

**“BOOT Water Projects Development Forum”
Private Sector Participation in Water Projects
in Egypt**

Challenges to Private Sector Participation in Egypt

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Proposed New Concession Law

Emphasis:

- Selection of the eligible concessionaire shall be through a public tender;
- Concession term shall not exceed 99 years;
- Modalities of supervision, technical and financial monitoring to ensure smooth performance systematically and constantly shall be determined;
- The concessionaire shall be obliged to maintain the facilities and keep them in good condition throughout the concession term;
- No amendment shall be made to the concession agreement without the consent of parties thereto; and
- All facilities shall be returned to the state free of charge and in good conditions by the end of the concession term.

Central Department for Private Sector Projects

1. Determine conditions and controls regulating private sector participation in water and wastewater projects in accordance with sector policies and the national strategic plan;
2. Develop and systematize process of preparation of per-feasibility studies for private sector participation in water and wastewater projects and prioritization;
3. Develop and systematize procedures of preparation of pre-qualification and tendering documents for water/wastewater utility concessions; and prepare forms of contract;
4. Provide investors with all data they require concerning opportunities for private sector participation in projects of the water and wastewater sector, the laws and regulations governing investment in the sector; and
5. Provide, at request, necessary technical assistance to authorities and companies working in the sector during stages of planning, tendering, and implementation of projects executed with the participation of the private sector. The Department may undertake to prepare the private sector feasibility studies, and manage tendering, awarding and contracting of a specific project per a decree issued by the competent minister. In this regard, it shall seek assistance of other entities based on the nature of the project.

Water & Wastewater Sector Regulatory Agency

1. Develop criteria for utility technical, economic, and financial performance; and determine the process and timing of periodic reporting and the control and audit procedures of the Agency;
2. Provide technical assistance to the utilities in terms of preparation of studies on the basis of which target performance levels are determined.
3. Set principles and controls for preparing cost and service pricing studies, and procedures for submitting and evaluating requests for tariff adjustment;
4. Prepare studies needed to determine the ability of ordinary citizens to pay for the minimum domestic service levels set by the Central Department of Utilities and set unit prices for this level of consumption in each governorate;
5. Examine, review and approve tariff adjustment requests submitted by water/wastewater utilities and determine the economic cost for each utility.
6. Set for each utility a five-year schedule of cost recovery targets leading to the maximum degree of cost recovery achievable under the utility's economic circumstances. The utility's level of achievement will be reviewed annually. The scheduled rate of cost recovery may be adjusted if the Regulatory Agency sees fit. The annual utility performance review will be submitted by the head of the EWRA to the Ministerial Committee on Utilities to arrange for the provision of the necessary subsidies.

7. Review and approve drafting of contracts and agreements that determine the reciprocal relationship between service providers and customers;
8. Monitor compliance of utilities with target technical, economic, and financial performance criteria mentioned in item 1 above and with the application of the tariff schedules approved by the Agency for them;
9. Review financial and economic feasibility of new projects to evaluate their expected impacts on the cost and price of service delivery;
10. Issue required operating licenses for water and wastewater facilities;
11. Determine rules and executive regulations necessary to begin the transformation of PEAs and companies working in the sector into joint-stock companies.

What Egypt Wants from PSP in WS/S Sector

- The government needs money
- The utility system needs to be rehabilitated and/or expanded
- The government believes that private management is more efficient
- The government desires to build capitalism by encouraging widespread ownership of shares
- The government encourages competition
- The government believes that private sector will be more capable to comply with environmental regulations
- The government views privatization as a means to technological innovation and economic efficiency.

Regulatory Risks

Regulatory Risk is defined - with reference to the political - as loss caused by changes in the regulatory framework or by unfavorable exercise of regulatory discretion by Regulatory Authorities, to protect or promote the Public Interest or necessitated by Socio Economic or Technical Development or by changes in customer demand:

Types of Regulatory Risks

- a) Changes of rules of the game during the life of the project
- b) Ex-post interpretation of rules vaguely specified
- c) Misuse of discretion
- d) Regulation decisions (as prices) driven by political and social climate
- e) Lack of enforcing problems

Political Risks

Political risk may be defined as changes in the operating condition of Private Enterprises arising out of the political process, either directly through war or political violence or through changes in government policies that affect the ownership, profitability and behaviour of the firm. Political risk can be conceptualized as events, or a series of events, in the national and international events that can affect the physical assets, personnel, operations, share holder rights and financial results of private firms.

Types of Political Risks

- a) Ex-post expropriation
- b) Ex-post changes in currency convertibility and transferability norms
- c) Lack of policies to eliminate political instability

Political and Regulatory Risks

Governments

Governments have three basic approaches to reduce risk faced by private investors in infrastructure sectors:

1. To offer financial support to private investors to compensate unstable macro-economic conditions
2. To design and implement a regulatory framework aimed to reduce political and regulatory risk
3. To issue government guarantees

Political and Regulatory Risks

Private Sector

Private Sector response to risks starts with the obvious: insurance, host government guarantees and involvement of multiple parties in projects.

Other responses include: negotiations to capture a substantial part of the returns quickly, leaving inexperienced partners and lenders to bear longer-term risk. In such case, the principal firms have little incentive to focus on broad political risk.

The Success Story of Buenos Aires

- ❑ \$4 billion – 30 years concession
- ❑ Water and Sewerage
- ❑ 9 million inhabitants
- ❑ Scope covers upgrading, rehabilitating and extending the systems
- ❑ 10% employee share
- ❑ In 3 years the private operator brought dramatic operational (with net increase in water production) and financial improvements through reduced UFW and higher bill collection rates. Water prices lowered, staff cut by 60%.

Significant steps took by the government:

1. raising tariffs prior to privatization
2. financing a voluntary retirement program
3. Providing a guarantee that the concession company could cut off service to consumers for nonpayment

4. Creating an independent regulatory authority to prevent politicization of the concession.

The Sector

- Demographic Issues
- Variations in levels of coverage
- Variations in institutional forms
- Current Issues, as viewed by experts and governorates

The Egyptian WS/S Sector Reform:

1. The Reform Agenda:

- The Regulatory Agency
- Central Department for Private Sector Projects
- Re-engineering of NOPWASD
- Local Public Authorities and Companies

2. Proposed New Concession Law

Other Challenges...

1. Project types and scope
2. Teaming strategy
3. Bid documents, data accuracy, design details, ...
4. Compliance with future Environmental Regulations (as expected to get tighter)

Other Challenges

1. Project types and scope

- Meeting new capacity needs

Or

Getting full value from past investments
(capital market position?)

- Separate or combined water supply and sanitation projects

- Bulk sales

or Production, distribution and revenue collection

- Fragmented projects or large scale systems (what if multiutility approach adopted).

Other Challenges

2. Teaming Strategy

- ❑ The origin of “the Obsolescing Bargain”, Louis Wells, Harvard University, 1999:
“The most popular explanation of the history of instability of infrastructure agreements begins with the assumptions that countries prefer domestic owners to foreign owners of assets in the country. Nevertheless, foreigner ownership is tolerated when it is perceived as bringing benefits that are not available locally (capital, technology including management skills, or access to foreign markets)

- ❑ May PS managers think that local parties can help in obtaining the deal, can defend the project if renegotiation is threatened and even think that they can decrease political risk??

Other Challenges

3. Bid Documents

- Conceptual vs. Detailed design
- Local standards, codes and regulations
- Evaluation criteria (for prequalifications and bids)
- In case of rehab/extension projects, availability of as built drawings, value of existing underground assets?

Other Challenges

4. Compliance with New Environmental Regulations

Compliance Issues

Enforcement Issues