In working with the preferred bidder, the Client can ask for clarification of aspects of the tender or confirm commitments contained in the tender as long as this does not distort competition.

Competition should not be distorted or restricted by imposing substantial new demands on the preferred bidder, or by involving any tenderer other than the preferred bidder.

Some change is expected at this stage. Traditionally in PPP contracts work is done with the preferred bidder to make sure that substantial bid costs are not imposed on all candidates.

This work would be done with whoever was chosen as the preferred bidder and so should not be regarded as distorting competition. Examples of this work would be completing design work, finalizing contractual documentation, due diligence by finance providers, and final consultation with the workforce and its representatives.

Tenderers whose offers are rejected should be informed and reasons given why they were not preferred. Any request for a de-briefing meeting should be accommodated.

3.5.5. Contract award and subsequent monitoring:

The process of PPP procurement requires concerted effort that may last up to two years or longer to achieve contract award. However, the hard work starts after the contract is signed.

Whatever the details of the contractual and other documentation, there will be many new issues that will arise both shortly after and during the course of the contractual relationship which will need to be handled in a fair and co-operative spirit.

If the long-term relationship is to succeed and the PPP to provide the benefits desired, both parties need to manage professionally their inputs into the contract. Where disagreements arise they should be handled sensitively and respect the intention and spirit which the transaction is to embody.

Public bodies have generally underestimated the time necessary to monitor and manage PPP contracts. Whilst there is a significant element of self-monitoring by the Partner, in the first two or so operating years of a PPP contract there is a need for much client input. Clients may wish to consider supporting the cost of a senior staff member to liaise with the Partner in these early stages of the long-term contract. Where the project is a group of, for example, schools, it is likely that this will need to continue beyond the initial period. Clients might feel that they can reduce core staff numbers following PPP contracts. This may make the client side role more difficult to do well. There is also evidence that some service providers have underestimated the resources needed to effectively monitor and report on the project's performance.

An operating manual should be produced in order that partners know what their detailed responsibilities are under the contract. Clients need to have an understanding as to how the Partner intends to operate the contract on a day to day basis, and be in a position to agree fine-tuning changes which will deliver a better service. Staff will need to understand how the contract will impact on their working practices. For instance, they must be aware of the process for reporting service problems that will differ from previous practices. This is particularly important where existing staff have different expectations based on pre-PPP experience. The management of such "cultural change" for existing staff can be a major task.

Act law No. 67 of 18 May 2010 calls for the regulation of private sector participation in infrastructure and public services and utilities and, after approval by the Parliament Act, marking the start of application of the provisions of the law. The English translation of the Law No. 67 has been reviewed by Zulficar & Partners Law Firm and Trowers & Hamblins in association with Nour Law Office. The law (English translation) is presented in Appendix 8.

CHAPTER 4: VALUE FOR MONEY AND AFFORDABILITY

4.1. WHAT IS VALUE FOR MONEY (VFM)

VFM in PPP contracting is akin to the notion of value used in everyday language. Any experienced purchaser of an asset that is to maintain performance levels over a protracted period recognizes the trade-off between initial cost, future repair and maintenance costs and overall reliability. Similarly, if services are being sourced there is a clear relationship between cost and the quality, reliability and, flexibility of those services.

Historically, and for reasons connected with transparency, annual cash budgets and periodic budget squeezes, public authorities developing investment projects have felt obliged to opt for what superficially appears the lowest cost option. All too often the result has been a sad sequence of cost and time overruns shabby construction, poor subsequent maintenance, very expensive periodic refits and an overall decline in service levels. In many cases the construction industry has responded to this approach by the client by bidding low but seeking to re-coup margins on the change orders that flow from inadequate initial specifications.

PPP contracting addresses this pattern of project failure by basing the contracts on certain key principles:

- The Client specifies its needs in terms of outputs, performance levels and standards over the extended term of the contract
- The Partner provides the full technical package of inputs (design, construction, operational method etc.) that meet the outputs and accepts the inherent technical and commercial risks
- The Partner finances the necessary investment, and therefore has “capital at risk”
- The Partner only receives payments when the project enters its operational phase after construction and those payments are spread evenly over the contract period
- If performance levels or standards fall short of what is specified, payments are reduced to compensate the authority for the shortfall

The effect is that the public authority achieves the outputs and quality of service it stipulates over the long term within pricing parameters known and settled at the contract date. The VFM question for the Client breaks down into two parts:

- Which bid offers the best value (which may not be the cheapest, if bidders have priced risks differently)
- Does the best bid propose a better financial outcome for the public sector (The tax effect of PPP differs from that of conventional contracting and normally requires looking beyond the immediate

impact on the project client in order to evaluate the overall impact on the Public Purse Affordability and VFM) for the services at the contracted standards than would have been achievable under more traditional procurement methods?

VFM is not the sole economic hurdle for project investment, whether by conventional or PPP procurement. A proposed project must also be affordable and the two concepts must be clearly distinguished.

- Affordability flows from a limitation of financial resource, the need to prioritize and the political judgment as to what proportion of the available budget can be committed to any single project and resultant services
- Affordability requires the matching of resource availability and expenditure over time. Thus a project may be unaffordable as a single one-time capital disbursement, but affordable if the costs, even if they are higher, are defrayed over a longer time period.
- Affordability does not imply that a project is offering good VFM, nor is a good VFM project necessarily affordable
- Affordability applies to all the costs that the Client will incur as a result of the project, not just the charges made by the PPP Partner. VFM only applies to the price of the service package offered by the PPP Partner.

4.2. SETTING AFFORDABILITY THRESHOLDS AND THE PUBLIC SECTOR COMPARATOR (PSC)

The tests for affordability and VFM must be carried out at four critical points during a PPP project's development and procurement:

- At the time of the Business Case when sanction is sought for the project
- Immediately prior to procurement when the previous estimates should be refined to reflect the output specification and proposed risk transfer, as well as costs as at the contract date
- On the receipt of proposals to ensure that both tests will be met by the preferred bidder
- Before contract award to ensure that there has been no adverse impact on either VFM or affordability as a result of changes during the discussion/dialogue phase or changes in public finances.

Affordability will be gauged from the net impact to the Public Purse of the cash flows resulting from the project over the contract life. VFM will be tested by comparing the net present value of the aggregated discounted cash payments under the PPP contract to an estimate of what it would have cost the Client to provide identical services and performance by traditional means. This "shadow" cost estimate is referred to as the Public Sector Comparator (PSC).

CHAPTER 5: PPP PROJECTS IN TRANSPORT SECTOR

5.1. INTRODUCTION

Based on consultation with the MOT Authority, the current Egyptian MOT policy is depended on assessment of the project risk. If the project will need to be provided by a grantee, the project will be implemented by PPP. If the project does not need a grantee, the project will be implemented by a concession like BOT. Almost all port projects can be managed by concession contract. Other transport sector projects will almost always be subjected to PPP agreement.

Therefore; based on feasibility studies, the project is classified viable or non- viable. In case of a non-viable project but there is a national needed to construct; the project capital will be provided by the Government. In the case of a viable project the providing of capital by concession or PPP will be decided based on the result of the risk assessment.

Attempts have been made to implement a Build Operate Transfer (BOT) structure for road procurement during the last ten years, however, none of these have moved forward to implementation.

Another form of procurement that evolved was applied to Al-Sokhna road, Al-Korimat road and its extension further south. These roads were financed, designed and constructed by the armed forces in return for giving them the right to collect toll revenues.

Another project was the Sohag Al-Bahr Al Ahmer road which was financed, designed and constructed by the Ministry of Investment under the supervision of GARBLT, in return for the rights to investments in specific areas around the road.

Based on the recent information obtained from the web-site of the PPP Central unit, there are only two projects under the transport sector category. One project is pipeline construction and the other is highway construction as shown in Table 5.1.1.

Further information regarding the Rod El Farag project is noted in Appendix 8.

Table 5.1.1 Ongoing Transportation Projects in PPP Central Unit

Project	El Galala Quarry Road
Sector	Roads & Accesses
Classification	Pipeline
Status	Advisors under procurement and Project Study ongoing, expected request for Tendering: request for Prequalification: Q2/2010, and expected Financial closure: Q1/2010
Description	Construction, Operation and Maintenance of El Galala Quarry road in Suez with a total length of 38 km.
Project	Road El Farag Axis
Sector	Roads & Accesses
Contracting Authority	Central Authority for Development "CAD" - Ministry of Housing, Utilities, and Urban Development "MHUUD"
Supervisor	Public Private Partnership Central Unit
Project Duration	20 Years
Location(s)	Greater Cairo
Status	Five bidders from 57 requests were qualified in October 2010 and tender documents are under preparation
Other	Invitation for Prequalification issued April 13th, 2010 and deadline for submission postponed to August 1st, 2010. Rod El Farag Highway Project is one of the key PPP Pilot Projects whereby the MHUUD (The Ministry of Housing, Utilities and Urban development) with the Ministry of Transport and by the technical assistance of the PPP Central Unit will invite the Private Sector participation through a competitive bidding process to enter into PPPs for the construction, operation and maintenance of Rod El Farag Access. The Project will connect the existing ring road around Cairo with the Cairo - Alexandria highway with a total length of 34 km.

Source: JICA Study Team based on PPP Central Unit Data

5.2. ONGOING AND IMPLEMENTED PROJECTS AND CONDITIONS IN DIFFERENT TRANSPORT SECTORS

5.2.1. ROAD SECTOR

GARBLT is preparing tender documents for several new BOT road projects that include:

- Alexandria-Fayoum 199km, (LE 700 million)
- Cairo Alex-Matroumh, 520km, (LE 900 million)
- Cairo-Ismailia-Port Said, 180km, (LE 500 million)
- Sohag-Hurghada, 250km, (LE 500 million)
- Luxor-Hurghada, 250km (LE 450 million)
- Fayoum-Assuit, 260km, (LE 500 million)
- Dayrout-Faraafra, 263km, (LE 500 million)
- Ain Sokhna-Marsa Allam, 630 km (LE 1200 million)
- Cairo-Aswan, 800km, (LE 500 million)

GARBLT Under Due Diligence Projects are:

- Shubra / Banha Highway (Figure 5.2.1)

Whereby the General Authority for Roads, Bridges and Land Transport (GARBLT) with the technical assistance of the PPP Central Unit (MOF) will invite the private sector participation through a competitive bidding process to enter into PPPs for the construction, operation and maintenance of a new freeway linking Shubra city to Banha city. The Project consists of a dual three lane motorway parallel –to and East of the existing road between the Cairo Northern ring road and Banha city, the

motorway is around 38 km long. It would start on the Northern Ring Road and will connect both roads to Alexandria and to Al Mansura.

The project will be tendered under the Roads law No. 229 of 1996 which is an amendment of Law No. 84 of 1968, that allows granting concessions to local and foreign investors for purpose of building, managing, and maintaining highways and free ways in return for collecting user charges.



Figure 5.2.1 Shubra / Banha Highway

Source: MOF, Public Private Partnership Unit, Update on the National Program for PPP, June 2009.

- Road El Farag Access Project (Figure 5.2.2)

The Rod El Farag Access Project is one of the key PPP pilot projects whereby the Ministry of Housing, Utilities and Urban development (MHUUD) with the Ministry of Transport and by the technical assistance of the PPP Central Unit (MOF) will invite the private sector participation through a competitive bidding process to enter into PPPs for the construction, operation and maintenance of Rod el Farag Access. The project route connects main routes at the River Nile bank to the ring road around greater Cairo and then to the Cairo – Alexandria highway.

The project will connect main routes as Abu Bakr Al Sedeek corridor and Seket al Waily corridor in Eastern Cairo to the Greater Cairo Ring Road starting at El Khalafawy square and Ismailia lake in addition to crossing the River Nile at Al Warrak Island till the Ring Road; a achieving speed limit of 120 km/hour. The highway will be of 4.2 km length, and 45 m width consisting of 4 lanes each side.

The project is under due diligence. Transaction and technical advisors are under procurement.



Figure 5.2.2 Rod El Farag Access Project

Source: MOF, Public Private Partnership Unit, Update on the National Program for PPP, June 2009.

- The Upper Egypt – Red Sea project (Figure 5.2.3)

This is an integrated project based on establishing a first class 412 km highway; connecting the Sohag, Qena and Assiut governorates in Upper Egypt with the Safaga harbour by the Red Sea. The project's total cost is about 764 Million US\$.



Figure 5.2.3 Qena-Safaga Highway

Source: MOF, Public Private Partnership Unit, Update on the National Program for PPP, June 2009.

The project will include the following components:

The Upper Egypt-Red Sea Road: The road is planned to be a free highway, connecting Upper Egypt governorates with the Red Sea harbour at Safaga. The road will be a regional corridor connecting the Sohag, Qena and Assiut governorates with each other. The road consists of three main parts, which are: The western part, which starts from Assiut valley and runs towards the governorate's southern borders. The middle, which starts from the Sohag governorate's northern border and runs to the Qena governorate; in addition to a 65 km section in the Assiut governorate. The eastern part, which is located in the Red Sea governorate and connects the governorate to the north-eastern part of Qena.

Land Reclamation: The project aims at extending the total agricultural land and agricultural products in Upper Egypt in addition to establishing new communities for the work force working in reclamation projects. A total of 54,000 new acres around the road have been allocated. This new area will be used mainly to produce medical plants, in addition to exportable fruit and vegetables, depending mainly on organic agriculture.

Agro-Industrial Compound: One of the main objectives of the project is to establish an agro-industrial compound to integrate agricultural activities with trading and services activities in the area. This kind of activity will depend mainly on the reclaimed land products. The compound aims to include the following:

- Crop collection points
- Canning and packaging fruit and vegetables
- Oil and aromatic products
- Traditional and non-traditional animal feeds
- Refrigerators for preserving agricultural products
- Distribution and export centres

Industry and mining:

The area around the road is rich with natural and mineral resources. The government aims to encourage industrial activities based on these mineral resources, especially in the field of construction and building materials. There will be about 114,000 acres dedicated to these types of industries. The landscape of this industrial area is planned to include huge industrial compounds, in addition to small supporting workshops and feeding industries.

Trading services: The project area is expected to be a trading hub between Upper Egypt governorates and the rest of the country; in addition to the Middle East and Mediterranean regions. Therefore, there will be about 750 acres allocated to establishing six dry ports, which will contain logistics and trading facilities.

These facilities can include the following:

- Transportation companies
- Refrigerated truck companies
- Container freight and handling companies
- Container manufacturing facilities
- Warehousing facilities
- Maintenance centres
- Business centres
- Marketing, export and freight companies
- Tourism services:

Two main tourism areas have been allocated within the project to provide different types of services to tourists. The first area, with a total land mass of 4,300 acres, will be in Akhmim, in the governorate of Sohag. The second area, spanning across 2,500 acres, will be in Safaga, the governorate of the Red Sea. The projects, which can be established within those two areas, will include:

- Different levels of hotels and compounds
- Different levels of entertainment centres/areas
- Commercial areas
- Business areas for travel agencies and airlines
- Housing Areas:

One of the project's main objectives is establishing new residential areas outside the congested Nile valley. More than 5,250 acres of land have been allocated to establish eleven residential areas, to accommodate more than 180,000 persons. These residential areas will be located in the Qena, Sohag, Assuit and Red Sea governorates.

Estimated Cost: 764 Million US\$

Project Sponsor: Ministry of Investment

Road Project Tendering Procedures in GARBLT:

Since the reorganization of the holding company, procedures for tendering for road construction and maintenance projects have been revised and made transparent. The steps to be followed are covered by regulations which appear to be followed and audited by independent parties. Contracting procedures within GARBLT are:

- Budget approval (CAPB budgets include design supervision and construction, funds once approved for a project are committed unless the agency has not initiated work during the budget year. This year the budget for new roads and bridges totals LE1, 500 million.
- Each project is tendered separately and selection is made via a technical committee appointed by the Chairman. All works are treated the same way irrespective of type.
- Firms are certified to undertake work on the basis of level of capitalization by a contractors association under the auspices of MOH. Because of the risk of bias, short lists are not often used. Long lists comprise both public and private companies.
- Technical proposals are rated independently by at least 3 independent parties and results given to the technical committee. Firms having a minimum rating of 70-80 points have their priced proposals opened and the bid price is divided by the rating. The firm with the lowest score is awarded the contract.

GARBLT has introduced this year a "performance based" contract for road maintenance as a pilot for a 50 km segment of the (Cairo-Belbis) toll road with the technical support of WB consultants. The duration will be 3 years and if successful the method will be applied on other roads.

Design Standards:

GARBLT is only one of several agencies designing and building roads. While they have their own design standards based on AASHTO (a new manual is to be issued shortly) these are not applied universally throughout the country.

5.2.2. RAILWAY SECTOR (ENR)

Recently, there are two projects with total estimated cost of 792 million US\$ which are:

- **Cairo –10th of Ramadan City Railway Line**

The project aims at giving concessions to the private sector, to construct, operate, maintain and finance a railway line from Ain-Shams to the 10th of Ramadan city (with the possible extension to the city of Belbais) under a comprehensive PPP scheme supported by the Ministry of Investment.

The project objectives are to:

- Provide a new passenger railway service between Ain Shams and the satellite city of the 10th of Ramadan, passing through other new cities (Al-Obour, Al-Shorouk, Heliopolis and Badr).
- Promote social and economic development in these new cities and communities throughout the planned route.
- Connect the 10th of Ramadan city to the national railway network through a state of the art, safe and reliable railway system.
- Set up a good model for PPP transportation projects in Egypt.

The project will include the following components:

- Upgrading the existing single line, while constructing a second line (making it a two-way or double track) between Ain Shams (Cairo) and Al Robaiky (45km in length)
- Construction of a new, double track line from Al Robaiky to the 10th of Ramadan industrial and residential area (32 km in length)
- A connection to the Delta Network by extending the line to Belbais (30 km in length)
- Operation and Maintenance of the whole line (including the Belbais Link)
- Refurbishment of existing stations and construction of 6 - 12 new additional stations
- Procurement and operation of new rolling stock for passenger services and maintenance of the new railway
- Provide for future further growth of the railway and allow access to new train operators. The total distance between Ain Shams and the 10th of Ramadan link is 77 km; and the possible extension link between the 10th. of Ramadan City and Belbais is 30 km in length.

The project scope includes the following Infrastructure:

- Civil (embankment, tunnels, bridges, etc.)
- Railroads
- Stations/Transportation Ports
- Signalling, communications and control rooms systems
- Infrastructure maintenance and lifecycle
- Highway Integration
- Rolling stock:
- Trains
- Depots
- Rolling Stock Maintenance and lifecycle
- Light maintenance (cleaning, watering)
- Operations:
- Fare collection, and ticketing (including e-ticketing)
- Timetabling

- Customer information
- Train drivers/operators
- Station staff
- Control room and signalling operations
- Provision of utilities (e.g. power and other)
- Dry Port land with a total land mass area of 250 Fadden
- Commercial Use Facility:
 - 5000 meters adjacent to each station allocated for commercial use
 - Availability to link Ain-Shams underground station with the railway station; and exploiting the commercial opportunities within this link.
- Access fees for the freight carriage passing through the railway track.

Estimated Cost: 727 Million US\$

Project Sponsor: Ministry of Transportation & Ministry of Housing

- **Relocating Matrouh Railway Line**

Relocating the Matrouh Railway line from Fukkah to Samalla Area (from the North side of the international road to its South) with a length of 60 Km. The relocation would make the land available for better investment utilization as it enjoys a sea front with 1.52- Km long and an area of 28.5 thousand acres.

Estimated Cost: 65 Million US\$

Project Sponsor: Ministry of Transportation & Matrouh Governorate

5.2.3. RIVER TRANSPORT SECTOR

The terminal development should follow a national development plan in which areas for development are nominated and prioritized according to the needs for river transport and the policy for a modal shift from road transport to river transport. High priority is given to the development of 1 or more river cargo terminals and special container logistic centres in/around Cairo with good connection to main roads and if possible to railways. The terminals are supposed to be built by private operators under a BOT (or similar type) scheme whereby RTA or a Governorate act as concession authority depending on the location and ownership of the land. It is to be advised, where the economic feasibility cannot be (entirely) proven in the short term, a (preferably temporary) subsidy in any form (soft loan, grants etc.) may be provided to induce the private sector to build and operate the terminals. Important for the supply chain of containerized cargo is the availability of full fledged Custom clearance facilities in river ports, in particular those that are designed for distribution function including LCL cargo pick-up and delivery. This would require the Customs Authorities (MOF) to jointly plan clearance facilities and manpower during the planning and implementation phases for the terminals. River terminals may have a local distribution function in which case an access to the ring road network is required. A rail link may not be required for this purpose. For more remote cargo deliveries and collection however, a (nearby) connection to the rail networks would be preferable.

Studies (JICA) learned that the planned terminals around Cairo (Athar El Nabi and El Tebeen) are not connected to rail lines while El Tebeen is not close to the ring road. However, plans were formulated to construct a regional ring road. Logistics analysis should determine whether such requirements can be economically justified in comparison with on- or pre-carriage by truck transport. The development of river terminals should be strategically matched against the development of full dry ports in the country. The inland and dry port development falls under the Authority of the Inland and Dry Port Authority (IDPA). The risk exists that the development of dry ports is lead by other motives than that of river ports/terminals. This may lead to terminals being developed at the wrong locations or with the wrong aim. A National Master Plan for inland ports should logically include both categories and can only be developed with a harmonized dry and river port network.

The present fleet of barges is not suitable for container cargo movement. Private ship owners are to be supported in investing in renovation or acquisition of barges capable of carrying containers and other cargo. This would require some incentives for investments.

At the same time RTA should review safe navigation standards and update crew requirements and certification as navigational risks may increase on – undoubtedly more - congested waterways.

There is another observation to be stated: The waterways are at present maintained with no contribution from society. To carry out proper maintenance of waterways and navigational aids feasible funds have to be found to cover cost. Therefore usage of waterways and aids (locks, etc.) should be charged in accordance with the planned cost of maintenance of waterways (surveys and dredging) and the cost of navigational control systems maintenance (beacons, buoys, locks, etc.). Whether this should be a cost recovering tariff is dependant on the economic feasibility of using the waterways by private operators of barges. In this context, an infrastructure pricing policy should be equally introduced for other modes of transport (roads, railways) in order to avoid a biased pricing mechanism for individual modes of transport.

- **City of Luxor Integrated Tourist Project**

Luxor is considered one of the most famous open museums in the world. The city contains about a third of the ancient worlds global monuments. The project targets a paradigm shift in Luxor's tourist infrastructure. This will be achieved by establishing a civilized project, aimed at doubling the flow of tourism, providing job opportunities and improving the whole city of Luxor and its surroundings by establishing a Marina. Improvements in the city's landscape and infrastructure come at the core of the success of such a project. The project is a model for an integrated tourism area, which will include hotels, entertainment venues and commercial activities, in addition to a major Marina, complying with international standards, based on the River Nile. The marina will serve the flow of over 300 available floating hotels; as well as taking into consideration the growth in such a sector, and catering to the growing number of tourists that will continue to visit this historical area. The project's vicinity will be a private investment zone and investors will be granted a long-term concession for the project's land.

The project will be located on the Nile's western bank, connected by the new Luxor bridge, which connects both the eastern and western banks.

The project aims to contain the following components:

- The Marina
- An International Conference Center
- Hotels of various categories
- Commercial and Entertainment Area
- Business Centers for Tourism Companies
- Supporting Services Areas
- Administrative Areas
- Parking Areas catering for all vehicles.

Estimated Cost: 236 Million US\$

Project Sponsor: Governorate of Luxor & Ministry of Investment

5.2.4. MARITIME SECTOR

Twelve Projects with a Total Investment Cost of 4.95 Billion US\$

- **East Port Said Port (Figure 5.2.4)**



Figure 5.2.4 East Port Said Port

Source: MOI, Investment Opportunities Infrastructure Projects,

Project Description:

General Cargo Terminal: 500 meters in length and 16 meters in depth, Storage Zone and storage facilities,
Liquid Bulk & Ship Refuelling Station: For handling petroleum materials, liquid bulk and marine services.
Phase 1 of the Logistics Areas: Establish two logistics and value added activity centres.

Estimated Cost: 554 Million US\$

Project Sponsor: Ministry of Transportation

- **Damietta Port (Figure 5.2.5)**

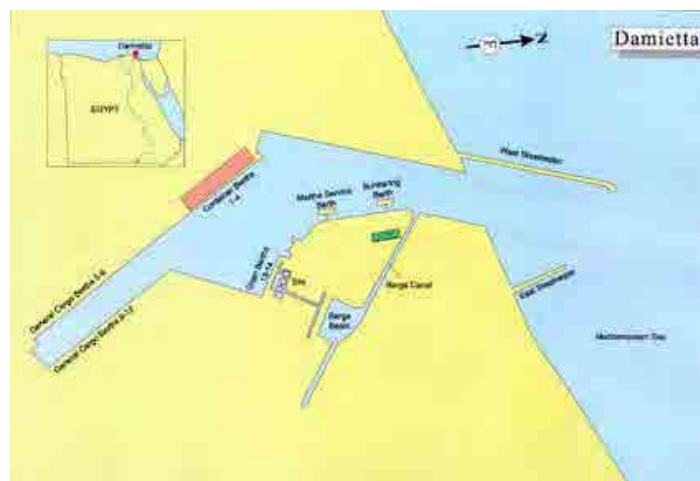


Figure 5.2.5 Damietta Port

Source: MOI, Investment Opportunities Infrastructure Projects,

Project Description:

New Container Terminal: Land area of 1million m² includes docks (2300 m length and 17m depth) planned to handle 4 million Containers, General Cargo Terminal: 3 docks (675m long, with storage zone and facilities areas amounting to 75,000 m and logistics area, refrigerators and equipment storage area of 100,000 m².

Multi-purpose Station: an area of 270 thousand m² east of barge canal and export facilities area and freight includes docks of 300 m long and 14.5 m depth.

Methanol Factory: The project area is about 650 thousand m² includes docks (300 m length and 15 m depth). The establishment of a new basin for the company planned to export methanol with annual capacity of 3 million tons.

Estimated Cost: 1855 Million US\$
 Project Sponsor: Ministry of Transportation

Alexandria & Dekhila Ports (Figure 5.2.6)



Figure 5.2.6 Alexandria & Dekhila Ports

Source: MOI, Investment Opportunities Infrastructure Projects,

Project Description:

Casting Station, Clean and Non-extended: Wharf with the length of 90 meters and a width of 255 m and a depth of 14 storage facilities and handling equipment. Building area of 77 thousand m²

Tourism and International Marina: Establish a group of international hotels in addition to the Yacht Marina.

Container Terminal Wharf 100: Pier 90 m and a length of 255 m.

Multi-purpose Terminals: Wharves with a length of 800 meters and a depth of 14 meters, open and covered squares, storage facilities with an area of 250 m².

Polyester factory: A factory for the production of polyester on an area of 700 thousand m².

Estimated Cost: 2545 Million US\$

Project Sponsor: Ministry of Transportation

5.3. CONCESSIONS IN THE FIELD OF TRANSPORTATION

5.3.1. ROAD AND ROAD-RELATED INFRASTRUCTURE

Road specific features concerning the concession-granting authority are:

- A road represents a sector in which two distinct activities can be associated with the concession/delegated management contract: construction and/or maintenance.
- Two types of financing can be envisaged: direct financing by the user (in the form of tolls), and indirect financing by the State, depending partly on traffic volumes. This latter mode, while considerably less risky for the operator, allows the public authority to spread the infrastructure payment over time.
- The socioeconomic return is often quite a bit higher than the financial profitability, thereby lending justification to the public authority's participation in the project's financing.
- The strength of the builder-operator partnership (hence the use of a single general contractor) is essential in limiting the risks of cost overruns and schedule delays.

- The income risk is very high for toll facilities: it is composed of: an overall traffic volumes risk, a price level risk and a price/demand elasticity risk. The income risk must be divided between the concession-granting authority and the concessionaire according to the benefits each party can expect to reap from the project.
- The political and social acceptability of the toll is independent of the classical economic model and must be used to determine the appropriate rate-setting policy.
- In order to evaluate this acceptability, the toll rate must incorporate both the facility's frequency of use by the average customer and the degree of user obligation. It depends on the specific context of each project and the particular country practices.
- The public authority and the service operator must do their utmost to inform and convince the public of the value of a toll-based system by means of well adopted and durable marketing policies and an awareness-building campaign.

5.3.2. PUBLIC TRANSIT SYSTEMS

Main lessons for the concession-granting authority are:

- Public transportation (and especially urban transit) is well-suited to the principles of delegated management. Various types of organization are possible and imply different levels of delegation, depending on the local context.
- In general, public transportation services are not financially profitable ventures as long as fulfilling a socioeconomic role is given priority and, thus require subsidization.
- From an overall standpoint, the transit authority can expect the private partner to: assume a portion of capital investment revenues (and ridership) through its commercial strategy.
- Regardless of the type of contracting procedure chosen, the public authority must display a strong presence. In particular, it must define: service content and quality, fare-setting policy and system safety requirements.
- In selecting the private partner, the local authority must focus first and foremost on the operator's professional skills; moreover, it may impose requirements on rolling stock as well as strong commitments with respect to costs and revenues.
- The organization of new inter-regional infrastructure requires heavy (especially financial) involvement from the State.
- At the core of public-private partnership set up to finance facilities of this type lies an operator capable of fully comprehending the system's technical elements and operational requirements.

5.3.3. PORTS

Main lessons for the concession-granting authority are:

- The modernization of port systems has led to distinguishing between the port authority's public service functions (police, security, regulation, control/supervision, and land ownership), facility ownership-related functions and operator functions (industrial and commercial).
- Within a vertical partnership, the port authority defines and regulates the conditions under which operations are performed.
- When drawing up regulations, the port authority must incorporate public imperatives (economic and regional externalities of the port activity), public service missions, situations of de facto monopolies, and management of the public domain.
- The port authority must also establish the public investment policy and regulate private-sector investment and maintenance of infrastructure.
- Regulation must also address rate-setting policy, public service obligations, equality of user treatment, environmental protection and safety standards.

- The level of regulation must correspond with the risks borne by the operator-concessionaire. Due to the costs involved, the use of regulation should be limited to cases of real necessity.

5.3.4. AIRPORTS

Main lessons for the concession-granting authority are:

- The reliance on concessions enables the public authority to: meet airport investment needs in a flexible manner, improve management performance, bolster the competitive position, upgrade quality of service, and strengthen the commercial approach for non-aeronautical resources.
- The regulatory functions of the airport authority cannot be delegated: air traffic control, access authorization, police, customs, immigration control, safety, etc.
- Functions related to actual operations may be delegated, yet must remain supervised and regulated: aircraft ground services, passenger conveyance systems, assignment of installations to airline companies, execution of control missions, etc.
- The function of additional commercial services, such as duty-free shops, must be delegated and do not require any special regulation.
- The public authority must oversee the provision of all public services which may influence airport operations and the project environment.
- The tender procedure must be clear and easily-understood, with the selection being based on technical and/or financial criteria which take into account the operator's capacities and experience.
- The partnership must be founded on a suitable breakdown of risks: the public authority is to bear environmental risks, while the private sector shoulders the other risks, provided it has been granted the flexibility to adjust investment schedules with fluctuations in traffic volumes.

CHAPTER 6: MINTS MAIN FINDING

6.1. INTRODUCTION

For the establishment of a Public Private Partnership (PPP) a legal entity must be created in the form of a project company that can act as contracting body and raise finance, prepare and develop the project, manage the assets and which is ultimately responsible for generating revenues from future operations.

In line with the Egyptian Government's strategy to promote and increase the private sector involvement in the country's economic and social development plan, particularly in the area of public utility services, a **PPP Central Unit** was established within the Ministry of Finance and reports directly to the Minister. The Unit will be in charge of the study, application, implementation as well as coordination with line Ministries and with the private sector to develop this PPP theme in a policy framework and a clear action plan. The Central PPP Unit at The Ministry of Finance has produced a guide. This is the first time such a guide has been produced in Egypt.

This Study report covers the following important issues: identifying suitable PPP projects, making the business case for PPP investment, the PPP structure and role of Special Purpose Vehicle (SPV), the current PPP procurement process in Egypt that consists of main five steps, (Step 1: Preparing for procurement, Step 2: Selection of candidates and short listing, Step 3: Invitation to candidates to present detailed proposals, Step 4: Dialogue/discussion phase leading to final offers and Step 5: Call for final offers on the basis of agreed proposals, evaluation and contract award), Value For Money (VFM) and affordability methodology for PPP (What is value for money, setting affordability threshold and the Public Sector Comparator (PSC)), New PPP Law.

Based on consultation with MOT, it can be concluded that the current Egyptian MOT policy is depended on assessment of the project risk. If the project will need to be provided a grantee, the project will be implemented by PPP. If the project does not need a grantee, the project will be implemented by a concision like BOT. Almost all port projects can be managed by a concision contract. Most other transport sector projects will be subjected to a PPP agreement. Therefore; based on the FS Study the project is classified viable or non- viable. In the case of a non-viable project but there is a national needed to construct; the project capital will be provided by the Government. In the case of a viable project the providing of capital by concision or PPP will be decided based on the result of the risk assessment.

Finally; the ongoing PPP projects in the transport sector are examined. There are only two projects, one is pipeline construction and the second is highway construction. The second one is the Road El Farag Corridor and it is considered as a pilot project. For further details it is recommended to check the PPP Central Unit web site:

<http://www.pppcentralunit.mof.gov.eg/PPPCUSite/Content/Projects/Rod+El+Farag+Axis+Project.htm>).

Due to the large number of roads that require upgrading, the government has decided to introduce the PPP model for road procurement in Egypt.

There are a number of ongoing studies in relation to other potential candidates for future concession and PPP road projects:

6.2. Potential candidates for concessions and PPP roads

Cairo –Alexandria – Matrouh 470 km

Port Said – Alexandria 285 km

Shoubra – Banha 45 km

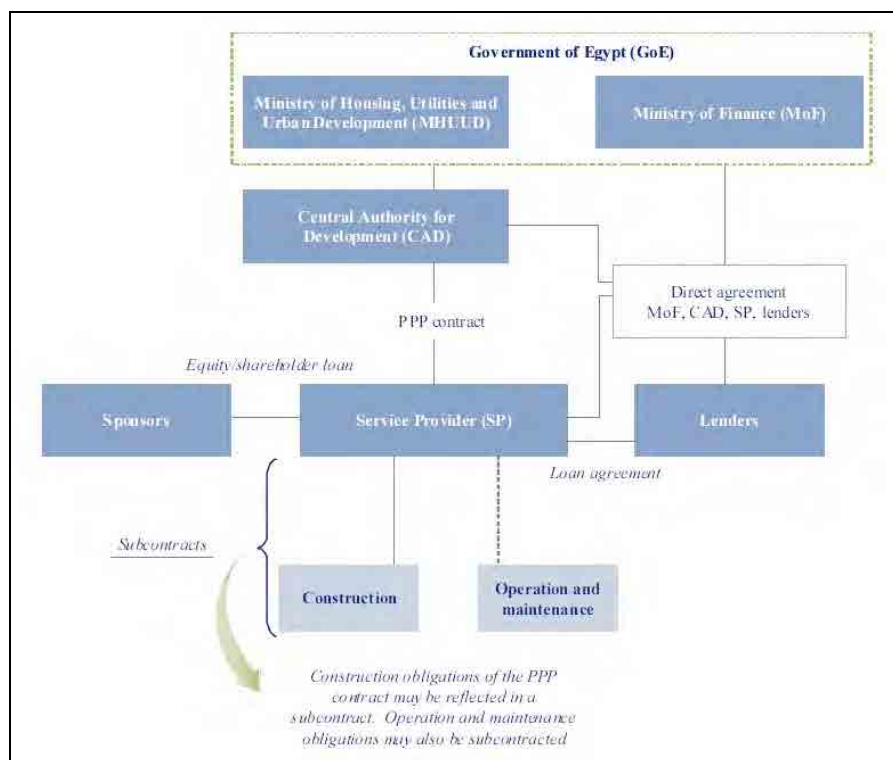
Toukh – Zaghazeig 45 km

Khafra Zayat – Hosh Eisa – Alexandria 110 km

Mehalla –Kafr El Sheikh – Desouk – Damanhour 76 km

Tanta – Kafr El Sheikh 37 k

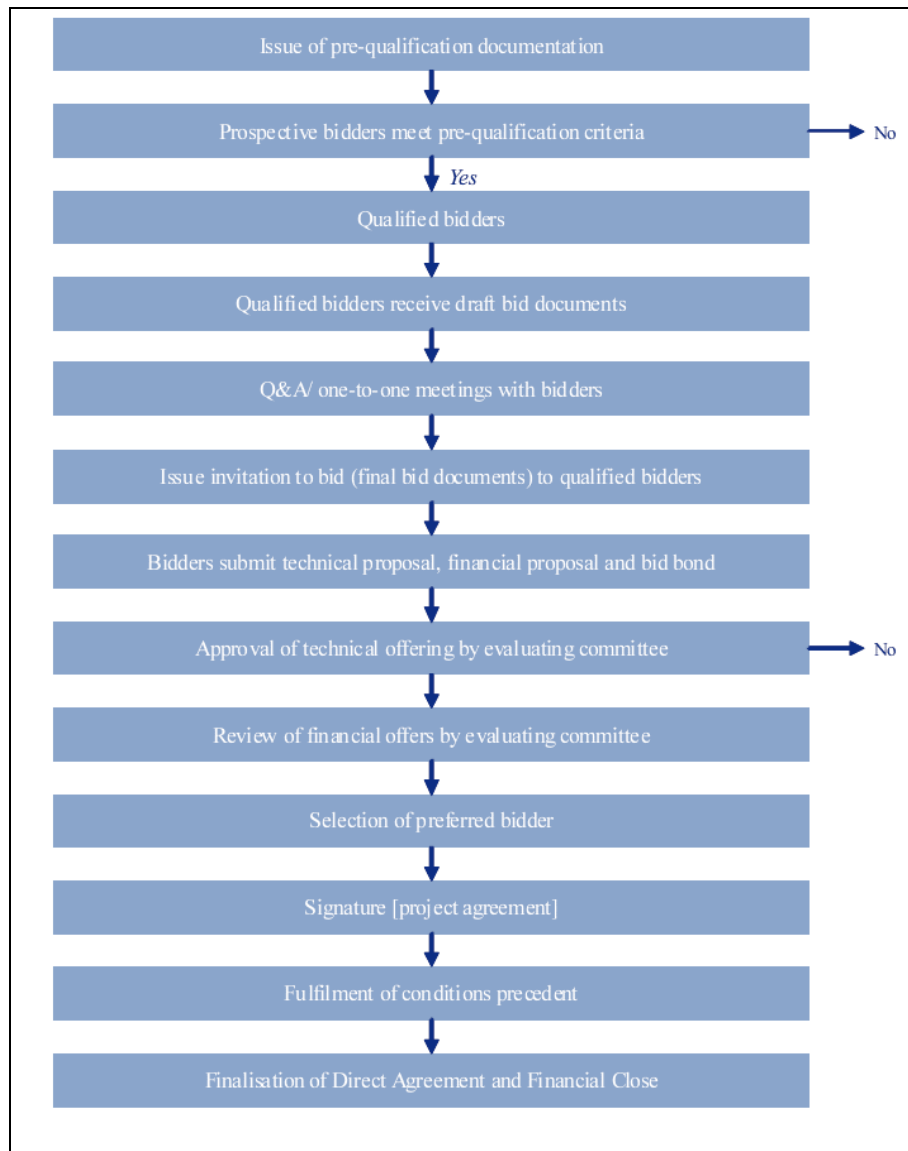
A typical proposed example of contractual structure of a project is presented in Figure 6.2.1.



Source: MOF

Figure 6.2.1 Contractual structure of the Project

Figure 6.2.2 shows the key stages in the procurement process.



Source: MOF

Figure 6.2.2 Key Stages in the Procurement Process

6.3. Fiscal Importance and Affordability

Planning for the transport sector must take into account its fiscal importance and affordability, now and in future. Recent data suggest an annual transport infrastructure investment in vicinity of 20 billion LE.

Historically, annual investment has ranged, roughly speaking, from two to three percent of GDP. The year 2008/2009 experience confirms a total GDP share of 2.06 percent, with 1.36 percent derived from public funds, and 0.70 percent from private sector funds (Table 6.3.1).

Table 6.3.1 Historic National Transport Investment

	Transport Investment (LE billion, current)			Transport Investment (% to GDP, current)		
	public	private	total	public	private	total
2002/2003	8.04	1.76	9.80	1.93	0.42	2.35
2003/2004	9.91	2.72	12.63	2.04	0.56	2.60
2004/2005	10.33	2.22	12.55	1.92	0.41	2.33
2005/2006	7.87	7.34	15.21	1.27	1.19	2.46
2006/2007	10.31	5.31	15.62	1.38	0.71	2.10
2007/2008	12.90	12.02	24.92	1.44	1.34	2.78
2008/2009	14.08	7.26	21.35	1.36	0.70	2.06

Source: Ministry of Economic Development

Then how much should be invested on transport infrastructure in Egypt? This is a difficult question to answer, because it is affected by socio-economic condition, political will and past achievements.

If similar levels of investment are assumed in future, the allocated amounts must address not only national-level projects such as those contained within MiNTS, but also urban projects, transport projects within urban new developments and investments in air sector. The Cairo metropolitan area, for example, has, in the early part of the 2000's decade, accounted for roughly one-fourth of national capital transport expenditure. This is unlikely to decrease, and quite possibly increase, in light of commitments towards Cairo International Airport as well as Metro Lines 3 and 4.

Obviously, the role of the private sector remains an opportunity. However, as noted in early part of this report, and borne out by recent experiences, there are few "success stories" for private sector investment in the Egyptian road, rail and inland waterway sectors. The lessons of history thus suggest that a likely expectation is that the majority of funding will arise from public sources, which, historically, have averaged some one to two percent of GDP per annum.

Current data on public investment to transport sector for the 6th 5-year Development Plan have been made available from the website of the Ministry of Planning as shown in 6.3.2, which indicates that the expenditure to the pure government sector accounts for 50% of the total public investment on average for the transport sector.

Further, assuming that 50% of the pure government sector expenditure is applied to the urban and air transport sectors the remaining portion, i.e. quarter to half percent of GDP can be dedicated to pure MiNTS projects. Thus, based on the estimated future GDP, the fiscal framework affordable to implement the MiNTS projects is derived as follows:

- In case Quarter percent of GDP Affordable budget up to 2027=72.8 billion LE
- In case of Half percent of GDP Affordable budget up to 2027=145.5 billion LE

Table 6.3.2 Government Investment on Transport Infrastructure: Sixth 5-Year Plan

Responsibility		Fiscal Year				
		2007/2008	2008/2009	2009/2010	2010/2011 Expected	2011/2012 Planned
Governmental Sector	Billion LE	5.1	7.6	11.0	7.1	9.2
	%	39.5	49.0	65.5	49.0	42.8
Economic Public Organizations	Billion LE	4.2	4.3	2.6	3.1	4.9
	%	32.6	27.8	15.5	21.0	22.8
Public Companies	Billion LE	3.6	3.6	3.2	4.3	7.4
	%	27.9	23.2	19.0	30.0	34.4
Total	Billion LE	12.9	15.5	16.8	14.5	21.5
	%	100	100	100	100	100

Source: Report of Development Plans, 2011/2012 Plan, website of MOP

In consultation with MOT, it was accepted to assume that a target affordable budget of the respective future 5-Year Plan could reach the vicinity of 50 billion LE for MiNTS projects.

The MiNTS Transport Master Plan has been staged over three consecutive 5 year periods; namely, short-term (present to year 2017), mid-term (years 2018-2022) and long-term (years 2023-2027). The proposed Master Plan requires a total expenditure of 320 billion LE over this composite time period. Forty one percent of this expenditure is linked to the public sector with the remaining expenditure potentially associated with the private sector.

The allocation of projects and programs within each of the 5 year planning periods is depicted in Tables 6.3.3 through 6.3.5.

Table 6.3.3 Initiative Staging – Short Term Planning Period (Present to Year 2017)

Category	Hardware					Software	Humanware
	Roads	Railways	IWT	Ports	Logistic/others		
Public	5 projects 8.8 bil.LE	10 projects 22.3 bil.LE	2 projects 2.0 bil.LE	-	3 projects 4.5 bil.LE	5 projects 10.2 bil.LE	4 projects 1.2 bil.LE
Private	8 projects 18.6 bil.LE	-	-	2 projects 2.2 bil.LE	-	-	-
Total	Public: 49.0 billion LE, Private: 20.8 billion LE						

Source: JICA Study Team. Refer Figure S.12.1 for project locations.

Table 6.3.4 Initiative Staging – Mid-Term Planning Period (Year 2018 through Year 2022)

Category	Hardware					Software	Humanware
	Roads	Railways	IWT	Ports	Logistic/others		
Public	20 projects 26.4 bil.LE	9 projects 10.2 bil.LE	2 projects 0.9 bil.LE			2 projects 0.9 bil.LE	1 projects 0.3 bil.LE
Private	6 projects 17.9 bil.LE	1 project ⁽¹⁾ 19.9 bil.LE		2 projects 3.0 bil.LE		-	-
Total	Public: 38.7 billion LE, Private: 40.8 billion LE						

Source: JICA Study Team. Refer Figure S.12.2 for project locations.

(1) High speed rail project, Cairo-Alexandria, 90% of total 22.1 billion LE cost for private sector investment with a 10% public contribution.

Table 6.3.5 Initiative Staging – Long Term Planning Period (Year 2023 through Year 2027)

Category	Hardware					Software	Humanware
	Roads	Railways	IWT	Ports	Logistic/others		
Public	12 projects 19.0 bil.LE	7 projects 24.0 bil.LE	2 projects 1.1 bil.LE	1 projects 1.0 bil.LE		-	-
Private	-	1 project ⁽²⁾ 125.6 bil.LE				-	-
Total	Public: 45.1 billion LE, Private: 125.6 billion LE						

Source: JICA Study Team. Refer Figure S.12.3 for project locations.

(1) High speed rail project, Cairo-Aswan, 90% of total 139.5 billion LE cost for private sector investment with a 10% public contribution.

Conclusion: considerable financial resources will be required to realize the projects and programs embedded within the MiNTS Master Plan. The implementation will require considerable will and commitment on part of the Government, not only in terms of financial resources but also having a steadfast and consistent approach towards realizing the proposed transport vision for Egypt. It is therefore suggested that, in addition to traditional sources of funding from governmental allocations, as well as potential participation of the private sector in select projects, that efforts be initiated to identify other revenue sources, whose yields could be allocated exclusively to funding construction and maintenance of transport systems and facilities.

APPENDIX

1. THE PPP LAW OF EGYPT (ENGLISH TRANSLATION)
2. PPP LAW (ARABIC VERSION)
3. CASE STUDY ON PPP (ROAD AL FARAG)
4. LIST OF BANKS IN EGYPT

1. THE PPP LAW OF EGYPT (ENGLISH TRANSLATION)

PPP LAW (English Translation)

Disclaimer

This English translation of the Law No. 67 for the year 2010 has been reviewed by Zulficar & Partners Law Firm and Trowers & Hamblins in association with Nour Law Office.

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It shall be noted than in case of any and all discrepancies between the original Arabic provisions and this translation, the original Arabic provisions of the Law shall prevail.

Law No. 67 for the year 2010

**Promulgating the law regulating Partnership with the Private Sector in Infrastructure
Projects, Services and Public Utilities**

In the name of the People, the President of the Republic, the People's Assembly has approved the following Law and we hereby enact it:

First Article

The provisions of the attached law apply to partnership contracts with the private sector and related advisory contracts concluded by the Administrative Authorities with the private sector to execute infrastructure projects, services and public utilities as well as in relation to the availability of related services. Such contracts will not be subject to the provisions of Law no. 129 for 1947 concerning concessions of public utilities, and Law no. 61 for 1958 concerning Concessions relating to the investment of natural resources and public utilities, as well as Public Tenders Law no. 89 for 1998 organizing tenders and bids and any specific laws related to granting concessions of public utilities.

Second Article

The Prime Minister will issue the executive regulations of the attached law based on the proposal of the Minister of Finance and the approval of the Cabinet within three months from the date of its enactment.

Third Article

This law will be published in the Official Gazette, and shall enter into effect on the first day of the following month after the lapse of 30 days from the date of its publication.

This law shall be stamped with the State seal and shall be enforced as one of its laws

Promulgated at the Presidency of the Republic on 4th of Gamady Alakherah year 1431 AH corresponding to 18th of May, 2010 AD

Law regulating Partnership with the Private Sector in Infrastructure Projects, Services and Public Utilities

CHAPTER I

GENERAL PROVISIONS

Article 1:

In applying the provisions of this Law, the following words and phrases shall have the meaning assigned to them below:

"Administrative Authorities": Ministries and Service and Economic Public Authorities, and any other public judicial persons designated as such by a decree issued by the Prime Minister.

"Competent Authority": competent Minister, the Chairman of the Authority, or the legal representative of the public judicial person,.

"Private Sector": an Egyptian or foreign judicial person in which the Egyptian State owned shareholding is less than 20%, and a consortium between two or more Egyptian or foreign judicial persons in which the State owned shareholding is less than 20%.

"Investor": private sector entity bidding to be awarded a Public Private Partnership contract pursuant to the provisions of this Law.

"Project Company": an Egyptian Joint Stock Company established by a successful bidder, the sole purpose of which shall be to execute a Public Private Partnership Contracts.

"Public Private Partnership Contract" / "PPP contract": a contract concluded between the Administrative Authority and a Project Company under which the Project Company is entrusted to undertake all or some of the activities stipulated under Article 2 of this Law.

"Private Advisory Contract(s)" a contract concluded by the PPP Central Unit, or after the approval of the PPP Central Unit, by a PPP satellite unit at an Administrative Authority, in both cases such units having been established pursuant to Article 16 of this Law, with the transaction advisers who are to undertake the preparation of studies and documents related to the project.

"Operation": management by the Project Company of the project, subject of the PPP contract, in relation to all financial, administrative, and technical aspects, as well as in respect of the supply of products, or provision of services to the Administrative Authority in relation to the project, in return for the remuneration agreed upon in the PPP contract, or according to the conditions and rules determined in the PPP contract.

"Utilization": management by the Project Company of the project subject of the PPP contract in relation to all financial, administrative, and technical aspects, as well as the sale of products, or provision of services related to the project directly to whoever the Administrative Authority specifies, in accordance with the conditions and provisions approved by the Supreme Committee for Public Private Partnership Affairs, and in accordance with the conditions and rules agreed upon in the PPP contract.

Article 2:

Administrative Authorities may enter into PPP contracts pursuant to which a Project Company shall be entrusted with the financing, constructing, equipping and operating infrastructure projects and public utilities, and making their services available or financing and rehabilitating such utilities with an obligation to maintain what has been constructed or rehabilitated, and to provide services and facilities necessary for the project to be capable of production or service provision regularly and progressively throughout the PPP contract duration.

The PPP contract duration shall not be less than five years and shall not exceed thirty years from the date of completion of the construction works and equipping works, or completion of the rehabilitation works, provided that the total value of the PPP contract is not less than one hundred million Egyptian Pounds. However, the Cabinet, based on the recommendation of the Supreme Committee for Public Private Partnership Affairs, may agree to conclude a PPP contract for more than thirty years, if it is required due to a material public interest.

The Project Company shall not start to receive any payments in return for the sale of products or availability of services, in accordance with the performance levels indicated in the PPP contract, until the contracting Administrative Authority issues a certificate accepting the quality level of the works, or products or services available.

Article 3:

In addition to what is stipulated in Article 2, the PPP contract may allow for the Project Company to operate the project, provide the service or the product to the Administrative Authority which will, in turn, provide the service or the product to the end beneficiaries or consumers.

Upon the approval of the Cabinet, based on a recommendation of the Supreme Committee for Public Private Partnership Affairs and in light of the reports prepared by the Public Private Partnership Central Unit, the Project Company may utilize the project and sell the product or provide the service to whoever is specified by the Administrative Authority.

Without prejudice to Article 2 of this law, the PPP contract may include articles concerning its renewal.

Article 4:

PPP projects shall not be tendered except with the approval of the Supreme Committee for Public Private Partnership Affairs, as provided for in Article 14 of this law, based on the request of the Competent Authority in light of the studies prepared under the supervision of the Public Private Partnership Central Unit, provided for in Article 16 of this Law. Such studies will determine the feasibility of the PPP project, guarantee the quality of its production and services, as well as the quality of the utility's assets and their maintenance, as indicated in the Executive Regulations of this Law.

Article 5:

The contracting Administrative Authority along with other concerned authorities regulating and monitoring the utilities and the services subject of the PPP contract, shall follow up on the Project Company during the construction and equipping of the project, and provision of the products and

services subject of the PPP contract, and shall ensure the fulfillment of quality levels determined by the law; and may, in this regard, designate representatives on its behalf to monitor execution in accordance with the terms and provisions stipulated in the PPP contract and without prejudice to the criteria and monitoring bases set out by law

If the PPP contract includes the entitlement of the Project Company to operate or utilize the project, the Administrative Authority, in agreement with the Project Company, and under the supervision of the concerned authorities regulating and monitoring the utilities and services subject of the PPP contract, shall form a committee to ensure that the product or services rendered meet the required standards, as well as submitting periodic reports. The Executive Regulations shall specify the committee's system of work and the reports to be submitted by it.

In the case mentioned above, the Project Company must provide the committee with all required documents, information, or data necessary for the committee to undertake its role and to allow the committee to visit and inspect the sites at any time, in accordance with the provisions of the Executive Regulations of this Law.

Article 6:

The Project Company entitled, pursuant to the PPP contract, to utilize the project shall be committed to guarantee that all beneficiaries of products or services provided by the project are treated equally, with regard to the provisions governing the sale of such products or provision of such services.

Whenever the public interest so necessitates, and after the approval of the Competent Authority, the Project Company may decide to provide special treatment for specific categories of beneficiaries who enjoy equal legal rankings, provided that such treatment shall be executed in accordance with general rules determined in advance and provided that within each category all beneficiaries shall be treated equally.

The Project Company shall be responsible for providing compensation against any damages resulting from the violation of the provisions set forth in this Article.

Article 7:

The Administrative Authority is entitled to amend the conditions of construction, equipment, rehabilitation and other works as well as the services availability payment agreed upon under the PPP contract. If the PPP contract includes the entitlement of the Project Company to operate or utilize the project, and if required for the public interest, the Administrative Authority has the right to amend the rules of operation or utilization including the sale prices of products or services. These modifications will only take place within the scope agreed upon in the PPP contract and after the approval of the Supreme Committee for Public Private Partnership Affairs, and without prejudice to the right of the Project Company, or the Administrative Authority (as the case may be), for compensation in accordance with the conditions and rules stipulated in the PPP contract.

If the sale price of the product or the services provision payment is amended, such amendment shall not have retroactive effect.

Article 8:

In case of the occurrence of unforeseen circumstances after execution of the PPP contract, including amendments to laws or regulations that were enforceable at the time of execution of the PPP

contract, it may be agreed to amend the PPP contract in accordance with the conditions and rules stipulated in the PPP contract.

Article 9:

The Administrative Authority has the right, either directly or through a selected third party, to manage the operation or utilization of the project if the Project Company materially breaches its obligations in operating the project or meeting the quality levels set by law or in the PPP contract, and does not remedy such breach, and the lenders do not step in to remedy such breach within the period provided for in the PPP contract from the date of their notification of such breach, without prejudice to the Project Company's obligation to compensate the Administrative Authority for the damages resulting from such breach

Article 10:

The Project Company shall be committed to preserve the assets related to the operation of the project and its rights, and commits to maintain and care for and use such assets for their intended purposes. The PPP contract shall include provisions regulating the ownership of the project facilities and assets for the PPP contract duration and upon its expiry or early termination.

Article 11:

No seizure or executive procedures shall be undertaken with regard to facilities, tools, machinery, or equipment allocated for the implementation of a PPP contract and for the operation or utilization of the project subject of the PPP contract.

Moreover, according to the PPP contract the Project Company shall not sell or arrange any right over the project's monies, assets, and facilities that are being constructed or rehabilitated, except for the purpose of implementing the replacement and renewal program stipulated in the PPP contract, and only after obtaining the approval of the Competent Authority. However, as an exception to the previous paragraph an arrangement for an accessory real right could be granted to the Project Company for the purposes of financing based on a prior written approval from the Administrative Authority in accordance with the terms mentioned in the PPP contract.

Any procedures or actions undertaken in contradiction with the provisions of this article shall be deemed null and void.

Article 12:

The Project Company shall provide the Administrative Authority with its shareholders' agreements and draft contracts intended to be entered into by it with third parties for the purpose of executing the works and services subject of the PPP contract, in accordance with the procedures and timing specified in the Executive Regulations.

The Administrative Authority shall have the right to object to the conclusion of such contracts within a period not exceeding sixty days from the date of their submission. An objection shall be made in case it is proven that the third party contract counterparties have been previously bankrupted or are subject to liquidation procedures, or have been previously convicted or, in case of a judicial person, whoever legally represents it has been subject to a final court judgment for an immoral crime, or have been struck off the vendor lists of the contracting Administrative Authority or if there are national security considerations that necessitate such objection.

Article 13:

The Project Company shall submit to the contracting Administrative Authority periodic reports on the construction, equipping, rehabilitation, maintenance, operation, and utilization works executed by the Project Company in accordance with the PPP contract (as the case may be). The Project Company must also warrant that environmental, health and safety conditions are met for the employees and the beneficiaries of the project.

CHAPTER II**The Supreme Committee****For Public Private Partnership Affairs****AND****The Public Private Partnership Central Unit****Article 14:**

A Supreme Committee for Public Private Partnership Affairs shall be formed chaired by the Prime Minister and with the membership of the Ministers of Finance, Investment, Economic Development, Legal Affairs, Housing and Utilities and Transportation as well as the Head of the Public Private Partnership Central Unit. In case of the absence of the Prime Minister, the Minister of Finance shall chair the committee. The Prime Minister may add other ministers to the membership of the Committee

The competent minister responsible for the PPP project required to be implemented shall join the committee during the consideration and approval process.

A decree shall be issued by the Prime Minister stipulating the committee's structure and the system of work based on the proposal of the Minister of Finance.

Article 15:

The Supreme Committee for PPP Affairs is competent for the following:

- a. Setting of an integrated national policy for the PPP, and identifying the framework, objectives, mechanisms, and targeted scope of the projects.
- b. Endorsing the application of the PPP structure on projects of Administrative Authorities.
- c. Monitoring the allocation of financial funds to ensure the fulfillment of financial obligations resulting from the implementation of PPP contracts.
- d. Issuing the rules and general criteria for the PPP, and endorsing standard PPP contracts for use in different sectors.

- e. Endorsing the recommendation of the Competent Authority of the Administrative Authority related to the selection of the contracting party entering into the PPP contract, and approving the conclusion of the contract.
- f. Conducting studies and proposing means to provide and develop the market tools necessary to provide appropriate financial structures for PPP projects.

No later than three months from the end of the fiscal year, the Supreme Committee for PPP Affairs shall prepare a report including the results of its activities in respect of infrastructure projects, services and public utilities and the consequential financial implications for the public budget and public debt.

The Minister of Finance shall submit the above mentioned report to the People's Assembly together with the draft laws related to the budget final accounts. .

Article 16:

A unit of special nature "The Public-Private Partnership Central Unit" is established within the Ministry of Finance. A decree shall be issued by the Minister of Finance stipulating its structure, and the appointment of its head. The Executive Regulations shall determine the administrative and financial framework of the PPP Central Unit, its relationship to other state organizations and its system of work, its employees as well as their remunerations with no restriction to applicable government regulations in this regard.

Moreover, PPP satellite units within the Administrative Authorities shall be established, whenever necessary. A decree shall be issued by the Competent Authority of the Administrative Authority regarding the structure of such units, their competencies and the system of their work.

The PPP Central Unit shall be competent to provide technical, financial, and legal expertise to the Supreme Committee for PPP Affairs and to the PPP satellite units at the Administrative Authorities. It shall also lay out and follow-up procedures to tender and conclude PPP contracts and their execution, and prepare and publish studies, information, and statistics related to PPP projects, both locally and internationally. The PPP Central Unit also shall be competent for the selection of advisers for the tender of PPP projects and contracting with them in accordance with the rules and procedures stated in the Executive Regulations of this Law.

The PPP Central Unit shall establish an electronic record for all PPP project documentation and also shall be competent to receive, investigate, and provide advice concerning complaints of Investors participating in PPP projects in preparation for submitting such complaints to the Supreme Committee for PPP Affairs.

The PPP Central Unit shall hold independent financial accounts and records listing all amounts allocated by the state to the PPP Central Unit and any financial support received, as well as fees collected from the Project Company in return for services it delivers. The Supreme Committee for PPP Affairs shall determine the specified percentage of fees and method of their payment with a cap of 0.5% of the total PPP contract value.

The PPP Central Unit may, after the approval of the Minister of Finance, provide its expertise in terms of preparing technical, financial, and legal studies, propose legislations and bylaws, and assisting in establishing the necessary administrative bodies that are required by local or foreign entities. The approval of the Minister of Finance shall state the financial returns to be charged by the unit.

Article 17:

The endorsement of application of a PPP structure to projects of an Administrative Authority shall be by virtue of a decree issued by the Supreme Committee for PPP Affairs at the request of the Administrative Authority, and after the presentation of the PPP Central Unit's recommendations concerning the project. The Executive Regulations of this law shall detail the necessary procedures.

Administrative Authorities that are interested in obtaining an endorsement on the application of the PPP structure on any of their projects must provide the PPP Central Unit with all information necessary for the preparation of its report and recommendations.

Article 18:

An Administrative Authority that has received an endorsement on the application of the PPP structure to its projects must take into account the application of the PPP Central Unit's recommendations in all its procedures. The publication of any advertisements or documents related to the tendered projects; including expressions of interest, prequalification invitations, information memorandums, and invitations to bid 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.

CHAPTER III

TENDERING AND AWARDING PROCEDURES

Article 19:

The Investor selection is subject to the principles of publicity, transparency, free competition, equal opportunity and fairness, in accordance with the rules and procedures stipulated in this Law and its Executive Regulations.

All published advertisements for bids and preparation for PPP competitions shall be undertaken in coordination with the PPP Central Unit in the manner prescribed by the Executive Regulations.

Article 20:

A "Prequalification Committee" shall be formed by decree issued from the Competent Authority of the Administrative Authority, including technical, financial and legal expertise. The committee members should include one or more representatives of the PPP Central Unit and a representative of the PPP satellite unit at the Administrative Authority, if any. The Executive Regulations shall determine the jurisdiction and system of work of such committee.

Disqualified Investors can object to the Prequalification Committee's decision. An objection shall be submitted to the PPP Central Unit to study and issue its binding decision. The Executive Regulations of this Law shall determine the dates and procedures for objections to the Prequalification Committee's decisions and procedures for their investigation and resolution.

Article 21:

The Administrative Authority in coordination with the PPP Central Unit may invite qualified Investors for private preliminary meetings and sessions to discuss issues related to the project specifications and initial preliminary conditions. All enquiries and replies shall be made available to all qualified Investors.

A qualified Investor may stipulate that the Competent Authority of the Administrative Authority may not disclose any confidential data related to its reservations or its economic or financial expectations. Dealing with qualified Investors shall be in a manner that secures equal opportunity and fairness.

The Competent Authority of the Administrative Authority may decide to reconsider a project's specifications and preliminary conditions based on the aforementioned meetings and sessions without affecting the prequalification criteria and before issuance of invitation to bids.

Article 22:

The Competent Authority of the Administrative Authority, with the prior approval of the PPP Central Unit, may decide that the submission of technical and financial bids shall be made in two phases. The first phase shall be a non-binding offer that shall include the broad outlines of the technical and financial bid followed by a competitive dialogue phase, according to provisions of Article 23 of this

Law. In the second phase, final bids shall be submitted, based upon which the final evaluation will take place.

The Executive Regulations stipulates the provisions and procedures for bidding over two phases.

Article 23:

The Administrative Authority, together with the PPP Central Unit, may hold a competitive dialogue with the qualified Investors who submitted their non-binding offers based on the prior approval and under the supervision of the Supreme Committee for PPP Affairs in order to obtain explanations for the contents of the technical and financial elements. These dialogues will be with each bidder on an individual basis.

Such dialogue shall take place on the basis of equality amongst the qualified Investors. The confidentiality of the discussions and disclosed information shall not be violated. The Executive Regulations shall stipulate the rules and procedures for managing such dialogue.

Article 24:

The Administrative Authority, in coordination with the PPP Central Unit, shall prepare the tender documents related to the project. The tender documents shall include, in particular, the following:

- a) general information related to the project required for the preparation and submission of bids;
- b) project specifications, as well as technical and financial conditions that should be met in the bids;
- c) final product specifications, level of services, and specifications of the final product, performance indicators and the main requirements of the Administrative Authority and the Authorities with the power to regulate and monitor utilities and services subject of the PPP contract regarding criteria for safety, security, environment preservation and others;
- d) Basic heads of terms for the PPP contract in addition to other supplementary agreements while identifying non-negotiable conditions;
- e) Determination of the method and basis for comparison amongst the bids. In case the score points evaluation system is chosen, the evaluation criteria and basis for technical and financial comparison amongst the bids shall be specified. In addition, the score given to each criteria and the method by which it shall be applied to evaluate the bids shall be identified as well
- f) Documents, forms and dates that should be considered and fulfilled in the bid;
- g) Bid security value and calculation method for the performance security;

The Executive Regulations shall stipulate the rules and regulations for preparing the tender documents.

Article 25:

A committee including technical and financial experts shall be formed by a decree issued by the Competent Authority of the Administrative Authority. The committee shall set the basic costs for the project "**the estimated value**" in case the project was executed through public procurement by the

Administrative Authority. The committee shall prepare a report about its work that includes the principles followed to estimate such costs and to determine their value. The report shall be placed in a sealed envelope signed by all of the committee members.

The PPP Central Unit shall review the basic costs for the project and adds to it the financing costs, quantified risks and burdens that would be borne by the Private Sector in order to execute the project. The PPP Central Unit shall submit its report with the new estimate called "**the public sector comparator**" to the Supreme Committee for PPP Affairs for approval. The **public sector comparator** shall then be placed in a sealed envelope signed by the head of the PPP Central Unit and shall not be opened until after the financial envelopes for technically accepted bids are opened.

The Executive Regulations of this Law shall determine the basis to be followed in setting the **estimated value** and the **public sector comparator**.

Article 26:

The Administrative Authority, after the approval of its Competent Authority on the final tendering documents, shall send invitations to qualified Investors to draw the tender documents against the value specified for them based on the rules stipulated by the Executive Regulations.

Article 27:

The Bids shall be submitted in two closed envelopes; one for the technical offer and the other for the financial offer. The technical envelope must include detailed input to meet the level of service or product specifications for the project according to the requirements specified in the tender documents. Only the financial envelopes of technically accepted bids shall be opened. The Executive Regulations of this Law shall stipulate the rules and procedures related to the submission of bids, opening of envelopes, and documents and data that must be included in each envelope.

Article 28:

A consortium of more than one qualified Investor may submit a bid. The bid shall be submitted under the name of the consortium unless it is stipulated in the tender documents that qualified Investors must submit their bids individually.

In case of a bid submitted by a consortium, none of the members of such consortium shall submit another bid directly or indirectly, individually or through another consortium, or through a company in which it owns the majority of its equity, or has control over its management, or if such member's ownership or management is controlled by one of these companies, unless otherwise stipulated in the tender document. Any submitted bid inconsistent with the provisions of this paragraph shall be deemed null and void.

Article 29:

A committee shall be formed by a decree of the Competent Authority of the Administrative Authority from technical, legal, and financial experts to receive bids and study them technically and financially. The Executive Regulations of this Law shall stipulate the committee's competencies and its system of work and ranking of accepted technical bids and the identification of bids to be disqualified. Amongst its members, the committee must include a representative from each of the Legal Advice Department of the State Council, the Ministry of Finance, and the PPP Central Unit. The committee may assign to sub-committees formed from amongst its members or other experts chosen by the committee, the study of the technical, financial, and legal aspects of the submitted bids, and the

extent of their compliance with declared conditions and specifications, as well as evaluation of bids that are compliant. Such sub-committees shall submit reports setting out the results of their work and recommendations to the committee responsible for receiving bids and studying them, and evaluating the compliant bids, in accordance with the evaluation criteria set out in the tender documents, to ensure the most economically advantageous benefit to the state. Each bid shall be given an evaluation grade according to the method identified in the request for submission of final bids and the tender documents. Based on this grading the technically accepted bids shall be ranked.

Article 30:

Bids that are non-compliant with the conditions and specifications set out in the tender documents shall be disqualified. Technical bidders with qualified bids shall be invited to attend the session for the opening of the financial envelopes. The most economically advantageous bid amongst the technically accepted bids shall be awarded the project; after working out the comparative balance for the financial and technical elements of the bid set out in the tender documents. The Executive Regulations of this Law shall provide the rules for the evaluation of the bids in relation to both technical and financial aspects.

Article 31:

Negotiations with the successful bidder may take place with regard to some clarifications and details pertaining to the technical and financial terms. These negotiations shall not impact any contractual conditions stipulated in the invitation to bid as non-negotiable conditions, or conditions in respect of which there were no reservations raised by the bidder in its submitted bid. No amendments will take place to the technical and financial terms resulting in the reduction of terms included in the bid and based upon which the bid has been evaluated.

Article 32:

The tender procedures shall be cancelled if the project in its entirety is dispensed with or if cancellation is required for the public interest. Moreover, the tender may be cancelled in the following cases:

- a. if only one bid is submitted or if there is one bid left after disqualified bids are excluded;
- b. if all bids, or most of them, are associated with reservations that are incompatible with the tender conditions and specifications, or that are difficult to evaluate financially;
- c. if the value of the lowest bid is unjustifiably higher than the public sector comparator endorsed by the Supreme Committee for PPP Affairs.

The cancellation in such cases shall be by virtue of a decree issued by the Competent Authority of the Administrative Authority based on the recommendation of the committee responsible for receiving and studying the bids and based on a previous approval from the Supreme Committee for PPP affairs. The decree must include reasons for its issuance. Bidders shall not claim any compensation for a decision to cancel a tender, except for a percentage of bidding expenses incurred by bidders whose technical bids were qualified, in accordance with the provisions of the Executive Regulations.

The Executive Regulations shall identify cases and limits where only one bid or a bid whose value is higher than the public sector comparator, may be accepted.

Article 33:

The successful bidder must establish a company the "Project Company" the sole purpose of which shall be to execute the project. The Executive Regulations of this Law shall stipulate the conditions that must be fulfilled by the Project Company and the cases in which the Project Company may execute other PPP contracts subject to the approval of the Supreme Committee for PPP Affairs. It shall also determine the cases in which a performance security must be provided and the basis for its estimation and method of payment.

CHAPTER IV
SUBSTANTIVE PROVISIONS
OF THE PPP CONTRACT

Article 34:

The PPP contract must include, in particular, the following.:

- a. the nature and scope of works and services that the Project Company must carry out as well as the conditions for their implementation;
- b. the ownership of the project's funds and assets, the obligations of parties related to the handover and receipt of the project site, and the provisions for ownership transfer at the end of the project;
- c. the responsibility of obtaining authorizations, permits, and approvals;
- d. mutual financial obligations and their relation to the funding mechanism;
- e. the product sale price or the service availability payment on which the project is based, and the rules for its determination and amendment, either by an increase or decrease, as well as the method of adjusting it for inflation indexes and changes in interest rates, if required;
- f. means of quality assurance and quality control, and supervision as well as administrative, financial, and technical monitoring of the project Operation, Utilization, and maintenance;
- g. regulating the right of the Administrative Authority to amend the conditions of the project's construction, equipment, maintenance, operation, and utilization and other obligations of the Project Company, in addition to the basis and mechanisms of compensation for such amendments;
- h. types and amounts of insurance on the project, and the risks of its operation or utilization, and executive warranties issued in favor of the Administrative Authority, and provisions and procedures for their release;
- i. determination of the basis of risk allocation in respect of change in law, sudden accidents, force majeure, or discovery of antiquities, as the case may be, and the resultant compensation;
- j. PPP contract duration, cases of early or partial termination, and the rights of the related parties;
- k. cases where the Administrative Authority has the right to unilaterally terminate the PPP contract, as well as the financial obligations resulting from the use of such right;
- l. regulation of handing over the project at the expiry of the PPP contract duration, or in case of unilateral, early or partial termination of the PPP contract.

Article 35:

The PPP contract shall be subject to the provisions of the Egyptian Law. Any contrary agreement shall be deemed to be null and void.

After the approval of the Supreme Committee for PPP Affairs, it may be agreed to resolve disputes resulting from the PPP contract through arbitration, or any other non judicial means of dispute resolution according to what was stipulated in the PPP contract.

Article 36:

The Project Company shall not be dissolved or its legal structure changed, or its capital reduced unless there is an approval from the Competent Authority of the contracting Administrative Authority.

The articles of incorporation of the Project Company shall include a prohibition on the transfer of its shares prior to the date of completion of the construction, equipping, or rehabilitation works, and the transfer of shares owned by the majority of the equity holders of the Project Company after such date, unless a prior written approval is granted by the Competent Authority of the Administrative Authority.

In all cases, pledge of the Project Company shares shall not take place except for the purposes of financing or refinancing the PPP project. Any procedure or action that is inconsistent with the provisions of this article shall be deemed to be null and void.

Article 37:

Without prejudice to Articles 7 and 8 of this Law, any articles of the PPP contract or its supplementary agreements shall not be amended unless approved by its parties. If the obligations of the contracting Administrative Authority are related to financial obligations of any other Administrative Authority, such amendment shall not be effective unless there is a prior written approval from such authority.

The Project Company shall not waiver the PPP contract or any of its rights or obligations there under except for the purpose of financing and after a prior written approval from the Competent Authority of the contracting Administrative Authority. Any agreements inconsistent with the provisions of this article shall be deemed to be null and void.

Article 38:

The contracting Administrative Authority is entitled to enter into **direct agreements** with the project's financing institutions and the Project Company, to regulate the method of payment of the financial obligations of the Administrative Authority to the Project Company and the financing institutions. Such agreements may include a provision whereby the Ministry of Finance guarantees the Administrative Authority's payment of its contractual financial obligations. Such agreements shall include a provision regulating the right of the financing institution to step in and assume the role of the Project Company in executing the provisions of the PPP contract, or to appoint a new Investor after the approval of the Competent Authority in case the Project Company defaults in either performing its material obligations, or meeting the quality levels established by law or in the PPP contract, in a manner that entitles the Competent Authority to terminate the PPP contract.

Article 39:

A petition committee shall be formed chaired by the Minister of Finance and with the the membership of two deputies to the President of the State Council to be selected by the President of the State Council, and the Head of the PPP Central Unit, as well as a non-government member expert to be selected by the chairman of the committee.

The petition committee shall be competent to consider all petitions and complaints submitted by Investors during the procedure of tendering, entering into and executing PPP contracts.

If the subject matter of the petition is an administrative decision, the petition shall be made within thirty days from the date of its notification of the decision or of becoming aware of such decision. A claim for the cancellation of such decision shall not be accepted before a petition is filed.

The Executive Regulations shall provide for the procedures of considering and settling petitions. The decision of the petition committee shall be final and binding.

2. PPP LAW (ARABIC VERSION)

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ٥

قانون رقم ٦٧ لسنة ٢٠١٠

بإصدار قانون تنظيم مشاركة القطاع الخاص
في مشروعات البنية الأساسية والخدمات والمرافق العامة

باسم الشعب

رئيس الجمهورية

قرر مجلس الشعب القانون الآتي تصه ، وقد أصدرناه :

(المادة الاولى)

تسرى أحكام القانون المرافق على عقود المشاركة مع القطاع الخاص وعقود الاستشارات الخاصة المتعلقة بها والتي تبرمها الجهات الإدارية ، لتنفيذ مشروعات البنية الأساسية والخدمات والمرافق العامة وإتاحة خدماتها .

ولا تسرى على هذه العقود أحكام القانون رقم ١٢٩ لسنة ١٩٤٧ بالتزامات المرافق العامة، والقرار بالقانون رقم ٦١ لسنة ١٩٥٨ في شأن منح الامتيازات المتعلقة باستثمار موارد الثروة الطبيعية والمرافق العامة وتعديل شروط الامتياز ، وقانون تنظيم المناقصات والمزايدات الصادر بالقانون رقم ٨٩ لسنة ١٩٩٨ ، وغيرها من القوانين الخاصة بمنح التزامات المرافق العامة .

(المادة الثانية)

يصدر رئيس مجلس الوزراء اللائحة التنفيذية للقانون المرافق ، بناءً على عرض الوزير المختص بالشئون المالية ، وموافقة مجلس الوزراء وذلك خلال ثلاثة أشهر من تاريخ العمل به .

(المادة الثالثة)

ينشر هذا القانون في الجريدة الرسمية، ويعمل به من أول الشهر التالي لمرور ثلاثين يوماً على تاريخ نشره .

يضم هذا القانون بخاتم الدولة، وينفذ كقانون من قوانينها .

صدر برئاسة الجمهورية في ٤ جمادى الآخرة سنة ١٤٣١ هـ

(الموافق ١٨ مايو سنة ٢٠١٠ م) .

حسنى مبارك

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠

قانون

تنظيم مشاركة القطاع الخاص
في مشروعات البنية الأساسية والخدمات والمرافق العامة

الفصل الأول

الاحكام العامة

مادة (١):

فى تطبيق أحكام هذا القانون يقصد بكل من الكلمات والعبارات الآتية المعانى المبينة قرين كل منها :

الجهات الإدارية : الوزارات والهيئات العامة، الخدمية والاقتصادية، وغيرها من الأشخاص الاعتبارية العامة التى يصدر بتحديددها قرار من رئيس مجلس الوزراء .
السلطة المختصة : الوزير المختص، أو رئيس مجلس إدارة الهيئة أو الممثل القانونى للشخص الاعتبارى العام .

القطاع الخاص : الشخص الاعتبارى المصرى أو الأجنبى الذى تقل نسبة مساهمة المال العام المصرى فى رأسماله عن (٢٠٪) ، والتحالف بين اثنين أو أكثر من الأشخاص الاعتبارية المصرية أو الأجنبية الذى تقل نسبة مساهمة المال العام فيه عن (٢٠٪) .
المستثمر : القطاع الخاص الذى يشارك فى المنافسة على الفوز بأحد عقود المشاركة طبقاً لأحكام هذا القانون .

شركة المشروع : الشركة المساهمة المصرية التى يؤسسها صاحب العطاء الفائز ويكون غرضها الوحيد تنفيذ عقود المشاركة .

عقد المشاركة : عقد تبرمه الجهة الإدارية مع شركة المشروع وتعهدها إليها بمقتضاه بالقيام بكل أو بعض الأعمال المنصوص عليها فى المادة (٢) من هذا القانون .

عقود الاستشارات الخاصة : عقود تبرمها الوحدة المركزية للمشاركة أو وحدات المشاركة فى الجهات الإدارية المنشأة بموجب المادة (١٦) من هذا القانون بعد موافقة الوحدة المركزية للمشاركة مع مستشارى الطرح القائمين على إعداد الدراسات والمستندات الخاصة بالمشروع .

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ٧

التشغيل : إدارة المشروع محل عقد المشاركة بمعرفة شركة المشروع، وذلك من جميع النواحي المالية والفنية والإدارية وتوريد المنتج أو تقديم الخدمة التي يقوم عليها المشروع للجهة الإدارية نظير المقابل المتفق عليه في عقد المشاركة أو طبقاً للأسس والقواعد التي يحددها العقد .

الاستغلال : إدارة المشروع محل عقد المشاركة بمعرفة شركة المشروع وذلك من جميع النواحي المالية والإدارية والفنية، وبيع المنتج أو تقديم الخدمة التي يقوم عليها المشروع إلى من تحدده الجهة الإدارية، وبالشروط والأحكام التي تعتمدها اللجنة العليا لشئون المشاركة وذلك وفقاً للأسس والقواعد المتفق عليها في عقد المشاركة .

مادة (٢) :

للجهات الإدارية أن تبرم عقود مشاركة تعهد بمقتضاها إلى شركة المشروع تمويل وإنشاء وتجهيز مشروعات البنية الأساسية والمرافق العامة وإتاحة خدماتها أو تمويل وتطوير هذه المرافق، مع الالتزام بصيانة ما يتم إنشاؤه أو تطويره، وتقديم الخدمات والتسهيلات اللازمة لكي يصبح المشروع صالحاً للاستخدام في الإنتاج أو تقديم الخدمة بانتظام واضطراد طوال فترة التعاقد .

ولا يجوز أن تقل مدة العقد عن خمس سنوات ولا تزيد على ثلاثين سنة من تاريخ اكتمال أعمال البناء والتجهيز أو إتمام أعمال التطوير، وألا تقل قيمة العقد الإجمالية عن مائة مليون جنيه .

ومع ذلك يجوز لمجلس الوزراء بناء على توصية اللجنة العليا لشئون المشاركة المنصوص عليها في المادة (١٤) من هذا القانون، الموافقة على إبرام عقد المشاركة لمدة تزيد على ثلاثين سنة إذا اقتضت ذلك مصلحة عامة جوهرية .

ولا تبدأ شركة المشروع في تقاضى أية مستحقات مالية نظير بيع المنتجات أو إتاحة الخدمات وفقاً لمستوى الأداء المنصوص عليه في العقد إلا بعد إصدار الجهة الإدارية المتعاقدة شهادة بقبول مستوى جودة الأعمال أو المنتجات، أو الخدمات المتاحة .

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مادة (٣):

يجوز أن يتضمن عقد المشاركة بالإضافة إلى ما هو منصوص عليه في المادة (٢) قيام شركة المشروع بتشغيل المشروع وتقديم الخدمة أو المنتج للجهة الإدارية لتتولى تقديمه لجمهور المستهلكين أو المنتفعين .

ويجوز ، بموافقة مجلس الوزراء ، بناء على توصية اللجنة العليا لشئون المشاركة في ضوء التقارير المعدة من الوحدة المركزية للمشاركة، قيام شركة المشروع باستغلال المشروع وبيع المنتج أو تقديم الخدمة إلى من تحدده الجهة الإدارية .
ومع مراعاة حكم المادة (٢) من هذا القانون، يجوز أن يتضمن عقد المشاركة تنظيمًا لتجديد مدته .

مادة (٤):

لا يجوز طرح مشروعات المشاركة إلا بعد موافقة اللجنة العليا لشئون المشاركة المنصوص عليها في المادة (١٤) من هذا القانون ، بناء على طلب السلطة المختصة، في ضوء الدراسات التي تعد تحت إشراف الوحدة المركزية للمشاركة المنصوص عليها في المادة (١٦) من هذا القانون ، لبيان جدوى مشروع المشاركة، وضمان مستوى الإنتاج والخدمات، وجودة أصول المرفق وصيانتها ، وذلك على النحو الذي تحدده اللائحة التنفيذية لهذا القانون .

مادة (٥):

تتولى الجهة الإدارية المتعاقدة وغيرها من الجهات المعنية بتنظيم ورقابة المرافق والخدمات محل التعاقد، متابعة شركة المشروع عند إنشائه وتجهيزه وإتاحة المنتجات والخدمات محل عقد المشاركة والتأكد من تحقيق مستويات الجودة المقررة قانونًا، ولها في سبيل ذلك تعيين مندوبين لها لمراقبة التنفيذ، وذلك طبقًا للشروط والأحكام المنصوص عليها في العقد، وبمراعاة معايير وقواعد الرقابة المقررة قانونًا .

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ٩

وإذا تضمن عقد المشاركة إسناد التشغيل أو الاستغلال لشركة المشروع، فعلى الجهة الإدارية بالاتفاق مع الشركة وتحت إشراف الجهات المعنية بتنظيم ورقابة المرافق والخدمات محل التعاقد، تشكيل لجنة للتأكد من مطابقة المنتج أو الخدمة للمستوى المطلوب، وتقديم تقارير دورية، وتحديد اللائحة التنفيذية لهذا القانون نظام عمل اللجنة وما تقدمه من تقارير .

وعلى شركة المشروع، فى الحالة المنصوص عليها فى الفقرة السابقة، أن تقدم إلى اللجنة كل ما تطلبه من الأوراق أو المعلومات أو البيانات اللازمة للقيام بمهامها، وأن تسمح لها بزيارة المواقع التى تطلب زيارتها والتفتيش عليها فى أى وقت، وذلك كله على النحو الذى تنظمه اللائحة التنفيذية لهذا القانون .

مادة (٦):

على شركة المشروع التى يتضمن عقد المشاركة إسناد استغلال المشروع إليها، الالتزام بكفالة المساواة التامة بين المنتفعين بالمنتجات أو الخدمات التى يتيحها المشروع، سواء من حيث أحكام بيع المنتج أو تقديم الخدمة .

وللشركة، بعد موافقة السلطة المختصة، متى اقتضت المصلحة العامة ذلك، تقرير معاملة خاصة لفئات معينة من المنتفعين الذين تتساوى مراكزهم القانونية، على أن يكون ذلك وفقاً لقواعد عامة مقرر سلفاً، وبشرط المساواة بين أشخاص كل فئة.

وتكون شركة المشروع مسئولة عن التعويض عن الأضرار الناجمة عن مخالفة أحكام هذه المادة .

مادة (٧):

للجهة الإدارية تعديل شروط البناء والتجهيز والتطوير وغير ذلك من الأعمال أو مقابل الخدمات المتفق عليها فى عقد المشاركة، كما أن لها إذا تضمن العقد إسناد تشغيل المشروع أو استغلاله لشركة المشروع، متى اقتضت المصلحة العامة ذلك، الحق فى تعديل قواعد تشغيله أو استغلاله، بما فيها أسعار بيع المنتجات أو مقابل الخدمات،

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وذلك كله في إطار الحدود المتفق عليها في العقد، وبعد موافقة اللجنة العليا لشئون المشاركة ودون إخلال بحق شركة المشروع أو الجهة الإدارية في التعويض بحسب الأحوال، طبقاً للأسس والقواعد التي يبينها العقد .

وإذا تم تعديل سعر بيع المنتج أو مقابل تقديم الخدمة ، فلا يسرى هذا التعديل إلا بأثر مباشر .

مادة (٨) :

يجوز الاتفاق على تعديل عقد المشاركة طبقاً للأسس والقواعد المنصوص عليها في العقد وذلك إذا طرأت ظروف غير متوقعة بعد إبرام عقد المشاركة بما في ذلك التعديلات في التشريعات السارية وقت إبرام العقد .

مادة (٩) :

للجهة الإدارية أن تباشر بنفسها أو عن طريق من تختاره لذلك، إدارة المشروع وتشغيله أو استغلاله إذا أخلت شركة المشروع إخلالاً جوهرياً بالتزاماتها في تشغيل المشروع، أو في تحقيق مستويات الجودة المقررة قانوناً أو في عقد المشاركة، ولم تقم بإصلاح الخلل و لم تتدخل جهة التمويل لإصلاحه خلال المدة المنصوص عليها في عقد المشاركة من تاريخ إخطارها بذلك، دون إخلال بالتزام شركة المشروع بتعويض الجهة الإدارية عن الأضرار الناجمة عن هذا الإخلال .

مادة (١٠) :

تلتزم شركة المشروع بالمحافظة على الأصول الخاصة بتشغيل المشروع وموجوداته وحقوقه، وصيانتها والعناية بها، واستخدامها في الغرض الذي أعدت له .
ويجب أن يتضمن عقد المشاركة الأحكام المنظمة للملكية منشآت المشروع وأصوله أثناء مدة العقد وعند انتهائه أو إنهائه مبكراً .

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مادة (١١) :

لا يجوز الحجز أو اتخاذ أية إجراءات تنفيذ على المنشآت والأدوات والآلات والمهمات المخصصة لتنفيذ عقد المشاركة وتشغيل المشروع أو استغلاله .

كما لا يجوز لشركة المشروع بيع ما قد تملكه وفقاً لعقد المشاركة من الأموال والأصول الخاصة بالمشروع والمنشآت التي يتم إقامتها أو تطويرها، إلا لغرض تنفيذ برنامج الإحلال والتجديد المنصوص عليه في العقد وبعد الحصول على موافقة السلطة المختصة ، أو أن ترتب أي حق عليها، ومع ذلك يجوز ترتيب حق عيني تبعي عليها بموافقة كتابية مسبقة من الجهة الإدارية لغرض التمويل بناءً على الشروط الواردة في العقد، وذلك استثناء من حكم الفقرة السابقة .

ويقع باطلاً أي إجراء أو تصرف يتم بالمخالفة لأحكام هذه المادة .

مادة (١٢) :

على شركة المشروع أن تعرض على الجهة الإدارية اتفاقات المساهمين في شركة المشروع، ومشروعات العقود التي تزمع إبرامها مع الغير بقصد تنفيذ الأعمال والخدمات محل عقد المشاركة ، وذلك وفقاً للإجراءات وفي المواعيد التي تحددها اللائحة التنفيذية لهذا القانون .

وللجهة الإدارية خلال مدة لا تتجاوز ستين يوماً من تاريخ العرض حق الاعتراض على إبرام هذه العقود، وذلك إذا ثبت لها أن الغير المزمع التعاقد معه سبق إفلاسه أو أنه خاضع لإجراءات التصفية أو سبق الحكم عليه نهائياً أو على من يمثله قانوناً بالنسبة إلى الأشخاص الاعتبارية في جريمة مخلة بالشرف، أو تم شطبه من سجلات الموردين أو المقاولين بالجهة الإدارية المتعاقدة ، أو كانت هناك اعتبارات للأمن القومي تستلزم ذلك .

١٢ الجريدة الرسمية - العدد ١٩ مكرر (أ) قى ١٨ مايو سنة ٢٠١٠

مادة (١٣):

على شركة المشروع أن تقدم إلى الجهة الإدارية المتعاقدة تقارير دورية عن أعمال البناء والتجهيز والتطوير والصيانة والتشغيل والاستغلال التي تقوم بها تنفيذاً لعقد المشاركة ، بحسب الأحوال، كما أن على الشركة ضمان توافر الاشتراطات البيئية ، وشروط الصحة والسلامة للعاملين بالمشروع والمنتفعين به .

الفصل الثانى

اللجنة العليا لشئون المشاركة والوحدة المركزية للمشاركة

مادة (١٤):

تُشكل لجنة عليا لشئون المشاركة، برئاسة رئيس مجلس الوزراء، وعضوية الوزراء المختصين بالشئون المالية، والاستثمار، والتنمية الاقتصادية، والشئون القانونية، والإسكان والمرافق، والنقل، ورئيس الوحدة المركزية للمشاركة . ويتولى الوزير المختص بالشئون المالية رئاسة اللجنة فى حالة غياب رئيس مجلس الوزراء .

ولرئيس مجلس الوزراء ضم من يراه من الوزراء المعنيين إلى عضوية هذه اللجنة . وينضم لعضوية اللجنة الوزير المختص بمشروع المشاركة المطلوب تنفيذه عند النظر فى المشروع واعتماده .

ويصدر بتشكيل اللجنة وبنظام العمل فيها قرار من رئيس مجلس الوزراء ، بناء على اقتراح الوزير المختص بالشئون المالية .

مادة (١٥):

- تختص اللجنة العليا لشئون المشاركة بما يأتى :
- (أ) رسم سياسة قومية موحدة للمشاركة مع القطاع الخاص تحدد أطرها وأهدافها وآلياتها والنطاق المستهدف لمشروعاتها .
- (ب) اعتماد تطبيق نظام المشاركة على مشروعات الجهات الإدارية .

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(ج) متابعة توفير المخصصات المالية لضمان الوفاء بالالتزامات المالية الناشئة عن تنفيذ عقود المشاركة .

(د) إصدار القواعد والمعايير العامة للمشاركة، واعتماد العقود النموذجية للمشاركة في القطاعات المختلفة .

(هـ) اعتماد توصية السلطة المختصة بالجهة الإدارية باختيار المتعاقد معها في عقد المشاركة والموافقة على إبرام العقد .

(و) إجراء الدراسات واقتراح وسائل توفير وتطوير أدوات السوق اللازمة لتوفير الهيكل التمويلي المناسب لمشروعات المشاركة .

وتُعد اللجنة العليا لشئون المشاركة في موعد غايته ثلاثة أشهر من انتهاء السنة المالية تقريراً عن أعمالها ، متضمناً ما أسفرت عنه ممارستها لاختصاصاتها من تطبيق نظام مشاركة القطاع الخاص في مشروعات البنية الأساسية والخدمات والمرافق العامة ، والأثر المالي لتطبيق هذا النظام على الموازنات العامة والدين العام .

وعلى الوزير المختص بشئون المالية أن يحيل التقرير المنصوص عليه في الفقرة السابقة إلى مجلس الشعب مع مشروعات قوانين الربط الخاصة بالحساب الختامي للموازنات العامة .

مادة (١٦) :

تُنشأ بوزارة المالية وحدة ذات طابع خاص تسمى "الوحدة المركزية للمشاركة" ، يصدر بتشكيلها وتعيين رئيسها، قرار من الوزير المختص بالشئون المالية، وتحدد اللائحة التنفيذية لهذا القانون علاقاتها بأجهزة الدولة، وهيكلها الإداري والمالي، ونظم العمل والعاملين بها وأجورهم دون التقييد بالنظم الحكومية المعمول بها .

كما تنشأ بالجهات الإدارية ، بحسب الاقتضاء ، وحدات للمشاركة، يصدر بتشكيلها وتحديد اختصاصاتها، وينظم العمل فيها قرار من السلطة المختصة في الجهة الإدارية .

وتختص الوحدة المركزية للمشاركة بتقديم الخبرة الفنية والمالية والقانونية للجنة العليا لشئون المشاركة، ولوحدات المشاركة بالجهات الإدارية، كما تختص برسم ومتابعة إجراءات

١٤ الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠

طرح وإبرام عقود المشاركة وتنفيذها ، وإعداد ونشر الدراسات والمعلومات والإحصاءات الخاصة بمشروعات المشاركة على المستويين المحلى والدولى، وتختص الوحدة المركزية للمشاركة باختيار مستشارى الطرح لمشروعات المشاركة والتعاقد معهم طبقاً للقواعد والإجراءات التى تحددها اللائحة التنفيذية لهذا القانون .

وتقوم الوحدة بإنشاء سجل إلكترونى لكل مستندات مشروعات المشاركة، كما تختص بتلقى شكاوى مستثمرى مشروعات المشاركة ودراستها وإعداد الرأى بشأنها تمهيداً لرفعها للجنة العليا لشئون المشاركة .

ويكون للوحدة المركزية للمشاركة حسابات مالية مستقلة تدرج فيها المبالغ المخصصة لها من الدولة وما تتلقاه من دعم مالى، بالإضافة إلى ما تحصله من شركة المشروع لقاء ما تؤديه من خدمات ، وتحدد اللجنة العليا لشئون المشاركة النسبة المقررة لذلك المقابل وطريقة سداده بحد أقصى ٥ ٪ من القيمة الإجمالية للعقد .

وللوحدة المركزية للمشاركة ، بعد موافقة الوزير المختص بالشئون المالية، أن تقدم خبرتها فى مجال إعداد الدراسات الفنية والمالية والقانونية واقتراح النظم التشريعية واللائحية والمساعدة فى إنشاء الهياكل الإدارية اللازمة للجهات المحلية أو الأجنبية التى تطلب ذلك، ويجب أن تضمن الموافقة تحديد المقابل المالى الذى تحصل عليه .

مادة (١٧) :

يكون اعتماد تطبيق نظام المشاركة على مشروعات الجهة الإدارية ، بقرار من اللجنة العليا لشئون المشاركة بناء على طلب الجهة الإدارية، وبعد عرض توصية الوحدة المركزية للمشاركة فى شأن المشروع ، وتنظم اللائحة التنفيذية لهذا القانون ما يتطلبه ذلك من إجراءات .

وعلى الجهات الإدارية التى ترغب فى الحصول على اعتماد تطبيق نظام المشاركة على أى من مشروعاتها أن توفر للوحدة المركزية للمشاركة جميع المعلومات اللازمة لإعداد تقريرها بالتوصيات .

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ١٥

مادة (١٨):

على الجهة الإدارية التي تم اعتماد اختيار نظام المشاركة لمشروعاتها أن تراعى في جميع إجراءاتها تطبيق توصيات الوحدة المركزية للمشاركة .
ويكون نشر أى إعلان أو مستند خاص بالمشروعات تحت الطرح، بما فى ذلك إعلانات إبداء الاهتمام والدعوة للتأهيل ومذكرة المعلومات والدعوة للتقدم بالعطاء، بعد الحصول على موافقة الوحدة المركزية للمشاركة ، ولا يصح انعقاد لجان تحديد المعايير والتأهيل ولجان تلقى ودراسة العطاءات إلا بحضور ممثل للوحدة المركزية للمشاركة .

الفصل الثالث

إجراءات الطرح والترسية

مادة (١٩):

يخضع اختيار المستثمر لمبادئ العلانية والشفافية وحرية المنافسة وتكافؤ الفرص والمساواة، وفقاً للقواعد والإجراءات الواردة فى هذا القانون ولائحته التنفيذية .
ويتم النشر والإعلان والتحضير لمنافسات المشاركة بالتنسيق مع الوحدة المركزية للمشاركة على النحو الذى تحدده اللائحة التنفيذية لهذا القانون .

مادة (٢٠):

تشكل بقرار من السلطة المختصة بالجهة الإدارية لجنة تسمى "لجنة التأهيل المسبق" تضم خبرات فنية ومالية وقانونية، ويجب أن تضم فى عضويتها ممثلاً أو أكثر عن الوحدة المركزية للمشاركة وممثلاً عن وحدة المشاركة بالجهة الإدارية إذا وجدت ، وتحدد اللائحة التنفيذية لهذا القانون اختصاصات هذه اللجنة ونظم العمل بها .

١٦ - الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠

ويكون للمستثمرين الذين لم ترد أسماءهم ضمن قائمة المستثمرين المؤهلين ، الاعتراض على قرار لجنة التأهيل ، ويقدم الاعتراض إلى الوحدة المركزية للمشاركة لدراسته وإصدار قرارها الملزم بشأنه ، وتحدد اللائحة التنفيذية لهذا القانون مواعيد وإجراءات الاعتراض من قرار لجنة التأهيل ، وإجراءات نظره والبت فيه .

مادة (٢١) :

للجهة الإدارية بالتنسيق مع الوحدة المركزية للمشاركة ، أن تدعو إلى عقد لقاءات واجتماعات تمهيدية خاصة مع المستثمرين المؤهلين لمناقشة الأمور المتعلقة بمواصفات المشروع وشروطه التمهيدية ، على أن تتاح كافة الاستفسارات والإجابات عليها لجميع المستثمرين المؤهلين .

وللمستثمر المؤهل أن يشترط على السلطة المختصة بالجهة الإدارية الالتزام بعدم إفشاء سرية أى من البيانات الخاصة بتحفظاته أو توقعاته الاقتصادية أو المالية ، ويكون التعامل مع المستثمرين المؤهلين بما يضمن تكافؤ الفرص والمساواة بينهم . وللسلطة المختصة بالجهة الإدارية أن تقرر إعادة دراسة مواصفات المشروع وشروطه التمهيدية بناء على ما تم فى اللقاءات والاجتماعات المشار إليها ، بما لا يؤثر على معايير التأهيل وذلك قبل إصدار دعوة تقديم العطاءات .

مادة (٢٢) :

للسلطة المختصة بالجهة الإدارية بموافقة مسبقة من الوحدة المركزية للمشاركة ، أن تقرر أن يكون تقديم العطاءات الفنية والمالية على مرحلتين يتم فى الأولى تقديم عرض غير ملزم يحتوى على الخطوط العريضة للعطاء الفنى والمالى ، يليه حوار تنافسى ، وفقا لحكم المادة (٢٣) من هذا القانون ، ويتم فى المرحلة الثانية تقديم العطاءات النهائية التى يتم على أساسها التقييم النهائى .

وتنظم اللائحة التنفيذية لهذا القانون أحكام وإجراءات الطرح على مرحلتين .

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ١٧

مادة (٢٣):

للجهة الإدارية أن تجرى حواراً تنافسياً مع المستثمرين المؤهلين الذين تقدموا بعروضهم غير الملزمة ، وذلك بالاشتراك مع الوحدة المركزية للمشاركة ، بناء على موافقة مسبقة وتحت رقابة اللجنة العليا لشئون المشاركة بهدف الحصول على إيضاحات بشأن عناصر العطاء الفنى والمالى ، وتكون هذه الحوارات مع كل صاحب عطاء على حدة .
ويجب أن تتم تلك الحوارات فى إطار من المساواة بين المستثمرين المؤهلين ، ولا يجوز إنشاء سرية ما يدور خلالها من مناقشات أو يبدى من معلومات ، وتنظم اللائحة التنفيذية لهذا القانون قواعد وإجراءات إدارة هذه الحوارات .

مادة (٢٤):

تعد الجهة الإدارية بالتنسيق مع الوحدة المركزية للمشاركة كراسة الشروط والمواصفات الخاصة بالمشروع ، ويجب أن تتضمن الكراسة، على وجه الخصوص ، ما يأتى :

(أ) المعلومات العامة المتعلقة بالمشروع والتي تلزم لإعداد العطاءات وتقديمها .
(ب) مواصفات المشروع والشروط الفنية والمالية الواجب توافرها فى العطاء .
(ج) مواصفات المنتج النهائى ومواصفات ومستوى الخدمة ومؤشرات الأداء والمتطلبات الرئيسية للجهة الإدارية ولجهات التنظيم والرقابة للمرافق والخدمات محل التعاقد فيما يتعلق بمعايير السلامة والأمن وحماية البيئة وغيرها .
(د) الشروط الرئيسية لعقد المشاركة ، وغيره من الاتفاقات التكميلية ، مع بيان ما يعتبر منها شروطاً غير قابلة للتفاوض .
(هـ) تحديد طريقة وأسس المفاضلة بين العطاءات ، وفى حالة اختيار نظام التقييم بالنقاط يجب بيان معايير تقييم العطاءات وأسس المقارنة بينها فنياً ومالياً والدرجة التى تمنح لكل معيار منها ، والطريقة التى تطبق بها تلك المعايير فى تقييم العطاءات .

١٨ الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠

(و) المستندات والنماذج والمواعيد الواجب مراعاتها واستيفائها في العطاء .

(ز) قيمة التأمين المؤقت وطريقة حساب التأمين النهائي .

وتحدد اللائحة التنفيذية لهذا القانون قواعد وإجراءات إعداد كراسة الشروط

والمواصفات .

مادة (٢٥) :

تشكل بقرار من السلطة المختصة بالجهة الإدارية لجنة من عناصر فنية ومالية تتولى وضع التكاليف الأساسية للمشروع في حالة تنفيذه بواسطة الجهة الإدارية ويطلق عليها "القيمة التقديرية" وعلى اللجنة إعداد تقرير عن أعمالها ، يتضمن بيان الأسس التي اتبعتها لوضع تلك التكاليف وتحديد هذه القيمة ، يوضع في مظاروف مغلق موقع عليه من جميع أعضاء اللجنة ، وتتولى الوحدة المركزية للمشاركة مراجعة التكاليف الأساسية للمشروع وتضيف إليها تكلفة التمويل وحساب المخاطر والأعباء التي يتحملها القطاع الخاص لتنفيذ المشروع ، وترفع بتقديرها الجديد تقريراً يتم اعتماده من اللجنة العليا لشئون المشاركة يطلق عليه "المقارن الحكومي" يوضع في مظاروف مغلق موقع عليه من رئيس الوحدة المركزية للمشاركة ولا يفتح إلا بعد فتح المظاريف المالية للعطاءات المقبولة فنياً .

وتحدد اللائحة التنفيذية لهذا القانون الأسس التي يتعين اتباعها عند وضع كل من القيمة التقديرية والمقارن الحكومي .

مادة (٢٦) :

تتولى الجهة الإدارية بعد اعتماد السلطة المختصة لمذكرة الطرح النهائية وكراسة الشروط والمواصفات ، توجيه الدعوة إلى المستثمرين المؤهلين لسحب كراسة الشروط وأداء الثمن المحدد لها وذلك طبقاً للأسس والقواعد التي تبينها اللائحة التنفيذية لهذا القانون .

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ١٩

مادة (٢٧) :

تقدم العطاءات في مظروفين مغلقين أحدهما للعرض الفني والآخر للعرض المالي ، ويجب أن يتضمن المظروف الفني المواصفات التفصيلية اللازمة لتحقيق مستوى الخدمة أو مستوى المنتج النهائي للمشروع ، طبقاً للتحديد الوارد بكراسة الشروط والمواصفات ويقتصر فتح المظاريف المالية على العطاءات المقبولة فنياً ، وتبين اللائحة التنفيذية لهذا القانون القواعد والإجراءات الخاصة بتقديم العطاءات وفتح المظاريف والمستندات والبيانات التي يتعين أن يتضمنها كل مظروف .

مادة (٢٨) :

يجوز أن يتقدم بالعطاء تحالف مكون من أكثر من مستثمر مؤهل ، ويقدم العطاء باسم هذا التحالف ، وذلك ما لم تنص كراسة الشروط والمواصفات على وجوب تقديم المستثمرين المؤهلين بعطاءاتهم منفردين .

وفي حالة تقديم العطاء من تحالف ، فإنه لا يجوز لأى من المستثمرين أعضاء هذا التحالف تقديم عطاء آخر بطريق مباشر أو غير مباشر منفرداً أو من خلال تحالف آخر أو من خلال إحدى الشركات التي يملك أغلبية رأسمالها أو تكون له السيطرة على إدارتها أو تكون ملكيته أو إدارته خاضعة لسيطرة إحدى هذه الشركات ، وذلك ما لم تنص شروط الطرح على خلاف ذلك ، ويقع باطلاً أى عطاء يقدم على خلاف أحكام هذه الفقرة .

مادة (٢٩) :

تشكل بقرار من السلطة المختصة بالجهة الإدارية لجنة لتلقى العطاءات ودراستها فنياً ومالياً من عناصر فنية ومالية وقانونية مناسبة وتنظم اللائحة التنفيذية لهذا القانون اختصاص اللجنة ونظام عملها وترتيب العطاءات المقبولة فنياً وتحديد العطاءات المستبعدة ،

٢٠. الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠

ويجب أن تضم اللجنة في عضويتها ممثلاً عن كل من إدارة الفتوى المختصة بمجلس الدولة، ووزارة المالية، والوحدة المركزية للمشاركة، وللجنة أن تعهد إلى لجان فرعية تشكلها من بين أعضائها أو ممن ترى اللجنة الاستعانة بهم من ذوي الخبرة لدراسة النواحي الفنية والمالية والقانونية للعطاءات المقدمة، ومدى مطابقتها للشروط والمواصفات المعلنة وتقييم المطابق منها، وتقدم اللجان الفرعية تقارير بنتائج أعمالها وتوصياتها إلى لجنة تلتقى العطاءات لدراستها وتقييم المطابق منها وفقاً لمعايير التقييم التي تحددها كراسة الشروط والمواصفات وبما يحقق أفضل جدوى اقتصادية للدولة، ويمنح كل عطاء درجة للتقييم وفقاً للأسس وبالطريقة المبينة بطلب تقديم العطاء النهائي وكراسة الشروط والمواصفات، ويتم بناءً على هذه الدرجة ترتيب العطاءات المقبولة فنياً.

مادة (٣٠):

يجب استبعاد العطاءات غير المطابقة للشروط والمواصفات، ويدعى مقدمو العطاءات المقبولة فنياً لحضور جلسة فتح المظاريف المالية، ويتم إرساء المشروع على صاحب العطاء الأجدى اقتصادياً من بين العطاءات المقبولة فنياً وذلك بعد إعمال الوزن النسبي لعناصر العطاء المالية والفنية الوارد بيانه في كراسة الشروط والمواصفات، وتبين اللائحة التنفيذية لهذا القانون قواعد تقييم العطاءات من الناحيتين الفنية والمالية.

مادة (٣١):

يجوز أن تجرى مفاوضات مع صاحب العطاء الفائز في شأن بعض الإيضاحات والتفصيلات الخاصة بالاشتراطات الفنية والمالية، ولا يجوز أن تتناول هذه المفاوضات أية شروط تعاقدية اعتبرتها دعوة تقديم العطاءات شروطاً غير قابلة للتفاوض، أو لم يبد صاحب العطاء أية تحفظات عليها في العطاء المقدم منه، كما لا يجوز إجراء أى تعديل في الشروط الفنية والمالية بما يقل عن الشروط التي تضمنها العطاء وتم تقييمه على أساسها.

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ٢١

مادة (٣٢):

تُلغى إجراءات الطرح إذا تم الاستغناء عن تنفيذ المشروع نهائياً أو إذا اقتضت المصلحة العامة ذلك ، كما يجوز إلغاؤها فى أى من الحالات الآتية :

(أ) إذا لم يقدم سوى عطاء وحيد ، أو لم يبق بعد العطاءات المستبعدة إلا عطاء وحيد .

(ب) إذا اقترنت العطاءات كلها أو أغلبها بتحفظات لا تتوافق مع الشروط والمواصفات المطروحة أو يتعذر تقييمها مالياً .

(ج) إذا كانت قيمة العطاء الأقل تزيد زيادة غير مبررة على المقارن الحكومى المعتمد من اللجنة العليا لشئون المشاركة .

ويكون الإلغاء بقرار من السلطة المختصة بالجهة الإدارية بناء على توصية لجنة تلقي العطاءات ودراستها وبناءً على موافقة مسبقة من اللجنة العليا لشئون المشاركة ، ويجب أن يشتمل القرار على الأسباب التى بنى عليها ، ولا يجوز لأى من مقدمى العطاءات المطالبة بأى تعويض عن قرار الإلغاء بخلاف نسبة من المصروفات التى يتكبدها أصحاب العطاءات المقبولة فنياً فى سبيل الاشتراك فى المنافسة للفوز بأحد مشروعات المشاركة وفقاً لما تحدده اللائحة التنفيذية لهذا القانون .

ويجوز فى الحالات والحدود التى تبينها اللائحة التنفيذية لهذا القانون قبول العطاء الوحيد أو العطاء الذى تزيد قيمته على المقارن الحكومى .

مادة (٣٣):

على صاحب العطاء الفائز تأسيس شركة ، تسمى "شركة المشروع" غرضها الوحيد تنفيذ المشروع المعلن عنه ، وتحدد اللائحة التنفيذية لهذا القانون الشروط الواجب توافرها فى شركة المشروع ، وحالات السماح لذات الشركة بتنفيذ عقود مشاركة أخرى بشرط موافقة اللجنة العليا لشئون المشاركة ، كما تحدد الحالات التى يلزم فيها تقديم تأمين نهائى وأسس تقديره وطريقة أدائه .

٢٢ الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠

الفصل الرابع

الاحكام الموضوعية لعقد المشاركة

مادة (٣٤):

- يجب أن يتضمن عقد المشاركة بصفة خاصة ما يأتي :
- (أ) طبيعة ونطاق الأعمال والخدمات التي يجب على شركة المشروع أدائها وشروط تنفيذها .
- (ب) ملكية أموال وأصول المشروع والتزامات الأطراف المتعلقة بتسليم واستلام موقع المشروع ، وأحكام نقل الملكية فى نهاية المشروع .
- (ج) مسئولية الحصول على التراخيص والتصاريح والموافقات .
- (د) الالتزامات المالية المتبادلة وعلاقتها بطريقة التمويل .
- (هـ) سعر بيع المنتج أو مقابل أداء الخدمة التى يقوم عليها المشروع وأسس وقواعد تحديدهما ، وأسس وقواعد تعديلهما بالزيادة أو النقصان ، وكيفية معالجة معدلات التضخم ، وما يرتبط بتغيير أسعار الفائدة ، إن كان لذلك مقتضى .
- (و) وسائل ضمان الجودة وأدوات الرقابة والإشراف والمتابعة المالية والإدارية والفنية لتشغيل المشروع واستغلاله وصيانته .
- (ز) تنظيم حق الجهة الإدارية فى تعديل شروط البناء والتجهيز والصيانة والتشغيل والاستغلال وغير ذلك من التزامات شركة المشروع ، وأسس وآليات التعويض عن هذا التعديل .
- (ح) أنواع ومبالغ التأمين على المشروع ، ومخاطر تشغيله أو استغلاله ، و ضمانات التنفيذ الصادرة لصالح الجهة الإدارية ، وأحكام وإجراءات استردادها .

الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠ ٢٣

- (ط) تحديد أسس توزيع المخاطر المرتبطة بتعديل القوانين أو بالحادث المفاجئ أو بالقوة القاهرة أو باكتشاف الآثار والتعويضات المقررة ، بحسب الأحوال .
- (ى) مدة العقد ، وحالات الإنهاء المبكر أو الجزئى وحقوق الأطراف المرتبطة .
- (ك) الحالات التى يحق فيها للجهة الإدارية الإنهاء المنفرد للعقد ، والالتزامات المالية المترتبة على استخدام هذا الحق .
- (ل) تنظيم قواعد استرداد المشروع عند نهاية مدة التعاقد أو فى حالات الإنهاء المنفرد أو الإنهاء المبكر أو الجزئى .

مادة (٣٥):

يخضع عقد المشاركة لأحكام القانون المصرى ، ويقع باطلاً كل اتفاق يتم على خلاف ذلك . ويجوز بعد موافقة اللجنة العليا لشئون المشاركة الاتفاق على تسوية المنازعات الناشئة عن عقد المشاركة بطريق التحكيم ، أو غيره من وسائل تسوية المنازعات غير القضائية وذلك طبقاً لما يتفق عليه فى عقد المشاركة .

مادة (٣٦):

لا يجوز حل شركة المشروع أو تغيير الشكل القانونى لها أو تخفيض رأسمالها إلا بعد موافقة السلطة المختصة بالجهة الإدارية المتعاقدة .

ويجب أن يتضمن النظام الأساسى لشركة المشروع حظراً على تداول أسهمها قبل تاريخ اكتمال أعمال البناء والتجهيز أو التطوير وعلى تداول الأسهم المملوكة للأغلبية الحائزة لرأسمالها بعد هذا التاريخ ، إلا إذا تم الحصول على موافقة كتابية مسبقة من السلطة المختصة بالجهة الإدارية .

وفى جميع الأحوال لا يجوز رهن أسهم شركة المشروع لغير غرض تمويل أو إعادة تمويل مشروع المشاركة .

ويقع باطلاً كل إجراء أو تصرف يتم بالمخالفة لأحكام هذه المادة .

مادة (٣٧):

مع عدم الإخلال بحكم المادتين (٧) و(٨) من هذا القانون ، لا يجوز تعديل أى من بنود عقد المشاركة وغيره من الاتفاقات الملحقه به إلا بموافقة أطرافه . وإذا كانت التزامات الجهة الإدارية المتعاقدة مرتبطة بالتزامات مالية تقع على عاتق إحدى الجهات الإدارية الأخرى ، فلا يكون هذا التعديل نافذاً دون موافقة كتابية مسبقة من هذه الجهة .

٣٤ الجريدة الرسمية - العدد ١٩ مكرر (أ) في ١٨ مايو سنة ٢٠١٠

ولا يجوز لشركة المشروع التنازل عن عقد المشاركة أو أى من الحقوق التى يرتبها أو الالتزامات الواردة فيه إلا لغرض التمويل وبعد موافقة كتابية مسبقة من السلطة المختصة بالجهة الإدارية المتعاقدة ، ويقع باطلاً كل اتفاق يتم على خلاف ذلك .
مادة (٣٨) :

للجهة الإدارية المتعاقدة إبرام اتفاقات مباشرة مع جهات التمويل وشركة المشروع تنظم طريقة أداء الالتزامات المالية لجهة الإدارة لصالح شركة المشروع وجهات التمويل . ويجوز أن تتضمن الاتفاقات المشار إليها حكماً بأن تضمن وزارة المالية الجهة الإدارية فى أداء التزاماتها المالية محل التعاقد ، وما يتعلق بتنظيم حق جهة التمويل فى الحل محل شركة المشروع فى تنفيذ أحكام العقد أو فى تعيين مستثمر جديد بعد موافقة السلطة المختصة ، وذلك فى حالة إخلال شركة المشروع بالتزاماتها الجوهرية ، أو مستويات الجودة المقررة قانوناً أو فى العقد ، على نحو يخول السلطة المختصة إنهاء العقد .
مادة (٣٩) :

تشكل لجنة للتظلمات برئاسة الوزير المختص بالشئون المالية وعضوية اثنين من نواب رئيس مجلس الدولة يختارهما رئيس المجلس ، ورئيس الوحدة المركزية للمشاركة ، وأحد ذوى الخبرة من غير العاملين بالدولة يختاره رئيس اللجنة .
وتختص اللجنة بنظر تظلمات المستثمرين وما يتعلق أو يرتبط بها خلال عمليات طرح وإبرام وتنفيذ عقود المشاركة .
وإذا كان محل التظلم قراراً إدارياً يكون ميعاد التظلم منه ثلاثين يوماً من تاريخ الإخطار أو العلم به ، ولا تقبل الدعوى بإلغاء هذا القرار قبل التظلم منه .
وتبين اللائحة التنفيذية لهذا القانون إجراءات نظر التظلم والبت فيه ، ويكون قرار اللجنة بالبت فى التظلم نهائياً وناظراً .

رقم الإيداع بدار الكتب ٢٠٠٩/٦٥ الهيئة العامة لشئون المطابع الأميرية ٢٥٥٦٠ س ٢٠٠٩ - ٢٠٠٧

3. CASE STUDY ON PPP (ROAD AL FARAG)

The case study recommended is deepened on the only available ongoing case of Road Al Farag axis. As clarified in the previous section five qualified bidders through 57 requests. The press announcement follows in Figure 8.2.1.

Arab Republic of Egypt
Public Private Partnership Program
Rod El Farag Axis PPP Project

INVITATION FOR PREQUALIFICATION

The Ministry of Housing, Utilities, and Urban Development (MHUUD) represented by the Central Authority for Development (CAD) with technical assistance from the PPP Central Unit of the Ministry of Finance (MOF) of the Arab Republic of Egypt, hereby invites interested companies or consortia to submit prequalification applications to enter into a Public Private Partnership tender with a contract term that is envisaged to be approximately 20 years for the partial design, finance, construction, operation and maintenance of a 35km highway connecting the Corniche on the east bank of the River Nile to the Cairo--Alexandria highway.

The Prequalification criteria are described in the Prequalification Documents.

Interested companies or consortia should send a formal request to the email address below:

pprodelfarag@mhousing.gov.eg

The Project Information Memorandum and Prequalification Documents will be sent electronically in response to received formal requests.

جمهورية مصر العربية
برنامج الشراكة مع القطاع الخاص
مشروع الشراكة مع القطاع الخاص
لمحورروض الفرع

دعوة للتقدم للتأهيل

تدعو وزارة الإسكان والمرافق والتنمية العمرانية ممثلة في الجهاز المركزي للتعمير - بدعم فني من الوحدة المركزية للشراكة مع القطاع الخاص بوزارة المالية بجمهورية مصر العربية- المهتمين من الشركات او التحالفات للتقدم بطلبات التأهيل للدخول في عقد شراكة؛ ومن المتصور حالياً أن تكون فترة العقد ٢٠ عاماً تقريباً للتصميم الجزئي وتمويل وإنشاء وتشغيل وصيانة طريق سريع طوله ٣٥ كيلو متر يربط بين كورنيش الضفة الشرقية لنهر النيل وطريق مصر-الإسكندرية الصحراوي.

وسيتم توضيح كافة معايير التأهيل في مستندات التأهيل.

وعلى الشركات او التحالفات المهمة إرسال طلب رسمي إلى عنوان البريد الإلكتروني المذكور أدناه:

pprodelfarag@mhousing.gov.eg

وسوف يتم إرسال مذكرة المعلومات الخاصة بالمشروع ومستندات التأهيل بالبريد الإلكتروني استجابة للطلبات الرسمية الواردة.

آخر موعد لتقديم طلبات التأهيل هو الساعة الثالثة بعد ظهري يوم الأحد ١٢ يونيو ٢٠١٠ بالتوقيت المحلي لمدينة القاهرة.

The deadline for submission of prequalification applications is 3:00 PM Cairo time on Sunday the 13th of June 2010.

Figure 3.1 Prequalification Press for Road El Farag Axis PPP Project

All the available details of this on going case study including: Amendment of Prequalification, Prequalification Document, Information Memorandum and Qualified Bidders can be obtained from the web site of PPP Central Unit:

(<http://www.pppcentralunit.mof.gov.eg/PPPCUSite/Content/Projects/Rod+El+Farag+Axis+Project.htm>).

The location map of this project is shown in Figure 8.2.2 hereafter.



Figure 3.2 Location Map for Road El Farag Axis PPP

The prequalification letter is presented in Figures 8.2.3 and 8.2.4. It should be recognized that the letter included the statement:

“The site for the Project and any existing assets will remain in the ownership of CAD throughout the duration of the contract. Newly built assets on the site will be owned by the Service Provider for the duration of the contract and will be transferred to CAD at the end of the PPP Contract.”


	<p>Arab Republic of Egypt Public-Private Partnership Program Rod El Farag Axis PPP Project Prequalification Document</p>
<p>Reference: Rod El Farag Axis PPP Project</p>	
<p>Arab Republic of Egypt</p>	
<p>Dear Prequalification Applicant</p>	
<p>The Ministry of Housing, Utilities, and Urban Development ("MHUUD", represented by its executive agency the Central Authority for Development "CAD" or the "Tendering Authority") and the PPP Central Unit ("PPPCU") of the Ministry of Finance ("MOF") of the Arab Republic of Egypt ("Egypt") hereby invite prequalification applications ("Prequalification Applications") from interested companies or consortia ("Prospective Bidders") to be qualified to bid on a Public Private Partnership ("PPP") tender for the financing, partial design, construction, operation and maintenance of a 35km Road connecting the Corniche on the east bank of the River Nile to the Cairo–Alexandria highway ("Project"). It is currently envisaged that the contract term will be for a period of approximately 20 years. The Project (including the ownership¹ of the new assets) shall be handed over to CAD at the end of the contract period. The PPP contract ("PPP Contract") will be awarded through a competitive bidding process ("Bidding Process") open to both local and international prequalified bidders.</p>	
<p>The following prequalification procedure will be adopted:</p>	
<ol style="list-style-type: none"> 1. This Prequalification Document is provided with an Information Memorandum (which gives Prospective Bidders an overview of the Project) to entities that have expressed interest in the Project in response to an Invitation for Prequalification, published in newspapers and on the websites of MOF and MHUUD. 2. Following the submission of the Prequalification Applications, interested companies or consortia will be evaluated on the requirements and criteria set forth in the attached Instructions to Prospective Bidders. 3. Prospective Bidders whose Prequalification Application is determined by the Prequalification Committee to be substantially responsive to the requirements and criteria of the prequalification process shall be designated as "Qualified Bidders". 4. Qualified Bidders shall be invited to participate in the bidding process for the Project. 	
<p>Prequalification Applications must be in hard copy and delivered no later than 3:00 p.m. local Cairo time on June 13th, 2010, at the address indicated in the attached Data Sheet (Annex 1).</p>	
<p>Prequalification Applications will be evaluated by a Prequalification Committee which is expected to conclude its evaluation by July 13th, 2010.</p>	
<hr/> <p>¹ The site for the Project and any existing assets will remain in the ownership of CAD throughout the duration of the contract. Newly built assets on the site will be owned by the Service Provider for the duration of the contract and will be transferred to CAD at the end of the PPP Contract.</p>	

Figure 3.3 Prequalification Letter for Road El Farag Axis PPP



Figure 3.4 Prequalification Letter for Road El Farag Axis PPP

4. LIST OF BANKS IN EGYPT

- 1) Central Bank of Egypt
- 2) Al Ahram Bank
- 3) Al Mohandes Bank
- 4) Al Watani Bank of Egypt
- 5) Alexandria Bank
- 6) Alexandria Commercial & Maritime Bank
- 7) Alexandria Kuwait International Bank
- 8) Arab African International Bank
- 9) Arab Bank
- 10) Arab Banking Corporation
- 11) Arab International Bank
- 12) Arab Investment Bank
- 13) Banca Commerciale Italiana
- 14) Banca Romana de Comert Exterior
- 15) Banco do Brasil
- 16) Bank Melli Iran
- 17) Bank of Alexandria
- 18) Bank of America NT & SA
- 19) Bank of Commerce & Development
- 20) Bank of Credit & Commerce
- 21) Bank of Egypt
- 22) Bank of Tokyo
- 23) Bank Saderat Iran
- 24) Bankers Trust Company

- 25) Banque de l'Union Europeene
- 26) Banque du Caire
- 27) Banque du Caire et de Paris
- 28) Banque Indosuez
- 29) Banque Misr
- 30) Banque Nationale de Paris
- 31) Banque Paribas
- 32) Barclays Bank
- 33) Byblos Arab Finance Bank
- 34) Cairo Amman Bank
- 35) Cairo Far East Bank
- 36) Chase Manhattan Overseas Corporation
- 37) Chase National Bank of Egypt SAE
- 38) Chemical Bank
- 39) Citibank
- 40) Commercial International Bank
- 41) Commerzbank
- 42) Credit Commercial de France
- 43) Credit Foncier Egyptien
- 44) Credit International d'Egypt
- 45) Credit Lyonnais
- 46) Credit Suisse
- 47) Credito Italiano
- 48) Dakahlia Commercial Bank
- 49) Delta International Bank
- 50) Deutsche Bank AG
- 51) Development Industrial Bank
- 52) Development International Bank
- 53) Dresdner Bank AG
- 54) Egypt Arab African Bank
- 55) Egyptian American Bank
- 56) Egyptian Arab Land Bank
- 57) Egyptian British Bank SAE
- 58) Egyptian Gulf Bank
- 59) Egyptian Saudi Finance Bank
- 60) Egyptian Workers Bank
- 61) European Arab Bank
- 62) Export Development Bank of Egypt
- 63) Faisal Islamic Bank of Egypt
- 64) Gharbia National Bank for Development
- 65) Giza National Bank for Development
- 66) Habib Bank Ltd
- 67) Housing and Development Bank
- 68) Industrial Development Bank
- 69) Islamic Banking System International
- 70) Islamic International Bank for Investment & Development
- 71) Jammal Trust Bank
- 72) Lloyds Bank International Ltd
- 73) Mashreq Bank
- 74) Middle East Bank

- 75) MISR America International Bank
- 76) MISR Exterior Bank
- 77) MISR Iran Development Bank
- 78) MISR Romanian Bank
- 79) Mohandes Bank
- 80) Monte dei Paschi Banking Group
- 81) Morgan Grenfell & Co Ltd
- 82) Nasser Social Bank
- 83) National Bank for Development
- 84) National Bank of Abu Dhabi
- 85) National Bank of Egypt
- 86) National Bank of Egypt, the oldest and largest bank in Egypt
- 87) National Bank of Greece
- 88) National Bank of Oman
- 89) National Bank of Pakistan
- 90) National Bank of Sudan
- 91) National Egyptian Bank
- 92) National Investment Bank
- 93) National Societe Generale Bank SAE
- 94) Nova Ljubljanska Banka
- 95) Overseas Development & Investment
- 96) Port Said National Bank for Development
- 97) Principal Bank for Development & Agricultural Credit
- 98) Pyramids Bank
- 99) Qaliubia National Bank for Development
- 100) Rafidain Bank
- 101) Royal Bank of Canada
- 102) Societe Arabe Internationale de Banque
- 103) Societe Generale Egypte Banque Francaise
- 104) State Bank of India
- 105) Suez Canal Bank
- 106) Sumitomo Bank
- 107) Swiss Bank Corporation
- 108) Trans Arabian Investment Bank
- 109) The Bank Of Nova Scotia
- 110) The Nile Bank
- 111) United Bank of Egypt
- 112) Union National Bank