CORPORATE GOVERNANCE · PPP & CONCESSION SPVS · SAUDI ARABIA & UAE

When the Board Table Doubles as a Negotiating Table

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. This prevents conflicted parties from framing the board's deliberations.

- **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, with conflicted parties entirely removed from that decision pathway.
- **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. This is a structural discipline, not an occasional formality — and it creates a clean audit trail for regulators and lenders.
- **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 and preserving the executive's ability to act in the SPV's interest.

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. Boards and C-suite leaders who get ahead of it will be better positioned in renegotiations, refinancings, and regulatory reviews.

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. The specific challenge of the conflicted-shareholder board has not been squarely addressed in any published NCP or CMA guidance.

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

01 The pool of qualified, truly independent directors with utility sector 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. The market does not yet have a deep bench of directors who are simultaneously independent of all major infrastructure players, familiar with utility sector dynamics, and available for the long concession terms PPP SPVs require. 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. The shareholders' agreement should define independence criteria that explicitly permit international appointments — retired utility regulators, former infrastructure fund executives, senior project finance bankers with no current advisory mandates in the sector. Sovereign wealth vehicles such as PIF already rotate talent across boards; this can be formalised into a pipeline for SPV independent director appointments. The NCP could catalyse this by publishing a director competency framework specifically for utility PPP SPVs as part of its concession standardisation work.

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

THE CHALLENGE

The CMA's Corporate Governance Regulations — including the requirement for at least two independent directors or one-third of the board — apply principally to listed joint stock companies. Most utility PPP SPVs in Saudi Arabia are structured as non-listed LLCs or closed JSCs. The 2018 CGRs for non-listed companies contain conflict of interest provisions, but they set a floor of abstention from voting — not exclusion from discussion — and do not specify independence ratios tailored to multi-hat shareholder structures. There is no mandatory standard that fills this gap.

THE MITIGATION

The gap must be filled contractually, not hoped away. The shareholders' agreement is where Australian-standard norms — exclusion rather than recusal, independent supermajority on related-party matters, standing conflicts register — must be written as binding obligations. Lenders are the natural enforcement mechanism: project finance banks and DFIs active in the KSA utility sector (IFC, IsDB, SIDF) should begin requiring these provisions as conditions of financial close. Regulation follows market practice; lender discipline accelerates that sequence.

03 Formally excluding a shareholder director from a board discussion cuts against embedded norms of collegial deference

THE CHALLENGE

In Saudi corporate culture, the act of excluding a director — a representative of a major shareholder, likely a relationship that predates the project — 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 where all voices are heard, and the reputational sensitivity around being seen to distrust a counterpart all create friction. Even where the exclusion provision exists in the SHA, it may not be enforced in practice.

THE MITIGATION

Normalise the mechanism before it is needed. The exclusion procedure should be rehearsed at the first board meeting, applied to a low-stakes matter, and framed explicitly in board induction materials as a protection for the excluded director — not a signal of distrust — since it insulates them from liability on decisions where they have a conflict. Framing matters: 'you are protected from this vote' lands very differently from 'you are excluded from this room.' The independent chair carries the cultural authority to hold this line and their briefing should anticipate this dynamic explicitly.

04 Government entities appear on both sides of the SPV table — as offtaker and, indirectly, as shareholder through state-linked sponsors

THE CHALLENGE

In several Saudi utility PPP structures, the offtaker (SEC for power, NWC for water) and the lead sponsor or co-investor may both have state ownership chains tracing back to the same government balance sheet. PIF holds stakes across the infrastructure ecosystem. This creates a variant of the Chinese governance problem: the distinction between state-as-regulator, state-as-offtaker, and state-as-equity-investor collapses in practice, and the independent director may face subtle pressure from a dominant state-linked presence that cuts across all three roles simultaneously.

THE MITIGATION

The shareholders' agreement must define independence with state-linkage explicitly in scope. A director whose employer, affiliated entity, or previous employer within the last five years has any contractual, regulatory, or ownership relationship with the Saudi state in the relevant sector should be treated as non-independent for SPV governance purposes. Where this standard would eliminate all candidate directors, the solution is to bring in internationally sourced independents — not to lower the standard.

05 Governance architecture gets compressed under the time pressure of 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 quickly under Vision 2030 timelines. In this environment, the SHA governance provisions are negotiated late in the process, under deadline pressure, with

THE MITIGATION

The NCP should publish a standardised SHA governance schedule — analogous to HM Treasury's PF2 standardised contract provisions in the UK — that sets out baseline board governance requirements for all utility PPP SPVs as a non-negotiable starting point. This removes governance architecture from

legal teams focused on the concession agreement and financing documents. Board governance architecture — independent director criteria, exclusion procedures, reserved matters thresholds, conflicts registers — gets treated as boilerplate to be agreed quickly, not structural design to be negotiated carefully.	late-stage negotiation pressure and embeds it in the procurement template. Sponsors and lenders who want to deviate from the standard would need to explain why, inverting the current dynamic where rigorous governance must be argued for rather than justified against. This is the single highest-leverage intervention available to the NCP.

> *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. And the international financial community financing these projects — IFC, development finance institutions, and global infrastructure funds — brings both the expectation and the leverage to demand better.

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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