

Using the *Checklist for Public Action* to assess framework conditions for private sector participation in water infrastructure

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Beirut, 8 March 2010



Private participation in WSS: trends & facts

- Public ownership and management remain preponderant but **most countries have had some experience & continue to seek the involvement of the private sector** => important lessons from past experiences
- **Increasing diversity of private actors:** emergence of regional players, new businesses and blurring of distinction between public and private. Continuum of risk-sharing arrangements => new opportunities and challenges for public action
- Some cases of high profile cancellations & expected surge in investment has not fully materialised: **water perceived as a risky sector** => complexity, necessity to consider different policy areas



Complexity of the sector

Monopolistic

Capital intensive, high fixed costs, long-term investments, technology-specific, inelastic demand, low returns and important asymmetry of information.

Essential for life

Basic need, important externalities on health, gender equality and environment. Essential input for business.

Many stakeholders and segmentation

Public sector, communities, users, employees, private sector, donors, NGOs. Responsibilities split between different ministries and across national, regional & local authorities.

Risky

Commercial risk, contractual risk, forex risk, sub-sovereign risk, risk of capture by vested interest. Combination amplifies the risks.



OECD Checklist for Public Action

- **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).



5 areas of consideration for public action

- **Deciding on nature and modalities of private sector participation**
 - Informed & calculated choice, project financial sustainability, tailor-made model, preserving fiscal discipline
- **Enhancing the enabling institutional environment**
 - Enabling environment, fight against corruption, competition, access to financial market
- **Developing goals, strategies, capacities at all levels of government**
 - Consultation, empowerment of authorities, clear and broadly understood objectives & strategies, cross-jurisdiction cooperation



Cont'd

- **Making the public-private co-operation work in the public interest**
 - Communication, disclosure of information, fair & transparent contract awarding, output-based, regulatory bodies, renegotiations, dispute resolution
- **Encouraging responsible business conduct**
 - Responsible business conduct, good faith & commitment, integrity, communication, responsibility for social consequences



Draft assessments under preparation

- **Egypt, Russia and Mexico (forthcoming)**
- **Building on:**
 - answers to the *Checklist*-based Questionnaire
 - publicly available material (academic papers, government information – i.e. PPP Central Unit, OECD publications)
 - Bilateral interviews during fact-finding missions
- **Overview of recent developments with PSP in WWS and identification of areas for consideration, i.e. in Russia:**
 - the institutional framework under development;
 - the accountability mechanisms;
 - the financial sustainability of projects.

Checklist: Enhancing the enabling environment

- **Clarifying public sector responsibilities:**

Principle 5. 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.



Institutional framework under development

- **Egypt:** the regulatory framework is lagging behind
 - PPP Law expected to be ratified by Parliament in June 2010.
 - Recent BOT tendered under law on Public Procurement.
 - Water Law (defining the responsibilities of regulatory body), is under development with no clear perspective for ratification.
- **Russia:** legislation in transition, PSP in stagnation since 2006
 - Amendments to the Concession Law: sector-specific provisions, flexibility in asset registration, compulsory competitive public tender, transition of old leases
 - New tariff regulation
 - Timeline of technical regulations under development unclear
 - State Clean Water Programme & long-term water policy

« Checklist: 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 capacity

- **Egypt:** new assignment of responsibilities but lim. capacity
 - Limited decentralisation of responsibilities.
 - Establishment of a PPP Central Unit within the Ministry of Finance. Development of sector-specific tools.
 - Support from high level foreign consultants.
- **Russia:** capacity and incentives at municipal level
 - Municipalities have responsibilities for infrastructure investment programmes, setting tariffs, registering assets but incentives and/or capacity are often not in place
 - Creation of a PPP Centre within VEB. Network of regional centres for PPP is under consideration.



Checklist: 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.



The accountability mechanisms

- **Egypt:** limited culture of performance based assessment and efforts to develop dispute resolution mechanisms.
 - 3-step dispute resolution mechanism
 - Just starting the development of monitoring indicators
- **Russia:** strengthening accountability in the public interest
 - Fighting corruption through limiting discretion, revising excessive or unrealistic regulation and establishing appropriate incentives
 - Improving the information base and monitoring
 - Strengthening the competitive environment, incl. by reducing administrative burden
 - Supporting accountability towards the end-users



Checklist: Deciding on private provision

- **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:** long-term affordability and scalability
 - Limited scope of PPPs (demo BOTs for big projects).
 - Demand risk born by the public sector.
 - Forex risk & limited development of local financial market and banking sector.
- **Russia:** establishing economic tariff regulation to balance diverse interests
 - Important potential market, but tariff regulation has been criticised as providing limited incentive to invest and raising important regulatory risk.



Thank You

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