

Regulating and Financing PPPs in Syria

31st October 2009



Defining PPP

Agreed Definition



The Syrian Concept

- ❑ The concept was not absent in the Syrian legal and economic framework
- ❑ Some PPP initiatives were implemented without:
 - ❑ Clear and well-defined policy – no common vision of involved stakeholders
 - ❑ Proper institutional set up
 - ❑ Conducive regulatory framework providing for the legal aspects of PPP

Partnering with the Public Sector under Syrian Laws

- ❑ **Civil Law of 1949**
 - ❑ Concession de service public
- ❑ **Public Procurement Law 51 of 2004**
 - ❑ Limited scope
- ❑ **Public Sector Entities Law no 2/2005**
 - ❑ Partnerships with the private sector under special “legal deeds”
 - ❑ Separating ownership from management in public sector

Financing Partnerships with Syrian Public Sector

- ❑ Financing Resources
 - ❑ Licensed banks and financial institutions
 - ❑ Regional and international financing institutions
 - ❑ Treasury bills
 - ❑ Capital Market
- ❑ Regulators
 - ❑ Central Bank of Syria
 - ❑ Syrian Commission for Financial Markets and Securities
 - ❑ Higher Council for Tourism Investment

Previous Experiences

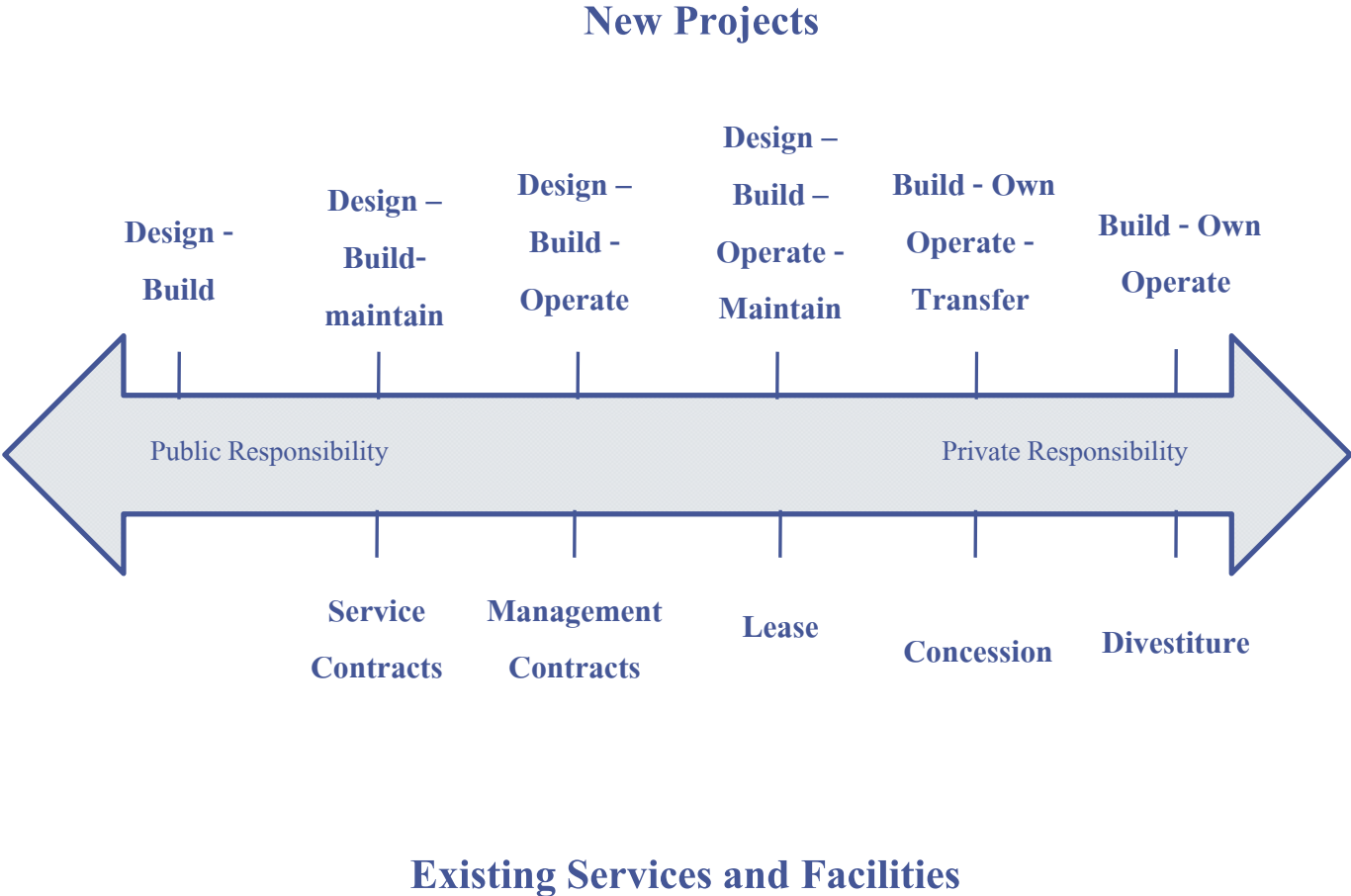
Joint Venture Agreements/Companies

Build Operate Transfer

Production Sharing Agreements

Management Contracts

Most Common Models



Source: The National Council for Public Private Partnerships

Port of Lattakia in the 50's

One of the First Syrian PPPs

Objective	Establishment and construction of an infrastructure project through the creation of a strategic port that can compete with other ports on the Mediterranean realising the need for financing and management skills and techniques
Legal Grounds	<ul style="list-style-type: none">• new legal concept which combines partnership between public and private sector.• Innovative corporate governance to secure representation of all stakeholders in the management• Special legislative decree for incorporation of the company enabling the ownership of the port as well as the right to grant concession.
PPP Model	<ul style="list-style-type: none">• Establishment of a joint sector shareholding company• Concession Contract

Port of Lattakia in 2009

One of the Latest Syrian PPPs

Objective	Desire of GoS to promote participation of the private sector in the operation, management and development of the Port of Lattakia
Legal Basis	<ul style="list-style-type: none">• Law 2/2005 encouraging separation between management and ownership• The unified investment Policy of Lattakia and Tartous ports issued by Decree no. 67/2002□ Appointment of an international transaction advisor (UNDP) throughout the pre/tendering process only
PPP Model	<ul style="list-style-type: none">• Management Contract on profit sharing• Establishment of the operating company

Lattakia Port 09 - Legal Analysis

Tendering and Contract Awarding Process

- Introduction to a new business model in partnering with the public sector building on previous experiences in port management.
- Clear publicity of scope and output
- Well structured and systematic tendering process
 - Stage 1 best and final offer
 - Stage 2 competitive dialogue
- Liaise and understand private sector concerns
- Introducing the preferred bidder concept
- Identifying the Contractor under the form of an SPV
- Transparent and objective contract negotiations
- Effective contract award process

Lattakia Port - Legal Analysis

Difficulties Faced

- Absence of expertise in the negotiation phase
- Insufficient data for completion of legal and financial due diligence on the port
- Inefficient handing-over process
- Transfer of public employees to private sector
- Bankability and access to finance
- Management of bank accounts
- Auditing and financials
- Tax issues

Developing the Concept and Lessons Learned

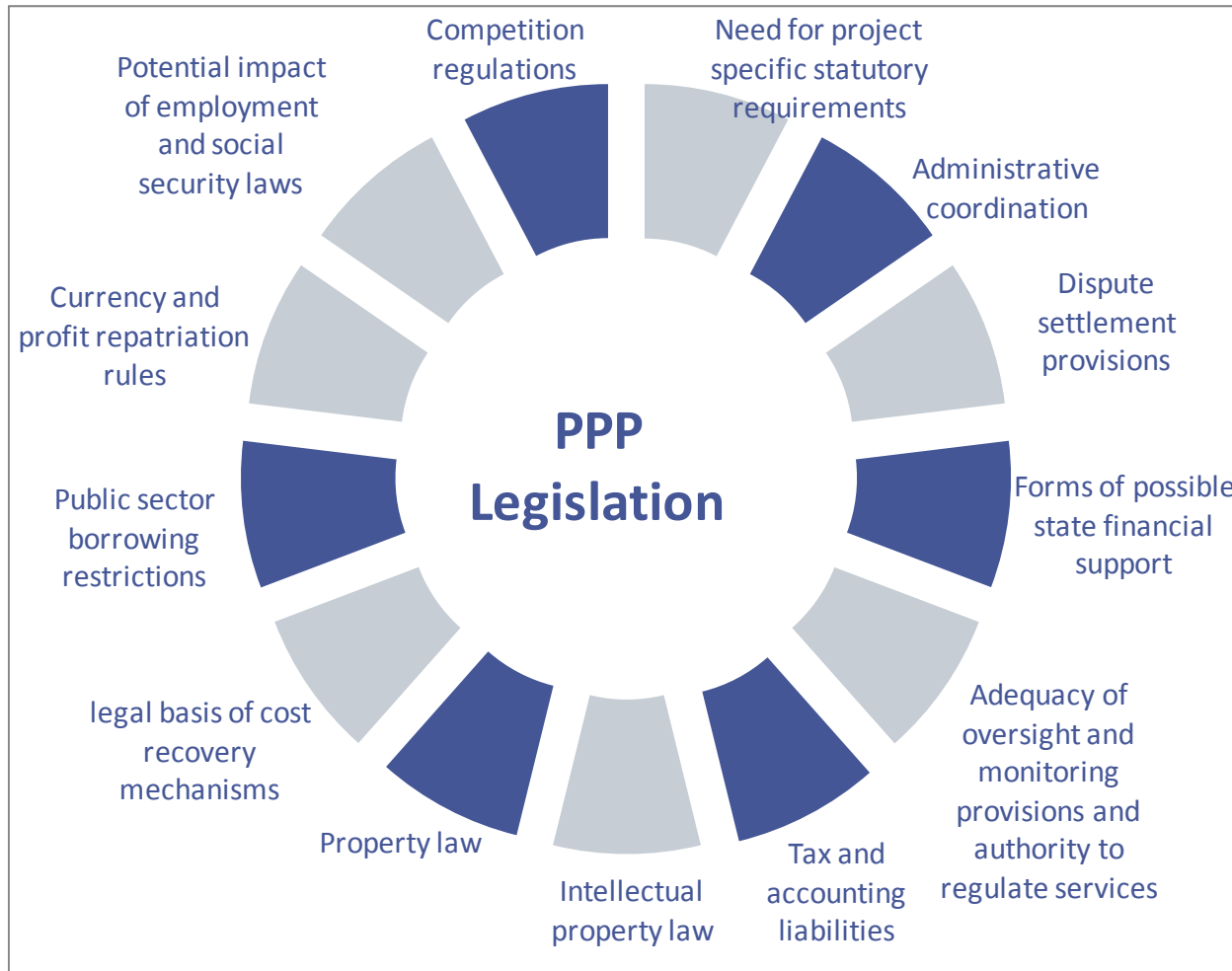
- ❑ Not yet specific preparation in the legal environment in order to accept PPP project.

- ❑ Any further expansion of PPP projects would surely require:
 - ❑ Formulation of PPP Policy which should be in line with the government objectives
 - ❑ Proper Legislative environment - legislative amendments/ new legislations, and
 - ❑ Institutional readiness - good quality institutional support of public agencies

Special PPP Legislation ?

- ❑ Drafting special legislation in harmony with the legislative framework tends to be more advantageous vis a vis ad hoc arrangements for PPP
- ❑ Previous experience proved that partnering with the public sector according to a special decree was relatively successful
- ❑ The legal system in Syria is still evolving therefore full legal due diligence and careful contract design are crucial
- ❑ Securing smooth financing methods to enable bankable PPPs

Legal Environment Surrounding PPP



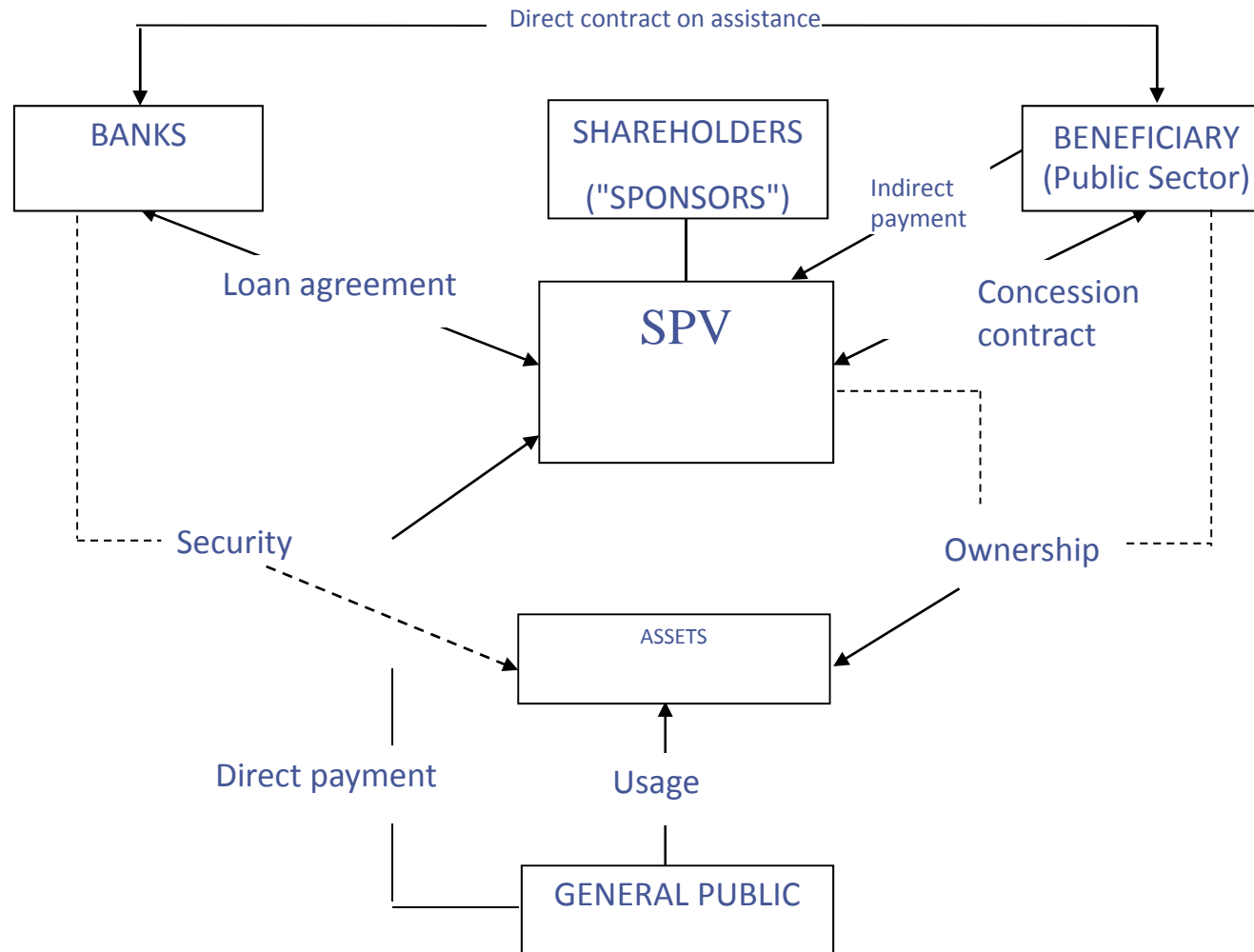
PPP Financing Principles

- ❑ Private Investors apply their own funds only to a minor portion of the projects.
- ❑ Most of the funding would be provided by financiers – commercial banks and international financial institutions.
- ❑ Projects' Bankability - ability to attract funding is one of the key issues to be resolved by both the public and the private sectors.
- ❑ Non-bankable projects are not PPP-feasible.

Bankable PPP Projects

- ❑ **Certain Cash Flow**
 - ❑ project must offer sufficient certainty in respect of factors that influence cash flow.
- ❑ **Security**
 - ❑ will require that any receivables and assets obtained within the framework of the project were pledged to the financiers.
- ❑ **“Step – in” Provisions**
 - ❑ the public sector may reserve special rights to interfere in such projects.
- ❑ **Public Guarantee**
 - ❑ help the public sector to cut certain costs and risks by providing public guarantees covering liabilities of private partners or the relevant joint venture(s).

Classical Financing Model



Conducive Legal Environment

- Examination of the existing legislative and regulatory framework - to ensure that there are no distortions in the overall incentive environment (the tax regime, labor laws and banking, foreign exchange, import and foreign investment restrictions).
- Evaluation of existing legal systems - to ensure that the enabling legislation has the appropriate corporate and commercial laws in place to support private investment
- Inter-governmental coordination for streamlining of regulatory framework
- Establishing the necessary legislative and regulatory framework to support PPP programmes

Thank You