The new Kuwait PPP Law

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The New PPP Law has been passed to codify some of the techniques applied in Az-Zour and to attract new investors to Kuwait by providing a more comprehensive road map and guidance in the implementation and operation of future mega projects. This article provides a brief overview of some of the key features of the New PPP Law.

The New PPP Law has introduced the Supreme Committee which has been decreed to have broad powers such as carrying out project tendering, approving projects, developing general policies and approving detailed documents for projects and initiatives (including unsolicited proposals of strategic importance to the national economy of Kuwait). The Committee is also responsible for selecting the relevant public entity to participate in the project and sign the relevant PPP contract determined to be in public's best interest.

It is to be noted that the Supreme Committee is presided over by the Minister of Finance and any decisions by the Supreme Committee take effect only after the approval by the Minister of Finance.

Under the old law, it was unclear whether the Partnerships Technical Bureau or the investor would be responsible for the incorporation of the project company and the shareholding structure. However, the New PPP Law appears to provide a clearer framework for these concerns.

The old law was viewed by many as being too restrictive, especially by Shariah-compliant banks, since it prohibited the disposal or mortgage of land and the constructions and building upon it[a1] , as well as any asset reverting to the state [a2] of Kuwait following the end of the BOT[a3] term, and from attaching any real rights over the same[a4] . From a lenders perspective (both conventional and Sharia-compliant), Article 13 of the old law effectively restricts lenders from being able to take security over virtually all tangible and substantial assets, including the land that the project is built on, any buildings (including offices, plants, and other fixed structures), any assets, including movable assets, that are integral to the project (such as turbines, equipment or any other fixtures), and any other direct or "real rights" in the assets.

Due to the nature of limited recourse financing, lenders need to ensure that any and all security available to them is properly registered. However, the law in its old form significantly crippled lenders' security packages. The New PPP Law has relaxed such restrictions and prohibitions under the old law, by introducing Article 23, which codifies some of the finance techniques applied in Az-Zour, such as assignment of government proceeds, pledge against shares, etc. It also allows for the pledging of shares prior to the 2-year lock-out period. Finally, in this regard, we can now mortgage the assets of the actual projects. This will substantially increase the parties' ability to make future projects more "bankable".

We wait for the Executive Regulations to be issued for further clarification and to set out certain requirements necessary for the enforcement of the New PPP Law. We hope to provide an upcoming article upon the issuance of the Executive Regulations to provide a brief overview of some of the key changes and additions to the New PPP Law.

[a1]The old law prohibited the disposal or mortgage of construction/buildings on the land? Or it prohibited construction/building on the land?

[a2]The old law prohibited assets from reverting to the State of Kuwait? Or it prohibited disposal or mortgage of any asset that reverted to the State of Kuwait?

[a3]What is BOT?

[a4]The old law prohibited the attachment of real rights over assets that reverted to the State of Kuwait? Or it prohibited the attachment of real rights over land / buildings?

The first half of this paragraph should be re-written to make it clear.