PUBLIC-PRIVATE PARTNERSHIPS: A POLICY OPTION FOR THE IMPROVEMENT OF PUBLIC SERVICE DELIVERY IN LEBANON

by

CARLA GHALEB ANTAR

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by

CARLA GHaleb Antar

Approved by:

Dr. Hilal Khashan, Professor
Political Studies and Public Administration
Advisor

Dr. Randa Antoun, Lecturer
Political Studies and Public Administration
Co-Advisor

Dr. Thomas Haase, Assistant Professor
Political Studies and Public Administration
Member of Committee

Dr. Hiba Khodr, Assistant Professor
Political Studies and Public Administration
Member of Committee

Date of thesis defense: March 23, 2011
I, Carla Ghaleb Antar

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AN ABSTRACT OF THE THESIS

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The efficient and effective provision of public services is among the most pressing challenges that the Lebanese government faces. The inadequate capabilities of the Lebanese government to provide public services and to implement large-scale infrastructure projects pushed the Lebanese government to seek new ways to incorporate private sector involvement in public service delivery; public-private partnership (PPP) is one of them.

There has recently been serious consideration within the Lebanese government about adopting a law that deals with partnerships between the public and private sector. The primary objective of the thesis is to investigate the feasibility of PPP in delivering better quality of public services in an efficient and effective manner. The concept of PPP is explored, as well as the possibility of PPP to relieve governmental financial burdens and ensure country’s development and well-being. Since the notion of PPP, put under a legal umbrella, is new to Lebanon, the second objective of this research is to evaluate the current version of PPP draft law. The Articles of the law are examined; criticisms of the content of the law are discussed; and when applicable, amendments are suggested.

This thesis largely depends on the content analysis method to compile information related to PPPs in Lebanon. The data were retrieved from the literature and interviews with Lebanese public officials and technocrats.

The conclusion inferred from this study is that PPP is a generic approach in which the Lebanese government harnesses the expertise and efficiencies of the private sector to upgrade Lebanon’s infrastructure. PPP yields positive outcomes when implemented under a legal framework in a transparent and accountable manner. Since Articles of the current version of PPP draft law are subject to controversy, considering PPP draft law as accountable, fair, and transparent remains debatable. Revisions of PPP draft law need to be made to guarantee that the best qualifications of each of public and private sectors become used fairly to create the synergy needed to hasten Lebanon’s infrastructure development. Lastly, having a myriad of benefits attached to PPP when put in the proper legal framework make a comprehensive approach to PPP an attractive option for Lebanon.
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TO MY BELOVED FAMILY
CHAPTER I
INTRODUCTION

A. Background

During the latter part of the twentieth century, the world witnessed increasing involvement of the private sector in public sector’s mission to deliver public goods and services. The mounting call for private sector participation is due to the recognition of the limitations of public bureaucracy to efficiently and effectively render goods and services. Public debt problems, complexities stemming from globalization, and a more sophisticated and demanding consumer base made the process of providing goods and services by the public sector more difficult.\(^1\) Alternative forms of public service delivery have been considered, most of which call upon the private sector to utilize its advanced skills and management techniques that governments mainly lack. The assumption is that, with private involvement, better quality of public services can be delivered more efficiently and at a faster rate.

Private sector involvement in public affairs is not new; some examples from history include: “Mathew the private tax collector from the Bible, the private cleaning of public street lamps in the 18\(^{th}\) century England, and the private railways of the 19\(^{th}\)

century.”² However, as a specific type of private involvement in public sector service delivery, public-private partnerships did not gain momentum until the early 1980s, when the wave of public-private partnership (PPP) started to hit continental Europe and North America.

Prior to the 1980s—a period which Michael Geddes (2005) refers to as the “pre-partnership” period³—governments used to work single-handedly. They determined policies; they were responsible for decision-making processes (sometimes without consulting others); they were in charge of procurement processes; they allocated resources; and they delivered public services. They even self-financed themselves and their operations. Occasionally, however, different sources of finance were accepted while keeping the ultimate control and responsibility in the hands of governmental bodies.⁴

Public sector involvement specifically increased after the Great Depression, when remarkable market failures resulted due the overarching private sector management. The main reason behind market failure is “profit-seeking companies being not motivated to provide goods that are ‘non-rivalrous’ (when an individual’s consumption does not diminish the amount available for other) and non-excludable.”⁵ To make up for these


⁴ Ibid.

market failures, government interventions increased in an attempt to correct inequities, unequal distribution, and inefficiencies that resulted from private sectors’ delivery of services.

During the post-1980 period, the reputation of the public sector being willing and able to deliver public services efficiently and effectively began to fade. Actually, the economic crisis of the 1970s and early 1980s made the notion of the market failure countered by the idea of state failure. This has been specifically associated with the rise of New Public Management (NPM), which was most popular in Anglo-Saxon countries like the United Kingdom, Australia, and the United States. NPM is famous for its criticisms of big governments because they are characterized by inefficiency, ineffectiveness, and mediocrity. Thus, NPM seeks to roll back the role of state by applying private sector management principles to government organizations.⁶ NPM represents “a shift from traditional public administration with far greater attention being paid to the achievement of results.”⁷ In fact, NPM encourages the fostering of private involvement in service delivery either through privatization or through forms of partnerships between public and private sector, and sometimes with the civil society.

In addition to the spread of NPM and market-principles in the post-1980 period, corporate social responsibility played a role in facilitating the expansion of PPP approach. Corporate social responsibility began to emerge as business leaders started to “see the community as primary stakeholders and community building as being in the interests of

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⁷ Ibid.
their shareholders.”

Private-sector companies started to focus on the community as a whole and respond to its needs and demands, rather than solely focusing on profit maximization. Consequently, the notion of corporate social responsibility facilitated the process of private involvement especially when the private sector has been conceived to respond to community’s demand. Many other factors occurring in the post-1980 period acted as facilitators of PPPs some of which include: the development of sophisticated communication systems that made the contact between the public and private sector easier, the pressure from citizens (or customers of public services) to reduce cost and improve public service quality, and the recognition of the public sector’s budgetary and financial constraints which negatively affected its performance. These facilitators paved the way to the introduction of the Private Finance Initiative (PFI) in 1990s in the United Kingdom, which acted as the stepping-stone towards the development of PPPs in other countries throughout the world.

B. Problem Statement

Lebanon has always faced problems in providing public goods and services to its population, specifically after its Civil War (1975-1990) that had drastic repercussions on the country’s economy, demography, and infrastructure. The governments of post-war Lebanon have been trying to restructure and reform the country’s inadequate infrastructure.


9 Ibid; p. 5.
Although privatization had been perceived to be an effective remedy to the problems related to the poor delivery of public services, efforts towards privatization mainly failed due to the controversies and criticisms attached to privatization, as viewed from the Lebanese political lens. At the same time, large question marks are raised about the financial and managerial capabilities of the Lebanese government to provide single handedly large-scale infrastructure projects that are needed for Lebanon’s future social development and well-being. Up until the present days, and after many rebuilding and rehabilitation efforts, infrastructure facilities are still poorly provided. Lebanese citizens often suffer from water scarcity, electrical shortages, and bumpy roads, in addition to other poorly supplied infrastructure services. Lebanese leaders have thus been searching for a third way (other than the ones provided by each of the state and the market exclusively) to cure the country from its financial, administrative, and service delivery ills. Recently, there have been talks about a new approach that seems to promise a better future for the performance of the Lebanese public sector. This approach calls for partnerships to develop between the public and private sectors.

C. Research Objectives

On March 24, 2010, the Lebanese Minister of Finance, Raya El Hassan, announced that there were serious negotiations between members of the Lebanese cabinet concerning the possibility of resorting to public-private partnerships.\textsuperscript{10} In fact, PPP is a

main element in the 2010 draft budget, whose purpose is to increase the level of investment spending. Establishing partnerships between the public and the private sectors seems to be the suitable means to provide better quality of public services and reduce the burdens of investment expenditures on the government’s budget.¹¹

According to El Hassan, “Lebanon is in great need of a proper infrastructure.”¹² Without the involvement of the private sector, any improvement in the Lebanese infrastructure may be difficult, if not impossible. El Hassan claims that the ultimate aim for introducing PPP is to “help upgrade the country’s infrastructure.”¹³ PPPs seem to provide the means to eliminate the obstacles that affect the participation of the private sector in financing large-scale infrastructural projects. Consequently, the Lebanese government prepared a legislation that would allow the use of PPP for infrastructure projects. On August 17, 2010, Assafir, a Lebanese daily newspaper, published the public-private partnership draft law which constitutes of 15 articles.¹⁴ This proposal explains the terms


¹² Ibid.


and conditions under which a public-private partnership can be established in Lebanon.

Currently, there seems to be serious considerations within the Lebanese government about the adoption of the draft law that deals with partnerships between the public and private sector. This is the first time in the history of Lebanon that the PPP approach has become seriously discussed in the Cabinet. A critical study of PPP becomes a necessity at this point in time, especially considering that there is a significant debate taking place about the appropriateness of PPP in Lebanon.

The primary objective of the thesis is to investigate the feasibility of PPP as a means to deliver better quality of public services. The concept of PPP will be explored, as well as the possibility of PPP to relieve governmental financial burdens and ensure country’s development and well-being. The second objective of this research is to evaluate the effectiveness of PPP draft law in making the experience of PPP in Lebanon successful. The Articles of the draft law will be examined; criticisms of the content of the law will be discussed; and amendments will be suggested.

D. Research Questions

Exploratory approach designs are used “to examine a new interest according or when the subject of study itself is relatively new.”\(^{15}\) Babbie (2004) notes that exploratory studies are typically done for three purposes: (1) to satisfy the researcher’s curiosity and

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desire for better understanding, (2) to test the feasibility of undertaking a more extensive study, (3) to develop the methods to be employed in any subsequent study.\textsuperscript{16} Given that the call for having a legislation of PPP is new for Lebanon, this thesis is exploratory in nature. As such, examining how the PPP phenomenon might play out in the Lebanese context, when put under a legal framework, will give an idea about its potential effects.

To explore the notion of PPP in the Lebanese context, the following research questions will be addressed:

- Why is there an increasing attention on public-private partnerships in Lebanon today?
- What are the strengths and weaknesses of PPP draft law?
- Is public-private partnership a feasible policy option to consider in the quest of improving the delivery of public services in Lebanon?

E. Methodology

Two research methods were utilized to answer the above-mentioned research questions. The first research method used is extensive review of literature, where academic books and journal articles were reviewed to form a sound theoretical basis for PPP.

The second research method (that was specifically used to collect data on PPPs in Lebanon) is content-analysis of primary resources. According to Babbie (2004), content analysis is “the study of recorded human communications, such as books, websites,

\textsuperscript{16} Ibid.
The primary resources used are newspaper articles, legislative manuscripts and recorded interviews. Thus, data related to PPP were collected. After data collection, the material extracted from the literature were coded under the following titles:

- Reasons for PPP
- Benefits of PPP
- Criticisms of PPP
- Points of strengths of PPP draft law
- Points of weaknesses of PPP draft law
- Suggested amendments to PPP draft law

The data was then processed and transformed into a standardized form. Relevant materials were then filtered and interpreted so that to get those data most relevant to the study at hand.

To explore PPP trend in the Lebanese context, newspaper articles, published between 2007 till 2010 and tackling PPP in Lebanon, were collected, analyzed, and utilized throughout the chapters. Even though there was a parsimony of resources available of PPP in Lebanon, Lebanese newspaper articles showed to be useful for four main reasons: (1) they allowed access to the content of PPP draft law, (2) they provided information about the history and development of PPP in Lebanon, (3) they published interviews (specifically tackling the concept of PPP) conducted with Lebanese public officials, and (4) they published statements made by economic and political experts on the issue of PPP in

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Lebanon. In addition to reviewing newspaper articles, analysis of the PPP draft law, legislative manuscripts, and decrees (such as the Lebanese Constitution, Law of Commerce, and Lebanon’s Privatization Law) is also provided.

To fill gaps in information on PPP in Lebanon provided by secondary resources available, five interviews were conducted with Lebanese public officials and technocrats whose perspectives and insights intensify the quality of data collected. One of the interviewees preferred to remain anonymous. The other four interviewees are the Director General of Ministry of Finance Alain Bifani, the Financial Expert in the Higher Council for Privatization Diala Shaar, the Head of Economic Division at the Consultation and Research Institute (CRI) in Beirut Kamal Hamdan, and Member of the Parliament (MP) Abbas Hachem.

Each of the interviewees was consulted for a reason. Alain Bifani was consulted because the Minister of Finance, Rayya El Hassan, pushed for PPP in her budget proposal in 2010. Taking his opinion on this matter will add valid data on the limited information present on PPP subject. Being an active member of HCP team that drafted the PPP draft law in Lebanon, Diala Shaar was asked for an interview to provide legal insights on PPP legislation, specifically on the law’s strengths, criticisms, and implications on Lebanese government. As the Head of Economic Division at a renowned consultancy firm, Kamal Hamdan was consulted to talk about PPP approach from an economic perspective. Being a Member of Parliament who will play an active role in the process of ratifying the PPP draft law, Abbas Hachem was asked for an interview to discuss the notion of PPP, specifically from a legal and political perspective.

The interviews were conducted between December 14 and December 28, 2010.
Semi-structured questions, which guarantee flexibility to probe further details on a subject matter, were utilized to ensure fruitful and prolific dialogue with the interviewees. Interview questions primarily focused on defining the term PPP and differentiate it from privatization, evaluating how might PPP improve or undermine the delivery of infrastructure services in Lebanon, providing PPP examples in Lebanon, understanding the impact of PPP legislature on public service delivery, studying the benefits and challenges associated with PPP approach, and suggesting recommendation for how to tailor PPP approach to fit the Lebanese context. A sample of the interview questions used for the purpose of this thesis is provided in Appendix III.

F. Limitations of the Study

After forming the preliminary list of resources, it became evident that there is a shortage of availability of data written on PPP in Lebanon. Securing reliable information on the Lebanese case was difficult; some data was not accessible. For example, research showed that there are three versions of PPP draft laws in Lebanon. Unlike versions 2 and 3 of PPP draft law, versions 1 was not accessible. The inability to get hold of version 1 made it difficult to monitor the changes made between the three versions. Therefore, this thesis will only be able to compare the content of versions 2 and 3 of PPP draft law.

More interviews were aimed to be conducted with different public officials and economic consultants. However, reaching public officials in Lebanon is a tedious process that requires time and political contacts. There are public officials concerned with the notion of PPP that the author of the thesis was able to contact (other than the ones mentioned above), however, they refused to conduct an interview mainly due to time
constraints, as they claimed. In addition, the turbulent political situation that Lebanon has been facing since the beginning of 2011 made officials reluctant to participate in an interview on a controversial topic such as that of PPP.

G. Structure of the Thesis

The remainder of the thesis is divided into five chapters. Chapter II presents a theoretical introduction to the fundamentals of public-private partnerships. Since the concept of PPP has only recently been introduced in countries across the world, this chapter defines the term PPP by distinguishing between the terms public, private, and partnership. It also points out the differences between PPP and privatization, which is important because the concepts are not sufficiently distinguished. To further clarify what is meant by PPP, constructive frameworks are provided to demonstrate the different forms of cooperative arrangements that can exist between public and private sectors. The frameworks also explain the characteristics that distinguish the various forms of PPP from one another.

Chapter III is devoted to understanding the dynamics of public-private partnerships. This chapter examines the reasons behind the increasing implementation of PPP throughout the world. Furthermore, the mechanisms used to form a typical PPP arrangement are examined by presenting the different participants involved in PPP process and the general guidelines used for the effective establishment of PPPs. The chapter then presents the benefits that can be reaped from a PPP approach to service delivery, and studies the obstacles that impede the PPP implementation. The last section of this chapter discusses the key factors that need to be present to ensure the successful formation and implementation of PPP projects.
This thesis explores the prospects of PPP approach in the Lebanese context. Chapter IV presents examples of PPP projects operating in Lebanon since the end of the Lebanese Civil War (1975-1990) and examines the extent to which they were successful in achieving their desired results. Afterwards, this chapter identifies the reasons that pushed the Lebanese government to adopt PPP projects and draft PPP legislation. The chapter concludes by examining the way PPP is defined in the Lebanese context today, and the extent to which Lebanese officials differentiate PPP from privatization.

To set a solid ground for the evaluation of Lebanon’s PPP legislation, Chapter V opens with a snapshot of the Lebanese political environment since 2005. Taking the political situation into account, the chapter then explains the reasons why the first two versions of PPP draft laws were ignored by the Parliament. Afterwards, the chapter brings forth a comprehensive analysis of the current version of PPP draft law by examining the points of strengths and weaknesses of draft law, and suggesting amendments, when applicable.

Chapter VI summarizes the findings of this study and answers the primary research questions of the thesis. The chapter studies the extent to which PPP approach is an attractive option in the quest of delivering better quality public services at an efficient and effective rate. In addition, the chapter brings forth future recommendations that would help ensure successful implementation of PPP projects to reap benefits specifically related to the effective and efficient provision of public services. The chapter ends by taking a look into the future: it discusses the implications of this thesis on further research.
 CHAPTER II

A THEORETICAL INTRODUCTION TO THE FUNDAMENTALS OF PUBLIC-PRIVATE PARTNERSHIPS

This chapter clarifies the term public-private partnership (PPP) by explaining what is meant by the words public, private, and partnership. To fully recognize what is meant by PPP, the chapter also aims to understand the relationship between PPP and privatization. Thus, the subsequent sections of this chapter will explore the definition of PPP and how PPP differs from privatization.

PPP is a term that encompasses countless forms of cooperative arrangements between the public sector and private sector, which might make the term confusing in terms of indicating the types of relationships that fall under PPP’s realm. To reduce confusion, the chapter provides frameworks that represent the most common forms of PPPs found throughout the world. Consequently, this chapter identifies the boundaries of PPP.

A. Defining Public-Private Partnership: The Words

This section defines PPP by explaining what is meant by each word constituting the term PPP. Since the meanings of public and private sectors are often blurred, the first subsection clarifies the similarities and differences between the two. Once similarities and differences have been identified, it becomes easy to differentiate between what is referred to as public and what is referred to as private. Then the second subsection moves to define the term partnership by relying on renowned dictionaries and thesauruses.
1. **Distinguishing between the Public Sector and the Private Sector**

   The distinctions between the public and private sectors are no longer clear-cut. Murray (1975) brings forth the areas of comparison between the two sectors. According to him, the notion that profits are the sole or main reason for the existence of private business is misleading. At the same time, to say that profits are never the objective of public sector activities is equally misleading. Both sectors try to make profit, but of different types. Public actors’ profits revolve around social revenues or welfare, whereas private actors aim to accrue business economic revenues. Murray (1975) goes as far as to equate the cultures of both sectors. That is to say, the desire for personal power and security, the notion of responsiveness to outside pressures, as well as the process of planning common to both the public and the private sectors. There are governmental agencies that act similar to private companies in the sense that they have considerable financial freedom, for example, by charging for their services and trading fund arrangements. In the same sense, some private companies have become politicized. There are companies that receive grants and subsidies from the government, even if they are exclusively owned by shareholders. Shafritz and Russell (1997) also discuss the similarities between both sectors by implying

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that, both public and private organizations possess professional elements, have large
bureaucracies with comparatively small leadership structures, and recruit from the same
pool of college and university graduates.  

No matter how similar the public and the private sectors might have become, there still exist significant differences between them. For example, the private sector is primarily accountable to its stockholders and customers, whereas the public sector is accountable to the government and citizens. Also, the private sector’s business operations are determined by market demands and business imperatives, while public sector operations are determined by societal considerations. Furthermore, the private sector is known for its flexibility in managing its operations, while the public sector is more rigid and traditional when it comes to managing public affairs. Other important differences are summarized below in Table 1:

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Table 1: Differences between public and private sector organizations. Adapted from Ghobadian et al (2004)\(^\text{23}\) and Jamali (2004)\(^\text{24}\).

<table>
<thead>
<tr>
<th>Key Distinguishing Features</th>
<th>Private</th>
<th>Public</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principal Stakeholder</strong></td>
<td>Equity holders, Customers</td>
<td>Local community, Government, Citizens</td>
</tr>
<tr>
<td><strong>Scope (range of products/services)</strong></td>
<td>Determined by business imperatives</td>
<td>Determined by social considerations</td>
</tr>
<tr>
<td><strong>Level of Managerial Discretion</strong></td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td><strong>Time horizons</strong></td>
<td>Short-term</td>
<td>Long-term</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>Based on merit and performance, Less security for employment</td>
<td>Based on appointments, High security for employment</td>
</tr>
<tr>
<td><strong>Working Practices</strong></td>
<td>Flexible/Modern</td>
<td>Rigid/Traditional</td>
</tr>
<tr>
<td><strong>Main cultural traits</strong></td>
<td>Competitiveness, Entrepreneurialism, Encouragement of initiative, Non-bureaucratic, Risk-takers</td>
<td>Fairness, Loyalty, Respecting traditions, bureaucratic, Risk avoiders</td>
</tr>
</tbody>
</table>

It is inaccurate to suggest that public and private sectors are antagonistic; they are rather complementary. While the public sector is primarily responsible for legal and regulatory procedures when implementing a certain project, the private organization is in charge of the capital, technical skills, and management needed in the project. When we enter an era that is witnessing an increased mix of public-private sectors, their differences becomes a minor concern. The focus should rather be on how these sectors are adding value to each other when working jointly, like in the case of PPP. For the matter of simplicity, this thesis uses the term “public” to refer to the state, municipalities, governmental


organizations, and state agencies. The term “private” will be utilized when referring to a company, or a consortium of companies, whose stakeholders are outside the realm of the State.

2. The Concept of Partnership

The meaning of the word partnership is usually taken for granted. However, ‘partnership’ can be associated with several nouns which, consequently, make it confusing to know what the word actually refers to. This section is dedicated to the clarification of the meaning of partnership, which will serve as a foundation for the subsequent discussions of public-private partnerships.

Merriam Webster’s dictionary defines ‘partnership’ as a “legal relation existing between two or more actors contractually associated as joint owners in a business who have specified and joint goals and responsibilities.”\(^2\)\(^5\) The Oxford Dictionary, as mentioned in Geddes’ book, defines a ‘partnership’ as a “joint business with shared risks and profits.”\(^2\)\(^6\) Roget’s Thesaurus associates several nouns with the word partnership, some of which include: association, cooperation, combination, and consociation.\(^2\)\(^7\) Webster’s dictionary stresses the notion of joint goals and responsibilities in a partnership while Oxford


dictionary correlates partnership with the sharing of risks and profits. Roget’s Thesaurus gives a general idea of the term partnership by seeing it as a form of cooperation or association.

Inspired by the above definitions, this thesis defines partnership as a legal relation between two or more actors working together to reach joint goals and objectives by sharing risks, responsibilities, cost, and revenues.

B. Defining Public-Private Partnership: The Term

Scholars have attached different meanings and characteristics to PPP. As Linder (1999) confirmed, PPP is “a grammar with multiple meanings.” These meanings help us to identify the set of elements that are common to all forms of PPPs. This section presents definitions of PPP brought forth by experts in the field of PPP. From these definitions, we can deduce the primary characteristics of PPP which will help give insights into what PPP is not.

1. Linder’s Six Meanings

Linder (1999) suggests that PPP has six meanings, each taking a different perspective. The first perspective is that of PPP as a management reform tool. According to Linder (1999), PPP act as an “innovative tool that aims at changing the way government functions, largely by tapping into the discipline of the market.”


29 Ibid.
projects collaborate with profit-seeking firms. This collaboration resembles a mentoring relationship in which the private sector teaches government employees advanced skills and techniques that they have never encountered before. Thus, the flow of know-how goes from the private sector to the government since the former is considered more advanced in its technical and managerial expertise than the government. By learning how to enhance productivity, decrease cost, and advance skills, the government will improve the way it works. Successful partnership with the private sector organizations gives the government the opportunity to progress by indirectly reforming the way it manages its affairs. Rather than divesting the government altogether, PPP, as a management reform tool, enables government’s culture and operations to change in order to stimulate competition, innovation, and creative problem solving skills.30

The second perspective sees PPP as a problem conversion. PPP is not seen as a tool for changing managerial practices but rather as a remedy for problems attached to the delivery of public goods and services. The task of government managers shifts “from getting their own practices in line with entrepreneurial mores to reframing the problems they face in a way that will attract profit-seeking collaborators.”31 The aim here is to commercialize problems to bait the marketplace.32 Accordingly, government managers persuade actors in the market to perform governmental tasks for less money. In this way, all parties involved become satisfied: the government creates business opportunities and

30 Ibid.
31 Ibid; p. 43.
32 Ibid.
focuses on its ultimate role as a regulator; the private company brings its know-how and capital; and the public get services that meet their expectations.

In contrast of the above two meanings that depicts partnership as a vehicle for bringing government closer to market, the third perspective sees PPP as moral regeneration. While neoliberals believe in the superiority of market that drives governments to embrace its incentive, neoconservatives view partnerships as a middle ground between public and private “rather than as a comprehensive tool for remaking government on the market’s image.” According to neoconservatives, the market offers expression to certain values but cannot be their principal source. The government also provides entitlement, worth, and sanctions to public employees that are largely absent from anonymous market exchanges, which are mediated by money rather than eligibility.

Partnerships are seen to have substantial benefits on the public employees involved. When government managers are drawn into entrepreneurial activities through a partnership, their characters will ultimately be strengthened and their problem-solving skills will become stimulated and advanced. From a neoconservative perspective, PPP regenerates the public sector from the mere fact that it improves public employees’ status, skills, character, and performance.

33 Ibid.
34 Ibid.
35 Ibid; p. 45.
36 Ibid.
37 Ibid.
The fourth perspective perceives PPP as a risk shifting tool. It emphasizes PPP as the option mostly considered when the government faces fiscal stringency. Partnerships arrangements are means to getting private companies to operate projects and manage financial risks. When partnering works the way it is supposed to, business partners help bring fiscal restraint to these projects and insure their financial viability.\(^\text{38}\) PPP is seen to allow business companies to join in cooperative ventures with the public sector to leverage government’s resources, not displace them.\(^\text{39}\) PPP also allows private investors to assume financial risks attached to PPP operations. Consequently, PPP, as a risk shifting tool, enables governments to do more for less.

The fifth perspective views PPP as a tool that restructures the public service. Linder discusses an example where government agencies are out of control, budgetary constrained, overextended, and overburdened. In this scenario, the government that lacked the adequate authority and money failed to deliver public services that meet citizen’s expectations.\(^\text{40}\) Partnerships with the private sector are seen as a striking solution to relieve the public sector from the weight of complex administrative procedures, to deregulate employment relations through the substitution of unorganized workers, to alleviate financial burdens, and to diminish output mistakes. Consequently, PPP results in the effective restructuring of public services.\(^\text{41}\)

\(^{38}\) Ibid; p. 46.

\(^{39}\) Ibid.

\(^{40}\) Ibid.

\(^{41}\) Ibid; p. 47.
The last perspective sees PPP as a power sharing tool. PPP aims at spreading control in regulatory matters horizontally by instilling an ethos of cooperation and trust, which replaces the “endemic command-and-control regulation” previously present between the public and private sector. Additionally, public and private partners are expected to share responsibility, risk, and knowledge, where each actor brings in something that adds value to the other. Thus there is the notion of give-and-take between the two actors.

2. Committee for Economic Development’s Definition

The Committee for Economic Development (1982) suggests that cooperation between public and private organizations has two dimensions: the policy dimension and the operational dimension. PPP links these dimensions in such a way that it benefits the broader community and the interests of each organization. The policy dimension articulates goals of the community and involves a process that produces consensus “on community goals, agreement on institutional roles, and sustained support for action.” The operational dimension, on the other hand, involves the pursuit of the goals by the involvement of different forms of arrangements that might take place between the public and private sector.

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42 Ibid.

43 Ibid.

like: private financing of a public service, joint ventures by government and private organizations, or government facilitating private activity for public benefit.45

3. Renowned Scholars’ Definitions

Michael Geddes (2005) sees PPP as a medium-to-long-term relationship between a range of partners at least one of which needs to be public. PPP involves the sharing of aspirations, risks, rewards, and resources on the part of all the partners. He also mentions the ultimate aim of PPPs which is to deliver outcomes and services in the public interest on a continuously improving basis.46

Nijkamp et al. (2002) stresses risk-sharing and commitment as important features of PPP in their definition of PPP. They see PPP as an institutionalized form of co-operation of public and private actors who work together towards a joint target, in which both parties accept investment risks on the basis of a predefined distribution of revenues and costs.47

B. Guy Peters (1997) identified five general elements that appear to be involved in PPP. The first element of a PPP, similar to Geddes (2005) is having two or more actors, at least one of which is public. The second element is that each PPP actor is a principal; i.e.

45 Ibid; p. 3.


each of the participants is capable of bargaining on its own behalf, rather than having to refer back to other sources of authority. Thus participants must both be autonomous and have a good deal of latitude for action. The third element of PPPs is the enduring relationships among actors involved, with some continuing interactions. The fourth element is that each of the participants brings something to the partnership. Therefore, for the partnership to be a genuine relationship, each will have to transfer some resources—material (money, public land, etc.) or immaterial (authority, values, etc.)—to the partnership. The final element mentioned by Peters (1997) is the importance of having some shared responsibility for outcomes of joint activities.48

Definitions of PPP found in the literature differ in their focus. Linder (1999), Peters (1997), and Geddes (2005) focus on the general characteristics of PPP without giving any aspect of PPP further attention or consideration. The Committee for Economic Development (1982), however, focuses on two dimensions: the policy dimension and the operational dimension. In addition, Nijkamp et al. (2002) highlight the importance of risk-sharing and commitment as the most important aspects of PPP. This review of the different perspectives of PPP makes it easier to understand the core aspects of public private partnerships.

C. Public-Private Partnership versus Privatization

The relationship between PPP and privatization is complicated. Some scholars see PPP as a form of privatization. Other scholars see PPP as a precursor to privatization. There are some who see PPP as an alternative to privatization efforts; and some use the term PPP and privatization interchangeably. Risse and Borzel (2002), for example, view PPP as a precursor to privatization. According to them, “PPPs are simple neo-liberal solutions in disguise; i.e. they amount to privatization and deregulation of formerly public services.”49 Furthermore, Calabrese’s report submitted to the World Bank (2008) goes as far as to equate PPP to privatization. She presented subtitles that confirm the fact that she treats PPP and privatization as similar private involvement processes. Some subtitles are ‘Definitions of Privatization and Public Private Partnerships’ and ‘Types of Privatization and Public Private Partnerships’.50 Nasirumbi (2006) also does not differentiate between PPP and privatization. She actually views both terms from the same lens. According to her, “PPP exists within a broad set of partnership arrangement which also includes contracting-out, privatization, and concessions.”51 Thus, Nasirumbi does not provide a clear-cut


differentiation between the terms. While some scholars treat PPP and privatization as two similar types of private involvement, this thesis assumes that PPP and privatization are two terms that characterize two different types of private involvement processes. The purpose of this section is to identify and explain these differences.

1. Defining Privatization

Shafritz and Russell (1996) define government privatization as the “process of returning to the private sector property or functions previously owned or performed by government.” They give privatization three basic characteristics: the sale of government assets, the private financing of public facilities, and the private provision of services. Akintoye (2003) et al defines privatization as a process that “involves the sale of a state-owned asset either by auction, public stock offering, private negotiating, or outright grant to a private organization that assumes operating responsibilities.” This approach refers to the complete transfer of equity to the private sector without time limitations. In light of the definitions presented above, privatization refers to the sale of state-owned assets and operations to private sector. The sale will automatically lead to the transfer of risk, management, and control to private agents. This definition of privatization is adopted throughout this thesis.

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53 Ibid; p. 127.

2. Differentiating Public-Private Partnership from Privatization

While PPPs were originally treated as a derivative of the privatization movement, “there is a growing consensus today that PPPs do not simply mean the introduction of market mechanisms or the privatization of public services.”

According to Jamali (2006), PPPs imply a collaboration that is used to pursue common goals, while leveraging joint resources and capitalizing on the respective competences and strengths of the public and private partners.

Jamali (2006) also differentiates between privatization and PPP, and explicitly states that the terms do not imply the same process. Privatization involves the *selling* of public-held assets to private owners. PPP, on the other hand, involves the *purchase* of services produced through different types of medium- to long-term contractual arrangements with the private sector either involving only a part of the service (operation or maintenance) or the entire service (leasing, concession).

Jamali (2006) not only differentiates PPP from privatization but also sees PPP as an alternative form of fully-fledged privatization efforts.

The United Nations Economic Commission for Europe (2008) warns against the confusing the concepts of PPP and privatization. The Commission was clear enough to


56 Ibid.

57 Ibid.

58 Ibid.
state that “PPPs are not privatization.”\textsuperscript{59} UNECE (2008) focus on the issue of accountability to show how PPPs differ from privatization. Under PPPs, accountability for delivery of the public service is retained by the public sector. Whereas under a privatization, accountability moves across to the private sector even if the public entity might retain some regulatory price control. Unlike privatization, in PPPs there is no transfer of ownership. The public sector remains the key regulator, and is ultimately accountable for all governmental operations and activities.\textsuperscript{60}

Grimsey and Lewis (2004) also identify how PPP differ from privatization by answering the question ‘in what ways do PPPs differ from privatization’. Within a PPP, the public sector “acquires and pays for services from the private sector on behalf of the community and retains ultimate responsibility for the delivery of the services”\textsuperscript{61} over an extended period of time. By contrast, when a government entity is privatized, the private firm takes over responsibility for the delivery of the services. There remains some form of public regulation over the goods and services delivered by the private sector to avoid monopolies. Such regulation differs from the regulation present in PPPs. In PPPs, the nature of the arrangement between the public and private sectors, the outcomes required, the prices paid for the services, along with the general rights and obligations of the various


\textsuperscript{60} Ibid.

parties involved are part of the government regulatory activities. Regulation, thus, does not come from a legal agency or from market forces, but is a result of the contract present between the public and private actors. The contract indicates the performance measures and quality standards expected from the public-private arrangement, which forms the basis of the regulatory authority.62

If PPP and privatization meant the same thing, then why have two terms to describe the same process? This literature review has identified that it is inaccurate to use the terms PPP and privatization interchangeably. Thus, PPP should be construed as a form of private involvement that differs from privatization. PPP can, in some contexts, be regarded as an alternative to privatization. This thesis differentiates between privatization and PPP. It refers to PPP as the “sharing” of management, risk, responsibilities, and outcomes between public and private sectors. Alternatively, this thesis refers to privatization as the “transfer” of ownership, management, risk, responsibilities, and functions from the public sector to the private sector, leaving the state preliminary regulatory efforts.

D. Forms of Public-Private Partnerships

There are different forms of PPPs. Cooperative arrangements between the public and private sector are numerous due to the different legal status, governance, contractual basis, management, contributions and operational roles, and objectives each PPP

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62 Ibid.
This section will review two frameworks discussed in the literature to differentiate between the different forms of public-private arrangements that fall under the realm of PPP. The first framework is that Bennett et al (1999) and the second framework is that of UNECE (2008).

To better understand the types of arrangements that occur between the public and private sectors, and differentiate these arrangements from privatization, an examination of the comprehensive spectrum of public private partnerships brought forth by Bennett et al (1999) becomes laudable. This spectrum identifies the broadest definition of PPPs. In other words, it presents the different forms of arrangements that might take place when a PPP is established. The spectrum identifies the entourage of PPP, which is important to understand before dwelling into the explanations of each form of PPP. The concept of PPP is a loose one, and if not placed in a spectrum that helps understand its realm, it becomes confusing.

As shown in the spectrum, identified in Figure 1 below, the different types of public private partnerships lie between two extremes: the fully public and the fully private sectors. By fully public, Bennett et al (1999) mean that the public sector is the sole provider of the goods and services to the citizens. The government takes the lead in funding, owning, and providing the delivery of public services in addition to building awareness of

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64 It is worthy to note that it is almost impossible to mention all forms of PPP. Each figure below fails to mention all types of PPPs. All PPP forms mentioned in the figures added together still miss some forms of existing PPP arrangements.
opportunities for improving the delivery. On the contrary, by fully private, the authors refer to the cases where the private sector is responsible for everything from financing, building, owning, and operating a facility that delivers a defined service while having the government role limited to monitoring and control.

**Fig. 1:** Spectrum of Public-Private Partnership Options.

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The variations between PPPs are based on two aspects: the type of government role played in the form PPP and the organization responsible for making investments available for the PPP project. To start with passive private investment, the government plays the role of the provider of the public service by keeping government-run operation in the hands of the public sector. The government also makes private investments available to government-run operations, such as through the purchase of government bonds. This type of PPP gives the public sector the upper hand in provision, management, and operation of the facility.

The public sector’s role as a provider slightly decreases in traditional public contracting, while still being mainly responsible for making investments available. In traditional public contracting, the public sector can either act as the purchaser of the product from private sector or as the hiring agent that chooses the private sector to design and/or build a new facility. Thus, the private sector’s participation in delivering services increases from the former type of PPP by not confining it to investment only, but also to designing and building a required facility.

As we move forward through the spectrum, the role of private sector increases to include service contracts such as that of operation, maintenance, and lease contracts. These are types of contracts where the public sector essentially hires a private organization

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68 Ibid.
to carry out one or more specified tasks or services for a specified period of time. The public sector remains the primary provider of the infrastructure services and only contract out portions of its operation to the private organization. The latter must meet the performance standards set by the public sector and must deliver the service at the agreed-upon cost.69

It is in a joint venture (also referred to as mixed-capital partnerships70) where the roles of the public sector and private sector become similar. In a public-private joint venture, a company jointly owned by the government and private companies is created, in which they share the responsibility, risks, and ownership for the provision of goods and services.71 The public and private sectors act as actual partners who can either hold shares in the new company or assume joint ownership of an existing company.72


joint venture is when the public sector sells shares of an existing municipal company to the private sector.

The role of public sector changes to become more of an enabler and regulator of price and quantity rather than the provider of services in Build, Operate, and Invest type of PPP. The private sector’s responsibilities and obligations, in such form of PPP, increase to include building, operating, and/or investing contracts. There are two types of Build, Operate, and Invest contracts that the Bennett et al (1999) spectrum focuses on.

First, there are concession contracts. Under a concession, the government awards the private contractor (also referred to as concessionaire) full responsibility for the delivery of infrastructure services in a specified area, including all related operation, maintenance, collection and management activities. The concessionaire is responsible “for any capital investments required to build, upgrade, or expand the system, and for financing those investments out of the tariffs paid by the system users.” In a concession, the fixed infrastructure assets are entrusted to the concessionaire for the duration of the contract, but they remain government property. Concessions are usually awarded for time periods of over 25 years; the duration depends on the contract requirements and the time needed for the private concessionaire to recover its costs.


74 Ibid.

75 Ibid.

76 Ibid.
Second, there are build-operate-transfer (BOT) contracts. BOT contracts are designed “to bring private investment into the construction of new infrastructure plants.”

Under a BOT, the private sector finances, builds and operates a new infrastructure facility or system according to performance standards set by the government for time periods ranging from 10 to 20 years. The government retains ownership of the infrastructure facilities and becomes both the customer and the regulator of the service.

Governments generally issue BOT contracts for “the construction of specific infrastructure facilities, such as bulk supply reservoirs, drinking water or wastewater treatment plants, waste transfer stations, and waste disposal stations.”

As we move forward along the spectrum, the public sector pertaining the role of the enabler and regulator of the service expands, and the roles of private sector to finance, manage, and operate project also increases. For example, in passive public investments, the private sector has to make it feasible for the government to fund private operations through grants, equity investments, loans, or guarantees offered by a range of public institutions. The public sector does not play any role in the management, operation, and distribution of

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77 Ibid; p. 8.

78 Ibid; p. 8.

79 Ibid.

80 Ibid.


the services; they are primarily provided by the private company. The public sector only acts as the role of the regulator and enabler of, and in some cases can provide some funding to, public services.

Finally, Bennett et al (1999) highlight the importance of the community action in the provision of public goods and services. According Bennett et al (1999), “community-based provision starts when financial limitations prevent the government from providing adequate public services to the population, forcing these residents to rely on their own means of serving their needs.”82 Participatory mechanisms and collective action are assumed by individuals, families, and local enterprises to pursue community’s goals.83

Bennett et al (1999) utilized a spectrum as a tool to elucidate the broadest definition of PPP, which indicates the boundaries of PPP. It thus helps to make the PPP concept less controversial and confusing. The spectrum shows that PPP is a midpoint between fully public and fully private sectors. It also clarifies that this midpoint can take many forms. These forms depend on the role of the public sector: from provider to enabler and regulator. The spectrum also emphasizes that PPPs play a role in changing the traditional role of the government. This change does not imply limiting government intervention. Rather, it shifts its role from being the owner of physical assets, employer of civil service, and provider of public services, to becoming the purchaser, regulator, and

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83 Ibid.
facilitator of the service.\textsuperscript{84} Despite all the strengths this spectrum has in setting the basis for the understanding the realm of PPP, it cannot be regarded as a comprehensive one since it fails to mention many forms of partnerships that fall within the realm of PPP.

The United Nations Economic Commission for Europe (UNECE) (2008) present a framework for PPPs which sheds light on the different PPP models, and helps to fill in some of the gaps present in the previous framework. The scale (sketched below) is a comprehensive approach that identifies more forms of PPP than Bennett \textit{et al.'s} (1999) spectrum. The scale also categorizes the forms in terms of degree of risk allocation and private sector involvement. This is a useful tool because it indicates the variations in the roles played by each partner in a PPP.

\textsuperscript{84} Dima Jamali. "Success and Failure Mechanisms of Public Private Partnerships (PPPs) in Developing Countries: Insights from the Lebanese Context." \textit{The International Journal of Public Sector Management} 17, no. 5 (2004), p. 419
The first two types of PPP contracts mentioned in this framework, Design and Build (DB) and Operation and Maintenance (OM), were also mentioned in Bennett et al’s spectrum. However, the above framework differentiates between PPP contracts along the degree of private sector involvement and the degree of private sector risk. Design and Build (DB) and Operation and Management (OM) involve low degrees of private sector involvement and the risks are primarily handled by the public sector. Hence, the degree of actual partnership (as defined in the thesis above) between the two sectors is weak. As the UNECE (2008) report mentions, many do not consider the Design and Build (DB) nor the

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Operation and Management (OM) within the spectrum of PPPs as these contracts are considered as public works contracts and service contracts respectively.\textsuperscript{86} This controversy is not unexpected since, as mentioned before, many scholars view PPP from a different perspective. Even though Bennett \textit{et al} (1999) considered DB and OM part of PPP realm, it is not surprising to have other scholars consider them as contracts that do not fit PPP’s characteristics they have assumed.

Going to the other end of the scale, the extent to which a concession can be regarded as PPP can also be debatable since, as the framework shows, there is a high degree of private sector involvement and it is the private sector that handles risks involved in PPP operations. A concession refers to having the government award a private firm full responsibility for the delivery of infrastructure services, without actually instilling the notion of partnership between the two sectors throughout the duration of PPP contract. Additionally, in a concession the government does not pay the private partner an annual fee, like in the case of a typical PPP. Actually, the concessionaire pays a fee to the government for the privilege of operating the asset which remains the property of the government.\textsuperscript{87} Another difference between a PPP and a concession is that the concessionaire receives payment not from government appropriations (like in the case of PPP) but typically from user charges levied on the consumers of the asset – for example, highway tolls.\textsuperscript{88}

\textsuperscript{86} Ibid; p. 3.


\textsuperscript{88} Ibid.
The other forms of PPP mentioned in the scale (Design-Build-Operate, Design-Build-Finance-Maintain, Design-Build-Finance-Operate, etc.) are common forms of PPP mentioned in the literature because they allocate responsibilities and risks between both the public and private partners. The distinction between each type is the difference in the mechanism the allocation of responsibilities and risks takes place. The above mentioned types of contracts are the ones that can be considered as PPP contracts because they include the notions of risk-sharing, continuity, sharing of responsibilities, and autonomy of actors involved.\textsuperscript{89}

The models presented above are the ones usually mentioned in the literature, with some modifications and additions of course since there are many types of PPPs. Therefore, these models are not inclusive of all the types of PPP that exist. If one digs into the literature, many other forms can be added to the list above. PPP forms are contingent on the circumstances, conditions, and country, under which they were established.

Despite the differences present between PPPs, it remains worth mentioning the different types of PPPs—some of which are mentioned above—because they help in drawing the entourage of PPP models, which is a building block for the understanding of the notion of public private partnerships. The models discussed above, therefore, act as the skeleton for realizing the fundamental meaning of PPP.

E. Conceptual Model

Since the concept of PPP has received extensive attention in the literature, defining the term becomes an essential, yet challenging, task. With the absence of a clear-cut differentiation between the public and private sector, in addition to the different meanings to the word ‘partnership’, it becomes obvious that the term PPP which combines the three words (public and private and partnership) has many ambiguities attached to it. Therefore, conceptual clarity is a prerequisite of any study or discussion done on PPP.

The definition of PPP that this thesis adopts is the following: A public-private partnership is an institutionalized form of cooperation between the public sector and the private sector that makes private sector financial resources and managerial expertise available to deliver public sector goods and services efficiently and effectively.

PPPs are characterized by a relationship between public and private actors that is reciprocal and continuous throughout the implementation of PPP project. The private partner needs to be chosen on a competitive basis. Moreover, each actor involved in PPP operation is autonomous, capable of negotiating on his behalf, and committed to the partnership’s goals and objectives. PPP requires defining a set of targets and outcomes, upon which each actor aims at achieving jointly to meet the public interest. Additionally, PPP relies on the principal of risk-sharing, where risks associated with PPP projects (such as technical risks, construction risks, financial risks, political risks, and environmental risks) are allocated fairly between the private and public entities. A PPP is also characterized by a predefined distribution of revenues, costs, responsibility, and knowledge between the public and private actors involved. Typically, this type of cooperation between public and private actors is generally perceived to be undertaken in infrastructural projects,
some of which include transport, prisons, schools, water and sanitation, electricity, telecommunication, libraries, and airports.

Even though all PPPs have general characteristics in common, they usually differ in four main aspects. First, they differ in the purpose of their existence. Some have economic orientations while other PPPs are concerned with welfare, educational, and infrastructural purposes. Second, they differ in the type of capital investment involved (either public investment or private investment). Third, the various forms of PPPs differ in the amount and type of risk shared between the public and private sector. Fourth, they differ in the duration of the implementation of PPP project. Some PPPs are long-term others are medium to short-term. Some PPPs are perpetual (like in a divestiture or Build-Own-Operate), others have a fixed duration (like BOT contracts). It all depends on the kinds of services and facilities that are expected from the private sector to deliver. Fifth, they differ in the amount and types of risks shared between the public and private sectors. Lastly, PPPs differ in their output specifications. The output and outcomes required from PPP project differ depending on each standard brought forth by the government.\footnote{United Nations Economic Commission for Europe. \textit{Guidebook On Promoting Good Governance in Public-Private Partnerships}. U.N. Publication, Geneva: United Nations, 2008, p. 2-3.}

No single PPP model can be universally applied. PPP arrangements vary according to the type and purpose of the relationship between the actors. Grimsey and Lewis (2004) assert that there are “many different types of PPPs and the models applied
While public private partnerships include a relationship between the public sector and the private (and sometimes non-voluntary) sector, this relationship can take many forms, yielding to a spectrum of possible relationships that actors can consider for the cooperative provision of public services. Bennett et al’s spectrum, discussed earlier in this thesis, outlines the boundaries of PPP while the diagram brought forth by UNECE reveals the various types of PPP, and differentiates them on the basis of degree of private sector risk and private sector involvement. There is one common fact that unites all of the diagrams, figures, sketches found in the literature: there are almost infinite forms of cooperation that may occur in PPP that cannot all be mentioned in one spectrum. The spectrums or frameworks are not exhaustive. However, they are effective tools that help to understand and visualize the meaning of PPP. In other words, they help formulate a general idea on the kinds of relationships that fall within the realm of PPP.

Both frameworks discussed in this thesis act as useful instruments to differentiate between PPP and privatization. While some scholars tend to over-generalize the term PPP and apply it to any type of private involvement, others tend to use it interchangeably with ‘privatization’—which is inaccurate. There are significant differences between PPP and privatization. The main difference between them is that privatization represents the total transfer of task, risk, and responsibility, while PPPs call for sharing them.

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Since public-private partnership is a contemporary topic, the next chapter reviews the dynamics of PPP. It answers three main questions: ‘why PPP today?’ ‘how can we form a PPP?’ and ‘what are the benefits and risks associated with PPP operations?’ The chapter also mentions the essential factors that need to be present to ensure successful implementation and operations of PPP projects.
CHAPTER III

UNDERSTANDING THE DYNAMICS OF PUBLIC-PRIVATE PARTNERSHIPS

This chapter begins by presenting the main reasons behind the increasing implementation of PPP projects throughout the world, especially during the latter part of the twentieth century. Then it moves to answer the question: how can we form a PPP? Since there are various types of PPPs, the thesis only discusses the method of establishment that is common to all PPPs, without delving into the details of the development of each form of PPP. After the questions ‘why PPP’ and ‘how can we form a PPP’ are answered, the thesis moves to present the benefits that PPPs yield to public sector service delivery. The benefits discussed are common to both public and private sectors. PPP approach is not exempted from hurdles and intricacies. Thus, the thesis sheds light on the impediments that arise in working through partnerships. Again, these impediments vary from one form of PPP to another. Therefore, the thesis only discusses the impediments common to most PPPs. The last section of this chapter discusses key factors whose presence is essential for avoiding the impediments in both the formation and implementation of PPPs. Thus, the last section will discuss the factors that are effective in building successful partnerships.

A. Reasons Behind the Increasing Implementation of Public-Private Partnerships

The increasing involvement of the private sector in organizing the delivery of public services can be explained by many factors. The factors common to most countries throughout the world are discussed in the subsequent section.
1. Financial Reasons

The utmost justification of establishing PPPs is the government’s need for money. Many governments suffer from shortage in public funds. During the latter part of the twentieth century, the fact that “social demands outstripped available public resources” placed tremendous pressures on the public purse.\textsuperscript{92} Consequently, government budgets are often insufficient to finance large-scale infrastructural projects. Ghobadian \textit{et al} (2004) stated that, in 1995, the World Bank estimated that “around 250 billion dollars in infrastructure investments will be necessary throughout the ensuing decade globally; this need could not be met without private sector intervention.”\textsuperscript{93}

The European Commission’s July 1997 policy highlights the need to develop public-private financing in order to promote the implementation of huge infrastructure investments.\textsuperscript{94} In the Netherlands, for example, PPPs are perceived as effective tools for the reduction of financial deficits, while providing private investment companies with new markets.\textsuperscript{95} In England, the UK Department for Education and Employment began, since


\textsuperscript{93} Ibid.


\textsuperscript{95} Ibid; p. 13.
1997, to set proposals for PPPs in schools for financial support. Private involvement has also occurred in Great Britain’s National Health Services (NHS), where PPPs were utilized for both “financing of capital investments and exploring the full range of private sector management, commercial, and creative skills.” In Ireland, the large-scale adoption of the PPP model was primarily due to the “constraints on exchequer resources” which called for alternatives to public investment and traditional procurement methods.

Moving away from Europe, an empirical survey undertaken in Hong Kong, Australia, and Great Britain conducted by Cheung et al (2008) identified the reasons behind the implementation of PPP projects. The respondents were practitioners from the public and private sectors. British respondents ranked “shortage of government funding” the main reasons behind the rise of PPP/PFI projects in the United Kingdom. Hong Kong ranked this reason sixth while Australia ranked it seventh. Despite the differences in ranking, these examples indicate that the ‘relief of financial burdens’ remains among the top reasons why governments resort to PPPs for the delivery of public services.

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96 Ibid; p. 15.
2. The Rise of New Market-Based Ideologies

During the 1970s and 1980s, the world witnessed a rise in neo-liberal ideologies that criticized monopolistic and bureaucratic inefficiencies. This ideological movement had a profound and prolonged impact on the emergence of PPPs.\textsuperscript{100} In addition, the victory of the right leaning parties in industrialized countries, most notably in Great Britain and the United States, resulted in widespread private sector involvement in the provision of essential public services.\textsuperscript{101} According to Osei (2004), PPP was adopted because it has become “fashionable in international development due to a paradigm shift.”\textsuperscript{102} This shift was influenced by emerging theories of New Public Management (NPM), which presented an alternative to traditional, input-oriented management styles. It is worthy to shed light on the dimensions of NPM, since it provided a fertile ground for the proliferation of the PPP approach. Hood (1995) outlines the dimensions of NPM under seven headings: the split of provision from production; a contract-based competitive provision; the use of private-sector styles of management practice; visible hands-on top management; explicit formal


\textsuperscript{101} Ibid; p. 271-272.

measurable standards and measures of performance and success; and stresses a result-oriented approach.\textsuperscript{103}

The spread of this paradigm has widened the interface between public and private sectors which, in return, has facilitated the proliferation of PPP projects. PPP can be considered a product of NPM ideas because the components of PPP match the discussions of NPM. PPP calls for competition between public and private actors, encourages accountability for results, focuses on customer satisfaction, and supports the achievement of value for money (do more with less).

3. \textit{The Increasing Importance of Governance}

Accompanying the emergence of market-based ideas, there has been a shift from notions of government to governance. Governments refer to “particular kinds of public institutions (or the State) vested with formal authority to take decisions on behalf of the entire community.”\textsuperscript{104} According to Meehan (2003), the notion of government refers to the traditional pattern of public power where authority is centralized and exercised hierarchically, often called the ‘command and control’ model.\textsuperscript{105} In contrast, governance


\textsuperscript{105} Elizabeth Meehan. \textit{From Government to Governance, Civic Participation and 'New Politics': The Context of Potential Opportunities for the Better Representation of Women}. Occasional Paper No. 5, Center for Advancement of Women in Politics School of Politics and International Studies, Queen's University Belfast, 2003, p. 2.
implies a “focus on process, rather than on institutions.”106 Thus, notion of governance recognizes the interdependence of organizations and try to meet the expectations and demands of citizens. Seeing governance as solely the study of public organizations is inaccurate; it is actually a study of the public sector as a whole including all the relationships between players involved: local and/or regional governments, private parties, citizens, and interest groups.

As explained by UNECE (2008), the key principles of good governance include: participation of stakeholders; transparency with which decisions are made; accountability for actions; and efficiency.107 To have good governance is to have the involvement and interactions of all players, in an accountable, efficient, transparent manner, in the process of provision of services.108

Governance focuses on a range of new arrangements and practices. It is characterized by three main factors. Firstly, governance calls for the fragmentation or sharing of public power amongst different tiers of regulation such as state governments and sub-state governments.109 Secondly, governance encourages policies to be formulated and


implemented away from the center.\textsuperscript{110} Thirdly, governance is a process that increasingly relies on partnerships, “networks and novel forms of consultation or dialogue that are at the heart of ‘Third Way’ thinking about policy design and delivery.”\textsuperscript{111} Additionally, Bult-Spiering and Dewulf (2006) assert that PPPs are a special feature of governance.\textsuperscript{112} The more ‘governance’ countries around the world instill, the more PPP approach becomes receptive to public administrations.

4. \textit{An Alternative to Privatization}

The motives behind privatization initiatives revolve around the desire to decrease the inefficiencies, complexities, and financial challenges governments face when delivering services to the public. Many countries were initially encouraged by the idea of privatization. However, in recent years, there has been increasing opposition to privatization plans which made governments reconsider the use of privatization, and resort to PPP approach instead. For example, the Labor Party in the UK opposed the privatization agenda Prime Minister Margaret Thatcher had. When the Labor Party came to office in 1997, it proposed PPP as a reaction to the aggressiveness privatization program the Conservative Party had. In France, President Mitterand also opposed the privatization plan that Prime Minister Chirac had. He announced that the plan threatens the national

\textsuperscript{110} Ibid.

\textsuperscript{111} Ibid.

independence of France. Mitterand viewed privatization as a means to permit the acquisition of French public enterprises by foreigners. Hence, his opposition to privatization efforts was based on the notion of preserving national independence. Additionally, the Egyptian’s enthusiasm to adopt privatization programs has been waning over the years due to the resistance from “a skeptical public that believed that privatization transactions were riddled with corruption and insider dealings.” Thousands of workers have demonstrated in front of Egyptian parliament complaining about loss of jobs and unfair wages and social protection resulting from privatization. Egyptians saw privatization as a way for the risk and powerful to grow richer and more powerful.

Privatization does not, by itself, cure governmental ills. Privatization can undermine accountability and governmental regulation, which might result in producing goods and services that do not meet the general public’s interest. It is a myth to say that privatization results in better quality of services because, as a general rule, private companies seek to expand their profits and reduce their expenditures as much as possible. Therefore, some private companies tend to lower the quality of the goods and services.


114 Ibid.


116 Ibid.
provided to widen their profit margins. In addition, privatization can result in the discharge of public employees, which ultimately cause unemployment and/or decrease the morale of personnel in both the government and the private sector.\textsuperscript{117} PPP seems to be an attractive alternative to replace outright privatization efforts.

B. The Formation of Public-Private Partnerships

The formation of PPPs is a complex, delicate, and important process. If implemented properly, PPPs can enable governments to reach their objectives in an efficient and effective manner. After examining the rationale behind the recent call for PPP approach throughout the world, this section outlines the common mechanism used by governments when they decide to adopt PPP approach for the delivery of public goods and services. This section also presents the main participants involved in the formation, and also operation, of PPP and the steps needed to bring the participants together. The explanation provided, therefore, does not delve into the details of the development of each form of PPP. Rather, it presents the general steps that any form of PPP would have taken.

1. Public-Private Partnership Participants

The main participants involved in a typical public-private partnership include: the special purpose vehicle (SPV), the public sector (including the government, state-owned enterprises, and governmental agencies), subcontractors, financiers, and other

involved parties such as advisers (legal, financial, technical), insurers, rating agencies, etc. Each participant’s role in a typical PPP project is discussed below.

As previously mentioned, PPPs bring together two (or more) actors, one of which should come from the public sector, for the delivery of public goods and services. The private companies, also referred to as a consortium, they are typically combined in the form of a “special purpose vehicle” (SPV) created specifically for the project. The SPV is a legal entity (usually a company) that is established to perform the activity defined in a contract between the SPV and its client. In the case of PPP, the client is the public procurer. The public sector bodies play a vital role in issuing permits, licenses, authorizations. In addition, they formulate the regulatory framework in which PPP operates. Ultimately, the public sector is responsible for defining the services required, setting targets and objectives, determining the performance of PPP by constantly monitoring and regulating the quality of outputs delivered, checking that the outcomes delivered from PPP are compatible with the standards set, ensuring that the public interest is secured, and cooperating with the private sector to respond to changes that might occur in a changing environment. The private companies and equity holders of the SPV are responsible for meeting their contractual obligations which include: delivering services that

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119 Ibid.

120 Ibid; p. 109.

121 Ibid; p. 112.
meet the required standards, designing and building or upgrading the infrastructure asset, raising funds for operating the project, and cooperating with the public procurer to respond to any unexpected changes.\textsuperscript{122}

The SPV often cannot execute the activity on its own. It requires the involvement of subcontractors that are specialized in performing the activity in the standards set forth in the contract. Subcontractors are companies that specialize in producing a certain good or service. The SPV subcontract functions such as construction, equipment supply, and operation and maintenance with a separate contract for each company involved.

The financiers are usually investments banks who provide the funding of the project. Usually, a large sum of the project funding comes from banks (in the form of debt or bonds), and the remainder of the financing comes from investors. As a precondition, the SPV and the public procurer must provide security for the financing institution.\textsuperscript{123} A guarantee that financiers have in PPP models, which is sometimes lacking in other types of projects, is the fact that risk is shared amongst many actors; everyone loses if the project fails.\textsuperscript{124} Thus, participants are most likely to work together to avoid problems that might put the project at stake. This gives financiers enough security in funding the project because the increasing probability of getting their money back.

\textsuperscript{122} Ibid.

\textsuperscript{123} Ibid; p. 113.

\textsuperscript{124} Ibid.
Governments, private investors and sponsors, and financiers rely on their advisers when taking an imperative decision, especially as critical as getting involved in a PPP project. Governments rely on their advisers to provide an independent check on each PPP-type transaction. SPVs need advisers to bid for projects, while financiers depend on them “to assess the viability of a project and the risks attached to the revenue stream providing security for the finance.”¹²⁵ Rating agencies and insurers are important to improve risk-management techniques involved in the project. Consequently, they help produce an insurance package that limits risk at an achievable price.¹²⁶ The next section discusses how the above-discussed participants are brought together to launch, implement, and operate a PPP project.

2. **Steps for Public-Private Partnership Establishment**

A typical PPP establishment undergoes two main phases: formation and operation. The formation phase is common to most PPPs which is why this thesis will focus on it. The operation phase differs from one form of PPP to another; therefore, handling the differences of operation amongst PPPs falls beyond the scope of the thesis.

The formation phase, which is the most critical and the main focus of this section, includes the following five essential steps. The first step is initiation where the

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¹²⁵ Ibid.

¹²⁶ Ibid; p. 114.
initial concept emerges from a number of sources—most often from clients—to meet a particular need, to react to particular circumstances, and to deliver goods and services.\textsuperscript{127}

The initiation step may be ill-defined, this is why definition, the second step, is needed to refine the concept of applying PPP to the specific project, so that the idea is articulated into a specific need or objective before it can be discussed more widely amongst possible stakeholders or partners.\textsuperscript{128} In this step, definition of project objectives, applying feasibility studies, analyzing risks, and testing the project framework conditions take place.

The third step is tendering. There are several competitive tender procedure steps; some of which include: open competitive tendering, invited tendering, and prequalification/shortlisting.\textsuperscript{129} The process of selecting the right (private) parties for “development, design, construction, maintenance, or operation,” is known as procurement.\textsuperscript{130} Procurement systems are “organizational structures, formalized in contracts.”\textsuperscript{131} Different projects need different contracts to initiate a PPP. The contracts differ according the type of service(s) to be delivered, and the context in which it is going


\textsuperscript{128} Ibid.


\textsuperscript{131} Ibid, p. 50.
to operate in. The method commonly used by the public sector to procure services in a typical PPP is through issuing an invitation to tender competitively. Tendering refers to a launching of a competition between different bidders on the basis of the quality of the service provided, rather than the price suggested. In this method, the selection process is formalized, and so are the criteria on which the final decision is made.\textsuperscript{132} Infrastructure projects, which PPP projects are mostly directed towards, operate at high levels of uncertainty. According to Bult-Spiering and Dewulf (2006), the high uncertainty level makes in-house public capabilities an unattractive option for the government. Projects with most uncertainty are likely “to require the appointment of highly specialized resources having relevant experience.”\textsuperscript{133} Therefore, competitive tendering is the most famous procurement method used to select highly qualified suppliers responsible for infrastructural projects. In a typical competitive tendering process, prospective suppliers are selected when their offer complies with the tender document of the public procurer. The tender document is a detailed description of the required service to be delivered.\textsuperscript{134} The private companies considered by the government for PPP projects are the ones whose calculated price for supplying the services is within the range the public procurer has put for the infrastructural project.

\textsuperscript{134} Ibid.
The fourth step is negotiating with short-listed tenderers. After assessment of the initial tender proposals, the client may negotiate to achieve better value of the price of the bid. Bidders may be required “to submit revised proposals and are asked to make their best and final offer.”\textsuperscript{135} The last step includes the selection of the consortium, the finalization of financial close, and the establishment of PPP. Selection is often based on the most economically most profitable solution. The lowest bid price is the most attractive criterion that governments consider during selection. A financial close is a “conclusive financing arrangement that is reached at the end of the negotiation phase.”\textsuperscript{136} After the selection of the corsotia, the financiers’ advisers assess the project on legislation, tax law, and economic viability issues. The comments and requirements of the financiers will affect the commercial deal between the public sector and consortium. Once the financial close is finalized and the contract between the actors involved is signed, the PPP project becomes officially and legally established.\textsuperscript{137} It is thus ready to operate and pursue the joint targets and objectives set by the public and private sectors. Throughout PPP project implementation, examinations of economic feasibility and key performance indicators take place. Sometimes, elements of the managerial and financing models, as well as to the contractual framework, adopted for PPP operation get modified to keep up with the changing economic, political, and managerial environment in which PPP project operates.

\textsuperscript{135} Ibid; p. 55.

\textsuperscript{136} Ibid.

\textsuperscript{137} Ibid; p. 56.
C. Benefits of Public-Private Partnerships

Since many controversies and oppositions have been attached to privatization, PPP has been considered an alternative to it. PPPs’ popularity began to grow because they bring together the benefits of state-ownership and privatization practices. PPPs are more often considered in infrastructural projects such as transport systems, defense, prisons, wastewater and sewerage, telecommunications, and energy sectors. A public-private partnership is an attractive policy option, especially when governments fail to finance large-scale infrastructural projects and face enormous demands from their citizens. Governments obtain many benefits when implementing a PPP initiative, some of which are explained in this section. It is worthy to note that each PPP form has specific benefits attached to it, which distinguishes it from other types. However, it is beyond the thesis’s scope to discuss each type’s benefits. The subsequent subsections will only provide the general benefits that are common to most PPP initiatives.

1. Risk-Sharing

One of the central aims for the establishment of PPPs revolves around the sharing of risks between the public sector and the private sector. Each actor is responsible for the type of risk that it is able to handle, control, manage and mitigate in an effective and efficient manner.\textsuperscript{138} Risks attached to PPP projects are numerous. They include risks related to environmental and other regulations, “delays in construction and service delivery, cost

overruns, service availability and quality, uncertainty about revenue flows during operation, and changes in discount rates and asset values.”\textsuperscript{139} Most of these risks cannot be completely transferred from one party to the other, which explains why risks are shared rather than transferred in PPPs.

To further understand the concept of risk sharing, it is worth mentioning that the party that has greater control and influence over a certain risk should bear a greater share of that risk.\textsuperscript{140} Risks specifically related to getting the necessary approvals and environmental licenses as well as political and legal risks are handled by the public sector; thus, the latter should take a greater responsibility for controlling and managing these risks. At the same time, they must allow the private sector to take part in controlling these risks, giving opinions, and handling the consequences. On the other side of the coin, risks related to construction, operation, and revenue are normally allocated to the private sector because the public sector cannot manage them properly. However, this does not deny the fact that these risks are not subject to public scrutiny and responsibility.\textsuperscript{141} The risks governments handle when owning and operating an infrastructural project typically pose substantial, and often enormous, cost. Sharing some of the risks with private actors is thus an attractive aspect of PPP that governments consider. Sharing risks enables governments to manage infrastructural projects at less cost, which subsequently, can lower the overall cost on governments.

\textsuperscript{139} Ibid.
\textsuperscript{140} Ibid.
\textsuperscript{141} Ibid.
2. **Value for Money**

Another benefit that results from PPPs is the added value they create for each party. Added value indicates that parties acting alone could not achieve results achieved through cooperation. Tremendous cost-savings, efficiency, and effectiveness in operations are consequences of the added value resulting from PPPs. Kwan (1999) indicates how construction cost savings can often be realized by combining design, construction, and maintenance (for example) in the same contract. The close interaction of designers and constructors in a team, which can be referred to as an added value, can result in more innovative and less costly designs. Therefore, design and construction activities can be carried out more efficiently, thereby decreasing construction time and allowing the facility to be put to use more quickly. The benefit of added value provided by PPP plays an important role in reducing overall costs of projects, shrinking the possibility of cost overruns, while producing high quality outputs.

3. **Efficiency and Effectiveness**

PPPs is seen as a route to increase the effectiveness and efficiency of public sector service delivery, especially through improved coordination, risk sharing, and cooperation between (and within) organizations. Consequently, synergy is often created between the public and private sectors, which typically reduces wasteful duplication,

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ensures greater output, and result in remarkable cost-savings. Synergy is the notion of
the whole being bigger than the sum of parts. Synergy occurs when actors create an
organization “which enjoys not only some of the capabilities of the individual parties but
also the capabilities which are derived from the very fusion of public and private
organizational leverage.” There are some prerequisites that public-private partnerships
should have to bring about synergy. According to Pierre (1997), synergy presupposes
consensus among the involved parties. A lack of overall understanding of the role of PPP
will result in having an incoherent strategy, let alone the difficulty in implementing it.
Synergy also presupposes some institutional autonomy of the partnership, where each actor
enjoys substantial discretion and has institutional capabilities of its own.

PPPs are believed to be more efficient than purely public or purely private
organizations because they seem to break down the stereotypical views of partners towards
one another by building trust, sharing risks, and opening possibilities of better coordination.
Ultimately, this creates synergy and new ways of joint working, which can improve the
efficient delivery of public goods and service. PPPs also improve effectiveness, especially
in the long term, “through creating stability, building local confidence, minimizing risk for
partners and potential investors, and building local capacity for action and control by the

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145 Ibid.
local community and other actors.”146 With the mixture of private sector’s advanced
techniques, know-how, and skills with public sector’s regulations, scrutiny, and control,
PPPs often render services that are effective in the sense that they meet citizens’ demands
and expectations.

4. Advanced Private Sector Techniques

Another benefit resulting from private sector participation in delivery of public
services is the large pool of resources that becomes available to the government, which if
working individually the government cannot obtain quickly and productively on its own,
nor can it have total control of the large scale of available resources. Examples of these
resources are knowledge, expertise, finance, technology, managerial skills, and contacts
from renowned actors in the private sector.147 The private sector’s reputation for innovation
and technological know-how and experience has played a vital role in making it an
attractive government partner.148

Improved levels of operation and service can be seen as a typical consequence
of private involvement in the delivery of public services. Private actors can introduce
innovative ways to organize and manage a public facility. They can also introduce “new


147 Ibid.

technologies and economies of scale that often reduce the cost and improve the quality and level of services.” Heinz (2006) argues that the main advantage of PPP is that public authorities gain access to private sector know-how and principles, and hence access to economic thinking and entrepreneurial logic, to private management and marketing strategies, and to information on different markets and the rules that govern them. He considers that the cooperation between public and private actors has generally shortened project procedures making them more efficient and effective. Better provision of public services are accelerated by combined private sector know-how and public sector regulative powers, private actors operating under profit-driven time constraints, and separating public partners and public functions involved from local government line administration.

Efficiency, knowledge, and customer orientation are market strengths that can improve public sector performance and delivery of services. In addition, the entry of private capital, as Valentin and Veselá (2006) affirm, allows for a “faster response to the current needs of society from the point of view of availability and quality of infrastructure.” Private capital thus allows the faster completion of projects that, if depending solely on traditional public funding, would have taken forever to implement due to the budgetary constraints governments usually suffer from. As a result of the above mentioned benefits,


having the chance to take advantage of private actors’ experience, expertise, and finance in delivering services encourages governments to enter into partnerships with them.

D. Impediments of Public-Private Partnerships

Public-private partnerships are not easy to implement. Many problems arise in working through partnerships, which may vary according to the form of partnership. As Grimsey and Lewis (2004) state, some obstacles are inherent in the concept of PPP itself.152 As with conventional forms of service delivery, there are risks as well as benefits associated with PPPs. This section reviews the risks most PPPs cope with to ensure successful operation of PPP project.

1. Unclear Goals

Most PPPs have agreed-upon goals, or else they would not have been established in the first place. However, these goals might sometimes be too broad. As a result, the details of their implementation might be unclear or the partners may have differing understandings of what the goals mean. This can rapidly lead to “misunderstanding, lack of coordination, and possible conflict between the partners.”153 Furthermore, lack of clarity of goals and the means of achieving them may increase the


likelihood of partners who have undeclared or ‘hidden’ goals to seek their own organizational goals, without supporting or reciprocating the efforts of their partners.\textsuperscript{154} Having unclear goals is often cited as a major cause of the failure of partnerships.

2. \textit{Increasing Costs}

Resource and transaction costs may impede the formation and operation of PPPs. Examples of resource costs include: huge amount of time the staff spends in discussions and making agreements, and the delays to make decisions as a result of consultation with partners.\textsuperscript{155} If each partner claims the full success of the partnership (e.g. in terms of jobs created) but only considers its own costs then distortion of decisions will result which, consequently, renders the PPP a failure. Hence, the full costs of the partnership need to be aggregated and compared with the full social benefits, rather than each partner focusing upon its own costs and benefits.\textsuperscript{156}

PPP projects usually require a number of permits, consents, and administrative decisions. These can be time-consuming to acquire and have transaction costs attached to them. In addition, not all actors consider the true costs involved in PPPs, especially when it comes to the costs of providing services. For example, the costs of overhead or administration and depreciation of assets are often not included in the pricing of individual

\textsuperscript{154} Ibid.

\textsuperscript{155} Ibid.

\textsuperscript{156} Ibid.
services. The different costs—transactional, operational, and resource—that are usually inherent in a PPP process, if not handled properly, act as impediments to the effectiveness of delivering services required from PPPs.

3. Conflicts of Interest

It is widely agreed that PPPs suffer serious obstacles due to the different cultures it combines. No matter how intertwined the public and private sectors have become, the sectors have different ideologies and values. These differences can lead to clashes between the public and private actors that can inhibit productive interaction.

Bult-Spiering and Dewulf (2006), in light of their evaluation of Klijn and Teisman’s (2003) work, suggest that public actors have what is called the ‘guardian syndrome,’ while the private actors have what they refer to as the ‘commercial syndrome.’ They state that Klijn and Teisman (2003) hypothesize that these two domains are mutually exclusive. Thus, a lack of fit between the two is expected. The guardian syndrome represents loyalty of public sector to their citizens, its devotion to a self-defined public cause, its controllability of process and approach (political/social), and its emphasis on risk avoidance and preventing expectations. While the commercial syndrome represents the competitive nature of the private sector, its devotion to consumer preferences, its controllability by shareholders on the basis of results, and its emphasis on market

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opportunities, risks and innovations. Opponents of PPPs fear that the lack of cultural fit between the public and private sectors endanger the public interest. The private sector’s profit-seeking goals cannot but conflict with public values. Disharmony does not only exist between the two sectors but also within the private or public sector itself. Disharmony between the sectors is usually caused by conflicts of interest, while disharmony within the sectors themselves is most dominant in the public sector because the different levels of government and different policy sectors involved might not cooperating efficiently. This ultimately complicates the establishment and operation of PPPs, making them inefficient and ineffective. Furthermore, cooperation between two different sectors may lead to negative outcomes, such as increased complexity, loss of decision-making autonomy and information asymmetry.

Clashes might occur between the public and private sectors due to the lack of clear communication channels: “both sectors speak different languages, and have different experiences and expectations.” There are differences between political and commercial time horizons, which can exacerbate PPP operations. From a political perspective, ministerial commitments need to be converted into positive action to achieve positive outcomes within an electoral period. The commercial sector, on the other hand, is taking on new risks and making significant investment in implementing innovative public service projects. The time scale for financial payback and the need to make ‘running adjustments’

159 Ibid.
160 Ibid; p. 38.
161 Ibid.
to the initial model often require a much longer period of time and some stability in the contract environment.¹⁶² Because public terms of office are mostly much shorter than the time needed for project delivery, the partnership’s continuity is challenged. Thus, it becomes transformed into ‘a set of loosely-linked projects’ that lacks the essence of shared responsibility.¹⁶³ Potential clashes need to be carefully considered and reduced for PPPs’ continuity and ability to deliver the services requested.

4. Organizational Difficulties

Organizational difficulties inhibit successful coordination of programs and approaches rendering PPPs inefficient and ineffective. McQuaid (2000) found that there are various organizational barriers that hinder coordination between the public and private sectors. He grouped the barriers into the following: organizational (these include differing missions, professional orientations, structures and processes of agencies); legal/technical (statutes or regulations, set down by higher authority, which mismatch the technological capacity and practice of the organization to implement); and political (instability of both external political environment and internal bureaucracy politics).¹⁶⁴ Managers can use a diverse variety of mechanisms to overcome these barriers. Most importantly, good


management characteristics, particularly leadership and interpersonal relationships, clear direction, and clear division of responsibilities are the main ingredients of effective coordination, and ultimately an effective PPP operation.

E. Building Successful Public-Private Partnerships

To eliminate the impediments, problems, and risks that PPPs face, some factors need to be present during PPP establishment and operation. Key factors of success differ from country to country, and even from one type of PPP to another. In addition, and as Bult-Spiering and Dewulf (2006) note, success does not depend on a single factor, but rather on a mix of factors.165 This section will discuss the key factors that influence the success of partnerships that, in turn, can yield benefits and desired results. No organization, especially as complex as a PPP, can succeed without being characterized by clear vision and objectives, right partner(s), trust, communication, and agreed accountability.

1. Finding the Right Partner(s): The Government’s Perspective

Foster (2004) asserts that personal ‘fit’ is important for the good functioning of any type of cooperation.166 Public-private partnerships depend on collaborative relationships to achieve common aims and objectives. Choosing the right partner is critical


to the success of a long-term arrangement for the provision of infrastructural services. Therefore, the key ingredient to success is getting the selection right. Afterwards, a successful partnership can be built to deliver required outcomes as part of a value for money solution for the public sector.\footnote{Ibid.} The remaining issue rests upon the method that needs to be taken into account by the government in the search for the right partner. Foster (2004) highlights the importance of market analysis in determining the extent to which the right partner can be chosen. According to Foster (2004), it is essential in any proposed partnership arrangement to analyze the market position on the delivery of the project proposal.\footnote{Ibid, p. 86-87.} Many markets specifically dedicated to the delivery of public projects or services are not yet mature which, in turn, severely restrict any competition process and the reality of being able to choose the right partner rather than the only partner.\footnote{Ibid.} Markets can be concluded in a variety of ways, the most common are collecting information through questionnaires, telephone surveys, open days (or briefing days), and procurer’s external advisers.\footnote{Ibid.}
2. Having Clear Vision and Objectives

Having a clear vision, along with clear strategic objectives is a precondition for successful PPPs. As Geddes (2005) notes, “imprecise objectives are a recipe for failure.”\textsuperscript{171} PPP actors, therefore, need to have a precise idea of the specific outcomes they hope to achieve within the lifespan (usually not less than 5 years) of the PPP. It is not enough to have clear targets and objectives; understanding the vision, committing to the targets, and sustaining the objective are equally important. It is of course easier to do this for some partnerships than others: “service delivery partnerships can usually set out their objectives with much greater clarity than those involved in strategy development.”\textsuperscript{172} No matter what form of partnership is attempted, to be successful, the actors need to spend considerable amount of time and effort at the outset to develop clarity of purpose, accuracy of targets, and precision in delivering outcomes. Revisiting, retuning, and discussing targets, objectives, and outcomes need to be encouraged throughout PPP operations in order to ensure progression and development of PPP in delivering the required outcomes.

3. Fostering Trust and Openness

Public-private partnerships depend on actors working together. Without trust, the relationships involved in PPP become weak, which negatively affect PPP operations and outcomes. As the Research and Policy Committee of the Committee for Economic


\textsuperscript{172} Ibid.
Development (1982) note, there is little that can be accomplished without trust since little is likely to work. Trust develops from practical considerations such as “personal acquaintance among key leaders, confidence in the processes by which decisions are made and carried out, shared experience in cooperative ventures, and knowledge, through observation of past performance, of who keep their pledges and fulfill their responsibilities.”

The concepts of trust, commitment, openness, and respect are intertwined, and equally important for cooperation. They play a vital role in eliminating the notion of ‘them-against-us’ approach, which is usually present between actors from different realms that need to cooperate to reach a desirable outcome.

Partners will find it difficult to trust one another unless they demonstrate integrity, openness, and respect. It is important that each partner values the integrity of the others. In addition, respect for each other’s contribution, skills, and significance is essential for successful partnership working. After all, being in a partnership “should not impinge on a partner’s own activities but should rather be adding value.” Some sort of openness between the actors is encouraged. However, it has to be recognized that the concept of openness is not an easy one to adopt especially when actors are asked to share information, whether sensitive or not, with others. Therefore, the degree and success of openness very

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174 Ibid.

much depend on “the way the chair and executive director manage the partnership and on their relationships with the leaders and staff of the partners.”\footnote{Ibid.} As mutual confidence, respect, and openness grow between the actors in a PPP, it becomes easier for trust to be developed.

4. **Encouraging Communication**

The Development Communication Division of the World Bank (2008) argues that strategic communication can help public-private partnerships work better and be more socially and politically sustainable by creating space for dialog and stakeholder participation in decision-making processes.\footnote{Daniele Calabrese. *Strategic Communication for Privatization, Public-Private Partnerships, and Private Participation in Infrastructure Projects*. World Bank Working Paper No. 139, Washington, D.C: The International Bank for Reconstruction and Development, 2008: foreword.} Communication paves the way for two-way dialogue on contentious issues which, in turn, helps clarify concerns and misconceptions present amongst the different sectors involved in a PPP. It can also help achieve compromise between actors. Good communication programs “facilitate mutual engagement and participation, help to bridge gaps, and create the trust that is needed for infrastructure development programs to succeed.”\footnote{Ibid; p. 16.} The theory of transaction costs economics\footnote{In economics and related disciplines, a transaction cost is a cost incurred in making an economic exchange, in searching for the best supplier/partner/customer, and in monitoring and enforcing the implementation of a contract. Transaction cost theorists see transaction costs also incorporating costs of all the information processing necessary to coordinate the work of people and machines that perform the primary processes.} argues...
that open communication can help participants understand each other and easily make a consensus because strong trust and willingness to collaborate can avoid unnecessary transaction costs and conflict among participants.\textsuperscript{180}

Communication is an instrumental component for problem identification and conflict resolution. Communication helps avert failure by: facilitating coordination amongst actors, identifying current and potential sources of support and opposition, raising awareness of an unsustainable status quo, and uncovering existing attitudes on a range of relevant issues (such as political interference, clientelism, and nepotism).\textsuperscript{181} In the absence of communication schemes, project opportunities for success and sustainability decline. Even though general consensus is not necessarily reached through communication, the latter can at least help with information flow and awareness-building among all stakeholders.

\footnotesize{
*Extracted from: http://www.istheory.yorku.ca/transactioncosteconomics.htm


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5. **Instilling Agreed Accountability**

Geddes (2005) affirms that a key precondition for the success of a PPP is the manifestation of accountability.\(^{182}\) The importance of accountability has always been emphasized in both public and private realms. Accountable means “liable to be called to account, responsible to persons.”\(^{183}\) It is inaccurate to equate accountability to responsibility. Accountability is more than being responsible. It requires “someone in the organization who can accept the blame or praise for a decision or action.”\(^{184}\) Traditionally, accountability has been used in two different ways in the public and private sectors. In the public sector, it has been viewed in a democratic sense where elected individuals are accountable to their electorate for the public services which their organization delivers. While in the private sector, it has been viewed in a more financial sense, where a company is accountable for the funds which it manages and this accountability is demonstrated in the annual accounts that a company has to prepare to satisfy stakeholders’ needs.\(^{185}\) In modern times, accountability no longer conveys bookkeeping methods. Rather, it has become a symbol for good governance.

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184 Ibid; p. 241.

PPPs need a system of accountability to be successful in delivering results. PPPs are not public agencies per se, even if they carry out duties and deliver outcomes that benefit the community as a whole. PPP actors do not have a “clear line of democratic accountability through elected representatives.” 186 Even so, accountability can safely be considered a key precondition for the success of PPP of whatever form. Partnerships, as Geddes (2005) states, need to develop processes which maximize the opportunities to demonstrate accountability to the partners and the wider community. 187 All the partners and the wider community need to be reassured that “partnership resources are being properly applied to support the partnership’s activities and are not benefiting one or other particular partner.” 188 PPPs are expected to justify any action they take, and be held accountable to the consequences that result. With a sound system of accountability, PPPs can have eligible support, transparent operations (disclosure of PPP activities), and responsive character (responding and reacting to actors’ and community’s opinions and demands) which, in turn, are essential to pave the way to the successful delivery of desirable outcomes.

Frameworks and concepts related to PPP, portrayed in chapters II and III, are tools used to investigate and study the application of PPPs in Lebanon. The next chapter sets a solid ground to delve into the case of PPPs in Lebanon. This is done through concentrating on a snapshot of the Lebanese experience with PPP from the early 1990s. In

186 Ibid.
187 Ibid; p. 96-98.
188 Ibid; p. 99-100.
addition, the following chapter discusses the rationale behind applying PPP in Lebanon and then defines PPP in Lebanese terms.
CHAPTER IV

PUBLIC-PRIVATE PARTNERSHIPS IN LEBANON: PAST AND PRESENT

This chapter is divided into three sections. The first section studies four PPP projects in Lebanon: the BOT contract of the cellular segment, ONDEA project for water service management, management contract for Sukleen—responsible for solid waste management, and the BOT contract with Mapas Company to rehabilitate Jeita Grotto. This section analyzes the extent to which these projects were successful. The second section discusses the reasons behind the increasing attention PPP projects are having today. The reasons are threefold. The first reason revolves around the need to have a PPP legal framework. The second reason behind the increasing call of PPP is to replace the failing efforts towards privatization in Lebanon. The third reason stresses the importance of PPP in yielding potential benefits to Lebanon. The last section of this chapter defines public-private partnerships from the perspective of Lebanese public officials today.

A. Public-Private Partnerships in Lebanon since Early 1990s

Privatization efforts have received remarkable attention from the Lebanese government since 1992. From the early 1990s until the early 2000s, privatization was the key focus of political discussions and conferences that were held to improve Lebanon’s financial, social, and public service conditions. In parallel, some PPP projects also took place. PPP projects have been existent in Lebanon since the end of the Lebanese Civil War.
(1975-1990). They were specifically used to reconstruct and redevelop infrastructure projects damaged during the war. PPPs were proposed as a possible solution to compensate for the inability of the Lebanese government to redevelop the damaged infrastructure.

Providing cost effective and productive infrastructure was regarded as a challenging task for the government to accomplish on its own. This is because the Lebanese government lacks the financial resources and managerial and technical expertise to manage costly infrastructure projects which, in return, has set the ground for initiating PPPs.

This section will give a brief history on some PPP projects that have taken place in Lebanon over the last two decades. PPP projects flourished specifically in the following sectors in Lebanon: telecommunications (particularly the cellular segment), transport, water services, and solid waste management. This section will also examine the extent to which PPP projects have been effective and sustainable in Lebanon. As information related to many PPP projects in Lebanon is limited, this section will primarily focus on the cellular segment’s experience with PPP because literature is abundant on this topic since it has been subject to hot debates in Lebanon for years. Other PPP projects will also be discussed in this section; these include ONDEA, Sukleen, and Jeita Grotto projects.

1. The Cellular Segment

In 1994, the Lebanese government launched a PPP project in the cellular segment by awarding two “Global System for Mobile (GSM)” communication licenses to private companies. Accordingly, two cellular operators, Cellis and Libancell, were granted ten-year GSM licenses under a Build Operate and Transfer (BOT) contract, which made the
private operators subject to an escalating revenue-sharing scheme. These revenues are normally collected by the Ministry of Post and Telecommunications (MPT), which also presumed a regulatory function in the mobile sector. As in a typical PPP, the private partner (Cellis and Libancell) were primarily responsible for building, operating, and managing the mobile network. The public sector’s (specifically the MPT) role was confined to monitoring and regulatory tasks.

The mobile sector’s performance showed to outweigh the performance of the fixed line segment in Lebanon, which is managed by the Organisme de Gestion et d'Exploitation de l'ex-société Radio-Orient, OGERO, a state-owned enterprise. As Jamali (2004) stated, “the cellular segment has improved its services at a faster rate than the fixed line segment.” This is primarily due to role of the technical and managerial expertise the private sector has in advancing the mobile sector. In her study, Jamali (2004) compared the fixed line segment’s services with the mobile segment’s services. The fixed line showed to lack basic services such as voicemail, dial back, and clip or detailed billing, which the mobile sector has established years ago. Jamali argued that the increase in the amount of revenues of both cellular operators from 1995 to 2001 portrays the pace of success that the mobile sector has had in Lebanon. Another indicator used by Jamali (2004) shows that the

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190 Ibid; p. 424.

191 Ibid.

192 Ibid.
mobile sector flourished at a fast rate which produced revenues of US$ 3,095 million in 2001.\textsuperscript{193} In addition, the Lebanese mobile segment reached high penetration levels (subscribers per 100 inhabitants) in a relatively short period of time. When compared to countries in the region (Egypt, Saudi Arabia, Oman, Jordan), Lebanon had the highest ratio of cellular subscribers per capita in 2002.\textsuperscript{194}

Despite the success of the Lebanese cellular segment on both technical and managerial levels, it drastically failed on the political level. Since no effective regulatory authority was present to ensure competition in the cellular market, the cellular sector fell in the trap of a duopoly, which sharply contrasts with the concept of PPP. Furthermore, the MPT, which was responsible for the regulatory function, did not have the human resources or the technical expertise to assume regulatory authority in a complex and advanced sector such as that of the cellular. When the BOT contract was signed in 1994, the government could not foresee the kinds of services that this sector will provide, nor the techniques used for service provision, due to the limited expertise the government has in this field. In addition, private operators did not have faith in the public partner, given “the predominant perception of the Lebanese public sector as bloated and inefficient.”\textsuperscript{195} The mistrust that was present between the government and the two private operators escalated the tensions between them.

\textsuperscript{193} Ibid; p. 425.
\textsuperscript{194} Ibid.
\textsuperscript{195} Ibid; p. 426.
Due to growing tensions and divergent perspectives amongst the MPT and the private operators (LibanCell and Cellis), the government terminated the BOT contract in 2001, prior to its expiration date. According to the cellular operators, the MPT did not fulfill its contractual obligation.\textsuperscript{196} At the same time, the government made a series of accusations against cellular operators, some include: private operators exceeded the BOT set ceiling of 250,000 subscribers; private operators generated huge profits at the expense of the government, which was receiving a small share of revenues; and private operators launched the prepaid cards without prior modification of revenue-sharing agreements.\textsuperscript{197}

After terminating the BOT contract, serious efforts were re-launched by the government to privatize the two mobile networks. Until privatization occurred, the government opened a tendering process after the termination of LibanCell and Cellis’ contracts to choose the companies that would operate the mobile sector. Consequently, new management contracts were awarded to two new networks, MTC Touch and Alfa, in June 2004. The Telecommunications Law 431 ratified in 2002 that aimed to privatize the telecommunication sector, came as an attempt to decrease the tensions and obstacles both sectors have been facing. The law aims at regulating the sector and sets out the rules for transfer of its management to the private sector.\textsuperscript{198}

\textsuperscript{196} \textit{GSM in Lebanon: The Truth.} Report, LibanCell, p. 8.

\textsuperscript{197} Ibid.

Mobile services in Lebanon are currently managed by the respective operations of Alfa and MTC Touch, and are wholly owned and controlled by the Lebanese government. There operators are still waiting for their fate to be decided. There have been serious talks to privatize the mobile sector in Lebanon. At the present time, privatization has not occurred because the exact terms and conditions under which the transfer of mobile assets and contracts need to take place are still debated among Lebanese public officials.

2. **ONDEA’s Project**

Lebanon enjoys relatively rich supplies of water resources. However, inadequate laws and poor administration have resulted in over abstraction of groundwater all over the country, reducing in turn the yield available to the various water utilities. Effective water resource management and allocation continues to be a salient issue in the Lebanese context.

Tripoli suffers from severe water shortages, which made Tripoli’s water sector a key candidate for a PPP arrangement. The ONDEA contract was launched when the Ministry of Energy and Water (MEW) and the Council for Development and Reconstruction (CDR) awarded ONDEA, a French company, “a four-year management

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201 Ibid.
contract for the Tripoli Water Authority in December 2002 at a cost of 8.9 million Euro, financed by the French Development Agency.\textsuperscript{202} ONDEA project assumes the responsibility of piping water from intake points to storage reservoirs, and then on to households via their water gauges.\textsuperscript{203} In addition, the contract encompasses a wide range of responsibilities to ONDEA that include organizing the billing system and collecting of water tariffs, managing of human and financial resources, and supervising the construction of a tertiary water supply network and the expansion of a water treatment plant.\textsuperscript{204}

Alain Bifani, Director General of the Ministry of Finance in Lebanon, described the ONDEA project as a complete failure. “In a nut shell,” he said, “ONDEA project failed because of an unrealistic code book (daftar shourout), absence of effective monitoring of operations, and high prices of services delivered.”\textsuperscript{205} The ONDEA project, according to Bifani, was not successful in achieving the results dictated in the PPP contract. On the other hand, Makdissi asserts that there is “no independent assessment of ONDEO’s progress.”\textsuperscript{206}

\textsuperscript{202} Ibid; p. 612.


\textsuperscript{205} Alain Bifani, \textit{Director General of Ministry of Finance}. Interview by Carla Antar. (December 17, 2010).

Information dissemination and public participation are very limited when it comes to studying the socio-economic impact of ONDEA project in Lebanon.\(^{207}\)

3. \textit{Sukleen}

Sukleen, a private company that is part of Sukkar Engineering Group, was founded to handle waste management in the regions of Beirut and Mount Lebanon. In 1994, a BOT contract was signed between the Reconstruction and Development Council and Sukleen—whose primary responsibility is to clean streets and collect wastes. The contract’s duration was for five years that can be renewable.\(^{208}\) Sukleen is a “contract company of the government; so it’s a private company doing public services, funded by the government. It can be regarded as a joint venture.”\(^{209}\) This is what Sukleen’s Managing Director, Ali Hodeib, stated when asked about the basis of Sukleen’s foundation. Accordingly, Sukleen’s operations are controlled and regulated by the government.

Sukleen’s operations did not run without obstacles. There has been a lot of controversy about the PPP contract the government has signed with Sukleen. In 2000, for example, the Lebanese government was reluctant to pay the millions of dollars owed to Sukleen for the work done in 1999. A Lebanese public official explained this reluctance by

\(^{207}\) Ibid.


stating that, “the original contract signed under the previous Lebanese administration was priced too high.”\textsuperscript{210} According to a contract signed in 1994, the government pays Sukkar Engineering Group 66.2 million each year for the collection of garbage, street sweeping, and treatment of domestic sewage.\textsuperscript{211} In 2000, public officials recommended that this price need to be changed because it has become too costly for the government to suffice.\textsuperscript{212} Sukleen employs “3,000 workers and uses 580 vehicles and, for their services, the company charges $20 for each ton of waste, a price considered too high by government officials in 2000.”\textsuperscript{213} Therefore, parliamentarians called on the government to review the agreement, arguing that work could have been done at half the price.\textsuperscript{214}

A public official said that the Auditing Department in Lebanon stated that, in 1994 the government should have invited other companies to submit offers from which the government could choose. The government should have chosen a firm that can do a good job at a cheaper price.\textsuperscript{215} Despite all the debate that went on in 2000, Sukleen’s contract was renewed. The delay in paying that Sukleen has been facing throughout its operations is

\begin{itemize}
\item[\textsuperscript{211}] Ibid.
\item[\textsuperscript{212}] Ibid.
\item[\textsuperscript{213}] Ibid.
\item[\textsuperscript{214}] Ibid.
\item[\textsuperscript{215}] Ibid.
\end{itemize}
not surprising from a government that is indebted with millions of dollars. However, “Sukleen will not leave the streets filled with garbage because there was a delay in payments,” a spokesman for Sukkar Engineering Group said. Sukleen’s contract was renewed in 2000 and in 2006.

Controversy re-escalated in October 2010 as Sukleen’s contract expired. The debate in the Cabinet on whether to renew Sukleen’s contract for another four years was revitalized because Sukleen poses high pressure on the government’s pocket due to its high fees. Prime Minister Saad Hariri told ministers that, “the company agreed to reduce the rates by 4 percent, but some ministers insisted on examining the contract before giving their seal of approval.” Calls from March 8 ministers and three ministers close to President Michel Sleiman voted against renewing the contract unless the contract is disclosed in the Cabinet. They also demanded the government to invite new companies to submit offers, but this demand was rejected by 14 ministers. Limited information is available on the terms and conditions of the government’s new contract with Sukleen.

4. **Jeita Grotto**

Other PPP projects operating in Lebanon include the Jeita Grotto, a touristic scene where the action of water has created “cathedral-like vaults beneath wooded hills in

216 Ibid.


218 Ibid.
Mount Lebanon."219 During the Lebanese Civil War, the Grotto was forced to close. In 1994, and upon the initiative of Minister of Tourism Nicolas Fattouche, the Ministry charged the German company Mapas to renovate and re-equip Jeita Grotto’s facilities by the most advanced techniques and to operate the complex.220 Debate has risen on the basis of the contract given to Mapas. Al Akhbar Newspaper describes this contract as being a “suspicious BOT contract.”221 The reason behind this suspicion is because there was neither a decree issued from the Cabinet, nor a law authorizing the organization and operation of such project ratified. Any project that calls for a private company to manage, use, rehabilitate, and develop a natural resource owned by the government must have a decree and a law issued by the Cabinet and Parliament respectively, to comply with Article 89 of the Lebanese Constitution. More information on Article 89, and on the correct mechanism through which a PPP contract must be issued will be discussed in the next chapter.

Other PPP projects include the Beirut Container Terminal Port, and Auto Mechanics. Unfortunately, reliable information and valid data on PPP progress in these projects are very limited in the literature. Further specialized studies are thus required on


220 Ibid.

previous PPP projects in Lebanon in order to have a comprehensive idea on the practicality of PPP projects to be implemented in the near future.

As shown above, PPPs were existent in Lebanon since the early 1990s. However, they lacked the legal framework that both specifies the terms and conditions under which PPP operates and sets the adequate regulatory authority to oversee PPP operations. Therefore, tensions resulted between the government and the private companies, which is why the success of PPP projects in the past is limited. The cellular sector’s contract, for example, was terminated because of misunderstandings occurring between private and public actors. The ONDEA project did not result in better quality water services, while Sukleean was chosen without having a tendering process which resulted in being monopoly with high prices that the government cannot afford. Jeita Grotto’s contract was viewed as suspicious with the absence of a ratified law that governs the basis of a contract that allows a private sector to use a country’s natural resource. The disagreements that PPPs in Lebanon resulted called for an increasing call among parliamentarians and public officials to create a legal framework. In addition to the need to create a legal framework for PPP, other reasons behind the increasing attention on PPP in Lebanon today are discussed in the next section.

B. Reasons Behind the Increasing Attention on Public-Private Partnerships Today

A large question mark has been raised about the capabilities of the Lebanese government to manage, at its own expenses, the large-scale infrastructure projects that are needed for the country’s social and economic development. Many rehabilitation and
development plans have been launched since the end of the Civil War to improve infrastructure. Unfortunately, infrastructure facilities are still poorly provided. Electricity shortages and water scarcity in many districts still exist; traffic jams and garbage landfills remain common scenes in Lebanon. PPPs revive the lost hope of Lebanese citizens to enjoy adequate infrastructure services. There are many reasons why PPPs are receiving an increased attention in Lebanon today, some of which are discussed below.

1. The Need for a Public-Private Partnership Legal Framework

A legal framework for PPP ensures that PPP contracts are negotiated in the right manner, outlines the basis of PPP operations, and guarantees that a professional regulatory authority oversees PPP project implementation, in an attempt to avoid as much obstacles as possible occurring between the different PPP actors. Without a legal framework, not all PPP contracts work to the satisfaction of government and the company because they have not been well structured. Ministries do not have the expertise to negotiate reasonable and equitable contracts for complex and advanced projects such as those of infrastructure. Without a legal framework and proper regulation, PPP’s success becomes “a hit and miss, as some contracts are negotiated by people not trained to negotiate them,” said Ziad Hayek. The lack of a legal framework for PPP operations limited their success, which is why the call to create a transparent PPP law has contributed to the increased attention PPPs in Lebanon have today.

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223 Ibid.
2. **Public-Private Partnership as an Alternative to Failing Privatization Efforts**

After 15 years of war, Lebanon’s economy became weak, unproductive, and disintegrated. The costs of the Civil War were estimated by the United Nations to be at “US$25 billion plus a loss of more than 150,000 lives, together with immeasurable suffering.” \(^{224}\) The resulting physical infrastructure’s damages were valued at US $ 5 billion. \(^{225}\) In addition, the overall Lebanese budget deficit rose from 12 percent of GDP in 1976 to about 32 percent of GDP in 1990, being one of the highest amongst the Middle East countries. \(^{226}\) Being a necessity for social and economic improvements, infrastructure rehabilitation and reconstruction were one of the top priorities on the agenda of Lebanese governments since 1992. The private sector is perceived to have advanced technological and managerial expertise, professional skills, and sufficient monetary resources than can be utilized to improve Lebanon’s infrastructure. Consequently, the private sector became an attractive option Lebanese governments resorted to for the implementation of large-scale infrastructure projects. Many efforts were made to encourage private sector participation in the reconstruction programs to compensate for the poor financial and administrative capabilities the Lebanese public sector has in operating infrastructure projects. Some of


these efforts are the Horizon 2000 Plan for Reconstruction and Development and Paris I, II, and III conferences.

Privatization efforts in Lebanon were unsuccessful primarily because of political considerations. For example, the “Horizon 2000” is a two-fold economic reconstruction plan that consists of securing a cumulative volume of public investments of $18 billion to generate in the private sector investments of $42 billion between 1995 and 2007.\textsuperscript{227} However, private sector participation in such a plan was limited. Private companies were reluctant in the immediate postwar period to fund such a plan. Hence, this plan failed in attaining its objectives due to the precarious assumptions regarding the availability of public funds.\textsuperscript{228} The continuing challenge of revitalizing the stagnant economy and decreasing the crippling public debt pushed the Lebanese government to outline its economic reform program and present it in Paris in three meetings taking place in 2001, 2002, and 2007 respectively. In these meetings, the Lebanese government agreed on certain measures to be adopted in an attempt to reduce the accumulation of public debt, increase economic growth, and improve the delivery of public services. The most highlighted step the Lebanese government brought forth in these meetings was instilling privatization programs in Lebanon. Three specific laws, for example, were enacted to accelerate the pace privatization, which is an important step that was called upon in Paris I meeting in 2002.

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For example, Law 431 calls for privatizing two existing cellular phone systems, while Law 462 ratified in August 2002 that calls for to corporatize and privatize the power sector.\textsuperscript{229} Another law also called for the corporatization and privatization of the fixed line communication in Lebanon. These laws target two sectors that represent Lebanon’s largest infrastructure, other than road, in terms of assets.\textsuperscript{230} They were seen as a stepping stone to stimulate economic growth and liberalize the economy.

“Privatization is a scary word for some people,” said Minister of Finance, Raya El Hassan.\textsuperscript{231} The Lebanese government also does not have a lot of assets to sell. Another obstacle standing in the way of privatization is that there are a number of Lebanese political parties, such Progressive Socialist Party (PSP), and the Communist Party, that oppose privatization because it conflicts with their ideological beliefs. Chouf Member of Parliament and PSP President Walid Junblatt affirmed his opposition to privatization by saying that he refuses to sell the public sector to private companies that want to make profits on the account of Lebanese citizens.\textsuperscript{232} Furthermore, Director General of Ministry of Finance, Alain Bifani, sees privatization as a money-making tool that fulfills the private interests of the most powerful businessmen in the country. “Instead of looking for ways to


\textsuperscript{230} Ibid.


transfer ownership to private companies, the State should invest efforts to reform its public institutions,” Bifani asserts.233 The General Labor Confederation also announced its refusal to privatization efforts because they see privatization as a destroying tool that undermines the role of the state.234

According to Rayya El Hassan, “the potential gains from privatizations are not as great as they once were.”235 Taking the telecom licenses as an example, $6 billion were expected from the sale of the two telecom licenses. Due to the low value of mobile licenses and the problems Lebanese mobile companies have been facing, the government does not expect to bring $6 billion from the sale of these companies anymore; it even doubts to earn half of the amount.236

Private sector involvement in infrastructure projects is believed to relieve the Lebanese government from financial burdens it has been facing since the end of its Civil War. The Horizon 2000 Plan, and three conferences, in addition to other efforts such as the ratified law encouraging privatization, highlighted the importance of private sector involvement, primarily through privatization, in contributing to the high public debt and in delivering infrastructure services in an efficient and effective manner. However, up until

233 Alain Bifani, Director General of Ministry of Finance. Interview by Carla Antar. (December 17, 2010).


236 Ibid.
the present time, privatization of power and communication sectors did not take place. The delays in enacting privatization laws are mainly due to political oppositions to the notion of privatization. There has always been a weak political commitment of Lebanese leaders to abide by the timetable and figures provided in Paris when it comes to privatization program, and mainly the Electricite du Liban privatization. Privatization does not seem to be an attractive option at it was before. Rather than selling to the private sector, attention is now being directed towards public collaboration with the private sector in a PPP framework.

3. **Public-Private Partnership as a Means to Yield Potential Benefits**

   Public-private partnership is regarded as an effective means used by governments for the purpose of infrastructure development. Having a comprehensive approach of PPP projects have recently gained wide interest in Lebanon due to the many benefits they provide. The Lebanese government has been examining a variety of ways to generate private sector involvement in infrastructure projects due to the potential benefits attached to such an approach. Below is a discussion of the different potential benefits Lebanon can enjoy if the government allows a comprehensive approach of PPP within a legal framework.

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a. **Relieves Government’s Financial Burden**

The Minister of Economy and Trade, Mohamad al-Safadi, said that, “Lebanon needs to spend at least $20 billion to improve its basic infrastructure; otherwise the high growth the country has been witnessing will dwindle and vanish.” The investment needs of large-scale infrastructure projects are vast, which makes it difficult for Lebanon’s Treasury to assume such a responsibility especially with a public debt of more than $49 billion. The Lebanese government is eager to solicit private sector involvement, through PPP, to shoulder the cost of shoring up the country’s infrastructure shortcomings. The emergence of PPP allows the resorting to private sector funding to provide better financing for costly infrastructure projects, especially in the fields of power, water, solid waste, transport, health, and education. The costs involved in building water dams, power stations, and bridges are too high, that the Lebanese government cannot afford.

Up till the present days, the Lebanese government has been unable to successfully manage any large-scale infrastructure project due budgetary constraints and limited administrative capabilities. Experience showed that when the Lebanese government funds and/or manages infrastructure projects, government management inevitably increases public budgetary constraints because the Lebanese public administration is technically and

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financially ill-equipped to service the money in a manner that produces high amounts of returns on investment. The state-owned company Electricite du Liban (EDL), for example, financed and operated by the Lebanese government, accumulated $3 billion in debt in 2003 and cannot afford to purchase enough fuel to keep the lights on 24 hours a day.\textsuperscript{241} Yearly budgetary losses resulting from such government expenditure impose extra financial burdens on the Lebanese government. Not only that, the money used to produce, transport, and distribute electricity is managed in an inefficient and ineffective manner. As a result, electricity shortages are not a surprise to Lebanese citizens today.

According to Kamal Hamdan, considering PPP as an attractive option is the result of financial surpluses the private sector, particularly the banking sector, enjoys.\textsuperscript{242} Abbas Hachem adds that PPP acts as an effective framework that encourages private banks to give money to the Lebanese government because PPP gives assurances to the banks and allows high returns on investments.\textsuperscript{243} Lebanon has one of the strongest banking sectors in the region. Banks in Lebanon are characterized by their high liquidity, strict and stringent regulations exercised by the Central Bank, and strong policies that have been evolving in

\textsuperscript{241} Ziad Abdelnour, "The Corruption behind Lebanon's Electricity Crisis." Middle East Intelligence Bulletin, August-September 2003. \url{http://www.meforum.org/meib/articles/0308_11.htm}

\textsuperscript{242} Kamal Hamdan, Head of Economic Division at the Consultation and Research Institute. Interview by Carla Antar. (December 27, 2010).

\textsuperscript{243} Abbas Hachem, Lebanese Member of Parliament. Interview by Carla Antar. (December 28, 2010).
The Association of Banks in Lebanon released the consolidated balance sheet of commercial banks showing that total assets reached “$118.3 billion at the end of February 2010, up 2.6% from end-2009 and up 24.4% from end-February 2009.” Private sector deposits totaled $97 billion. Furthermore, figures released by the Central Bank of Lebanon show that Lebanon registers $714.2 million balance-of-payments surplus in the first two months of 2010. The chairperson and general manager of Lebanon’s BLC bank said that the PPP’s returns on investment depend on the sector, but experts estimate an annual 20 to 27 percent. Therefore, PPPs become an attractive option to private equity funds. Ziad Hayek adds that PPP offer banks not only an opportunity for long-term cash flow stability, because of the long tenor, comprehensive, and secured nature of PPP deals (which often run over two decades) but also the chance to diversify away from an over reliance on buying government bonds. Through a PPP deal,

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246 Ibid.


249 Ibid.
banks are indirectly lending the government through the private sector, which is more of an attractive option to commercial banks, Hayek asserts.\textsuperscript{250}

Even though Lebanon is famous for its robust service-oriented sectors, many investors are discouraged from setting up businesses in a country characterized by political instabilities, governmental corruption and inefficiencies, and high public debt that reached $44.2 billion\textsuperscript{251} in February 2010. The governor of Lebanon’s Central Bank, Riad Salame, said that the banking sector, which has lent consistently to the government, is frustrated by the fact that they are not seeing reforms being implemented.\textsuperscript{252} Local banks do not finance projects haphazardly. They need to see their money being used in a project that has economic feasibility and high returns on investment. Since PPP projects ensure economic feasibility and high returns on investment, if properly implemented, it is seen as the most feasible solution for private sector reluctance in providing public services in an efficient and effective manner.

\textsuperscript{250} Ibid.

\textsuperscript{251} "Lebanon This Week." no. 160. Byblos Bank: Economic Research & Analysis Department, March 29-April 6 2010, p. 4.

b. Provides On-Time and On-Budget Completion

Diala Shaar summarized the benefits of PPP by using two terms: on-time and on-budget completion. Having an agreed-upon PPP contract ensures efficient project execution in a transparent and accountable manner. It also guarantees that the project operates within the financial resources specified in the budget of the PPP project. Through ensuring on-time completion, PPPs decrease the high levels of financial costs governments incur when projects’ operations get delayed and/or require more money than the one specified in the budget.

c. Provides Technical Expertise

PPP comes as the realistic solution to both the lack of financial and managerial expertise the government has to deliver public services of good quality. PPP secures funding for infrastructure projects via private companies, particularly banks, who have both financial surpluses and advanced technical skills that can be invested in large-scale infrastructure projects. The Lebanese official, Rayya El Hassan, said that private sector participation in areas formerly controlled by the state allows efficient public service delivery. This is due to the advanced managerial and technical expertise the private sector has which ensures better quality of infrastructure services. In addition, private participation through PPP allows deepening the stock market and providing a much more


competitive environment.\footnote{Ibid.} Competition fosters better quality of infrastructure at a fair price.

d. Fosters Economic Development

To better understand the effect of PPP on economic development, it is essential to distinguish between economic growth and economic development. According to Sen (1988), economic growth is concerned only with Gross National Product (GNP, a measure of national income) per head.\footnote{Amrtya Sen. "The Concept of Development." In *Handbook of Development Economics*, by Hollis Chenery and T.N. Srinivasan. U.K.: Elsevier Publishers, 2008, p. 13.} Economic growth does not deal with the question of the distribution of the GNP among the population.\footnote{Ibid.} It is possible for a country to expand its GNP per head, while its distribution is unequal amongst the population. In such a case, it is wrong to conclude that such country is becoming economically developed, even if GNP is high. Even though an expansion of GNP should enhance living conditions of people, there are other variables that also influence the living conditions that the concept of development cannot ignore.\footnote{Ibid.} Development is concerned with the achievement of better standards life. The focus of development has to include the nature of the life that people succeed in living. Economic development deals with the distribution of GNP among the population.\footnote{Ibid.} It is
PPP projects encompass a wide range of services to be made available to all Lebanese citizens, as the PPP draft law mentions. These services range from education to hospitals to roads to electricity to solid waste management plants, etc. It is through the provision of these services to Lebanese citizens across the country that economic development is fostered. The distribution of these services falls at the heart of the concept of economic development. Building schools, universities, and libraries (which fall within the realm of PPP projects), for example, improves the education sector, which consequently enhances the lives of Lebanese citizens by providing them with the weapon of knowledge. Similarly, the availability of electricity at all times increases the productivity of Lebanese citizens and, consequently, improves the economic growth and quality of the citizens’ lives in the long run.

The Lebanese Banks Association confirms the reality that partnerships between the public and private sectors in Lebanon enhances productivity by saying that PPP projects expand Lebanese national economy and, therefore, contributes to its development.261 In

260 Ibid.

261 "Partnership between Public and Private Sectors Strengthens the Lebanese Economy." Al- Sharaka Bain al Kitaa al Aam wal Khass To’aziz al Iktisad al Lobnani.
addition, Abbas Hachem agrees to the fact that PPP improves the economic status of Lebanon’s government in addition to ensuring infrastructure development. Adnan Kassar, a Lebanese businessman and politician, also argues that PPP, which attracts local and foreign investments in addition to advanced technical and managerial skills, plays an effective role in improving the Lebanese economic situation. Ensuring good quality of infrastructure services through PPP fosters economic development because the services both improves the way of life of Lebanese citizens and positively affect economic growth.

e. Creates New Job Opportunities

Lebanon suffers from high unemployment rates. In 2007, the high unemployment rate has reached 20%. Infrastructure projects require large number of employees, which consequently enable the provision of job opportunities to Lebanese youths. Due to


262 Abbas Hachem, Lebanese Member of Parliament. Interview by Carla Antar. (December 28, 2010).


264 "Lebanon Unemployment Rate." Index Mundi. December 30, 2010.
budgetary constraints the Lebanese government is facing, the public sector will not be able to implement large-scale infrastructure projects unless the private sector is invited to participate in financing and operating such projects. As previously shown, PPP can be considered a formula that ensures private participation in infrastructure projects. When infrastructure projects get launched, job opportunities will increase. Building a new power station, for example, provides work for a lot of employees in more than one field, such as banking, economic research and consultancy, and engineering. A new power station not only employs a lot of people, but also produces a service from which everyone can benefit.265 “We won’t be able to offer job opportunities to our citizens without investing in huge infrastructure projects,” said HCP’s Secretary-general Ziad Hayek.266 According to Lebanon Opportunities (2010), not only do PPPs harness the efficiencies of the private sector for undertaking large-scale public works to tackle complex infrastructure projects, “PPPs also create far more jobs than sectors such as hospitality and banking.”267 The socio-economic status of Lebanese citizens who have struggled for years to get employed in their home country will also gradually improve when administering the PPP approach. Not only that, the large number of job vacancies that will be available through a PPP project attracts Lebanese expatriates to come back to Lebanon.


C. Defining Public-Private Partnerships: The Lebanese Perspective

This section undertakes two tasks to define the notion of PPP in the Lebanese context. The first task makes use of the PPP definition provided in the first article of the recent PPP draft law proposal. The second task compares PPP to privatization. This analysis acts as an effective means to distinguish what PPP is and what it is not in the Lebanese context.

1. Defining Public-Private Partnership in Legal Terms

The first article of the recent version of PPP draft law deals with defining, explaining, and clarifying the terms related to public-private partnerships. First of all, it mentions what is meant by each of the terms “public” and “private”. It then defines what is meant by a project company, partnership, and partnership contract. Afterwards, it explains the elements of a typical PPP project. It then indicates the Council that regulates the PPP project.

According to the PPP draft law, a public entity is “the State, public institutions, municipalities, and municipal federations.” While a private partner is “a company or a group of local or foreign companies in the private sphere that has been awarded the

A project company (also referred to as the special purpose vehicle, SPV) is a Lebanese private company (or a consortium of private companies) established for the purpose of the execution of the project by the private partner, and in which the public sector may own shares.

Partnerships are defined as “all forms of collaboration between the public and private sectors for the implementation of the projects that are to be subject to the provisions of the law." Furthermore, a partnership contract is formed between the public entity and the SPV. The agreement must determine the terms and conditions for executing the project as well as the legal framework of the project also in accordance with the provisions of the law. The article ends by specifying that the Higher Council for Privatization would be responsible for regulating the PPP operations. HCP was established by virtue of Law No. 228 on May 31, 2000. According to the PPP draft law, a public-private partnership project(s) must include all of the following elements:

1. Funding
2. Building and/or development and/or renovation and/or rehabilitation and/or equipping and/or maintenance.
3. Investment and/or management of projects that have economic feasibility and serves public benefit.

The PPP operation may also include elaboration of studies and designs related to projects.271

269 Ibid.
270 Ibid.
271 Ibid.
2. What Public-Private Partnership is and What It is Not

The Secretary-General of the HCP, Ziad Hayek, distinguishes the partnership between the private and public sectors from privatization. According to Hayek, “the partnership between the public and private sectors includes the purchase of services by the public sector from the private sector, while privatization refers to the transfer of any government function to the private sector, including governmental functions like revenue collection and law enforcement.”272 He adds that, with privatization, the private sector is solely responsible for securing services to citizens while the public sector’s role is limited to organization and control of project operations. In contrast, PPP requires from the public sector to be responsible for offering services to the citizens in addition to its regulatory and monitoring role.273

Various informants provide a similar perspective. Randa Abousleiman, for example, sees privatization as a process that involves the outright sale of a public service or facility to the private sector while PPP as a process that involves private management of the public service through a long-term contract between a private operator and a public authority.274 Therefore, PPP ensures that the assets would revert back to the state at the end of the duration of the contract, unlike privatization, which leads to the final sale of public


273 Ibid.

assets to the private sector.275 Throughout the duration of the PPP contract, the public partner would be paying the private actor installments, whose amount is indicated in the contract, so that when the deadline of the contract is reached, the public sector would have paid the full amount of the assets used and services produced by the SPV. As such, the public sector would have not sold its assets and facilities to the private sector. On the contrary, it will gain upgraded assets, services, and facilities which would have been managed and operated by a qualified private partner, who is technologically and managerially more advanced that the public sector.276

According to Alain Bifani, PPP and privatization are two different things. Privatization, he said, “is a term that encompasses many types of processes involving the transfer of ownership of a facility from the public to the private sector.”277 In some cases, partial privatization takes place, where the government keeps some shares and sells others to the private sector. In other cases, privatization includes the complete transfer of ownership from the public sector to the private sector. In the case of privatization, as Bifani mentioned, the state has nothing to do with the sold facility afterwards, except its usual monitoring role. PPP, on the other hand, involves a contract that calls for the formation of a company to implement a specific project.278 This contract specifies the duration of the

275 Ibid.


277 Alain Bifani, Director General of Ministry of Finance. Interview by Carla Antar. (December 17, 2010).

278 Ibid.
PPP is not privatization; not its precursor nor its derivative. PPP is not the sale of public assets to a private company. In fact, it is the gradual purchase of services, assets, and facilities from the private company throughout the duration of the PPP contract. It is “a business deal between the public and private sectors created specifically to reach a specific goal for an enterprise.”279 It involves the sharing of risks and rewards between the two actors over a fixed period of time. PPP also deals with output specification. In other words, the public actor informs the private company the specifications of the output required from the private sector to deliver. The public sector does not delve into the intricate details of the method, technique, management, and skills used by the private company as long as it satisfies the specifications and standards of services produced put by the public sector. Furthermore, PPP involves the transfer back of assets and services to the state. Once the contract ends, all services, assets, and facilities will be returned back to the government in a process dictated by the contract. Furthermore, a regulatory authority needs to oversee the PPP operation to make sure that it complies with signed contract in order to avoid disappointments on either side.

PPP projects involve both public and private actors whose relationship is reciprocal, continuous, and enduring. The Lebanese government pays the private partner

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fees for the services it produces and delivers so when the contract ends, the assets and services can be reverted back to the state. PPP relies on the principles of risk-sharing and output specifications to deliver outcomes that fall in the public interest. The above mentioned definition of PPP in the Lebanese PPP draft law to the PPP definition and characteristics previously adopted in this thesis. In addition, PPPs in Lebanon differ from privatization, which also confirms the assumption taken in this thesis that PPPs are neither the derivative nor precursor of privatization.

The Lebanese government perceives PPP as a new formula that can make use of the high liquidity of the banking sector to provide guarantees to the private sector and better quality of infrastructure services to citizens. The weapon the poor Lebanese government can use to ensure fiscal security to the private sector is PPP legislation. Previous PPP projects operated in Lebanon, some of which were discussed previously in the chapter, showed the importance of having such a transparent and fair legislation to ensure the success of PPP projects. When ratified, the law clarifies the basis through which PPP project takes place and gives guarantees to the private company that their money is being invested in a project that has both economic feasibility and public benefit. The next chapter presents a comprehensive evaluation of the recent version of PPP draft law. It brings forth the draft law’s content, as well as the draft law’s points of strengths and weaknesses.
CHAPTER V

A COMPREHENSIVE ANALYSIS OF PUBLIC-PRIVATE PARTNERSHIP DRAFT LAW PROPOSALS IN LEBANON

Prior to 2007, there were no serious talks in the Lebanese Cabinet about having a legal framework for PPP projects. PPP projects were done haphazardly with no specific framework guiding their implementation nor a regulatory authority ensuring PPP projects’ conformity with agreed-upon standards. The pre-2007 experience of PPP was shown to be unsuccessful due to several reasons. One reason is the lack of control and monitoring of PPP project implementation from a certified regulatory authority. Another reason, as mentioned by Diala Shaar, is the lack of a legal framework that both specifies the terms and conditions that need to be mentioned in PPP contract and outlines the basis under which the project needs to take place.\(^{280}\) The main difference between “pre-2007” PPPs and “post-2007” notion of PPPs is the legal touch. This touch was missing from PPP projects in previous years, which is why their success was limited. If there were a PPP law, the obstacles that PPP projects have been facing would have decreased tremendously.

Since 2007, there have been three attempts to pass PPP legislation in Lebanon. Each version of PPP draft law differs from the previous one in minor changes done to some of the draft law’s Articles. The first version of PPP draft law was proposed by Prime Minister Fouad El Seniora in 2007. The second version was proposed by Member of Parliament (MP) Ali Hassan Khalil in March 2010. The third version was proposed by

secretary-general of the Higher Council for Privatization, Ziad Hayek, in August 2010. Versions 1 and 2 were ignored by the Parliament, primarily due to political considerations; whereas version 3 is still being reviewed by public officials and waiting to be either amended or ratified.

This chapter is divided into three sections. The first section presents a snapshot on Lebanon’s political environment since 2005. It is important to understand this environment because politics played a role in the neglect of versions 1 and 2 of the PPP draft law and in the lateness in amending and ratifying version 3. Politicization of PPP draft law has been taking place, which is why understanding the political environment in Lebanon becomes significant. The second section discusses the reasons why earlier versions of the PPP draft law were not ratified. The third section explores the nature of the current (version 3) of PPP draft law. It presents its content, strengths, criticisms, and suggested amendments of the draft law’s text.

A. Lebanon’s Political Environment: Since 2005

The events of February 14, 2005 navigated Lebanese politics into a new direction. The former Prime Minister Rafiq al-Hariri’s assassination on this day changed the rules of the Lebanese political game. Dramatic events began to exacerbate. Several mass demonstrations coupled with street violence took place. A number of political assassinations targeting March 14 (which mainly included parties of the Future Movement, Progressive Socialist Party, The Phalangists, The Lebanese Forces) politicians and supporters occurred repeatedly. Lebanon also witnessed the withdrawal of Syrian troops after their presence in Lebanon since 1990. Other dramatic political events happening after
Hariri’s assassination include: a vacant presidential seat, a parliament that failed to convene, and a civil protest.

The remarkable developments that have happened in Lebanon since 2005 revealed deep divisions in society. The gap between the March 14 coalition and the March 8 coalition (which included Amal Movement, Hezbollah, The Free Patriotic Movement, and other pro-Syrian parties) have widened. The March 14 coalition stood in firm opposition to Syria’s presence in Lebanon, demanded an international tribunal to be established to punish Hariri assassins, and opposed to Hezbollah’s weapons. While the March 8 coalition was pro-Syrian, called for the establishment of a local, rather than an international, court to look into the Hariri’s assassination, and defended the right of Hezbollah to keep their arms.²⁸¹

The antagonism between the March 14 and the March 8 alliances was aggravated by the March 8-led (particularly Hezbollah and Amal) armed uprising against the Seniora government in May 2008, in objection to the government’s decisions to investigate Hezbollah’s phone network and to transfer an airport security chief (allegedly affiliated to Hezbollah) from his position.²⁸² This uprising not only intensified the level of distrust between March 14 and March 8, but also added a new divide to the Lebanese society: a Sunni/Shiite one. The precariousness of the Lebanese political system and the degree to which the Lebanese are not genuinely integrated is due to the ever-existing conflicting attitudes between Christians and Muslims and to the new polarization amongst


²⁸² Ibid; p. 84.
Muslims themselves (Sunnis and Shiites, in particular). The antagonism between Sunnis and Shiites was exacerbated after the May 7, 2008 street fights amongst Hizbullah and Amal (whose supporters are mainly from the Shiite sect), on one side, and Future Movement (whose supporters are mainly from the Sunni sect), on the other.

Two weeks after the clashes in May 2008, leaders from both alliances signed the Doha Agreement under the auspices of the Arab League. The agreement signaled a new chapter in Lebanese politics. The political situation subsequently began to stabilize. On May 25, 2008, General Michel Sleiman was elected as President. A few months later, a new government was formed reflecting the terms of the Doha Agreement. A year later, Parliamentary elections took place and resulted in the winning of March 14 coalition the majority of Parliamentary seats. After weeks of parliamentary and political negotiations regarding the composition of the cabinet, Saad al Hariri, the son of the former Prime Minister Rafiq al Hariri, was appointed as the new Lebanese Prime Minister on September 18, 2009. Months later, a new government emerged comprising 30 ministers, 15 of which represent the March 14 coalition and the Progressive Socialist Party (whose political views recently skewed from that of March 14 coalition), ten ministers representing March 8 coalition, and five ministers representing the President.²⁸³

The political situation since has been regarded as a relatively stable one: the cabinet has ministers representing the different political parties present in Lebanon, no major protests or strikes occurred, and no street violence has been reported. However, this political stability is expected to be shaken again when the International Tribunal announces

its tentative resolution that specifies the party responsible for the assassination of former Prime Minister Rafiq Hariri. Fingers have been pointed towards Hezbollah, after Syria was seen as innocent when the Lebanese government realized that false witnesses have been relied upon as the sole proof to accuse Syria for the past five years. Hezbollah officials will not tolerate any resolution that accuses any of its officials as assassin of Rafiq al Hariri.

On January 12, 2011, Lebanon’s wary political stability was shaken one more time with the collapse of Prime Minister Saad al-Hariri’s national unity Cabinet after 10 ministers from the March 8 coalition and a minister loyal to President Michel Sleiman resigned over the International Hariri Tribunal. March 8 ministers’ resignation showed their refusal of Saad al-Hariri government’s cooperation with the Hariri’s International Tribunal. They want the Cabinet to “stop payment of Lebanon’s share toward the financing of the International Tribunal, withdraw the Lebanese judges from the tribunal, and prosecute the false witnesses linked to the UN probe into Rafik Hariri’s killing.” They regard the Special Tribunal as an Americanized and politicized one whose decision will not be based on a transparent, fair, and accountable study of facts.

Above was a snapshot on Lebanon’s recent political story. The political events make it evident that societal, religious, and political cleavages are widening in Lebanon, despite all international, regional, and national efforts to establish a national unity. Lebanon remains a deeply divided society along sectarian, ideological, and confessional lines.

Antagonism and mistrust between March 14 and March 8 coalitions has been increasing. This has negative repercussions on the country’s operations in Lebanon especially due to the difficulty in achieving a compromise between the two coalitions in any field. The turbulent political situation that Lebanon has been facing since 2005 has played a role in disrupting the process of ratification of PPP draft law. Up till the present days, the PPP draft law is still waiting for its fate to be decided by Parliamentarians, who are busy in solving the many problems Lebanon is facing on the political level.

B. Reasons Behind Neglecting Versions 1 and 2 of Public-Private Partnership’s Draft Laws

Three PPP draft law proposals were submitted to the Parliament since 2007. Two of them were ignored. The third version, which remains in a draft form, is still waiting to be amended and ratified. This section states the reasons behind the neglect of the earlier versions of PPP legislation. It is worthy to note that, unlike versions 2 and 3 of PPP draft law, version 1 was not accessible. Diala Shaar asserts that minor changes between versions 1, 2, and 3 were implemented.\(^{285}\) Since the key components of the three versions are similar, examining the content of version 3 becomes sufficient.


The push for a legal framework for PPP projects started in 2007 when the Lebanese Former Prime Minister Fouad El Seniorea passed the first PPP draft law proposal,

which was drafted by Higher Council for Privatization (HCP). The secretary-general of HCP, Ziad Hayek, assured that it was “due to the tense political and security situation, in addition to the irregularity of Parliament sessions that was prevailing in 2007, that the PPP draft law was not ratified.”\textsuperscript{286} Diala Shaar, added another reason behind ignoring the PPP law in 2007. All draft laws, she stated, passed to the Parliament from the Council of Ministers in 2007 were not taken into consideration by the Parliament Speaker Nabih Berri because he considered the Council of Ministers unlawful at that time due to political clashes between March 14 and March 8 coalitions.\textsuperscript{287} Therefore, the fate of the 2007 version of the draft law proposal was in one of the drawers of the Parliamentary offices.


As soon as the new Council of Ministers headed by Prime Minister Saad al-Hariri was formed in November 2009, the Minister of Finance Rayya El Hassan started drafting the budget for 2010. The budget proposal called for a consensus on public-private partnerships as an alternative to an increase in the Value Added Tax (VAT) from 10\% to either 12\% or 15\%.\textsuperscript{288} According to the economic analyst Ghazi Wazni, an increase in VAT

\begin{footnotesize}
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  \item \textsuperscript{287} Diala Shaar, \textit{Financial Analyst in the Higher Council for Privatization}. Interview by Carla Antar. (December 14, 2010).
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would have had negative impact on the middle and lower classes in Lebanon because VAT leads to inflation, which has tremendous repercussions on Lebanon’s economic growth.\(^{289}\)

According to Zbib (2010), considering PPP an alternative to a VAT increase is one of the reasons that pushed Member of Parliament (MP) Ali Hassan Khalil (who is also the political advisor of the Lebanese Parliament Speaker Nabih Berri) to pass again the PPP draft proposal.\(^{290}\) MP Ali Hassan Khalil asserted that the submittal of PPP draft law on March 30, 2010 is due to the following reasons:

- The financial and economic conditions in Lebanon that lead to an urgent need for cooperation between the public and private sectors to finance large-scale investment projects;
- The absence of PPP framework to monitor PPP projects that have become common in many countries throughout the world;
- The ability to make use of foreign and local investments in projects that both increase productivity and benefit the Lebanese economy;
- The willingness of local and foreign companies to implement large-scale PPP projects, either through financially cooperating with Lebanese private banks or through foreign companies concerned with the project at hand.\(^{291}\)


The second version of PPP draft law integrated minor changes to the first version and was passed to the Parliament on March 30, 2010.\textsuperscript{292} However, these changes cannot be tracked since there was a difficulty in accessing the first version of PPP draft law.

The second version of PPP draft law was also not ratified. Zbib (2010) asserts that the reason behind ignoring the draft law by the Parliament Speaker, Nabih Berri, is that a number of political advisors and consultants close to Berri warned him about the dangers the content of PPP draft law has on Parliamentary authority, which is why it was neglected.\textsuperscript{293} The political advisors regarded that such a law trespasses the Parliament authority all together since it gives HCP full authority in the tendering process and in implementing and overseeing PPP projects, without any mentioning of the need of Parliamentary monitoring and regulatory control.\textsuperscript{294}

Zbib (2010) added another reason for the neglect of the draft law. PPP draft law, he states, allows for a large number of PPP projects to be implemented as HCP sees required without the need of issuing a Parliamentary decree specific for each PPP project. This directly contrasts with what Nabih Berri declared in one of his previous speeches, that each project comprising any type of private sector involvement must have a specific law

\textsuperscript{292} Diala Shaar, \textit{Financial Analyst in the Higher Council for Privatization}. Interview by Carla Antar. (December 14, 2010).


attached to it that indicates the specific terms and conditions under which the project is to be established. This is viewed as another reason for neglecting PPP draft law proposal for the second time.

“The HCP team did not give up,” said Diala Shaar. HCP insisted on passing the PPP law again since many benefits are seen to be awaiting the Lebanese community on both economic and social levels when a comprehensive approach of PPP is adopted. Many remarks targeted the second version of the draft law proposal. According to Shaar (2010), the remarks were taken into consideration by HCP which is why a steering committee has been formed to study these remarks and amend the draft law accordingly. The steering committee was formed incorporating members of HCP team, judges (Mrs. Lara Karam—also the advisor of Minister of Justice, Mrs. Rita Karam, and Mr. Youssef Nasr), and financial, technical, and legal experts who collectively worked on editing the PPP draft law based on remarks previously made on the content of the law. As soon as the changes were implemented, a third version of PPP draft law was ready to be passed to the Parliament. The core content, strengths, and criticisms of the latest version of PPP draft law will thoroughly be discussed in the subsequent section.

295 Ibid.


297 Ibid.
C. Evaluating Version 3 of Public-Private Partnership Draft Law

On August 17, 2010, Assafir, a Lebanese daily newspaper, published the third version of PPP draft law proposal constituting of 15 articles.\(^{298}\) The third version of PPP draft law is similar to the previous versions except for minor changes it has undergone, such as re-ordering of some Articles, adding new Articles, rephrasing existing Articles, and changing some of the content. To start with, version 2 consists of 12 Articles while version 3 consists of 15 Articles. The content of Articles 6, 10, and 11 of version 3 were not mentioned in version 2 (see Appendix). In addition, the content of Article 8 in version 2 was changed. Unlike the content mentioned in version 3 (which will be discussed thoroughly in the next section), Article 8 in version 2 stated that PPP projects must act under the provisions of the PPP law and must comply with the regulations specified by the Council of Ministers in accordance to Article 7 of the law. Another difference between version 2 and version 3 concerns the duration of PPP contracts. The duration mentioned in version 2 was 25 years, while in version 3, it is changed to 35 years. Diala Shaar stated that changes were administered to the content of the second version of PPP draft law to enhance clarity, credibility, and transparency of PPP legislation.\(^{299}\) However, even after amending Articles of previous versions of PPP draft law the content of the current version of PPP


legislation remains controversial.

The evaluation of PPP draft law pursued in this section aims at identifying the strengths and criticisms of the law proposal. As soon as the current version of PPP legislation was published, public officials, economists, politicians, and journalists bombarded it with comments. Some were in favor of the legislation; some were against. Discussion of the different opinions on the draft law will be included in this section.

The first subsection examines the key points of PPP draft law. Thus, it sheds light on the important aspects mentioned in the draft law’s Articles. The second subsection identifies the elements of strengths of PPP draft law. The third subsection assesses the Articles that have been criticized and suggests amendments to them. The analysis takes into account both the essence of PPP in the Lebanese context and the Lebanese political environment in which PPP draft law was initiated. The English version of the law used in this thesis (which was published in Arabic in Assafir Newspaper) is translated by Ditto Translating Agency, with few English language corrections made by the author of the thesis. There is no official English translation of the draft law, which is why Ditto Translating Agency was consulted.

1. Basic Content of the Current Public-Private Partnership Draft Law

The new draft law of establishing, managing, and monitoring PPP projects was submitted to the Parliament by Secretary-General of HCP, Ziad Hayek and was published in Assafir, an official Lebanese Newspaper, on August 17, 2010 (see Appendix). The draft law defines the rules, regulations, and principles that govern PPP projects, including the role of the public person and the project company in operating these projects. The draft law
assigns HCP as the Council whose mission is to follow up the execution of PPP projects, regulates their operations, and assesses their performance according to a set of standards defined by the public sector. Then, the draft law presents the principles that govern the selection of PPP projects, some of which include achieving public benefit and economic feasibility, and filling the gap of public person in the provision of public services. The draft law also stipulates that the Council of Ministers must decree particular statutes that govern the procedure and principles that shall be adopted in proposing and assigning PPP projects, in assessing economic feasibility, in selecting the private partner, and in evaluating performance. Furthermore, the draft law develops a mechanism for choosing the Project Company that operates the PPP project. It emphasizes that the selection of private partner must be based upon the principles of transparency, competition, and equality between the bidders. In addition, the draft law details the specifications of the Partnership Contract that binds the public and private sectors for the fulfillment of PPP project. Next, the draft law requires PPP projects to comply to provisions of Law No. 360 (that deals with encouraging investments in Lebanon) and the Commercial law, with the exception of Articles 78, 144, and 173. More details on both laws will be presented below. Towards the end, the draft law emphasizes that the peculiarities of its enforcement shall be specified through decrees issued by the Council of Ministers upon the proposal of the Prime Minister and the closure of the Council.\(^300\)

2. **Strengths**

Even though comments have been made on the content of PPP draft law, there are points of strengths the draft law demonstrate that are worth shedding light on. The strengths will be thoroughly discussed in this section.

a. **Ensures the Importance of Competition**

Monopolies will be less frequent under PPP umbrella since the legislation in Lebanon ensures in Article 7 that the selection of the private partner shall be based on a tendering process that ensures transparency, competition, and equality between all contestants. The aim of the public entity is to find qualified private operator(s) that can provide best quality of services at a reasonable price. In all cases, the selection should be based on merit. It shall not be biased to powerful private businesses that have strong connections or affiliations to political leaders. Article 7 also mentions that the selection should not target any private company that declared its bankruptcy nor contract a project company whose chairman or board member has been the subject of a verdict for commitment of crime or felony.  

b. **Outlines the Specifications of a Typical Public-Private Partnership Contract**

Article 9 of PPP legislation specifies the terms and conditions that each PPP contract must include. As the Article stipulates, the contract must mention the rights and obligations of each partner involved in a partnership. It must also indicate the works that

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301 Ibid.
every public person and project company shall refrain from executing. The duration of the contract must not exceed 35 years. Moreover, the project funding bases and key performance indicators are to be clarified in the contract, in addition to the amount of installments and methods of payment of these installments by the public entity to the project company in return for performing the works entrusted thereto under the Partnership Contract.

In Article 9, PPP draft law also highlights the importance of risk sharing. The Article emphasize the significance of specifying in the PPP contract the method used to distribute risks between the public entity and the project company, in addition to the measures and procedures to be employed to minimize risks. Article 9 indicates other specifications that the PPP contract must indicate; these specifications are:

- The warranties and commitments that may be granted for the execution of the PPP project.
- The method and timing of transferring the project to the public sector.
- The procedures and penalties that will be imposed on the project company when the latter fails to respect any of its contractual obligations.
- The fund and properties that belong to the public entity and which are placed, contrary to any other text, throughout the partnership period, in the possession of the Project Company for the execution of its obligations, in addition to the rights and obligations of the Project Company regarding these properties and funds.
- The procedures related to ensuring the project continuity and the works that are the subject matter of the partnership upon the end of the partnership contract, upon its term, termination or in case the Project Company fails to fulfill its contractual obligations.
- The procedures followed in settling disputes, including the arbitration and mediation.\(^{302}\)

Having a comprehensible, concise, and clear PPP agreement reduces tensions between the actors involved, making the implementation of PPP project as smooth as possible. Providing general guidelines to draft a PPP contract will play a role in increasing the success rate of a PPP project to render the required public services at an efficient and effective rate.

c. **Gives Assurances to the Private Sector**

Private companies have been reluctant to work with the government in Lebanon. Two main reasons make private companies reconsider the option of going into business with the government. The first reason for reluctance is due to political instabilities Lebanon has been facing throughout the last two decades. To succeed, businesses need to operate in a stable environment. The political turbulence that Lebanon has been facing specifically after 2005 has increased the level of wariness private companies when contracting with the public sector. The second reason is that the public sector in Lebanon has been regarded as inefficient and corrupt. Working with an organization filled with bureaucracy and red tape does not seem to be an attractive option to private companies.

Through PPP legislation, the reluctance of private companies can be decreased by giving assurances to private sector. These assurances are highlighted in Articles 10 and 13. Article 10, and contrary to any other text, allows the Public Person to place at the disposal of the Project Company public real estate required for the execution of the Project for the duration of the Partnership Contract. Furthermore, Article 13 stipulates that the private companies that create the Project Company shall benefit from the provisions of Law No. 360 issued on August 16, 2001 and which are related to encouraging investments in
Lebanon. Investment projects benefit from exemptions, reductions, and facilities according to provisions of Law 360. Accordingly, Articles 10 and 13 provide the private company, adopting a PPP project, assurances for both acquiring public assets, if needed, and for benefiting from the provisions of Law 360.

3. Criticisms

The criticisms the draft law outnumber its strengths. This subsection points out the Articles of PPP draft law that were criticized and suggests, when applicable, some amendments to make the newer version of PPP law acceptable to all Lebanese citizens.

a. Lacking Clarity

Article 1 includes definitions of the terms Public Person, Private Partner, Project Company, Partnership, and Partnership Contract. It also defines the elements that need to be present in a project for it to fall under the realm of PPP. Article 1 assigns the Higher Council for Privatization as the Council responsible for overseeing PPP operations.

Diala Shaar stated that one criticism HCP received targeted the first Article of PPP draft law. The criticism was concerned about considering municipalities and municipal federations as part of Public Person. Municipalities in Lebanon, according to Law 118,

\[303\] Ibid.

\[304\] For more information about Law 360, visit: <www.opportunities.com.lb/Lebanon/Tables/InvLaw360English.pdf>
enjoy legal, administrative, and financial autonomy.  

Mentioning them in the draft law as part of Public Person is regarded as if the municipalities are being forced to be under the influence of the Lebanese Council of Ministers, and thus undermining their autonomous nature. Shaar assured that removing the mentioning of municipalities in the PPP draft law is being studied. The amendment suggested by Shaar is to leave it optional for municipalities to consider implementing PPP projects.

According to Al-Haff (2010), the draft law’s definitions provided in Article 1 are confusing since they lack precision and clarity. Moreover, Abbas Hachem states that the term “Al-Manfa’a Al-A’ammah” or “public benefit” used in the first Article can be defined in many ways, depending on the person’s perspective on what constitutes the public and on what types of goods and services benefit the citizens. Hachem stresses the importance of incorporating a clear legal definition of each contentious term used in the draft law’s text to wipe any confusion on aspects of PPP operation arising in the future.

The Article also mixes defining PPP terms with PPP mechanism. It would have been clearer if the law defined the Public Person, Private Company, Partnership, and


307 Abbas Hachem, *Lebanese Member of Parliament.* Interview by Carla Antar. (December 28, 2010).
Project Company in one article and defined PPP projects’ nature, characteristics, and elements of PPP mechanism (PPP Contract and Council) and the process through which the project is implemented in another Article. This separation will help avoid confusion between defining PPP concepts and defining PPP mechanism.

The definitions provided in Article 1 do not clarify how PPPs differ from privatization. There is no mentioning of the characteristics of PPP in Article 1 that show how PPP is distinguished from privatization. The Article does not mention that PPP includes the buying, rather than the selling, of assets and services from the private sector, nor does the Article mention that PPP includes having assets and services reverting back to the State after the duration of PPP contract expires. Additionally, the Article fails to point out that in a PPP, the public sector informs the private company of the output specifications required from the private company to produce, nor does it mention that the public sector is directly responsible for the services provided to citizens. Pointing out these distinguishing factors of PPP in the draft law is essential to clarify the real meaning of PPP.

b. Lacking Specificity

Article 2 is linked to Article 1. It adds that the provisions of the PPP draft law govern all types of partnerships between the public and private sectors.

Article Two: All forms of partnership between the public and private sectors for the implementation of projects shall be governed by the provisions of this Law as specified in Article One of this Law.

According to Oweis (2010), Article 2 also violates some articles of corresponding enforced laws which determine the codes of conduct of partnership projects
in sectors such as the electricity, telecommunication, and civil aviation. For example, the case of building energy production plants in Lebanon is bounded to specific provisions that the current version of PPP law do not take into account. Therefore, Oweis (2010) sees that Article 2 should be rephrased as follows “all types of partnerships between the public sector and private sector formed to implement PPP projects are subject to the provisions of this law, with the exception of the projects that already have specific provisions attached to them.”

The projects that can be subject to the PPP mechanism include: waste water management, waste management, parking facilities (street and lots), bridges and roads, bus and rail, airports and ports, specialized clinics, hospitals, schools, technical schools, sport venues, garrison, power plants, libraries, fire stations, and jails. The comprehensiveness of the word “all” runs counter to the logic of specificity that each law must have for its efficient and effective implementation. Through mentioning the word “all”, the law fails to mention the types PPP projects to be governed by the provisions of the law. Therefore, it becomes difficult to specify what public goods and services are eligible for PPP legislation and which are not.


309 Ibid.

PPP projects differ in their nature, profitability, usefulness, and the extent through which the citizen can benefit from the goods and services a PPP project delivers. PPP projects, for example, can have varying degrees of financial risks. The establishment of car garages or parking on public property does not involve serious financial and economic risks because the companies are directly receiving money from the costumers using these services. In contrast, the case of establishing a power production plant imposes complex levels of financial risks on the government, where the government pays the private company money from the State Treasury, even if the government does not receive any kind of levy from the power plant. In this case, the government acts as a financial guarantor for the private company to ensure that the private company does not become subject to any risk. There are projects, like building of garrisons and jails, where the government does not collect money from their users. Their contracts operate by stating a ceiling for public money to be used in a project. Therefore, financial risks (as an example of a differentiating factor between PPP projects) differ from the projects discussed above. The draft law fails to mention the distinguishing factors between the different PPP projects. Identifying those factors is crucial to set the right frame for PPP operations.

c. Stating Economic Feasibility as A Pre-Condition for Public-Private Partnership Projects

Article 3 sets the characteristics that need to be taken into account when selecting a project to be subject to a PPP framework.

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311 Ibid.
Article Three: The following principles shall govern the selection of projects to be implemented:

1- Achieve public benefit.
2- The project is needed by the public sector to fill the gap in the provision of public services.
3- Achieve economic feasibility and cost-effectiveness.
4- The advantages of implementing the project through partnership, and the reasons.

Article 3 stipulates that for a project to be eligible for PPP, it must achieve public benefit and much be economically feasible. In addition, the advantages in implementing the project through partnership must outweigh the advantages of implementing the project exclusively through private or public organizations. The project must deliver goods and services that the public sector cannot deliver on its own due to the gaps it has on financial and administrative levels.

An economic feasibility study is a vital element often completed prior to funding approval of a given project. Economic feasibility studies estimate total project earnings, total project costs, risk factors, cost benefits, and the viability of a project before financial resources are allocated to a given project. On the other hand, achieving public benefit through a project means that the project, through its deliverables, improves the social, economic and cultural well being of the society. Usually PPP projects produce public goods and services produced to benefit all their users. They are non-excludable, which means that if provided to one person, they become available to all with no exclusion

made to any person in society. The draft law fails to clarify the meanings of economic feasibility and public benefit.

Oweis (2010) sees that having economic feasibility as a condition for implementing PPP project is erroneous. Serving public interest should be the sole concern of the public sector. Achieving public benefit should always be the overwhelming condition in entering in a partnership with the private sector, no matter what economic feasibility of such the project is. The public sector’s ultimate concern is to serve public interest, whether or not the project leads to any economic benefit. It is the responsibility of the private companies to study the economic benefit of the specific project. Accordingly, the private companies have the freedom to decide whether to accepts the PPP contract. The private company that sees that the economic feasibility of the project matches its goals and financial standards will then present itself as a potential candidate for the project. Therefore, the public sector should not have economic feasibility as a pre-condition in implementing PPP projects that produce goods and services for the whole society. The primary concerns of the public sector must be focused on both achieving public benefit and offsetting its financial and administrative burdens. Eliminating the condition of economic feasibility of PPP projects is a suggested amendment that can be taken into consideration by HCP team when revising the current version of PPP draft law.


314 Ibid.
d. Assigning the Higher Council for Privatization as the Regulatory Authority

   The draft law also contributes to the establishment of the Higher Council for Privatization (HCP). The HCP’s duties and responsibilities include setting general privatization policies and means of implementation, preparing draft laws required for privatization programs, evaluating assets and properties of the public entity, and establishing timetables for privatization operations.\footnote{315} HCP is headed by the Lebanese Prime Minister and composed of four permanent members namely Ministers of Finance, Economy and Trade, Justice, and Labor. Each Minister in charge of a sector (be it Telecommunications, Energy and Water, Health, or Public Works) joins the Council as a member of the HCP team when the sector undergoes privatization. HCP plans, initiates, and implements privatization programs, that are seen to increase efficiency and productivity of public services, encourage foreign investment, reduce public debt, and catalyze economic growth.\footnote{316}

   Articles 5 and 6 specify the responsibilities of the Higher Council of Privatization. Unlike PPPs previously implemented in Lebanon, future PPP projects require a regulatory authority that supervises, follows up, and oversees the implementation of the projects. The PPP draft law assigns HCP to be the regulatory and monitoring authority of PPP operations.

   According to the draft law, HCP is the regulatory body that is to receive the initiatives provided by the public entity to execute projects through the partnership. HCP


\footnote{316} Ibid.
can also propose projects that are worth implementing in a PPP framework and submit them to the concerned Public Person. HCP then assesses the technical and economic feasibility of the projects and coordinates with Ministry of Finance to study the impact of the project on the public budget. HCP also elaborates the Request for Proposals\textsuperscript{317} (RFP or \textit{dafatir shorout}) and the partnership contracts in collaboration with the Public Person responsible for PPP project. Afterwards, HCP organizes and manages the procedures of selection of the private partner pursuant to the provisions of the PPP Law.\textsuperscript{318} HCP transfers the files containing the feasibility study and the RFP to the Council of Ministers to obtain its approval of the project flow and progress, provided that the partnership contract, in its final form and after the signature of the concerned parties, is ratified by the Council of Ministers.\textsuperscript{319}

Once the PPP project gets launched, HCP needs to follow up its execution and assess the performance of the Project Company. For this purpose, it may require from the Public Person and/or Project Company to provide it with the necessary information, documents, and reports related to the execution of the partnership contract. HCP makes

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317 Request for Proposal (RFP) is when an invitation is issued to suppliers to submit a proposal on producing or delivering a specific good or service. This proposal indicates the background of the organization that issued the RFP, purpose for requesting the proposal, technical specifications to be met by the supplier to ensure benefits, and selection criteria. Check \url{www.worldcommunitygrid.org/bg/rfp.pdf} for an example of a typical RFP.


319 Ibid.
\end{flushright}
sure that the project company and the public entity meet the terms and conditions mentioned in the PPP contract.\textsuperscript{320}

Throughout the implementation of PPP project, HCP will express its opinion and provide feedback regarding the execution of the partnership contract in the light of the information and reports available from the concerned Public Person and Project Company. Accordingly, it will also elaborate annual reports to the Council of Ministers regarding the projects that are going to be executed through partnership and submit propositions aiming at developing and fostering the partnership in general.\textsuperscript{321}

Even though ensuring a regulatory framework is vital for the success of PPP projects, the current PPP draft law centralizes the auditing and regulatory authority to HCP, which is regarded by some Lebanese citizens as a politicized body that works to fulfill interests of the Prime Minister and his associates. “Giving HCP the upper hand in supervising, preparing, regulating, and executing PPP contracts raise suspicion to many concerned Lebanese citizens,” said Kamal Hamdan.\textsuperscript{322} HCP was created to monitor and regulate privatization projects as indicated in Law 228. The Law does not mention any role of HCP in PPP projects. Therefore, further clarification is needed to explain why HCP is adopting a PPP law, specifically when HCP’s secretary-general always mention that privatization is different than PPP. Kamal Hamdan suggests that rather than HCP being the

\textsuperscript{320} Ibid.

\textsuperscript{321} Ibid.

\textsuperscript{322} Kamal Hamdan, \textit{Head of Economic Division at the Consultation and Research Institute}. Interview by Carla Antar. (December 27, 2010).
body that regulates PPP operations, a new independent body must be created to monitor for PPP projects to be named, for example, Higher Council for Public-Private Partnerships.\footnote{Ibid.}

Abbas Hachem also drew concerns on giving HCP the ultimate regulatory authority in PPP operations. First, according to Hachem, none of HCP members are hired based on mechanism usually used for appointment of public employees. Furthermore, HCP is directly influenced and managed by the Prime Minister, Saad al Hariri, who represents a powerful business cartel in Lebanon.\footnote{Abbas Hachem, \textit{Lebanese Member of Parliament}. Interview by Carla Antar. (December 28, 2010).} Second, Hachem is against having HCP subject to the will of Prime Minister. It is erroneous to have the same public body both execute and regulate PPP projects. According to Hachem, separation of tasks is essential. The party responsible for executing PPP projects should not be the one also regulating, monitoring, and overseeing the implementation of these projects. Due to these reasons, Hachem draws large question marks on Article 5 and 6 of the draft law because they give a controversial organization such as that of HCP the upper hand in handling PPP projects.\footnote{Ibid.}

Opponents of privatization programs regard PPP as disguised privatization\footnote{Mohammad Zbib. “Public Private Partnership Draft Law: A Legislation that Opens Doors to Political Corruption.” \textit{Kanoun al-Sharaka Maa Al-Kitaa al Khass: Tashree’ Abwab al Fasad al Siyassi}. \textit{Al-Akhbar Newspaper}. August 24, 2010. http://www.al-akhbar.com/ar/node/203414 (accessed December 6, 2010).}; having HCP regulate it further increases their opposition to PPP. Furthermore, the draft law provokes a number of Lebanese citizens specifically because the law was drafted by a
body that lies under the direct supervision and control of Saad al-Hariri, a member of March 14 coalition who also happens to be the HCP’s President. There are a number of Lebanese citizens, politicians, and analysts who do not trust the Prime Minister’s intentions in encouraging projects that satisfy the needs of all Lebanese citizens, primarily due to political considerations. Additionally, the former Minister of Finance Elias Saba sees PPP as one of the most dangerous projects because it is a new attempt to overcome the obstacles that stand in the way of certain political figures to seize what is left of public resources for their private gains.\(^{327}\) Others actually go as far as to see the PPP law as a tool used by the Prime Minister and his associates to fill their pockets with extra millions of dollars.

According to Zbib (2010), the law opens the door to a new phase of political corruption through the transfer of what have remained of the functions, tasks, and assets of the state to the private sector, which is in the hands of few powerful businessmen in Lebanon. The law is seen to allow the maximization of the private benefits of the few businessmen in Lebanon.\(^{328}\) Consequently, large question marks are to be drawn on the extent to which such a PPP law serves its purpose in promoting economic, infrastructure, and social development to all Lebanese citizens if the regulatory authority is given to HCP, which some (mostly opponents of Prime Minister al-Hariri) view it as a politicized body.

\(^{327}\) Ibid.

\(^{328}\) Ibid.
e. Not Mentioning the Notion of “PPP Unit”

When asked about criticisms that HCP received concerning PPP draft law, Diala Shaar said that there were a number of criticisms targeting the notion of having a centralized PPP unit.\(^{329}\) Even though the concept of PPP unit is not clearly mentioned in PPP draft law, it is worth shedding light on since Ziad Hayek has been pushing for the creation of a single inter-ministerial PPP central unit in the government.\(^{330}\) PPP unit falls under the auspices of HCP. It consists of a team of experts specialized in field which the partnership project is operating on. This team works across the concerned ministries, financing banks, and lawyers. Hence, PPP unit acts as a liaison between the ministry adopting the project and the Higher Council for Privatization. The PPP unit prepares tender specifications, divides the risks of a project between the ministry and the private partner, and ensures that the implementation of the PPP project is taking place based on legal and professional standards.\(^{331}\)

In Lebanon, the Minister is the sole authority responsible for his ministry, “Al Wazeer Sayyed Wezaratheh” (a minister is the master of his/her ministry).\(^{332}\) Shaar stated that some view having a centralized PPP unit (that is influenced by HCP) undermines the


\(^{330}\) *Lebanon Opportunities*. "PPP: The Nitty Gritty From Financing to Contract Negotiation, Successful PPP is all in the Details." December 2010, p. 49.


powers and authority of the Minister in his Ministry. Therefore, rather than being centralized, Shaar stated that there were calls to having decentralized PPP units (also called nodal PPP units) in each Ministry. Ziad Hayek affirms that having a centralized PPP unit does not mean the role of the ministry has declined. Actually, Shaar stated that having a separate centralized PPP unit increases efficiency and effectiveness in implementing PPP projects more than decentralized PPP units. In fact, a centralized PPP unit fills the gaps in technical expertise that the ministries have in advanced and complex infrastructure operations. It also helps the ministry in making balanced PPP contracts and allows the ministry to gain access to the best private operator in the field under study. According to Hayek, having a centralized PPP unit is compelling especially that financiers are “more comfortable dealing with an entity that is close to the higher authority of the state.”

The importance of PPP unit in the formation and implementation of PPP projects makes it worth mentioning in the PPP draft law. Since there are controversies revolving around the notion of PPP unit, PPP draft law must be amended to add an Article that defines PPP unit, explains the mechanism used to establish PPP unit, describes the unit’s duties, obligations, and responsibilities, and clarifies its importance and implications.

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333 *Lebanon Opportunities*. "PPP: The Nitty Gritty From Financing to Contract Negotiation, Successful PPP is all in the Details." December 2010, p. 49.


335 *Lebanon Opportunities*. "PPP: The Nitty Gritty From Financing to Contract Negotiation, Successful PPP is all in the Details." December 2010, p. 49.

336 Ibid.
on PPP projects in Lebanon. Not mentioning an important aspect such as that of PPP unit, in the draft law makes the draft law susceptible to criticisms.

f. **Overriding Parliamentary Authority**

The PPP draft law proposal allows many PPP projects to operate without the need to have a specific law for each PPP project. This fact has previously been regarded as a criticism by some politicians and legal experts, which is one reason why version 2 of PPP draft law was previously ignored. However, Diala Shaar sees that allowing PPP projects to operate without the need to wait for Parliament to ratify a law specific to each project, increases the efficiency in rendering public services. It takes a long time for a draft law to get ratified in Lebanon due to political instabilities and inefficiencies present in the public bureaucracy. If each project needs to wait for a specific law ratified from the Parliament in order to start operating, then it will take forever to launch any PPP project.

Randa Abousleiman, the managing partner of Abousleiman and Partners Law Office who has been working closely with HCP on the PPP draft law, said, “we’ve been trying to find a law so PPPs do not need a new law every time.”

The feasible solution to overcome the hurdles and inefficiencies to pass a law for each PPP project was to have a private company (referred to as the project company in the PPP draft law) that acts on

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338 Ibid.

339 Lebanon Opportunities. "PPP: The Nitty Gritty From Financing to Contract Negotiation, Successful PPP is all in the Details." December 2010, p. 49.
behalf of the state. Articles 10 and 12 of PPP draft law show how the Private Company can act on behalf of state. Article 10, for instance, stipulates the Public Person can place at the disposal of the Project Company the public real state that is required for the execution of the Project. In addition the private company, as Article 12 of the PPP draft law stipulates, can collect the fees and taxes for the PPP project in the name and for the account of the concerned public person, by virtue of a decree issued in the Council of Ministers.

Even though Abousleiman and Partners Law Office sees PPP draft law conforming to Article 89 of the Lebanese Constitution, Assafir and Al Akhbar Newspapers had articles mentioning that the PPP draft law trespasses Article 89 of Lebanese Constitution, by giving HCP and the Council of Ministers the authority to give decrees to PPP projects, without consulting with, or getting the consent of, the Parliament. Clarification on this issue needs to occur to avoid further controversy on the extent to which the PPP draft law conforms to Lebanese Constitution. It is worthy to note that Article 89 allows the exploitation of the natural resources of the country and of public

340 Ibid.


utility services only through a contract or concession granted by virtue of a law and for a limited period of time.  

Randa Abousleiman’s Law Office, in contrast to what the articles in Assafir and AlAkhbar Newspapers mention, sees PPP legislation matching Article 89 since it is through a PPP contract (that is emphasized in the PPP draft law) signed by the concerned project company and public body that a private project company uses a public utility services or resources for a limited period of time. In fact, by creating a project company, the current PPP draft law legally overrides the inefficiencies of the Lebanese government to ratify a law for each PPP project so that the implementation of these projects can take place at a faster rate.

The PPP draft law proposal does not specify any role to the Parliament throughout PPP operations, which according to Alain Bifani, raises further doubts on the extent to which the law acts as a tool to fulfill certain private goals. Article 4 in PPP draft law gives the Council of Ministers the authority to decree the particular statutes that govern the PPP project without any mentioning of Parliamentary consent or supervision of this process. In addition, and as previously mentioned, allowing many PPP contracts issued

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345 Lebanon Opportunities. "PPP: The Nitty Gritty From Financing to Contract Negotiation, Successful PPP is all in the Details." December 2010, p. 49.

346 Alain Bifani, Director General of Ministry of Finance. Interview by Carla Antar. (December 17, 2010).
under the provision of one PPP law undermines Parliamentary regulatory authority and supervision. This calls for the revisiting of the current PPP law so that it includes Articles that specify the role of the Parliament in implementing PPP projects.

g. Allowing the Exemption of Three Articles of the Commercial Law

Article 8 sees the formation of an SPV, a private company established for a specific purpose, a condition for creating a PPP project. It states that the private partner, selected to manage the PPP project, shall establish a Lebanese project company subject to the provisions of the Commercial Law but exempted from the application of the provisions of Articles 78, 144, and 173.

The exemption from Articles 78, 144, and 173 of the Commercial Law specified in Article 8 made it subject to criticisms. Article 78 of the Commercial Law stipulates that any public service must have at least one-third of its shares owned by Lebanese. Article 144 of the Law of Commerce stipulates that the majority of Board of Directors of a private company must be holders of the Lebanese nationality. Rather than necessitating public sector ownership and majority in Board of Directors, Article 144 stipulates that the public sector may own shares in the company and must be represented by at least one member in the board of directors in the Project Company. Article 173 of Law of Commerce stipulates that an extra supervisory commissioner is to be selected from the panel of chartered accountants approved by the Court of primary jurisdiction, for two months following the formation of the company. This commissioner is added to the group of supervisory
commissioners that regulate the work of the company and whose contract’s duration is for one year (that can be renewable).347

Article 8 also allows the General Manager of the SPV not to have a work permit, if he is foreigner. Consequently, Article 8 allows the private operator to be a purely international company without necessitating the need to have a Lebanese share in this private company. This fact worries Abbas Hachem when he see that a Lebanese law allowing the management, operation, and development of public assets, services, and facilities by fully foreign companies without necessitating any Lebanese governmental ownership.348 Hachem asserts that being jointly owned by Lebanese and foreign companies is an acceptable option, but “allowing full ownership of public assets and operations by foreign company draws large question marks.”349

h. Allowing the Exemption of the Bureau of Accounts’ Control

The draft law, in Article 8, exempts the Project Company from the control of the Bureau of Accounts (Diwan Al Muhasaba), making HCP the sole regulatory authority supervising PPP projects. The Bureau of Accounts is an administrative court that falls under the direct supervision of the Prime Minister. The Bureau of Accounts supervises how public funds are managed by municipalities, state departments, and public enterprises. It


348 Abbas Hachem, Lebanese Member of Parliament. Interview by Carla Antar. (December 28, 2010).

349 Ibid.
ensures that funds deposited in the Treasury and public funds spent are used in a legal, transparent, and efficient manner.  

Hayek justifies the reason why PPP’s Project Companies are exempted from Bureau of Accounts’ control by saying that the Project Company is a private company and private companies do not fall under the realm of Bureau of Accounts, based on the provisions of Law 132.  

Alain Bifani and Kamal Hamdan find it unprofessional for the Ministry involved in PPP project to choose a PPP project (since it has become a member of HCP), to choose the private partner, and at the same time to regulate the PPP operation. The transparency and accountability of the regulatory authority becomes suspicious and questionable when the same party that is regulating and overseeing a PPP operation is taking part of that of the operation. Article 8 undermines the need to have an independent regulatory authority of PPP operations by denying the Lebanese Bureau of Accounts Control from overseeing PPP operations, specifically from a monetary perspective.

The PPP draft law does not mention any auditing authority that can replace the Bureau of Accounts to oversee PPP operations. Confining regulatory control of PPP operations to HCP is seen to be inaccurate by some public officials for two main reasons.

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The first reason is that HCP does not have the adequate auditing techniques to oversee complex projects such as those of PPP operations. The second reason is that HCP is regarded by some politicians as a politicized body that falls under the realm of Prime Minister, who is affiliated with March 14 coalition. Specifying an independent governmental auditing and regulatory authority to supervise PPP operation in particular is recommended in PPP legislation.

4. Analysis

When put in the appropriate legal frame, Lebanon would reap many benefits from PPP on economic, budgetary, and service delivery levels. Today, the dispute over PPPs in Lebanon does not target the concept of PPP per se as an effective approach to deliver public goods and services. Rather, the dispute targets the PPP draft law. Once the criticisms on the PPP draft law are dealt with, through the amendment of its articles, dispute over PPP will gradually fade.

None of the data collected for this thesis intrinsically criticized PPP as a promising solution to infrastructure problems in Lebanon. Actually, some of the data presented criticisms that targeted the content PPP draft law rather than the notion of PPP. The article written by Hassan Al Haf (2010), for example, criticized the lack of clarity the definitions mentioned in Article 1 has. The same article also mentions what Ziad Hayek

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asserted, that when amendments are applied to the current version of PPP draft law, there would be no substantial drawback of the PPP process, if of course operated in the correct framework and under the scrutiny of a qualified regulatory authority. Furthermore, Al Haf’s article presents the comments the Minister of Telecommunications in Lebanon, Charbel Nahhas, on PPP draft law. Nahhas said that the draft law must undergo several amendments in order to reap the benefits attached to any PPP process.

The criticisms mentioned in another article written by Sabine Oweis also targeted the content of PPP draft law and not the notion of PPP as an innovative tool to improve public service delivery. In her article, Oweis mentions the Articles that needed amendment. Her criticisms of Articles 1, 2, 5, and 8 were discussed previously in this thesis in the section entitled Criticisms.

Similar to Al-Haf and Oweis’s articles, Mohamad Zbib’s article also included criticisms that only focused on the content of the PPP draft law, without mentioning any drawbacks PPP has if the current PPP legislature gets amended. Zbib’s comments were focused on Articles 1 and 8 of PPP draft law.

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353 Ibid.  
354 Ibid.  
El Khatib (2010) mentioned in his article the comments that the Secretary-General of the Lebanese Banks Association, Makram Sadr, has on the current version of PPP draft law. The Lebanese Banks Association, said Sadr, “studied the PPP draft law and has no fundamental objections to it.” Therefore, Sadr is with the notion of PPP, even if he has comments on its draft law. Sadr mentions that PPP draft law sets the general framework of PPP operations which, according to him, is necessary but not sufficient for a complex operation such as that of PPP. Sadr suggests more scrutiny of details of the wide range of contracts that PPP processes involve; such scrutiny is important to ensure the success of PPP project. Sadr suggests an important amendment to be made to the PPP law legislation. He argues that conflicts might arise throughout the implementation of PPP projects even with the presence of a transparent PPP legislation. Thus, conflict resolution will be required through arbitration to settle the disputes that might evolve between the actors involved. The methods for arbitration and conflict resolutions to be used in PPP operations must be clearly stated in the PPP legislation, according to Sadr, in order to avoid any intricacies PPP project might face that would impede its operation.


358 Ibid.

359 Ibid.
In addition to the data collected from Lebanese newspaper articles, the interviewees also ensured that PPPs will not have any significant drawbacks if its legal framework and contractual basis were agreed-upon in a fair, transparent, and accountable manner. Furthermore, the interviewees were not against the notion of PPP per se, but rather had concerns on the draft law and the mechanisms of PPP implementation.

When asked if they are with the notion of a comprehensive approach of PPP in Lebanon, Kamal Hamdan and Diala Shaar answered, “yes, if…” Kamal Hamdan asserts that one cannot be with the notion of PPP in general; each PPP project needs to be studied on financial and social basis and accordingly one deduces if PPP is the proper means to be used or not. In other words, PPP projects need to be independently studied in terms of their specifications, objectives, and benefits before deciding whether or not PPP is a favorable option. “I can say that I am with PPP only if each PPP project is overseen by a professional regulatory authority that studies the project in terms of the levels of risks and amount of costs it imposes on the government throughout the implementation of project,” Hamdan said.\textsuperscript{360} Kamal Hamdan is also concerned about giving HCP the upper hand in regulating PPP projects. He adds that giving authority to a body responsible for privatization "implicitly orients PPP projects towards privatization path."\textsuperscript{361} In parallel, Diala Shaar said that “PPP is a win-win solution to both public and private actors involved if the PPP project

\textsuperscript{360} Kamal Hamdan, \textit{Head of Economic Division at the Consultation and Research Institute}. Interview by Carla Antar. (December 27, 2010).

\textsuperscript{361} Ibid.
is implemented in a transparent way."

In fact, Diala Shaar saw PPP as an attractive option that acts as a middle ground between the inability of the Lebanese state to finance and manage infrastructure projects and the failing privatization efforts Lebanon has been facing. Similarly, Abbas Hachem said “I am not against the law, I am against keeping it vague as it is.” Hachem argues that PPPs have no negative aspect if public and private goals complement to serve the public interest. According to Hachem, “PPP becomes dangerous if public and private sectors meet for erroneous goals and become partners in stealing public money.” Hachem acknowledges the benefits of PPP. He mentions that PPP improves the economic status of Lebanon in addition to ensuring infrastructure development. Hachem sees that the lack of trust and agreement present among Lebanese politicians impedes any PPP implementation. Therefore, Hachem stresses the importance of instilling trust among Lebanese politicians, wiping the confusion on the content of PPP draft law, and reaching an agreement between different parties concerning the notion of PPP so that Lebanon reaps PPP’s benefits.

The concerns of Hamdan, Shaar, and Hachem are directly related to PPP draft law, rather than on the notion of PPP. Hamdan is concerned about assigning HCP as a

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363 Abbas Hachem, *Lebanese Member of Parliament*. Interview by Carla Antar. (December 28, 2010).

364 Ibid.

365 Ibid.

366 Ibid.
regulatory authority for PPP operations, Shaar is concerned about the implementation of the content of PPP law in a transparent manner to ensure the reaping of PPP benefits, while Hachem is concerned about the vagueness of the content of the draft law.

The reason why an interviewed public official, who refused his name to be mentioned in the thesis, is against PPP is because he does not trust the intention of the government in using PPP as a tool for public interest but rather as a money-making tool used by the powerful billionaires for their private gains. One of the major criticisms he had was also on the PPP draft law when giving HCP ultimate authority in choosing, organizing, and regulating PPP projects. This is because HCP is directly associated with Saad al-Hariri who, to the public official, is seen to serve Hariri’s interests and the interests of his affiliates, rather than the public interest. Modifying HCP’s role in the draft law might make the notion of PPP more receptive to the public official.

There was no mentioning in any reviewed article or interview conducted for the purpose of this thesis of any significant negative effect PPPs might have on the delivery infrastructure, if of course put under the influence of a legal framework that ensures Parliamentary authority is not trespassed, guarantees effective regulatory authority, and revisits the above mentioned criticized Articles. Impediments of PPP previously mentioned in this thesis (such as increasing costs on both parties involved in PPP operation, conflicts of interests between public and private sectors, and organizational difficulties) were not dwelled upon neither in newspaper articles reviewed nor in interviews conducted for this thesis when dealing with the case of Lebanon, perhaps because attention is being directed towards PPP draft law than notion of PPP. Today focus of PPP debate is on the content of PPP legislation, not on the notion of PPP. Therefore, one can deduce the notion of PPP
approach is not being criticized. Controversy is rather directed towards the different implications the current version of the law might have on political and economic levels.

This chapter explained the reasons why versions 1 and 2 of PPP draft law were ignored, after presenting a snapshot on Lebanon’s political environment. Then, the chapter moved to specify the points of strengths the current version of PPP draft law has. No law is void from criticisms. This chapter examined the criticisms the latest version of the PPP legislation witnessed from politicians and legal experts since its launching in Assafir Newspaper on August 17, 2010. Criticisms primarily targeted the content of the law and its implications on Lebanese citizens.

If concerns made on the text of PPP draft law get clarified and answered by HCP team, the notion of PPP would become more receptive to Lebanese citizens. The criticisms mentioned in this chapter require the revision of the current PPP draft law. Up till the present days, PPP legislation is still awaiting for its amendments to be applied so that a PPP law becomes eligible in giving the green light for PPP projects to get launched. The next chapter delves into the future. After discussing the potential benefits and weaknesses of the notion of PPP in Lebanon in this chapter, the concluding chapter brings forth recommendations that ensure the transparent, fair, and accountable implementation of PPP projects in Lebanon.
CHAPTER VI
CONCLUDING REMARKS

This concluding chapter is divided into three sections. The first section summarizes the research findings by revisiting the research questions addressed in chapter one. The second section suggests recommendations to improve the implementation of PPP projects that are going to be launched in the near future in Lebanon. The last section discusses the implications of this thesis on future research.

A. Research Questions: Revisited

This section summarizes the findings by specifically revisiting each of the three research questions this thesis aimed at answering.

- Why is there an increasing attention on public-private partnerships in Lebanon today?

  The thesis found that there are three main reasons behind the increasing attention on PPP today. First, the attention on PPP is due to realizing the importance of adopting a legal framework that regulates PPP operations in Lebanon today. Having a legal framework is important to ensure the effective and efficient implementation of PPP projects. Since Lebanon lacks a legislation specific to PPP projects, attention is now being paid to ratify a transparent PPP law. Second, and similar to what has been stated in the literature review of this thesis, Lebanon accounted to an increasing call for PPP because it is seen as an alternative to failing privatization efforts. Third, the recent advancement of PPP approach is also due to the potential benefits it can yield to Lebanon. PPP approach
acts as an effective tool to relieve Lebanon’s financial burdens. Private sector involvement through PPP provides better financing for large-scale infrastructure projects, that the Lebanese government cannot afford. Additionally, PPP is seen to ensure on-time and on-budget completion, to provide funding for costly projects, to provide advanced technical expertise, to foster economic development, and to create new job opportunities for Lebanese citizens.

- What are the strengths and weaknesses of PPP draft law?

The thesis presented the content of draft law and examined its points of strengths and weaknesses. The points of strengths of the draft law were found to be Articles 7, 9, 10, and 13. These Articles outline the specifications of a typical PPP contract, ensure competition, and give assurances to the private sector respectively. The thesis found that a number of criticisms targeted the content of the draft law. These criticisms outnumber the strengths that the content enjoys. The criticisms were mainly directed towards Articles 1, 2, 3, 5, 6, and 8. Article 1 was seen to lack clarity. Article 2 failed to specify the types of PPP projects that fall under the influence of the draft law. Article 3 states economic feasibility as a precondition for a project to be eligible for PPP; however, the government should only focus on public benefit when pursuing a PPP project no matter what the economic feasibility of the project is. Articles 5 and 6 centralize the regulatory authority in the hand of HCP, which raised suspicion of Lebanese officials who regard HCP a politicized, rather than an independent body. Article 8 was targeted because it allows exemption of three Articles of the Lebanese Commercial Law.

Since Articles of PPP draft law are subject to controversy, considering PPP draft law as accountable, fair, and transparent remains inaccurate. When applicable, the thesis
suggested amendments to criticized Articles of draft law. Further legal studies must be done to ensure that the criticisms and concerns are tackled to secure fairness, accountability, and transparency of PPP law.

• Is public-private partnership a feasible policy option to consider in the quest of improving the delivery of public services in Lebanon?

In an attempt to figure out if PPP approach is the right option, this thesis examined the potential benefits and weaknesses of PPP approach. It showed that many potential benefits are attached to the PPP approach, some of which were thoroughly tackled in this study. PPP was found to ensure on-time and on-budget completion, private funding and technical expertise, economic development, and job opportunities.

The thesis pointed to the fact that the weaknesses of PPP mentioned by Lebanese articles and public officials are primarily focused on PPP draft law. The thesis showed that PPP operation does not pose tremendous risks on government if put under the right legal framework and if regulated by a professional authority especially that the Lebanese government lacks both the ability to costly projects and the administrative capability to operate and manage complex and advanced infrastructure projects. Additionally, the privatization formula adopted in Lebanon to invite the private sector to provide infrastructure projects failed to reap desired outcomes, which is why attention is being focused on PPP as the alternative option.

With a corrupt, inefficient, and indebted Lebanese government on one hand, and failing privatization efforts on the other, PPP acts as an attractive option today since it is seen as a compromise between state failure in financing and delivering infrastructure services and outright privatization—that has been a debated issue in Lebanon for years.
Consequently, the Lebanese government must consider PPP as an option, given the turbulent economic and financial conditions the country has been baring for the last two decades. PPP is an approach that allows the marriage between the public and private sectors. Each sector has a set of goal that distinguishes it from the other. The government’s goal is to serve the public interest, create job opportunities, relieve financial burden, and distribute public goods and services equally among the population. The private sector’s main goal, on the other hand, is to make profit through introducing advanced managerial and economic technologies. Striking a balance between the different goals is critical to sustain the effective execution of PPP projects. Other recommendations will be discussed in the next section.

**B. Recommendations**

Public-private partnerships have been gaining wide interest throughout the world especially for infrastructure development. The utmost justification for the government to enter into a partnership with the private sector is usually financial. The participation of the private sector in the provision of public goods play a vital role in offering the government a source of funding, which in return, help mitigate financial pressures governments face. Other subordinate justifications that countries might have when taking the PPP approach are: to improve the performance of the public sector; to deliver improved public services in terms of quality and quantity; to make for unsuccessful

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privatization efforts; to ensure better planning; to encourage competition; to reduce inefficiency in the provision of public goods; and to reduce the risks associated with delivering a good or service.

By itself, PPP cannot guarantee the relief of financial burden and the efficient and effective provision of low-cost and high-quality services. Public-private partnership is a complicated issue that should be placed in the proper economic, legal, and political context to meet the requirements of the process of building, rehabilitation, and managing an infrastructure project. It is only under the right conditions that PPP represent a win-win scheme bringing together the expertise of the government and the private sector to meet the needs of the public in an efficient and effective manner. In addition to the amendments proposed to PPP draft law mentioned in the previous chapter to ensure a transparent legislation, this section presents a list of recommendations that need to be taken into account to ensure the successful implementation of PPP approach in Lebanon.

1. Incorporating Administrative Reforms

Through working on the ratification of a PPP law, the Lebanese government is on the right track in ensuring successful PPP implementation in the future. However, having a transparent legal framework for PPP is a necessary but not a sufficient condition. Even if the Lebanese government is ready to support a comprehensive PPP approach to deliver public services, it does not necessarily lead to the success of PPP project. Other efforts need to be ensured to guarantee PPP’s achievement of desired results.

PPP efforts will not yield positive results if not supplemented with extensive efforts in implementing administrative reforms to eliminate corruption and nepotism in
public sector. In addition, the Lebanese government must develop the adequate capacity and skills to cope with technologically advanced PPP projects. The Lebanese government must also have clear channels of responsibility and accountability to oversee these projects. Public sector reforms give the government the tools to play an active role in PPP processes to ensure better quality of services, more efficiency in service delivery, and high levels of citizens’ satisfaction.

2. Ensuring Political Commitment

Equally important, ministers should be “responsible champions and promote PPP process within a government.” Without a strong political commitment on the notion of PPP, the legislation in Lebanon—when ratified—becomes useless. After all, PPP legislation is a paper. If no commitment is offered to employ the law in a prolific manner, service delivery will not be improved no matter how many laws get ratified for this purpose.

3. Maintaining Political Stability

Political tensions are the major reason for malfunctioning of a PPP project. Not only does political turbulence impede PPP operation, it also increases private sector reluctance in getting into business with public entities, which acts as an obstacle for the effective launching of PPP projects. Member of the Parliament Abbas Hachem argued that

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PPP is not a priority for the government today because of political instability in Lebanon. All attention is now focused on resolving political hardships Lebanon is facing. The priority, he said, “is to find a solution for the political deadlock in Lebanon.” Once political consensus is reached in Lebanon and the role of state is identified, the chances of the successful launching, operating, and sustaining PPP projects increase. Political stability in Lebanon is required to ensure effective PPP implementation.

4. Instilling Trust

Trust and mutual respect are prerequisites for the success of PPP. The level of mistrust among the different political factions in Lebanon is apparent. Political instabilities that Lebanon witnessed during the last six years fueled the mistrust present among the different political parties. Mistrust in intentions of Prime Minister and President of HCP in promoting PPP to serve the public interest puts PPP legislation, and thus PPP projects, at stake. This mistrust dates back to 2005 when political tensions between March 14 and March 8 flared up. Mistrust of intentions present among political leaders in Lebanon act as an obstacle to effective implementation of PPP approach. Instilling trust forms a sound basis for PPP operations and facilitates effective communication between different actors involved in PPP.

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370 Abbas Hachem, Lebanese Member of Parliament. Interview by Carla Antar. (December 28, 2010).
C. Implications for Future Research

This thesis analyzes PPP status in Lebanon. It defines PPP in the Lebanese context; it presents the reasons for increasing call for PPP approach; it evaluates the PPP draft law proposal; finally, it studies future prospects of PPP. No attention has been given to PPP in Lebanon as much as it has been given today. Further research should investigate the outcomes of previous PPP projects so that comparisons can be made between past PPP projects and future ones that will be influenced by PPP legislation, if it gets ratified. Additionally, once PPP legislation gets ratified, proper assessment must be done to the law to see if the comments on the current PPP draft law were taken into consideration to ensure transparent and fair legal framework for PPP. Future research can also evaluate the extent to which PPP projects in Lebanon produce better quality of public services at a low price, if put under a legal framework. The extent to which the new Lebanese government headed by Najib Mikati sees PPP approach as an important tool to deliver public services can be examined as well. Each government has a different perspective in dealing with legal matters that call for private sector involvement. Studying Mikati government’s vision and its effect on PPP is an important subject to study in the future.

D. Final Word

In the final analysis, PPP is a generic approach in which the government harnesses the expertise and efficiencies of the private sector to upgrade Lebanon’s crumbling infrastructure. PPP yields positive outcomes if implemented in a transparent and accountable manner. However, if PPP projects act as means to reap private gains, country’s development will be imperiled. In Lebanon, PPP acts as a compromise between the lack of
administrative and funding capacities of public sector to deliver infrastructure services and fading outright privatization efforts.

Ratifying PPP legislation is a promising initial step the Lebanese government is making to successfully implement PPP projects in the future. PPP legislation acts as a tool that helps guarantee that the best qualifications of each of public and private sectors become used in an accountable and transparent manner to create the synergy needed to hasten Lebanon’s development. The sooner the draft law incorporates the amendments needed so that it gets ratified on an agreed-upon basis, the sooner will Lebanese citizens get relieved from traffic jams, electricity cuts, and water shortages. Ziad Hayek was optimistic that the PPP draft law will see the light before the end of 2010. However, his estimations were not in place due to political turbulence the country has been facing. Up till the present days, no information is provided on the status of PPP draft law. In fact, no information can be accessed on its status because of the political disorder Lebanon is facing today.

The fate of the current version of PPP draft law is still awaiting political consensus over its Articles. Political consensus takes time to reach in Lebanon especially today with the current political deadlock in the country. With the resignation of Saad al Hariri’s government, political deadlock in Lebanon has been reached. Lebanon is currently waiting for the new appointed Prime Minister, Najib Mikati, to form a government so that normalization of public activities takes place. Therefore, the legal framework of PPP draft

law is currently stuck in Parliamentary drawers waiting for political reconciliation so that its fate gets decided. Having a myriad of benefits attached to PPP when put in the proper legal framework make PPP worth a try, of course once the political situation in Lebanon gets settled.

PPP draft law is not the primary concern of Lebanese politicians today but attention is rather focused on solving the critical political problems in Lebanon. Until political consensus is reached, PPP draft law has no choice but to wait for its fate to be decided. PPP legislation is a necessary ingredient to ensure the success of forthcoming infrastructure projects in Lebanon. The wait to ratify the PPP draft law will have direct effect on the launching of infrastructure reconstruction projects. The longer the wait to ratify the law, the longer Lebanese citizens will have to bear with electricity cuts, bumpy roads, and water shortages. In conclusion, as PPP yields collective benefits to the public sector in Lebanon when properly implemented, it then becomes a reasonable option to reflect on when trying to solve public sector adversities.
APPENDIX I

Arabic Version of Public-Private Partnership Draft Law

 المادة الأولى: من أجل تطبيق احكام هذا القانون، يقصد بالمصطلحات التالية المعاني المقابلة لكل منها:

الشخص العام: الدولة والمؤسسات العامة والبلديات واتحادات البلديات.

الشريك الخاص: شركة أو تكتل شركات محلية أو أجنبية من القطاع الخاص فازت بالمشروع.

شركة المشروع: الشركة المغلقة اللبنانيّة التي تؤسس بعغaina تنفيذ المشروع من قبل الشريك الخاص، والتي يمكن للشخص العام أن يمتلك أسهماً فيها.

المشروع أو المشاريع: أي عملية تشتمل على العناصر التالية:

أولاً: تمويل.

ثانياً: إنشاء و/أو تطوير و/أو ترميم و/أو تأهيل و/أو تجهيز و/أو صيانة.

ثالثاً: استثمار و/أو إدارة مشاريع لها طبيعة اقتصادية وذات منفعة عامة.

يمكن أن تتضمن العملية أيضاً إعداد الدراسات والتصميم المتعلقة بتلك المشاريع.

الشراكة: تشمل لكل أشكال التعاون بين جهات من القطاعين العام والخاص لتنفيذ المشاريع الممولة بإجراءات هذا القانون.

عقد الشراكة: الاتفاق الذي يربط الشخص العام وشركة المشروع والذي يحدد شروط تنفيذ المشروع والنظام القانوني للشراكة وفقاً لإحكام هذا القانون.

المجلس: المجلس الأعلى للخصخصة المنشأ بموجب القانون رقم 228 تاريخ 31 أيار 2000.

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المادة الثالثة: تخضع لأحكام هذا القانون كل أشكال الشراكة بين القطاع العام والقطاع الخاص لتنفيذ المشاريع كما هي محددة في المادة الأولى من هذا القانون.

المادة الثالثة: تراعى في اختيار المشاريع المنوي تنفيذها عبر الشراكة المبادئ التالية:

1. تحقيق المشروع للمستفيدين العام.
2. حاجة القطاع العام للمشروع لسد فجوة قائمة في تقديم الخدمات العامة.
3. جدوى المشروع الاقتصادية وتستمد النتائج المرجوة من تنفيذه مع كلفته.
4. حسنات تنفيذ المشروع عبر الشراكة والأسباب التي تدعو إلى ذلك.

المادة الرابعة: تحدد بمراسيم تتخذ في مجلس الوزراء، بناء على اقتراح رئيس مجلس الوزراء ونهاية المجلس، الأنظمة الخاصة التي ترعى:

1. الأصول والإجراءات الواجب اتباعها في اقتراح وإحاله المشاريع سواء بمبادرة الشخص العام أو المجلس.
2. الأسس الواجب اعتمادها لتصنيف الجودة الفنية والاقتصادية للمشروع.
3. المبادئ والقواعد التي تنظم إجراءات اختيار الشريك الخاص.
4. أسس مراجعة تنفيذ المشروع وتفريق أداء شركة المشروع.

المادة الخامسة: يمارس المجلس، بالإضافة إلى المهام المنطة به بموجب القانون رقم ٢٨٨ تاريخ ٢٠٠٠/٥/٣، المهام التالية:

1. استلام المبادرات المقدمة من الشخص العام والشبه العام والشخص المعني بالمشاريع المنوي تنفيذها عبر الشراكة والاقتراح المشاريع وعرضها على الشخص العام المعني.
2. تقييم الجودة الفنية والاقتصادية للمشروع على أن يحظى كل مشروع بموافقة المجلس كشرط لتنفيذها عبر الشراكة عملاً باحكام هذا القانون.
3. التنسيق مع وزارة المالية في ما خص أثر المشروع على الموازنة العامة.
4. إعداد دفاتر الشروط وعقود الشراكة وملفات التعاون مع الشخص العام المعني.
5. تنظيم وإدارة إجراءات اختيار الشريك الخاص وفقاً لإحكام هذا القانون ونصوصه التطبيقية.
6. متابعة تنفيذ المشروع وتفريق أداء شركة المشروع، ولا لأجل هذه الغاية أن يطلب من الشخص العام أو شركة المشروع تزويده بالمعلومات والوثائق والدعايات المرتبطة بتنفيذ عقد الشراكة.
7. إبداء الرأي وتقديم الملاحظات بخصوص تنفيذ عقد الشراكة على ضوء المعلومات والدعايات المتوفرة لديه إلى الشخص العام المعني إلى مجلس الوزراء عند الضرورة.
8. إعداد تقارير سنوية لجلس الوزراء بشأن المشاريع التي تُنفذ عبر الشراكة، وتقييم الاقتراحات التي تترى إلى تطوير وتحفيز الشراكة بشكل عام.
9. الاستعانة بالخبراء والاستشاريين المتخصصين وبمكتبات التدقيق المحلية والدولية لدى ممارسة المجلس لأي من المهام المذكورة أعلاه.
المادة السادسة: بعد الموافقة على المشروع، يخلي المجلس الملف المتضمن دراسة الجدوى ودفتر الشروط إلى مجلس الوزراء لأخذ موافقته على السير بالمشروع على أن يخضع عقد الشراكة بصيغته النهائية وبعد توقيعه من قبل الأطراف المعنية لمصادقة مجلس الوزراء.

المادة السابعة: تراعى في عملية اختيار الشريك الخاص مبادئ الشفافية والمنافسة والمساواة بين المتنافسين. وفي مطلق الأحوال، لا يجوز اختيار شريك خاص أعلن إفلاسه ولا التعاقد مع شركة مشروع صدر بحق رئيس أو أحد أعضاء مجلس إدارتها حكم مبرم يدينه بارتكاب جناية أو جنحة شائعة.

المادة الثامنة: يجوز على الشريك الخاص تأسيس شركة المشروع، وهي شركة مغلقة لبنانية تخضع لأحكام قانون التجارة وتعفي من تطبيق أحكام المواد 87 و 141 و 171، كما يعفي رئيس مجلس الإدارة المدير العام غير اللبناني من موجب الحصول على إذاعة عمل.

يمكن للشخص العام المشاركة في تأسيس شركة المشروع والمساهمة في أعمالها بأية نسبة، وتعفى مقدماته العينية من معاملة التحقق المنصوص عنها في المادة 86 من قانون التجارة على أن يتم التخمين عن طريق جيدة مستقلة ذات اختصاص دولي. يتم اختيار أعضاء مجلس الإدارة من قبل الجمعية العمومية على أن يمثل الشخص العام طيلة مدة مساهمته في الشركة بعضو على الأقل يعين من قبل مجلس الوزراء.

لا تخضع شركة المشروع لرقابة ديوان المحاسبة.

المادة التاسعة: يجب أن يحدد عقد الشراكة الأمور التالية:

1. الأعمال التي يتوافق على كل من الشخص العام وشركة المشروع القيام أو الامتثال عن القيام بها وموجبات وحقوق كل فريق.
2. أسس تمويل المشروع.
3. مدة العقد، على أن لا تتجاوز هذه المدة خمسة وثلاثون عاماً.
4. كافة البندات التي ستقتضيها شركة المشروع من الشخص العام لقاء قيامها بالأعمال الموكلة إليها بموجب عقد الشراكة، وطريق تفاوض تلك البندات.
(key performance indicators).
5. ميزات تقييم أداء شركة المشروع.
6. التقارير التي تعدها شركة المشروع حول تنفيذ المشروع وتحيلها إلى الشخص العام والمجلس.
7. توزيع المخاطر بين الشخص العام وشركة المشروع بالإضافة إلى التدابير والإجراءات التي يجب إتباعها للحد من وقوع تلك المخاطر.
8. الضمانات والتعهدات التي قد تعطى لتنفيذ المشروع.
9. الأموال والأملاك العائدة إلى الشخص العام والتي توضع، خلافاً لأي نص آخر، طيلة مدة عقد الشروكة بصرف شركة المشروع لتنفيذ موجباتها، بالإضافة إلى حقوق وواجبات شركة المشروع فيما خص هذه الأملاك والأموال.

10. كيفية وتوقيت تحويل المشروع إلى الشخص العام عندما تقتضي طبيعة المشروع ذلك.

11. الإجراءات والجزاءات التي تحق بشركة المشروع في حال إخلائها بأي من موجباتها العقدية.

12. إجراءات تأمين استمرارية المشروع والأعمال موضوع عقد الشراكة لدى إنتهاء عقد الشراكة بحلول أجله أو بفسكه أو في حال إخلال شركة المشروع في تنفيذ موجباتها العقدية.

13. الأصول المتبقية لحل النزاعات، بما فيها الوساطة والتحكيم.

المادة العاشرة: خلافاً لأي نص آخر، يجوز للشخص العام أن يضع بصرف شركة المشروع العقارات العائدة له واللازمة لتنفيذ المشروع مما كانت طبيعتها القانونية وذلك طيلة مدة عقد الشراكة.

إذا أوجب تنفيذ المشروع استملاك عقارات خاصة، يمكن للمجلس أو شركة المشروع أن يطلب من الشخص العام استملاك تلك العقارات. تطبق في هذه الحالة أصول الاستملاك على أن تصدر قرارات وضع البيد ونقل الملكية في مهلة أقصاها ستة أشهر من تاريخ صدور مرسم إعلان المنفعة العامة. تسجل العقارات المستملاكة في السجل العقاري باسم الشخص العام وتعطي شركة المشروع حق الاتفاق منها طيلة مدة عقد الشراكة.

المادة الحادية عشرة: تلخيص نقاط المشروع التي تقع على عاتق الدولة في موازنة الدولة العامة.

المادة الثانية عشرة: للحكومة بمرسوم يتخذ في مجلس الوزراء أن تجزي لشركة المشروع استياء الرسوم والجداول العائدة للمشروع باسم وحساب الشخص العام المعني.

المادة الثالثة عشرة: لا تحول أحكام هذا القانون دون استفاء الشريك الخاص وشركة المشروع من أحكام القانون رقم 360 الصادر بتاريخ 16 أب 2001 والمتعلق بتشجيع الاستثمارات في لبنان.

المادة الرابعة عشرة: تحدد عند الاقتضاء دقائق تطبيق هذا القانون بمراسيم تتخذ في مجلس الوزراء، بناء على اقتراح رئيس مجلس الوزراء وإنهاء المجلس.

المادة الخامسة عشرة: يعمل بهذا القانون فور نشره في الجريدة الرسمية.

كتاب المحرر البرلماني: 2010/8/17
APPENDIX II

English Version of Public Private Partnership Draft Law

Article One: For the application of the provisions of this Law, the following terms shall carry the meanings ascribed thereto:

Public Person: the State, public institutions, municipalities, and municipal federations.

Private Partner: a company or a consortium of local or foreign companies in the private section that has been awarded the project.

Project Company: the Lebanese anonymous company established for the purpose of the execution of the project by the private partner and in which the public person may own shares.

Project or Projects: any operation that includes the following elements:

- First: Funding
- Second: Establishment and/or development and/or renovation and/or rehabilitation and/or equipping and/or maintenance
- Third: Investment and/or management of projects of economic nature and public benefit.

The operation may also include the elaboration of studies and designs related to these projects.

Partnership: It includes all forms of collaboration between the private and public sector for the implementation of the projects subject to the provisions of this law.

Partnership Contract: The agreement between the public person and the project company and which specifies the project execution conditions and the legal regulations of this partnership pursuant to the provisions of this Law.

*Translated by Ditto Translation Agency, Beirut, Lebanon. www.dittotranslation.com
**Council:** the Higher Council for Privatization established by virtue of Law No. 228 on May 31, 2000.

**Article Two:** All forms of partnership between the public and private sectors for the implementation of projects shall be governed by the provisions of this Law as specified in Article One of this Law.

**Article Three:** The following principles shall govern the selection of projects to be implemented:

1. Achieve public benefit.
2. The project is needed by the public sector to fill the gap in the provision of public services.
3. Achieve economic feasibility and cost-effectiveness.
4. The advantages of implementing the project through partnership, and the reasons.

**Article Four:** Upon the proposal of the Prime Minister and the closure of the council, the Council of Ministers shall decree the particular statutes governing the following:

1. The procedures that shall be adopted in proposing and assigning projects whether on the initiative of the public person or the council.
2. The principles to be adopted in assessing the technical and economic feasibility of the project.
3. The principles and rules that regulate the selection of the private partner.
4. The principles of controlling the execution of the project and the assessment of the project company performance.

**Article Five:** The Higher Council for Privatization shall exercise, in addition to the powers entrusted thereto by virtue of Law No. 228 of 31/5/2000, the following missions:

1. Receive the initiatives provided by the public person and which are in relation with the projects to be executed through the partnership, and propose projects and submit them to the concerned public person.
2. Assess the technical and economic feasibility of the projects provided that each project is subject to the approval of the council as a condition of implementation through the partnership, in conformity with the provisions of this Law.
3. Coordinate with the Ministry of Finance concerning the impact of the project on the public budget.
4. Elaborate the Request for Proposals, the partnership contracts and their peripherals in collaboration with the concerned public person.
5. Organize and manage the procedures of selection of the private partner pursuant to the provisions of this Law and its applicable texts.
6. Follow up the execution of the project and assess the performance of the project company; and for this purpose it may require from the public person and/or project...
company to provide it with the necessary information, documents, and reports in relation with the execution of the partnership contract.

7. Express opinion and provide feedback regarding the execution of the partnership contract in the light of the information and reports available thereat to the concerned public person and to the Council of Ministers when need be.

8. Elaborate annual reports to the Council of Ministers regarding the projects that are executed through partnership and submit propositions aiming at developing and fostering the partnership in general.

9. Hire experts, specialists and consultants and seek local and international audit firms when the Council exercises any mission mentioned above.

**Article Six:** After approval of the project, the Council will transfer the file containing the feasibility study and the RFP to the Council of Ministers to obtain its approval of the project flow and progress, provided that the partnership contract, in its final form and after the signature of the concerned parties, is ratified by the Council of Ministers.

**Article Seven:** The selection of partner shall be based upon the principles of transparency, competition and equality between the contestants. In all cases, the selection shall neither target any person that declared its bankruptcy nor contract a project company whose chairman or board member has been the subject of a verdict for commitment of crime or felony.

**Article Eight:** The Private Partner shall establish the project company that is a Lebanese anonymous company subject to the provisions of the Commercial Law and shall be exempted from the application of the provisions of Articles 78, 144, and 173. The non-Lebanese chairman shall be also exempted from obtaining a work visa.

The Public Person may participate in the establishment of the project company and contribute in its capital by any share, and its real contributions shall be exempted from the investigation provided for in Article 86 of the Commercial Law provided that the valuation is undertaken through an independent authority of international jurisdiction. The members of the board of directors are selected by the general assembly provided that the public person is represented through its contribution period in the company by at least one member designated by the council of ministers.

The project company shall not be subject to the Accounting Diwan control.

**Article Nine:** The Partnership Contract shall specify the following:

1. The works that every public person and project company shall carry out or refrain from executing, in addition to the obligations and rights of every party.
2. The project funding bases.
3. The contract period provided that this period does not exceed thirty-five years.
4. All allowances that will be received by the Project from the Public Person in return for performing the works entrusted thereto under the Partnership Contract, and the methods of receipt of such allowances.

5. The key performance indicators of the Project.

6. The reports elaborated by the Project Company about the execution of the Project and which it transmits to the Public Person and the Council.

7. Distribution of risks between the public person and the project company, in addition of the measures and procedures that should be followed to minimize such risks.

8. The warranties and commitments that may be granted for the execution of the Project.

9. The fund and properties that belong to the public person and which are placed, contrary to any other text, throughout the partnership period, in the possession of the Project Company for the execution of its obligations, in addition to the rights and obligations of the Project Company regarding these properties and funds.

10. The method and timing of transferring the project to the Public Person when the nature of the project requires it.

11. The procedures and penalties that will be imposed on the Project Company in the event the latter fails to respect any of its contractual obligations.

12. The procedures related to ensuring the project continuity and the works that are the subject matter of the partnership upon the end of the partnership contract, upon its term, termination or in case the Project Company fails to fulfill its contractual obligations.

13. The procedures followed in settling disputes, including the arbitration and mediation.

**Article 10:** Contrary to any other text, the Public Person may place at the disposal of the Project Company its own real estate that are required for the execution of the Project, whatsoever their legal nature, for all the period of the Partnership Contract.

Should the execution of the Project require the appropriation of private real estate, the Council or the Project Company may require from the Public Person to appropriate such real estates. In this case, the appropriation procedures shall be applied provided that the seizure and ownership transfer decisions are issued within a maximum period of six months from the date of issuance of the decree on the declaration of the public benefit. The appropriated real estate shall be registered at the real estate registry in the name of the public person and the project Company shall be granted the usufruct right throughout the period of the partnership Contract.

**Article Eleven:** The Project costs which are at the expense of the State shall be budgeted in the State Budget.

**Article Twelve:** The Government may by virtue of a decree issued in the Council of Ministers authorize the Project Company to collect the fees and taxes for the Project in the name and for the account of the concerned Public Person.
Article Thirteen: The provisions of this Law shall not prevent the private partner and the project company from benefiting from the provisions of Law No. 360 issued on August 16, 2001 and which are related to encouraging investments in Lebanon.

Article Fourteen: The particularities of enforcement of this Law shall be specified through decrees issued in the Council of Ministers upon the proposal of the Prime Minister and the closure of the council.

Article Fifteen: This Law shall become effective as of its publishing in the official gazette.

Elaborated by Parliamentary Clerk on August 17, 2010.
APPENDIX III

Interview Questions:

1. How do you define privatization; why do governments pursue privatization?

2. How do you define public-private partnerships; why do governments pursue PPP?

3. To what extent do you believe that public-private partnerships are appropriate for Lebanon?
   a. How might public-private partnerships improve the delivery of public services in Lebanon?
   b. How might public-private partnerships undermine the delivery of public services in Lebanon?

4. Do you know whether Lebanon’s government is currently involved in any public-private partnership?
   a. Can you provide an example?
   b. Can you evaluate the general performance of this example?

5. To what extent is Lebanon’s government interested in increasing the use of public-private partnerships? Why do you believe this to be the case?

6. Can you comment on Lebanon’s proposed public-private partnership legislation?
   a. What are the strengths of the proposed legislation?
   b. What are the weaknesses of the proposed legislation?

7. Can you comment on Lebanon’s proposed public-private partnership legislation?
   a. What are the strengths of the proposed legislation?
   b. What are the weaknesses of the proposed legislation?
   c. Do you suggest any amendments to the proposed legislation?

8. To what extent does your Ministry support Lebanon’s proposed public-private partnership legislation?

9. Is there anything else that you believe is important that I should know about?
APPENDIX IV

List of Interviewees

2. Mr. Alain Bifani, General Manager of Ministry of Finance.
3. Dr. Kamal Hamdan, Head of Economic Division at the Consultation and Research Institute.
4. Mr. Abbas Hachem, Lebanese Member of Parliament.
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