



**Sustainable Water
Integrated Management (SWIM) -
Support Mechanism**



Project funded by
the European Union

Water is too precious to waste

**Policy dialogue to assess the enabling
environment for PSP in Water Services**

**Case studies results from Egypt &
Lebanon**

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Trends & facts brief reminder

- ✓ Many countries experienced and continue to seek private sector participation in water services : **important lessons from past experiences**
- ✓ Increasing variety of PSP models and private partners : more competitive market and **more choices for decision makers in government**
- ✓ Number of PSP experiences have fallen short of expectations : often because of **poor understanding of PSP risks and opportunities as well as inadequate framework conditions**
- ✓ Public versus Private, a misleading debate : To some extent, **PSP brings to light the tensions that the development of water infrastructure generates**, tensions that usually remain hidden when infrastructure is kept in the public sector

OECD Checklist

- ✓ **A tool for policy dialogue** in support of governments' efforts to build a shared understanding of risks and opportunities related to PSP in water infrastructure and harness more effectively private sector contributions.
- ✓ **A tool to assess** countries' PSP framework conditions, allowing the identification of country-specific challenges.
- ✓ **Building on the OECD Principles** for Private Sector Participation in Infrastructure and experience of 30 developing and emerging countries in Africa, Asia and Latin America + practices in OECD countries.
- ✓ **Developed through a consultation process:** with NEPAD in Zambia (Nov. 2007), with the ADB in the Philippines (March 2008), with IMTA in Mexico (Sept. 2008).

Structure

- ✓ The Checklist is organised around **24 principles** : For each principle, the Checklist lists the key specificities of the water and sanitation sector; corresponding issues for governments; and some available tools and country practices.
- ✓ It highlights **5 areas** of key importance for consideration by governments:

1. Deciding on nature and modalities of private sector participation

Principles : Informed & calculated choice, project financial sustainability, apply tailor-made model, preserving fiscal discipline and transparency

Structure

2. Enhancing the enabling institutional environment

Principles : Enabling environment, fight against corruption, create a competitive environment, Facilitate access to financial market

3. Developing goals, strategies, capacities at all levels of government

Principles : Consultation with stakeholders, empowerment of authorities, clear and broadly understood objectives & strategies, cross-jurisdiction cooperation

Structure

4. Making the public-private co-operation work in the public interest

Principles : Establish communication and consultation with PS; full disclosure of information; fair & transparent contract awarding; output/performance based contracts; competent, well resourced and independent regulatory bodies ; allowing good faith, transparent and non-discriminatory renegotiations; setting dispute resolution mechanisms

5. Encouraging responsible business conduct

Principles : Responsible business conduct; good faith & commitment; integrity and fight against corruption; communication with users, responsibility for the social consequences of actions

Checklist application in the Mediterranean

Application in the Mediterranean region through **National Policy Dialogues** carried out jointly by **OECD and GWP-Med** in collaboration with **national governments** in the framework of **MED EUWI** and **GEF -Med Partnership** :

Egypt : Holding Company for Water and Wastewater
(Following the policy dialogue on water and sanitation financing in the Great Cairo)

Lebanon : Ministry of Energy and Water

Tunisia : Ministry of Agriculture and Environement-
Planning and Hydraulics Balance Department
(on going)

Methodology & Assessment structure

Assessment building on:

- ✓ Answers to the Checklist-based Questionnaire
- ✓ Publicly available material (academic papers, government information, OECD & other organisations' publications)
- ✓ Targeted bilateral & multilateral interviews/discussions during fact-finding missions
- ✓ Consultation workshops

Structure:

- ✓ Overview of recent developments
- ✓ identification of areas for consideration by government
- ✓ Steps for going forward

Overview of recent developments

Egypt :

- ✓ Long-term policy agenda adopted in 2006 for pursuing PPP (According to the PPP Unit, the government should allocate between 5.5 to 7% of its yearly GDP to cover infrastructure needs (not only water), of which some 10-15% could be mobilized through PPPs)
- ✓ Under the new impetus, wastewater sector is leading in terms of closed PPP deals and projects in the pipeline
- ✓ Key pilot project : New Cairo wastewater treatment plant. Winning consortium Orasqualia composed by Orascom (Egyptian) and Aqualia (Spanish)
- ✓ 5 additional similar projects in the pipeline for the coming 12 to 24 months and more expected in the future

Overview of recent developments

Egypt :

- ✓ Signs of Private Sector interest on PPPs (New Cairo project :60 interested parties, 7 qualified, 5 bids – 6th of October : 10 qualified)
- ✓ The New Cairo wastewater treatment plant is a pilot project which involves important innovative mechanisms such Performance Monitoring Committee- that need to be concretely used to prove their operation
- ✓ Also, PPP projects may generate contingent liabilities on budget (through the provision of sovereign guarantees for example) raising issues of long term affordability
- ✓ Low financial sustainability (Mixes of 3Ts that do not cover costs and inadequate tariff regulation) besides legislative barriers are key bottlenecks for future involvement of private sector on service provision to final consumers

Overview of recent developments

Lebanon : Limited experience

- ✓ Service contracts for specific works
- ✓ Experience with the Water and Sanitation Establishment of South Lebanon for the financial and accounting system's operation
- ✓ BOT contract for the water conveyor project from the Awali River to Beirut in the middle of the 90s : cancelled due to the competition between two interpretations of the legal framework (by the Court of Account on one side and the Legislation and Consulting Department of the Ministry of Justice on the other)

Overview of recent developments

✓ Tripoli service and management contract

- Framework: Project financed by AFD (Specific law)
- Operator: Ondeo-Liban / Duration: 2003 – 2007 / Fees: 4.6 M€
- Objectives reached: service continuity, water quality, staff training,...
- Other objectives recorded progress but have not been reached: billing rate, debt recovery, technical efficiency rate (water losses)...

 **The contract was not renewed: Institutional complexity and scattering of responsibilities**

Enhancing the enabling environment

✓ **Clarifying public sector responsibilities:**

Principle 5. Enabling environment : A sound and enabling environment for infrastructure investment, which implies high standards of public and corporate governance, transparency and the rule of law, including protection of property and contractual rights, is essential to attract the participation of the private sector.

✓ **Developing sound regulatory framework:**

Principle 17. Regulation of infrastructure services needs to be entrusted to specialised public authorities that are competent, well-resourced and shielded from undue influence by the parties to infrastructure contracts.

Enhancing the enabling environment

Egypt : The regulatory framework is lagging behind

- ✓ Strong political will to attract private investors, however legal and institutional framework is still under development
- ✓ PPP Law just ratified by Parliament in June 2010
- ✓ Allocation of role across different public actors remains under discussion :
 - 2004 reform : Creation of the Holding Company for Water and Wastewater (HCWW) along with Egypt Water Regulatory Agency (EWRA). However, EWRA regulatory service is pending upon the implementation of the Water Law in particular regarding tariffs rates adjustment that still remains with the Cabinet. There is no clear perspective for ratification
 - New law on local governance and a Decentralisation Action Plan are under preparation with unclear consequences for PSP. So far the PPP programme attributes main responsibilities for PSP development and supervision to central government
 - Egyptian Regulatory Reform and Development Activity (ERRADA) initiative has been launched in 2007 and housed within the Ministry of Trade and Industry assessing regulatory impact o, economic activity and business in Egypt

Enhancing the enabling environment

Lebanon : Institutional uncertainty and lack of legal framework

- ✓ Launched reform in 2000 in order to rationalize the sector in incomplete : Enforcement of this law delayed and related decrees were finalised end of 2005; Establishments' administrative and financial autonomy limited (human and financial resources)
- ✓ Fragmentation of responsibilities:
 - CDR: externally-financed investments
 - MEW: domestic budget financed investments
 - WSE: self-financing small investments
- ✓ Current legislation does not allow PSP in the water sector, but a set of laws are under preparation or approval (PPP framework law, Water Code, Draft law for BOT contracts prepared by MEW)
- ✓ Interference between the various draft laws & Deadlines for the promulgation of laws are not specified, the process may be long

Goals, strategies & capacities at all levels

- ✓ *Principle 10. **Empower authorities responsible for privately-operated infrastructure projects.*** Authorities responsible for privately-operated infrastructure projects should have the capacity to manage the commercial processes involved and to partner on an equal basis with their private sector counterparts.
- ✓ *Principle 11. **Clear and broadly understood objectives and strategies.*** Strategies for private sector participation in infrastructure need to be understood, and objectives shared, throughout all levels of government and in all relevant parts of the public administration.

Building administrative capacities

Egypt: New assignment of responsibilities but limited capacity

- ✓ While a new legislative and institutional framework is under development, the allocation of responsibilities for PPP projects is not fully clarified
- ✓ Limited decentralisation of responsibilities
- ✓ Establishment of a PPP Central Unit within the Ministry of Finance : Develops sector-specific tools (standard PPP contracts and procurement standard documentation), acts as a centre of expertise and capacity building across sectors and assist line ministries in analysing projects' feasibility and value for money
- ✓ Support from high level foreign consultants to remediate capacity gaps in the short-term
- ✓ In order to strengthen the interface with line ministries, satellite PPP Units are under consideration but still not established

Building administrative capacities

Lebanon : Lack of capacities and no special measure has been taken to overcome this gap

- ✓ What is in place :
 - HCP : Preparation of the general policy and the privatization programmes
 - Commission created within the MEW in June 2010: explores potential and possibilities for PSP in the energy and water sectors (until now looked only into questions related to Energy)
 - Committee for Performance Evaluation of RWSE according to law 221/2000 not yet created
- ✓ The Ministry and the Establishments lack related human capacity and expertise

Building administrative capacities

Lebanon : Lack of capacities and no special measure has been taken to overcome this gap

- ✓ The Draft PPP Law confers to HCP the role of a PPP Central Unit but it doesn't award it any role for capacity building
- ✓ Evaluation of projects' feasibility, preparation of contracts and distribution of responsibilities between the various authorities are done on a case by case basis

Ensuring Sustainability

✓ **Informed and calculated choice:**

Principle 1. The choice by public authorities between public and private provision should be based on cost-benefit analysis taking into account all alternative modes of delivery, the full system of infrastructure provision, and the projected financial and non-financial costs and benefits over the project lifecycle.

✓ **Financial sustainability of infrastructure projects:**

Principle 2. No infrastructure project, regardless of the degree of private involvement, should be embarked upon without assessing the degree to which its costs can be recovered from end-users and, in case of shortfalls, what other sources of finance can be mobilised.

✓ **Preserve fiscal discipline and transparency:**

Principle 4. Fiscal discipline and transparency must be safeguarded, and the potential public finance implications of sharing responsibilities for infrastructure with the private sector fully understood.

Financial sustainability of PPPs

Egypt: scalability & long-term affordability for governments

- ✓ Limited scope of PPPs (demo BOTs for big projects).
- ✓ Demand risk born by the public sector, sovereign guarantee
- ✓ Forex risk & limited development of local financial market and banking sector.

Lebanon: low cost recovery and high public debt.

- ✓ Investment framework still marked by high political risk (Guarantees provision)
- ✓ Commercial risk also high : low collection rates, limited cost recovery

Making the cooperation work

✓ **Output/performance based contracts:**

Principle 16. The formal agreement between authorities and private sector participants should be specified in terms of verifiable infrastructure services to be provided to the public on the basis of output or performance based specifications. It should contain provision regarding responsibilities and risk allocation in the case of unforeseen events.

✓ **Consultation with stakeholders:**

Principle 9. Public authorities should ensure adequate consultation with end-users and other stakeholders including prior to the initiation of an infrastructure project.

✓ **Create a competitive environment:**

Principle 7. The benefits of private sector participation in infrastructure are enhanced by efforts to create a competitive environment, including by subjecting activities to appropriate commercial pressures, dismantling unnecessary barriers to entry and implementing and enforcing adequate competition laws.

Accountability mechanisms

Egypt: limited culture of performance based assessment

- ✓ efforts to develop dispute resolution mechanisms.
- ✓ Just starting the development of monitoring indicators
- ✓ 3-step dispute resolution mechanism

Lebanon: development of performance indicators

- ✓ Programme aiming at developing performance indicators is underway (GTZ assistance): Committee for Performance Evaluation of RWSE according to law 221/2000 not yet created
→ temporary coordination by a team instituted within the Exploitation Directorate

Going Forward

Egypt:

- ✓ Clarifying allocation of roles and responsibilities
- ✓ Strengthening the capacity of dedicated public agencies
- ✓ Careful identification and selection of PPP projects through assessment of the market, due consideration to value-for-money and affordability for the government

Lebanon:

- ✓ Speed-up the on-going legal and institutional reform
- ✓ Build capacity and reinforce operational capacities of responsible authorities
- ✓ Sound out private sector interest in investing in the water sector

Going Forward

Private Banks Consultation

National Workshop with Private Banks (Dec. 2010)

- ✓ Organised by the MEW and the Association of Banks in Lebanon with the support of GWP-Med/MED EUWI
- ✓ More than 50 participants representing 30 private and national banks
 - ↳ Private banks are interested on investing in water infrastructure. Nonetheless common understanding should be built on PPP contracts and their implications legally and financially as well as risks management
 - ↳ Prepare MoU for pilot projects

**Assessment available on
websites :**

www.gwpmed.org

www.oecd.org