



## Construction & Infrastructure

# Are PPPs Still The Right Structure for African and Middle Eastern Major Projects?

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# PRESENTERS



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# INTRODUCTION



# PPP In A Nutshell

- Public-Private-Partnerships:
  - An “arrangement” that allows the public and private sectors to work together to achieve the design, build, operation and sometimes also the maintenance of a key asset
  - Private sector arranges the financing/ funding of the project
  - Generally, but not always, operates against a backdrop of legal codification or jurisdictional legislation
  - For Profit orientated so efficiencies are key:
    - Innovation capacity
    - Life cycle
    - Maintenance

# The Rising Tide Of PPP

- PPP has played a frontal role for many years across the GCC/Middle East – UAE, Qatar, Kuwait, Saudi Arabia, Bahrain, Oman
  - Governments are keen to move away from reliance on oil-based revenues
  - Major infrastructure asset development is key for growth and economic diversification
  - Strong collaboration between public sector ministries and the private sector
  - Also strong collaboration on a “G2G” (*Government to Government*) basis
  - Energy, renewables, power, water, transport, housing etc.
  - Supported by PPP Codes/Laws across the region



# That Tide Now Also Extends To Africa

- Growth is the focal point for the African nations:
  - Governments remain limited by budget limitations and resource constraints
  - Funding for major infrastructure and services is key particularly roads, energy, utilities, ports, bridges
  - PPP is front and centre of alternative funding sources
  - Some development of PPP Codes/Laws
  - Foreign investors want to see certainty in legal systems to alleviate risk allocation

## But the PPP Model, however adaptable is not always easy or straight forward:

- Collaboration is key but not easy
  - Private v Public
- Sourcing investors is difficult:
  - Legal backdrops are not always perfect
  - Corruption remains a serious issue
- Many projects start out as a PPP but fail to complete:
  - Not a holy grail
- Alternative models are bogged down by political, social and economic issues – *PPP in disguise*



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# GHANA





# Promotion of PPPs in Ghana

- Ghana's infrastructure deficit sits at approximately \$0.4bn each year.
- The country spends about \$ 1 bn each year on infrastructure
- Addressing Ghana's infrastructure deficit will require sustained spending of at least US\$ 1.5 bn over the next decade.
- PPP has been considered as an alternative to bridging the infrastructure gap in the country.

# Milestones the Legal Framework for PPPs in Ghana

- Government in 2004 formulated policy guidelines for the Public Private Partnerships.
- The 2004 policy guidelines were never operationalized.
- In 2011 the National Policy on Public-Private Partnerships was adopted to provide  
“...a clear and consistent process for all aspects of PPP project development and implementation...”
- Enactment of Public-Private Partnership Act, 2020 (Act 1039)



# Current State of PPP Projects in Ghana

- 2022 Annual Report on Public Private Partnership Projects-Submitted to Parliament on 31 March 2023
- 23 Projects at the Pre-Investment Phase with initial cost of \$24.14 bn (16 Infrastructure Projects, 11 Projects at the Feasibility stage, 2 at Contract Negotiation)
- 15 Projects at the Investment/Implementation Phase with an initial investment of \$2.78bn (11 Infrastructure Projects, 9 Ports Projects GPHA)
- 2 Infrastructure Projects at the Pre-Construction Stage, 7 at the Operation and Maintenance Stage

# Challenges of PPP in Ghana

- Inadequate Public Sector capacity in the conception, implementation and management of PPP Contracts
- Issues bordering on Transparency and Competitiveness of the Tendering Process
- Incidents of underperforming projects leading to financial and credit risk
- Difficulties with concessionaires reaching financial close



# Notable Projects

- Tema Terminal 3 Project \$1.5bn BOT (35 years concession) Operation and Management stage
- Ghana Burkina Rail Interconnectivity Project \$ 4.9bn- Procurement of Private Partner
- Takoradi Ship Repair Facility \$100m (25 years)- \$94m syndicated loan sealed by PMD
- Takoradi Integrated Container and Multi-purpose Terminal \$210m (25 years) – Phase 1 Construction 90% complete

# NIGERIA





# Advantages of PPPs

- **Funding and Investment:**
- **Access to Capital:** PPPs can help bridge the funding gap by attracting private investment to supplement limited public resources
- **Risk Sharing:** Risks related to construction, operation, and maintenance are shared between the public and private sectors
- **Efficiency and Expertise:**
- **Operational Efficiency:** The private sector can often deliver projects more efficiently, due to their experience and expertise
- **Innovation:** PPPs encourage innovation in project design, construction, and management, as private entities seek to maximize returns







# Notable PPP Projects in Nigeria

- The Nigerian government and its different agencies have implemented several infrastructural projects using the Public Private Partnership mechanism
- **Lekki Ikoyi Link Bridge:** This was built at a cost of N29 billion (approx.US\$195 million). Construction on the bridge started in May 2009 and was commissioned in May 2013.
- **Lekki to Epe Expressway:** The bank provided a loan of up to US\$85 million to help fund the upgrade and rehabilitation of the Lekki to Epe expressway in 2008, and it was based on Public-Private Partnership (PPP) under the Design, Build, Operate (DBOT), and Transfer and Rehabilitate, Operate (ROT) framework/business model.
- Lagos–Ibadan Expressway expansion project
- Lekki Port

# What are the challenges of public private partnerships?

- PPPs may be inflexible
- There can be a trust deficit between public and private sector
- Lack of sufficient time to implement PPPs realistically
- Conflict of interest between the private and public sectors

# Key Milestones in Nigeria's PPP Legal Framework:

- **Infrastructure Concession Regulatory Commission (ICRC) Act, 2005:**
- **Establishment:** This act established the Infrastructure Concession Regulatory Commission (ICRC) to regulate and oversee PPP projects in Nigeria
- **Mandate:** The ICRC is tasked with promoting, facilitating, and coordinating the implementation of PPPs, ensuring transparency, efficiency, and competitiveness in the procurement process
- **Functions:** The ICRC's functions include issuing guidelines, setting standards, and providing technical assistance for PPP projects



# Key Milestones in Nigeria's PPP Legal Framework:

- **National Integrated Infrastructure Master Plan (NIIMP), 2014:**
- **Long-Term Planning:** The NIIMP outlines Nigeria's infrastructure development strategy over a 30-year period, identifying key sectors for PPP investment. It aims to create a unified approach to infrastructure development and facilitate private sector participation.
- States also have various laws regulating PPPs for projects contemplated at the State level

# KUWAIT



# Kuwait Is A Leader in Middle East PPP Projects

- Kuwait prides itself in being at the leading edge of PPP/PFI projects across diverse sectors, including power, electricity, water, construction, education, and transportation
- Kuwait Authority for Partnership Projects (“KAPP”) is a key stakeholder for PPP projects in country
- Kuwait is sophisticated when it comes to its forms of PPP transactions and agreements.
- Kuwait successfully attracts major international legal and financial advisors, investors, and financial institutions involved in the PPP projects
- Kuwaiti governmental entities and other instrumentalities are experienced in structuring and progressing PPP projects
- The Council of Ministers play a key role as well as other line Ministries, and the Department of Advice and Legislation on the interpretation of the current PPP law and other related laws, and on the development of the PPP legal framework in the State of Kuwait.
- We will look at a few examples of recent successful projects



# Kuwait's PPP Projects

## Power, Electricity, and Water: Kabd Municipal Solid Waste Project Overview:

The project involves the development, design, construction, financing, operation, maintenance, and transfer of the waste to energy facility at the Kabd site in Kuwait

### Role:

- HLG assisted KAPP with the drafting and reviewing of the Project agreements
- HLG advised KAPP in negotiating the contractual terms of the PPP agreements of the Project with the investors
- HLG successfully represented KAPP before the Grievance Committee with respect to complaint filed by one of the Bidders
- HLG worked closely with the Project's Transaction Advisor on the evaluation of the technical and financial bids
- HLG worked closely with the Project's Transaction Advisor on concluding the negotiations with the Preferred Bidder
- HLG assisted KAPP in obtaining the required approvals for the execution of the PPP agreements

## Power, Electricity, and Water: Az-Zour North-Phase (II & III) IWPP Project Overview:

The Project involves the design, build, operate, maintain, and transfer to the state of a Power Generation and Water Desalination Plant

### Role:

- HLG assisted KAPP with drafting and reviewing the RFP for Transaction Advisory Services
- Drafting the Advisory Services Agreement
- HLG will work closely with the Project's Transaction Advisor on drafting the Project agreements and other necessary documents
- HLG will advise KAPP throughout the different phases of the Project starting from the RFQ, the RFP, until the financial close

# Kuwait's PPP Projects

## Power, Electricity, and Water: Al Abdaliyah Integrated Solar Combined Cycle ("ISCC") Project Overview:

The project, which is an Initiative from the private sector to KAPP, consists of Combined Gas Turbine unit and Solar Island. The total capacity of the power plant will be 280 MW, with a solar contribution of 60 MW.

### Role:

- HLG advised on and assisted KAPP with negotiating the legal framework for the tendering of the project with the Department for Advice and Legislation (Fatwa and Tashrei)
- HLG carried out detailed studies to explain the relationship between the IWPP Law No. 39 of 2010 and the PPP Law No. 116 of 2014
- HLG carried out detailed studies to determine the detailed procedures of re-tendering the project
- HLG advised KAPP throughout the different phases of re-tendering the Project starting from the RFQ, the RFP, until the financial close

## KAPP: Al-Khairan Phase-I IWPP Project

Project Overview: The project involved the design, build, operate, maintain, and transfer to the state of a power generation and water desalination plant

### Role:

- HLG provided comprehensive legal advice to KAPP on all aspects of the project, including the drafting and review of project agreements
- Advised on the entire tender process up to and including its cancellation

# Kuwait's PPP Projects

## Consortium of Mabanee, PHC & NIG, Kuwait: PAHW J3 - Facility-Residential Project Overview:

- Design, construction, finance, operation, maintenance, and transfer of the Residential and Commercial Facilities located in Jaber Al Ahmad City
- Role:
  - Acted as co-counsel for the Sponsors during the Preferred Bidder negotiations
  - Reviewed project documents and subcontracting agreements
  - Negotiated with third parties, including lenders and subcontractors
  - Established the project company
  - Drafted the shareholders' agreement

## Ministry of Public Works: Umm Al-Hayman Water Waste Treatment Project Overview:

- Retained by MPW for post-contractual implementation phase of the Umm Al Hayman Project.
- Role:
  - Advised on legal issues arising from delays by the project company
  - Provided legal counsel on compliance with contractual obligations and regulatory requirements
  - Assisted in resolving disputes and claims between the project company and subcontractors
  - Reviewed and negotiated amendments to project agreements to address unforeseen challenges
  - Offered guidance on risk management strategies to mitigate potential legal and financial impacts
  - Ensured alignment of the project's legal framework with international best practices and local laws



# SUMMARY

# Positive But Challenging Landscape

- The PPP landscape is highly active but regulatory, legislative and procurement frameworks are still developing
- Foreign investors/ private sector want security and certainty versus governments who need an operable asset
- PPP offers an adaptable model so it will remain prevalent albeit in a variety of forms
- Challenges vary jurisdiction to jurisdiction so due diligence and legal support remain key



**The World Bank predicts that the Middle East and North Africa alone will need how much PPP investment to deal with their funding gap over the next 20 years?**

- US\$5-10 billion
- US\$10-20 billion
- US\$25-50 billion
- US\$75-100 billion

**THANK YOU! If you have any  
questions, please contact  
one of the presenters**



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