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High-Level consultations between senior representatives of Governments and the UNECE PPP Business Advisory Board

“Developing standards and best practices in PPPs”

PUBLIC- PRIVATE PARTNERSHIP IN TUNISIA

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PUBLIC- PRIVATE PARTNERSHIP IN TUNISIA

Bref Introduction : Tunisia and its economy

- Located in the north of Africa Tunisia has 164 thousands sq Km of area and 1400 km of sea cost



- 10,7 Mio inhabitants in 2010
- 5 800 production companies (>10 employees)

- GDP per capita 3950 US D (2010)

GDP Growth per year (%)	(%)
1970 - 2010	5
2011	-1.9
2012	3.6
2013	4

Share in GDP by sector (%)	2010
Agriculture and Fisheries	11,5
Manufacturing	19,7
Non-manufacturing (energy,mining,water,...)	7,4
Merchant Services (tourism, banking,ensurance,...)	48,4
Others	13

THE PPPs IN TUNISIA

The private sector participation in the financing, construction and management of infrastructure and equipment in Tunisia dates back to the 80s .

The most common public-private partnership contractual form in Tunisia, is the concession.

MAJOR PPP PROJECTS IN TUNISIA

The goal is not to quote but to show how the Tunisian legislation has evolved based on the experience required

1- Successful call :

Power Plant of Rades

The project's objective is to achieve a mode BOO power plant with a capacity of 471 mega watts to secure the national electricity production .

For selecting a short list the tender was launched in 1997.

The contract was awarded to U.S. investors (60%) and Japanese investors (40%).

The project starts in 2002 and it costs 260 million U.S. Dollars.

The main selection criteria were:

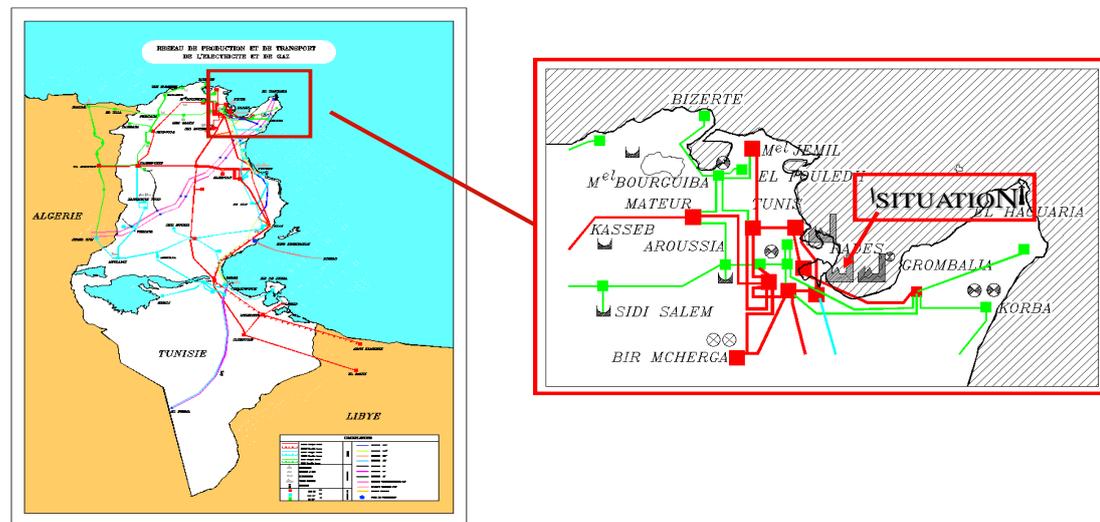
- The experience of similar projects
- The possession of power plant
- Experience in project financing without recourse to the state guarantee
- The financial capacity of the investor

Several contracts were signed between the investor and the STEG to have:

- Concession Agreement falling on 30 years
- Power Purchase Agreement
- Gas Agreement
- Land Lease Agreement
- Direct Agreement with Ministry
- Direct Agreement with STEG
- Novation Agreement

The purchase contract for electricity with STEG provides that the purchase price consists of a fixed part and a variable part.
The payment is Tunisian dinar and the transfer of profits is on a diet change in Tunisia.

Plan de situation



2

Enfidha Airport

Construction of a new airport under a BOT concession for the decongestion of airports of Tunis and Monastir with a capacity of 5 million passengers / year i twill be 30 million passengers / year terms.

The concession was awarded to Turkish group TAV for 40 years

The aeroport was opereted in November 2009 and costs 1000 Mdt .

The dealer was still managing the airport of Monastir .



Cruise terminal

Construction and operation of a cruise terminal at the port of La Goulette and a tourist village.

The concession period has been set at 30 years, renewable up to 20 years and was awarded following an unsolicited offer .

Operation and management of wastewater treatment plants ,

Private participation in the sanitation sector began in 1996, but as a simple public tender for a period of 3 to 5 years .

Currently private sector manages and operate 23% of the sanitation infrastructure with an annual cost of 8.7 MD .

The National Sanitation Office (ONAS) believes that the private sector plays its role . That has allowed ONAS to focus on the development of its network and the strategic studies.

Given that most of the contracts expire by 2014, ONAS was invited to follow national guidance by adopting concessions and PPPs

2. The failed calls

Deepwater port

Construction of a deep water port at Enfidha under a BOT concession , the study of the project was completed in 2007 the tender was launched in 2008 and no offer was deemed admissible.

Problem of underestimation of the business and financial - no sharing of risk between the Tunisian government and the investor.

The final conclusion that this project can not be realized in full BOT , the State shall contribute to finance this deep water port.

Sea Water Desalination

Finance ,build and manage a desalination sea water plant with a capacity of 50,000 m³ / day in Jerba under a BOT concession. The tender was launched in 2008 and saw the participation of five companies and groups .

By the end of 2010 the contractor was selected and go sign the agreement.

After the revolution in January 14th, 2011 the tender procedure is canceled because of lack of transparency and non-regulatory practices related for the selection of the contractor.

The project will be implemented directly by SONEDE and financed by external credit KFW

Sewage Treatment Plant

Construction of two sewage treatment plants in El Attar and Allef (total capacity of 100,000 m³ / day) and operation of two existing stations (south Méliane and Chotrana) ,

The preliminary study was completed in 2006 and the screening was launched in 2007 .Three dealers were shortlisted .

The feasibility study showed that the cost provided by private is higher than ONAS's cost and there is a challenging project .

A problem of underestimation of risk

1.3 Conclusion

In conclusion Preparing a PPP project takes more time , needs strong competence in the administration , deep and perfect studies able to show the best montage for the partner granting durability and adequate regulation

OVERVIEW OF CHANGES IN THE REGULATION OF PPP IN TUNISIA

1- CRITICAL ANALYSIS: CONCESSIONS

- There are Several sectoral laws governing the granting of concessions :such as sanitation, waste management , electricity , transport, ports, airports, highways , urban parks , forests, oil , mining, economic areas ...
- Some sectoral texts announce the principle without specifying the methods for granting, monitoring and control of these concessions.
- some texts does'nt specify the rights and obligations and guarantees between the two parts of the concession contract , especially those relating to buildings and built as part of the concession facilities.
- The lack of a specialized institution for concession, the multiplicity of stakeholders and lack of coordination
- Lack of knowledge and / or lack of expertise in the field of development and negotiation of concession contracts at the administration
- Reluctance of the private sector due to the absence of a legal framework that covers all aspects of the concession.

This led to the enactment of Law No. 2008-23 of April 1, 2008 on the regime of concessions to:

- Strengthen and complete the sectoral laws
- preserve the specificities of each sector , keeping the relevant sectoral laws on the one hand , and to strengthen and complement the sectoral framework with a general framework for different aspects of concessions
- Interpret sectoral laws in case of ambiguity.
- A framework that can be applied in areas where the legislation does not expressly recognize the possibility of granting concessions.

1- THE PRINCIPLES

- financial equilibrium of the concession contract .
- risk-sharing between the parties of the concession contract .
- opening initiative grants to unsolicited applications .
- competitive bidding for the selection of the concessionaire.

- specify the mandatory information for each concession .
- determine the general rights and obligations of the contracting parties.
- identify and define the property of the concession.
- Spend the idea of a real right in the concessions.

2- THE INSTITUTIONAL FRAMEWORK

creating a monitoring unit concessions in the Prime Ministry (Decree 2008-2965 of 8 September 2008)

3- DIFFICULTIES

- The law provides precisely control the public entity and does not set a legal framework ..
- The law outright references to the contract that is a risk (ability of the public person to negotiate facing a very experienced and advised private partner).
- New techniques are not provided (competitive dialogue control of the administrative court , protection of public finances and management by the judge accounts , criminalization of behaviors likely to seriously harm the public interest).
- The law is actually for large concessions (duty to create an ad hoc society, "Special Purpose Vehicle " (SPV)
- The law does not provide for its applicability to municipalities.

NEW REGULATORY FRAMEWORK :

PPP FRAMEWORK LAW

1- NEW CONTEXT

After the revolution the political, social and economic context has changed.

The new development model must meet the first challenge of creating jobs especially for university graduates , to ensure inclusive development , to reduce regional disparities , to develop sectors with high added value and innovation, to develop value chains based on the resources of regions and to ensure a growth rate of over 7% per year beyond 2016.

Given the pressure on public finances and the challenges, the state can not in itself raise the necessary funds to ensure sustainable regional development and economic growth.

Thus the policy of greater private sector involvement in development efforts through a sustainable partnership.

The role of the private requires the creation of a holy and transparent business climate and therefore an upgrade of the regulations in force.

The concession system has worked well for some types of projects that pay for themselves by charging fees but it showed the limits for others.

- Establishment of a National Committee in 2012 responsible for the preparation of the new regulatory framework has benefited from international technical assistance.
- An awareness and dialogue with civil society was engaged : round tables were organized around this theme
- A PPP Act was drafted and sent to the ANC for approval
- A decree establishing the High Authority for the PPP was written .
- A decree fixing the conditions, procedures and conditions for the award of concession contracts and public-private partnerships was written pending the approval of the Law on PPP .

2- THE PRINCIPLES LAID IN THE NEW LAW ON CONTRACTS OF PPP IN TUNISIA

- Transparency and equality before the public procurement
- the most advantageous offer
- the unsolicited offer
- Privacy
- integrity and absence of conflict of interest
- the exception of direct negotiation

3- THE INSTITUTIONAL FRAMEWORK

Creation of the national institution of public-private partnership under the supervision of the presidency of the government .

The missions of the national institution of ppp are:

- Provide advice to the government on issues relating to the various contractual forms.
- Coordinate proposals for public-private partnerships at the national level .
- Provide technical support to public entities
- Provide a notice of acceptance or rejection on the eligibility of projects
- Give an opinion about the documents presented relating to various stages of preparation and conclusion of PPP contracts

The prerequisites for ensuring the success of PPPs - what remains to be done ?

- ◆ Initiate a national dialogue about PPP to involve stakeholders : round tables were organized
- ◆ Awareness among policy makers of the importance of the alternative PPP in financing, design, construction and management of infrastructure projects and public services
- ◆ Write a strategic guidance note confirming the choice of PPP for inclusive and sustainable economic development .
- ◆ Create a stimulating private investment environment
- ◆ Provide administration proficient and able to lead discussions to face an experienced private partner and surrounded by experts and qualified lawyers
- ◆ Develop sectoral guidance notes justifying the choice of ppp
- ◆ Targeting a pipe line of projects objects (a list of not more than 10 projects) to be done on PPP and undertake immediately the necessary studies
- ◆ Focusing on a major sector such as sea water desalination, renewable energie, wastewater management, transport

THANK YOU FOR READING THIS PAPER

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