



## TRAINING MANUAL 4 Private Sector Participation

### Module 4-1: General Approach and Framework Requirements

Prepared by the International Consortium  
GTZ-ERM-GKW



### Training Manual for ISWM Private Sector Waste Management Services Participation

The Training Manual in support of capacity development of waste management service delivery through Private Sector Participation (PSP) will comprise 4 ‘courses’.

1. Private Sector Participation - General Approach and Framework Requirements (one module)
2. Private Sector Participation - Choice of the appropriate contract model (four modules)
3. Private Sector Participation - Contract preparation and procurement (three modules)
4. Private Sector Participation - Contract monitoring (one module)

The module “General Approach and Framework Requirements” is the first module and will give some overview.



## Content

- I Why Private Sector Participation (PSP) ?
- II Current Situation in the Region
- III Pre-requisites for Sustainable PSP
- IV PSP Contract Options
- V Steps to Enhance Services and Efficiency via PSP
- VI PSP Relevant Tools Provided by the RSWM Project
- VII General Conclusion
- VIII Regional Outlook and Recommendations



Self explanatory.



## I. Why Private Sector Participation (PSP) ?

- Higher efficiency by competition, accountability and transparency.

- Access to expert skills and know how for implementation and operation.

- Access to (international) financing

- Motivation of the employees by accountability and competition.

### Regional importance

- Waste management services in the region have potential for increase of efficiency.

- Know how on waste management services is still limited in most countries of the region.

- Financing and cost recovery are core problems in the region.

- Public service provision in waste management is sometimes regarded as a thankless task.

One comment above:

every time the green colour box occurs a regional context, regional example, regional experience, regional recommendation, is mentioned opposite to the other boxes which shows more general statements.

additional comments:

1. Higher efficiency could be achieved by reduced effort (or expenditures) for the same service but also by a higher level of services with the same effort (or expenditures)
2. There is no doubt that also public entities are able to enhance their skills and now how e.g. by exchanging experience with neighbours in the region as possible within the METAP RSWMP. But due to competition the internal know how exchange and availability of central expertise in private entities seem more effective.
3. The availability of (international) capital to fund Solid Waste Management Projects depends on well elaborated framework conditions as discussed later on. In the sector of water supply or electricity supply PSP contracts / concessions are common, where the private partner is beneath others responsible for the fee collection. In the sector waste collection and treatment it would be difficult to oblige the private partner to collect the fees at an level which will cover his costs. Due to this the public authority will be responsible to ensure the cost recovery (by fees and also by taxes)
4. Private entities as well as public entities try to motivate their employees. But due to the competition situation for the private entities the managing directors seems more successful.

## II. Current Situation in the Region (Year 2003)

	PSP in solid Waste Management Projects			
	Collection	Operation of Facilities	Financing of Large Budget	Involvement of International Company
Algeria	—	—	—	—
Egypt	•	○	○	○
Jordan	(—)	(—)	—	(—)
Lebanon	•	○	○	○
Morocco	○	—	—	—
Palestinian Authority	○	—	—	—
Syria	•	○	—	○
Tunisia	•	○	—	○

— no projects or rare    ○ partial    • common

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The figure above shows the current situation of PSP projects in the region. It is differed between project types concerning

- waste collection,
- the operation of facilities and
- the financing of facilities / large budgets.

Additional the involvement of international companies is mentioned .

If project type or the involvement of international companies is common in the selected country it is mentioned with a full bullet.  
If it is only partial realised this is mentioned with the light bullet.  
In case that such projects are realised not at all or rare it is mentioned with a bar.

The figure shows that most of the countries (except Algeria and Jordan) have already realised PSP projects in the sector waste collection. In the other sectors the implementation of PSP projects is more rare.

For in-depth information see also Training Manual PSP: “Case Studies” and the volume 6 of the RSWMP - Regional Guidelines



## II. Current Situation in the Region

- Several examples in the region indicate that PSP can be successfully established in such a way as to achieve higher efficiency and cost savings.
- Many examples from the region outline obstacles up to complete project and contract failure by different reasons.



Self explanatory.

For in-depth information see also Training Manual PSP: "Case Studies"



### III. Pre-requisites for Sustainable PSP

- A national and local waste management strategy which allows a reasonable project identification Regional Guideline Vol. 2: Policy
- Legal and institutional framework Regional Guideline Vol. 2: Legal and Institutional
- Financial and tax framework Regional Guideline Vol. 3: Finance and Cost Recovery
- Procurement framework which allows competition Regional Guideline Vol. 4: Private Sector Participation
- Capacity of the public authority which allows efficient contract monitoring Regional Guideline Vol. 4: Private Sector Participation
  - PSP did not avoid corruption by itself. In fact it is necessary to avoid corruption at any stage as project identification, tender process, contracting, monitoring.

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The green button reference to the Regional Guidelines prepared in the Regional solid Waste Management Project (RSWMP), funded by the European Union; executed by the World Bank and hosted by the ANPE, Tunisia) within the Mediterranean Environment Technical Assistance Programme (METAP). The Final Versions of the guidelines were published the 1<sup>st</sup> quarter of 2004.

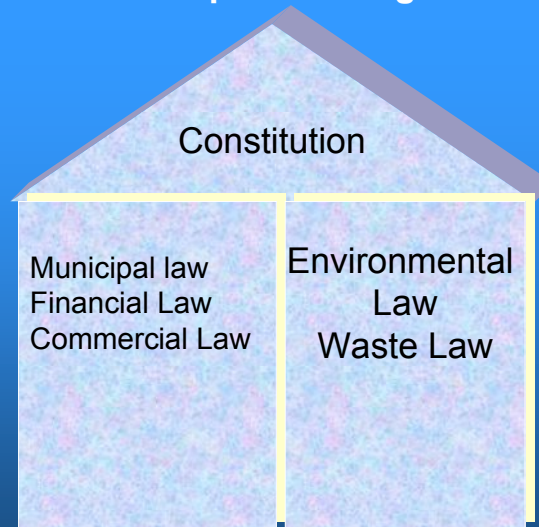
Some selected Pre-requisites will be presented at the following slides.

In general PSP is not able to solve problems caused by poor framework conditions.

In fact most of the core tasks have to be solved before a sustainable PSP could start.

And be aware: if the public entity working efficient (proven e.g. by benchmarking) there should be no obligation to install PSP. PSP is only an instrument to enhance efficiency within a well elaborated legal and institutional framework.

### III. Selected Pre-Requisites: Legal Framework (1)



The establishment of an appropriate and effective legal framework is a prerequisite to creating an environment that fosters private investment in ISWM public services and infrastructure. Depending from each legal system, intervention has to happen at different levels.

Action at the constitutional level is needed when some rules hinder or limit excessively the award of concessions of public services or infrastructure projects in solid waste management sector.

Depending from each legal system, the legislative rules can either be sector-specific or general. Sector-specific provisions will be ruled in waste law, whereas general provisions belong usually to public markets law and municipalities law.



### III. Selected Pre-Requisites: Legal Framework (2)

Revise legal framework

Municipal Law  
Financial Law  
Commercial Law  
Property Law  
Intellectual Property Law  
Private Contract Law  
Company Law

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Several aspects of the laws of a country, without necessarily dealing directly with private provision of public services or privately financed infrastructure projects, may have an impact on their implementation (such as property law, intellectual property law, private contract law, company law, etc.). Reviewing and, as appropriate, improving legal provisions in those areas, will substantially contribute to securing a hospitable climate for private sector investment in ISWM.





### III. Selected Pre-Requisites: Legal Framework (3)

Legal provisions shall take into account legitimate interests of stakeholders, such as

- predictability
- competitiveness
- confidence in a country's infrastructure development programme

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Action at the constitutional level is needed when some rules hinder or limit excessively the award of concessions of public services or infrastructure projects in solid waste management sector.



### III. Selected Pre-Requisites: Legal Framework (4)

Legal provisions should state minimal requirements:

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The establishment of an appropriate and effective legal framework is a prerequisite to creating an environment that fosters private investment in ISWM public services and infrastructure. Depending from each legal system, intervention has to happen at different levels.

Action at the constitutional level is needed when some rules hinder or limit excessively the award of concessions of public services or infrastructure projects in solid waste management sector.

### III. Selected Pre-Requisites: Legal Framework (4.1)

Identify clearly the public authorities or levels of government competent to award concessions and to act as contracting authorities



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- provide for the extent of powers that may be needed by these authorities. In a decentralised context, competence and correspondent powers fall to municipalities.

Establish and/or identifying authority to regulate private provision of public services and PSP in infrastructure projects in local waste management, endowed with an appropriate level of autonomy and devoid of operational functions. Depending from each legal system, it will be the matter of the concerned ministry/department or an autonomous regulatory agency.



### III. Selected Pre-Requisites: Legal Framework (4.2)

Define the rules governing regulatory procedures



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Clear, accessible legal rules should ensure transparent and fair administrative procedures related to preparatory measures, tenders and selection of the concessionaire, so as conclusion, execution, monitoring and termination of the concession agreements



### III. Selected Pre-Requisites: Legal Framework (4.3)

Define the various categories of projects according to the extent to the rights and obligations assumed by the concessionaire

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At least the law should provide that concessions may be awarded for the purpose of entrusting an entity, private or public, with the obligation to carry out infrastructure works and/or to deliver certain public services, in exchange for the right to charge a price for the use of the facility or for the services or goods it generates, or for other payment or remuneration

### III. Selected Pre-Requisites: Legal Framework (4.4)

Define the categories of services and operations that may be entrusted at private or public entities



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The law should clarify that concessions may be awarded for the construction and operation of a new infrastructure facility or system or for the maintenance, repair, modernisation, expansion and operation of existing infrastructure facilities and systems (waste selection and treatment), or only for the management and delivery of a public service (waste collection).



### III. Selected Pre-Requisites: Legal Framework (4.5)

Define the general rules applying to each category of concession agreements :

Identify the core terms to be provided in the concession agreement:

- operations and/or services to deliver
- financial arrangements
- infrastructure property
- risk allocation
- service exclusivity
- concession assignment
- reporting;
- execution failures
- extension and termination
- dispute settlement

State principles governing the extent of concessionaire's obligations related quality and quantity of the public services to deliver

- continuity,
- adaptation so as to meet the actual demand
- non-discriminatory access to all users

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The law should clarify that concessions may be awarded for the construction and operation of a new infrastructure facility or system or for the maintenance, repair, modernisation, expansion and operation of existing infrastructure facilities and systems (waste selection and treatment), or only for the management and delivery of a public service (waste collection).



### III. Selected Pre-Requisites: Legal Framework (4.6)

Establish and/or define the institutional mechanisms required for the efficient co-ordination and support of infrastructure projects.

International experience has demonstrated the usefulness of entrusting a central unit within the country's administration with following responsibilities :

- formulating policy in projects involving private participation
- providing local waste management authorities and stakeholders with practical guidance
- co-ordinating the input of the main public authorities that interface with the project company

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The law should clarify that concessions may be awarded for the construction and operation of a new infrastructure facility or system or for the maintenance, repair, modernisation, expansion and operation of existing infrastructure facilities and systems (waste selection and treatment), or only for the management and delivery of a public service (waste collection).





### III. Selected Pre-Requisites: Financial & Cost Recovery

- Legal basis – the proposed measures must fall within the legal span of control of the municipality/WM agency.
- Financial policy and cost recovery objectives must be clearly defined and understood.
- Know your costs – viable financing policy depends on knowing the full costs of the WM service (and its components) over time and how they are to be funded.
- Determine what proportion of costs is to be covered by municipal transfers and which via a user charging scheme.
- A reliable funds transfer mechanism from the municipality to the WM agency based on realistic budgets is essential.

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## IV. PSP Contract Options

Option / Contract:	Asset Ownership	Operation and Maintenance	Capital Investment	Commercial risk	Duration
Service Contract	Public	Private	Public	Public	1-2 years up to 5-8 years
DBO / BTO	Public	Private	Public	Shared	5 -25 years
Concession, BOT, LROT	Public	Private	Private	Private	25-30 years
BOO	Private	Private	Private	Private	Not limited
Divestiture	Private or private and public	Private	Private	Private	Not limited

**DBO** Design-Build-Operate      **BTO** Build-Transfer-Operate  
**BOT** Build-Operate-Transfer      **BOO** Build-Own-Operate  
**LROT** Lease-Renovate-Operate-Transfer

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Lots of option and names for possible contracts between local authorities and private entities are used.

And also some of the used terms are not well defined or even used in different ways. In general we can differ between service contracts and contracts concerning also investment and facilities.

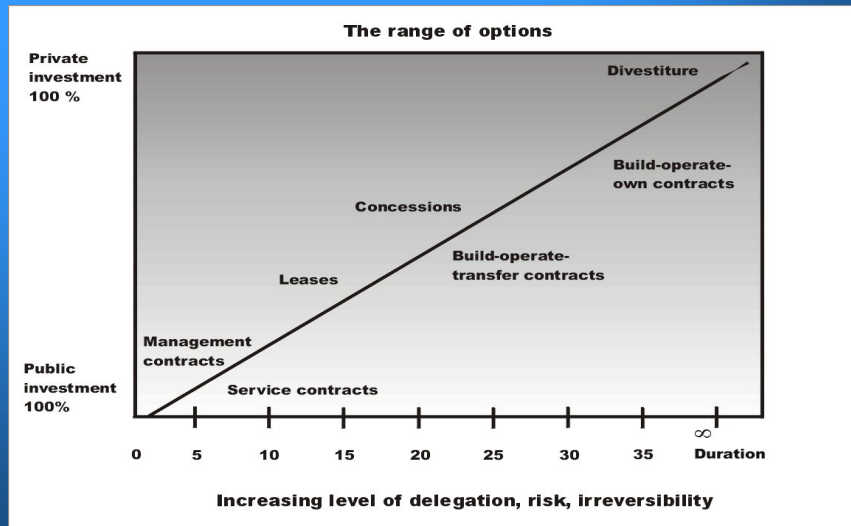
More explanations and definitions will be found in the subsequent course "Private Sector Participation - Choice of the appropriate contract model", module 1 of 4: "Different Contract Models")

**Service contracts** should need small amount of investment or assets which could not be removed in case of termination or early termination of contracts. Service contracts could be management contracts or operating contracts or e.g. waste collection contracts (without building reload stations or other facilities). The typical duration of service contracts depends on the primary effort and the duration that changes in operation or management will get effective. Due to this the range of duration is between one year (extremely short) up to 8 or even 10 years.

In case that the contracts should also cover the building of facilities or higher amounts of investment other contracts could be used (as mentioned in the figure). The details of these contract options and the advantages and disadvantages will be explained in the subsequent presentation. Design Build and Operate (DBO) contracts minimise the involvement of the private contractor in financing and have as well as BTO, BOT, LROT contracts a defined date of contract termination. After the contract termination the responsibility is again completely by the local authority.

In case of BOO Contracts or Divestiture the ownership of the assets remains by the private entity without termination.

## IV. PSP Contract Options



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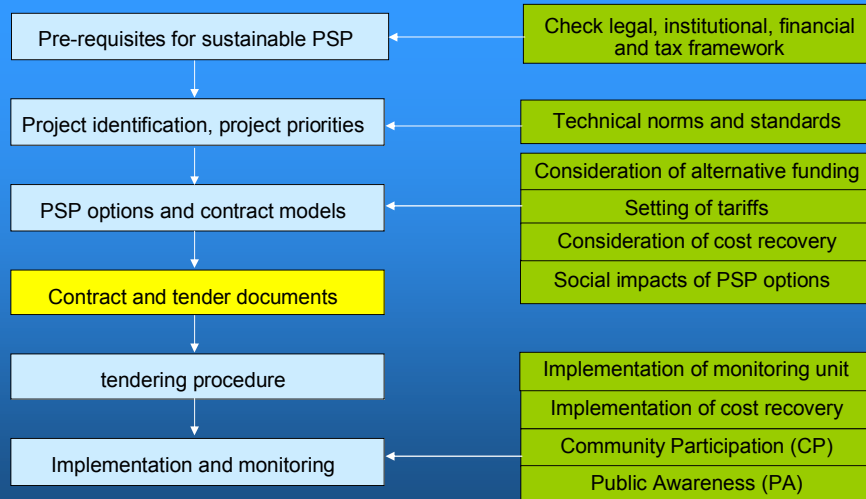
This figure is used in many publications and is provided originally by the World Bank in the context of PSP Project concerning Water and Sanitation Services. The figure demonstrates the range of PSP contract options following:

The y-axis (vertical) shows the level of private investment. Below the investment is 100% done by the public authority. Above the private investment is 100% done by the private sector.

The x-axis (horizontal) shows the common duration (in years) of different contract types and at the same time mentions that the level of delegation, risk and irreversibility is rising from left to the right side of the figure.

The more the investment is provided by the private partner, the longer is the duration of the contracts (maybe this is only a part of the truth: more correct it should be as follows: the longer the duration of the depreciation of the facilities financed by the private sector, the longer is the duration of the contracts). And at the same time: the longer the duration of contracts, the higher is the level of delegation and the higher is also the risk and the irreversibility.

## V. Steps to Enhance Services and Efficiency via PSP



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In many cases PSP projects start by the intention of a client (local authority) to prepare contract and tender documents (yellow button). But to prepare these documents seriously it is necessary to check and consider all pre-requisites as mentioned before, and all previous decisions of the responsible authorities. We need to identify the expected level of services as well as the forecasted costs for this level, we need to identify the possibilities of cost recovery. We need decisions on the chosen PSP option (service contract - DBO contract – divestiture) and so on. And we have to consider the subsequent steps as tendering procedure (to ensure and enable fair competition) and even the implementation and monitoring phase (who will responsible and able for the monitoring?). Due to this reason the procedure of preparing contract and tender documents takes in many cases much more time than by the clients (local authority) was expected. If a PSP contract and tender document will be prepared the first time by the client (local authority) it is not unusual that the procedure takes up to two years. It is also possible that unexpected obstacles were identified which could prohibit the PSP.

## VI. PSP Related Tools Provided by the RSWM Project

### Pre-requisites for sustainable PSP

A national and local waste management strategy which allows a reasonable project identification:

Regional Guideline Vol. 2: Policy

Legal and institutional framework:

Regional Guideline Vol. 2: Legal and Institutional

e.g.

Financial and tax framework:

Regional Guideline Vol. 3: Finance and Cost Recovery

<sup>1)</sup> UNCITRAL: United Nations Commission on International Trade Law, Legislative Guide on Privately Financed Infrastructure Projects, 2001

PLI-ATI 4 - Model National ISWM Law

Legislative Guide on Privately Financed Infrastructure Projects <sup>1)</sup>

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The following chapter mentions recommended helpful documents to check the specific framework conditions and to implement PSP projects

The yellow box shows the issue explained

The light green boxes shows the documents prepared specially in the RSWMP

The dark green boxes shows additional actual documents which should be considered additionally. The source of this documents is written in white colours.

During the training courses one hard copy of all mentioned documents should be available. Additionally the participants should get an electronic version of the mentioned documents.

## VI. PSP Related Tools Provided by the RSWM Project

Pre-requisites for sustainable PSP

Project identification, project priorities,  
PSP options and contract models

PSP Aids to Implementation (vol.4)

- 2.1 Description and Assessment of PSP Options for ISWM Projects
- 2.2 TOR for institutional, financial and privatisation study <sup>1)</sup>
- 2.3 SWM Planning <sup>2)</sup>
- 2.4 Municipal Solid Waste Management Involving Micro and Small Enterprises <sup>3)</sup>

<sup>1)</sup> SKAT / WB: Guidance Pack on Private Sector Participation in municipal solid waste management, 2000

<sup>2)</sup> MoE Egypt: Solid Waste Management Procedural Manual, 2003

<sup>3)</sup> SKAT: Municipal Solid Waste Management Involving Micro and Small Enterprises, 1998

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## VI. PSP Related Tools Provided by the RSWM Project

Pre-requisites for sustainable PSP

Project identification, project priorities,  
PSP options and contract models

Contractual relationships between  
public and private partners

PSP Aids to Implementation (vol.4)

- 3.1 Critical Contract Issues
- 3.2 Sample TOR Zoning Study for Privatisation of Waste Collection <sup>1)</sup>
- 3.3 Checklist of issues to be covered in different types of MSWM agreements <sup>1)</sup>
- 3.4 Generic Documents for the Design, Build Operate Contract for a Solid Waste Facility <sup>2)</sup>
- 3.5 Generic Documents for Waste Collection Services

<sup>1)</sup> SKAT: Guidance Pack on Private Sector Participation in municipal solid waste management, 2000

<sup>2)</sup> World Bank: Draft Generic Documents for the Design, Build Operate Contract for a Solid Waste Facility, 05/2000

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## VI. PSP Related Tools Provided by the RSWM Project

Pre-requisites for sustainable PSP

Project identification, project priorities,  
PSP options and contract models

Contractual relationships between  
public and private partners

Competition, transparency, monitoring  
and accountability

PSP Aids to Implementation (vol.4)

4.1 Critical Procurement and Contracting  
Issues

4.2 Pre Qualification <sup>1)</sup>

4.3 Tendering and Contracting <sup>1)</sup>

4.4 Sample Criteria for Evaluating Tenders <sup>2)</sup>

4.5 Contract Monitoring Unit <sup>1)</sup>

4.6 Performance Monitoring Measures <sup>2)</sup>

<sup>1)</sup> MoE Egypt: Solid Waste Management Procedural  
Manual, 2003

<sup>2)</sup> SKAT / WB: Guidance Pack on Private Sector Participation  
in municipal solid waste management, 2000

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## VI. PSP Related Tools Provided by the RSWM Project

Pre-requisites for sustainable PSP

Project identification, project priorities,  
PSP options and contract models

Contractual relationships between  
public and private partners

Competition, transparency, monitoring  
and accountability

Social impacts of PSP and related  
solutions

PSP Aids to Implementation (vol.4)

5.1 Options related to transfer of personnel of  
Waste Management Utilities

5.2 Options related to involvement of the  
Informal Sector

5.3 TOR Demand Assessment and  
Willingness to pay Survey <sup>1)</sup>

5.4 Solid Waste Collection that Benefits the  
Urban Poor <sup>2)</sup>

<sup>1)</sup> SKAT / WB: Guidance Pack on Private Sector Participation  
in municipal solid waste management, 2000

<sup>2)</sup> SKAT: Solid Waste collection that benefits the urban  
poor, 2003

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## VI. PSP Related Tools Provided by the RSWM Project

### RSWMP Regional Guideline Volume 6: PSP related Regional Case Studies

PLI 06:	Programme National de reprise et de valorisation des déchets d'emballage utilisés - ECO~Lef -Tunisie
TEC E01:	The Biogas Project – Reduction of Methane Emissions and Utilisation of Municipal Waste for Energy in Amman
PSP 01:	Privatisation of Solid Waste Management in Egypt – Alexandria Governorate
PSP 02:	Private sector participation in Greater Beirut SWM
PSP 05:	Mise en Œuvre de la Participation du Secteur Privé en Tunisie

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## VII. General Conclusion

- PSP offers a substantial means of enhancing efficiency, through introduction of commercial principles.
  - PSP is no magic solution offering better services without cost and without effort of the responsible public authority.
  - PSP needs a supportive legal, institutional and financial framework
- 
- Contractual relation between government and the private sector should be well understood and systematically applied
  - Successful and cost-effective PSP need fair competition and transparency as well as continuous monitoring
  - Social impacts of PSP e.g. on existing informal sector or the current staff of the municipality have to be considered.

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Self explanatory.



## VIII. Regional Outlook and Recommendations

A PSP implementation starting with low or medium budget investment by the private sector - as collection contracts - could strengthening the capabilities of the contracting authorities and development of a national market.

The option of implementation of waste management facilities via DBO contracts seems to be a promising approach.

Comprehensive PSP projects with large budget investment by the private sector needs elaborated framework, clear financing concept and high capabilities by the contracting authorities and are connected with high risks of failure - and they seems to stay particular.

The responsible authorities will need special skills to implement and monitor cost-efficient PSP. The Regional Guidelines and the Training Manuals will try to provide support.

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Self explanatory.