

# When the Board Table Doubles as a Negotiating Table

*The governance paradox of Saudi Arabia's \$400B utility assets*



**HYPHEN**  
— العربية —  
perspective that matters

*In a standard company, directors represent shareholders who broadly share a common interest in value creation. Utilities structured as public-private partnership SPVs enjoy no such luxury — and the governance implications are profound.*

## PART I — THE PROBLEM

### The standard model and its limits

The foundational purpose of a board of directors is straightforward: represent the interests of shareholders, provide independent oversight of management, and steer the company in a direction that protects and grows shareholder value. This works well when there is a meaningful separation between those who own the business and those who run it, and when owners — whatever their differences — are fundamentally pulling in the same direction.

When a conflict of interest arises for a specific director, the remedy is equally well-established: that director recuses from the vote, the remaining board acts, and the record is clean. The system is designed to handle conflicts as exceptions, not as the defining feature of every material decision.

*In a PPP utility SPV, conflict of interest is not the exception — it is the architecture.*

### The utilities SPV problem

Consider a typical water or power generation SPV established under a public-private partnership concession in Saudi Arabia or the UAE. The shareholder table typically includes the offtaker — the government authority or state utility that has contracted to purchase the asset's output — alongside the O&M; contractor responsible for operating it, and often the EPC or technical sponsor who built it. These are not passive financial investors. Each carries a live commercial relationship with the very company whose board they sit on.

The offtaker-shareholder has a structural incentive to keep tariffs low and performance obligations high — often in direct tension with what maximises SPV profitability. The O&M; contractor-shareholder has a vested interest in the scope and pricing of its own service contract. The private equity or strategic sponsor may be focused on distributions, exit timing, or refinancing. These interests do not merely diverge occasionally. They diverge on the very decisions a board must make repeatedly: budget approvals, contract renewals, capital expenditure, and tariff renegotiations.

Applying the standard conflict-of-interest recusal mechanism in this environment would, at the extreme, leave no quorum at all. The solution cannot be procedural patch-ups applied to a governance framework designed for a different

type of company. It requires purpose-built architecture.

## PART II — THE AUSTRALIAN BENCHMARK

### What Australia figured out

Australia is among the world's most experienced PPP markets, with over two decades of concession-based infrastructure delivery across water, power, transport, and social infrastructure. Its SPV boards carry exactly the same cast of conflicted shareholders — EPC contractors, O&M; operators, and financial investors — and the market has developed practices that go meaningfully beyond what most GCC boards currently require.

#### The Australian standard in practice

In Australian PPP SPVs where design-and-construct or O&M; contractors hold equity stakes alongside pure financial investors — pension fund aggregators such as QIC, or superannuation funds such as Hostplus — shareholders' agreements routinely require contractor-nominated directors to recuse themselves from board votes on matters where their parent company has a direct interest: construction cost variations, O&M; contract scope changes, or similar related-party decisions.

More significantly, some of the larger financial investors go further. They assert that conflicted directors should be excluded from the meeting entirely — not merely asked to abstain from voting. The distinction matters: a director who remains in the room shapes the discussion, frames the options, and influences the board's deliberations before any vote is called. Exclusion addresses the conflict at the point where it actually bites.

This is the insight that most PPP governance frameworks miss. Recusal manages the optics of conflict. Exclusion manages the substance of it. For GCC boards operating in a market where the offtaker, the operator, and the sponsor may all hold seats simultaneously, the Australian standard — exclusion, not recusal — is the right benchmark.

#### Governance practices calibrated for this reality

The following practices reflect both the Australian experience and the specific shareholder conflict landscape of Saudi and UAE water and power PPP SPVs.

- **Genuinely independent directors as a structural majority.**  
At least a majority — ideally a supermajority — of board seats should be held by directors with no commercial relationship with the SPV or any of its shareholders. These are not token independents. They hold real authority, including tie-breaking rights on all related-party matters.
- **Exclusion, not recusal, as the standard for conflicted directors.**  
Following the Australian model, shareholders' agreements should specify that directors with a direct or affiliate interest in a matter leave the meeting before discussion begins — not simply abstain from the final vote.
- **Reserved matters requiring approval by independent directors only.**  
All decisions touching shareholder-related contracts — O&M; scope changes, offtake amendments, EPC warranties, related-party loans — should require approval by a defined subset of independent directors.
- **A standing related-party transactions committee.**  
Rather than managing conflicts case by case, a permanent committee of independent directors should review and approve all transactions between the SPV and any shareholder affiliate, with defined materiality thresholds and mandatory board-level disclosure.

- **A conflicts register embedded in every board paper.**  
Each paper touching a commercial or contractual matter should carry a standing declaration of known director interests — a structural discipline, not an occasional formality.
- **CEO accountability to the independent bloc.**  
The CEO's performance review and remuneration should sit with the independent directors committee, insulating management from capture by any single shareholder constituency.

### The regulator's interest

Regulators and concession-granting authorities in Saudi Arabia and the UAE are increasingly attentive to the board composition of PPP utilities as part of concession compliance. A poorly governed SPV that allows a dominant shareholder to extract value through related-party contracts — at the expense of service delivery or tariff fairness — is

a regulatory risk as much as a governance one.

The Australian experience offers a further lesson: it was the financial investors — pension funds and infrastructure funds seeking stable, long-duration returns — who drove the push for stronger exclusion standards, not the regulators. In the GCC context, as institutional investors from sovereign wealth funds and international infrastructure funds deepen their participation in the PPP market, the same commercial pressure for governance rigour is building.

## PART III — CHALLENGES IN KSA AND HOW TO MANAGE THEM

Saudi Arabia's PPP framework has evolved significantly. The 2021 Private Sector Participation Law, the National Centre for Privatisation's growing pipeline of over 200 projects, and the Capital Market Authority's successive reforms to corporate governance regulations for non-listed companies all point in the right direction. But the governance of utility SPV boards remains largely an afterthought in the shareholders' agreement, negotiated under time pressure at financial close and rarely revisited.

Five structural realities in the Kingdom make adoption harder — and each demands a deliberate response.

### The pool of qualified independent directors with utility expertise is shallow

#### THE CHALLENGE

Saudi boards show a strong preference for Saudi nationals — historically 84–90% of appointments — and only around 10% of directors hold international experience. Governance and risk committees remain rare. A token independent director who lacks the knowledge to challenge management on an O&M; contract dispute is governance theatre, not governance.

#### THE MITIGATION

Broaden the talent pool deliberately and early. Define independence criteria that explicitly permit international appointments — retired utility regulators, former infrastructure fund executives, senior project finance bankers. The NCP could catalyse this by publishing a director competency framework specifically for utility PPP SPVs.

### CMA regulations apply to listed companies; most utility SPVs are non-listed LLCs or closed JSCs

#### THE CHALLENGE

The CMA's Corporate Governance Regulations apply principally to listed joint stock companies. Most utility PPP SPVs are non-listed LLCs or closed JSCs. The 2018 CGRs for non-listed companies set a floor of abstention from voting — not exclusion from discussion — and do not specify independence ratios for multi-hat shareholder structures.

#### THE MITIGATION

The gap must be filled contractually. Australian-standard norms — exclusion rather than recusal, independent supermajority on related-party matters, standing conflicts register — must be written into the shareholders' agreement as binding obligations. Project finance banks and DFIs (IFC, IsDB, SIDF) should require these provisions at financial close.

### Excluding a shareholder director cuts against embedded norms of collegial deference

#### THE CHALLENGE

In Saudi corporate culture, the act of excluding a director from a board discussion carries social weight it does not in an Australian pension fund boardroom. The expectation of consensus, the significance of majlis-style deliberation, and reputational sensitivity around distrust all create friction. Even where the exclusion provision exists in the SHA, it may not be enforced.

#### THE MITIGATION

Normalise the mechanism before it is needed. Rehearse the exclusion procedure at the first board meeting on a low-stakes matter. Frame it in board induction materials as a protection for the excluded director: 'you are protected from this vote' lands very differently from 'you are excluded from this room.'

### Government entities appear on both sides of the SPV table

#### THE CHALLENGE

In several Saudi utility PPP structures, the offtaker (SEC for power, NWC for water) and the lead sponsor may both trace ownership chains to the same government balance sheet. PIF holds stakes across the infrastructure ecosystem. The distinction between state-as-regulator, state-as-offtaker, and state-as-equity-investor collapses in practice.

#### THE MITIGATION

The shareholders' agreement must define independence with state-linkage explicitly in scope. A director with any contractual, regulatory, or ownership relationship with the Saudi state in the relevant sector within the last five years should be treated as non-independent. Where this eliminates all candidates, bring in internationally sourced independents — not lower the standard.

### Governance architecture is compressed under time pressure at financial close

#### THE CHALLENGE

Saudi Arabia is running one of the largest PPP pipelines in the world — over 200 projects across 17 sectors — with significant pressure to execute under Vision 2030 timelines. Board governance architecture gets treated as boilerplate to be agreed quickly, not structural design to be negotiated carefully.

#### THE MITIGATION

The NCP should publish a standardised SHA governance schedule — analogous to HM Treasury's PF2 standardised contract provisions — that sets baseline board governance requirements for all utility PPP SPVs as a non-negotiable starting point. Sponsors and lenders who want to deviate would need to justify why, inverting the current dynamic.

***The highest-leverage move available to the NCP is a standardised SHA governance schedule — making strong board architecture the default, not the exception.***

### THE WINDOW IS OPEN

None of these five challenges is insurmountable, and the conditions for progress are unusually favourable. The CMA's ongoing Corporate Governance Regulations development initiative — due for completion in 2026 — creates a live regulatory window in which non-listed SPV board governance standards could be addressed. The scale of the PPP pipeline means that standardising governance architecture now, before poor practices become entrenched, will have a compounding beneficial effect across dozens of projects.

Saudi Arabia has the institutional ambition, the regulatory momentum, and the deal pipeline to become the benchmark for PPP utility governance in the GCC. What it needs is the explicit decision to treat board architecture as a first-order design question — not an afterthought to be resolved under pressure at financial close.

The utilities PPP SPV is not a broken governance model — it is a complex one that requires deliberate design. Directors and executives operating in Saudi Arabia and the UAE should stop applying a standard corporate

governance template and start building one calibrated to the reality that, in this boardroom, every seat carries a conflict. Australia's two-decade experience has demonstrated that the way through is not to pretend those conflicts away, but to design a board structure that can make decisions in the SPV's own interest despite them. The benchmark is exclusion, not recusal — and the drafting of the shareholders' agreement is where that standard must be set.

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#### ABOUT HYPHEN CONSULTANCY

Hyphen Consultancy has advised utility companies across KSA and the UAE on corporate governance, board structuring, shareholders' agreement design, and regulatory strategy. Our engagements span water and power generation SPVs, PPP concession frameworks, and state-linked infrastructure entities operating under Vision 2030 and UAE Energy Strategy mandates. We bring independent perspective to the most consequential governance decisions in the GCC's fast-growing infrastructure market.

#### ABOUT THE AUTHOR · CONTACT US



### Faheem Piracha

CEO, Hyphen Consultancy

Faheem brings over two decades of advisory experience across GCC infrastructure, corporate governance, and PPP frameworks, with a focus on utility sector engagements in Saudi Arabia and the UAE.

#### GET IN TOUCH

##### Riyadh Office

18th Floor, Al Faisaliah Tower King Fahd Rd, Al Olaya Riyadh  
12212, Saudi Arabia

##### Phone

+966-114903989

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