

Qatar: Set to attract foreign direct investments through PPP initiatives

Sharifah Hamzah
s.hamzah@tamimi.com

PPP is often misconstrued and confused by many who think that it refers to the selling of government assets, or the transfer of public sector services to the private sector, in what is commonly known as a “privatisation”. It is correct to say that privatisation is a form of PPP but what should be understood is that privatisation is only part of several different variant forms of PPP. Therefore, privatisation comes under the umbrella of PPP together with PFI (Private Finance Initiatives), Joint Ventures between the public sector and private sector and Concessions such as BOT (Build Operate Transfer), BLT (Build Lease Transfer), BOOT (Build Own Operate Transfer).

Is Qatar gearing towards PPP Projects?

A major misconception is that only governments which have to grapple with limited financial resources will opt for the PPP route. On the contrary, even countries flushed with cash and abundant resources can benefit from the PPP structure. Qatar can utilise the PPP structure to promote efficiency in implementing its vast infrastructure projects in the next 10 years leading up to the FIFA World Cup 2022. This will ease the burden of its public sector workforce to manage and oversee these projects and free up the public sector to focus more on policy making and project implementation.

Over 10 years ago, Qatar had already initiated its privatisation programme by transferring the responsibility of the state-owned electricity and water corporation to an independent authority. More recently the BOOT was used to implement the Ras Laffan IWPP (Independent Water and Power Project). There is great scope for widening the use of PPPs in Qatar and there is a strong indication that this is the path Qatar is taking with its future plans for its rapid major infrastructure development.

In February, Markab Advisory released a new research study entitled “Public Private Partnerships: A Vehicle of Excellence for the Next Wave of Infrastructure Development in the GCC”. It is interesting to note that this study was sponsored by the Qatar Financial Centre Authority and the State of Qatar Ministry of Business and Trade. In this study, Markab Advisory stated that “By weaving PPP into its infrastructure and growth plans for the next ten years, Qatar can rapidly emerge as a centre of excellence for PPP in the region”.

How can Qatar benefit from PPP initiatives?

PPP initiatives can offer the required expertise and know-how for the development and operation of mega infrastructure projects. In addition, intelligent risk allocation and sharing between the public partner and the private partner should add to the value and success of a PPP initiative. The PPP partners can develop a Risk Allocation Matrix which will be encapsulated into the PPP contract. It will be decided during the contract negotiation stage which partner will bear the construction risk and the operation and maintenance risk. Other risks which the partners will have to consider are political risks, environment and safety risks, financial risks and revenue risks. Ideally there should be a balance within the PPP structure of risk sharing between the public partner and the private partner.

PPPs have been used globally to implement various projects in the following areas:

- Infrastructure – Roads, Bridges, Railways
- Utilities – Power, Water
- Waste Management Services

- Healthcare
- Education

Collaboration and Partnership in a PPP arrangement

With careful planning and structuring of the PPP project to be undertaken, the Government may find that partnering with the private sector will increase and improve the supply of related services.

As mentioned above, there are several variant forms of PPPs that may be used by the Government. It is more likely that the PPP model where the private sector owns the Project assets or which focuses on financing the Project based on a PFI structure, will not be the model used in Qatar as this model does not meet Qatar's immediate concerns or needs. What would be more suitable for Qatar, in relation to infrastructure development, is a PPP based on a project management contract concept. This would entail a contracting arrangement between the relevant government authority, or government owned entity, for the management of facilities which are usually managed by a government authority, or government owned entity, such as ports, airports, utilities and waste management services.

Another possible PPP model is the concession arrangement based on a BOT (Build Operate Transfer), BLT (Build Lease Transfer) or BTO (Build Transfer Operate). Usually the private entity creates a Special Purpose Vehicle (SPV) to undertake the PPP project. The design and construction, operational and investment risks can substantially be transferred to the SPV/Concessionaire under this arrangement. The concession agreement for this PPP structure can be split into the following parts:

Part 1 - constitutes the design and construction phase. Therefore, there will be similar elements in the concession agreement as in a construction contract although quite notably, the approval process will be different.

Part 2 - follows the completion of construction works where the Concessionaire will carry out the operations and maintenance phase. There should be a detailed schedule on the scope of works under operations and maintenance. Where the concession involves the operation and maintenance of a plant or facility, for example a water treatment facility, the maintenance obligations should include routine maintenance and not upgrading works such as the replacement of major spare parts. Upgrading works would usually be charged separately as additional works.

Part 3 - upon the expiry of the concession period, the Concessionaire will hand over the hospital, bridge, waste management plant or water treatment plant to the government entity. Handover rights and details of the handover should be ironed out with the Government before the commencement of the concession. The level of investment of the Concessionaire should be determined from the beginning and also whether, upon expiry, the plant will be handed over on an "as is" basis, or certain upgrading or enhancement works will have to be carried out before handover. There should be a checklist of what equipment, materials or plant spare parts will be handed over. If the Concession is terminated before the expiry of the Concession period, then the compensation payable to the Concessionaire is important.

This of course depends on why it was terminated - whether it is due to a material default of Concessionaire or the Government entity, or if it is a termination of convenience or expropriation by the Government. Methods of calculation for compensation should be agreed upon up front and set out in the Concession agreement rather than be left for the parties to compute and decide upon termination itself. Computation of compensation also depends on what stage of the Concession such termination occurs - that is, whether it is during construction phase or operations & maintenance phase.

Other key points in a Concession Agreement are:

- Concession rights
- Concession fee (if any)
- Financing (if any) and rights of lenders (such as, Step in rights and Rights of assignment)

- Concession period
- Land rights (if any)
- Government's obligations
- Concessionaire's obligations
- Dispute Resolution procedure
- If the Concession involves taking over government services, there will be issues on existing staff and assets and the transfer thereof to the Concession company (however, this will probably not be the Concession model that will be used in Qatar).

Is a Comprehensive Legislative Framework required to implement PPPs?

PPP initiatives around the world have been implemented in various ways. Some countries have enacted comprehensive legislation to govern and facilitate PPPs, whilst others do not have a specific law on PPPs, preferring to rely on contractual agreements governed by existing laws. PPP investments in the MENA region countries have essentially been contractual rather than based on a comprehensive single legislative framework.

However, a clear national policy and legal framework is advisable to provide the necessary support, foundation and basis in order to kick-start this wave of PPP initiatives. There should be a creation of institutions, a PPP Unit or Task Force within the Government framework, to develop expertise in structuring PPPs and to oversee the development and implementation of PPPs in the country. The PPP Unit or Task Force should be given clearly defined authority and responsibility and their responsibility should be to coordinate and facilitate the development of PPPs in Qatar. Part of their initial task should be to standardise procurement documentation and procedures and formulate a standard PPP Contract Form to be utilised by the various government ministries and departments.

It is prudent to recognise at an early stage of development that having well defined PPP policies and legal framework is crucial to the success of implementing PPP initiatives.

The State of Qatar Ministry of Business and Trade has already set up a PPP Directorate. The signs are clear that Qatar is moving in the right direction in establishing a framework to launch its PPP initiatives in tandem with its massive infrastructure development.