

# Public Private Partnerships in Lebanon Municipalities

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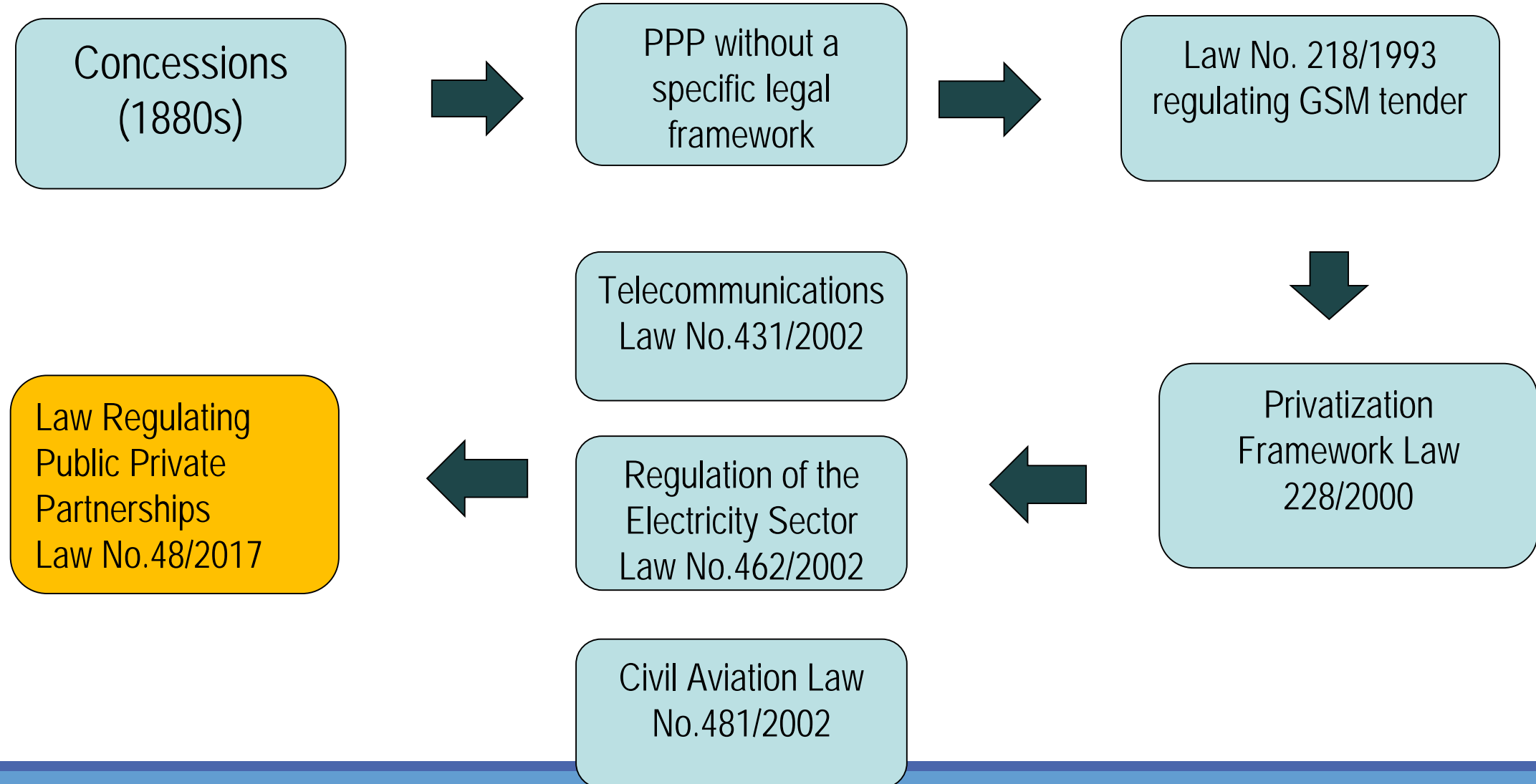
TYPES, HISTORY, USES, OPPORTUNITIES, CHALLENGES

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# GROWTH OF LEGAL FRAMEWORK FOR PPP



# PPP experience prior to the new PPP law

## WHAT WAS LEARNED

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- Most of the PPP implemented experiences were criticized, some were considered as success stories others as failure.
- The major lessons learned from these experiences relate to:
  - **Lack of standardized project preparation processes** and contract design (not systematic)
  - **Inadequate tender procedures**
    - PPPs were procured under sector-specific and , or project-specific laws, using tender procedures drawn from the Public Accounting Law.

# PPP - WHAT IS NEEDED

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- Reduce project risk through a solid legal framework for PPP that specifies the “rules of the game” for both the public and the private sector, thus improving the success rate of PPP projects.
- Developing strong support for PPPs across a range of stakeholders, from all levels of government, to the private sector, to the general public and elsewhere and that meet the needs and interests of all these stakeholders in a sustainable manner.

# WHY THE RECENT EMPHASIS ON PPP?

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The existing legal framework did not offer for PPP projects the customary guarantees which foreign investors and international financial institutions seek to have visibility of the project deal and reduce its risks.

For this reason the **GoL passed in September 2017 law number 48 Regulating Public Private Partnerships before CEDRE conference.**

# THE NEW PPP LAW

# THE NEW PPP LAW

## Law 48/2017 Regulating Public Private Partnerships

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- Until August 2017 there was no clear framework, law or model specifically for the PPPs
- Law 48/2017 moves **a step closer to the global standards** and is a positive response to the expectations of the international players.
- It is generally in line with current trends and expectations from the international market, applying the principle of **transparency** throughout the public tender process and procurement.
- With 18 articles, this law establishes the regulatory outline of the contracts that the government will use to entrust private investors to build and/or **manage the equipment and the infrastructures in different sectors**, among which **electricity, telecommunications, and civil aviation are expressly included**.
- The provisions of this law shall govern all PPP Projects undertaken by the State and public institutions and all moral persons of public law, **with the exception of municipalities and unions of municipalities**, which may **choose** to subject their PPP Projects to the provisions of this law.

# HIGH COUNCIL FOR PRIVATIZATION AND PARTNERSHIP

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The PPP law renames the “High Council for Privatization” instituted by virtue of the Privatization Law No. 228/2000 as the “High Council for Privatization and Partnership.”

The HCPP is provided with a broad mandate to manage the development and tendering of PPP projects, and provides the legislative basis for the HCPP to act as a high-level, centralized PPP champion with representation from across the Lebanese government.



# ADVANTAGES OF THE NEW PPP LAW

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- Institutes a **comprehensive** legal framework for PPP projects.
- It insures **transparency and competitiveness**, attracting private investment to enable quicker mobilization of capital to undertake infrastructure projects which also ensures long-term maintenance of infrastructure assets.
- It attracts foreign direct investments with the potential for creating thousands of jobs, increasing revenues and stimulating economic growth.
- Give assurance and motivate the reputable private companies to invest and contract with the public sector.
- Transfer of risk to the private sector to incentivize performance and reduce the amount of risk borne by the public sector.
- Efficiency gains due to the private sector's expertise and incentive structures typically built in to PPP contracts.
- At the same time preserves the rights of the public sector to monitor, and benefit from the private expertise.

# GAPS IN THE NEW PPP LAW

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The new PPP Law explicitly states that it **has precedence over sector laws regulating the energy, telecoms and aviation sectors**. Nevertheless, these laws and policy documents will remain valid and further clarity should be provided on their legal status moving forward in terms of governance of PPP projects in these sectors.

Possible political interference and control through HCPP (appointed by Council of Ministers).

# ADDITIONAL REQUIREMENTS

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- Missing implementation decrees : require issuance of decrees with implementation details for the new PPP law
- The need to update and finalize the PPP Guidelines, aligned with the PPP Law, to provide a comprehensive legal framework for PPPs. [draft guidelines exist from 2014]
- Develop Fiscal Commitments and Contingent Liabilities framework and debt management strategy to manage the fiscal impact of PPPs and ensure the sustainability of the PPP program.

# MUNICIPALITIES AND PPP

# CURRENT ENABLING LAW FOR MUNICIPALITIES

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Municipal Act Decree-Law 118, issued on June 30 1977 and its amendments, provides that the municipality is a local administration exercising, within the scope of its work, the powers entrusted thereto by the law, the municipality shall hereby enjoy **legal personality** as well **as financial and administrative independence**.

As a legal personality **enjoying a financial independence** the municipalities according to the existing laws have the right to open bank accounts as well as the right to profit from financial aid, donations, and loans, but after taking into consideration the administrative control over Municipal Council's decisions that are stated by the Municipal Act Decree-Law 118.

The Ministry of Interior and Municipalities (MoIM) exercises its authority over the management, budget and finances of all municipalities through each of the Qaemakam, the Mohafez, and the Minister of Interior and Municipalities.

# MUNICIPALITIES AND PPP LAW

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- **Municipalities have been able to develop and tender PPP projects under existing laws and decrees:**
  - Municipal Act Decree-Law No. 118/1977
  - Decree 5595/1982 (Specifying Accounting Procedures in Municipalities and Unions of Municipalities)
  - Municipalities that are subject to Court of Audit ( such as Beirut, Tripoli, and Saida etc.) are obliged to follow the procurement procedures laid out in the Public Accounting Law of 1963
  - Municipalities that do not follow the Public Accounting Law are obliged to follow the financial regulations and procurement procedures detailed in Decree 5595/1982.
  - Municipal fees and Surtaxes Law 60/1988

# MUNICIPAL CONSTRAINTS

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- Municipalities should be playing a vital role in strengthening local economic development.
- Municipalities are entrusted with by the law to carry out a wide range of functions, but they are unable to fulfill even the most basic duties such as service provisions and investment in development, since they are **administratively constrained and fiscally dependent**.
- In order for municipalities to keep pace with increased local demands and provide local development, the **involvement of the private sector in local development complemented with reforms to the municipal financial system are required**.

# EXAMPLES MUNICIPALITIES USING PPP

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- Municipalities and unions of municipalities **have the legal right according to the municipal-decree law to establish joint projects with the private sector.**
- Some projects have already been implemented in partnership with private firms and donors, such as:
  - The Municipal Union of Jezzine has invested in several **eco-tourism projects** in partnership with the private sector such as “La maison de la foret,”.
  - El Ghbaire Municipality has also jointly invested in several projects with the private sector including a **sports stadium, a disaster council, and a health center** among many others.
- These projects have created employment opportunities for the residents as well as boosted local production and proven to be successful in generating revenues for both the municipality and the Union.



# LOOKING AHEAD – PPP OPPORTUNITIES

## Net-metering:

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- According to EDL's foundation Decree No. 16878 dated July 10, 1964, that mandated EDL in its first article the sole responsibility of the generation, transmission, and distribution of electrical energy in Lebanon.
- However article (4) of this decree considers natural and legal persons eligible to produce electricity for their own consumption and to cover their personal needs only.
- **The executive curriculum based on the decision of EDL's board of directors, number 318-32/2011 (net metering) allows consumers to inject generated power from different renewable sources such as sun, wind, waste or water... into the EDL's grid**, the net-metering mechanism is certified by the Ministry of Energy and Water and approved by the Ministry of Finance.
- The net-metering process allows **residential**, commercial, or industrial EDL subscribers, who produce and use renewable energy, to export excess power to the grid, **the value of which is discounted from their EDL energy bills.**

# LOOKING AHEAD – PPP OPPORTUNITIES...

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## **Qabrikha Model Village**: (located in Marjayoun Qasa)

This is a perfect example how municipalities and the donor can come together to find sustainable solutions. Qabrikha residents enjoy electricity 24hrs a day, 7 days a week due to a 250kWh solar built farm there. The solar farm was funded by the EU and implemented by the UNDP, and managed by the municipality of Qabrikha.

Smart meters were installed to support around 550 homes from this green source of energy.

Apart from the ecofriendly nature of the solution residents benefiting from the new solar farm have cited a 30% decrease in their power bills using the net-metering process.

This model is a successful example of how electricity power shortage can be solved while decreasing carbon emissions.

This concept could be replicated in other municipalities adopting the PPP model in order to implement the facility.

# SOLID WASTE MANAGEMENT EXAMPLES

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## **Two examples of how municipalities faced the garbage crisis:**

- The Municipality of Bikfaya-Mhaiydseh (Metn), in collaboration with the Municipality of Sakiet el Misk-Bhersaf , has taken the lead in handling waste management in “Greater Bikfaya” according to the system of integrated waste management. This initiative involves a waste management center (grant from the EU) that is now treating eight tons of daily waste sorted from source.
- In the South, supported by Spain, garbage is collected and converted into organic waste useful as manures and inorganic substances not only from Kleyaa but also from the neighboring villages of Deir Mimes and Bourj al-Malouke.

# BANQUE DE LIBAN SUBSIDIES

The BDL helps finance investments with subsidized rates specifically in energy saving, renewable energy technology and even environmental green projects with low cost financing and medium to long term maturities, by exempting banks from part of the required reserve requirement to finance these projects at low cost.

Types of loans:

**NEEREA**: National Energy Efficiency and Renewable Energy Action loans

It is a national financing mechanism initiated by BDL dedicated to the financing of green energy projects in Lebanon. It is a green financing mechanism that provides interest-free long-term loans to residential, commercial, non-profit and industrial users for all energy efficiency and renewable energy projects for new and existing facilities.

Projects under NEEREA covers the following issues:

Renewable Energy Projects, Energy Efficiency Projects, Renewable Energy and Energy Efficiency Projects and Green Certified Buildings Projects.

# BDL SUBSIDIES continued...

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## **LEA:**

The Lebanese Environmental Action (LEA) for Water, Air, and the Environment is another National Financing Mechanism initiative issued by the Central Bank of Lebanon (BDL). LEA aims at offering subsidized loans for projects dealing with air quality, water, and the environment.

Solutions include waste water treatment plants, rain water collection, landscaping, and also traditional roof tiling and stone cladding systems.

## **BDL Circular No 399:**

The Central Bank of Lebanon (BDL) issued the circular 399 date 08/10/2015 that extends NEEREA financing mechanism to villages and rural areas, which supports loans in Lebanese Lira for villages and rural areas for financing environment friendly and renewable energy projects.

**This circular is tailored specifically to meet municipal needs.**

# CHALLENGES FOR SUBSIDY UTILIZATION

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- All the above mentioned subsidized loans are accessible for municipalities but in reality are not being targeted. **Since despite the legal right for municipalities to target loans according to the municipal law-decree the controlling authority has not given permissions for municipalities to get loans.**
- There is a high interest for municipalities to develop and implement such projects **mainly to respond to key issues like energy deficit, clean energy as well as other non-energy issues like waste management**, but they do not have the technical capacities to prepare the projects and also the municipalities do not have easy access to financial resources.
- Through the PPP type of financing mechanism the private company targets the subsidized loan (NEEREA or other BDL or bank loan) on behalf of the municipality. The municipality commits to pay the loan through the whole loan period to the private company, which in turn pays the due loan to its financing institution.
- The main advantage of this process is that the financing will be sourced through NEEREA or other BDL subsidized existing loans which are already in place with a clear and well established procedure allowing the municipalities through PPP to indirectly benefit from these subsidized loans.

# Platform For Progress P4P

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The Platform for Progress (P4P) is a civil initiative established in 2019 in Jounieh, with the support of the City of Jounieh and the Union of Kesserwein, to advocate for more PPPs in Lebanese cities. It aims to contribute to the PPP-enabling environment through awareness-raising and capacity-building activities for cities.

**Membership:** Membership with the Platform is open to all Lebanese cities willing to develop more projects for progress, especially projects that utilize the PPP model for climate actions.

**Activities:** We offer capacity building and awareness raising activities tailored for cities:

Capacity building activities include conferences, trainings and workshops for cities' staff members on PPP concepts, benefits, limitations and legal framework.

These activities will tackle the issues of legal PPP models, contracts, risk identification and allocation, as well as financing. Upon completion of trainings, participants will receive a certification demonstrating their knowledge in this field. To enhance the recognition of this certificate the Center will build partnerships with professional associations.

The P4P experts will offer awareness raising activities to cities, helping municipalities and local government units develop their own bankable PPP projects. The Platform will also be equipped with manuals, project references and templates for PPPs to serve as a resource for interested cities.

The Platform invites innovative entrepreneurs offering solutions for cities' climate challenges to join us to help cities identify what solutions are available to them, from whom, and to correctly evaluate their localized value.



# DISADVANTAGES UNDER THE NEW LAW

- If municipalities choose to prepare and procure PPPs according to the new law 48/2017 they will undergo the same processes as national-level projects, but this law does allow for a differentiated approval process in line with the Legislative Decree No. 118/1977.
- This means that the bureaucratic procedures and authorizations from the **controlling authority** over municipalities as stated in Decree law 118/1977 still exists under the PPP law 48/2017 which renders the PPP process slow.
- In addition, the PPP Law does not contain any separate, simplified process for the preparation and procurement of small projects based on investment size. This is particularly relevant for municipal-level projects, which are often smaller in nature than national-level projects, and may lead to unnecessarily long preparation timelines for some municipal-level projects.
- This could ultimately dissuade municipalities from choosing to develop projects under the PPP Law due to expensive, long and complicated procedures.

# ADDITIONAL REQUIREMENTS UNDER Law 48/2017

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- Specific guidance on municipal-level PPPs either within the PPP Guidelines or as a standalone Municipal PPP Guideline related to the preparation and approval processes for small scale municipal level projects is needed.
- Due to the complicated process of the new PPP law, this will require ongoing awareness building and training to ensure that the municipalities fully understand the detail and the advantages of the PPP Law and PPP Guidelines, and are comfortable with the roles and responsibilities of all entities within the PPP institutional framework.
- Encourage municipalities (especially small ones) and unions of municipalities to gather in developing common projects in order to benefit from the new PPP law.

Thank you for your  
attention!

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