



EGYPT

**ASSESSMENT OF THE QUALITY OF THE PPP LEGISLATION AND OF THE EFFECTIVENESS OF ITS IMPLEMENTATION
2011**

I- PPP Legislative Framework Assessment (LFA)	Compliance of the PPP legal framework with PFI Guide recommendations¹ and Best Practice		
Core Area		Rating	Assessment
1- PPP Legal Framework	Existence of specific PPP law or a comprehensive set of laws regulating concessions and other forms of PPP and allowing a workable PPP legal framework	18/18	
2-Definitions and Scope of the Law	Existence of a clear definition of the boundaries and scope of application of the concession legal framework (e.g. definition of "PPP", sectors concerned, competent authorities, eligible Private party) limiting the risk of a challenge to the validity of PPP contracts, irrespective of whether the act is specifically targeted at PPP	15/21	
3-Selection of the Private Party	Mandatory application of a fair and transparent tender selection process. Limited exceptions allowing direct negotiations, competitive rules for unsolicited proposals and the possibility to challenge illegal awards.	22/42	
4-Project Agreement	Flexibility with respect to the content of the provisions of the Project agreements which should allow a proper allocation of risks without unnecessary or unrealistic/not bankable/compulsory requirements/interferences from the Contracting Authority (obligations, tariff, termination, compensation).	21/27	
5-Security and Support Issues	Availability of reliable security instruments to contractually secure the assets and cash-flow of the Private Party in favour of lenders, including "step in" rights and the possibility of government financial support, or guarantee of, the Contracting Authority's proper fulfilment of its obligations.	21/21	

¹ UNCITRAL *Legislative Guide on Privately Financed Infrastructure Projects*, 2001 (hereinafter the "PFI Guide")

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2.

6-Settlement of Disputes and Applicable Laws	Possibility to obtain proper remedy for breach under the applicable law through international arbitration and enforcement of arbitral awards.	13/15	
General LFA Rating			
		81,3/%	High Compliance
II-Legal Indicators Survey (LIS)	Effectiveness Assessment : How the PPP law works in practice		
Core Area		Rating	Legal Indicator Survey
7- Policy Framework	Existence of a policy framework for public private partnerships	9/21	
8 Institutional Framework	Existence of an institutional framework for public private partnerships	21/27	
9- PPP Law Enforcement	Award and implementation of PPP projects in compliance with the Law	18/27	
General LIS Rating		62,7/%	Medium Effectiveness
OVERALL RATING		72/%	High Compliance/Effectiveness

Local Expert²: Ahmed El Sharkawy - Sharkawy & Sarhan Law firm

² The Local Experts in charge of each country have been consulted for the elaboration of the responses to the Checklist in their capacity of well recognized established law firm in the country but the Local Experts as well as EBRD are in no way responsible for the responses given to any question in this Checklist as the Consultant was free to use any other sources of information for its final determination.



3.

RATING: Key for assessment of Each Question

✓ ✓ ✓	Yes	3 points
✓ ✓	Yes, with reservations	2 points
✗ ✗	No, with Limited compliance / redeeming features	1 point
✗ ✗ ✗	No	0 point
N/A	Not applicable	0 point/ Not included in total

Key for Assessment of Each Core Area and for Overall Assessment

≥ 90%	Very High Compliance/Effectiveness
≥ 70%-89%	High Compliance/ Effectiveness
50%-69%	Medium Compliance/ Effectiveness
30%-49%	Low Compliance/ Effectiveness
< 30%	Very low Compliance/ Effectiveness

TERMINOLOGY

So as to keep answers consistent and avoid ambiguity, we set out below some brief definitions of the terminology used in this questionnaire. Any definition is provided solely to clarify some of the terminology used below. The reader should note that any such definition does not correspond with any given definition under best international practice (which does not provide for any standardised PPP legal definitions recognised worldwide) neither should it be interpreted that we recommend the adoption of such definitions under actual documentation, but they are included in the interests of clarity for the completion of this questionnaire, and we should be grateful if you could adopt such definitions for the purposes of completing the questionnaire.

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- **"Public Private Partnership" - "PPP" or "PPP project"** includes all types of long-term arrangements between public authorities and private institutions, including but not limited to; Concessions, BOT and derived forms, PFI and Institutional PPP. For the purposes of this questionnaire, PPP excludes the sale of public assets or of public company shares which are part of a privatisation process and also excludes public works, services or supply contracts which are subject to public procurement rules.

The following types of Public - Private Partnership Agreements may be adopted by a Contracting Authority for undertaking infrastructure projects. These are solely indicative in nature and the Contracting Authority may seek to adopt a combination of the different contractual arrangements, which incorporate some of their elements or combine elements.

- **"BOT" - (Build-Operate-and-Transfer)- and derived forms** : a contractual arrangement whereby the Private Party undertakes to finance, design, construct under a turnkey risk basis, operate and maintain an Infrastructure project for a specified period after which period the project facilities are transferred to the Granting Authority usually without payment of any compensation.

The Private Party has the right to collect contract or market based tariffs or fees from the users of the infrastructure project, as specified in the PPP agreement, to recover its investment and operating and maintenance expenses for the project. A BOT type of PPP arrangement may provide for all the implementation and operational efficiencies of the private sector, together with new sources of infrastructure capital. Derived forms of BOT contractual arrangements exist such as Build-Own-Operate-and-Transfer (BOOT) similar to the BOT agreement, except that the Private Party owns the Infrastructure project during the specified term before its transfer to the Contracting Authority or its designee, or such as Build-Own-and-Operate (BOO) which is a contractual arrangement similar to the BOT agreement, except that the Private Party owns the Infrastructure project and no transfer of the project to the Contracting Authority or its designee at the end of the fixed period is envisaged. Derived forms incorporating Lease right rather than Ownership or dealing with rehabilitation or extension rather than construction which extend the possible combination which for the purpose of this questionnaire will all be hereafter referred to as BOT for simplification purpose except where legal specificity requires specific treatment.

- **"Concession"**: is an act attributable to the State whereby a Contracting Authority entrusts to a third party the total or partial management of public services for which that authority would normally be responsible and for which the third party assumes all or part of the risk.
- **"PFI" (Private Finance Initiative)** : a form of cooperation and partnership between public authorities and Private Parties which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of service to the infrastructure without the delegation of the public service itself. It is a contractual arrangement whereby the Private Party



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undertakes the financing and the construction of an infrastructure project and after its completion transfer it to the Contracting Authority or its designee. This arrangement may be employed in the construction of a public service facility for which the public service must be operated directly by the contracting authority for whatever reason but the operation and maintenance of the facility remain the responsibility of the Private Party for the entire duration of the PPP agreement. The contracting authority will reimburse the total project investment on the basis of a rent based of an agreed schedule with the payment starting from the date of commencement of operation and pay for the services rendered to the facility on a performance basis.

- **"IPPP"**(Institutional PPP): a structural or corporate form of PPP which provide for the cooperation between public authorities and a Private Party through a joint venture or mix (public - private shareholding) company in which case all reference to the selection process refers to the selection of the Private Party.

Other definitions:

- The **"Law"** or **"PPP Law"**: a law regulating any form of PPP including but not limited to Concession, BOT, PFI, IPPP and including, for the purpose of this questionnaire, the set of rules applicable to any PPP in the absence of a specific PPP law. The Law for the purpose of this questionnaire also includes any implementing regulation and any form of governmental act regulating PPP.
- **"BOT Law"** : a law regulating a BOT type of PPP in their multiple forms.
- **"Concession Law"**: a law regulating a Concession form of PPP.
- **"Contracting Authority"**: a public authority empowered to award a PPP and enter into Project Agreements
- **"PFI Law"**: a law regulating a PFI form of PPP.
- **"PPP unit"** : specialized institution/agency/ministerial department established to promote and take care of PPP.
- **"Private Party"** : Private Party or other entity in the form of a special purpose company to which a Project Agreement in general has been awarded. [*The word Private party will be used for the sake of this study even in case the PPP regulation allows PPP business partner to be a mix company or even a public entity.*]
- **"Project Agreement"**: an agreement(s) between the Contracting Authority and the Private Party regulating their respective rights and obligations with respect to the PPP project.



REFERENCE TO BEST PRACTICE

- UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, 2001 (hereinafter the "**PFI Guide**") and UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, 2003 (UNCITRAL Model Legislative Provisions).
- EC - Commission Interpretative Communication on Concessions Under Community Law dated 12 April 2000; together with additional EU major documents/decision /recommendation on concessions including Directives 2004/18/EC and 2004/17 EC of 31 March 2004; Green Paper on Public Private Partnerships and Community Law on Public Contracts and Concessions dated 30 April 2004; Report on the public consultation on the Green Paper (SEC(2005) 629- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Public-Private Partnerships and Community Law on Public Procurement and Concessions (Brussels, 15.11.2005.COM(2005) 569) European Parliament resolution on public-private partnerships and Community law on public procurement and concessions (2006/2043(INI)); European Commission Guidelines for Successful Public-Private Partnerships (2003).Commission Interpretative Communication Brussels, 05.02.2008 C (2007)6661on the application of Community law on Public Procurement, and Concessions to Institutionalised Public-Private Partnerships (IPPP);
- EBRD Core Principles for a Modern Concessions Law – selection and justification of principles Prepared by the EBRD Legal Transition Team.2005;
- UNIDO Guidelines for Infrastructure Development through Build Operate Transfer (BOT) Projects, 1996 (UNIDO BOT Guidelines); and
- OECD Basic Elements of a Law on Concession Agreements, 1999-2000.



OVERALL ASSESSMENT 2011 : EGYPT

The PPP program in Egypt commenced in 2006. A special unit in the Ministry of Finance, the PPP Central Unit, was established in June 2006. The PPP Central Unit is the main entity responsible for the initiation and implementation of PPP Projects in Egypt. Under the growing interest of both the public sector and private sector in the PPP different scheme, issuing a new law governing this scheme became very important. Hence, a new law governing the PPP projects was issued on 2010. The law was designed to adopt and localize the international successful PPP models and to ensure that established PPP principals and Standard Operating Procedures (SOPs) are followed. Also the law is tended to avoid most of the legislative gaps that used to paralyze the PPP scheme in the past.

Historically the concessions BOTs and BOOs were granted based on the general public utilities legislation (law 129 of 1947 and law 61 of 1958) or the sector specific laws; i.e. laws which were issued to govern the concessions granted in relation to each sector (e.g. electricity, ports, etc) (the “**Sector Specific Laws**”). Although the new Law is drafted in a way that would suggest that the PPP Law is applicable to all the PPP projects, the Law did not abolish existing laws which regulate government concessions. Therefore, administrative entities may still grant concessions, BOTs and BOOs based on the old scheme. In light of this, and apart of the PPP Law, there are three approaches to granting concessions under Egyptian Law:

- *The first approach* is to issue a concession according to the provisions of the general public utilities legislation (law 129 of 1947 and law 61 of 1958). These laws are relatively old and include restrictive requirements, such as limitation on the investor’s profit and setting a maximum duration for the concession of thirty years. Thus, in practice, this method is not applied on modern PPP projects.
- *The second approach* is for the government to pass a specific law for each project/concession. This is the practice in oil and gas concessions. Passing a concession or a specific law for the project by the parliament is a relatively lengthy and complex method. Therefore, and save for projects in the oil and gas sector, this approach is generally not used on PPP projects.
- *The third approach* is for the government to issue the concession project under the provisions of a sector-specific law. These laws typically exclude the application of the general public utilities legislation and set forth the legal basis for concessions in a particular sector. Sector-specific laws have been issued for various sectors in Egypt, including electricity, specialized ports, airports, trains and roads. This approach is expected to be used in the future for the power sector.



8.

For the sake of the below questionnaire, we will restrict our responses to the principles of the PPP Law and the projects awarded subject thereto, without elaborating on the Other Laws.

Up till the present date, there has been only one PPP project successfully awarded, which is the New Cairo Wastewater Treatment Plant. This project was offered and awarded before the new law was issued and therefore is not subject to this law. Currently, there are several tenders opened and under preparations; however we expect that they will be on hold until a new elected government comes to power. There is sign however that the government will be looking into more PPP projects.

Because the PPP Law is relatively recent and no projects were granted under this Law, the law is not yet tested and therefore it is not clear yet what kind of practical shortcomings might come along with the law or what kind of obstacles might come along with the implementation thereof.



ASSESSMENT & LEGAL INDICATOR SURVEY

1. LEGAL FRAMEWORK

1.1 Existence of different forms of PPP legal framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the country have a single act dealing specifically with Concessions or a generalised act incorporating the legal framework for PPP, including Concessions ?	✓ ✓ ✓		1. Law No. 67 for the year 2010 (hereafter PPP Law) promulgating the law regulating Partnership with the Private Sector in Infrastructure Projects, Services and Public Utilities. 2. Concession Law : law no. 61 for the year 1958 on the authorization for awarding concessions related to the investment of natural resources and public utilities. 3. Sector Specific Laws. Alltogether referred as the Law



<p>2. Does the country have an act that allows BOT or derived forms such as BOOT, BOO or other forms either as part of a specific act or as part of a general PPP Law?</p>	<p>✓ ✓ ✓</p>	<p>Art 2 PPP</p>	<p>Any project that comprise building, financing, operating and transferring should be governed by the Law.</p> <p><i>Administrative Authorities may enter into PPP contracts pursuant to which a Project Company shall be entrusted with the financing, constructing, equipping and operating infrastructure projects and public utilities, and making their services available or financing and rehabilitating such utilities with an obligation to maintain what has been constructed or rehabilitated, and to provide services and facilities necessary for the project to be capable of production or service provision regularly and progressively throughout the PPP contract duration.</i></p> <p><i>The PPP contract duration shall not be less than five years and shall not exceed thirty years from the date of completion of the construction works and equipping works, or completion of the rehabilitation works, provided that the total value of the PPP contract is not less than one hundred million Egyptian Pounds. However, the Cabinet, based on the recommendation of the Supreme Committee for Public Private Partnership Affairs, may agree to conclude a PPP contract for more than thirty years, if it is required due to a material public interest.</i></p> <p><i>The Project Company shall not start to receive any payments in return for the sale of products or availability of services, in accordance with the performance levels indicated in the PPP contract, until the contracting Administrative Authority issues a certificate accepting the quality level of the works, or products or services available.</i></p>
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<p>3. Does the country have an act that allows PFI, either as part of a specific act or as part of a general PPP Law?</p>	<p>✓ ✓ ✓</p>	<p>Art 2 PPP Art 3 PPP</p>	<p><i>Administrative Authorities may enter into PPP contracts pursuant to which a Project Company shall be entrusted with the financing, constructing, equipping and operating infrastructure projects and public utilities, and making their services available or financing and rehabilitating such utilities with an obligation to maintain what has been constructed or rehabilitated, and to provide services and facilities necessary for the project to be capable of production or service provision regularly and progressively throughout the PPP contract duration.</i></p> <p><i>The Project Company shall not start to receive any payments in return for the sale of products or availability of services, in accordance with the performance levels indicated in the PPP contract, until the contracting Administrative Authority issues a certificate accepting the quality level of the works, or products or services available. Article 3:</i></p> <p><i>In addition to what is stipulated in Article 2, the PPP contract may allow for the Project Company to operate the project, provide the service or the product to the Administrative Authority which will, in turn, provide the service or the product to the end beneficiaries or consumers.</i></p>
<p>4. If the answer is <i>No</i> to any of the three first questions concerning a specific form of PPP does the Constitution or other general act (ex: the Civil Code, sectoral law) recognise the basic principles of the concerned PPP and regulate its granting?</p>	<p>N/A</p>	<p></p>	<p>N/A</p>



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For our general information: Is a new PPP Law or an amendment to the existing Law being prepared, or considered, in the country?

If so, at what stage of the legislative process is such new PPP Law or amendment to the existing Law? We are not aware of any.

1.2 Specificity and integration of PPP legal framework

5. If the country has a Public Procurement Law, is it clear to what extent does the Public Procurement Law apply or not to the granting of a PPP?	✓ ✓ ✓	First Article PPP	<i>PPP contracts will not be subject to the provisions of Law no.129 for 1947 concerning concessions of public utilities, and Law no. 61 for 1958 concerning Concessions relating to the investment of natural resources and public utilities, as well as Public Tenders Law no. 89 for 1998 organizing tenders and bids and any specific laws related to granting concessions of public utilities.</i>
6. If the country has sectoral laws regulating PPP in specific sectors, is it clear which law is applicable to the granting of PPP for each particular sector?	✓ ✓ ✓		Yes – if any of criteria provided under the PPP Law is not met, the Sector Specific Laws apply. For example, the electricity sector is operated through private companies owned by the Government. Those private companies do not fall under the definition of Administrative Authority as per the Law. Hence, they



			cannot offer a project under the PPP Law and they are expected to recourse to the Sector Specific Laws in stead.
7. Does the country have a Law allowing the Institutional form of PPP (IPPP) which regulates IPPP participation to PPP?	✓ ✓ ✓	Art 1 PPP	<p><i>Private Sector": an Egyptian or foreign judicial person in which the Egyptian State owned shareholding is less than 20%, and a consortium between two or more Egyptian or foreign judicial persons in which the State owned shareholding is less than 20%.</i></p> <p>This definition allow some limited form of IPPP</p>



			<p><i>production or service provision regularly and progressively throughout the PPP contract duration.</i></p> <p><i>The PPP contract duration shall not be less than five years and shall not exceed thirty years from the date of completion of the construction works and equipping works, or completion of the rehabilitation works, provided that the total value of the PPP contract is not less than one hundred million Egyptian Pounds. However, the Cabinet, based on the recommendation of the Supreme Committee for Public Private Partnership Affairs, may agree to conclude a PPP contract for more than thirty years, if it is required due to a material public interest.</i></p> <p><i>The Project Company shall not start to receive any payments in return for the sale of products or availability of services, in accordance with the performance levels indicated in the PPP contract, until the contracting Administrative Authority issues a certificate accepting the quality level of the works, or products or services available.</i></p>
2- Does the Law apply to all contracts entered into that fall under the definition(s) given above, irrespective of the name given to such contract (<i>concession, license, usufruct right, lease, etc.</i>)?	✓ ✓		Egyptian law takes a substance over form approach.
3- Does the Law make a clear distinction between a PPP agreement (<i>such as a Concession</i>) and a license (<i>i.e. an authorisation to operate by a public authority</i>)?	✓ ✓	Art 34 PPP	<p>Not specified in the law but no confusion as the endorsement process shall apply and if license are needed they will be in addition as part of the legal feasibility study.</p> <p>Yes, the Law mentions that “<i>The PPP contract must</i></p>

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			<p><i>include, in particular, the following.:</i> (...) <i>c. the responsibility of obtaining authorizations, permits, and approvals; (...).”</i> This implies that the licensing process is a separate process and that the responsible party for it must be agreed ahead of signing the agreement.</p> <p>In general all site related approvals such as the approval of the Supreme Council of Antiquities and the Ministry of Defence are obtained by the contracting authority (i.e., the government), and the licenses required for building and operating the project are usually obtained by the Service Provider (e.g., construction license, environmental approvals, etc.). In all cases, the contracting party is most often entitled to reasonable assistance by the Contracting Authority in obtaining the required licenses.</p>
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2.2 Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
4- Does the Law identify <i>(or allow clear</i>	✓ ✓ ✓	Art 1 PPP	<i>"...Administrative Authorities": Ministries and Service and Economic Public Authorities, and any other public judicial</i>

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			<p><i>follow-up procedures to tender and conclude PPP contracts and their execution, and prepare and publish studies, information, and statistics related to PPP projects, both locally and internationally. The PPP Central Unit also shall be competent for the selection of advisers for the tender of PPP projects and contracting with them in accordance with the rules and procedures stated in the Executive Regulations of this Law. (...).”</i></p>
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For our general information: *If yes, which of the following authorities are identified: any entity falling under the definition of Administrative Authority under article 1 of the Law can enter into a BOT, concession, etc under the PPP Law.*

- *National authorities (e.g.: the government, ministries, and independent agencies); yes*
- *Regional/state-level authorities; yes*
- *Local or municipal authorities; or yes*
- *State owned companies? No – they are considered private companies.*

2.3 Private Party and Project Company

QUESTION	ANSWER	ARTICLE	COMMENTARY
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5- Is it possible for a PPP to be awarded to a foreign company, a Private Party or to a domestic company with foreign participation in the share capital and/or management (<i>without discrimination</i>)?	✓ ✓ ✓	Art 1	<i>"Private Sector": an Egyptian or foreign judicial person</i>
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For our general information: *can a PPP be awarded to public entities or to entities jointly owned by private and public entities (IPPP)? Are there restrictions imposed on such contracts? Yes, as long as the government share in the entity (or the joint venture) is not more than 20%.*

2.4 Concerned sectors⁴

QUESTION	ANSWER	ARTICLE	COMMENTARY
6- Does the Law identify (<i>or allow identification by reference to other laws or regulations</i>) the sectors and/or types of infrastructure and/or services in respect of which a PPP may or may not be granted?	✓ ✓	Art 1	No. The Law does not identify or exclude any sector or service. Therefore it applies to all sectors.

⁴ For further information on the concerned sectors please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendation 3 and 4.



<p>7- Do the list of sectors eligible for PPP correspond to an open-ended one (<i>as opposed to being exhaustive</i>) allowing (<i>or at least not preventing</i>) PPP to be granted in numerous sectors”?</p>	<p>N/A</p>		
<p>8- Do the sectors eligible for PPP include non commercial activities such as the provision of government services (such as <i>schools, hospitals, prisons, defence and housing</i>) in addition to the merchant sectors of the economy (<i>energy, transport, water, oil and gas</i>).</p>	<p>✓ ✓</p>	<p>Art 2 PPP</p>	<p>Yes.</p> <p><i>Administrative Authorities may enter into PPP contracts pursuant to which a Project Company shall be entrusted with the financing, constructing, equipping and operating infrastructure projects and public utilities, and making their services available or financing and rehabilitating such utilities with an obligation to maintain what has been constructed or rehabilitated, and to provide services and facilities necessary for the project to be capable of production or service provision regularly and progressively throughout the PPP contract duration.</i></p>

For our general information: Please indicate the restrictions if any imposed by the Law on the sectors eligible for PPP:

There are no legal restrictions. However, in practice there are sectors that are not expected to benefit from the Law; e.g. the electricity sector. That is, the electricity sector is operated through private companies owned by the Government. Those private companies do not fall under the definition of Administrative Authority as per the Law. Hence, they cannot offer a project under the PPP Law and they are expected to recourse to the Sector Specific Laws instead.



3. SELECTION OF THE PRIVATE PARTY⁵

3.1 General Considerations

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law require, in principle, the Contracting Authority to select Private Parties through a competitive tender process?	✓ ✓ ✓	Chapter III PPP	The Law only provides for a tendering process
2. Is there reference in the Law to the principles of transparency, equal treatment and proportionality?	✓ ✓ ✓	Art19 PPP	<i>The Investor selection is subject to the principles of publicity, transparency, free competition, equal opportunity and fairness, in accordance with the rules and procedures stipulated in this Law and its Executive Regulations.</i>
3. Is there a provision in the Law concerning the publication of information related to the competitive procedures in the country media and in the international media (<i>for large projects</i>)?	✓ ✓ ✓	Art 19 PPP	<i>All published advertisements for bids and preparation for PPP competitions shall be undertaken in coordination with the PPP Central Unit in the manner prescribed by the Executive Regulations.</i> <i>If the nature of the project necessitates inviting investors</i>

⁵ For further information on the selection of the Private Party, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 14 to 39 included.



		Art 29 PPP Executive Regulations	<i>to express their interest, as a prior step prior to pre-qualification procedures, the Administrative Authority shall announce this at least in a widely circulated daily newspaper in both Arabic and English; and if needed, in a foreign newspaper or in a publication abroad; and on the electronic sites of the Administrative Authority, the PPP Unit, and the General Authority for Investment (GAFI), all as set by the PPP Unit.</i>
4. Are there provisions within the Law or any special manual or recommendations governing in detail the selection of the Private Party (<i>i.e.: the pre-selection of bidders, the procedure for requesting proposals or other procedure such as competitive dialogue/two stage procedure</i>)?	✓ ✓ ✓	Chapter III PPP Chapter III PPP Executive Regulations	Tendering and awarding procedures are provided in details under the PPP Law, including the pre-selection of bidders, the procedure for requesting proposals or other procedure such as competitive dialogue/two stage procedure.
5. Does the Law provide that if the Contracting Authority rejects an applicant at the time of pre-selection or disqualifies a bidder, it must make public the reasons for the decision (<i>or inform the rejected bidder thereof explaining the reasons for rejection</i>)?	XXX		Although reasoning is required, no publicity requirement as per the Law.

3.2 Award of PPP

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QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law provide that all proposals are ranked solely on the basis of a predefined evaluation criteria set forth in the pre-selection documents/ request for proposals?	✓ ✓ ✓	Art 29	<i>Each bid shall be given an evaluation grade according to the method identified in the request for submission of final bids and the tender documents. Based on this grading the technically accepted bids shall be ranked.</i>
7. Does the Law provide for the publication of a notice of the award of the project, identifying the Private Party and including a summary of the essential terms of the project agreement?	XXX		No publication requirement.
8. Does the Law provide that the Contracting Authority or any other public authority maintain records of key information pertaining to the selection and award proceedings?	✓ ✓ ✓	Art 16 PPP	<i>The PPP Central Unit shall establish an electronic record for all PPP project documentation and also shall be competent to receive, investigate, and provide advice concerning complaints of Investors participating in PPP projects in preparation for submitting such complaints to the Supreme Committee for PPP Affairs.</i>
9. If the answer to the previous question is <i>Yes</i> , does the Law provide that such record is accessible to the public, or at least to interested parties?	XXX		No.

3.3 Final negotiations

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QUESTION	ANSWER	ARTICLE	COMMENTARY
10. Does the Law contain provisions regulating final negotiations (i.e. post contract award) so that transparency, equal treatment and competition are preserved?	✓ ✓ ✓	Art 31 PPP	<i>Negotiations with the successful bidder may take place with regard to some clarifications and details pertaining to the technical and financial terms. These negotiations shall not impact any contractual conditions stipulated in the invitation to bid as non-negotiable conditions, or conditions in respect of which there were no reservations raised by the bidder in its submitted bid. No amendments will take place to the technical and financial terms resulting in the reduction of terms included in the bid and based upon which the bid has been evaluated.</i>
11. Does the Law provide that the Contracting Authority has the authority to terminate negotiations with the invited bidder if it becomes apparent that the bid will not result in an agreement and start negotiations with the second ranked candidate?	XXX		No.

3.4 PPP Award without competitive procedure

QUESTION	ANSWER	ARTICLE	COMMENTARY
12. Does the Law provide that the Contracting	XXX		No.

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Authority has the authority to award a PPP without a competitive process only in limited/ exceptional circumstances?			
13. Does the Law provide for a procedure, set of rules or principles to be respected when awarding a PPP without a competitive process?	N/A		N/A

For our general information, please specify the conditions which would allow such direct negotiations?



3.5 Special case of unsolicited proposals

QUESTION	ANSWER	ARTICLE	COMMENTARY
14. Does the Law provide for an adequate framework for the Contracting Authority to manage unsolicited proposals/private initiatives (i.e. a proposal relating to the implementation of a PPP that is not submitted in response to a request or solicitation by the Contracting Authority) that ensures transparency and equal treatment and does not distort competition?	XXX		No.

3.6 Review procedures

QUESTION	ANSWER	ARTICLE	COMMENTARY
15. Does the Law allow the bidders who claim to have suffered, or that may suffer loss or injury, to seek review of the Contracting Authority's actions or failure to act?	XX	Art 32 PPP	Only in case of cancellation of a tender <i>The cancellation of a tender shall be by virtue of a decree issued by the Competent Authority of the Administrative Authority based on the recommendation of the committee responsible for receiving and studying the bids and based on a previous approval from the Supreme Committee for PPP affairs. The decree must include reasons for its issuance. Bidders shall not claim any compensation for a</i>



		<p>Art 83 PPP Executive Regulations</p>	<p><i>decision to cancel a tender, except for a percentage of bidding expenses incurred by bidders whose technical bids were qualified, in accordance with the provisions of the Executive Regulations.</i></p> <p><i>No bidder is allowed to claim any compensation for the cancellation decision, with the exception of a compensation of 10% from the actual expenses incurred by the bidder for the preparation of its bid with a cap of five hundred thousand Egyptian pounds [around Euro 62,500].</i></p> <p><i>These compensation amounts shall be payable by the Administrative Authority from its budget within three months utmost, from the date of filing a request at the said Authority by the bidder or its legal representative, by virtue of a power of attorney to receive payment.</i></p>
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4. **PROJECT AGREEMENT**⁶

4.1 **Model or list of provisions**

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>1. Does the Law give flexibility to the negotiation of most terms of the Project agreement and if it contain (or refer to): (i) a model PPP agreement it is an optional template agreement for guidance only or (ii) a list of mandatory material provisions which must be included in the agreement, the content of such provisions is left for negotiation)?</p>	<p>✓ ✓ ✓</p>	<p>Art 34 PPP Art 15 PPP</p>	<p>Provides a list of substantive provisions to be negotiated and included.</p> <p>Please note that so far there is no model PPP contract. <i>The Supreme Committee for PPP Affairs is competent for the following:</i> <i>d. Issuing the rules and general criteria for the PPP, and endorsing standard PPP contracts for use in different sectors.</i></p> <p>However, please note that the law does not allow the governing law to be any law other than the Egyptian Law.</p> <p>Also, there are some provisions that can be negotiated and others that cannot be touched as a result of the invitation for bid. .</p>

⁶ For further information on the project agreement definition, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 12 and 40 to 68 included.



		Art 31 PPP	<i>Negotiations with the successful bidder may take place with regard to some clarifications and details pertaining to the technical and financial terms. These negotiations shall not impact any contractual conditions stipulated in the invitation to bid as non-negotiable conditions, or conditions in respect of which there were no reservations raised by the bidder in its submitted bid. No amendments will take place to the technical and financial terms resulting in the reduction of terms included in the bid and based upon which the bid has been evaluated.</i>
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4.2 Duration and extension of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
2. Does the Law provide that the duration of the Project Agreement should depend on the length of time taken for the amortisation of the Private Party's investment and an appropriate return on the capital?	XX	Art 2 PPP	<i>The PPP contract duration shall not be less than five years and shall not exceed thirty years from the date of completion of the construction works and equipping works, or completion of the rehabilitation works, provided that the total value of the PPP contract is not less than one hundred million Egyptian Pounds. However, the Cabinet, based on the recommendation of the Supreme Committee for Public Private Partnership Affairs, may agree to conclude a PPP contract for more than thirty years, if it is required due to a material public interest.</i>



<p>3. Does the Law provide that the renewal or extension of the Project Agreement should be limited and depend on exceptional circumstances (<i>such as Contracting Authority default or an event of force majeure</i>)?</p>	XX	Art 3 PPP	<p><i>Without prejudice to Article 2 of this law, the PPP contract may include articles concerning its renewal.</i></p> <p><i>However, the Cabinet, based on the recommendation of the Supreme Committee for Public Private Partnership Affairs, may agree to conclude a PPP contract for more than thirty years, if it is required due to a material public interest. (Art 2 PPP)</i></p>
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For our general information, please provide the given minimum and maximum duration (if any) Minimum is 5years and no maximum (although a special approval from the cabinet must be obtained for projects with a duration exceeding 30 years).

4.3 Termination of the Project Agreement

QUESTION	ANSWER	ARTICLE	COMMENTARY
<p>4. Does the Law leaves open to the Project Agreement negotiations the list of possible ground for termination and the content of to the termination provision?</p>	✓ ✓ ✓	Art 34 PPP	<p>The contract must include provisions concerning termination without an exhaustive list of possible ground for termination :</p> <p><i>j. PPP contract duration, cases of early or partial termination, and the rights of the related parties;</i> <i>k. cases where the Administrative Authority has the right to unilaterally terminate the PPP contract, as well as the financial obligations resulting from the use of such right;</i> <i>l. regulation of handing over the project at the expiry of</i></p>



			<i>the PPP contract duration, or in case of unilateral, early or partial termination of the PPP contract.</i>
5. If the answer to the previous question is <i>No</i> does the Law provide for a list of grounds of termination which does not affect the balance between the parties rights and obligations (<i>one sided provisions</i>) or the stability of the contractual relation under the Project Agreement (e.g.: <i>too large or non exhaustive list</i>)?	N/A		
6. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for losses incurred as a result for termination on the grounds of public interest for losses incurred as a result of public authority acts?	✓ ✓		Does not prevent
7. Does the Law provide for (<i>or at least does not prevent</i>) compensation of the Private Party for all cases of early termination (<i>including in case of serious breach or failure by the Private Party</i>), for fair value after depreciation of the assets financed by the Private Party?	✓ ✓		Does not prevent



			<p><i>The Committee , to fulfill its duties, shall adopt all necessary actions and procedures to ensure compliance of the product or service with the required level, including sites' visits and random inspection at its discretion; request of necessary papers, information or data necessary to fulfill its functions.</i></p> <p><i>(...)</i></p> <p><i>In all cases, the Committee shall exercise its duties in a manner that shall not impede or disrupt operations in an unjustified manner. (...)</i></p>
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4.5 Financial responsibilities of the Private Party and Contracting Authority

QUESTION	ANSWER	ARTICLE	COMMENTARY
9. Does the Law provide that the Private Party can collect tariffs or fees for the use of the facility or its services?	✓ ✓ ✓	Art 1 PPP	<p><i>"Operation": management by the Project Company of the project, subject of the PPP contract, in relation to all financial, administrative, and technical aspects, as well as in respect of the supply of products, or provision of services to the Administrative Authority in relation to the project, in return for the remuneration agreed upon in the PPP contract, or according to the conditions and rules determined in the PPP contract.</i></p> <p><i>"Utilization": management by the Project Company of the project subject of the PPP contract in relation to all financial, administrative, and technical aspects, as well as the sale of products, or provision of services related to the project directly to whoever the Administrative Authority specifies, in accordance with the conditions and</i></p>



		<p>Art 7 PPP</p>	<p><i>provisions approved by the Supreme Committee for Public Private Partnership Affairs, and in accordance with the conditions and rules agreed upon in the PPP contract.</i></p> <p>The tariff structure is therefore left to the PPP contract but:</p> <p><i>the Administrative Authority is entitled to amend the conditions of construction, equipment, rehabilitation and other works as well as the services availability payment agreed upon under the PPP contract. If the PPP contract includes the entitlement of the Project Company to operate or utilize the project, and if required for the public interest, the Administrative Authority has the right to amend the rules of operation or utilization including the sale prices of products or services.</i></p> <p><i>These modifications will only take place within the scope agreed upon in the PPP contract and after the approval of the Supreme Committee for Public Private Partnership Affairs, and without prejudice to the right of the Project Company, or the Administrative Authority (as the case may be), for compensation in accordance with the conditions and rules stipulated in the PPP contract.</i></p> <p><i>If the sale price of the product or the services provision payment is amended, such amendment shall not have retroactive effect.</i></p>
<p>Does the Law provide for the possibility of fixed and/or consumption-based payments to the Private Party by the Granting Authority or other public authorities (<i>in the case of Power Purchase Agreement , shadow tool or PFI for instance</i>) ?</p>	<p>✓ ✓ ✓</p>	<p>Art 1 PPP Art 7 PPP</p>	<p>The tariff structure is left to the PPP contract subject to the amendment possibility of the Administrative authority - See §9 above</p>



5. SECURITY AND SUPPORT ISSUES⁷

5.1 Security Interests

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law provide for (<i>or does not specifically prevent</i>) a Private Party to create security interests over the project assets, rights and proceeds or other valuable guarantees related to the project?	✓ ✓ ✓	Art 11 PPP	<i>according to the PPP contract the Project Company shall not sell or arrange any right over the project's monies, assets, and facilities that are being constructed or rehabilitated, except for the purpose of implementing the replacement and renewal program stipulated in the PPP contract, and only after obtaining the approval of the Competent Authority. However, as an exception to the previous paragraph an arrangement for an accessory real right (e.g. commercial mortgage or real estate mortgage) could be granted to the Project Company for the purposes of financing based on a prior written approval from the Administrative Authority in accordance with the terms mentioned in the PPP contract.</i>
2. If the answer to the previous question is <i>Yes</i> , does the Law clearly state which types of security can be provided and include some of the most common type of guarantees in project financing (such as those listed in the request for general information below)?	✓ ✓ ✓	Art 36 PPP Art 37 PPP	<u>The Law:</u> <i>In all cases, pledge of the Project Company shares shall not take place except for the purposes of financing or refinancing the PPP project.</i> <i>The Project Company shall not waive the PPP contract or</i>

⁷ For further information on support and financial securities, please refer to: PFI Guide, Consolidated Legislative Recommendations, Recommendations 13, 49, 57 and 60.



		<p>Art 38 PPP</p>	<p><i>any of its rights or obligations there under except for the purpose of financing and after a prior written approval from the Competent Authority of the contracting Administrative Authority.</i></p> <p><i>The contracting Administrative Authority is entitled to enter into direct agreements with the project's financing institutions and the Project Company, to regulate the method of payment of the financial obligations of the Administrative Authority to the Project Company and the financing institutions.</i></p> <p><i>Such agreements may include a provision whereby the Ministry of Finance guarantees the Administrative Authority's payment of its contractual financial obligations. Such agreements shall include a provision regulating the right of the financing institution to step in and assume the role of the Project Company in executing the provisions of the PPP contract, or to appoint a new Investor after the approval of the Competent Authority in case the Project Company defaults in either performing its material obligations, or meeting the quality levels established by law or in the PPP contract, in a manner that entitles the Competent Authority to terminate the PPP contract.</i></p> <p><u>Common Securities:</u></p> <ul style="list-style-type: none"> 9- Commercial mortgage subject to the prior written approval of the Administrative Authority; 10- Assignment of proceeds subject to the prior written approval of the Administrative Authority; and 11- Assignment of insurance policies.
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For our general information, please can you confirm whether a Private Party may pledge or assign by way of security:

- *the proceeds and receivables arising out of the PPP; Yes, for financing purposes and subject to the prior written approval of the Administrative Authority.*
- *the assets for which it has rights of use under a project agreement; No, assuming that these assets were provided by the Administrative Authority.*
- *its property; Yes, for financing purposes and subject to the prior written approval of the Administrative Authority.*
- *shares of the Project Company; Yes, pledge is allowed for financing purposes and subject to the prior written approval of the Administrative Authority.*
- *the project agreement; or Yes, for financing purposes and subject to the prior written approval of the Administrative Authority.*
- *obtain other valuable guarantees (please specify)? Commercial Mortgage (Fond de Commerce), subject to the approval of the Administrative Authority.*

5.2 Government support

QUESTION	ANSWER	ARTICLE	COMMENTARY
3. Does the Law provide for (or does not specifically prevent) the public authority to provide support to the Contracting Authority and a guarantee for the proper implementation	✓ ✓ ✓	Art 38 PPP:	<i>The contracting Administrative Authority is entitled to enter into direct agreements with the project's Financing institutions and the Project Company, to regulate the method of payment of the financial obligations of the Administrative Authority to the Project Company and the</i>



of the PPP by the Contracting Authority?			<p><i>financing institutions.</i></p> <p><i>Such agreements may include a provision whereby the Ministry of Finance guarantees the Administrative Authority's payment of its contractual financial obligations. Such agreements shall include a provision regulating the right of the financing institution to step in and assume the role of the Project Company in executing the provisions of the PPP contract, or to appoint a new Investor after the approval of the Competent Authority in case the Project Company defaults in either performing its material obligations, or meeting the quality levels established by law or in the PPP contract, in a manner that entitles the Competent Authority to terminate the PPP contract.</i></p>
4. Does the Law provide for (or does not specifically prevent) the Public Authority to provide financial or economic support for the implementation of PPP?	✓ ✓ ✓	Art 38 PPP	<p><i>The contracting Administrative Authority is entitled to enter into direct agreements with the project's Financing institutions and the Project Company, to regulate the method of payment of the financial obligations of the Administrative Authority to the Project Company and the financing institutions.</i></p>
5. If the answer to the previous question is <i>Yes</i> , does the Law clearly state which public authorities may provide such support and which types of support can be provided? (i.e. <i>tax and customs benefits; foreign exchange protection (convertibility and transfer guarantees; subsidies; equity or loan participation)</i>)?	✓ ✓ ✓	Art 38 PPP	<p><i>Such agreements may include a provision whereby the Ministry of Finance guarantees the Administrative Authority's payment of its contractual financial obligations.</i></p>



5.3 Lenders' rights

QUESTION	ANSWER	ARTICLE	COMMENTARY
6. Does the Law provide for the Parties to arrange the financing with reasonable flexibility under the Project Agreement without strict time constraints or other constraints (<i>except with respect to security package and government support</i>)?	✓ ✓ ✓		The law provides for a possibility of Direct Agreement with the Lender which should give the necessary flexibility
7. Does the Law provide, in the event of the default of the Private Party for the lenders to “ <i>step-in</i> ” or substitute the Private Party with a qualified new Private Party without initiating a new tender process?	✓ ✓ ✓	Art 38 PPP	<p><i>Such agreements shall include a provision regulating the right of the financing institution to step in and assume the role of the Project Company in executing the provisions of the PPP contract, or to appoint a new Investor after the approval of the Competent Authority in case the Project Company defaults in either performing its material obligations, or meeting the quality levels established by law or in the PPP contract, in a manner that entitles the Competent Authority to terminate the PPP contract.</i></p> <p><i>Such agreements may include a provision whereby the Ministry of Finance guarantees the Administrative Authority's payment of its contractual financial obligations.</i></p> <p><i>Such agreements shall include a provision regulating the right of the financing institution to step in and assume the role of the Project Company in executing the provisions of the PPP contract, or to appoint a new Investor after the approval of the Competent Authority in case the Project Company defaults in either performing its material obligations, or meeting the quality levels established by law or in the PPP contract, in a manner that entitles the Competent Authority to terminate the PPP contract.</i></p>



6. SETTLEMENT OF DISPUTES AND APPLICABLE LAWS⁸

6.1 Settlement of disputes

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Does the Law permit the Contracting Authority to enter into a Project Agreement that is subject to international arbitration?	✓ ✓	Art 35 PPP	<p><i>After the approval of the Supreme Committee for PPP Affairs, it may be agreed to resolve disputes resulting from the PPP contract through arbitration, or any other non judicial means of dispute resolution according to what was stipulated in the PPP contract.</i></p> <p>We understand that the Supreme Authority can give this approval either at the time of the contract or at the time of the dispute.</p> <p>No specific reference to International Arbitration.</p>
2. Has the government of the country ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) (1965)?	✓ ✓ ✓		

⁸ For further information on the settlement of disputes, please refer to: PFI Guide, Consolidated legislative Recommendations, Recommendations 57, 69 and 71.



3. Has the government of the country ratified the New York Convention on recognition and enforcement of foreign arbitral awards (1958)?	✓ ✓ ✓		



6.2 Applicable laws

QUESTION	ANSWER	ARTICLE	COMMENTARY
4. Does the Law permit (<i>or does not prevent</i>) the Contracting Authority) to enter into side agreements to the Project Agreement (such as <i>a direct agreement with the lenders to the project or a support and guarantee agreement in respect of the Project Agreement</i>) that is governed by foreign law.	✓ ✓	Art 35 PPP	<p><i>The PPP contract shall be subject to the provisions of the Egyptian Law. Any contrary agreement shall be deemed to be null and void.</i></p> <p>This provision does not affect the possibility for side agreements other than the PPP contract to be governed by foreign law.</p>
5. Has the country ratified any international convention for the protection of foreign investments?	✓ ✓ ✓		<p>Egypt signed bilateral agreements with more than a hundred countries, including most of the European Union countries, the United States and several African countries, the Middle-East and Asia. On the Mediterranean Basin, Egypt has signed bilateral conventions with Algeria, Spain, France, Greece, Italy, Libya, Lebanon, Malta, Morocco, Portugal, Tunisia and Turkey.</p>



II- EFFECTIVENESS ASSESSMENT: HOW THE LAW WORKS IN PRACTICE:

(Please comment based on the previous 2006 effectiveness general assessment)

7. POLICY FRAMEWORK

7.1 Existence of PPP Policy Framework

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a general/national policy framework (explicit or implicit) for PPPs for infrastructure or public services?	✓ ✓	Art 15 PPP	<p><i>The Supreme Committee for PPP Affairs is competent for the following:</i></p> <p><i>a. Setting of an integrated national policy for the PPP, and identifying the framework, objectives, mechanisms, and targeted scope of the projects.</i></p> <p>Such policy was not declared yet. However, there seems to have been a general trend during recent years to turn from full privatization to PPPs. This is in light of the negative connotation that privatization projects have gained during the previous administration's rule (due mostly to corruption and the sale of some allegedly successful public companies).</p> <p>A Government's National Program on PPPs was elaborated in 2009 A Government sponsored PPP Investment Summit took place in 2010: An October 2011 article from the Head of the PPP Unit claims that the government will be looking into more PPP projects:http://www.zawya.com/story.cfm/sidZAWYA20111016063631</p>



			/Infrastructure in Egypt
2. Is there any administrative guidance or printed information edited by the government or the PPP Unit concerning the legal framework for PPP projects in the country?	✓ ✓ ✓		Yes Government's National Program on PPPs 2009: http://www.investment.gov.eg/en/Investment/Documents/Public%20Private%20partnership%20June%202009.pdf
Is there a municipal/regional policy framework (explicit or implicit) for PPPs in infrastructure or public services?	XXX		No

7.2 PPP Awareness and Sustainability

3. Is there a national and/or municipal /regional long term programme for PPP promotion and awareness?	XXX		We are not aware of any.
4. Are there PPP training programmes on a national and/or municipal/regional level for public servants and other PPP concerned people?	XXX		We are not aware of any.



5. Are there PPP courses as part of university curriculum or specialist departments and faculties in universities teaching PPP?	XXX		We are not aware of any.
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7.3 Obstacle to implementation of PPP Policy

<p>6. Are you of the opinion that there are no social/political obstacles to implementing PPP in the country (e.g. grass roots opposition, policy measures against private sector participation in public infrastructure/services, etc.)?</p>	<p>XX</p>		<p>Because Egypt had a “<i>non-transparent</i>” experience with privatization, there is an inherited negative perception of the private sector or any cooperation between the private sector and the public sector.</p>
<p>7. Are you of the opinion that there are no legal obstacles to implementing PPP in the country (e.g. non-publication of a decree provided under the Law and necessary for such law to become effective, etc.)?</p>	<p>✓ ✓ ✓</p>		<p>So far none.</p>



For our general information, please describe the existing impediment and obstacles if any with respect to the two previous questions

8. INSTITUTIONAL FRAMEWORK

8.1 Existence and role of PPP Central Units/Agency

QUESTION	ANSWER	ARTICLE	COMMENTARY
1. Is there a specialised institution/agency/ministerial department established to promote PPP and to serve as Central PPP Unit?	✓ ✓ ✓	Art 16 PPP:	<p><i>A unit of special nature "The Public-Private Partnership Central Unit" is established within the Ministry of Finance. A decree shall be issued by the Minister of Finance stipulating its structure, and the appointment of its head. The Executive Regulations shall determine the administrative and financial framework of the PPP Central Unit, its relationship to other state organizations and its system of work, its employees as well as their remunerations with no restriction to applicable government regulations in this regard.</i></p> <p><i>Moreover, PPP satellite units within the Administrative Authorities shall be established, whenever necessary. A decree shall be issued by the Competent Authority of the Administrative Authority regarding the structure of such units, their competencies and the system of their work.</i></p> <p><i>The PPP Central Unit shall be competent to provide technical, financial, and legal expertise to the Supreme Committee for PPP Affairs and to the PPP satellite units at the Administrative Authorities. It shall also lay out and follow-up procedures to tender and conclude PPP contracts and their execution, and prepare and publish studies, information, and statistics related to PPP projects, both locally and internationally. The PPP Central</i></p>



			<p><i>b. Endorsing the application of the PPP structure on projects of Administrative Authorities.</i></p> <p><i>c. Monitoring the allocation of financial funds to ensure the fulfillment of financial obligations resulting from the implementation of PPP contracts.</i></p> <p><i>d. Issuing the rules and general criteria for the PPP, and endorsing standard PPP contracts for use in different sectors.</i></p> <p><i>e. Endorsing the recommendation of the Competent Authority of the Administrative Authority related to the selection of the contracting party entering into the PPP contract, and approving the conclusion of the contract.</i></p> <p><i>f. Conducting studies and proposing means to provide and develop the market tools necessary to provide appropriate financial structures for PPP projects.</i></p> <p><i>No later than three months from the end of the fiscal year, the Supreme Committee for PPP Affairs shall prepare a report including the results of its activities in respect of infrastructure projects, services and public utilities and the consequential financial implications for the public budget and public debt.</i></p> <p><i>The Minister of Finance shall submit the above mentioned report to the People’s Assembly together with the draft laws related to the budget final accounts. .</i></p>
<p>2. Is such Central PPP Unit composed mainly of specialists recruited from the business community and not exclusively composed of civil servants coming from different public ministries?</p>	<p>✓ ✓ ✓</p>	<p>Art 16 PPP</p>	<p>The PPP Unit is composed mainly from public servant but who may come from the private sector. Currently, Most of the officials at the PPP Central Unit came from the private sector.</p> <p><i>The Executive Regulations shall determine the administrative and financial framework of the PPP Central Unit, its relationship to other state organizations and its</i></p>



		<p>Art 11 PPP Executive Regulations</p>	<p>system of work, its employees as well as their remunerations with no restriction to applicable government regulations in this regard.</p> <p>The PPP Central Unit also shall be competent for the selection of advisers for the tender of PPP projects and contracting with them in accordance with the rules and procedures stated in the Executive Regulations of this Law.</p> <p>The organization structure of the Unit shall comprise a Director in the rank of head of sector; a deputy Director in the rank of head of central department; three central departments comprised of an appropriate number of general departments and departments. The Director of the Unit shall be under the direct supervision of the Minister of Finance.</p> <p>The provisions of the Unit's employees' affairs and their organization structure are governed under the employment regulations decree issued by the Prime Minister specifying the employment system which includes remuneration packages, bonus and incentives system for the Unit's employees, The provisions of law on the state's civil servants system promulgated by Law no. 47/1978 shall apply where no special provision is incorporated in the Unit's employee Regulations provided that it is not inconsistent with such Regulation provisions.</p>
<p>3. Is the role of such Central PPP Unit comparable to a "task force" assisting in the development of projects in general and not limited to promotion</p>	<p>✓ ✓ ✓</p>		<p>1) The PPP Unit, under the Law, only has an advisory role. However in practice it interferes more in the negotiations and execution of the PPP bid and contract.</p>



			<i>receive and evaluate bids shall not be valid unless a representative of the PPP Central Unit is present.</i>
5. Is one of the roles of the Central PPP Unit to assist in building capacity namely of the public sector with respect to PPP?	✓ ✓ ✓	Art 16 PPP	<i>The PPP Central Unit shall be competent to provide technical, financial, and legal expertise to the Supreme Committee for PPP Affairs and to the PPP satellite units at the Administrative Authorities. It shall also lay out and follow-up procedures to tender and conclude PPP contracts and their execution, and prepare and publish studies, information, and statistics related to PPP projects, both locally and internationall</i>

For our general information, please name such establishment and specify its place in public hierarchy, format and key functions (regulatory, operational, know how collecting, etc. or a combination thereof). PPP Central Unit, a unit under the Minister of Finance. Please check articles 9-11 of the executive regulations.

8.2 Other institutions concerned by PPP

6. Is there any PPP unit/agency or department of the Central PPP unit either at the municipal or regional level?	✓ ✓	Art 16 PPP	<i>PPP satellite units within the Administrative Authorities shall be established, whenever necessary. A decree shall be issued by the Competent Authority of the Administrative Authority regarding the structure of such units, their competencies and the system of their work. No decree has been issued yet</i>
7. Is there any specific PPP unit department in any ministry (other than the central PPP unit) or at sectoral level?	✓ ✓	Art 16 PPP	<i>PPP satellite units within the Administrative Authorities shall be established, whenever necessary. A decree shall be issued by the Competent Authority of</i>



			<p><i>the Administrative Authority regarding the structure of such units, their competencies and the system of their work.</i></p> <p>No decree has been issued yet</p>
8. Is there either a specific “one stop shop” for PPP authorisations and formalities or a “one stop shop” which services are available to the sponsors of PPP project as well as other investors?	XXX		No
9. Is the division of power between different public authorities involved in the PPP granting process simple and coordinated?	✓ ✓		<ol style="list-style-type: none"> 1. There is not such division as per the Law. 2. In the circulars of the PPP Unit, there is a simple and coordinated process which would lead to a very clear division of responsibilities. However, in practice this is not quite the case.

9. PPP LAW ENFORCEMENT

9.1 Effectiveness of PPP enforcement and compliance with the Law

QUESTION	ANSWER	ARTICLE	COMMENTARY
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1. Have any PPP projects in any form ever been awarded in the country on the basis of the Law discussed above ? <i>(with or without specific reference to the Law)</i>	✓ ✓		No. The PPP law is too recent. Several projects have been implemented based on Concession Law or Sectorial Law
2. Have such PPP projects, if any, been awarded generally following a transparent competitive selection procedure <i>(and only through direct negotiation under exceptional legal circumstances as may be provided by the Law)</i> ?	✓ ✓ ✓		Yes
3. Have any PPP projects or similar long term agreements <i>(falling under the definition of PPP under this questionnaire)</i> never been awarded on any legal basis different from the Law since the Law has been in force?(bypass of the Law)	✓ ✓		Recently one PPP project was successfully awarded, which is the New Cairo Wastewater Treatment Plant. This project was offered and awarded before the new PPP Law was issued and therefore is not subject to this Law but to previously existing laws. We can therefore not say that the Law was bypassed.

For our general information, please give example of legal instruments, or reasons used, to bypass the Law and establish a PPP. N\A

9.2 Statistics on PPP implementation under the Law

4. Have most of the awarded PPP projects been successfully implemented and put into operation in compliance with the Law?	✓ ✓		No projects were granted based on the new PPP Law. PPP Projects have however been previously awarded under the concession law or specific law (electricity,
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			solid waste).
5. Has a PPP project ever been awarded and implemented in the country at the local /regional /municipal level in compliance with the law?	✓ ✓		Yes, e.g. 1) North Ain Sokhna Port. 2) Sidi Krir. 3) Marsa Alam International Airport.
6. Have PPP project ever been awarded in the country in the non merchant sector (<i>such as Hospital, School, prisons</i>) and not exclusively in the merchant sector (<i>energy, water, transport</i>)?	XX		Not yet but we are aware a hospital project is currently in the pipeline.

For our general information:

- Approximately how many PPP projects are presently in operation (figure or order of magnitude) in the country and in what sectors have PPP projects been awarded (energy, water, education, health for example)? Many projects; however only one project was conducted under the supervision of the PPP Central Unit but before the PPP Law was issued.
- Please give some examples of the most significant project awarded:
 - 1) North Ain Sokhna Port.
 - 2) Sidi Krir Power Plant.
 - 3) Marsa Alam International Airport.

Checklist Egypt



- under which legal form have such PPP projects been awarded (Concession, BOT, PFI, other):
Concession and Sector Specific Laws.
- have such PPP project been granted by (i) central, (ii) sub-sovereign/regional (if applicable) or (iii) municipal government as Contracting Authority; mix of them all.
- when did PPP begin to be awarded in the country: (i) in the last 10 years or before; (ii) in the last 5 years; or (iii) within the past few years only; and within the past few years. However concessions and BOT were known in the country since very long time ago.
please give examples of any PPP projects awarded but not implemented (or not implemented under a PPP form) New Cairo Wastewater Treatment Project.
- are there any PPP/Project Agreements in discussion? Yes.

9.3 Challenge of PPP

7. Are you of the opinion that there is a reasonable chance for an unsuccessful bidder to successfully challenge in the country a PPP awarded under conditions contrary to the Law?	✓ ✓		Yes.
8. If the answer to the previous question is <i>Yes</i> , are you of the opinion that there is a reasonable chance for the plaintiff to get some compensation or for such action to result in the cancellation of the award?	✓ ✓		Yes.
9. Have PPP project been implemented by the parties most generally without serious claims/arbitration by either Party concerning the	✓ ✓		Electricity PPP projects and other concessions projects have generally been implemented without major claims



performance of the Project Agreements under the Law?			
10. If any Project Agreement has been terminated prior to the end of the contractual period by the Contracting Authority, has fair compensation been paid to the Private Party in compliance with the Law?	N/A		N/A

For our general information, can you provide any examples of a successful legal challenge in the courts or otherwise of a PPP award in the country based on the PPP Law? Please describe the matter and, if known, the outcome of such matter. We are not aware of any.