Dubai's Public Private Partnership Law

Public Private Partnerships, or PPPs, are essentially partnerships between government and the independent private sector, pursuant to which delivery of a public service is transferred, for a period of time, from the public party to the private party.

These structures have, for many years and in many countries, been seen as a means of risk sharing and creating collaboration between the two sectors on substantial infrastructure and like projects. With a few notable exceptions, that has not, however, been the norm for such development in the United Arab Emirates (UAE).

On 19 November 2015, Dubai's Law No. 22 of 2015 Concerning Regulating Partnership Between the Public and Private Sector (the PPP Law) came into force. Prior to the advent of the PPP Law, under the long-established infrastructure development model used in the UAE, government alone has largely been responsible for the development and construction of each infrastructure project, and owns each such project, financing it entirely from its own resources. The new law may herald a change to this.

The PPP Law reflects the growing strength of the private sector in the UAE, formerly dominated by large governmental and quasi-governmental commercial ventures, and puts the Emirate of Dubai on equal legal footing with neighbouring jurisdictions such as Kuwait, Oman and Egypt, which have enacted comprehensive PPP laws. The law has been well received locally and certainly is an expression of the Government of Dubai's willingness to tap the financial resources and expertise of the private sector in meeting the Emirate's growing infrastructure needs.

Scope of the PPP Law

The PPP Law is a Dubai law, not a Federal law, and does not apply in any of the UAE's other six Emirates. Otherwise, the law is stated to apply to all partnership or joint venture arrangements made between any government agency and private establishment or companies in Dubai other than projects related to the production of water and electricity and contracts for works or materials government by the Procurement Law (Dubai Law No. 6 of 1997). The law also stipulates that other specific projects and contracts may be excluded in future by the Emirate's Supreme Committee for Fiscal Policy.

Purpose of the PPP Law

The PPP Law sets out a number of objectives and statements of purpose. These include:

- To encourage the private sector to participate in development projects and to generally increase investment
- To mitigate the financing burdens placed on the general budget in connection with project costs and to generally reduce the financial risk to Government of such projects
- To increase productivity and improve the quality of public services
- To facilitate the transfer of knowledge and experience from the private to public sectors and to train and qualify governmental personnel to manage and operate the projects in future

Structure of the Partnership

A government entity or department wishing to commence a project under the auspices of the PPP Law is required to form a Partnership Committee composed of members nominated by resolution of its Director General. Where the value of the project in question may exceed AED (Emirati Dirham) 200 million, it is a requirement that the Partnership Committee include at least one representative of the Dubai Department of Finance. It is unclear from the law as to how the Partnership Committee would interact with private project management.

A successful bidder is required by the PPP Law to form a Project Company to execute the project, with such Project Company to be in the form of a sole proprietorship, local or foreign company licenced to operate in the Emirate of Dubai (presumably by the Dubai Department of Economic Development). The government entity initiating the project may participate in the Project Company as an investor provided that the participation is through a limited liability company. The implication here is that, in that instance, the local ownership requirements of the UAE Companies Law (Federal No. 2 of 2015) will apply to the Project Company. Currently, all locally formed limited liability companies must by law be majority locally owned with at least 51% of the company's issued shares owned by a UAE national or a company entirely owned by one or more UAE nationals. In any event, it appears that Free Zone companies, which are licenced by their relevant free zone authority, would not qualify to form Project Companies under the PPP Law.

The PPP Law does provide that the relevant government department may exempt the successful bidder from the requirement to form a Project Company and permit it to execute the project directly where it is satisfied that the bidder has the ability to execute the project on its own, that it has adequate financial and technical capabilities to do so and that it posts adequate financial security for performance.

The Partnership Agreement

The PPP Law gives the government and private parties significant leeway to freely negotiate the terms of their Partnership Agreement. There are certain mandatory provisions, however, spelled out in Article 26 of the PPP Law which sets out 18 required terms including terms regarding types and amounts of insurance for the project, details concerning Emirati personnel to be retained and terms regarding what environmental protection measures will be undertaken.

Another important mandatory term is that the Partnership Agreement cannot exceed thirty (30) years in duration unless a longer term or extension is expressly granted by Dubai's Supreme Committee for Fiscal Policy.

Importantly, it appears that the law permits the Partnership Agreement to override the Procurement Law (Dubai Law No. 6 of 1997) and provide for its own procurement practices and procedures if the parties so agree. The law is silent, however, on whether or not the parties can rely on sovereign financial guarantees for the projects in question.

Governing Law and Dispute Resolution

The PPP Law provides that the Partnership Agreement must be governed by the Federal laws of the UAE as applied in the Emirate of Dubai and by local Dubai law. The Partnership Agreement may not provide for the resolution of disputes to be determined by arbitration outside the Emirate. This provision would still allow arbitrations to be conducted locally under the ICC Rules, for example, or in the Dubai International Arbitration Centre (DIAC). We also understand that the Government of Dubai interprets the relevant section so as to permit arbitration in the LCIA-DIFC Arbitration Centre in the Dubai International Financial Centre, a forum in which many foreign investors are often more comfortable.

Conclusion

The introduction of the PPP Law was not actually a legal requirement in order for Dubai to adopt a PPP model to advance its infrastructure requirements. Many countries, such as the US, Canada, Australia, the UK and others, pioneered the PPP concept without benefit of specific laws to implement these types of projects and have been using this model successfully for more than a generation. Also, UAE laws, including the UAE Commercial Companies Law (Federal Law No. 2 of 2015), Commercial Transactions Law (Federal Law No. 18 of 1993) and Civil Code (Federal Law No. 5 of 1985, as amended) already provide a perfectly viable means for implementing this type of arrangement. The law, however, serves as a signal to Dubai's growing private sector and to foreign parties contemplating doing business here that it is open for business and, moreover, open to changing its finance and operational business model for these types of projects for the benefit of Dubai.

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