PARTNERING UP WITH KUWAIT

Abdullah Alharoun, associate at International Counsel Bureau in Kuwait, analyses how Kuwait could be the new capital of public private partnership in the GCC

Since its independence in the early 1960s, the State of Kuwait has embarked on an extensive modernisation exercise. This manifested in a broad programme of construction projects, which entailed strong partnership between public and private entities. In fact, Kuwait was miles ahead of its GCC counterparts in this area, with an impressive roster of construction projects, including modern roads, cities, sporting facilities, airports, and oil and gas facilities.

However, following the first Gulf War in 1990, this construction boom decelerated significantly. Amongst several reasons, one of the things that attributed to this is the unsupportive legal framework which gave birth to the old public private partnership (PPP) regime housed within Law No. 7 of 2008. The old regime created several issues that contributed to the negative reputation Kuwait has earned when it comes to PPP projects. In fact, Kuwait's PPP projects were often criticised for being costly, rigid, and not granting fair competition to international players.

That being said, over the past two years the paradigm seems to be shifting. The state has taken steps to modernise the legal infrastructure in an effort to do away with outdated legislation, including the enactment of a new PPP law, Law No. 116 of 2014, which came into force on the publication of its executive bylaws on 29 March 2015. The new PPP law aims to remedy many of the negative aspects that had plagued the old regime and bring it in line with international best practices.

PROJECTS IN THE PIPELINE

Notwithstanding the dramatic plummeting of oil prices, which has a direct impact on public expenditure in Kuwait, the PPP programme spearheaded by the Kuwait Authority for Partnership Projects (KAPP) appears to be moving ahead with an impressive catalogue of megaprojects. This is further proven in 2015 when projects awarded were worth $30bn, comprising every sector within the economy; from oil and gas projects by the Kuwait National Petroleum Company, to construction projects by the Ministry of Public Works, as well as projects aimed at enhancing and expanding the current power, water and transportation facilities.

Modern infrastructural projects including the new road network connecting the various regions of the country are currently underway.

Kuwait is also adamant about developing its public transportation and logistics systems, with the introduction of the Kuwait National Rail Road project providing integrated links to Kuwait's sea ports, airports, new cities, and neighbouring countries. Furthermore, the much talked about Kuwait metro project seems to be on track to commence soon, with plans to create a system with a ticket price of $20bn, and which will eventually consist of 69 stations spreading over 160km of rail.

INCENTIVES AND INCREASE OF CONTRACT TERM

The spirit of the PPP Law intends to encourage unsolicited proposals from local, regional, and international players and contractors in various industries. From an intellectual property standpoint, the PPP Law provides extensive protection to the concept of the proposals. The law also has streamlined application processes to classify such proposals as "initiatives", and the feasibility studies

Kuwait City's skyline

Kuwait City

of which are awarded certain subsidies.

Additionally, one of the interesting developments in Kuwait's modern legal frameworks is the well-defined cross-applications of incentives between the PPP law and the direct investment promotion law (Law No. 116 of 2013 or the KDIPA law). The executive bylaws of the PPP law provide for specific incentives set forth on a project-by-project basis and granted to investors and contractors. Such incentives include exemptions from income tax and other duties, in addition to tax holidays conferred by virtue of the KDIPA law. According to the PPP law, the decisions taken by the PPP "Higher Committee" regarding incentives and exemptions are binding to all public bodies in Kuwait.

Furthermore, the term of the PPP contracts, which had been criticised as being too short and restrictive of economic feasibility under the old regime, has been extended to a maximum of 50 years - from the date of completion of construction, development and installation of project works.

PROJECT FINANCE

One of the main developments in the PPP law is the relaxation of rules when it comes to financing the projects. In stark difference to the old regime and for the purpose of giving comfort to lenders, the PPP law allows the granting of security over assets (such as the project itself), pledge of shares in the project company or over any receivables due to the contacting investor or project company.

Such steps aim to widen the pool of funding available to investors, by providing a robust and easily enforceable covenants package to lenders. Historically, as the rules under the old regime were averse to the granting of securities and the adoption of limited or non-recourse financing, projects in Kuwait were not afforded the same competitive advantage in securing the various financing opportunities by lenders. Additionally, this move is projected to stimulate the local banking system.

THE COMPETITIVE ADVANTAGE

It is crucial for players who intend to take part in the Kuwaiti projects programme to understand the business environment of the country. Kuwait - like many countries in the GCC - has several peculiar rules regarding the need for a local component in the form of local agent (except for some exempt circumstances under the KDIPA law). It also suffers from a lack of specialist courts and rigid local labour laws. Long lead items, such as licensing and the establishment of project companies, must be understood and planned for with appropriate buffers. The often bureaucratic landscape of the public sector, with which any player (whether investor, contractor, sponsor, and managers) has to work within, must be understood and planned against. The necessity of obtaining specialist advice from consultants who understand this business environment is often overlooked and undervalued.

The State of Kuwait is under increasing pressure to diversify its economy in order to move past the hydrocarbons-dominated national income. The dramatic decrease in oil prices has prompted serious plans to develop the country's physical and legal infrastructures, in an effort to liberalise its markets and become a hospitable environment - for both foreign capital and technical know-how. The modernisation of Kuwait's PPP programme, and other supporting legislations, is one step towards achieving these goals.