

PUBLIC PRIVATE PARTNERSHIPS AND THEIR APPLICABILITY IN MALTA: AN ANALYSIS

**BY
DANIEL GALEA**

A dissertation submitted in partial fulfilment of the requirements for the award of the Master in Accountancy degree in the Department of Accountancy at the Faculty of Economics, Management and Accountancy at the University of Malta

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Abstract

TITLE: Public Private Partnerships and their Applicability in Malta: An Analysis

PURPOSE: The purpose of this study is to examine PPPs in Malta by (i) ascertaining the nature and assessing their definability, (ii) identifying and analysing the main alternative ways of formulating PPPs and finding the optimal ways of doing so, as well as (iii) assessing PPP monitoring and analysing any factors which may render such monitoring more effective.

DESIGN: The study follows a qualitative mixed-methods design. It draws data from semi-structured interviews conducted with fourteen experts within the Maltese PPP scenario. These consisted of representatives from consultancy firms and from Government entities and private sector firms involved in PPPs.

FINDINGS: The findings indicate that in Malta few, if any, controversies arise about the inherent characteristics of PPPs or about the importance of the players involved in them or even about the respective PPP roles of Government and SPs. However, the response indicated that, if a formal statutory PPP definition were to be adopted, this would likely face substantial resistance. Moreover, specific case studies and detailed risk assessments are *sine qua nons* for optimal PPP formulations. Furthermore, at the PPP contract drafting stage, dilemmas too often arise regarding the inclusion of the appropriate level of detail about the different aspects of such contracts if one is not to render them too complex. Additionally, in the current procurement of SPs for PPPs, different procedures are used as no uniform procedure has as yet been established. It was also noted that respondents preferred the inclusion of a pre-qualification stage in such SPs procurement. Furthermore, while it is generally agreed that further skills and resources are required for effective Government monitoring, differences of opinion emerged as to how and when such monitoring is to be performed.

CONCLUSIONS: This study concludes that in Malta PPPs are commonly well formulated and monitored. Yet, there is clearly still room for improvement. In this respect, the insufficient level of expertise of Government personnel in both the formulation and monitoring of PPPs is a main contributor to the existing deficiencies. Other contributing factors include the lack of a specific regulatory framework for PPPs and the related absence of a central procurement authority.

IMPLICATIONS: This study is meant to raise public sector awareness on the need to improve Maltese PPP practices with respect to their definability, formulation and monitoring. It is hoped that the forwarded recommendations support the competent authorities in addressing the identified existing deficiencies, thus enabling them to enhance PPPs and render them improved vehicles for public sector development.

KEYWORDS: PPPs, Public Private Partnerships, PPP Formulation, PPP Monitoring

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Dedication

*To those who believed in my abilities
and encouraged me, even when I did
not believe in myself*

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List of Abbreviations

BPQR	Best Price Quality Ratio
CD	Competitive Dialogue
DBFMO	Design-Build-Finance-Maintain-Operate
BFMO	Build-Finance-Maintain-Operate
EPEC	European PPP Expertise Centre
EU	European Union
MEAT	Most Economically Advantageous Tender
NAO	National Audit Office of Malta
NC	Negotiated Competitive
PA	Performance Audit
PQQ	Pre-Qualification Questionnaire
PPP	Public Private Partnership
PSC	Public Sector Comparator
KPI	Key Performance Indicator
RA	Risk Assessment
RfQ	Request for Qualification
SMART	Specific, Measurable, Achievable, Realistic, Timely
SP	Service Provider
VfM	Value for Money

Chapter 1

Introduction

1.1 Introduction

This chapter establishes the rationale for the dissertation. Section 1.2 provides a background to the study, while section 1.3 identifies the need for the study. Subsequently, Section 1.4 sets out the research objectives and Section 1.5 identifies the scope and limitations of the study. Lastly, Section 1.6 presents a rundown of the dissertation structure.

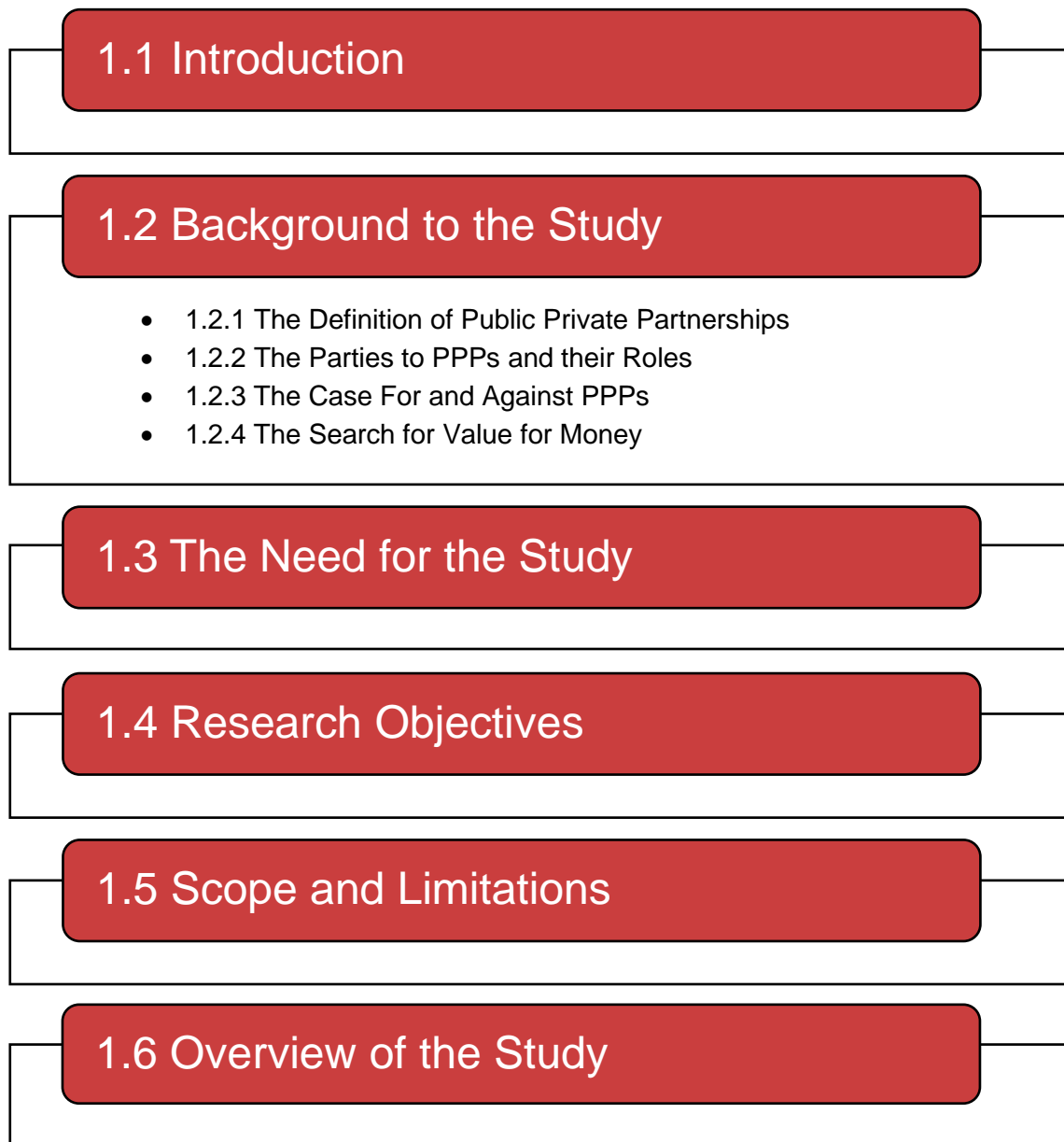


Figure 1.1: Outline of Chapter 1

1.2 Background to the Study

1.2.1 The Definition of Public Private Partnerships

There is no universal definition and model of what constitutes a Public Private Partnership (PPP) (PricewaterhouseCoopers [PwC] 2005) and the term is not defined at European Union (EU) statutory level (Commission of the European Communities [CEC] 2004). Nevertheless, different international organisations and authors have attempted to conceptualise the notion of PPPs. In fact, one such definition which is being taken as the working definition for this study, is:

“Public-Private Partnerships (PPPs) are long term contractual arrangements between the government and a private partner whereby the latter delivers and funds public services using a capital asset, sharing the associated risks.” (Organisation for Economic Co-operation and Development [OECD] 2012, p.18)

1.2.2 The Parties to PPPs and their Roles

Burnett (2007, p.106), argues that there are four roles in PPPs. These are the public body or Government, the private party or “*service providers*” (SP), the providers of finance and the customers or “*end-users*”. Their responsibilities vary according to the nature of the PPP.

Government

In simple terms, in PPPs, the Government changes its role from that of an SP to a buyer (Colverson, Perera 2012). The Government’s role is mainly three-fold, in that, firstly, it outlines the overall scope and the specific conditions required to be delivered by the SP; secondly, it may provide land or other assets to the SP to carry out its contracted duty; and thirdly, to supervise that the operations and end-products are in line with the conditions it previously set out (Burnett 2007). Similarly, the European Commission [EC] (2003, p.48) describes the role of Government as “*management and monitoring*” and as responsible for promoting and forming PPPs with the aid of a National PPP Unit.

Service Providers

The role of the SP depends on the contracted terms and could range from the design and construction of an asset, to its eventual operation, management and maintenance (Burnett 2007). The EC (2003) acknowledges that the main roles of the SP involve the supply of managerial and implementation skills to support a more efficient deployment of resources, to add value to the end-users and to finance in part or in full the project in question. Burnett (2007) argues that the private sector's managerial style is highly influenced by the performance measures and their associated targets established by the public authority. These targets can be both financial, such as controlling costs and improving revenue collection, and other targets such as a better customer experience and an improvement in staff training and staff absence (Burnett 2007).

This set-up is in line with Savas (2000, p.7) where it is argued that the *"job of government is to steer, not to row"* due to its inability to deliver services proficiently. Consequently, services should be procured through the private sector (Savas 2000), which is in line with the PPP philosophy.

Other Players

On the other hand, lenders provide financial resources to the SP, however, if contractual obligations imposed by Government are adequate to provide security for the borrowing facility, these two will have a shared interest in ensuring that the SP is compliant (Burnett 2007).

End-users are those who make use of the product or service procured through a PPP and essentially play an informal role, at formulation stage during contract drafting and SP selection as reviewers, and aid the monitoring function through feedback from first-hand use of the product (Burnett 2007).

1.2.3 The Case For and Against PPPs

Firstly, PPPs allow for better financing options and for the costs to be spread over the lifespan of the asset in question (EC 2003). Additionally, the SP's managerial skills tend to result in adherence to budgetary timescales set for the project and higher cost certainty (PwC 2005). In fact, historically, PPP contracts result in

lower construction and life-cycle costs and can provide a better customer experience (Deloitte 2006). In the same connection, Sultana (2007, p.111) writes that PPPs:

“are heralded as much-needed agents of change, within the public sector, from an inward-looking bureaucratic tendency to a customer-oriented, needs-centred approach.”

Moreover, maintenance of particular assets is likely to be postponed by Government in light of more urgent need to fund other assets. However, in PPPs this is avoided as such funds would have been previously committed (Deloitte 2006). Finally, due to a shift in responsibilities to the SP, Government is not distracted with operational aspects and can focus on setting the project's objectives and monitoring. This in turn ensures quality and Value for Money (VfM) (EC 2003).

Nonetheless, challenges exist and need to be addressed. PwC (2005) stated that any cost savings arising from the PPP formation can be offset by a costly procurement process. Colverson and Perera (2012) argued that such procurement process is also complex and long and consequently may reduce competition because it automatically excludes potential bidders. Furthermore, any financing options typically available to private companies are more expensive than those available to Government (PwC 2005). Moreover, PPPs can result in impaired accountability and transparency as information may be withheld from the public in the name of market sensitivity (Colverson, Perera 2012).

Therefore, the salient factor is that both the private and public sectors need to possess sufficient capability to successfully formulate and monitor PPPs (PwC 2005).

1.2.4 The Search for Value for Money

An overall theme in PPPs is that of ensuring VfM, which refers to receiving the best service for the lowest cost (United Nations Economic Commission for Europe [UNECE] 2008). Government needs to ensure that added value is not only derived from the PPP but also from the initial stages, where other alternatives to forming a PPP are to be considered (PwC 2005). Furthermore, if

a PPP is deemed to be the ideal choice, Burnett (2007) argues that Government should undertake two stages to attain VfM. This involves the employment of a transparent and competitive procurement process, together with an effective mechanism for contract management for the assessed VfM to actually be derived (Burnett 2007).

1.3 The Need for the Study

A former Prime Minister of Malta contended that PPPs are the way forward, as Government should not work on its own if the private sector has better capability (Psaila 2016). While various PPPs are being formed, implying increased popularity, little research has been conducted in the Maltese context in this regard. It is essential that a study is conducted to analyse the type of PPPs being negotiated and to identify optimal ways for their formulation. This will contribute to a smoother, more transparent process where Government is able to obtain a better deal, while ensuring maximum utility of the taxpayer's funds and the exercise of good governance.

In addition, Government is heavily scrutinised for performing insufficient monitoring of PPPs. In fact, newspapers often publish articles addressing PPPs and the degrading quality of the public good under assessment. Therefore, there is the need to identify what makes monitoring effective and what can be done to improve it.

All in all, PPPs are relatively a recent development in Malta (Psaila 2016). Thus, any findings will contribute to the creation of knowledge so as to apply the concepts in the Maltese scenario. Ultimately, identifying ways for better formulation and effective monitoring will provide for an improved relationship between the two parties in question, thus allowing for value maximisation. Moreover, the results can act as a benchmark for assessing PPPs.

1.4 Research Objectives

Research regarding PPPs in Malta is limited, and therefore, this study will be one of the first to analyse in detail the nature and definition, the formulation and the monitoring of PPPs, as applicable to the Maltese context.

Consequently, this research study will attempt to achieve the following objectives:

- i. To ascertain the nature of PPPs in Malta and to assess their definability;
- ii. To identify and analyse the main alternative ways of formulating PPPs within the Maltese scenario and to find the optimal ways within such scenario; and
- iii. To assess the monitoring of current Maltese PPPs and to analyse the factors, if any, which may render such monitoring more effective.

1.5 Scope and Limitations

Due to the stipulated timeframe, this study includes relevant national and international information up to 31st March 2020. However, national literature about PPPs is very limited, outdated and not in the public domain.

Furthermore, in view of time and word restrictions, this study has been limited to the major important aspects relating to the PPP's nature and definition, formulation and monitoring.

1.6 Overview of the Study

Chapter One provides the relevant background information on the research topic, also giving the need, objectives and scope as well as the limitations of the study.

Chapter Two presents a review of existing international and national literature in relation to the definition and nature, formulation and monitoring of PPPs.

Chapter Three describes the research methodology used to achieve the research objectives of the study.

Chapter Four presents the research findings collected from the semi-structured interviews with the respondents of the study.

Chapter Five provides a discussion by evaluating the research findings presented in Chapter Four and the literature review presented in Chapter Two.

Chapter Six concludes the study by summarising the key findings, makes recommendations and suggests areas for further research. Figure 1.2 overleaf outlines the structure of the dissertation.

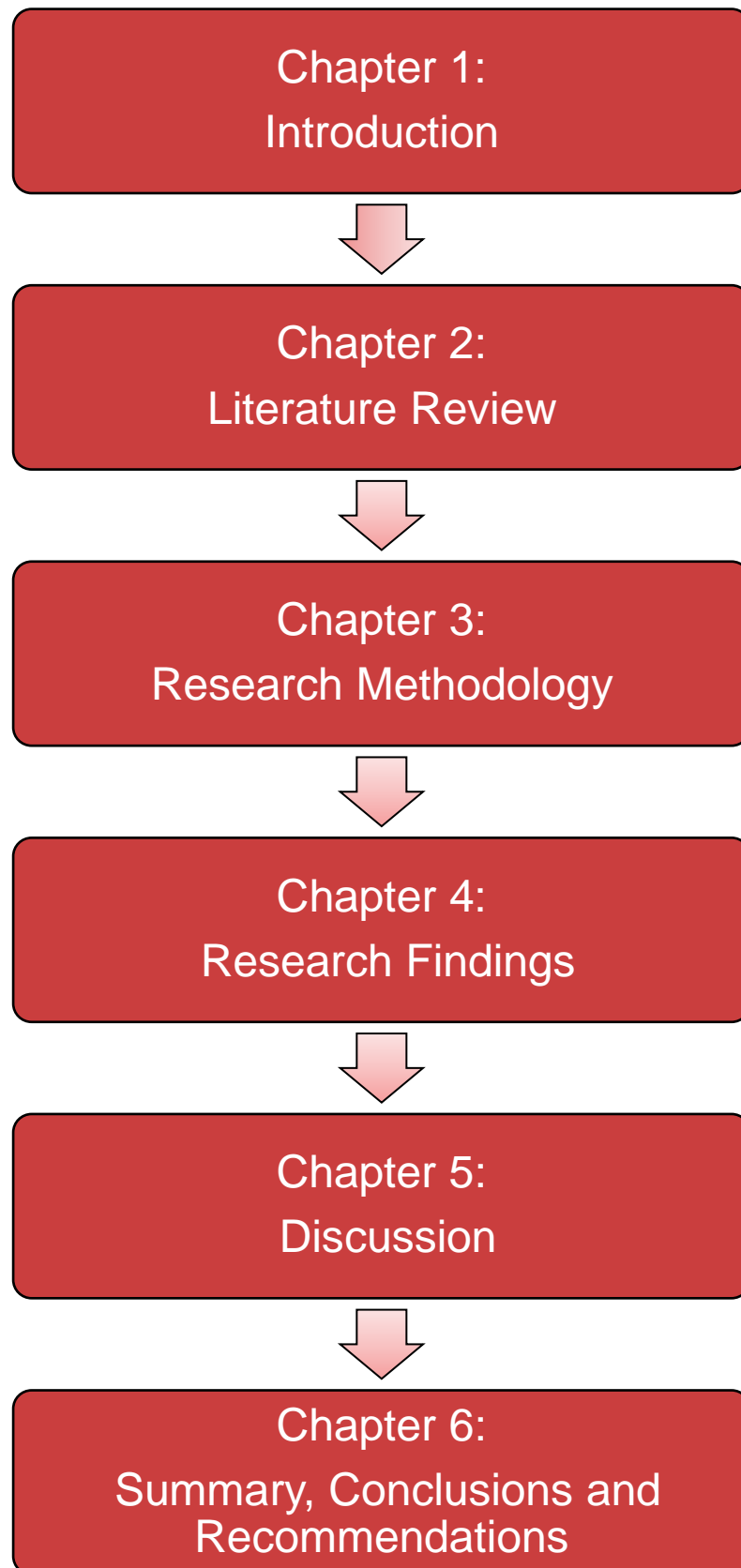


Figure 1.2: Dissertation Overview

Chapter 2

Literature Review

2.1 Introduction

This chapter presents a detailed literature review on the research topic. As illustrated in Figure 2.1, Section 2.2 evaluates the definition and nature of PPPs, while Section 2.3 analyses aspects in the formulation of PPPs. Subsequently, Section 2.4 deals with the monitoring of PPPs, and Section 2.5 concludes the chapter.

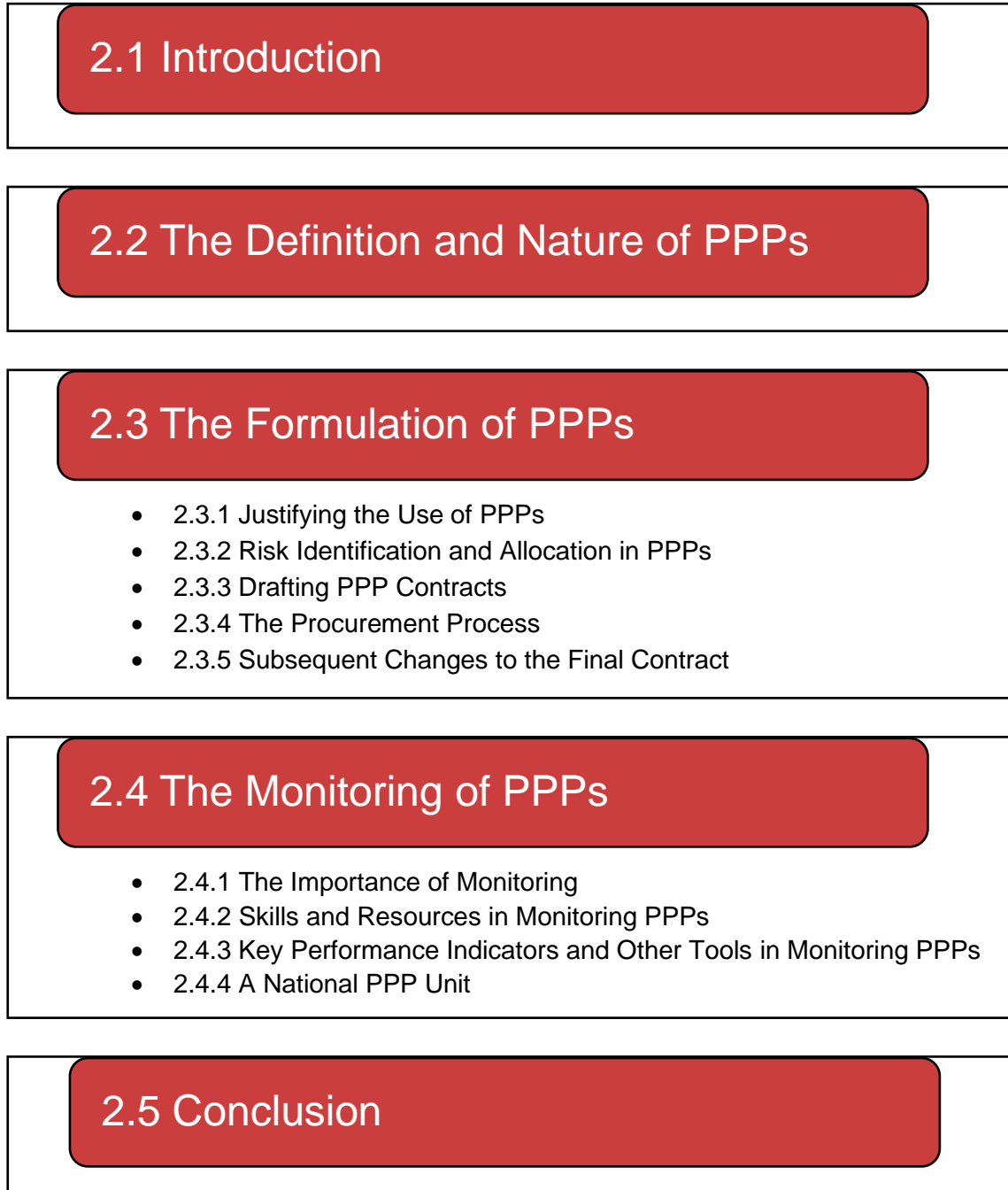


Figure 2.1: Outline of Chapter 2

2.2 The Definition and Nature of PPPs

The working definition of PPPs, as adopted in Chapter One¹, indicates that particular characteristics are present for the formulation of such partnerships. The UNECE (2008) and CEC (2004), claim that these partnerships between the public sector and the private sector usually:

- i. Are long-term in nature;
- ii. Involve the transfer of risk to the private sector;
- iii. May take different forms depending on the specificity of the case; and
- iv. Are financed by both private and public investments.

In this context, Burnett (2007) argues that the lack of definition at law shall not discourage the proper use of PPPs and stated that defining PPPs would create unnecessary risk, as public parties would attempt to bypass transparency measures set out by public procurement regulation.

Nonetheless, the EC (2003) emphasised that the correct identification of the PPP structure is required before forming such a contract, given that PPPs can take several forms. The different types are categorised according to the amount of risk transferred to the private sector and the responsibilities retained by Government (UNECE 2008). A summary of the main types of PPPs is found in Figure 2.2 overleaf, where those placed at a higher level in the diagram indicate a greater degree of risk transferred to the SP.

One must highlight that while there are many forms of PPPs, privatisation and public procurement are not considered as such (UNECE 2008). In fact, PPPs' arrangements have been used to counter the negative view surrounding privatisation with regards to dilution of control (Sultana 2007). Furthermore, in PPPs, Government remains the owner of the asset and is ultimately responsible for the service, whereas in privatisation, these are passed on to the private sector. On the other end of the spectrum, public procurement relates to one-off transactions and the characteristics of PPPs are absent. Nevertheless, public procurement regulations are used in selecting SPs in PPPs (UNECE 2008).

¹ Vide Section 1.2.1

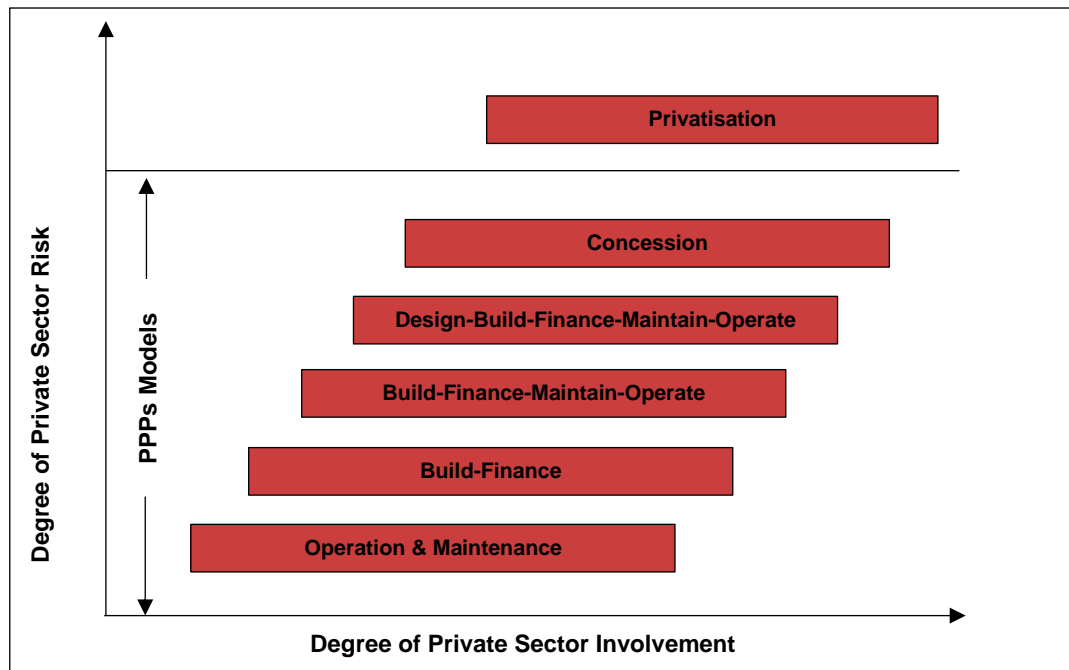


Figure 2.2: PPP Models

Source: Adapted from National Audit Office of Malta [NAO] (2015, p.29)

Operation and Maintenance contracts refer to SPs being responsible for the daily operation and maintenance of an asset owned by Government for a specific period of time (NAO 2015). In contrast, a Concession refers to Government granting a private party the rights to provide, operate and maintain an asset, while the ownership of such asset, except for improvements made to it, is retained by Government (Deloitte 2006). Such Concession contract would include specific conditions set by Government and is long-term in nature (Deloitte 2006).

In between these two extremes, many other forms of PPPs exist, such as Build-Finance-Maintain-Operate (BFMO) and Design-Build-Finance-Maintain-Operate (DBFMO) (Deloitte 2006). All these models would transfer the responsibility to SPs, as identified in their name, while any other responsibilities remain with Government (UNECE 2008). According to the European Court of Auditors [ECA] (2018), DBFMO is the most popular type of PPP.

The key point in relation to the nature of PPPs is that it is a contractual agreement between two parties, and thus, the terms can be tailored to the specific situation at hand (Farquharson, Torres de Mästle et al. 2011). Thus, the models described

above are by no means an exhaustive list of PPP models but are models which are commonly used (EC 2003).

An alternative way to generally classify PPPs is between “*User-fee and Availability-based PPPs*” which focuses on who assumes the demand risk, or put simply, who pays (Farquharson et al. 2011, p.11). In a User-fee PPP, the SP collects fees from end-users for using the product or service while in an Availability-based PPP, the Government pays SPs for making the product or service available to end-users (ibid.).

2.3 The Formulation of PPPs

The World Bank [WB] (2017, p.114), listed several steps that Government needs to undertake in order to form a PPP which it called the “*PPP cycle*” and is summarised in Figure 2.3 below.

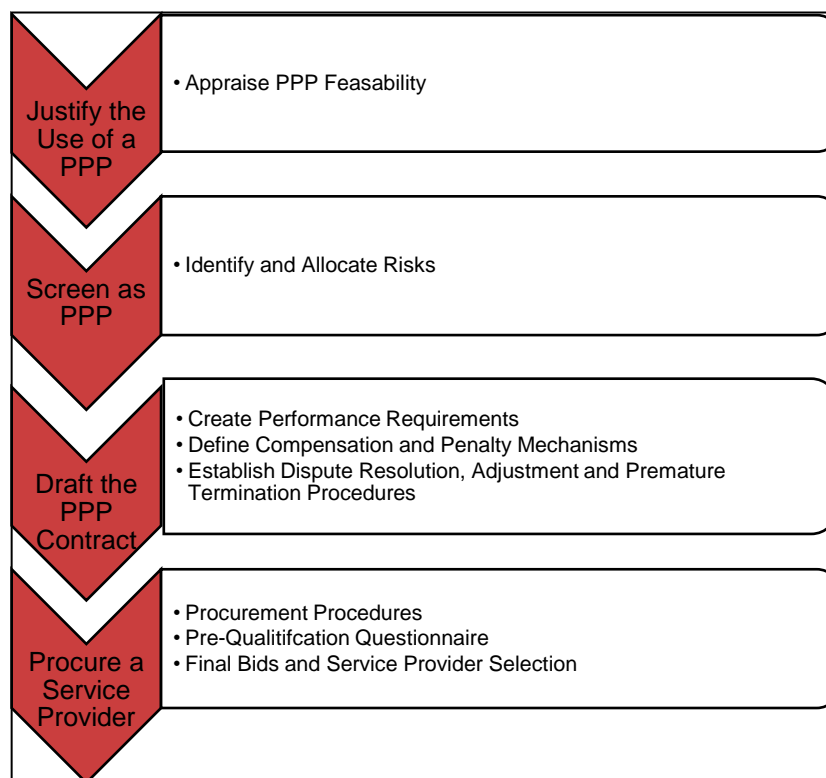


Figure 2.3: PPP Process
Source: Adapted from WB (2017, p.114)

2.3.1 Justifying the Use of PPPs

The first step, before starting to draft the PPP contract, needs to be one where Government considers whether a PPP is the best way forward for the project under consideration (PwC 2005). In fact, the OECD (2012, p.12) recommends that once Government decides to carry out a project, it should undertake a “*procurement option pre-test*” to identify that a PPP is a viable option. Thus, this necessitates Government to ascertain that a PPP will provide VfM in excess of that generated from other possible procurement methods (EC 2003). Moreover, Burnett (2007, p.103) argued that the decision to form a PPP “*should be justified on a case by case basis*”.

Usually, a Public Sector Comparator (PSC) is employed in carrying out the VfM assessment where the discounted cost of the PPP plan is compared against that of the most adequate traditional form of procurement (ECA 2018, OECD 2012). The aspects to study include lower life cycle costs, improved risk allocation and higher quality of service, among others. Additionally, certain factors which are unique to the project can be studied through the experience of comparable projects (EC 2003).

However, the ECA (2018) criticised that most member states were not undertaking this initial assessment and stressed the potential future negative implications due to the PPP’s longstanding nature. In relation to the Maltese scenario, the NAO (2015) noted that two PPP contracts subjected to a performance audit (PA) did not consider other investment possibilities.

Burnett (2007) argues that the motives behind forming PPPs are either to obtain private sector competencies of better overall quality and financial advantages resulting in an improved bottom line, or to overcome financing restrictions. The EC (2003) attributed these financing restrictions to a decline in the availability of public funds, or as a result of projects that require a substantial initial outlay. In fact, Psaila (2016) argues that certain large infrastructural projects would not be viable without a cash injection from the private sector.

2.3.2 Risk Identification and Allocation in PPPs

After confirming that a PPP is the most beneficial option but prior to drafting the PPP contract, a detailed risk assessment (RA) needs to be performed where risks are identified and allocated (UNECE 2008). This step involves listing the risks and gathering those that are of similar nature, such as construction and operation risks, in order to pinpoint the major risks on which to base allocation (WB 2017).

According to Deloitte (2006, p.5), Government should ensure that the risks of the project are assigned *“to the party best positioned to manage it”*. Therefore, the assignment of each risk should be rooted according to who has the best ability to control both probability and magnitude (Irwin 2007). However, Yescombe (2007, p.243) argues, that such party needs to do so *“at the lowest cost”* or else will undermine the VfM principle. In fact, UNECE (2008) stresses that for better governance, Government should accept a degree of risk or else it runs the possibility that in transferring all risks, the project becomes unfeasible. This is due to the notion that higher risk merits higher reward, which will be exercised by SPs (WB 2017).

2.3.3 Drafting PPP Contracts

Subsequently, there are two things to plan and execute. These are the drafting of an effective PPP contract and the procurement of the SP (Burnett 2007, Fenech 2005).

The WB (2017) states that the PPP contract is a critical document for PPP formulation as risk is assigned through setting the responsibilities of both parties, performance requirements, a system of compensation and penalties, along with procedures to tackle disagreements, adjustment and termination, amongst others.

Performance Requirements

The performance requirements, which should be matched with performance targets, set out Government's intentions and guide the SP (Burnett 2007). A crucial aspect of PPP contracts is that these requirements are established in respect of the amount and quality of the expected output, as opposed to

specifying the inputs (WB 2017). This is an innovative feature when compared to traditional procurement contracts and helps Government to prevent monopolistic behaviour by prospective bidders, which in turn helps such bidders by providing a clearer picture, without restricting creativity (Farquharson et al. 2011, WB 2017). Farquharson et al. (2011, p.34) go on to argue that such requirements “*should be SMART—specific, measurable, achievable, realistic, and timely*” in order to add value to all parties involved and to aid in monitoring. Moreover, Burnett (2007, p.125) is of the same opinion, and most notably writes “*suppliers will tend to do what is measured*”, motivated by the eventuality of penalties and thus aim to attain the prescribed targets.

Compensation and Penalty Mechanisms

The performance targets need to be the foundation for both Compensation and Penalty Mechanisms in PPP contracts and act as a “*system of carrots and sticks*” (Iossa, Spagnolo et al. 2007, p.33). As discussed in Section 2.2, payment to SPs can be made either by end-users (*User-fee Mechanism*) or by Government (*Availability-based Mechanism*). In case of an Availability-based Mechanism, the payment could take the form of a Usage-fee, which is based on usage, or simply a Lump-sum Payment, which is based on availability (WB 2017). Alternatively, payment could be a combination of both User-fee and Availability-based mechanisms (Yescombe 2007). The choice is embedded in demand risk acceptance, since Availability-based PPPs impose a continuous obligation for payment on Government, while User-fee PPPs depend on end-user demand, hence a mixed approach might be beneficial (Farquharson et al. 2011). Additionally, a cost for non-compliance with the contracted requirements needs to exist, which can take different forms, such as fines or a reduced compensation (WB 2017). All in all, the payment structure needs to be sufficient to cover costs and to motivate SPs but commensurate to the risk assumed (Iossa et al. 2007).

Dispute Resolution, Adjustment and Premature Termination Procedures

Given the long-term nature of PPPs and the inability to precisely predict the future, it is essential to include both adjustment and dispute resolution mechanisms to allow for the necessary changes (WB 2017). Ergo, flexibility needs to be ingrained in PPP contracts, although this goes against the concept of a contract since its very purpose would be to reduce the ability to circumvent around it (Iossa et al. 2007). Nevertheless, Iossa et al. (2007) state that a balance between possible abuse and flexibility is vital and can be achieved by stipulating rules about what, when and how adjustment provisions may be triggered. An example is by factoring for inflation in the Compensation Mechanism and tweaking the output requirements according to emerging trends (WB 2017). With respect to solving differences, a straightforward procedure should be in place, which can range from a non-binding assessment of selecting an independent person to settle disagreements, to referring the matter to the relevant regulator. Additionally, for more serious matters, one may resort to the judicial system, amongst other options (European PPP Expertise Centre [EPEC] 2011).

Furthermore, such contract will cease, either on an agreed date or earlier, due to default by either parties or unforeseen events. Consequently, provisions for returning the asset back to Government, and in case of premature termination a pre-defined fee, ought to exist (WB 2017).

2.3.4 The Procurement Process

Another essential aspect in formulating PPPs is the procurement process, and according to EPEC (2010), it is crucial for PPPs to be successful. The purpose is to choose the SP to deliver the project's goals, and thus, an important theme here is to encourage competition and transparency, hence developing a procurement strategy becomes a must (Farquharson et al. 2011). In doing so, the public procurement law applies and thus, it is of utmost importance that the procuring public authority gains an understanding of the legal framework (Burnett 2007).

Procurement Procedures

In terms of Directive 2004/18/EC, four Procedures are available. These are the Open, Restricted, Negotiated and Competitive Dialogue (CD) Procedures (EC 2004, art.28). EPEC (2010) discovered that all four Procedures are used by EU member states to procure SPs for PPPs, but the CD Procedure is the most popular as it was specifically developed for complicated contracts and usually PPPs involve complications. This was also substantiated by Fenech (2005), who, in a guide for PPP procurement in Malta, states that the CD Procedure is the suitable choice.

Directive 2004/18/EC was subsequently replaced by Directive 2014/24/EU which, split the Negotiated Procedure into two: the Competitive or Non-competitive Negotiated Procedures, and additionally introduced the Innovative Partnership Procedure (EC 2014, art.26). The procurement strategy options were thereby increased to six, and five of which are considered as competitive (OECD 2014). Moreover, specific requirements need to be met to make use of the CD or the NC Procedures. These include the presence of innovative ideas, unique situations requiring negotiations with potential suppliers, and whether inadequate proposals are received through an Open or Restricted Procedures (OECD 2014). Ultimately, these procedures determine whether to restrict the number of bidders, the interaction with bidders and the criteria for selection, amongst others (WB 2017).

Pre-Qualification Questionnaire

Another aspect is planning whether to use a one-stage process or a process that includes a Request for Qualification (RfQ) (WB 2017). According to Fenech (2005), in Malta, such a stage is referred to as the Pre-Qualification Questionnaire (PQQ). In a one-stage process, bidders submit a detailed proposal for immediate evaluation (WB 2017). Conversely, in a process that includes a RfQ, interested parties are invited to register their interest by submitting a RfQ which needs to include information to corroborate their experience in the field and their financial and technical abilities (Yescombe 2007). Subsequently, such information is assessed by a procurement team and deficient applicants are rejected while the

remaining bidders are invited to submit a detailed proposal for evaluation (Kerf, Gray et al. 1998). Farquharson et al. (2011) argued that including a RfQ is a fruitful exercise that results into a cost and time efficient procurement process and is recommended for sophisticated projects. However, it may have a potential negative impact on competition and transparency goals.

Final Bids and SP Selection

Furthermore, Government needs to decide on a strategy to appraise the final bids in order to select the best one (WB 2017). Directive 2014/24/EU states that preference should be given to the “*most economically advantageous tender*” (MEAT) (EC 2014, art.67, par.1). This can involve either a two-tier or a weighted strategy but both strategies require the selection to be rooted in technical and financial criteria (WB 2017). In a two-tier strategy, the bids first need to pass the technical criteria and then, if successful, proceed to financial analysis stage. In a weighted strategy, both technical and financial criteria are evaluated simultaneously (Kerf et al. 1998). The New Zealand Government (2015) PPP procurement guide contends that such criteria need to reflect the PPP’s performance requirements and for primary goals to be assigned higher weighting. Furthermore, EPEC (2011) stresses the publication and correct application of selection criteria to avoid doubts on the integrity of the process.

2.3.5 Subsequent Changes to the Final Contract

After the procurement strategy is decided, the actual procurement process is carried out, where the preferred bidder is chosen and then the procurement process should reach a “*financial close*” (WB 2017, p.174). Farquharson et al. (2011) defines financial close as the point where the requirements, which for example, may involve securing borrowing facilities, are met and the PPP contract is signed. Nonetheless, Yescombe (2007) writes that some final tweaks to the PPP contract may be necessary prior to financial close. This may be due to demands imposed by finance providers, which may refuse to grant finance until certain requirements are met.

2.4 The Monitoring of PPPs

2.4.1 The Importance of Monitoring

Following the successful implementation of a PPP, it is essential to introduce mechanisms to monitor and enforce the terms stipulated by the contract throughout its duration (WB 2017). Yescombe (2007) argues that in PPP arrangements, since SPs generally have better information than Government, a principal-agent conflict may arise.

The NAO (2018) stated that effective monitoring facilitates early warnings for possible issues that may develop and safeguards the public interest in the PPP. In line with this, the UK's Public Private Partnerships Programme [4ps] (2007) guide adds that monitoring confirms that VfM is attained, guarantees that compensation is appropriate to the level of service delivered and motivates SPs towards continuous improvement.

2.4.2 Skills and Resources in Monitoring PPPs

The Government's task to monitor PPPs is usually entrusted to a specialised team or individual that has the proper skill and resources. Thus, it is paramount to plan for this role before PPPs start to operate (WB 2017). Fenech (2005) stressed that for effective monitoring, resources need to be commensurate with the assessed risk presented by the SP. Furthermore, according to 4ps (2007), competencies need to include interpersonal skills, negotiation skills to settle conflicts, analytical abilities and experience on monitoring PPP contracts.

Farquharson et al. (2011) described several helpful resources that may potentially aid in monitoring. These included hiring independent advisors which can be the same ones employed during formulation stage, providing adequate training to those in charge of monitoring, and creating a contract administration manual. The aim of such manual is for guidance purposes and it would need to focus on risk, and in detail, describe the tasks and checks to be carried out (EPEC 2014). Furthermore, EPEC (2014) identified other necessary tools for effective monitoring which are a mechanism for obtaining valuable information about the PPP and an agreed financial model to calculate compensation due. Farquharson et al. (2011 p.134) wrote that PPP contracts should impose a duty on SPs to

provide the requested information and to allow public authorities unrestricted access, even to audit, and go on to argue that:

“The seeds for success or failure of the contract management phase are sown by many of the actions or inactions during the project preparation and procurement phases”

2.4.3 Key Performance Indicators and Other Tools in Monitoring PPPs

The Global Infrastructure HUB [GIH] (2018) stated that several monitoring tools can be adopted for PPPs, mainly construction targets during construction period and Key Performance Indicators (KPIs) during the operational stage. It is critical for KPIs to be based on output requirements designed at formulation stage and be set out in PPP contracts, as monitoring outcomes could result in penalties (Farquharson et al. 2011, 4ps 2007).

KPIs show the adequacy of the job being carried out by SPs, however, GIH (2018) claimed that the KPIs usefulness varies according to the payment mechanism used. If the payment mechanism is an Availability-based one, detailed KPIs are necessary, whereas if a User-fee Mechanism is used, KPIs are not important. This is because a User-fee Mechanism is within itself motivating to SPs, as if service quality declines end-users would stop using the PPP's services and consequently results into lower revenue (GIH 2018). Furthermore, Garvin, Molenaar et al. (2011) suggested for KPIs to be based on key desired results and to include aspects that result in benefits for end-users and society at large. Additionally, KPIs need to be subjected to continuous revisions to reflect the situation at the time (Garvin et al. 2011).

Additionally, PAs aid in monitoring as they are a third-party check that attempt to measure the economy, efficiency and effectiveness of PPPs (O'Leary 1996). In the Maltese scenario, the NAO (2015, 2017, 2018) has investigated a number of PPPs through PAs which in simple terms assessed whether the PPPs under review were *“a good deal for government”* (NAO 2018, p.16).

2.4.4 A National PPP Unit

Colverson and Perera (2012) wrote that many countries lack the experience required to obtain the capacity to formulate and monitor PPPs. Henceforth, the establishment of a nationwide PPP excellence centre, equipped to specifically deal with PPPs is considered as a beneficial investment (PwC 2005). The idea behind such Unit is to improve the PPP formulation process by employing skilled and experienced individuals who will drive and simplify the process by creating procedures and standardising the process based on best practises. Resulting benefits include a less costly and an accelerated tendering process, resolving legal and bureaucratic barriers and more useful monitoring (UNECE 2008).

2.5 Conclusion

This chapter provided an analyses of literature relating to the definition and nature, formulation and monitoring of PPPs. The following chapter explains the research methodology used in this study.

Chapter 3

Research Methodology

3.1 Introduction

This chapter outlines the research methodology of the study. As illustrated in Figure 3.1, Section 3.2 highlights the preliminary secondary research carried out. Subsequently, Sections 3.3 and 3.4 describe the research design and research tools respectively, while Section 3.5 explains how the research participants were identified. Moreover, Sections 3.6 and 3.7 demonstrate how data was collected and analysed respectively. Finally, the research limitations are outlined in Section 3.8 while Section 3.9 concludes the chapter.



Figure 3.1: Outline of Chapter 3

3.2 Preliminary Research

At the beginning of the study, a review of various international and Maltese literature sources was conducted to gain an understanding of the research area. The main literature sources included reference guides issued by international institutions, books, reports and journal articles.

Additionally, given the novelty of the research topic, a meeting was held with a deemed expert in the field. Its purpose was to obtain a better understanding of the specificities of the topic in order to better set the objectives of the dissertation.

3.3 Research Design

One may choose between different types of research designs mainly between quantitative, qualitative, or mixed-methods, the latter involving the integration of both quantitative and qualitative designs (Saunders, Lewis et al. 2016).

On the outset, the main difference between qualitative research and quantitative research is that the former produces non-numerical data while the latter produces data in numerical format (Saunders et al. 2016). Moreover, Yilmaz (2013) argues that qualitative research tries to explain phenomena in descriptive terms and, as opposed to quantitative research, permits the researcher to understand the interviewees' experiences in detail. Nonetheless, quantitative methods permit the researcher to obtain research findings that are generalisable, unlike qualitative methods.

Mixed-methods provide an improved way to address the research objectives as it allows for quantitative data to be explained with the qualitative information collected (Creswell 2014). Moreover, such mixed-methods enable the researcher to use the different approaches innovatively to explore issues such as cultural differences surrounding the research, rather than having to stick to rigid frameworks. Thus, in order to overcome the limitations of both qualitative and quantitative methods, it is considered appropriate to use a mixed-method approach (Hesse-Biber 2015).

3.4 Research Tool

The research tool considered most suitable to collect data to achieve the research objectives of this dissertation was the semi-structured interview. When preparing for the semi-structured interviews, the researcher produces an interview schedule which includes both open-ended and closed-ended questions that address the research objectives, as well as some prompting questions to allow for a better discussion (Harrell, Bradley 2009). Semi-structured interviews allow respondents to answer more freely, and consequently, give the researcher the opportunity to get a deep understanding of the interviewees' opinions. Nonetheless, since a standardised set of questions are used, data can be compared and statistically analysed (Macintosh, Morse 2015).

The interview schedule² designed for this study was intended for Public Private Partnership Experts. As illustrated in Table 3.1, the interview schedule included three sections with open-ended and closed-ended questions, as well as a section with some definitions and another with the Likert scales to be used for the closed-ended questions.

Section Heading	Question Number
Section 1: The Nature and Definition of PPPs	1 – 6
Section 2: The Formulation of PPPs	7 – 18
Section 3: The Monitoring of PPPs	19 – 24
Section A1: Definitions	–
Section A2: Scales	–

Table 3.1: Interview Schedule Structure

Table 3.2 below outlines the open-ended and closed-ended questions in each interview schedule section. The closed-ended questions were of two forms. Some closed-ended questions necessitated a yes/no answer while most closed-ended questions required interviewees to rate their level of agreement or importance, as shown in Table 3.3. The five-point Likert scale was utilised to develop the Agreement and the Intensity scales, as depicted in Table 3.4 below.

² Vide Appendix 3.1

Question Type	Section	Question Number
Open-Ended	1	4 – 5
	2	7b – 8d 10b – 10c 11c – 13 14b 15b – 18
	3	20c – 24
Closed-Ended	1	1 – 3b 6
	2	7a, 9, 10a, 11a, 11b, 14a, 15a
	3	19 – 20b

Table 3.2: Open-ended and Closed-ended Questions

Response Required	Closed-Ended Question Number
Yes/No	6, 14a
Agreement scale	1, 7a, 9, 10a, 15a, 19, 20b
Intensity scale	2, 3a, 3b, 20a

Table 3.3: Type of Response Required to Closed-ended Questions

Agreement Scale	Intensity Scale	Five-point Likert Scale
Strongly Disagree	Not Important at All	0
Disagree	Not Important	1
Neutral	Neutral	2
Agree	Important	3
Strongly Agree	Highly Important	4

Table 3.4: Agreement and Intensity Scales Using the Likert Scale

3.5 Research Participants

Given the particularity of the research area, it was difficult to identify respondents who are experts in the field, including experienced consultants as well as senior officials at Government entities and private sector firms. Thus, initially PAs on PPPs published by the NAO Office were analysed to identify potential interviewees at both Government and private sector firms. Additionally, prominent advisory firms were contacted to identify experienced consultants. Thereafter, snowball sampling was used, whereby interviewees themselves suggested other respondents for the study. By the end of the data collection period, it was clear that saturation was reached as this was partly indicated by the fact that the final two interviewees suggested individuals who had previously been interviewed.

Most interviewees were contacted via email, using email addresses obtained online while a few were contacted through a social media platform. In both cases, deemed experts were invited to participate in the study by accepting to be interviewed and additionally, a Letter of Introduction was attached. Such a letter briefly described the study and was signed by the Head of Department of Accountancy. If the potential interviewees failed to reply within a week, another reminder was sent using the same communication channel. Furthermore, in case of another non-response, potential respondents were contacted by phone where possible. Despite such efforts, some individuals failed to reply to the communication sent, while another explicitly indicated that s/he did not wish to contribute to the study. Additionally, one interviewee accepted to participate, subject to ethical clearance by the organisation s/he worked for.

As shown in Table 3.5, a total of fourteen interviews were carried out with deemed experts. The target was to identify experts who were involved in the formulation and monitoring of PPPs. Capturing the consultants' knowledge and experiences in advising clients on various PPPs was deemed as important, as was capturing the experiences of both Government and the private sector firm representatives involved.

Interviewee Category	Research Participants	Number of Interviewees
Consultants	Advisory Partners (Big 4)	3
	Advisory Partners (Non-Big 4)	2
	Advisory Associate Director (Big 4)	1
Involved Government Entities Representatives	Heads of Entities	3
	Senior Official	1
	Senior Advisor	1
Involved Private Sector Firms Representatives	CEOs	2
	Senior Official	1
Total Number of Interviewees		14

Table 3.5: Interviewees Participating in Research

3.6 Data Collection

As long as there is consistency between the data collection method to be used and the research objectives, all methods are valid (Saunders et al. 2016). Nonetheless, it is important to select an appropriate data collection method to ensure that research findings are valid and trustworthy (Harrell, Bradley 2009).

For the purpose of this research, secondary data was obtained from various sources and was later analysed in Chapter Two of this dissertation. Subsequently, an interview schedule was prepared based on this data. Then, before starting the actual data collection process, a preliminary interview was carried out to identify potential problems and improve the interview schedule (Mackey, Gass 2016). Thereafter, the interview questions were revised, and the interview schedule was finalised.

Interviews were carried out between the 7th of November 2019 and the 6th of March 2020 at the respondents' offices on a date and time most convenient to

them. The interviews duration varied from forty minutes to one hour twenty minutes.

The interview schedule³ was sent via email prior to each interview to allow interviewees the chance to read it beforehand. Nonetheless, a hard copy was always given to interviewees at the beginning of each interview. Moreover, the researcher encouraged interviewees to ask where clarifications were required. Additionally, respondents were requested to sign a consent form, whose purpose was to acquire explicit authorisation from the respondents to be interviewed and for the interview to be audio-recorded. Some interviewees were uncomfortable about being recorded and a few still declined to be recorded even after assurance was given that the recording is for transcript purposes only in order to enhance quality during data analysis. In these cases, detailed notes were instead taken during the interview.

Furthermore, during the interviews some respondents were uncomfortable in answering some questions owing to their nature, despite being reassured of anonymity. Therefore, in such cases⁴ the total amount of responses is shown to be less than fourteen in the findings.

3.7 Data Analysis

All audio recordings obtained during the interviews were subsequently transcribed. These transcripts, together with the notes written during the interviews, allowed the researcher to document all the important aspects mentioned during each interview in great detail. This enhanced the quality of each interview and facilitated data analysis and interpretation.

3.7.1 Qualitative Data Analysis

Qualitative data was collected through both the open-ended questions asked during the interviews and through the interviewees' remarks in justifying their ratings to the Likert scale questions. Such qualitative data was analysed by summarising the transcripts of the responses for each question in the interview

³ Vide Appendix 3.1

⁴ Vide Sections 4.3.7, 4.3.8, 4.3.9

schedule. This allowed for easier evaluation and for the key similarities and differences in responses to be noted.

3.7.2 Quantitative Data Analysis

IBM SPSS Statistics was used to analyse the quantitative data gathered through the responses to the Likert scale and Yes/No closed-ended questions in the interview schedule.

The Friedman test⁵ was used for the Likert scale questions in order to compare the mean rating scores provided to the different statements in each question. These mean rating scores range from 0 to 4, where 0 corresponds to Strongly Disagree/Not Important at All and 4 corresponds to Strongly Agree/Highly Important. Consequently, this means that the higher the mean rating scores, the higher the agreement to/importance of the respective statements. The **null hypothesis** (H_0) specifies that the mean rating scores provided to the related statements vary marginally and it is accepted if the p -value exceeds the 0.05 level of significance. The **alternative hypothesis** (H_1) specifies that the mean rating scores provided to the statements differ significantly and it is accepted if the p -value is less than the 0.05 criterion.

The Chi-squared test⁶ was used for the Yes/No questions to investigate the association between the two categorical variables. The **null hypothesis** (H_0) specifies that there is no association between the two categorical variables and it is accepted if the p -value exceeds the 0.05 level of significance. The **alternative hypothesis** (H_1) specifies that there is a significant association between the two categorical variables and it is accepted if the p -value is less than the 0.05 criterion.

⁵ Vide Appendix 3.2

⁶ Vide Appendix 3.3

3.8 Research Limitations

One of the main limitations was that contact was made with twenty known experts in the field which were referred to by various sources, including previous respondents. However, five refrained from responding despite multiple attempts by the researcher, while another potential interviewee refused to participate.

Moreover, a degree of subjectivity was unavoidably present in responses provided by interviewees. Furthermore, although limited, some inconsistencies were observed between the ratings given to Likert scale questions and other interview questions.

3.9 Conclusion

This chapter explained the research methodology used throughout the study. The next chapter presents the research findings collected from the interviews carried out.

Chapter 4

Research Findings

4.1 Introduction

This chapter analyses the findings obtained from the interviews. As illustrated in Figure 4.1, the following three sections address the three components of the interview schedule: Section 4.2 is concerned with the nature and definition of PPPs, Section 4.3 discusses the formulation of PPPs and Section 4.4 is about the monitoring of PPPs. Finally, Section 4.5 concludes the chapter.

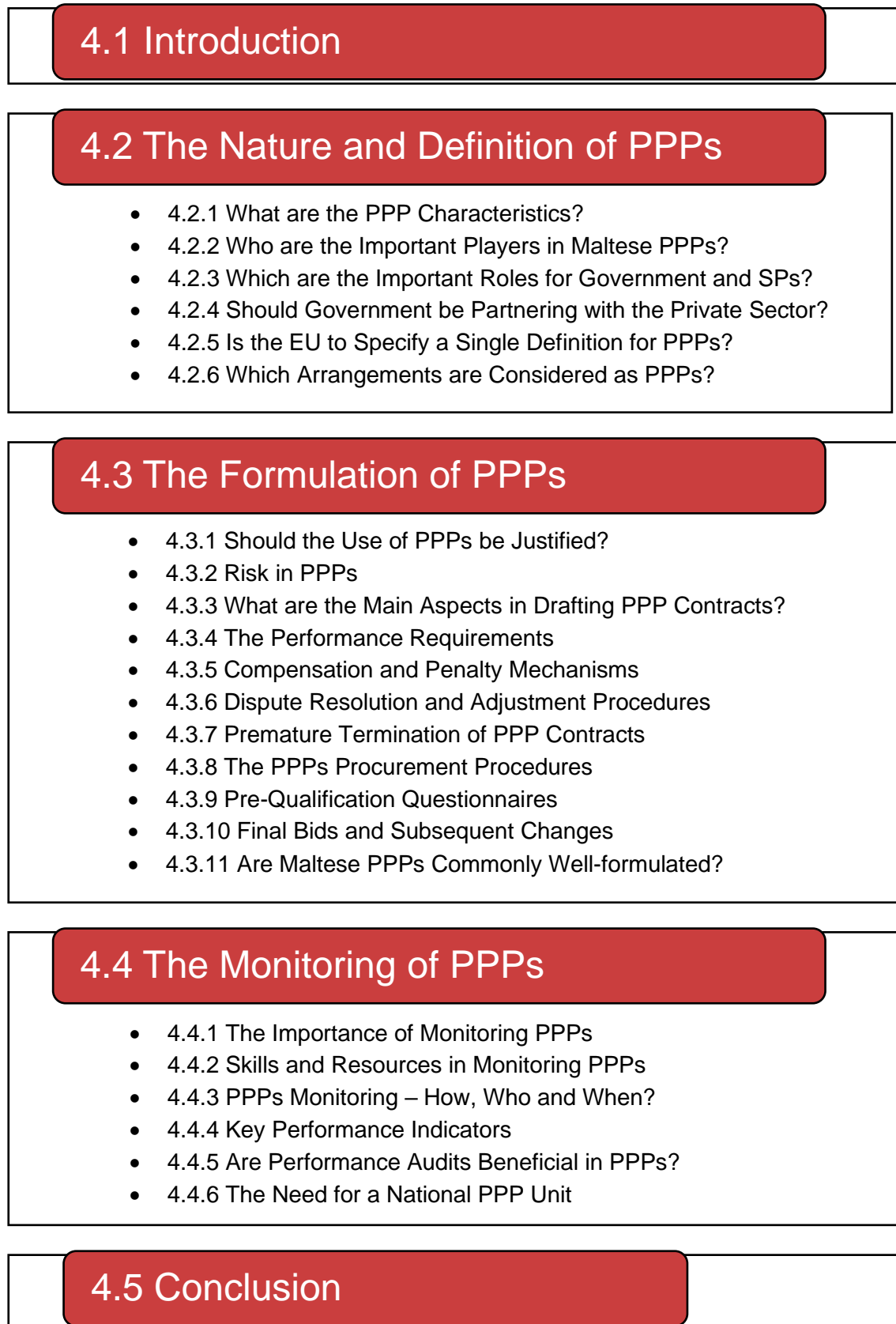


Figure 4.1: Outline of Chapter 4

4.2 The Nature and Definition of PPPs

The first Section of the interview schedule presented six questions (Qns.1-6) relating to the nature, characteristics and definition of PPPs.

4.2.1 What are the PPP Characteristics?

In the first question⁷, interviewees were asked to rate their agreement with four characteristics of PPPs. The rating scores in descending order are shown in Table 4.1. Respondents strongly agreed that a PPP contract may take different forms ($\bar{x}=3.64$) and agreed that a PPP contract is long-term ($\bar{x}=3.29$), transfers risks to the private sector ($\bar{x}=2.86$) and is financed by both sectors ($\bar{x}=2.50$). Furthermore, a significant difference ($p=0.006$) was found in respondent agreement with the different characteristics.

A PPP is a contract between the Government and the private sector and has the following characteristics:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
iii. May take different forms	3.64	4	0.497
i. Is a long-term contract	3.29	4	1.139
ii. Transfers risks to the private sector	2.86	3	0.949
iv. Is financed by both sectors	2.50	3	1.401
Scale from 0 (Strongly Disagree) to 4 (Strongly Agree)	$\chi^2(3) = 12.471, p = 0.006$		

Table 4.1: PPP Characteristics (Qn.1)

Clearly, the nature of PPPs was understood by respondents to take different forms. Regarding whether or not PPP contracts are long-term, two respondents_(2/14) commented that it had to be so. By long-term, they assumed that it needs to be a period of 25 years. However, two other respondents_(2/14) added that while still long-term, a ten-year term is ideal unless it needs to be extended for PPPs to be financially feasible. Regarding whether or not PPP contracts transfer risks to the private sector while agreeing, two respondents_(2/14) added that some risks are retained by Government. Another_(1/14) remarked that only operational risks are transferred while another_(1/14) stated that the degree of

⁷ Vide Q1 p.A3.1-2

risks being transferred varies with Government's intentions. Regarding whether or not PPPs are financed by both parties, three respondents_(3/14), while agreeing, added that most PPPs are not equally financed, while one_(1/14) emphasised that PPPs are normally financed by Service Providers (SPs).

4.2.2 Who are the Important Players in Maltese PPPs?

Interviewees were then asked⁸ to rate how important they find the listed four players (see Table 4.2) in Maltese PPPs. The table also provides the rating scores.

The important players in Maltese PPPs are the following:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
i. Government (<i>Public Sector</i>)	4	4	0.000
ii. Service providers (<i>Private Sector</i>)	3.93	4	0.267
iii. Providers of finance (<i>ex: Banks</i>)	2.64	3	0.745
iv. End-users (<i>Consumers</i>)	2.29	2	1.437
Scale from 0 (<i>Not Important at All</i>) to 4 (<i>Highly Important</i>)	$\chi^2(3) = 28.588, p = 0.000$		

Table 4.2: Major PPP Players (Qn.2)

It is evident that respondents found the roles of Government_($\bar{x}=4$) and SPs_($\bar{x}=3.93$) to be highly important, the finance provider role_($\bar{x}=2.64$) to be important and that of end-users to be neutral_($\bar{x}=2.29$). Furthermore, the relative importance of the different players was significantly different_($p=0.000$). With respect to the end-users, these are not particularly interested in the specific set-up_(8/14). One_(1/14) respondent pointed out that two other players, the Department of Contracts and the State Aid Monitoring Board, may also have a role which is commonly significant to ensure an appropriate procurement process and to avoid market distortions respectively.

⁸ Vide Q2 p.A3.1-2

4.2.3 Which are the Important Roles for Government and Service Providers?

Interviewees were next asked⁹ to rate the importance of three proposed roles of Government (see Tables 4.3) and four proposed roles of SPs (see Table 4.4). The rating scores are listed in the tables below, respectively.

The important roles of Government are as follows:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
i. Setting the scope and the conditions to be delivered by service providers	3.93	4	0.267
iii. Monitoring service providers	3.57	4	0.646
ii. Providing assets for the purpose of the project	2.86	3	0.663
Scale from 0 (Not Important at all) to 4 (Highly Important)	$\chi^2(2) = 16.000, p = 0.000$		

Table 4.3: Major Government Roles (Qn.3a)

As may be noted in Table 4.3, respondents found Government's roles of setting the SPs' requirements ($\bar{x}=3.93$) and of monitoring the SPs ($\bar{x}=3.57$) to be highly important, while Government's role of providing assets ($\bar{x}=2.86$) was deemed as important. This is in line with Burnett (2007) and EC (2003)¹⁰. Furthermore, the relative importance of the different roles was significantly different ($p=0.000$). As regards monitoring, two respondents (2/14) added that such a function was at times provided by different branches of Government. As regards assets, some respondents (3/14) added that such assets normally consisted of land.

⁹ Vide Q3 p.A3.1-3

¹⁰ Vide Section 1.2.2

The important roles of service providers are as follows:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
ii. Deploying resources efficiently	3.93	4	0.267
i. Supplying managerial skills	3.79	4	0.426
iii. Adding value to end-users	3.50	4	0.650
iv. Financing projects	3.14	3	0.770
Scale from 0 (Not important at all) to 4 (Highly important)	$\chi^2(3) = 14.571, p = 0.002$		

Table 4.4: Major Service Providers Roles (Qn.3b)

As may be seen in Table 4.4, respondents found the SP roles of deploying resources efficiently ($\bar{x}=3.93$), supplying managerial skills ($\bar{x}=3.79$) and adding end-users value ($\bar{x}=3.5$) to be highly important and the SP role to finance projects ($\bar{x}=3.14$) to be important. This is in line with Burnett (2007) and EC (2003)¹¹. Furthermore, the relative importance of the different roles was significantly different ($p=0.002$). One respondent ($1/14$) argued that whether or not resources are deployed efficiently depends on the original specification requirements. For instance, efficiency declines if a continuing obligation to employ all present employees exists. Other interviewees ($3/14$) stated that at times a further role of SPs is that of providing assets for the purpose of the project.

4.2.4 Should Government be Partnering with the Private Sector?

Interviewees were then asked¹² whether it is better for Government to partner with the private sector rather than carry out the planned project itself. Nearly all respondents ($13/14$) believed that it was better for Government to partner with the private sector. Eight ($8/13$) added that this is because Government lacks the necessary expertise, in that, it lacks experience, innovation and efficiency. Furthermore, three respondents ($3/13$) while still finding it better for Government to partner with the private sector emphasised that the benefit to Government was

¹¹ Vide Section 1.2.2

¹² Vide Q4 p.A3.1-3

conditional on Government appropriately enforcing the contract and ensuring no detrimental consequences to the public.

The only dissenting respondent^(1/14) stated that in his/her experience, it may not be beneficial for Government to partner with the private sector and for any benefits to materialise to Government, any PPPs need to be preceded by a careful study.

4.2.5 Is the EU to Specify a Single Definition for PPPs?

Interviewees were then asked¹³ whether they found the fact that there is no single definition of PPPs within the EU as being more advantageous than disadvantageous. The results are summarised in Table 4.5 below.

	Responses (N = 14)
Major Advantage	
No definition allows for flexibility and tailor-made solutions reflecting particular circumstances	4
Major Disadvantage	
The lack of parameters induces misunderstandings and misperceptions	6
Neither an Advantage nor a Disadvantage	
Definition is unnecessary but only when the concept works in practice	4
Total number of responses	14

Table 4.5: No EU-wide PPP Definition: Major Advantage and Disadvantage (Qn.5)

As shown, while a number of respondents^(4/14) found such a lack of definition as being neither advantageous nor disadvantageous, more respondents^(6/10) stated that they found this disadvantageous. The reason given was that consequently, there are no clear EU-wide parameters for PPPs across the EU, this leading to

¹³ Vide Q5 p.A3.1-3

varying concepts about the nature of PPPs. As one added^(1/6), the PPP term is thus “*used loosely to mean many things*”.

Contrastingly, four respondents^(4/14) found the absence of a definition advantageous and stated that PPPs by their nature are undefinable as they require flexibility of form, creative and tailor-made solutions and reflect particular circumstances. Thus, there is “*no one size fits all approach in PPPs*”^(1/4) as whilst a model might work in one sector (*e.g. health*), it may not work in another (*e.g. education*). Furthermore, one respondent^(1/4) argued that a tight definition would not improve governance, as there would be a tendency not to abide to this.

Those who were neutral about the matter^(4/14), reasoned that a definition is unnecessary but only when the concept works in practice, and one^(1/4) stated that PPPs are country specific and it would be futile to define on an EU level. Finally, one^(1/4) argued that such a definition was not a *sine qua non* one, as in practice, in PPP contracts one may insert an internal relevant working definition that clarifies the meaning of PPPs.

4.2.6 Which Arrangements are Considered as PPPs?

Interviewees were then asked¹⁴ which of the listed seven arrangements (see *Table 4.6*) fall within the parameters of a PPP. As shown, the response to the different arrangements was deemed to be significantly different^($p < 0.001$).

Respondents^(14/14) saw both DBFMO and BFMO as forms of PPPs while most saw Build-Finance^(12/14), Operation and Maintenance^(11/14) and Concessions^(10/14) as other forms of PPPs. Additionally, only a few respondents^(3/14) saw Part Privatisation as another form of PPPs while only one^(1/14) saw Major Public Procurement as a form of PPPs. This is in line with UNECE (2008)¹⁵.

Three respondents^(3/14) added that Operation and Maintenance resembles a form of procurement rather than PPPs, while others^(5/10) noted that Concessions are a “*light*” form of PPPs although not considered as such by law and for statistical purposes. In effect, the only difference is that “*in Concessions, the end-users rather than the Government pay for the service*”^(1/10). Contrastingly, those^(4/14) who

¹⁴ Vide Q6 p.A3.1-4

¹⁵ Vide Section 2.2

did not see Concessions as PPPs, considered them as “*closer to privatisation than PPPs*”^(1/4).

As for Part Privatisation, those in disagreement^(11/14) remarked that, while a relationship with the private sector exists, this is only tantamount to Government disinvestment and lacks the inherent characteristics of PPPs as described in the literature¹⁶. As regards Major Public Procurement, a dissenting respondent^(1/13) argued that this is not a PPP because a long-term relationship does not exist in such an arrangement. Furthermore, two interviewees^(2/14) reasoned that what one considers as PPPs is “*subjective*” and that practical difficulties exist in classifying arrangements as PPPs.

	Interviewees (N = 14)	
	Yes	No
ii. Design-Build-Finance-Maintain-Operate (DBFMO)	14	0
iii. Build-Finance-Maintain-Operate (BFMO)	14	0
iv. Build-Finance	12	2
v. Operation and Maintenance	11	3
i. Concession	10	4
vii. Part Privatisation where the Government maintains part ownership	3	11
vi. Major Public Procurement	1	13
	$X^2(6) = 52.267, p < 0.001$	

Table 4.6: Different Forms of PPPs (Qn.6)

¹⁶ Vide Section 1.2.1

4.3 The Formulation of PPPs

The second Section of the interview schedule presented twelve questions (Qns.7-18) relating to the formulation of PPPs.

4.3.1 Should the Use of PPPs be Justified?

The next question¹⁷ requested interviewees to rate their agreement to two proposed reasons for forming PPPs in Malta. Rating scores are presented in Table 4.7.

PPP's are formed in Malta due to:	Interviewees (N=14)		
	Mean	Median	Std. Dev
i. service providers competencies being better quality and financial effectiveness	3.50	4	0.650
ii. Government's unavailability of initial finance due to the capital outlays involved and/ or Government's reluctance or restrictions in financing by borrowing	2.79	3	1.051
<i>Scale from 0 (Strongly Disagree) to 4 (Strongly Agree)</i>	$\chi^2(1) = 2.778, p = 0.096$		

Table 4.7: Reasons for Forming PPPs in Malta (Qn.7a)

Interviewees strongly agreed ($\bar{x}=3.5$) that SPs competencies of better quality and financial effectiveness are the main reason for forming PPPs in Malta. Moreover, three ($3/14$) added that such effectiveness commonly emanates from cost containment and better timeliness in project management. Nevertheless, another ($1/14$) stated that this was so despite the fact that these competencies can be procured and not necessarily obtained through PPPs.

Moreover, interviewees agreed ($\bar{x}=2.79$) to statement (ii). One respondent ($1/14$) stated that the unavailability of initial finance may be a reason for opting for PPPs in

¹⁷ Vide Q7a p.A3.1-4

times of budget deficits and thus, the economic scenario is an important factor. Similarly, another^(1/14) added that EU rules require Government to include all the project's cost on its Balance Sheet upfront and through PPPs, it could keep the cost off Balance Sheet. However, two respondents^(2/14) dismissed statement (ii) and explained that Government always managed to obtain the necessary funds.

Respondents were then asked¹⁸ whether the launching of new PPPs needs to be justified by a specific case study, and most respondents^(12/14) agreed. One respondent^(1/12) added that without a case study, Government would be disadvantaged in negotiations with the private sector while another^(1/12) argued that a case study illustrates Government's commitment to accountability and transparency. Those in disagreement^(2/14) stated that in certain sectors PPPs' option has already proved successful and such a case study is only a bureaucratic exercise in the eventuality that the NAO performs an audit. Nevertheless, one^(1/2) suggested that a case study should be performed periodically and not for each PPP to ensure the concept's validity.

Furthermore, those respondents^(12/14) agreeing to a case study in the previous question were further asked¹⁹ whether a Public Sector Comparator (PSC) needs to be used in such a case study and nearly all agreed^(11/12). The dissenting interviewee^(1/12) explained that the reasons why Government opts for PPPs are unmeasurable, this including the SP's knowhow and competencies, and thus a PSC would not establish the facts.

Four respondents^(4/14) pointed out that in such a case study, in addition to factors already established in other countries²⁰, such as whether lifecycle costs are lowered and risk allocation is improved, other factors needed to be included such as public interest element^(1/14), regeneration of assets^(1/14), and opportunities for misappropriation^(1/14).

Finally, interviewees were asked²¹ about the extent to which such procedures are actually carried out in Malta. Respondents^(14/14) confirmed that a case study is

¹⁸ Vide Q7b p.A3.1-4

¹⁹ Vide Q7c p.A3.1-5

²⁰ Vide 2.3.1

²¹ Vide Q7d p.A3.1-5

prepared, three^(3/14) adding that it usually involves a cost-benefit analysis and the engagement of independent consultancy firms. Yet, a number^(5/14) emphasised that although “*one cannot aspire for perfection*”, improvements are needed as such studies are not comprehensive, are not sufficiently documented and too often are limited to a ticking box approach.

4.3.2 Risk in PPPs

Interviewees were asked²² how the Risk Assessment (RA) of PPPs is to be performed. Three respondents^(3/14) stated that brainstorming sessions need to be held so key risks are identified and subsequently mitigated through the PPP contract. Another three^(3/14) reasoned that a comprehensive RA needs to be made by both Government and SPs. Government needs to assess feasibility, probability of delays or non-completion and also whether public interest would be deteriorated, while SPs need to assess jurisdiction, financial and technical risks. Moreover, three others^(3/14) insisted that RA guidelines issued by various institutions such as EPEC have to be followed.

Additionally, two respondents^(2/14) argued that an RA is to be made in two stages. First, inherent risks need to be assessed before Government finds the SPs, and then, any residual risks are to be reassessed prior to contract finalisation. This ensures that Government is not taken “*lock, stock and barrel by SPs*”. Furthermore, one^(1/14) suggested that the various risks are to be weighted, while another^(1/14) recommended that risk owners need to be appointed for each risk type. Finally, one^(1/14) mentioned political interference and corruption risks.

Interviewees were then asked²³ whether the RA is to consider who can manage the various risks at the lowest cost. Respondents^(14/14) confirmed this. However, a couple^(2/14) emphasised that better risk management involves higher costs, and so a balance needs to be found between the two.

Interviewees were then asked²⁴ what major risks Government needs to retain. Four respondents^(4/14) stated that it depends on the nature of the projects but

²² Vide Q8a p.A3.1-5

²³ Vide Q8b p.A3.1-5

²⁴ Vide Q8c p.A3.1-5

retaining major risks could reflect adversely on Government's Balance Sheet^(3/4). They elaborated that if Government does not wish for the PPPs' debt to be shown on its Balance Sheet "*for statistical purposes*", then transferring all risk is important, but it would not obtain the best Value for Money (VfM). Moreover, another four respondents^(4/14) mentioned that Government needs to maintain risks relating to any project disruption (e.g. *earthquake*). Similarly, another two^(2/14) stated that, in deciding, Government needs to consider the public interest, for instance, to ensure availability in old people's homes, Government may take the demand risk upon itself. Furthermore, three^(3/14) explained that the price of shifting more risks to SPs is the higher return that will be required. Contrastingly, those^(3/14) against Government retaining any risks emphasised that Government's role is to be limited to monitoring as it is not so well equipped for risk management and internal control evaluation.

Interviewees then were asked²⁵ whether the above RA procedures are actually being employed in the formulation of PPPs, and twelve^(12/14) confirmed this. However, five^(5/12) stated that there is room for improvement as Government commonly lacks technical expertise. In fact, one^(1/5) stated that any RA being carried out is "*informal, generally fragmented and limited*". Two respondents^(2/14) pointed out that this situation could be improved by having international experts providing training to Government's personnel.

4.3.3 What are the Main Aspects in Drafting PPP Contracts?

Interviewees were next asked²⁶ to rate their agreement with five main aspects which are to be found in drafting PPP contracts. As shown in Table 4.8, interviewees strongly agreed to all aspects, in line with WB (2007)²⁷.

²⁵ Vide Q8d p.A3.1-5

²⁶ Vide Q9 p.A3.1-5

²⁷ Vide Section 2.3.3

The following are to be the main aspects in drafting PPP contracts:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
i. Assigning risks and responsibilities	4	4	0
ii. Creating performance requirements	3.93	4	0.267
iii. Designing compensation and penalty systems	3.79	4	0.426
iv. Formulating dispute resolution procedures	3.79	4	0.579
v. Setting up termination procedures	3.71	4	0.611
Scale from 0 (Strongly Disagree) to 4 (Strongly Agree)	$\chi^2(4) = 6.800, p = 0.147$		

Table 4.8: Main Aspects to be Included in Drafting PPP contracts (Qn.9)

Furthermore, one respondent^(1/14) explained that assigning risks and responsibilities is to be the most important aspect, as PPPs often fail when there are “*too many cooks*” with no one overall in charge. Moreover, another^(1/14) added that, in drafting PPP contracts, one needs to determine the appropriate level of detail or, as stated, that of resolving the dilemma of “*implementability vs. simplification*”. In view of the difficulty in finding the “*right balance*”, Government may tend not to undertake the PPP.

4.3.4 The Performance Requirements

Interviewees were then asked²⁸ to rate their agreement to three proposed reasons for limiting PPP requirements to the expected output and quality rather than to input specifications. As shown in Table 4.9 overleaf, interviewees agreed to the three reasons, that is, that prospective bidders may be more creative ($\bar{x}=3.43$), that a clearer picture is provided ($\bar{x}=3.00$) and that, this helps the prevention of collusive behaviour by prospective bidders ($\bar{x}=2.50$).

²⁸ Vide Q10a p.A3.1-6

Limiting PPP requirements to the expected output and quality rather than to input specifications:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
i. allows prospective bidders to be creative in achieving the end goal	3.43	4	0.756
ii. provides a clearer and more definite picture	3.00	3	1.109
iii. helps prevent collusive behaviour by prospective bidders	2.50	2.5	1.019
Scale from 0 (Strongly Disagree) to 4 (Strongly Agree)	$\chi^2(2) = 3.931, p = 0.140$		

Table 4.9: Reasons for Output-based Performance Requirements (Qn.10a)

However, despite agreeing with statement (i), some respondents stated that basic input requirements are still to be stated to ensure quality_(5/14) (e.g. nurse-to-patient ratio in the health sector) and for the Government to be able to assess the different bidders_(2/14). Moreover, two respondents_(2/14) emphasised the need not to limit inputs so that bidders may be allowed enough flexibility, a characteristic which is rare to find as permissible in public procurement. Another two_(2/14) were sceptical about either input or output restrictions helping to prevent collusive behaviour by prospective bidders.

Next, interviewees were asked²⁹ how performance requirements are normally set up in Malta. Four_(4/14) stated that performance requirements are formed by way of negotiations with SPs while one_(1/14) specified that these focus on timeframes, the service given and payments. In this connection, another respondent_(1/14) added that given Malta's size, negotiations are needed, as initially, no one bidder tends to come forward to meet all Government's requirements. Moreover, another four_(4/14) explained that the more experienced the Government personnel or their consultants are, the more improved, specific and detailed are the performance requirements. Two respondents_(2/14) stated that while requirements are in fact increasingly becoming performance based, they are as yet not being given enough importance. Finally, two_(2/14) pointed out that performance requirements

²⁹ Vide Q10b p.A3.1-6

are subject to standards imposed by the relevant regulator, if there are any (*e.g. standards imposed by the Licensing Authority in health care*).

Thereafter, interviewees were asked³⁰ how SMART output goals, if any, are being established. Nine respondents^(9/14) confirmed that such goals are normally being established, although there may be exceptions. However, one^(1/9) emphasised that SMART output goals do not always adhere to the specificity aspect. Another^(1/9) stated that whether or not output goals were SMART, varied with the competence of Government personnel responsible for drafting the contract. Contrastingly, those who disagreed^(5/14) stated that the goals which are being typically set are not really SMART. They only serve to induce Government to go “*after numbers*”^(1/5).

4.3.5 Compensation and Penalty Mechanisms

Interviewees were next asked³¹ to decide which is the superior Compensation Mechanism between an Availability-based Mechanism and a User-fee Mechanism. According to eight respondents^(8/14) it depends on the project under consideration as both mechanisms have their respective benefits. Half of these^(4/8) added that if Government wants to incentivise SPs to behave appropriately, demand risk must be transferred to SPs and thus a User-fee Mechanism would be needed (*e.g. in a heritage site*). Conversely, if Government wants guaranteed availability and financial stability, it needs to absorb demand risk and use an Availability-based Mechanism (*e.g. in old people’s homes*). Similarly, another respondent^(1/8) stated that SPs would request higher prices for the higher risk in User-fee Mechanism and thus, if Government is confident on demand, an Availability-based Mechanism would result in better pricing. Using similar reasoning, the remaining respondents^(6/14) concluded that an Availability-based Mechanism is superior. One respondent^(1/6) added that in Malta, the expectation in certain sectors (*e.g. health and education*) is that Government pays and not the end-user.

³⁰ Vide Q10c p.A3.1-6

³¹ Vide Q11a p.A3.1-6

Furthermore, interviewees were asked³² whether the better type of an Availability-based Mechanism is a Lump-sum Payment, Usage-fee or Other. Eight_(8/14) selected the Usage-fee type because it is motivating to SPs_(1/8) while Lump-sum Payments distort market prices_(2/8). Even if the type of payment is Lump-sum, Government needs to be careful to limit such Lump-sum to two years or less as beyond that, it may not be VfM_(1/8). On the other hand, another_(1/8) added that with a Usage-fee, Government keeps control and is able to investigate whether the PPP was loss-making. Contrastingly, three respondents_(3/14) were in favour of a Lump-sum Payment and argued_(2/3) that if such payments are given to end-users as opposed to SPs, it could result in “*cost optimisation*” as opposed to “*cost minimisation*” and a better service because such mechanism enhances competition. Three respondents_(3/14) were neutral about the choice, arguing that the type of mechanism chosen will depend upon whether a close link to performance is necessary.

Subsequently, interviewees were asked³³ how far the performance targets are linked to compensation and penalty systems. They all_(14/14) remarked that, while such links are not consistently there, stronger links are being noted over the years in line with PPP evolution, especially in complex or service-oriented PPPs_(1/14). Three respondents_(3/14) added that such link consolidation needs to progress in order to eliminate controversy, giving potential future examples such as bonuses to be awarded to SPs for exceeding expectations and, conversely, penalties for not meeting them.

Interviewees were then asked³⁴ about the typical safeguards and/or penalties in PPP contracts normally inserted for non-compliance and whether these are sufficient. Safeguards involved contingency plans guaranteeing service continuity_(2/14), and Government making the first payment only after SPs have arrived at a certain stage in their operation_(1/14). Penalties included monetary ones_(4/14), one respondent_(1/4) specifying that these now range from €100 to €1000 a day, as well as the loss of performance guarantees_(2/14), and the revocation of

³² Vide Q11b p.A3.1-7

³³ Vide Q11c p.A3.1-7

³⁴ Vide Q11d p.A3.1-7

licences of non-compliant SPs_(1/14), the latter being particularly in the health sector. Yet, most respondents_(12/14) pointed out that such safeguards/penalties are typically insufficient with some_(5/12) making an exception when Government personnel are knowledgeable enough. Two respondents_(2/14) emphasised that a proper safeguard would be a joint committee, which meets regularly to discuss any non-compliance and the reasons thereof.

4.3.6 Dispute Resolution and Adjustment Procedures

Interviewees were asked³⁵ if dispute resolution and adjustment procedures are adequately inserted in Maltese PPP contracts. In relation to dispute resolution procedures, most_(12/14) confirmed that normally they are adequately inserted, with one respondent_(1/12) stating that most PPP contracts refer to arbitration. In relation to adjustment procedures, most interviewees_(8/14) stated that improvements are needed while some_(4/14) stated that such procedures are already adequate. One_(1/8), emphasising the need for improvement, explained that better adjustment procedures would benefit both parties as in PPPs Government typically pays a rate to SPs which includes both capital and operational expenditure. Over the years, operational costs often need to be updated while the capital expenditure portion is not always removed. Finally, two respondents_(2/14) argued that the adequacy of both adjustment procedures and dispute resolution could be ensured by proper prior planning.

Interviewees were then asked³⁶ whether enough room is generally made for changing circumstances in long-term contracts. The matter is controversial as six_(6/14) agreed, others_(6/14) disagreed while two_(2/14) were neutral, the latter explaining that PPP “*duration*” actually varies with the “*level of SP investment*”. An interviewee_(1/6) upon agreeing, added that normally SPs exert enough pressure for an allowance to be made for changing circumstances. Contrastingly, two dissenting respondents_(2/6) added that irrespective of the initial contract, one cannot anticipate the future and it often results in insufficient room being made

³⁵ Vide Q12a p.A3.1-7

³⁶ Vide Q12b p.A3.1-7

for changing circumstances. Consequently, as one^(1/2) added, addenda to PPP contracts are sometimes made.

4.3.7 Premature Termination of PPP Contracts

Interviewees were then asked³⁷ if the consequences of premature contract termination were clearly spelled out. This was confirmed by seven respondents^(7/12). Four^(4/7) stated that legal consultants ensure that contracts are well built to avoid litigation. However, such clauses are difficult to enforce owing to the possibility of different interpretations. Additionally, another respondent^(1/7) confirmed that the process has been improving, and SPs now need to be insured for the possibility of termination. Contrastingly, two^(2/12) disagreed. One^(1/2) argued that termination clauses merely ensure service continuity at the SPs' expense, whilst another^(1/2) stated that there are no clear transition plans included in the case of such premature termination. Finally, three respondents^(3/12) explained that neither party would be willing to terminate the contract prematurely as project abandonment would reflect badly on Government as well as having adverse financing consequences on the SP.

4.3.8 The PPPs Procurement Procedures

Interviewees were then asked³⁸ which of the six proposed listed Procedures (see *Table 4.10*) have been used in the Maltese PPPs procurement process.

Open^(10/11), NC^(9/11) and CD^(8/11) Procedures are mostly used in the Maltese PPPs procurement process whereas Restricted^(7/11), Negotiated Non-Competitive^(6/11) and Innovation Partnership^(4/11) are used less often. Three respondents^(3/11) stated that all Procedures are used to a different extent and that Innovation Partnership has only been used recently while others^(3/11) commented that all Procedures are commonly used except for Innovation Partnership.

Furthermore, two^(2/11) added that while in theory, an Open Procedure allows everyone to apply, it practically still imposes a limitation as specifications are listed in the tender document. Moreover, three respondents^(3/11) added that the

³⁷ Vide Q13 p.A3.1-7

³⁸ Vide Q14a p.A3.1-7

NC Procedure has become more popular as it allows Government to negotiate with those bidders deficient with respect to some requirements, particularly in complex projects. Another one_(1/11) argued that a CD Procedure allows the same facilities as NC Procedure. Nonetheless, one respondent_(1/11) added that s/he prefers a CD Procedure as it is the most transparent and structured procedure.

	Interviewees (N = 11)	
	Yes	No
i. Open	10	1
iii. Negotiated Competitive (NC)	9	2
iv. Competitive Dialogue (CD)	8	3
ii. Restricted	7	4
v. Negotiated Non-Competitive	6	5
vi. Innovation Partnership	4	7
	$\chi^2(5) = 9.545, p = 0.089$	

Table 4.10: PPPs Procurement Procedures (Qn.14a)

Interviewees were then asked³⁹ how far these Procedures are predetermined in Malta. Nine respondents_(9/11) explained that no Procedure is preferred, whilst two others_(2/11) explained that a CD Procedure is preferred as it allows Government to obtain a better product through dialogue with more knowledgeable possible SPs prior to issuing the final call for bids. This is advantageous as PPPs usually require specialisation lacked by Government.

4.3.9 Pre-Qualification Questionnaires

Interviewees were next asked⁴⁰ to rate their agreement to three statements regarding Pre-Qualification Questionnaires (PQQs). Rating scores are presented in Table 4.11.

³⁹ Vide Q14b p.A3.1-8

⁴⁰ Vide Q15a p.A3.1-8

The Pre-Qualification Questionnaire:	Interviewees (N = 11)		
	Mean	Median	Std. Dev
ii. is required for sophisticated PPPs	3.45	4	0.688
i. leads to a cost and time-efficient procurement process	2.73	3	1.348
iii. undermines competition and transparency goals	1.18	1	1.079
<i>Scale from 0 (Strongly Disagree) to 4 (Strongly Agree)</i>	$\chi^2(2) = 11.556, p = 0.003$		

Table 4.11: The Pre-Qualification Questionnaire (Qn.15a)

Respondents agreed that a PQQ is required for sophisticated PPPs ($\bar{x}=3.45$) and that PQQs lead to a cost and time-efficient procurement process ($\bar{x}=2.73$) while they disagreed ($\bar{x}=1.18$) that they undermine competition and transparency, with response to the three statements being significantly different ($p=0.003$).

In relation to the first and second statements, two respondents (2/11) added that PQQs are used for complicated projects so as to weed out potential financial and/or technical incompetent bidders immediately, while three others (3/11) added that PQQs result in better standards but take more time. Furthermore, one (1/11) added that PQQs may be completely avoided by including the necessary qualifications, thus excluding ineligible parties in the first place.

As to whether the PQQ undermines competition and transparency goals, two respondents (2/11) added that competition is still retained among the relevant bidders, although on a limited scale and that PQQs could lead to more contract abuse, although neither is this completely eliminated in a one-stage process.

Interviewees were then asked⁴¹ if PQQs are actually included in the PPP process in Malta and if so, how an applicant is accepted or rejected. Ten respondents (10/11) confirmed that PQQs are used in Malta and with two (2/10) adding that by such PQQs, a Government-appointed committee obtains the needed preliminary

⁴¹ Vide Q15b p.A3.1-8

information from prospective bidders prior to deciding on the necessary specifications. Five respondents^(5/10) added that this committee also assesses the bidders' financial strength and experience based on the submitted technical and financial information. Moreover, one^(1/11) added that such PQQs mostly consist of yes/no questions (*e.g. if in possession of a licence*) in order to facilitate the elimination of the ineligible potential bidders.

Interviewees were then asked⁴² whether they prefer a one-stage bidding process to a process which includes a PQQ. Ten respondents^(10/11) preferred a process which includes a PQQ, explaining that, for proper PPP contract drafting, PQQs need to be included in the first stage, owing to the complexity, size, and nature of bidders. However, one^(1/11) stated that s/he prefers a one-stage process. Moreover, another^(1/11) added that Government needs to engage market consultants rather than issuing PQQs.

4.3.10 Final Bids and Subsequent Changes

Interviewees were then asked⁴³ to describe how final bids are typically appraised and if any technical and financial criteria are commonly included. Eleven respondents^(11/14) remarked that the Most Economically Advantageous Tender (MEAT) system is used. The MEAT is either the cheapest technically compliant bid, or the bid with Best Price Quality Ratio (BPQR). The cheapest technically compliant bid refers to bidders having first to meet the technical criteria and, if not eliminated on such ground, they will then compete for the cheapest bid. On the other hand, the BPQR takes a weighted approach between financial and technical criteria. Two^(2/11) added that in BPQR, either the 70:30, 60:40 or, in rare cases the 80:20 ratios are used, but more importance is consistently allocated to the technical criteria. Additionally, four respondents^(4/11) emphasised that, in assessing quality under the BPQR, maximum scores need to be predetermined and specified in tender documents so as to eliminate subjectivity. Furthermore, one^(1/11) elaborated that BPQR is mostly used for PPPs.

⁴² Vide Q15c p.A3.1-8

⁴³ Vide Q16a/b p.A3.1-8

Three respondents^(3/14) explained that a committee composed of different professionals appraises the bids. Moreover, one^(1/3) suggested that such committee members need to be different from those who had prior contact with the bidders so as to eliminate potential conflict of interest. Finally, three respondents^(3/14) mentioned that technical criteria vary with the project under review. For example, in old people's homes these could include the quality of food, activities that may be offered and other living conditions.

Interviewees were then asked⁴⁴ if changes may occur to the proposed PPP contract once the bidder is accepted. Eight respondents^(8/14) stated that at such a stage, reasons for changes to further improve the PPP contract might exist but these need to be avoided if they are substantial modifications, so as not to compromise transparency and be unfair to the other bidders. One respondent^(1/14) specified that a 10% variation from the original contract is acceptable, while another^(1/14) argued that changes can only be allowed if they are advantageous to Government. Furthermore, two respondents^(2/14) explained that it takes time to come to the final contract and thus, revisions to specifications might have to be made. One example includes advancement in technology.

4.3.11 Are Maltese PPPs Commonly Well-formulated?

Interviewees were then asked⁴⁵ whether, in their view, PPPs in Malta are commonly well formulated. Most^(13/14) replied that PPPs are satisfactorily formulated but that there is room for improvement, with six respondents^(6/13) specifying that there are as yet deficiencies in Government knowhow and monitoring as well as in the regulatory framework. One^(1/13) also referred to the need to deal with the persisting negative public misperceptions of PPPs which ignore their economic benefits. However, another one^(1/14) considered PPPs as being very well formulated.

⁴⁴ Vide Q17 p.A3.1-8

⁴⁵ Vide Q18 p.A3.1-8

4.4 The Monitoring of PPPs

The third Section of the interview schedule presented six questions (Qns.19-24) relating to monitoring of PPPs.

4.4.1 The Importance of Monitoring PPPs

Interviewees were then asked⁴⁶ to rate their agreement with five statements (see *Table 4.12*) regarding the importance of monitoring PPPs. Respondents strongly agreed that monitoring facilitates early warnings ($\bar{x}=3.93$) and safeguards the public interest ($\bar{x}=3.93$) and they agreed that monitoring ensures appropriate compensation ($\bar{x}=3.43$), motivates SPs ($\bar{x}=3.43$) and is value adding ($\bar{x}=3.36$). As shown, interviewees significantly differed ($p=0.022$) as to the extent of their agreement with the different statements.

However, one respondent_(1/14) argued that monitoring does not motivate SPs towards continuous improvement but only keeps them “*on track*”.

Monitoring is important because it:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
i. facilitates early warnings	3.93	4	0.267
ii. safeguards the public interests	3.93	4	0.267
iv. ensures that compensation is appropriate to the level of service	3.43	4	0.756
v. motivates service providers towards continuous improvement	3.43	4	0.938
iii. is value adding	3.36	4	0.929
Scale from 0 (Strongly Disagree) to 4 (Strongly Agree)	$\chi^2(4) = 11.480, p = 0.022$		

Table 4.12: Why Monitoring is Important in PPPs (Qn.19)

⁴⁶ Vide Q19 p.A3.1-9

4.4.2 Skills and Resources in Monitoring PPPs

Interviewees were then asked⁴⁷ to rate the importance of five proposed major skills (see Table 4.13) in effective monitoring. A significant difference ($p=0.005$) emerged in the rating scores of the importance of these skills.

The importance levels of major skills in effective monitoring are as follows:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
ii. Negotiation skills to settle conflicts	3.79	4	0.579
iv. Analytical abilities	3.43	3.5	0.646
i. Interpersonal skills	3.14	3	0.949
iii. International experience on PPPs	3.14	3	0.663
iv. Maltese experience relating to previous PPPs	3.14	3	0.770
Scale from 0 (Not Important at all) to 4 (Highly Important)	$\chi^2(4) = 14.776, p = 0.005$		

Table 4.13: Importance of Major Skills in Effective Monitoring (Qn.20a)

Respondents found negotiation skills to settle conflicts as highly important ($\bar{x}=3.79$) while analytical abilities ($\bar{x}=3.43$), interpersonal skills ($\bar{x}=3.14$), international experience ($\bar{x}=3.14$) and Maltese experience ($\bar{x}=3.14$) on PPPs were found to be important. As regards PPP experience, one ($1/14$) added that while Maltese experience is important, it is as yet lacking.

Subsequently, interviewees were asked⁴⁸ to rate their agreement to five listed resources which aid in monitoring. Rating scores are presented in Table 4.14.

⁴⁷ Vide Q20a p.A3.1-10

⁴⁸ Vide Q20b p.A3.1-11

The following resources aid in monitoring:	Interviewees (N = 14)		
	Mean	Median	Std. Dev
ii. Providing adequate training to those in charge of monitoring	3.79	4	0.426
iv. An agreed mechanism for obtaining valuable information	3.71	4	0.469
v. An agreed financial model to calculate compensation due based on monitoring	3.57	4	0.514
i. Hiring independent advisors	3.36	3.5	0.745
iii. Creating a contract administration manual	3.36	4	0.842
Scale from 0 (Strongly Disagree) to 4 (Strongly Agree)	$\chi^2(4) = 8.504, p = 0.075$		

Table 4.14: Resources Required for Monitoring (Qn.20b)

Respondents strongly agreed that adequate training to those in charge of monitoring ($\bar{x}=3.79$), an agreed mechanism for obtaining valuable information ($\bar{x}=3.71$) and an agreed financial model to calculate compensation ($\bar{x}=3.57$) aid in monitoring. Furthermore, two ($2/14$) emphasised the importance of having pre-agreed mechanisms and models as “*judgements have to be based on facts*” and added that PPP contracts need to include clauses which allow Government entities to access SP records for auditing purposes. Moreover, respondents agreed that both hiring independent advisors ($\bar{x}=3.36$) and creating a contract administration manual ($\bar{x}=3.36$) aid in monitoring. One ($1/14$) added that independent advisors are normally important, however only as long as Government lacks the necessary insource expertise. Finally, another one ($1/14$) added that in his/her view, any contract administration manual could not be comprehensive in view of the uniqueness of each PPP.

Interviewees were then asked⁴⁹ how Government ensures that relevant information, known by SPs, is sufficiently transmitted to it. Eight respondents^(8/11) stated that PPP contracts oblige SPs to provide Government with such information, but this does not ensure that such transmission is actually affected. Two^(2/7) specified that there is the need for a more comprehensive list and timing of the types of information to be required by Government for better monitoring, including items such as maintenance spending and monthly reports. Additionally, others^(3/11) suggested that Government needs to retain the options of different audits over the duration of PPPs.

4.4.3 PPPs Monitoring – How, Who and When?

Interviewees were asked⁵⁰ about how, who and when is monitoring of PPPs typically being carried out. Four^(4/14) explained that these aspects vary with different PPPs. With regards to how, references were made to inspection^(1/14), following terms of references designed in PPP contracts^(4/14), and to the use of operational and financial KPIs^(2/14). With regards to who carries out monitoring, reference was made to the Government entity ultimately responsible for the delivery of the PPP^(10/14). However, four^(4/14) referred to engaging an outsourcer if technical knowledge is lacking, which commonly is the same one who sets up the PPP's original performance requirements^(1/4). With regards to when, respondents explained that monitoring varies from being affected monthly to annually^(3/14), at each stage of the PPPs^(3/14), at times this simply preceding the periodic payments to SPs^(1/14).

4.4.4 Key Performance Indicators

Interviewees were asked⁵¹ what KPIs, if any, are normally developed to aid in monitoring. Most^(13/14) stated that KPIs are consistently developed in monitoring. Some indicated that such KPIs are detailed and varying with each PPP^(9/13) and often subject to revision^(4/13). However, two respondents^(2/14) added that the use

⁴⁹ Vide Q20c p.A3.1-11

⁵⁰ Vide Q21 p.A3.1-11

⁵¹ Vide Q22 p.A3.1-11

of KPIs may often be improved, such as by linking to them the SP compensation (*e.g. food quality in old people's homes*).

4.4.5 Are Performance Audits Beneficial in PPPs?

Interviewees were asked⁵² whether Performance Audits (PAs) are relevant in determining whether or not PPPs have been successful. Respondents_(14/14) confirmed such relevance, with one_(1/14) adding that PAs often indicate any deficiencies both on the part of Government and the SPs. Five_(5/14) added that such PAs are currently carried out by the NAO but may also be carried out by external consultants_(4/5), the Internal Audit and Investigations Department_(2/5) or the Contracting Authority_(2/5).

4.4.6 The Need for a National PPP Unit

Finally, interviewees were asked⁵³ whether a national PPP Unit is needed to help improve PPPs. Ten_(10/14) confirmed that such a Unit would be beneficial. Nine_(9/10) argued that as long as it is staffed by technically competent and experienced people, such a unit would help improve the regulatory framework_(2/9), harmonise the whole process_(4/9), specify the fundamental principles to form and operate PPPs_(4/9) and ensure that PPPs are no longer formulated by different ministries or other public sector entities_(2/9). They also added that a separate section of such a Unit could act as a regulator_(3/9). Contrastingly, two respondents_(2/14) stated that, in the first instance, a robust PPP framework needs to be drawn up. Another two_(2/14) stated that there are too few PPPs for the setting up of a new Unit to be justifiable.

4.5 Conclusion

This chapter presented the findings from the interviews conducted. The next chapter presents a comprehensive discussion of these findings.

⁵² Vide Q23 p.A3.1-11

⁵³ Vide Q24 p.A3.1-12

Chapter 5

Discussion

5.1 Introduction

This chapter discusses the research findings presented in the previous chapter of this study in light of the literature review in Chapter Two. As shown in Figure 5.1, Section 5.2 deals with the nature and definition of PPPs, while Section 5.3 discusses the formulation of PPPs. Subsequently, Section 5.4 discusses the monitoring of PPPs, and finally Section 5.5 concludes the chapter.

Three elements are needed to ignite a fire: the first is the basic element of oxygen, this being backed up by the two other elements of fuel and heat. In an analogous manner, for a PPP to succeed three elements are needed: the basic element involving its nature and definition, its optimal formulation and its effective monitoring.

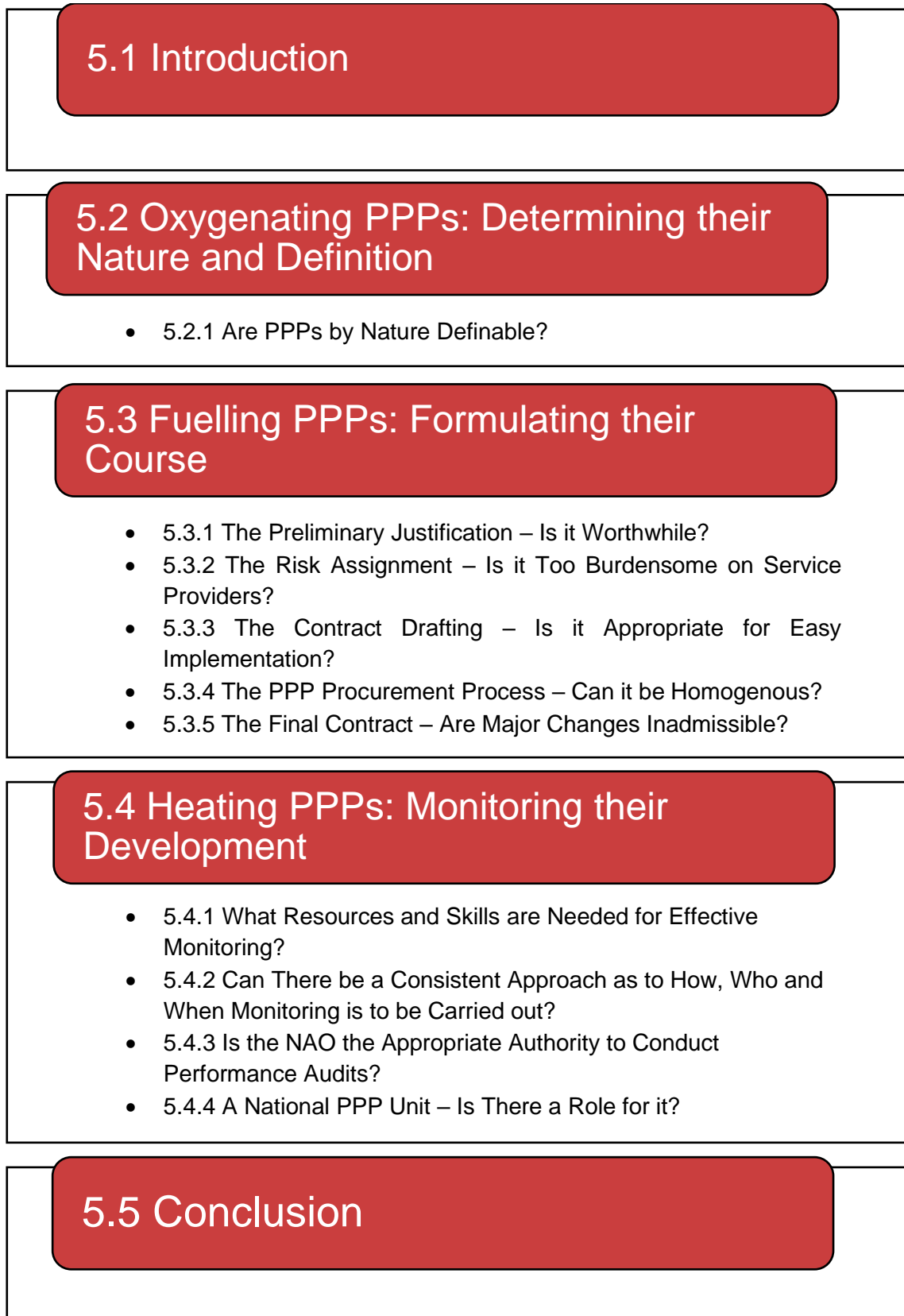


Figure 5.1: Outline of Chapter 5

5.2 Oxygenating PPPs: Determining their Nature and Definition

5.2.1 Are PPPs by Nature Definable?

As has been seen⁵⁴ Maltese PPPs take different forms, are long-term with a period ranging from ten to 25 years, transfer risks to the private sector and are financed by both sectors but not consistently to equal proportions. Such characteristics are in line with the literature⁵⁵.

Moreover, practical difficulties⁵⁶ clearly exist in classifying arrangements as PPPs and what one considers as a PPP is “*subjective*”. In fact, arrangements which are mainly considered as PPPs include DBFMO, BFMO, Build-Finance, Operation and Maintenance and Concessions. Yet, not all arrangements are viewed to be on the same scale, as Concessions are viewed as a “*light*” form of PPPs. Thus, it would probably be beneficial if the PPP term is clarified, especially since Concessions have been found to be separately identifiable for statistical purposes.

The CEC (2004)⁵⁷ stated that the PPP term is not defined at the EU statutory level and the findings⁵⁸ indicate that it is mainly disadvantageous. This is because, in the absence of a definition, the lack of EU-wide parameters induces misunderstandings and misperceptions. As a result, the PPP term tends to be inconsistently used by different consultants with reference to the same arrangements. Yet, the lack of a definition may be advantageous as PPPs by their nature require flexibility of form as well as creative and tailor-made solutions that may be constrained by a PPP definition. Therefore, a “*one-size fits all approach*”⁵⁹ may not work in all sectors and consequently gives rise to situations where professionals try to find ways so as not to adhere strictly to such a definition. Consequently, it may be more beneficial if Government provides

⁵⁴ Vide Section 4.2.1

⁵⁵ Vide Section 2.2

⁵⁶ Vide Section 4.2.6

⁵⁷ Vide Section 1.2.1

⁵⁸ Vide Section 4.2.5

⁵⁹ Vide Section 4.2.5

guidance on a non-legally binding PPP definition. This would allow for the formation of an internal working definition that is specific for each PPP.

5.3 Fuelling PPPs: Formulating their Course

5.3.1 The Preliminary Justification – Is it Worthwhile?

Burnett (2007)⁶⁰ contended that a reason for forming PPPs are SP competencies, which include better quality products and financial effectiveness. Such a reason is also found to be a major one applicable in Malta⁶¹. Yet, such competencies do not in themselves justify the formulation of PPPs as these can be alternatively obtained through public procurement. Moreover, as also contended by the EC (2003)⁶², the findings⁶³ indicate that the formation of PPPs may be a way for Government to solve the unavailability of its initial financing, particularly in times of Government budget deficit. Therefore, the country's economic scenario may play an important role in the decision to form PPPs.

As recommended by PwC (2005)⁶⁴, the first step in optimally launching each PPP is to justify such a decision by undertaking a specific case study. This has also been confirmed by the findings⁶⁵. These have pointed out that, in the absence of such a study, Government will lack transparency, effectiveness in negotiations with SPs and VfM. Nonetheless, if in the past, the PPP option had already proved to be successful in certain sectors, the undertaking of such an exercise may turn out to be merely bureaucratic and ritualistic and therefore not add any value. One proposed solution to such a dilemma was that, in such instances, one may limit case studies to some dubious PPPs rather than to all of them. Yet, Burnett (2007)⁶⁶ argued that each PPP needs to be individually justified and therefore, the matter is not that simple. The claim⁶⁷ is probably true that the PSC, as recommended by ECA (2018) and OECD (2012)⁶⁸, may not capture why a PPP

⁶⁰ Vide Section 2.3.1

⁶¹ Vide Section 4.3.1

⁶² Vide Section 2.3.1

⁶³ Vide Section 4.3.1

⁶⁴ Vide Section 2.3.1

⁶⁵ Vide Section 4.3.1

⁶⁶ Vide Section 2.3.1

⁶⁷ Vide Section 4.3.1

⁶⁸ Vide Section 2.3.1

is the better option. Yet, undertaking such a study would make it possible to include considerations such as whether the PPP is in the public interest, whether asset regeneration may be improved by it and whether the PPP may give rise to more opportunities for irregularities⁶⁹. Therefore, the indication in the findings⁶⁹ that there are more case studies currently being conducted in Malta than before, marks an improvement from the situation, as described earlier by NAO (2015) and ECA (2018)⁷⁰. This is because undertaking such case studies for each PPP is probably a *sine qua non* if Government is to be helped to ensure appropriate decision-making. Of course, it needs to also be ensured that the quality and documentation backing such studies are of the appropriate level, which does not seem to be as yet the case.

5.3.2 The Risk Assignment – Is it Too Burdensome on Service Providers?

In line with UNECE (2008) and WB (2017)⁷¹, the findings⁷² indicate that a detailed RA needs to be performed to identify and allocate key risks by following RA guidelines issued by institutions such as EPEC. For optimal formulation, brainstorming sessions need to be held by both Government and SPs in order to identify their risks. However, the focus of each party needs to be different. Government needs to give priority to public interest, assessing the risks of project non-completion or delays, and of political interference or corruption. On the other hand, SPs need to assess their operational and financial risks.

Moreover, the study indicates⁷² that, in order to ensure appropriate PPP formulation, Government may best perform the RA in two stages. The first stage is before choosing the SP where the Government assesses the inherent risks. The second stage is prior to contract finalisation and involves the reassessment of any residual risks in order to verify that the PPP deal is actually beneficial to Government.

⁶⁹ Vide Section 4.3.1

⁷⁰ Vide Section 2.3.1

⁷¹ Vide Section 2.3.2

⁷² Vide Section 4.3.2

Furthermore, a major question arises as to whether Government needs to retain some risks in each PPP. Yescombe (2007) and UNECE (2008)⁷³ emphasised the need for this, and the study⁷⁴ also confirms that this is acceptable in Malta on the basis that the more risks transferred to SPs, the higher the return that will be required by them. Evidently, considerations as to whether all risks are to be transferred to the SP are not to be influenced by whether or not a PPP's debt is to be off the Government's Balance Sheet - as claimed by some respondents⁷⁴ to have been frequently the case in the past - but rather by whether the transfer of all such risks would result in VfM and the public interest. An example of such public interest is the absorption by Government of demand risks in the case of old people's homes so as to ensure sufficient availability.

Therefore, a consistent policy of passing all the risks to SPs may not only be detrimental to Government but also too burdensome for some potential SPs to come forward to undertake the PPP. Yet, the decision to retain some risks in particular PPPs to result in VfM and in the public interest also hinges on the technical ability of the Government's side to manage those risks itself. In this regard, results⁷⁴ indicate that Government personnel need to improve their technical ability and that possibly, this may be done through the provision of training by experts with the appropriate international experience. Another condition which one may consider for appropriate risk retention by Government is for it to appoint specific risk owners for each type of retained risk.

5.3.3 The Contract Drafting – Is it Appropriate for Easy Implementation?

The findings⁷⁵ indicate that optimal PPP formulation requires someone to be responsible for the whole process. Furthermore, those drafting the contract clauses of each PPP need to face the dilemma of specifying the nature and detail that such clauses are to have for easier interpretation and implementation at a

⁷³ Vide Section 2.3.2

⁷⁴ Vide Section 4.3.2

⁷⁵ Vide Section 4.3.3

later stage. The main aspects to PPP contracts, indicated hereunder, deliberate on this dilemma.

Performance Requirements – Input-based or Output-based?

As stated by WB (2017) and Farquharson et al. (2011)⁷⁶, PPP performance requirements are to be based on quality and expected output, as opposed to input, as this allows prospective bidders to be creative in achieving the end goals. The local findings⁷⁷ are in line with such literature. Yet, it must be kept in mind that basic input requirements also need to be stated, as otherwise, quality may tend to easily and unobtrusively decline, and thus Government may find it difficult to assess the different bidders. However, such requirements need to be kept simple if SPs are to have enough room for operational flexibility for implementation.

Indications⁷⁸ have also emerged that performance requirements are normally “*SMART*”, as suggested by the literature⁷⁹. Yet, more qualitative output-based requirements need to be developed at the drafting stage. Government needs to avoid blind adherence to quantitative performance requirements and refrain from assuming that the PPP would be on its way to optimal formulation if quantitative targets are attained. Here again, issues seem to arise as to the competence of Government’s personnel in PPP formulation.

Furthermore, whenever performance standards are regulated in the industry, these are often automatically inserted in the drafting⁸⁰. However, the absence of such regulations will normally lead to the resetting and clarification of such performance standards at a later stage by way of negotiations with SPs because no one bid offer is then found to have met all of Government’s initial requirements as drafted. Such negotiations may possibly have to include timeframes, service delivery and settlement of payments.

⁷⁶ Vide Section 2.3.3

⁷⁷ Vide Section 4.3.4

⁷⁸ Vide Section 4.3.4

⁷⁹ Vide Section 2.3.3

⁸⁰ Vide Section 4.3.4

Compensation and Penalty Mechanisms – Availability-based or User-fee?

As described by the literature⁸¹, PPP Compensation Mechanisms can generally take either the form of an Availability-based Mechanism or a User-fee Mechanism. However, neither mechanism is perceived to be superior in Malta as each lends itself to different Government objectives, with the actual choice varying with the question of which of the two parties – Government and SPs – is to take on the demand risks⁸². When the Government objective is to guarantee availability of service and to ensure that the PPP remains financially stable, it typically takes over such demand risks by opting for the Availability-based Mechanism. On the other hand, a User-fee Mechanism is better suited to Government when its objective is to induce SPs towards appropriate behaviour. However, in the latter mechanism, the end-user, which may be the Government itself, will have to pay a higher price in view of the higher risk assumed by SPs. It therefore follows that if Government is confident that the PPP outputs will be subject to consistent demand, it is more economical for Government to opt for an Availability-based Mechanism, as this typically results in better pricing. In addition, the User-fee Mechanism may have limited practical use in Malta, as in most sectors, particularly in health and educational services, the perceptions are that public goods are to be funded by Government rather than end-users.

Moreover, as described by the WB (2017)⁸³, an Availability-based Mechanism may take the form of either a Lump-sum Payment or a Usage-fee. A Usage-fee mechanism is probably more preferable in Malta as it is more motivational to SPs⁸⁴. Furthermore, it has been found that it is difficult for both parties to set a reasonable Lump-sum Payment for beyond the first two years of the PPP and that this will probably have to be revised biennially. Therefore, the obvious disadvantages arising from such mechanism are that both parties may either

⁸¹ Vide Section 2.3.3

⁸² Vide Section 4.3.5

⁸³ Vide Section 2.3.3

⁸⁴ Vide Section 4.3.5

have to periodically go back to the negotiating table or are to accept the risks of drastically changing end-user demand.

Additionally, for optimal formulation, a “*system of carrots and sticks*” as described by lossa et al. (2011)⁸⁵ warrants serious consideration. This is because, with such a system, additional compensation in the form of bonuses is to be awarded if performance targets are exceeded. Conversely, penalties are to be levied when such targets are not reached⁸⁶. However, the indications⁸⁶ are that in Malta the typical safeguards and penalties normally inserted for non-compliance are insufficient, this again probably being due to the prevailing lack of expertise on the part of Government. Furthermore, despite their insufficiency, such safeguards (*including contingency plans and guarantees of first payment timeline*) and penalties (*including loss of performance guarantees and licence revocation*) are implemented in the case of some but not all PPPs and therefore it may be optimal if such safeguards and penalties are applied in all cases.

In view of the above issues, it would probably also be beneficial if in the PPP contract, arrangements are made for periodic meetings between the Government and the SP. Thus, both parties can be sure of meeting regularly to discuss any arising issues, particularly with respect to those impinging on safeguards and penalties.

Dispute Resolution and Adjustment Procedures – Are They Ever Sufficient?

EPEC (2011)⁸⁷ stated that a straightforward dispute resolution procedure needs to be in place. In Malta⁸⁸, such a procedure typically takes the form of arbitration rather than court action. In contrast, adjustment procedures are not as well established, this sometimes emanating from inadequate planning on the Government part⁸⁹. In this connection, lossa et al. (2007)⁹⁰ stated that PPP contracts need to provide for flexibility and that this may be done by including

⁸⁵ Vide Section 2.3.3

⁸⁶ Vide Section 4.3.5

⁸⁷ Vide Section 2.3.3

⁸⁸ Vide Section 4.3.6

⁸⁹ Vide Section 4.3.6

⁹⁰ Vide Section 2.3.3

rules about what, when and how adjustment procedures are to be triggered. However, the need for such adjustment procedures stems from the fact that PPPs are typically long-term⁹¹. This is important because, in ensuring that the interests of Government and SPs are aligned, PPP duration needs to vary with the level of SP investment⁹². As a result, it is difficult at the outset to allow sufficient room for changing circumstances, despite the attempts of SPs in this direction.

Premature Termination of PPP Contracts – Is a Clause Enough?

According to the WB (2017)⁹³, PPP contracts need to have provisions in case of premature contract termination on the part of either party. While legal consultants typically ensure that contracts are comprehensive, yet, in this connection, beyond a mere clause specifying penalties, more detailed and clearer transition plans are needed for such eventualities⁹⁴. Such a need arises despite the common unwillingness of either party to resort to premature contract termination given the grave negative consequences that this may have.

5.3.4 The PPP Procurement Process – Can it be Homogenous?

Does an Ideal Procurement Procedure for PPPs Exist?

Literature⁹⁵ indicates that deciding on the right procurement strategy to procure the SP is another requisite in the optimal formulation of PPPs. In this regard, public procurement law applies and Directive 2014/24/EU⁹⁵ lists six procurement Procedures which may be utilised in the selection of SPs. No Procedure is typically preferred in Malta. However, the Open, NC and CD Procedures are most frequently adopted⁹⁶. All three Procedures take into account both competition and transparency requirements as required by Farquharson et al. (2007)⁹⁷. Yet, the NC and CD Procedures are better suited for the complex PPP formulation process because of their inbuilt requisites of negotiation and dialogue respectively. Through such processes with the more proficient bidders,

⁹¹ Vide Section 4.2.1

⁹² Vide Section 4.3.6

⁹³ Vide Section 2.3.3

⁹⁴ Vide Section 4.3.7

⁹⁵ Vide Section 2.3.4

⁹⁶ Vide Section 4.3.8

⁹⁷ Vide Section 2.3.4

Government may seal a better product as these take into account their experience, innovation and efficiency⁹⁸.

The Pre-Qualification Questionnaire – Is it Sufficiently Transparent and Invariably Needed?

According to WB (2017) and Fenech (2005)⁹⁹, Government has to decide whether to include a stage involving a Pre-Qualification Questionnaire (PQQ) as part of the PPP procurement process. By means of such a PQQ, a Government-appointed Committee assesses the necessary preliminary information submitted by prospective bidders through a number of predetermined questions¹⁰⁰. In line with Yescombe (2007) and Kerf et al. (1998)¹⁰¹, such information may be both technical and financial and therefore expedites the comparative assessment of the financial strengths and experiences of the various prospective bidders. In such an assessment, the Committee is also known¹⁰² to exclude details relating to the project design. The acquisition of such information may indeed be highly relevant for optimal PPP formulation. Yet, for the sake of transparency, it would probably be better if the questions themselves are not only predetermined but possibly also closed and dichotomous, although still permitting the possibility of additional comments by the respondents.

The indications¹⁰² are that this pre-qualification stage is preferred as a requirement for all sophisticated PPPs, this being in line with Farquharson et al. (2011)¹⁰³. Such a requirement would ensure the immediate exclusion of those prospective bidders who are clearly unequipped in terms of their size, complexity and nature. Furthermore, the findings¹⁰⁴ indicate that, if appropriately implemented, the PQQ would not only render the process more efficient but would also not bear the disadvantage claimed by Farquharson et al. (2012)¹⁰⁵ of materially undermining competition and transparency goals.

⁹⁸ Vide Section 4.2.4

⁹⁹ Vide Section 2.3.4

¹⁰⁰ Vide Section 4.3.9

¹⁰¹ Vide Section 2.3.4

¹⁰² Vide Section 4.3.9

¹⁰³ Vide Section 2.3.4

¹⁰⁴ Vide Section 4.3.9

¹⁰⁵ Vide Section 2.3.4

On the other hand, with unsophisticated PPPs, it may be beneficial to engage market consultants in lieu of implementing a PQQ. In this case, such consultations may be enough to ensure their optimal formulation.

The SP Selection – A Two-tier or a Weighted Approach?

The bidder is selected, in line with Directive 2014/24/EU, WB (2017) and Kerf et al. (1998)¹⁰⁶, on the basis of who presents the MEAT¹⁰⁷. In fact, this may involve one of two approaches, both based on financial and technical criteria - the two-tiered approach or the weighted one (the BPQR) - the latter being preferred and more used for PPPs in Malta, as it gives importance both to price and, in varying degrees, to technical criteria¹⁰⁷. This is in line with New Zealand Government (2015)¹⁰⁸ which stated that higher weightings need to be assigned to primary goals. However, the implementation of BPQR may have its dangers of subjective assessment with respect to quality. Thus, implementation would be easier if, prior to the issue of the tender document, maximum scores are predetermined to the various quality aspects¹⁰⁹. A further safeguard in ensuring objectivity may be that of having different members in the committee evaluating the final bids from those involved earlier in the procurement process.

5.3.5 The Final Contract – Are Major Changes Inadmissible?

As stated by Yescombe (2007)¹¹⁰ and also confirmed by findings¹¹¹, changes to the draft contract may need to be affected after the SP is chosen yet prior to contract finalisation. In this respect, local practices are that, for such changes to be both fair and insofar as possible transparent, they are not to result in substantial modifications to the PPP contract and to be limited to less than the 10% variation from the original draft agreement. Such changes may be understandable because, given the substantial amount of time that may be consumed by the whole procurement process, technology may have, in the meantime, progressed rendering such changes worthwhile from the point of view

¹⁰⁶ Vide Section 2.3.4

¹⁰⁷ Vide Section 4.3.10

¹⁰⁸ Vide Section 2.3.4

¹⁰⁹ Vide Section 4.3.10

¹¹⁰ Vide Section 2.3.5

¹¹¹ Vide Section 4.3.10

of both the Government and ultimate SP. However, perhaps a better guidance of what involves “*substantial*” modifications beyond the 10% quantitative element could lead to improvements in this respect.

5.4 Heating PPPs: Monitoring their Development

5.4.1 What Resources and Skills are Needed for Effective Monitoring?

According to the literature¹¹², Government needs to effectively monitor PPPs to ensure that the agreed contract terms are being adhered to. This importance was confirmed in the findings¹¹³, and in line with NAO (2018) and 4ps (2007)¹¹⁴, effective monitoring ensures the issue of early warnings, the protection of the public interest and the motivation and appropriate compensation to SPs. Thus, the question might arise as to what resources and skills are required to ensure that such monitoring is effective.

The major skill required in effective monitoring is the ability to negotiate in order to settle conflicts¹¹⁵. Additionally, in line with 4ps (2007)¹¹⁶, analytical abilities, interpersonal skills and experience on PPPs are considered important in effective monitoring. Moreover, both international and also the limited Maltese experiences on PPPs are considered relevant.

With respect to resources, Farquharson et al. (2011) and EPEC (2014)¹¹⁷ identified various resources in order to aid monitoring. Adequate training to those in charge of such monitoring is the most essential resource for effectiveness¹¹⁸. Moreover, an agreed mechanism to objectively¹¹⁸ obtain valuable information, as well as an agreed financial model to calculate compensation also seem to be considered as important resources. Thus, Government entities need to have unrestricted access to SP records and to be able to conduct relevant audits. In this connection, the study¹¹⁸ confirms that specifying this in PPP contracts is not

¹¹² Vide Section 2.4.1

¹¹³ Vide Section 4.4.1

¹¹⁴ Vide Section 2.4.1

¹¹⁵ Vide Section 4.4.2

¹¹⁶ Vide Section 2.4.2

¹¹⁷ Vide Section 2.4.2

¹¹⁸ Vide Section 4.4.2

enough, as a comprehensive list and timing of types of information is to be required. Furthermore, other resources which could aid monitoring include hiring independent advisors and creating a contract administration manual. Yet, the latter may never be comprehensive given the uniqueness of each PPP.

Therefore, it would probably be helpful that, during PPP formulation, Government also prepares for the subsequent monitoring phase and accordingly plans for skilled personnel and the necessary resources. This could possibly be achieved through outsourcing the monitoring function, with such outsourcing possibly being open for international firms outside the EU. Moreover, it may be beneficial if provisions are made for SPs to be charged for the cost of enhanced monitoring wherever they are uncooperative.

5.4.2 Can There be a Consistent Approach as to How, Who and When Monitoring is to be Carried Out?

As identified by WB (2017)¹¹⁹, Government is tasked with monitoring PPPs, but, how, by whom and when is monitoring carried out so as to ensure that it is effective? The findings¹²⁰ indicate that these three aspects are not consistently applied within different PPPs.

In terms of the how, references are typically made to the relevant PPP contract's terms of reference, inspections and KPIs, the latter¹²¹ being developed for the purpose of monitoring each specific PPP. Yet, the extent of detail varies among the various PPPs and consequently these need to be improved. In line with GIH (2018)¹²², such improvement may be affected through better links to the compensation mechanisms.

In terms of the who, monitoring is to be the responsibility of the Government entity ultimately responsible for the delivery of the PPP, if need be with the help of outsourced services¹²³.

¹¹⁹ Vide Section 2.4.2

¹²⁰ Vide Section 4.4.3

¹²¹ Vide Section 4.4.4

¹²² Vide Section 2.4.3

¹²³ Vide Section 4.4.3

Furthermore, in terms of the when, this may vary from being carried out at predetermined separate stages of PPPs to being carried out periodically, say on an annual basis¹²³.

In this manner, effectiveness is likely to be enhanced if an overall consistent approach is agreed for all PPPs. A possible way of ensuring consistency is for a Monitoring Committee to be established to meet regularly and to identify those responsible for implementing the necessary decisions.

5.4.3 Is the NAO the Appropriate Authority to Conduct Performance Audits?

Over the years, the NAO (2015, 2017, 2018) has carried PAs to measure the economy, efficiency and effectiveness of PPPs¹²⁴. It seems that such PAs are relevant for effective monitoring, especially in highlighting deficiencies¹²⁵. However, it may be beneficial if other bodies, such as external consultants, the Internal Audit and Investigations Department or the Contracting Authority also conducts similar audits. More studies may be required in this regard.

¹²⁴ Vide Section 2.4.3

¹²⁵ Vide Section 4.4.5

5.4.4 A National PPP Unit – Is There a Role for It?

The overall indications¹²⁶ are that a tighter regulatory framework is called for in order to ensure improvements in the formulation, operation and monitoring of PPPs, this being in line with Colverson and Perera (2012)¹²⁷. Such a framework may include the following:

- a. the setting up of a separate and independent national unit responsible for PPPs (“National PPP Unit”) with its two main functions being that of regulating all PPPs by establishing guidelines for their formulation and that of monitoring their operations so as to ensure the implementation of such guidelines. The functioning of such a Unit could thus eliminate any current need of other public sector entities to form their own PPPs without any benchmarks¹²⁸;
- b. the harmonisation of the whole PPP process by clear provisions as to which arrangements¹²⁹ are to be considered as PPPs and by the inclusion of the fundamental principles of formulation, operation and monitoring of such PPPs¹³⁰;
- c. the requirement that such a Unit as specified in (a.) will be managed by a variety of professionally qualified personnel¹³⁰. Furthermore, it is to take on the task of publishing justifications in the public interest for the launching of any new PPPs. One example of such justification may be that of the regeneration of idle Government assets for the derivation of economic benefits¹³¹.

5.5 Conclusion

This chapter presented a discussion of the main research findings. The next chapter presents a summary of these findings and provides recommendations in order to conclude this dissertation.

¹²⁶ Vide Section 4.3.11

¹²⁷ Vide Section 2.4.4

¹²⁸ Vide Section 4.4.6

¹²⁹ Vide Section 4.2.6

¹³⁰ Vide Section 4.4.6

¹³¹ Vide Section 4.3.11

Chapter 6

**Summary, Conclusions
and Recommendations**

6.1 Introduction

This chapter concludes the dissertation. As illustrated in figure 6.1, Section 6.2 summarises the study, while Section 6.3 outlines the major conclusions. Section 6.4 gives a number of recommendations and Section 6.5 identifies areas for further research. Finally, Section 6.6 presents the concluding remark.

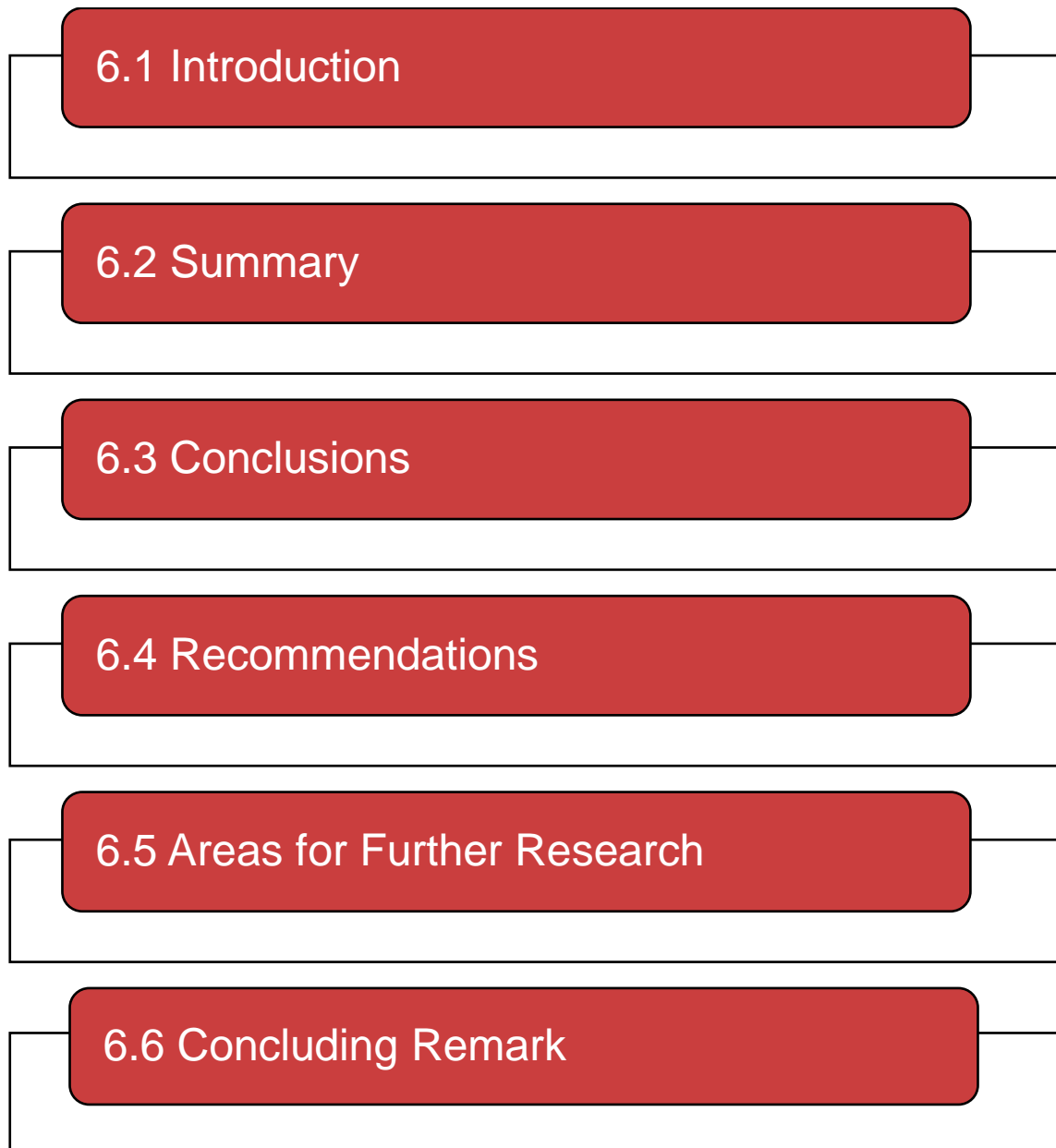


Figure 6.1: Outline of Chapter 6

6.2 Summary

The objectives of this study were to examine PPPs in the Maltese scenario, firstly, by ascertaining the nature of PPPs and assessing their definability; secondly, by identifying and analysing the main alternative ways of formulating PPPs and finding the optimal ways of doing so; and thirdly, by assessing the monitoring of current PPPs and analysing any factors which may render monitoring more effective.

To achieve such objectives, a mainly qualitative mixed-methods approach was adopted. Data was collected through semi-structured interviews with fourteen experts within the Maltese PPP scenario. These consisted of representatives from consultancy firms, and from Government entities and private sector firms involved in PPPs.

The findings indicate that in Malta, few, if any, controversies arise about the inherent characteristics of PPPs or about the importance of the players involved in them or even about the respective PPP roles of Government and SPs. However, response indicated that if a formal statutory PPP definition were to be adopted, this would likely face substantial resistance by most stakeholders. Moreover, specific case studies and detailed RAs are seen as *sine qua nons* for optimal PPP formulations. Furthermore, at the PPP contract drafting stage, dilemmas too often arise as to the inclusion of the appropriate level of detail relating to the different aspects of such contracts if one is not to render them too complex. Additionally, in the current procurement of SPs for PPPs, different procedures are used as no uniform procurement procedure has as yet been established. It was also noted that respondents preferred the inclusion of a pre-qualification stage in procuring SPs. Furthermore, while it is generally agreed that further skills and resources are required for effective Government monitoring, various differences of opinion emerged as to how and when such monitoring is to be performed effectively. Finally, it also became clear that the setting up of a National PPP Unit would be beneficial for Government.

6.3 Conclusions

This study concludes that in Malta, PPPs are commonly well formulated and monitored. Yet, there is clearly still room for improvement. In this respect, one main contributor to the existing deficiencies in both formulation and monitoring is the insufficient level of expertise of Government personnel in both processes. Other factors contributing to such deficiencies include the lack of a specific regulatory framework for PPPs and the related absence of a central procurement authority.

Furthermore, the study concludes that well-conducted preliminary case studies are necessary to determine the feasibility of PPPs for the sake of transparency, effective negotiations and VfM. However, while such case studies are generally being conducted in Malta, the danger is that these may at times turn out to be merely ritualistic exercises. Furthermore, with respect to RA exercises, the tendency is for these not to be exhaustive, thereby resulting in risks being transferred to SPs which may be too burdensome and not necessarily value-adding in the public interest. Additionally, in the drafting of PPP contracts, there is as yet the need to establish qualitative and basic input requirements in addition to the current output-based performance requirements set out by way of negotiations. It may also be concluded that while an Availability-based Compensation Mechanism results in better pricing and seems to be more appropriate for Malta, it may need to be subjected to revisions later in the contract period. In this connection, safeguards and penalties which are originally planned at the setting out of the contract, too often turn out later to be difficult to implement with consistency. Added on to this, while pre-set adjustment procedures may be difficult to determine at the outset, more emphasis on them is clearly needed to ensure long-term alignment of Government and SP interests. As for provisions relating to the premature termination of PPP contracts, more detailed transition plans are needed, despite the fact that such occurrences may be rare. The study also concludes that of the six procurement Procedures that may be utilised in selecting SPs, the Open, NC and CD Procedures are generally perceived to ensure more competition and transparency and that these relative advantages justify their use. Moreover, in the Maltese PPP procurement strategy, PQQs have

their place and may often, although not always, need to be utilised in view of the complexity, size and nature of bidders. Furthermore, in selecting the ultimate SP for each PPP, a weighted approach is probably preferable in Malta as it permits enhanced focus on technical criteria and objectivity. Another relevant point in the formulation of PPP contracts is that the level of modifications permissible in the period between the selection of the SP and the final contract remains ambiguous particularly as to the point at which such modifications may be considered substantial enough to be unfair and therefore unacceptable.

With respect to the effectiveness of monitoring, the study concludes that negotiation abilities to settle conflicts and adequate training for the involved Government staff are even here important requisites. Furthermore, PPP contracts do not as yet provide for unrestricted access to SP records and thus they do not facilitate their public sector auditing. Finally, the various approaches towards monitoring in PPP contracts give rise to variations in terms of frequency and extent of details. Such inconsistencies may act as a further barrier to effective monitoring of PPP contracts.

6.4 Recommendations

This study recommends that:

(i) Government provides guidance on a non-legally binding PPP definition (*Section 5.2.2*)

It is recommended that such guidance allows for flexibility in forming internal working PPP definitions but removes any current misunderstandings and misperceptions about PPPs.

(ii) improvements in preliminary case studies and RAs are made (*Sections 5.3.1 and 5.3.2*)

Both preliminary studies and RAs are needed in forming PPPs. However, such studies need improvement in quality and documentation while such RAs need to be carried out by Government in two stages involving both a pre-assessment of risks and a later reassessment. Moreover, Government may consider the appointment of specific public sector risk owners for each type of risk retained.

(iii) international experts are engaged to provide training to Government personnel responsible for PPPs (*Sections 5.3.2 and 5.3.3*)

Deficiencies in Government personnel skills, particularly in setting out RAs and performance requirements as well as in creating safeguards, penalties and adjustment procedures may be addressed by having experts with the appropriate international experience train Government personnel. This would lead to better PPP formulation and eventually more effective PPP monitoring.

(iv) an Availability-based Compensation Mechanism is conditional to Government being confident on demand (*Section 5.3.3*)

The benefits associated with an Availability-based Compensation Mechanism are more closely related to the Maltese PPP scenario. However, Government is to ensure periodic revisions to the level of service required by only booking availability, say two years in advance.

(v) periodic meetings are held between Government and the SP (*Section 5.3.3*)

The PPP contract is to establish the basis for such meetings by determining their frequency and necessary quorum. Any pressing issues need to be presented and resolved in such meetings to avoid such issues from resulting in reduced VfM and/or possible court action.

(vi) the PQQ includes objective assessment criteria and that its use depends upon the degree of PPP sophistication (*Section 5.3.4*)

For a PQQ to be optimally used, it is better for questions to be restricted to closed and dichotomous ones, although allowance may still be retained for respondents to add their comments. This will ensure more transparency in the elimination of insufficiently equipped bidders. Furthermore, the PQQ is only to be restricted to sophisticated PPPs with the less sophisticated ones alternatively engaging market consultants.

(vii) the Committee members evaluating the final bids are independent of the earlier PPP process (*Section 5.3.4*)

Those individuals charged with appraising the final bids to choose the SP are best not to have had prior contacts with the bidders under review during the

procurement process. Thus, individuals involved at the pre-qualification stage, negotiation or dialogue with the bidders will not be involved in such Committee.

(viii) better guidance is provided for premature terminations and for changes to the drafted PPP contracts subsequent to SP selections

(Sections 5.3.3 and 5.3.5)

In the case of premature termination, more detailed and clearer transition plans are needed, while in the case of subsequent changes to the drafted PPP contract, additional guidance is needed as to what constitutes a substantial modification. This will allow for a fairer and more transparent process.

(ix) uncooperative SPs are charged the cost of monitoring *(Section 5.4.1)*

To effectively monitor and audit SPs, unrestricted access to valuable information is necessary. As a deterrent for SPs not to be uncooperative in allowing Government entities to appropriately monitor and audit their records, any additional cost of enhanced monitoring may be charged to these SPs.

(x) a PPP Monitoring Committee is established *(Section 5.4.2)*

The aim of such a Committee would be to ensure an overall effective and consistent approach to monitoring PPPs in Malta. It is recommended that it meets regularly and plans a monitoring programme to ensure that the established PPPs continue to provide VfM *(See also Section 6.5)*.

(xi) a National PPP regulatory framework and a National PPP Unit are formally established *(Section 5.4.4)*

It is recommended that such framework sets up a National PPP Unit, harmonises the PPP process and requires such a Unit to be managed by professionally qualified personnel *(See also Section 6.5)*.

6.5 Areas for Further Research

This study identified the following areas requiring further research:

(i) The need for a National PPP Unit: A study [Sections 5.4.4 and 6.4 (xi)]

Such a study would analyse why, despite the common launching of PPPs in Malta, no centralised National PPP Unit as yet exists. Such a study may analyse SP expectations with respect to such a Unit and confirm the viability and usefulness of the roles recommended in this study.

(ii) The role of a PPP Monitoring Committee: An analysis [Sections 5.4.2 and 6.4 (x)]

Such a study would analyse and propose ways how such a Committee may set a relevant monitoring programme to cover existing and potential PPPs in Malta.

(iii) PPP performance and the role of public sector auditors: A study (Section 5.4.3)

The NAO has already undertaken a number of PAs on PPPs. It would be worthwhile to study the recommendations highlighted by such reports and analyse whether such recommendations have been implemented and the justifications for the SP courses of actions. Moreover, such a study could also include the possibility of other public sector authorities undertaking similar audits.

6.6 Concluding Remark

In Chapter Five, reference was made to the three elements of oxygen, fuel, and heat for fires to fully start. In the same manner, it is hoped that this study has amply proved the point that all three elements of definability, formulation and monitoring of PPP contracts are essential if PPPs are to be successful future vehicles for public sector development. After all, as argued by one expert in the study, *“PPP in Malta are separate species as yet in their infancy and therefore more efforts are to be dedicated for their successful growth”*.

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Appendices

Appendix 3.1 Interview Schedule

This appendix presents the interview schedule that was used during the interviews carried out for the purpose of this dissertation. Sections 1 to 3 present the interview questions, while Sections A1 and A2 present some definitions and the Likert scales to the closed-ended questions, respectively. The schedule further presents the responses for each Likert scale and Yes/No question, in *italics*.

Section 1: The Nature and Definition of Public Private Partnerships [PPPs]

1. To what extent do you agree with the following statements? *Kindly rate from 0 to 4 (with 0 being strongly disagree and 4 strongly agree), adding comments, if any:*

A PPP is a contract between the Government and the private sector and has the following characteristics:	Number of Interviewees = 14				
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
i. Is a long-term contract	1	0	1	4	8
ii. Transfers risks to the private sector	0	1	4	5	4
iii. May take different forms	0	0	0	5	9
iv. Is financed by both sectors	2	1	3	4	4

2. In your experience, how important are the following players in Maltese PPPs? *Kindly rate from 0 to 4 (with 0 being not important at all and 4 being highly important), adding comments, if any:*

The important players in Maltese PPPs are the following:	Number of Interviewees = 14				
	Not Imp. at All	Not Imp.	Neutral	Imp.	Highly Imp.
i. Government (<i>Public Sector</i>)	0	0	0	0	14
ii. Service providers (<i>Private Sector</i>)	0	0	0	1	13
iii. Providers of finance (<i>ex: Banks</i>)	0	1	4	8	1
iv. End-users (<i>Consumers</i>)	2	2	4	2	4

3. How important are the following roles in PPPs of a) Government and b) Service Providers? Kindly rate from 0 to 4 (with 0 being not important at all and 4 being highly important), adding comments, if any:

a)

The important roles of Government are as follows:	Number of Interviewees = 14				
	Not Imp. at All	Not Imp.	Neutral	Imp.	Highly Imp.
i. Setting the scope and the conditions to be delivered by service providers	0	0	0	1	13
ii. Providing assets for the purpose of the project	0	0	4	8	2
iii. Monitoring service providers	0	0	1	4	9

b)

The important roles of service providers are as follows:	Number of Interviewees = 14				
	Not Imp. at All	Not Imp.	Neutral	Imp.	Highly Imp.
i. Supplying managerial skills	0	0	0	3	11
ii. Deploying resources efficiently	0	0	0	1	13
iii. Adding value to end-users	0	0	1	5	8
iv. Financing projects	0	0	3	6	5

4. In your view, is it better for Government to partner with the private sector, rather than carry out the planned project itself? Please comment (if any).
5. Do you find the fact that there is no single definition of PPPs within the EU as being more advantageous than disadvantageous?

6. In your view, which of the following arrangements, if any, fall within the parameters of a PPP:

	Number of Interviewees = 14	
	Yes	No
i. Concession	10	4
ii. Design-Build-Finance-Maintain-Operate	14	0
iii. Build-Finance-Maintain-Operate	14	0
iv. Build-Finance	12	2
v. Operation and Maintenance	11	3
vi. Major Public Procurement	1	13
vii. Part Privatisation where the Government maintains part ownership	3	11

Section 2: The Formulation of PPPs

7. Justifying the use of PPPs:

a) To what extent do you agree with the following statements? *Kindly rate from 0 to 4 (with 0 being strongly disagree and 4 strongly agree), adding comments, if any:*

PPPs are formed in Malta due to:	Number of Interviewees = 14				
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
i. service providers competencies being better quality and financial effectiveness	0	0	1	5	8
ii. Government's unavailability of initial finance due to the capital outlays involved and/or Government's reluctance or restrictions in financing by borrowing	0	2	3	5	4

b) In your opinion, does the launching of new PPPs need to be justified by a specific case study?

- c) If yes, is such a case study to include a Public Sector Comparator¹³² [PSC]?
- d) To what extent are the procedures as stated in b to c above actually carried out in Malta?

8. Risk:

- a) In your view, how is the Risk Assessment [RA] of PPPs to be performed?
- b) Is the RA to consider who can manage the various risks at the lowest cost?
- c) What major risks need to be retained by Government?
- d) In your view, to what extent, if in any way, the analysis referred to from a to c above, is actually being employed in the formulation of Maltese PPPs?

9. To what extent do you agree with the following statements? *Kindly rate from 0 to 4 (with 0 being strongly disagree and 4 strongly agree), adding comments, if any:*

The following are to be the main aspects in drafting PPP contracts:	Number of Interviewees = 14				
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
i. Assigning risks and responsibilities	0	0	0	0	14
ii. Creating performance requirements	0	0	0	1	13
iii. Designing compensation and penalty systems	0	0	0	3	11
iv. Formulating dispute resolution procedures	0	0	1	1	12
v. Setting up termination procedures	0	0	1	2	11

¹³² Vide Section A1 Definition 1

10. The Performance Requirements:

- a) To what extent do you agree with the following statements? *Kindly rate from 0 to 4 (with 0 being strongly disagree and 4 strongly agree), adding comments, if any:*

Limiting PPP requirements to the expected output and quality rather than to input specifications:	Number of Interviewees = 14				
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
i. allows prospective bidders to be creative in achieving the end goal	0	0	2	4	8
ii. provides a clearer and more definite picture	1	0	2	6	5
iii. helps prevent collusive behaviour by prospective bidders	1	0	6	5	2

- b) In your experience, how are the performance requirements normally set up in Malta?
- c) If output goals are being established, how “SMART”¹³³ are they?

11. Compensation and Penalty Mechanisms:

- a) In your view, which is the superior of the following two Compensation Mechanisms:
- i. An Availability-based¹³⁴ Mechanism; or
 - ii. A User-fee¹³⁵ Mechanism?

¹³³ Vide Section A1 Definition 2

¹³⁴ Vide Section A1 Definition 3

¹³⁵ Vide Section A1 Definition 4

- b) As regards, the Availability-based Mechanism, which of the following is the better type:
- i. Lump-sum payment
 - ii. Usage-fee
 - iii. Other; (please state if any)
- c) How far are the performance targets linked to compensation and penalty systems?
- d) In your experience, what typical safeguards and/or penalties in PPP contracts are normally inserted for non-compliance? In your view, are these sufficient?

12. Adjustment and Dispute resolution procedures:

- a) In your view, are adjustment and dispute resolution procedures adequately inserted in Maltese PPP contracts?
- b) In long-term contracts, is enough room generally made for changing circumstances?

13. In your view, how far are the consequences of premature contract termination clearly spelled out in the contract itself?

14. The PPPs Procurement Process:

- a) In your experience, if in any way, have any of the following procedures been used in the Maltese PPPs Procurement Process?

	Number of Interviewees = 11	
	Yes	No
i. Open	10	1
ii. Restricted	7	4
iii. Negotiated Competitive (NC)	9	2
iv. Competitive Dialogue (CD)	8	3
v. Negotiated Non-Competitive	6	5
vi. Innovation Partnership	4	7

- b) With respect to the above procedures, how far are they predetermined in Malta?

15. Pre-Qualification Questionnaire [PQQ]¹³⁶:

- a) To what extent do you agree with the following statements? Kindly rate from 0 to 4 (*with 0 being strongly disagree and 4 strongly agree*), adding comments, if any:

The Pre-Qualification Questionnaire:	Number of Interviewees = 11				
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
i. leads to a cost and time-efficient procurement process	1	1	2	3	4
ii. is required for sophisticated PPPs	0	0	1	4	6
iii. undermines competition and transparency goals	4	2	4	1	0

- b) In Malta, are PQQs actually included in the PPP process? If yes, how is an applicant accepted or rejected?
- c) Are you in favour of a one-stage bidding process to a process which includes a PQQ?

16. Final bids:

- a) Can you please describe how final bids are typically appraised?
- b) Are there any technical and financial criteria commonly included?

17. Once the bidder is accepted, may changes occur to the proposed PPP contract? If so, can you elaborate?

18. In your view are PPPs in Malta commonly well-formulated?

¹³⁶ Vide Section A1 Definition 5

Section 3: The Monitoring of PPPs

19. To what extent do you agree with the following statements? *Kindly rate from 0 to 4 (with 0 being strongly disagree and 4 strongly agree), adding comments, if any:*

Monitoring is important because it:	Number of Interviewees = 14				
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
i. facilitates early warnings	0	0	0	1	13
ii. safeguards the public interests	0	0	0	1	13
iii. is value adding	0	1	1	4	8
iv. ensures that compensation is appropriate to the level of service	0	0	2	4	8
v. motivates service providers towards continuous improvement	0	1	1	3	9

20. Skills and Resources in Monitoring PPPs:

- a) In your view, how important are the following in effective monitoring?
Kindly rate from 0 to 4 (with 0 being not important at all and 4 highly important), adding comments, if any:

The importance levels of major skills in effective monitoring are as follows:	Number of Interviewees = 14				
	Not Imp. at All	Not Imp.	Neutral	Imp.	Highly Imp.
i. Interpersonal skills	0	1	2	5	6
ii. Negotiation skills to settle conflicts	0	0	1	1	12
iii. International experience on PPPs	0	0	2	8	4
iv. Maltese experience relating to previous PPPs	0	0	3	6	5
v. Analytical abilities	0	0	1	6	7

b) To what extent do you agree with the following statements? *Kindly rate from 0 to 4 (with 0 being strongly disagree and 4 strongly agree), adding comments, if any:*

The following resources aid in monitoring:	Number of Interviewees = 14				
	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
i. Hiring independent advisors	0	0	2	5	7
ii. Providing adequate training to those in charge of monitoring	0	0	0	3	11
iii. Creating a contract administration manual	0	0	3	3	8
iv. An agreed mechanism for obtaining valuable information	0	0	0	4	10
v. An agreed financial model to calculate compensation due based on monitoring	0	0	0	6	8

c) How, if in any way, does Government ensure that relevant information known by service providers is sufficiently transmitted to it?

21. How, who and when is monitoring of PPPs being typically carried out?

22. What Key Performance Indicators, if any, are normally developed to aid in monitoring?

23. Are performance audits¹³⁷ relevant in determining whether or not PPPs have been successful?

¹³⁷ Vide Section A1 Definition 6

24. Do you think that a national PPP Unit is needed to help improve PPPs? If so how? If not, why?

Section A1: Definitions

1. **Public Sector Comparator [PSC]:** Discounted cost of PPP plan is compared against that of the most adequate traditional form of procurement (ECA, 2018; OECD, 2012)
2. **SMART:** Specific, Measurable, Achievable, Realistic and Timely (Farquharson et al., 2011, p.34)
3. **Availability-based PPP:** Government pays the service provider based on availability of service (Farquharson et al., 2011)
4. **User-fee PPP:** The end-user pays the service provider for the service (Farquharson et al., 2011)
5. **Pre-Qualification Questionnaire [PQQ]:** It is a pre-qualification stage where interested parties are invited to register their interest by submitting information to corroborate their experience, financial and technical abilities (Yescombe, 2007)
6. **Performance Audits in PPPs:** Attempt to measure economy, efficiency and effectiveness of a PPP project (O’Leary, 1996)

Section A2: Scales

1. **Agreement scale** to be used for questions: 1, 7a, 9, 10a, 15a, 19, 20b

0	1	2	3	4
Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree

2. **Intensity scale** to be used for questions: 2, 3a, 3b, 20a

0	Not Important at All
1	Not Important
2	Neutral
3	Important
4	Highly Important

Appendix 3.2 Statistical Data Analysis using the Friedman Test

The bar graphs presented below complement the statistical tables presented in Chapter Four. Such bar graphs provide a visual representation of the differences, significant or otherwise, between the agreement to/importance of the statements in each Likert scale question, and clearly depict the results from the Friedman Test.

The error bar graph displays the 95% confidence interval of the actual mean rating score provided to a statement if the whole population of Public Private Partnership Experts had to be included in the study. If two confidence intervals overlap, this indicates that their mean rating scores are similar and do not differ significantly. Conversely, if two confidence intervals do not overlap, or overlap slightly, this indicates that their mean rating scores differ significantly.

Section 1: The Nature and Definition of PPPs

Figure A3.1 below presents the level of agreement to PPPs characteristics. As can be seen, the error bars of statements (iii) and (iv) do not overlap, indicating that the mean rating scores differ significantly. Moreover, the p -value (0.006) confirms this.

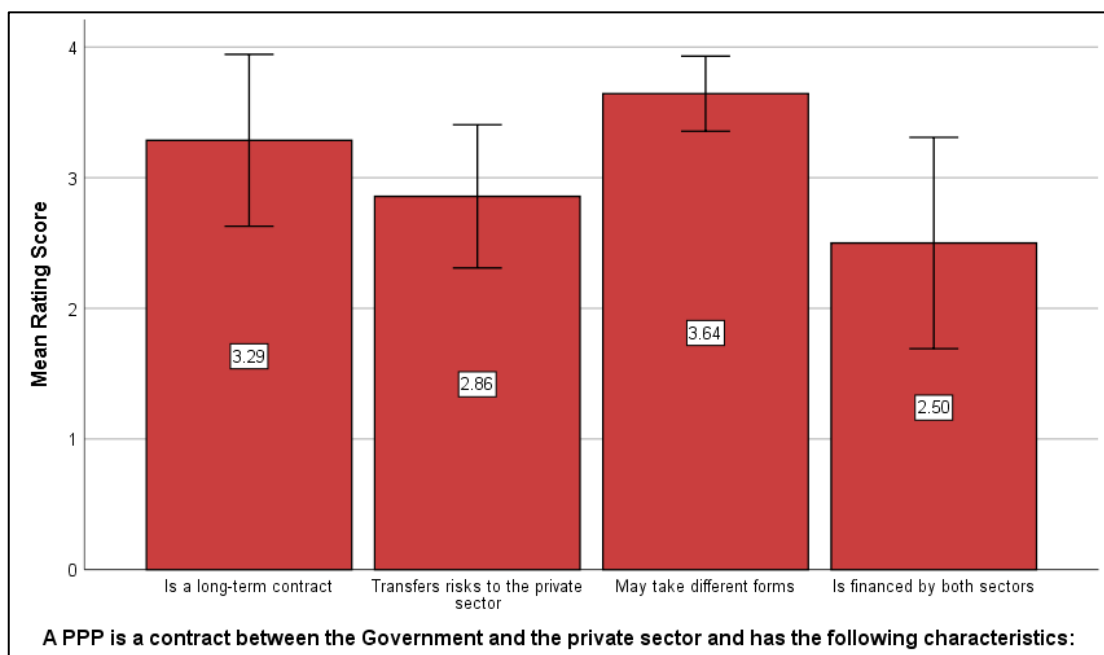


Figure A3.1: PPPs Characteristics (Qn.1)

Figure A3.2 below presents the level of importance of players in Maltese PPPs. As can be seen, the error bars of statements (i) and (ii) do not overlap with the error bars of statements (iii) and (iv), indicating that the mean rating scores differ significantly. Moreover, the p -value (0.000) confirms this.

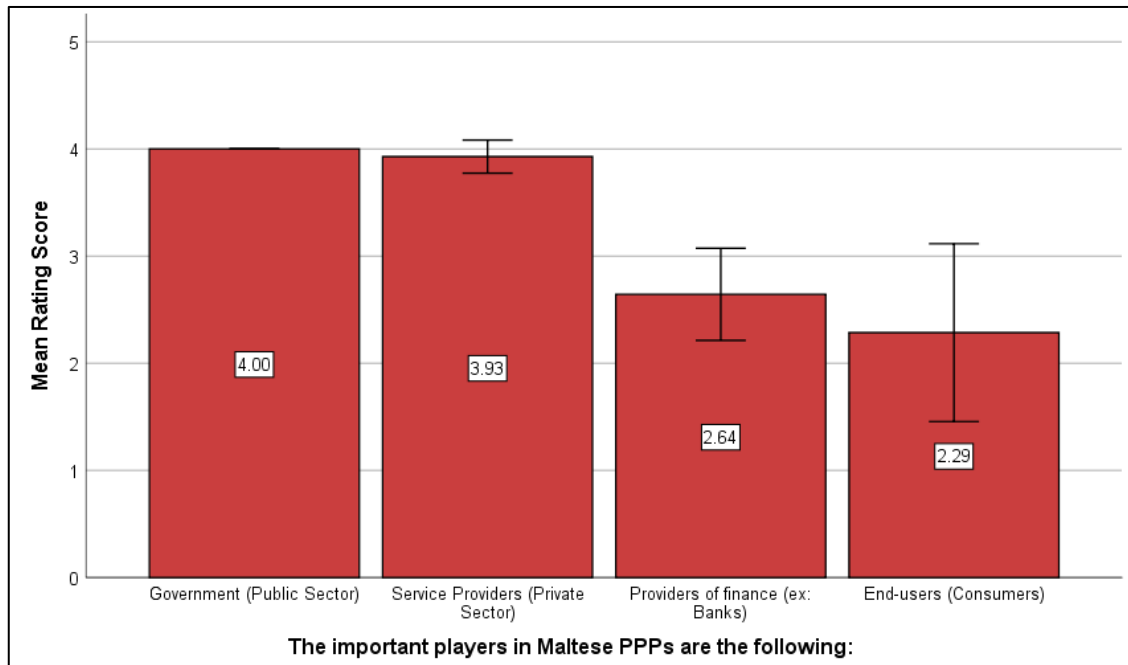


Figure A3.2: Major PPP Players (Qn.2)

Figure A3.3 below presents the level of importance of Government roles. As can be seen, the error bars of statements (i) and (ii) do not overlap, indicating that the mean rating scores differ significantly. Moreover, the p -value (0.000) confirms this.

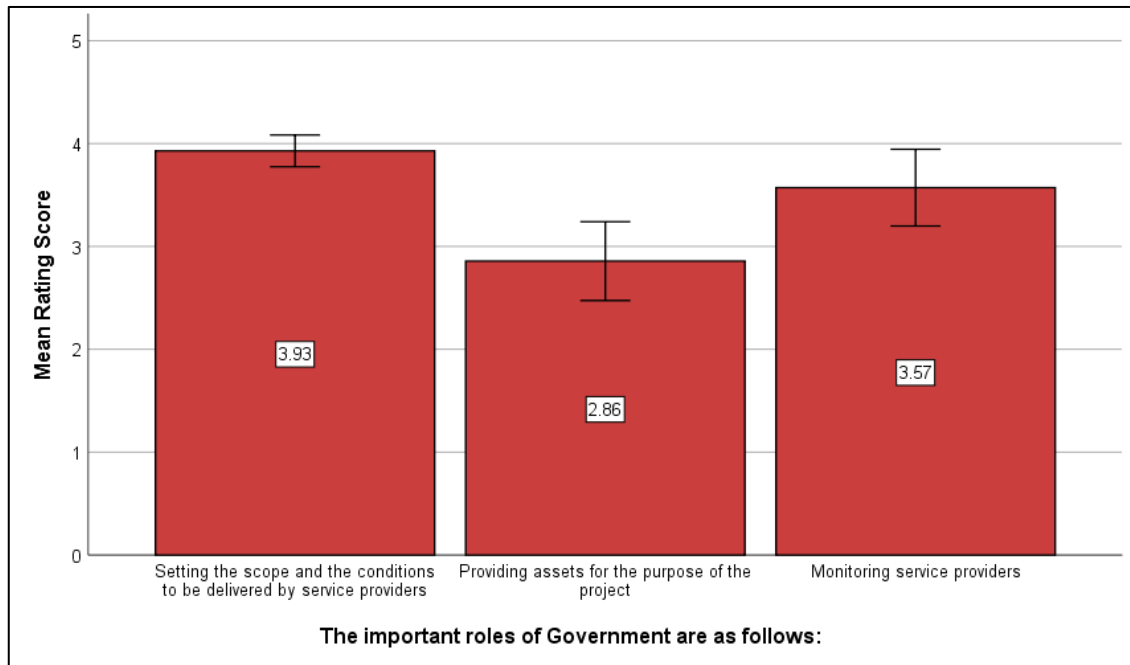


Figure A3.3: Major Government Roles (Qn.3a)

Figure A3.4 below presents the level of importance of SPs roles. As can be seen, the error bars of statements (ii) and (iv) do not overlap, indicating that the mean rating scores differ significantly. Moreover, the p -value (0.002) confirms this.

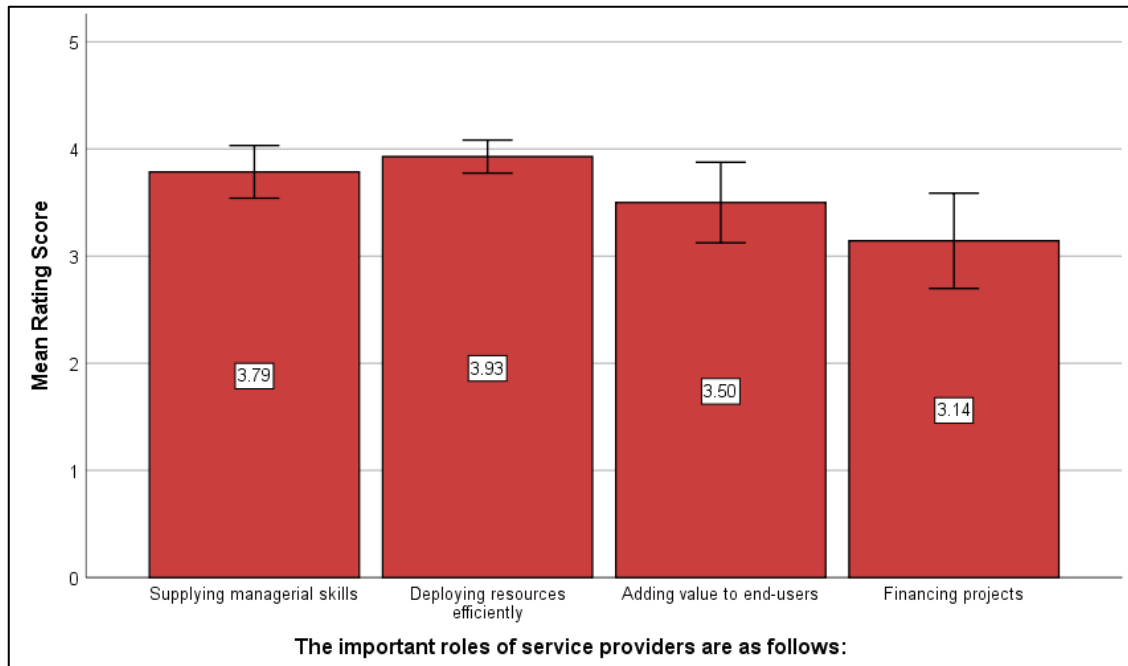


Figure A3.4: Major Service Providers Roles (Qn.3b)

Section 2: The Formulation of PPPs

Figure A3.5 below presents the level of agreement to reasons why PPPs are formed in Malta. As can be seen, the error bars overlap, indicating that the mean rating scores do not differ significantly. Moreover, the p -value (0.096) confirms this.

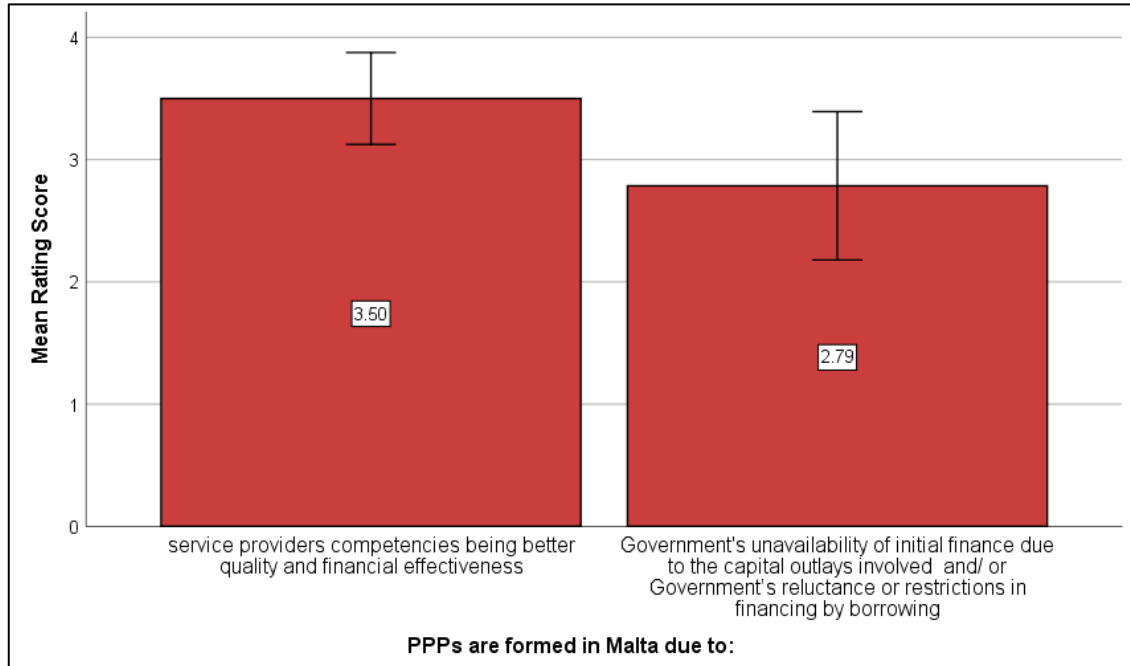


Figure A3.5: Reasons for Forming PPPs in Malta (Qn.7a)

Figure A3.6 below presents the level of agreement to the main aspects in drafting PPP contracts. As can be seen, the error bars overlap, indicating that the mean rating scores do not differ significantly. Moreover, the p -value (0.147) confirms this.

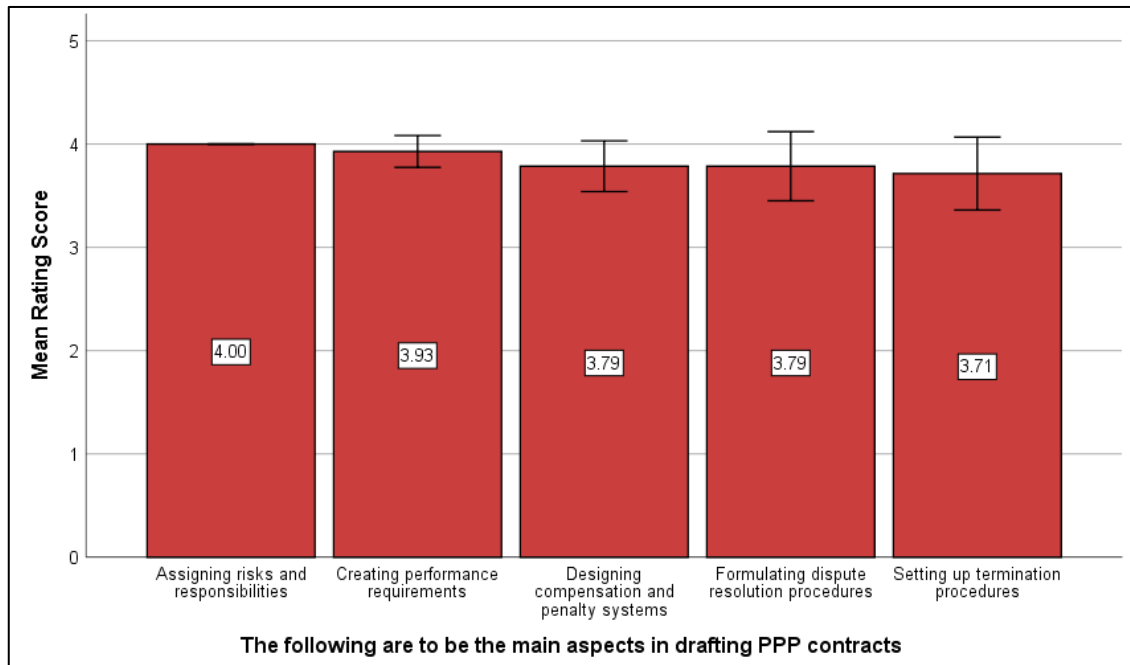


Figure A3.6: Main Aspects in Drafting PPP Contracts (Qn.9)

Figure A3.7 below presents the level of agreement to reasons for output-based performance requirements. As can be seen, the error bars overlap, indicating that the mean rating scores do not differ significantly. Moreover, the p -value (0.140) confirms this.

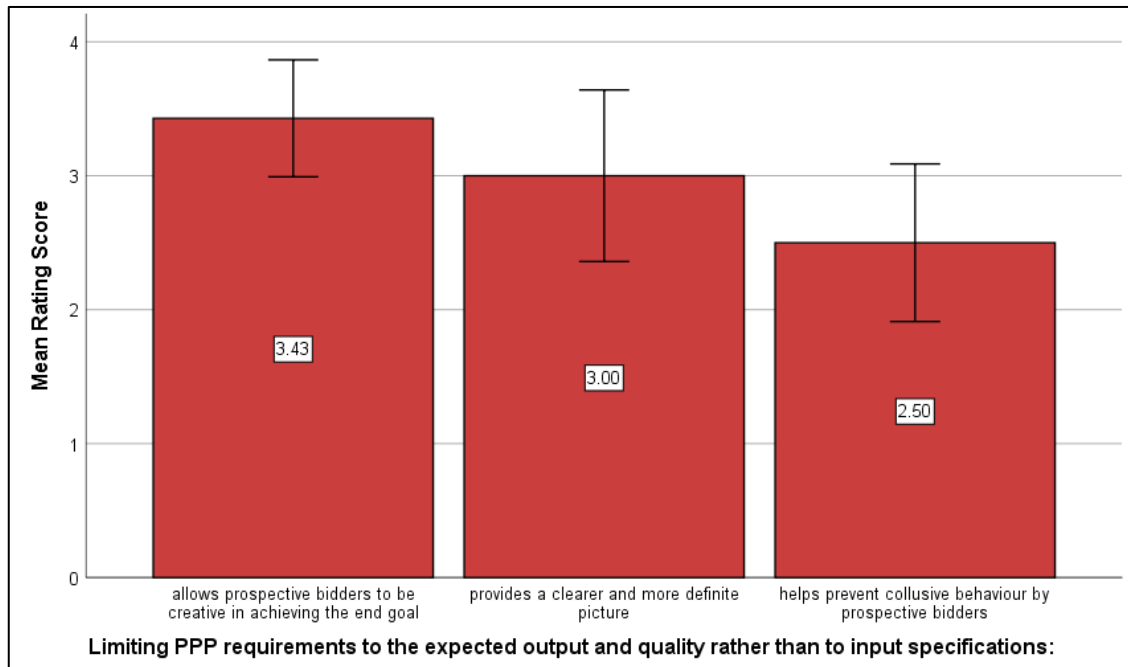


Figure A3.7: Reasons for Output-based Performance Requirements (Qn.10a)

Figure A3.8 below presents the level of agreement to statements about the PQQ. As can be seen, the error bars of statements (ii) and (iii) do not overlap, indicating that the mean rating scores differ significantly. Moreover, the p -value (0.003) confirms this.

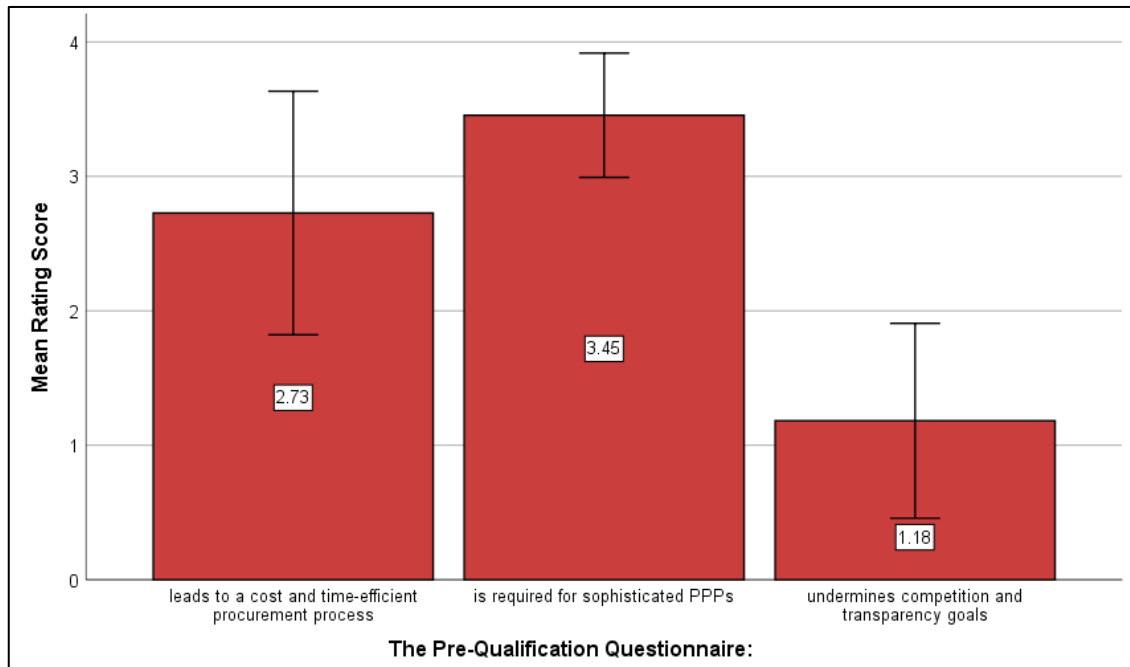


Figure A3.8: The Pre-Qualification Questionnaire (Qn.15a)

Section 3: The Monitoring of PPPs

Figure A3.9 below presents the level of agreement to why monitoring is important in PPPs. As can be seen, the error bars of statements (i) and (ii) slightly overlap with the error bars of statements (iii), (iv) and (v), indicating that the mean rating scores differ significantly. Moreover, the p -value (0.022) confirms this.

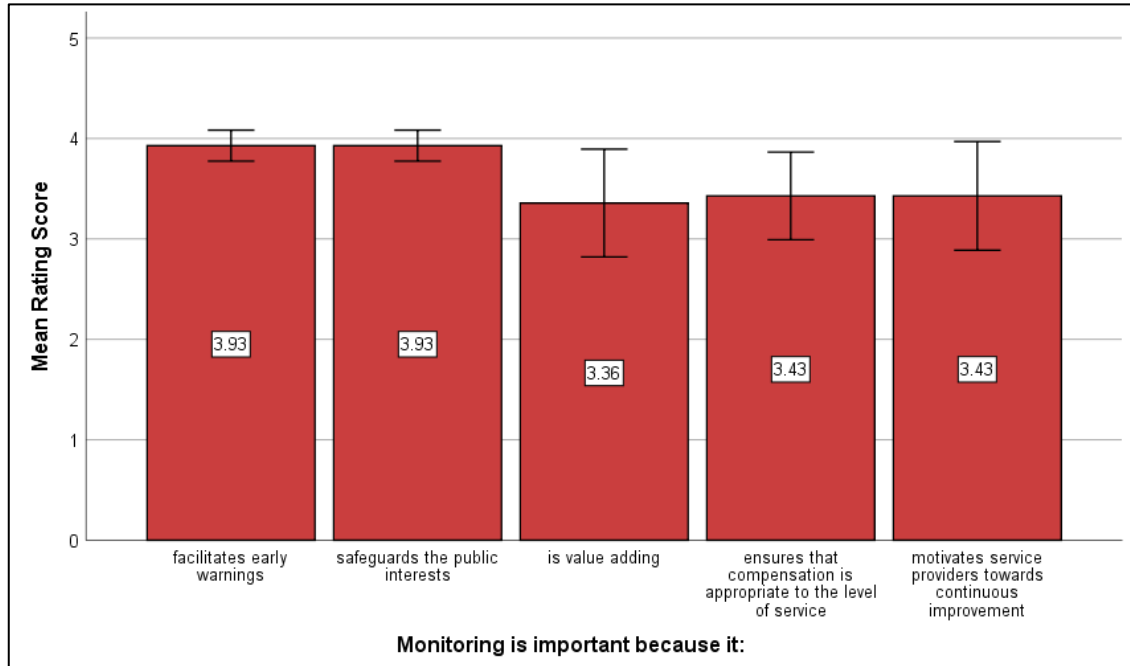


Figure A3.9: Why Monitoring is Important in PPPs (Qn.19)

Figure A3.10 below presents the level of importance of major skills in effective monitoring. As can be seen, the error bar of statement (ii) slightly overlaps the error bars of statements (iii) and (iv), indicating that the mean rating scores differ significantly. Moreover, the p -value (0.005) confirms this.

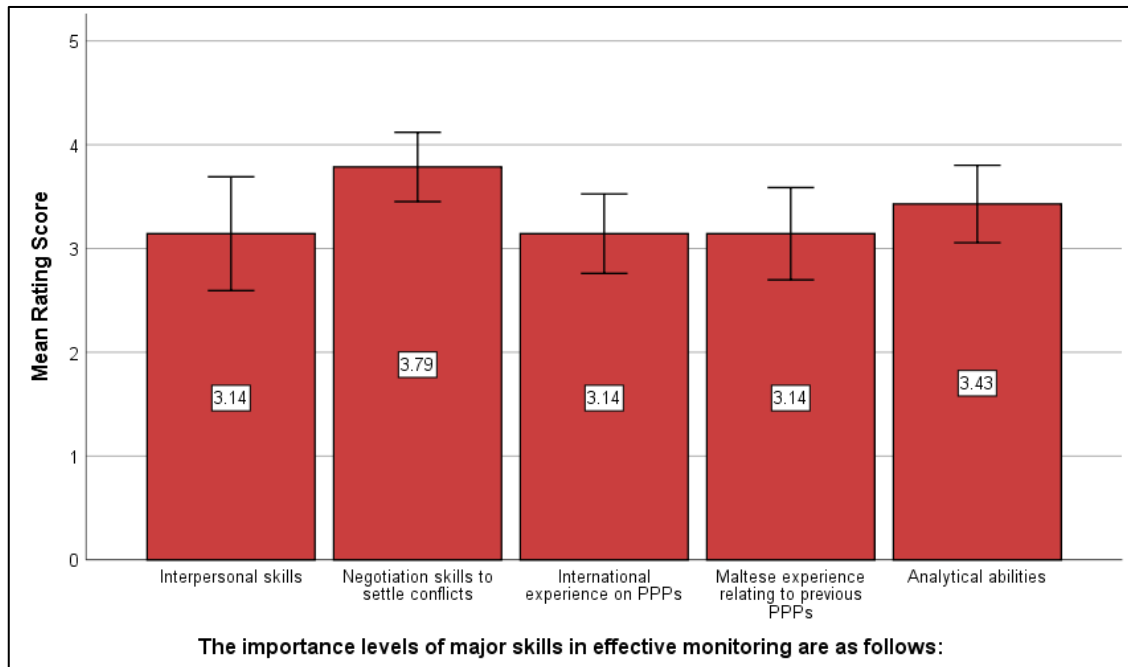


Figure A3.10: Importance of Major Skills in Effective Monitoring (Qn.20a)

Figure A3.11 below presents the level of agreement to resources required for monitoring. As can be seen, the error bars overlap, indicating that the mean rating scores do not differ significantly. Moreover, the p -value (0.075) confirms this.

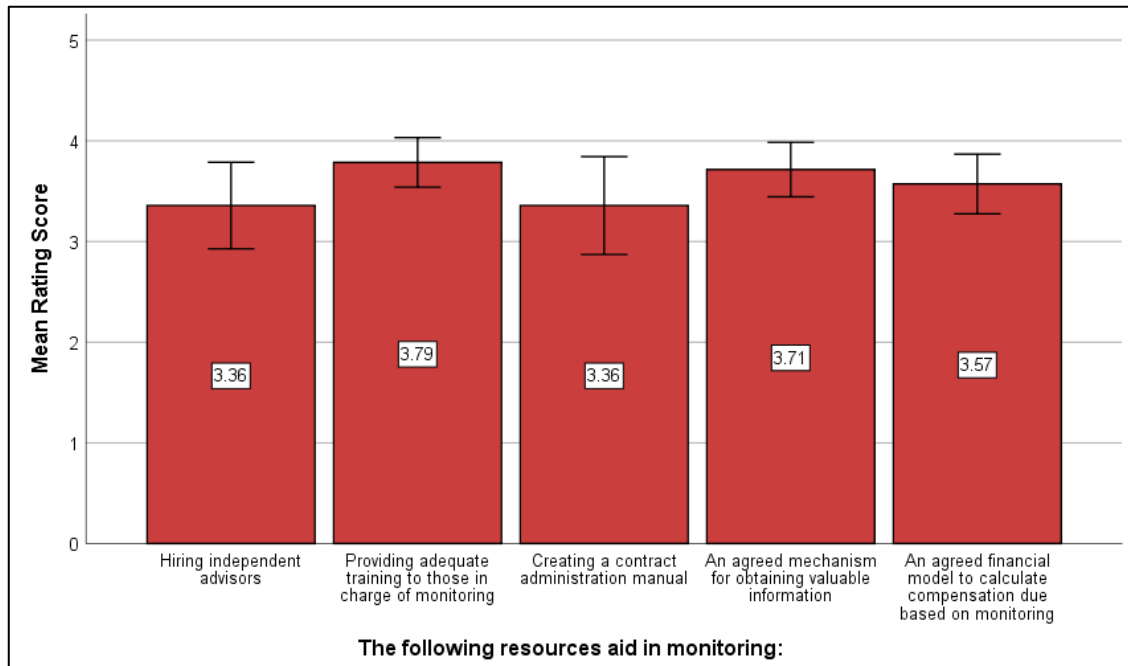


Figure A3.11: Resources Required for Monitoring (Qn.20b)

Appendix 3.3 Statistical Data Analysis using the Chi-squared Test

Section 1: The Nature and Definition of PPPs

Figure A3.12 below shows that a larger percentage of PPP arrangements have been used in Malta, which include Design-Build-Finance-Maintain-Operate (100%), Build-Finance-Maintain-Operate (100%), Build-Finance (85.7%), Operation and Maintenance (78.6%) and Concessions (71.4%), as compared to Part Privatisation where Government maintains part ownership (21.4%) and Major Public Procurement (7.1%). These percentage differences are significant since the p -value (<0.001) is less than the 0.05 level of significance.

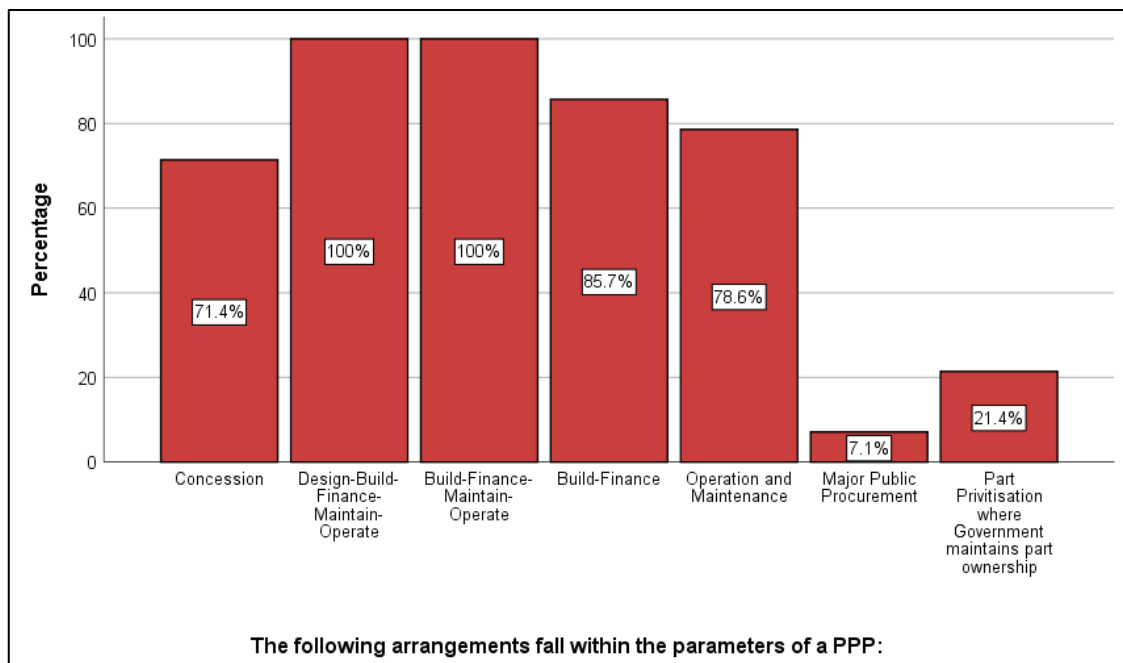


Figure A3.12: Different Forms of PPPs (Qn.6)

Section 2: The Formulation of PPPs

Figure A3.13 below shows that a larger percentage of Procurement Procedures has been used in the Maltese PPP Procurement Process which includes the Open (90.9%), Negotiated Competitive (81.8%), Competitive Dialogue (72.7%), Restricted (63.6%) and Negotiated Non-Competitive (54.5%) Procedures, as compared to the Innovation Partnership (36.4%) Procedure. However, these percentage differences are not significant since the p -value (0.089) exceeds the 0.05 level of significance.

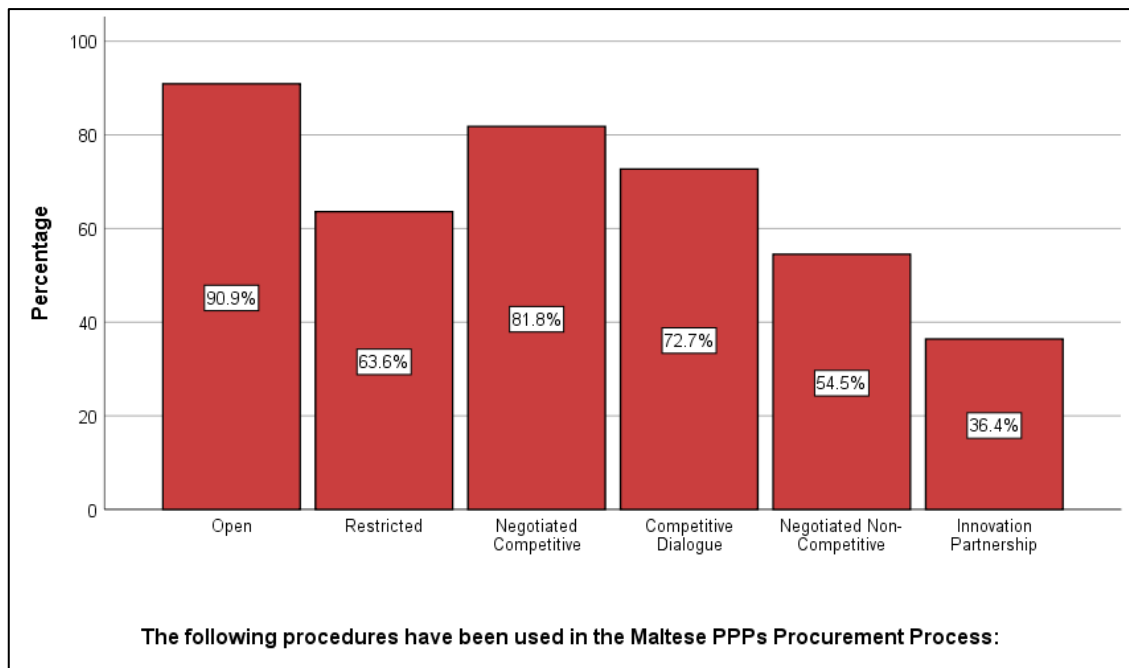


Figure A3.13: PPPs Procurement Procedures (Qn.14a)